CS EXECUTIVE CHART BOOK
QUICK REVISION GUIDE

JIGL

MODULE - I

Summarised Tabular Chart Format for revising the subject matter in an easy-to-learnformat

Point-wise Summaries of each chapter are provided in a nutshell

Full-coverage of the New Syllabus for CS-Executive Dec 2024 exams

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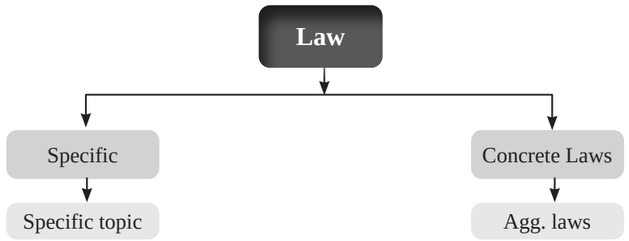
1 SOURCES OF LAW



PURPOSE OF LAWS

Regulate human activities & to define what is permissible & what is not.

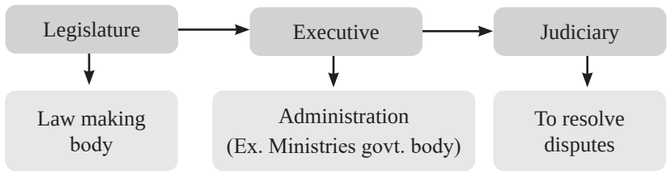
Constitution of India

Article - 13(3) Law

- Includes any ordinance, order, bye - laws, rules, regulation, customs or usage in territory of India

Law in force

- Law passed by OR made by legislature OR any competent authority in territory of India (before commencement of constitution and not previously repealed)



Ulpine	→	Art or science of what is equitable & good
Cicero	→	highest reason implanted in nature
Justinian Digest	→	Standard of what is just & unjust

SIGNIFICANCE OF LAW

- Law is not static [Law changes with changes in society]
- Idea of abstract justice has been replaced by social justice
- Law is expected to provide source economic justice

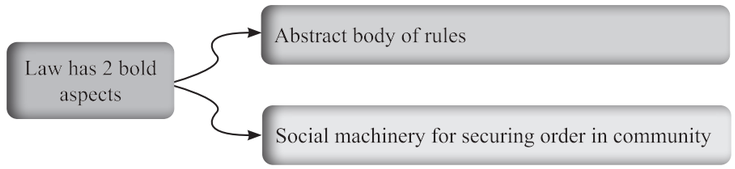
Meaning of Jurisprudence

Juris	Prudence
↓	↓
Law	Knowledge

- Not about any particular law OR rule
- It is about law in general, concepts, principles
- Its about analysis of rights, duties, delegations & how they emerge in society

LAW ARE OF TWO TYPES

Substantive	-	defines our right / duties
Procedural Law	-	Procedure



ANALYTICAL JURISPRUDENCE

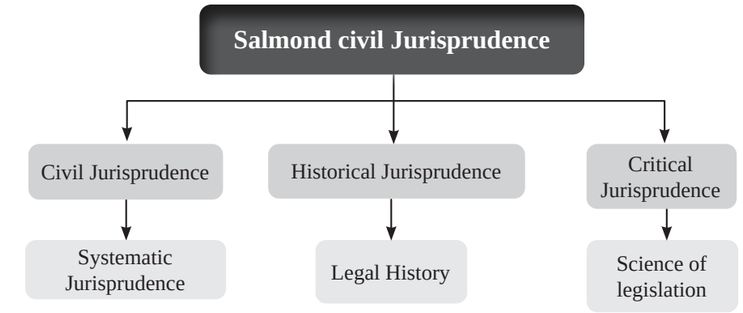
Elements of pure science
Objectives which will be universally true
Not shifting in hands of individual preference, of particular ethical OR sociological views

SOCIOLOGICAL JURISPRUDENCE

Highlights limitations of pure science of law
Finish answer to social problems

TELEOLOGICAL SCHOOL & JURISPRUDENCE

Law is product of human reason & to national of purpose.



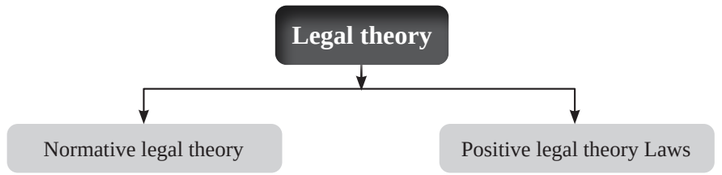
PROF. JULIUS STONE

Law is lawyer's extraversion lawyer's explanation of ideals & techniques of law derived from present knowledge.

PROF. G.W. PATON

Jurisprudence is founded on attempting not to find universal principles of law but need to construct relationship between law, its concepts & life of society

Task of Jurisprudence
To study nature of law
Nature of legal institution and their relation to society

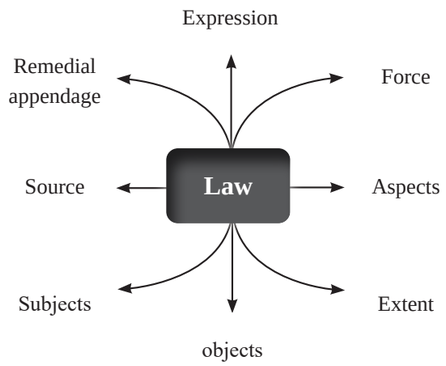


JEREMY BENTHAM

- Pioneer of analytical jurisprudence in Britain
- Law may be defined as assemblage of signs, declarative of volition, conceived OR adopted by sovereign in a stak

He commanded that nature has placed man under command of two sovereign pam & pleasure

Function of law is to bring max happiness be each individual resulting in happiness of all



COMPLETE LAW SHOULD HAVE FEARNESS OF INTEGRITY + UNITY

Law is complete in expression connection & design

Criticism

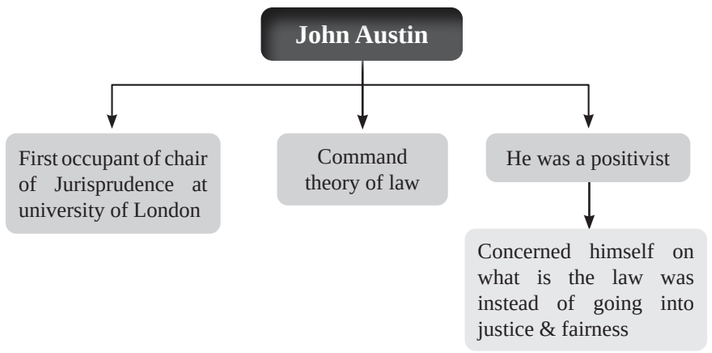
(i) Straight-Jacketing of law into an imperative theory
(all laws are either command OR permission)

(ii) He did not give fair treatment to customs as source of law

(iii) Did not allow judge made law

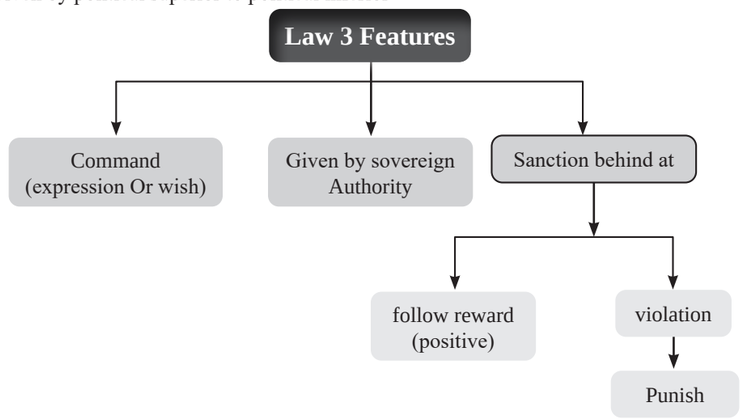
(iv) Theory did not provide subjective criteria of pain & pleasure

(v) It is not always true that an increase in happiness of a certain segment of society will lead.



"Law properly so called"
General Command

"Law un-properly so called"
Given by political superior to political inferior

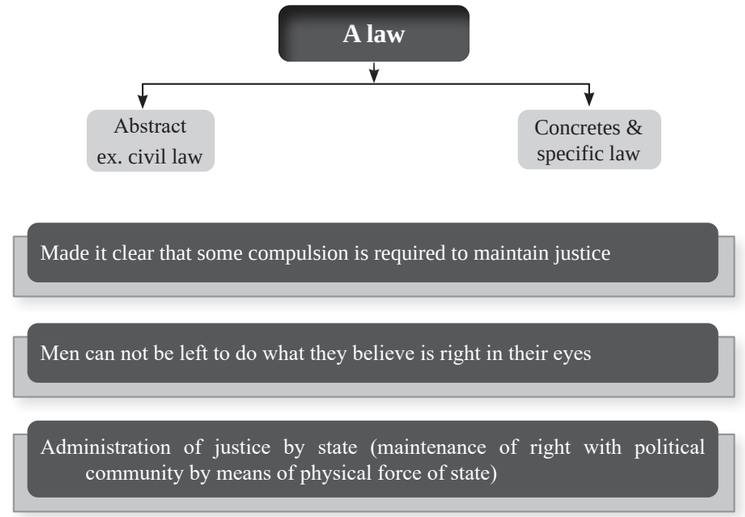


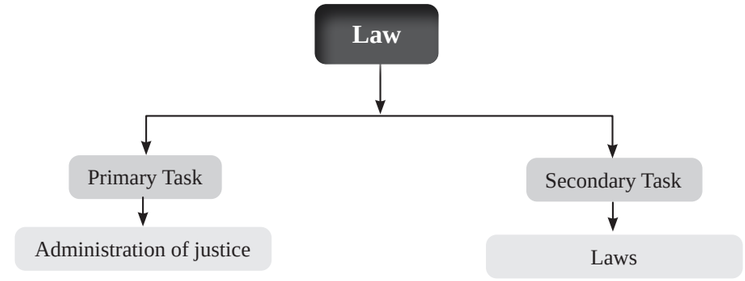
Criticism

- State pass number of laws that do not command people but gives them rights & benefits
- Sovereign does not have to obey anyone
- Does not provide for judge made laws
- Presence of a sovereign is a prerequisite for proposition (law), But it failed to recognize international laws.

John William Salmond

- Law professor
- Judge of supreme court of New Zealand





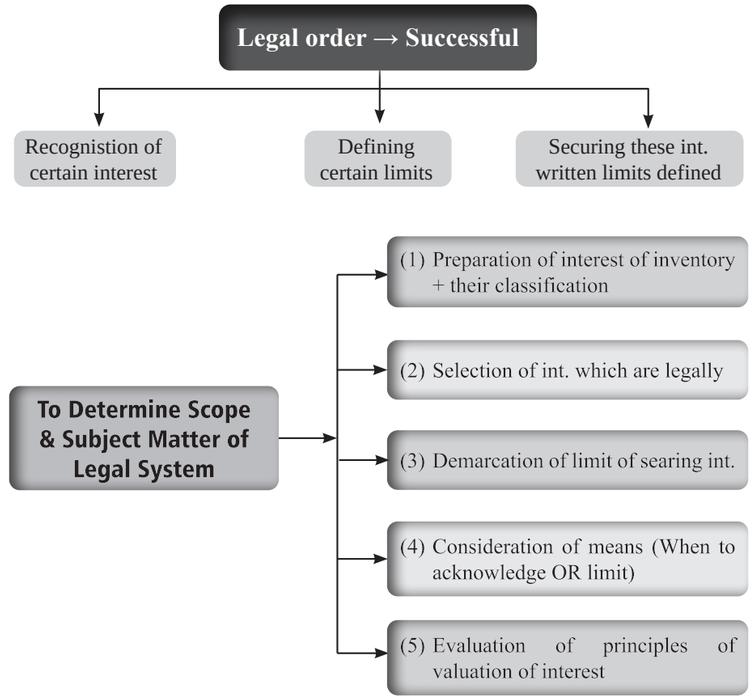
Laws are pre-established & authoritative rules are applied in administration of justice.
Administration of justice is possible without lands but it is not desirable.

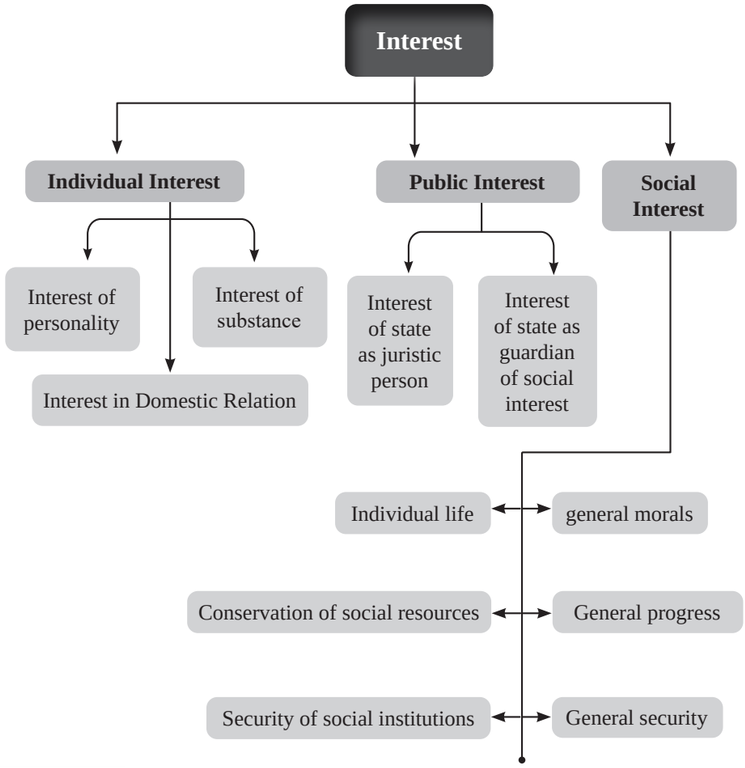
CRITICISM

- Justice is the end & law is medium to realize it.
- Pursuit of justice is not the only purpose of law.
- Justice is a universal concept
- Purpose of law → administration of justice to study first principles of law which should not be constrained by rational boundaries.

ROSCOE POUND

- American legal scholar
- Law is made by Engineer and lawyer = social engineering
- Goal → build a structure of society where max. satisfaction of wants can be achieved with minimum of function & waste





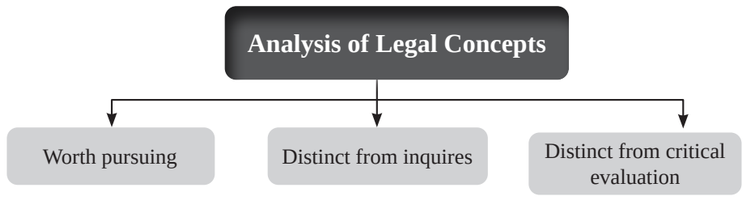
CRITICISM

- Pre-existing law & legal system should have a balance (due to a lot of interest creation)
- Does not provide any criteria for evaluation of interest
- Judges translate the activity in terms of interest, (more importance to judiciary, not legislature)
- Distinctions are doubtful
- Recognition of new interests is a matter of policy.

PROF. HLA HART

British legal philosophers

Law are

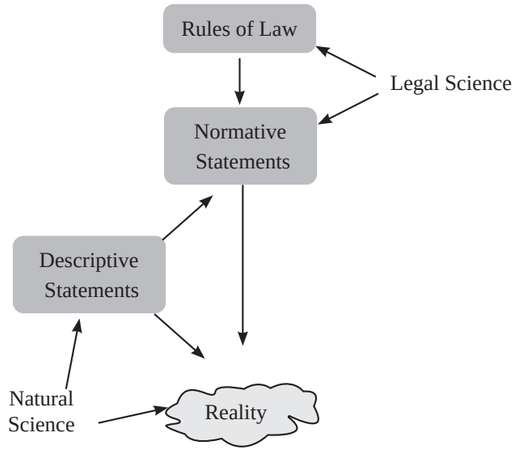


DECISIONS CAN BE DEDUCED LOGICALLY FROM PRE-DELOMINED RULES

Moral judgments can not be established or defended by rational judgment, evidence or proof.

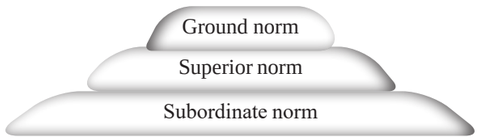
Law as it is lord down should be kept separate from law ought to be

Hans Kelson



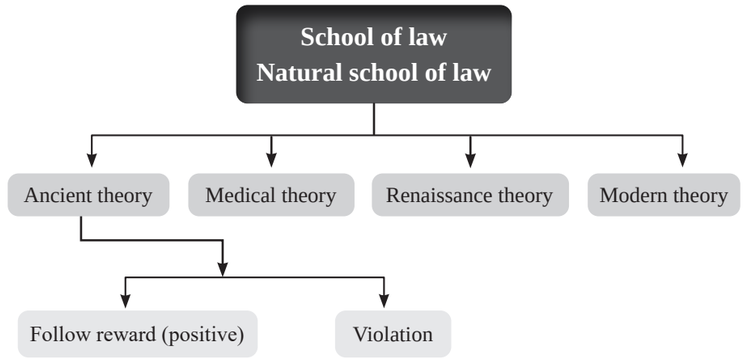
LAW IS A PRELIMINARY NORM WHICH STIPULATES ACTION

(Sanction) rules forbidding certain behavior



Criticism

- Difficult to trace grund norm is every legal system
- Does not provide time frame for effectiveness OR validity
- Ceases to be "pure" the moment one tries to analyse groundnorm
- Does not sit well with international laws.



(1) Ancient Theory

(*a*) **Heroclites** - Greek philosopher 3 main features of law
- Destiny
- Reason
- Order

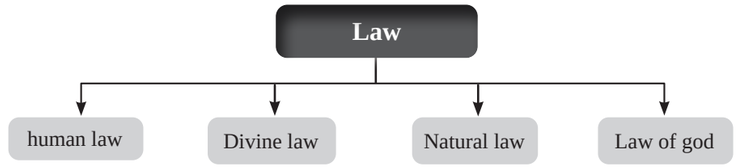
(*b*) **Socrates** – Human sight → helps a man distinguish between good OR bad

(*c*) **Plato** – 2 man aspects - **wisdom and reason**

(*d*) **Aristotle** – Reason unaffected by desires

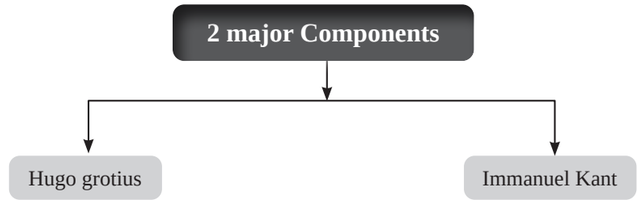
(2) Medieval Theory

- Theological idea of god
- Law is actually true
- Dharma connecting with god
- "Law is part of dharma"



(3) Renaissance Theory

- Marked by rationalism
- Reason is main foundation
- More secure, political was founded on human reasons
- Advocates natural rights of man & the state



(4) Modern Theory

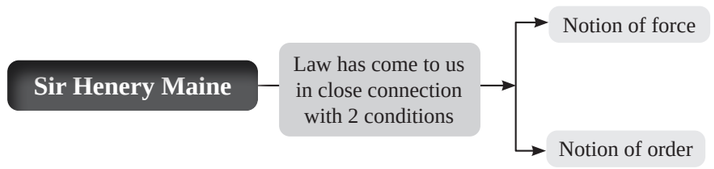
- Rejects older theories & conceptions
- Revival of natural law
- Reaction against positive & historical approaches

Analytical School of law

- English jurist → John Anstin
- Law is set of rules by man as politically superior or sovereign to men as political Subject
- Law is command of sovereign
- Includes Hans Kelsen theory

Historical school of law

- Origin, formation & development of law is outcome of historical & evaluation forces
- Originates from a long drawn practice of customs, ongoing conventions, social habits, traditions etc.



Von Savigny's theory of law

- Law is matter of unconscious & organic growth (law is found & not made)
- Law is not universal in nature (varies with people & age)
- Customs not only proceeds legislature but it is superior to it (Conform to popular consciousness)
- Law has its source from common consciousness of people
- Legislation is last stage of law making (lawyer & jurist are more important)

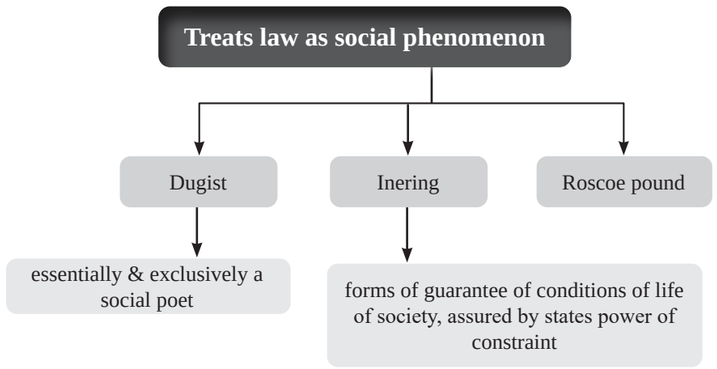
Philosophical / Ethical school of law

- Law must have an element of ethical value & purpose
- Law as a means to achieve its end which individuals can harmonize with general will.

Hugo Gratius – Rules of human conduct emerge from right reason therefore they receive public support of community

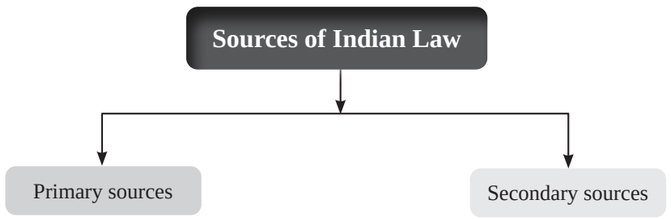
Hegel – purpose of law is to reconcile the conflicting egos in society (to achieve human perfection + individual liberty)

Sociological school of law



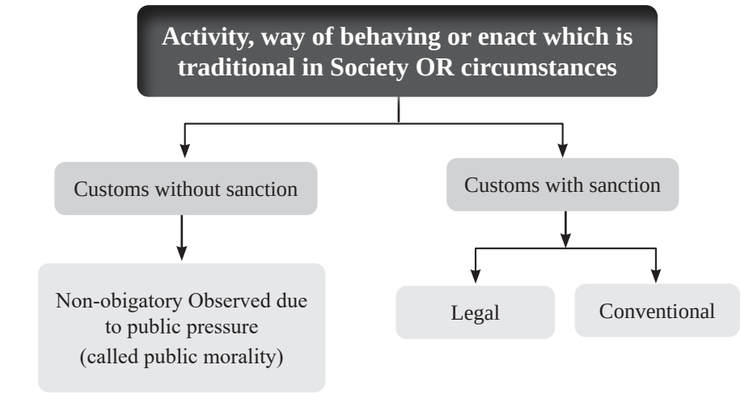
Realistic School of Law

- Law is a statement of circumstances in which a public force will be is brought to bear upon courts.
- following are the main characteristics of law and a definition to become universal one, must incorporate all these elements:
- – Law pre-supposes a State
- – The State makes or authorizes to make, or recognizes or sanctions rules which are called law
- – For the rules to be effective, there are sanctions behind them
- – These rules (called laws) are made to serve some purpose. The purpose may be a social purpose, or it may be simply to serve some personal ends of a despot.



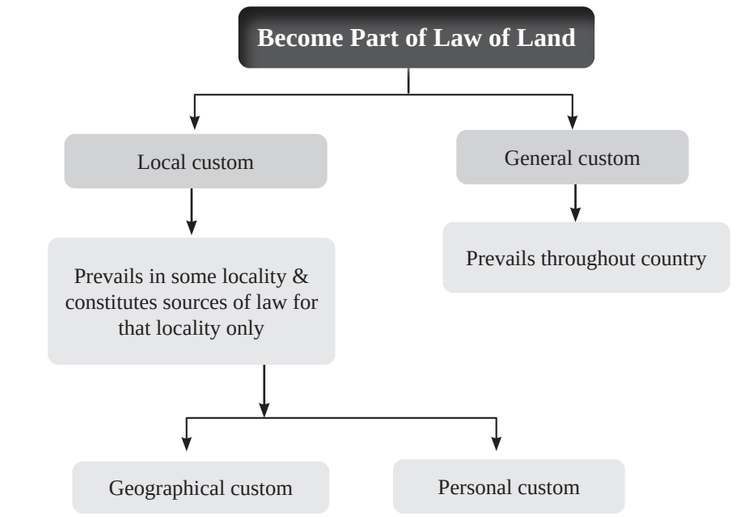
- Customs / customary law
- Judicial Decision / precedents
- Statutes OR legislation
- Personal law

(1) CUSTOMS OR CUSTOMARY LAW



(I) LEGAL CUSTOMS

- Operate as binding rule of law



(II) CONVENTIONAL CUSTOMS

- Binding due to an agreement between parties
  - Fully known & clearly established
  - Reasonable
  - Can not alter general law of land

REQUISITE OF VALID CUSTOM

- Immemorial (Antiquity)
  - Must be ancient
- Certainty
  - Not vague & ambiguous
- Reasonableness
  - Useful & convenient to society
- Compulsory observance
- Conformity with law & public morality
  - Not opposed to public policy
- Unanimity of opinion
  - Must be general OR universal
- Peaceable enjoyment
  - Enjoyed peacefully without dispute

(2) JUDICIAL DECISION OR PRECEDENTS

- Guidance or authority of past decisions
- Only those decision which lay down down new principles
- Decisions of high court are binding on all courts & tribunals in its jurisdiction
- High courts are courts of Coordinate jurisdiction
  (One's decision is not binding on another)
- Supreme court (Highest court)
  decision
  ↓
  Binding on all courts & judicial tribunals of country
- Supreme court is not bound by it own decisions
  If the earlier is found erroneous + detrimental to welfare of public, it can be departed + Not bound by decisions of privy council

KIND OF PRECEDENTS

(I) Declaratory & Original

- Application of already existing rule of law
- Decision OR applies new rule of law
  ex: vishakha guidelines

(II) Persuasive Precedents

- Judges are not bound to follow but which will be taken into consideration
- Regarded as historical source of law
  ex: Decisions of High Court

(III) Absolute authoritative precedents

- Which judge must follow, whether they approve it OR not
- Binding force

(IV) Conditionally Authoritative

- Binding on court cited + be disregarded if it is wrong

DOCTRINE OF STARE DECISIS

- Adhere to the decisions & do not unsettle things which are established
- "to be a side by things decided"
- Obligates courts to follow historical cases while making ruling in similar cases.
- Rule making power of executive is hedged with limitations

Both Houses of parliament → President → Notify in official gazette

OBITER DICTA

"said by the way"

used to denote the judicial entrances in course of delivering a judgement

Must go beyond requirement of particular case & have persuasive precedent only

Judges are not bound to follow but can take their advantage

(3) STATUTES OR LEGISLATION

declaration of legal rules by authority empowered under constitution

"Jus scriptum" ↓ Written law — "Jus non scriptum" ↓ unwritten law

(4) PERSONAL LAWS

Applied to personal law of parties where point of issue is not covered under any statutry law

- Shruti includes four vedas
- Smriti
- Hindu's are governed by their personal laws

Recollections handed over by Rishi's OR Ancient teachings

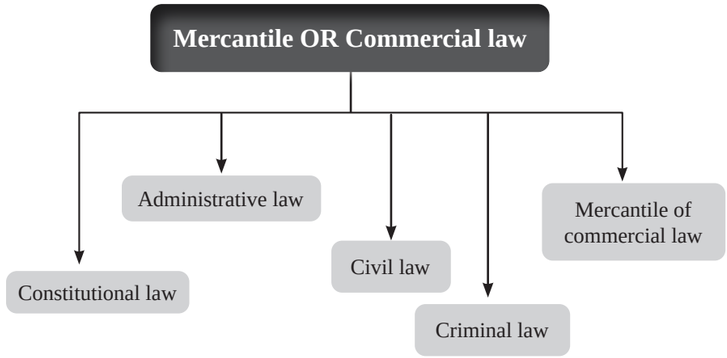
Personal laws of Mohammedans

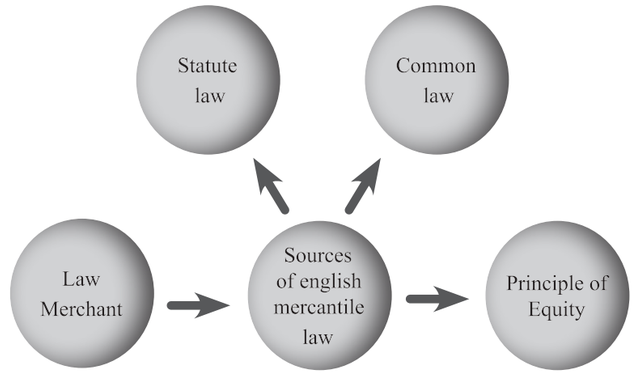
- Holy Book, Quran
- Action, pereepts, sayings of prophet mohammed
- Igmas
- Kiyas
- Digest & Commentaries on mohammaden law

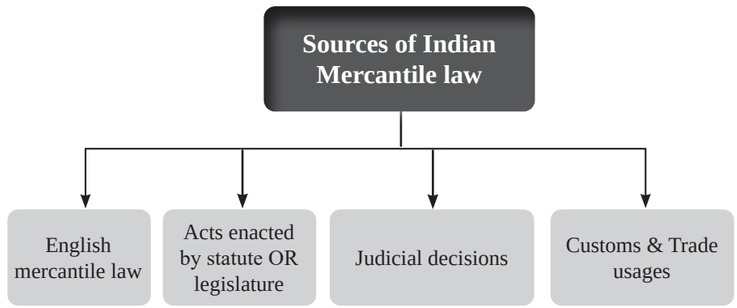
Secondary sources of law

- Justice Equity & good conscience
- Sources of English law
  - ❖ Common law
    Made on cases brought before judges
  - ❖ Law merchant

- ❖ Binding on traders dealings
- ❖ Statute law
  Derived from legislature
- ❖ Principle of equity
  - ◆ No remedy in common law







2 THE CONSTITUTION OF INDIA

THE PREAMBLE TO THE CONSTITUTION STATES

We, the People of India, having solemnly resolved to constitute India into a **[Sovereign Socialist Secular Democratic Republic]** and to secure to all its citizens:

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity assuring the dignity of the individual and the [unity and integrity of the Nation];

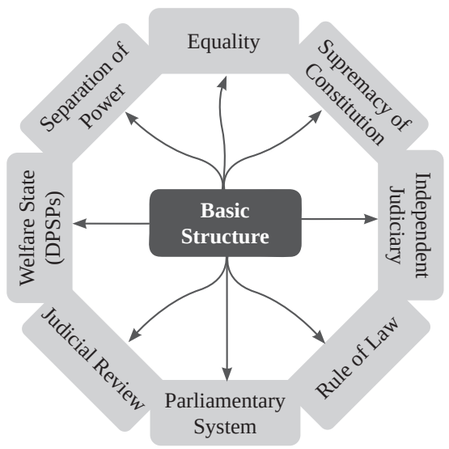
In Our Constituent Assembly this twenty-sixth day of November, 1949, do **Hereby Adopt, Enact And Give to Ourselves this Constitution.**

Structure of the Constitution

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

The majority of the Supreme Court judges in ***Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461,*** were of the view that the federal features form the basic structure of the Indian Constitution. However, there is some controversy as to whether the Indian Constitution establishes a federal system or it stipulates a unitary form of Government with some basic federal features. Thus, to decide whether our Constitution is federal, unitary or quasi federal, it would be better to have a look at the contents of the Constitution.

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

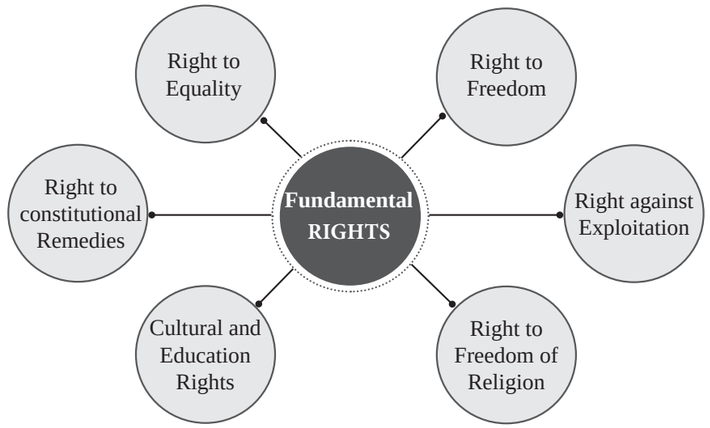


Fundamental Rights

The Constitution seeks to secure to the people "liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and fraternity assuring the dignity of the individual". With this object, the fundamental rights are envisaged in Part III of the Constitution.

Inclusion of Fundamental Rights in Part III of the Constitution

Part III of the Indian Constitution guarantees six categories of fundamental rights. These are:



Definition of State (Article 12)

With a few exceptions, all the fundamental rights are available against the State. Under Article 12, unless the context otherwise requires, "the State" includes "The expression 'local authorities' refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trusts, Port Trusts and Mining Settlement Boards".

The Supreme Court has held that 'other authorities' will include all authorities created by the Constitution or statute on whom powers are conferred by law and it is not necessary that the authority should engage in performing government functions ***(Electricity Board, Rajasthan Mohanlal, AIR 1967 SC 1957).***

It has also been held that a university is an authority ***(University of Madras v. Shanta Bai, AIR 1954 Mad. 67).***

The Supreme Court in ***Sukhdev Singh v. Bhagatram, AIR 1975 SC 1331*** and in ***R.D. Shetty v. International Airports Authority, AIR 1979 SC 1628***, has pointed out that corporations acting as instrumentality or agency of government would become 'State' because obviously they are subjected to the same limitations in the field of constitutional or administrative law as the government itself, though in the eye of law they would be distinct and independent legal entities.

JUSTIFIABILITY OF FUNDAMENTAL RIGHTS

Article 13 gives teeth to the fundamental rights. It lays down the rules of interpretation in regard to laws inconsistent with or in derogation of the Fundamental Rights.

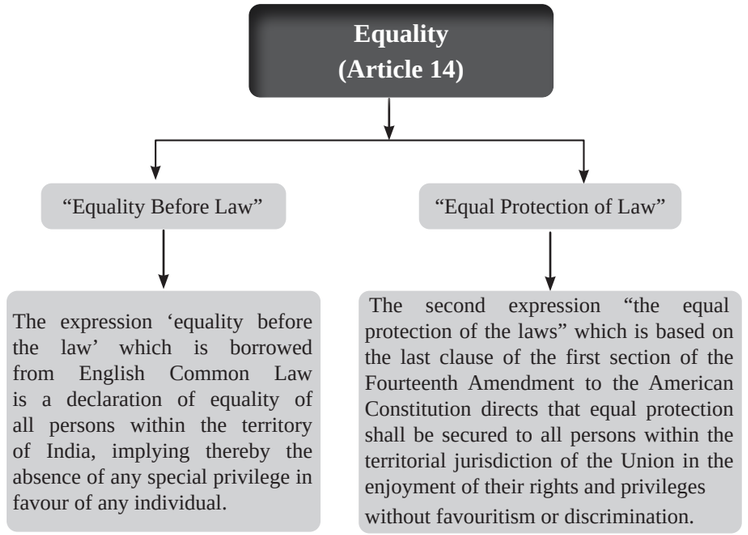
Existing Laws: **Article 13(1)** relates to the laws already existing in force, i.e. laws which were in force before the commencement of the Constitution (pre constitutional laws). A declaration by the Court of their invalidity, however, will be necessary before they can be disregarded and declares that 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. 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	**Only conflicting parts are void:** Laws don't get scrapped entirely if a section clashes with Fundamental Rights. Just the problematic part becomes invalid. **Severability test:** The remaining valid part must still fulfill the original purpose of the law after removing the unconstitutional section. If it can't function independently, the whole law might be struck down.
Doctrine of Eclipse	**Pre-Constitution Laws and Fundamental Rights:** Laws existing before the Constitution can be overridden (eclipsed) if they conflict with Fundamental Rights (like freedom to conduct business). **Not Permanently Dead:** These eclipsed laws aren't completely erased. They can be revived if the conflicting Fundamental Right is itself removed through a Constitutional Amendment. **Example:** A law allowing government control over transportation became unenforceable due to Article 13. However, a subsequent amendment permitting state monopolies in transport revived that part of the law.
Doctrine of Waiver	**Doctrine of Waiver:** People can generally give up certain rights granted by the state. **Limits on Waiver:** This applies only if the person is aware of their rights and waives them voluntarily. **Fundamental Rights are Different:** The Supreme Court, in the Basheshar ***Nath case***, ruled that fundamental rights cannot be waived by citizens.

Article 14: Equality Before the Law and Equal Protection of the Laws

Article 14 of the Constitution says that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".



As is evident, Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws.

Article 14 applies to all persons and is not limited to citizens. A corporation, which is a juristic person, is also entitled to the benefit of this Article ***(Chiranjit Lal Chowdhury v. Union of India, AIR 1951 SC 41)***. The right to equality is also recognised as one of the basic features of the Constitution ***(Indra Sawhney v. Union of India, AIR 2000 SC 498)***.

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

Article 15(1) prohibits the State from discriminating against any citizen on grounds only of:

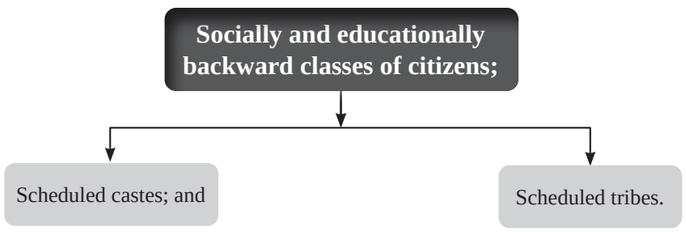
(a) Religion	*(b) Race*	*(c) Caste*	*(d) Sex*	*(e) Place of Birth*	*(f) Any of them*

Article 15(2) lays down that no citizen shall be subjected to any disability, restriction or condition with regard to

- ❖ Access to shops, public restaurants, hotels and places of public entertainment; or
- ❖ 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(3) and 15(4) create certain exceptions to the right guaranteed by Article 15(1) and 15(2). Under Article 15(3) the State can make special provision for women and children. It is under this provision that courts have upheld the validity of legislation or executive orders discriminating in favour of women ***(Union of India v. Prabhakaran, (1997) 2 SCC 633)***.

Article 15(4) permits the State to make special provision for the advancement of –



Article 15(5) inserted in the Constitution of India under the Constitution (Ninety-third Amendment) Act, 2005, permits the State to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in of article 30.

Article 16: Equality of Opportunity in Matters of Public Employment

Article 16 guarantees to all citizens' equality of opportunity in matters relating to employment or appointment of office under the State.

This article also prohibits discrimination against a citizen on the grounds of religion, race, caste, sex, descent, place of birth or residence.

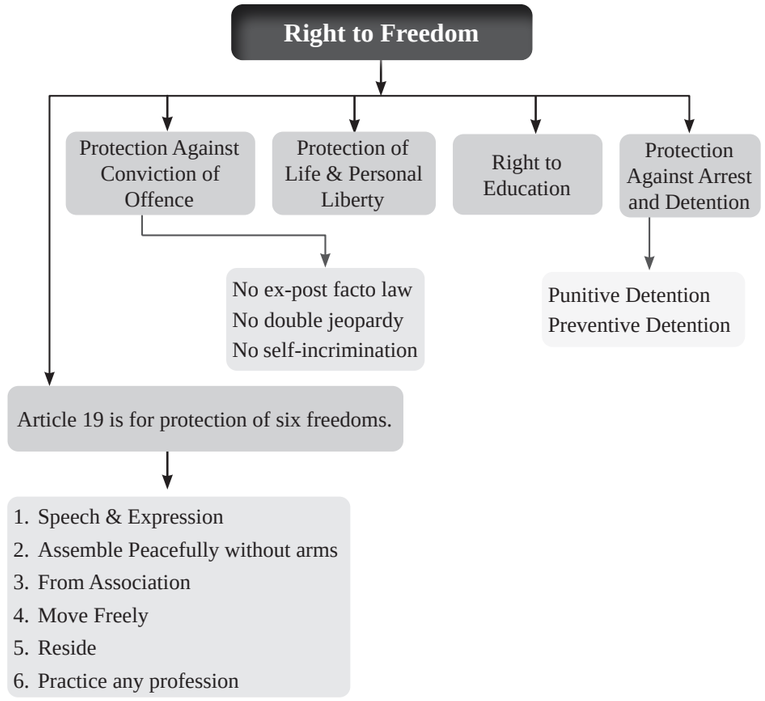
However, there are certain exceptions provided in Article 16(3), 16(4) and 16(5). These are as under:

(1) Parliament can make a law that in regard to a class or classes of employment or appointment to an office under the Government of a State on aUnion Territory, under any local or other authority within the State or Union Territory, residence within that State or Union Territory prior to such employment or appointment shall be an essential qualification. [Article 16(3)]

(2) A provision can be made for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. [Article 16(4)]

(3) A law shall not be invalid if it provides that the incumbent of an office in connection with the affair of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. [Article 16(5)]

(4) Nothing inthis article shallpreventthe State frommaking anyprovisionfor the reservationof appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category. [Article 16(6)].



These freedoms are those great and basic rights which are recognized as the natural rights inherent in the status of a citizen. At the same time, none of these freedoms is absolute but subject to reasonable restrictions specified under clauses (2) to (6) of Article 19. The Constitution under Articles 19(2) to 19(6) permits the imposition of restrictions on these freedoms subject to the following conditions:

(a) The restriction can be imposed by law and not by a purely executive order issued under a statute;

(b) The restriction must be reasonable;

(c) The restriction must be imposed for achieving one or more of the objects specified in the respective clauses of Article 19.

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

Freedom of speech and expression
Assemble peaceable and without arms
From associations or unions or co-operatives societies
Move freely throughout the territory of India
Reside and settle in any part of the territory of India
Practice any profession, or to carry on any occupation, trade or business.

Reasonableness of the restriction is an ingredient common to all the clauses of Article 19. Reasonableness is an objective test to be applied by the judiciary. Legislative judgment may be taken into account by the Court, but is not conclusive. It is subject to the supervision of Courts. The following factors are usually considered to assess the reasonableness of a law:

- ❖ The objective of the restriction;
- ❖ The nature, extent and urgency of the evil sought to be dealt with by the law in question;
- ❖ How far the restriction is proportion to the evil in question;
- ❖ Duration of the restriction;
- ❖ The conditions prevailing at the time when the law was framed.

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-three rights namely

(*i*)	Protection against ex-post facto law	**Article 20(1)** of the Indian Constitution prohibits convicting someone for an act that wasn't illegal when they did it, or punishing them more harshly than the law allowed at that time. This is called an ex post facto law. The Supreme Court clarified in Shiv Bahadur Singh v. State of Vindhya Pradesh that this protection applies to substantive law, not procedural law. So, changes in legal procedures generally don't violate this rule. Another exception is if a new law lessens the punishment for a crime. This is because it benefits the accused.
(*ii*)	Protection against double jeopardy	**Article 20(2)** protects against double jeopardy in India. You cannot be both prosecuted and punished for the same crime. However, if you were only prosecuted (tried) but not punished, you can be prosecuted again. This is because "prosecuted and punished" are linked with "and", meaning both must occur for the protection to apply.

(*iii*)	Protection against self-incrimination	**Article 20(3)** gives you the right against self-incrimination in India. You cannot be forced to say anything that might incriminate yourself. But there are three conditions to this right: You must be an accused of an offence; There must be a compulsion to be witness; and Such compulsion should result in his giving evidence against himself.

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."

The right to life includes those things which make life meaningful.

The majority in the case of ***A.K. Gopalan v. State of Madras, AIR 1950 SC 27***, gave a narrow meaning to the expression 'personal liberty' within the subject matter of Articles 20 to 22 by confining it to the liberty of the person (that is, of the body of a person). The majority of the judges also took a narrow view of the expression 'procedure established by law' in this case.

In the ***State of Maharashtra v. Prabhakar Pandurang Sanzigri, AIR 1966, SC 424***, Subba Rao J. considered the inter-relation between Articles 19 and 21 as was discussed by the majority Judges in the A.K. Gopalan's case and came to the conclusion that "that view was not the last word on the subject".

It was stated in ***Maneka Gandhi v. Union of India, AIR 1978 S.C. 597***, that 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad, and no person can be deprived of this right except according to procedure prescribed by law. In this case, it was clearly laid down that the fundamental rights conferred by Part III of the Constitution are not distinct and mutually exclusive. Thus, a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has still to stand the test of one or more of fundamental rights conferred by Article 19 which may be applicable to a given situation.

Article 21A: Right to Education

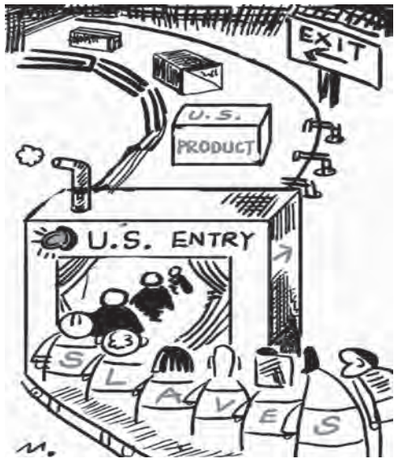
This was introduced by the Constitution (Eighty sixth Amendment) Act, 2002. According to this, the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. In ***Environmental and Consumers Protect foundation v. Delhi Administration 2012 (4) SCALE 243*** the Court held that in order to ensure compliance of article 21A of the Constitution, it is imperative that schools must have qualified teachers and basic infrastructure.

In the ***State of Tamil Nadu v. K. Shyam Sunder AIR 2011 SC 3470*** the Court held that the right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the grounds of their economic, social and cultural background.

Safeguards Against Preventive Detention

Article 22 (amended by the 44th Constitution Amendment Act, 1978)1 contains following safeguards against preventive detention:

(*a*)	such a person cannot be detained for a longer period than three months unless: ❖ An Advisory Board constituted of persons who are or have been or are qualified to be High Court judges has reported, before the expiration of the said period of three months that there is, in its opinion sufficient cause for such detention. ❖ Parliament may by law prescribe the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention and the procedure to be followed by an Advisory Board.
(*b*)	The authority ordering the detention of a person under the preventive detention law shall: ❖ communicate to him, as soon as may be, the grounds on which the order for his detention has been made, and ❖ afford him the earliest opportunity of making the representation against the order.



Right Against Exploitation

This group of fundamental rights consists of **Articles 23 and 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.

(a) Prohibition of traffic in human beings and forced labour **(Article 23)**

(b) Prohibition of employment of children **(Article 24)**

Right to Freedom of Religion

Article 25 begins a group of provisions ensuring equality of all religions thereby promoting secularism. Freedom of conscience and free profession, practice and propagation of religion.

Article 25 gives to every person the:

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

But this freedom is subject to restrictions imposed by the State on the following grounds:

- ❖ Public order, morality and health.
- ❖ Other provisions in Part-III,
- ❖ Any law regulating or restricting any economic, financial; political or other secular activity which may be associated with religious practice, and
- ❖ Any law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
- ❖ The Supreme Court in ***State of Karnataka v. Dr. Praveen Bhai Thogadia,***

(*a*)	The Concept of Religion	The Indian Constitution doesn't define religion. It can be based on faith in a higher power (theistic) or not (atheistic religions like Buddhism and Jainism exist in India). Religion is more than just beliefs. It can include ethical codes, rituals, ceremonies, worship practices, and even food and dress rules.
(*b*)	Freedom to manage religious affairs	Article 25 protects individual religious freedom in India, while Article 26 focuses on the rights of religious groups. A religious denomination is a group with a common faith, organization, and name. Examples include followers of Ramanuja (Shri Vaishnavas) or Madhvacharya. The Supreme Court has ruled that Article 26 protects these groups' rights, but with limitations. These limitations include public order, morality, health, and other parts of the Constitution (like Article 25 on individual religious freedom).
(*c*)	Freedom as to payment of tax for the promotion of any particular religion	Article 27 of the Indian Constitution guarantees the freedom of conscience. This means you cannot be forced to pay taxes that go towards promoting or maintaining a particular religion or religious denomination.

(*d*)	Freedom as to attendance at religious instruction or religious worship in educational institutions	Article 28 in India's Constitution ensures two things related to religion in government-funded schools: No Religious Instruction in Public Schools: Schools entirely funded by the state cannot provide religious instruction. Freedom to Opt-Out of Religious Activities: Students (or their guardians for minors) in any state-recognized or state-aided school have the right to choose not to participate in religious instruction or worship held at the school.

Cultural and Educational Rights [Rights of Minorities]

Minority

The word 'minority' has not been defined in the Constitution. The Supreme Court in D.A.V. College, Jullundur v. State of Punjab, A.I.R. 1971, S.C. 1737, seems to have stated the law on the point. It said that a minority should be determined in relation to a particular impugned legislation. The determination of minorities should be based on the area of operation of a particular piece of legislation. If it is a State law, the population of the State should be kept in mind and if it is a Central Law the population of the whole of India should be taken into account.

The two Articles guarantee the following rights:

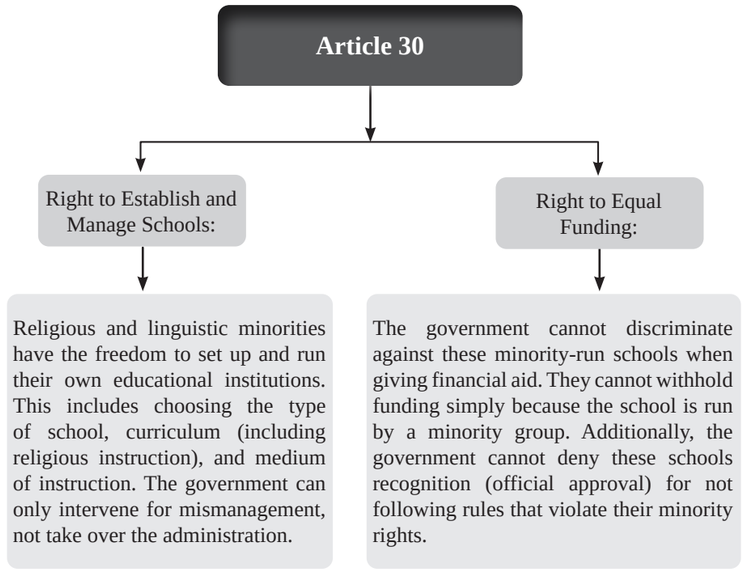
(*a*) Protection of interests of Minorities Article 29 guarantees two rights:

- **Cultural Rights:** People have the right to preserve their distinct language and culture, even if they live in a place where it's different from the majority.
- **Right to Education:** No one can be discriminated against based on factors like religion or language when entering a state-funded school, except for programs supporting disadvantaged groups.

(*b*) Right of Minorities to establish and administer educational institutions

The rights guaranteed to the minorities in Article 30 are even more important than those covered by Article 29.

Following rights are declared in Article 30:



Articles 31A, 31B and 31C

relating to Property

Right to property is no more a fundamental right which was previously guaranteed under Part III of the Constitution by Article 31.

But the right to property has been inserted by Article 300A under Part XII of the Constitution. **Article 300A** reads–

"No person shall be deprived of his property save by authority of law".

Saving of Laws Providing for Acquisition of Estates etc.

Then follows Article 31A which is an exception to the right of equality as guaranteed in Article 14 and to the six freedoms as guaranteed in Article 19, if they come into conflict with any law mentioned in Article 31A.

Remedies for Enforcement of Fundamental Rights

That is why it is natural that this Court should, in the words of ***Patanjali Sastri, J.,*** regard itself 'as the protector and guarantor of fundamental rights', and should declare that "it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights. In discharging the duties assigned to it, this Court has to play the role of 'sentinel on the qui vive' ***(State of Madras v. V.G. Row, AIR 1952 SC 196)*** and it must always regard it as its solemn duty to protect the said fundamental rights 'zealously and vigilantly'. ***(Daryao v. State of U.P., AIR 1961 SC 1457).***

- ***Shankari Prasad v. Union of India (1951)***: This case established that Parliament has the power to amend the Constitution, including fundamental rights, through Article 368. The court interpreted "law" in Article 13(2) (which prohibits laws that take away fundamental rights) as not including amendments made under Article 368's special process. This decision was upheld in a later case (Sajjan Singh v. State of Rajasthan, 1965).
- ***I.C. Golak Nath v. State of Punjab (1967)***: This case reversed the previous understanding. Here, the court ruled that Parliament could amend any part of the Constitution, including fundamental rights and even Article 368 itself, as long as it followed the proper procedure outlined in Article 368.
- ***Kesavananda Bharati v. State of Kerala (1973)***: This case introduced the idea that Parliament can amend the Constitution, but there's a limit. It can't change the fundamental, core principles ("basic structure") of the Constitution.
- ***Indira Gandhi v. Raj Narain (1975)***: This case helped define the "basic structure." The court ruled that removing judicial review over election disputes of certain officials (like the Prime Minister) weakens democracy, which is a core principle.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Articles included in Part IV of the Constitution (Articles 36 to 51) contain certain Directives which are the guidelines for the future Government to lead the country. Article 37 provides that the 'provisions contained in this part (i) shall not be enforceable by any Court, but the principles therein laid down are nevertheless (ii) fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The Directives, however, differ from the Fundamental Rights contained in Part-III of the Constitution or the ordinary laws of the land in the following respects:

(*i*)	The Directives are not enforceable in the courts and do not create any justiciable rights in favour of individuals.
(*ii*)	The Directives require to be implemented by legislation and so long as there is no law carrying out the policy laid down in a Directive neither the state nor an individual can violate any existing law.
(*iii*)	The Directives per-se do not confer upon or take away any legislative power from the appropriate legislature.
(*iv*)	The courts cannot declare any law as void on the ground that it contravenes any of the DirectivePrinciples.
(*v*)	The courts are not competent to compel the Government to carry out any Directives or to make any law for that purpose.
(*vi*)	Though it is the duty of the state to implement the Directives, it can do so only subject to the limitations imposed by the different provisions of the Constitution upon the exercise of the legislative and executive power by the state.

Conflict between a Fundamental Right and a Directive Principle

What will be the legal position if a law enacted to enforce a Directive Principle violates a Fundamental Right?

Initially, the Courts adopted a strict view in this respect and ruled that a Directive Principle could not override a Fundamental Right, and in case of conflict between the two, a Fundamental Right would prevail over the Directive Principle.

Supreme Court in ***State of Madras v. Champakram Dorairajan, AIR 1951 S.C. 226,*** where the validity of a Government order alleged to be made to give effect to a Directive Principle was challenged as being violative of a Fundamental Right, the Supreme Court made the observation that :

"The Directive Principles of State Policy have to conform to and run as a subsidiary to the chapter of Fundamental Rights."

FUNDAMENTAL DUTIES

Article 51A imposing the fundamental duties on every citizen of India was inserted by the Constitution Forty-second Amendment) Act, 1976.

The objective in introducing these duties is not laid down in the Bill except that since the duties of the citizens are not specified in the Constitution, so it was thought necessary to introduce them.

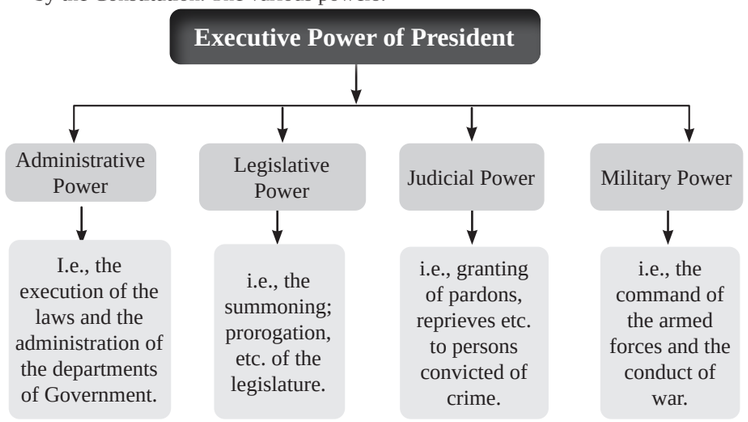
These Fundamental Duties are:

Fundamental Duties

- ❖ Abide by the constitution, National Flag and the National Anthem;
- ❖ Cherish the ideals of Freedom Struggle
- ❖ Uphold Sovereignty, Unity and Integrity of India
- ❖ Defend the Country and render National Service
- ❖ Promote Harmony and Brotherhood
- ❖ Preserve Rich Heritage of Composite Culture
- ❖ Protect and Improve Natural Environment
- ❖ Develop Scientific Temper, Humanism etc.
- ❖ Safeguard Public Property and Abjure Violence
- ❖ Strive for Excellence
- ❖ Provide Opportunities for Education

ORDINANCE MAKING POWERS

1. **Of the President:** In Article 53 the Constitution lays down that the "executive power of the Union shall be vested in the President". The President of India shall, thus, be the head of the 'executive power' of the Union. The executive power may be defined as the power of "carrying on the business of Government" or "the administration of the affairs of the state" excepting functions which are vested in any other authority by the Constitution. The various powers:



These powers vest in the President under each of these heads, subject to the limitations made under the Constitution.

This independent power of the executive to legislate by Ordinance has the following peculiarities:

The Ordinance-making power will be available to the President only when both the Houses of Parliament have been prorogued or is otherwise not in session, so that it is not possible to have a law enacted by Parliament. However, Ordinance can be made even if only one House is in Session because law cannot be made by that House in session alone. Both the Houses must be in session when Parliament makes the law. The President's Ordinance making power under the Constitution is not a co-ordinate or parallel power of legislation along with Legislature.

This power is to be exercised by the President on the advice of his Council of Ministers.

the President must be satisfied about the need for the Ordinance and he cannot be compelled

The Ordinance must be laid before Parliament when it re-assembles, and shall automatically cease to have effect at the expiration of 6 weeks from the date of re-assembly or before resolutions have been passed disapproving the Ordinance.

The period of six weeks will be counted from the latter date if the Houses reassemble on different dates.

2. **Of the Governor:** The executive power of the State is vested in the Governor and all executive action of the State has to be taken in the name of the Governor. Normally there shall be a Governor for each State but the same person can be appointed as Governor for two or more States. The Governor of a State is not elected but is appointed by the President and holds his office at the pleasure of the President. The head of the executive power to a State is the Governor just as the President for the Union.

Ordinance making power

This power is exercised under the head of 'legislative powers'. The Governor's power to make Ordinances as given under Article 213 is similar to the Ordinance making power of the President and has the force of an Act of the State Legislature. He can make an ordinance only when the State Legislature or either of the two Houses (where it is bicameral) is not in session.

But in following cases the Governor cannot promulgate any Ordinance without instructions from the President:

If a Bill containing the same provisions would under this Constitution have required the previous section of the President.

he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President.

an Act of the State legislature containing the same provisions would under this Constitution have been invalid under having been reserved for the consideration of the President, it had received the assent of the President.

LEGISLATIVE POWERS OF THE UNION AND THE STATES

1. **Two Sets of Government**

The passage explains India's federal system. Here are the key points:

India's central and state governments share power, following the principle of federalism.

Each level of government is independent within its assigned area.

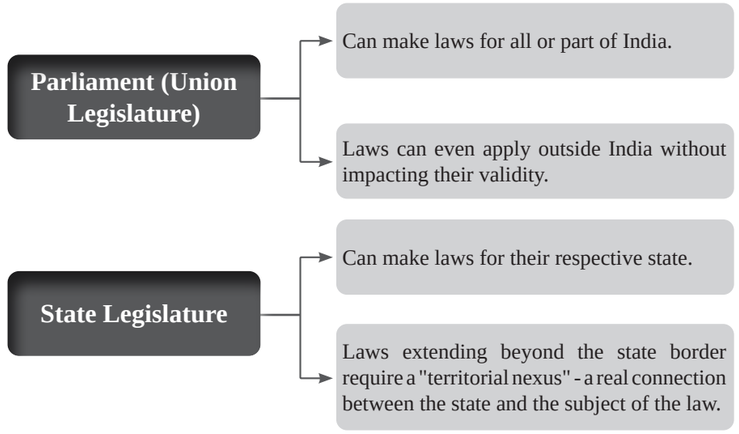
The Constitution divides governmental functions and powers between the center and states.

Chapter I of Part XI (Articles 245 to 255) of the Indian Constitution read with Seventh Schedule thereto covers the legislative relationship between the Union and the States. Analysis of these provisions reveals that the entire legislative sphere has been divided on the basis of:

(*a*) Territory with respect to which the laws are to be made, and

(*b*) Subject matter on which laws are to be made.

2. **Territorial Distribution:** The passage explains the legislative powers of the Indian Parliament and State Legislatures based on territory.



3. **Distribution of Subject Matter of Legislation:** The Indian Constitution divides legislative powers into three lists based on subject matter:

Central Government	Concurrent List	State Government
Union List Central government has power to make laws. ❖ Defence ❖ Banking ❖ Currency ❖ Foreign affairs ❖ Communication	Both Central and State government jointly make laws ❖ Education ❖ Forest ❖ Trade ❖ Marriage ❖ Adoption ❖ Succession	**State List** State government has power to make laws ❖ Police ❖ Trade ❖ Agriculture ❖ Irrigation

4. Legislative Powers of the Union and the States with respect to Legislative Subjects

The Indian central and state governments share legislative power based on three lists:

Union List (List I): The central government has exclusive authority to make laws on these subjects of national importance. State legislatures cannot make laws on these subjects, even if the central government hasn't acted yet.

Concurrent List (List III): Both the central government and state legislatures can make laws on these subjects. If there's a conflict, the central government's law prevails.

State List (List II): State legislatures have exclusive power to make laws on these local matters. The central government cannot make laws on these subjects.

Residual Powers: The central government has exclusive power to make laws on any subject not included in the other three lists.

5. Power of Parliament to make Laws on State List

The rule that state legislatures have exclusive power over subjects in the State List. The central government can also make laws on these subjects in certain situations:

- **National Interest (Article 249):** Two-thirds of the Rajya Sabha can pass a resolution declaring it necessary for Parliament to make a law on a state subject in the national interest. This law can remain in effect for up to a year and be renewed.
- **Emergency (Article 250):** During a national emergency, Parliament can make laws on any state subject. These laws expire after six months when the emergency ends.
- **Breakdown of State Machinery (Article 356 & 357):** If the President's rule is imposed in a state due to a breakdown in its government, Parliament can make laws on any state subject for that state.

- **Request from States (Article 252):** Two or more states can request Parliament to make a law on a specific subject of common interest.
- **Implementing International Agreements (Article 253):** Parliament can make laws on any subject to implement international treaties and agreements.

6. Interpretation of the Legislative Lists

For giving effect to the various items in the different lists the Courts have applied mainly the following principles :

- **Plenary Powers:** If a list grants legislative power on a subject without restrictions, it's interpreted broadly to allow the legislature to make any laws related to that subject.
- **Harmonious Construction:** Lists should be interpreted to avoid conflicts. If two entries in different lists seem to overlap, they should be interpreted so both can be used.
- **Pith and Substance Rule:** If a law mainly deals with a subject in one list, it's valid even if it slightly touches on a subject in another list.
- **Colourable Legislation:** Laws cannot be disguised attempts to make laws on a subject outside the legislature's power. A law that appears constitutional but is really meant for an unconstitutional purpose is invalid.

FREEDOM OF TRADE, COMMERCE AND INTERCOURSE

- The concept is broad, encompassing activities beyond buying and selling, including radio broadcasting, phone communication, and even non-commercial movement.
- A strict interpretation could invalidate many laws as impacting trade.
- To avoid this, the Supreme Court in ***Atiabari Tea Co. v. State of Assam (A.I.R. 1951 S.C. 232)*** established the "direct and immediate" restriction test:
- Only laws that directly and immediately restrict trade are covered by Article 301.
- Laws that indirectly or incidentally affect trade are not restricted by this article.
- The document also mentions the broad meaning of "intercourse" in Article 301, encompassing activities beyond trade and commerce.

THE JUDICIARY

The Supreme Court -

The Courts in the Indian legal system, broadly speaking, consist of:

(i) The Supreme Court,
(ii) The High Courts, and
(iii) The subordinate courts.

The Supreme Court of India is the highest court in the country for both regular legal matters and interpreting the Constitution. It inherited the roles of the Federal Court (interpreting the Constitution) and the Privy Council (highest appellate authority) from the pre-independence era. The current Supreme Court's jurisdiction is broader than both its predecessors.

High Courts:

High Courts in India predate the Constitution, with some established under British rule in 1861. The Constitution continued or created new High Courts, assigning them:

- Appellate jurisdiction over lower courts for their state(s).
- Power to handle civil and criminal appeals.
- Writ jurisdiction to enforce fundamental rights and for other purposes (expanded from pre-Constitution times).
- Original civil jurisdiction for specific cities in some High Courts (like Bombay, Calcutta, and Delhi).
- Ability to hear references from tribunals like the Income Tax Appellate Tribunal.

Subordinate Courts:

Finally, there are various subordinate civil and criminal courts (original and appellate), functioning under ordinary law. Although their nomenclature and powers have undergone change from time to time, the basic pattern remains the same. These have been created, not under the Constitution, but under laws of the competent legislature. Civil Courts are created mostly under the Civil Courts Act of each State. Criminal courts are created mainly under the Code of Criminal Procedure.

Civil Courts:

In each district, there is a District Court presided over by the District Judge, with a number of Additional District Judges attached to the court. Below that Court are Courts of Judges (sometimes called subordinate Judges) and in some States, Munsiffs. These Courts are created under State Laws.

Criminal Courts:

Court of Session:
Tries all offences and can impose any sentence (except capital punishment requiring High Court confirmation)

Judicial / Metropolitan Magistrates:
Divided into two classes (Second and First) with varying powers to try criminal cases. They are subject to control by the Court of Session.

Executive Magistrates:
Handle miscellaneous cases related to public order but don't convict or acquit anyone. Some states give them limited trial powers.

City Sessions Court:
In some major cities, this court handles sessions cases similar to the district Courts of Session.

Special Tribunals:

Besides these Courts, which form part of the general judicial set up, there are host of specialised tribunals dealing with direct taxes, labour, excise and customs, claims for accidents caused by motor vehicles, copyright and monopolies and restrictive trade practices. For the trial of cases of corruption, there are Special Judges, appointed under the Criminal Law Amendment Act, 1952.

WRIT JURISDICTION OF HIGH COURTS AND SUPREME COURT

High Courts (Article 226):

- Issue writs (Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari) to enforce fundamental rights (Part III) and for other purposes (wider scope than Supreme Court).
- Jurisdiction extends throughout their territory.
- Should not entertain petitions if an effective alternative remedy exists (e.g., Companies Act for shareholders).(Case Law: ***Ramdas Motors Transport Company Limited Vs. T.A. Reddy (AIR 1997 SC 2189)***

Supreme Court (Article 32):

- Issues writs to enforce only fundamental rights (Part III).
- Jurisdiction extends throughout India.
- Can issue writs against anyone or government in India.
- Limitation: Cannot be approached unless a fundamental right is violated.

Types of Writs: -

A brief description of the various types of writs is given below:

01 Habeas Corpus	"To bring a person arrested to the court" ❖ Against individual as well as state
02 Mandamus	"A command to perform its duty" ❖ Against officers, public servants & govt. ❖ Also against lower court ❖ Not against president & governor
03 Prohibition	❖ Only to a lower court ❖ To keep them in their jurisdiction ❖ Against judicial and quasi-judicial bodies.
04 Certiorari	❖ Judicial & quasi-judicial bodies ❖ Administrative authorities ❖ Quashes the other of lower court and pulls the case to itself. ❖ Not against legislative bodies.
05 Quo Warranto	❖ Substantive public office of permanent character. ❖ Enquire the legality of claims of a person to a public office. ❖ Not against a ministerial office. ❖ Anyone & not just the person aggrieved can seek this writ.

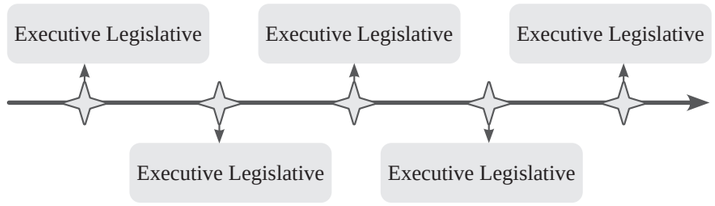
DELEGATED LEGISLATION

The increasing complexity of modern administration and the need for flexibility capable of rapid readjustment to meet changing circumstances which cannot always be foreseen, in implementing our socio-economic policies pursuant to the establishment of a welfare state as contemplated by our Constitution, have made it necessary for the legislatures to delegate its powers. Further, the Parliamentary procedure and discussions in getting through a legislative measure in the Legislatures is usually time consuming.

The three relevant justifications for delegated legislation are:

- ❖ The limits of the time of the legislature;
- ❖ The limits of the amplitude of the legislature, not merely its lack of competence but also its sheer inability to act in many situations, where direction is wanted; and
- ❖ The need of some weapons for coping with situations created by emergency.

Classification of Subordinate Legislation



SEPARATION OF POWERS

It is generally accepted that there are three main categories of governmental functions –

(i) the Legislative,
(ii) the Executive, and
(iii) the Judicial.

LEGISLATIVE FUNCTIONS

Ordinary Bill (It may be introduced in either house of Parliament)

Money Bill (It may be introduced in Lok Sabha Only)

Finance Bill (Category - I, may be introduce only in Lok Sabha and Category - II, may be introduce in any house)

Amendment to the Constitution Bill (It may be introduced in either house of Parliament)

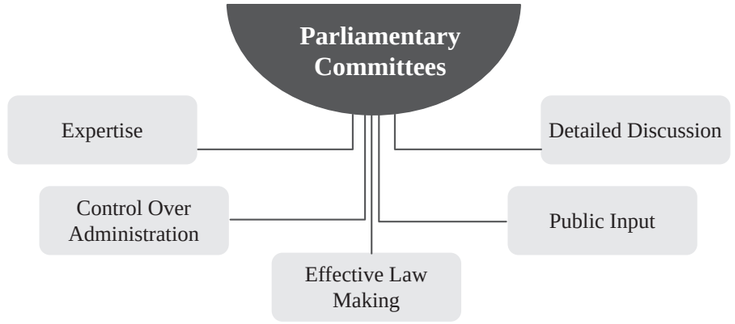
Ordinance Replacing Bill (It may be introduced in either house of Parliament)

PARLIAMENTARY COMMITTEES

Legislative Oversight (Vigilance): Committees keep a watchful eye on the government's (Executive's) actions.

Workload Management: Modern legislatures have too much work and limited time for thorough scrutiny of every issue. Committees allow for deeper dives into specific matters.

Benefits of Committees:



Types of Committees:

- ❖ Ad Hoc Committees: Appointed for specific tasks and dissolve after completing them (e.g., Select Committees on Bills).
- ❖ Standing Committees: Permanent committees with ongoing duties (e.g., Business Advisory Committee, Committee on Petitions).

Parliamentary Committees

Ad hoc committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report.

Apart from the Ad hoc committees, each house of parliament has standing committees; the committee on petition, the committee of privileges and the Rules committee etc.

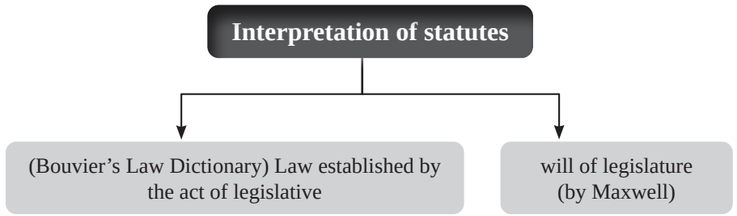
} AD Hoc Committees and the Standing Committees

These committees act as Parliament's 'Watch Dogs' over the executive. These are the committees on Subordinate Legislations, the committee on Estimates, the Committee on Public Accounts and the Committee on Public Undertakings and Departmentally Related Standing Committees (DRSCs)

} Other Committees

3 INTERPRETATION OF STATUTES

INTERPRETATION OF STATUTES



STATUTES

- ❖ Codifying
- ❖ Declaratory
- ❖ Remedial
- ❖ Amending
- ❖ Consolidating
- ❖ Enabling
- ❖ Disabling
- ❖ Penal

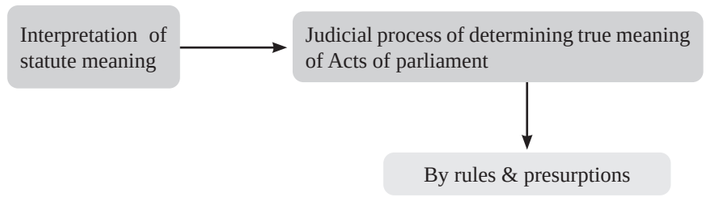
NEED FOR INTERPRETATION OF STATUTE

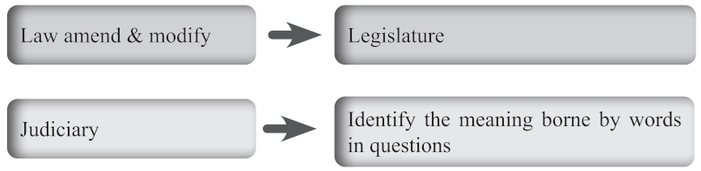
It is not within human powers to focus on the manifold set of facts which may arise, it is not possible to provide law free from all ambiguity (seaford court estates Ltd. vs. Asher)

In case of any defect the judge can not simply fold his hands & blame draftsman and judge must not alter the material which is iron but he can and should iron out the creases.

HASHBURY LAWS OF ENGLAND

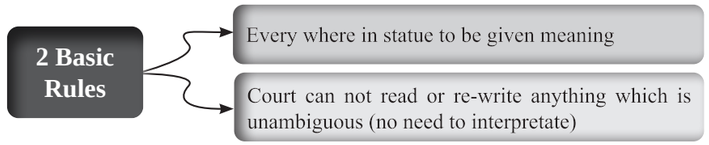
Interpretation of written document is to discover the intention of author + construction must be as near to the minds & apparent intention of parties as possible (from natural and grammatical



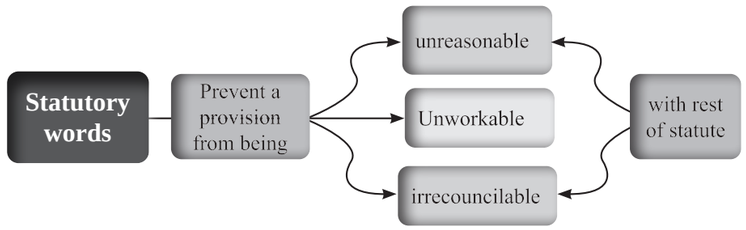


CASUS OMISSUS RULE

- ❖ Means situation not provided by statute OR Regulation

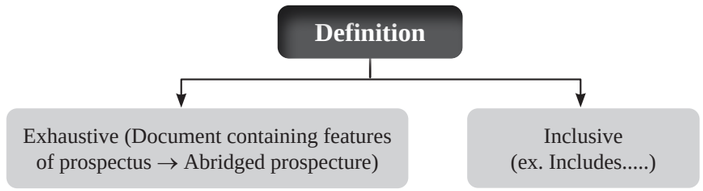


- ❖ Power of judge is limited to Add, Alter and Ignore.



INTERPRETATION OF DEFINITION CLAUSE

- ❖ Definition is always conclusive unless the context otherwise require
- ❖ Definition is not given, refer popular word



PRINCIPLES OF INTERPRETATION

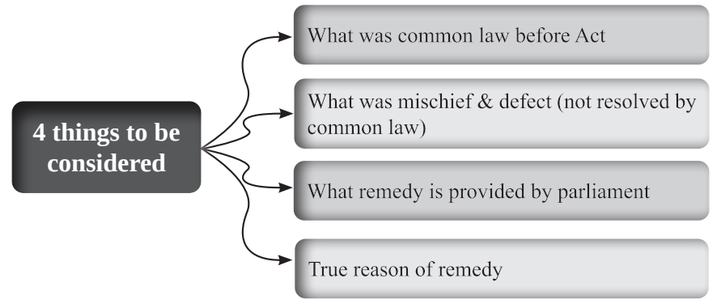
Primary Rule

(a) Literal Construction

Statute (word, phrases, sentences) → Natural, ordinary, populars & grammatical meaning

- ❖ Interpretation would not make other provisions redundant (Naval Prakash Vohra vs. State of HP)
- ❖ Nothing is to be added OR taken from a statute unless these are adequate grounds to justify
- ❖ **State of H.P. vs. Pawan Kumar (2005) (Supreme court)**
  Interpretation of statutes → plain, literal & grammatical meaning
  In case of any inconsistency, contrary, absurdity, repugnancy, it must Modified to the extent of removal of problem
  Advance something to grammatical construction (repugnant to intention of Act)

(b) Mischief OR Heydon's Rule



Courts must adopt construction that "Suppress the mischief & advance the remedy" and construction should not ignore the plain natural meaning

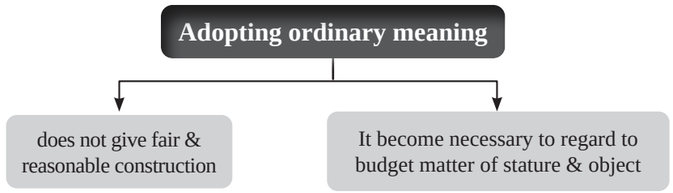
(*Umed singh vs. Raj singh*)(*1975*)

Heydon's Rule is applicable only → when words in question are ambiguous and capasle of more than one meaning

(*Sodhea Devi case*) (*Supreme court*) (*1957*)

(c) Rule of Reasonable construction

(*Ut Res Magis valeat quam pereat*)



- ❖ Provision of law can not be interpreted to divorce them from common cause + every word should have natural & fair meaning.
- ❖ Court can depart from dictionary meaning which will advance the remedy & suppress mischief
- ❖ (RBI vs. peerless general Finance & Investment co.) (1987)

- ❖ Statute must be looked from glasses of statute maker and must look at act as whole & discover what each word and section is meant

(d) Rule of Harmonious Construction

One provision of act should be construed with reference to another provision in save act, to make consistent enactment of whole statute

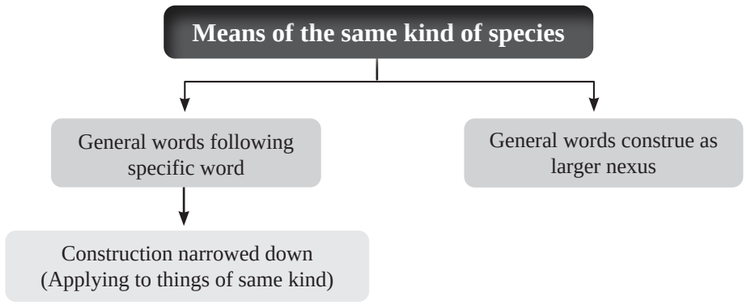
Duty of court to avoid "Head on clash" between two sections of same act whenever possible, construction should be done to harmonize

(*Raj Krishna vs. Binod kanumgo*)

Recognised rule of interpretation of statute that expression used harmonize with object of statute and effect object of legislature

(*New India sugar mills Ltd. vs. commissioner of sales tax*)

(e) Rule of ejusdem generis



Conditions to apply:

- ❖ Enumeration by specific words
- ❖ Mausens of enumeration constitutes a class
- ❖ Class in not exhausted by enumeration
- ❖ Distinct genus comprises of more than one species.
- ❖ No clearly manifested intent.

OTHER RULE OF INTERPRETATION

(a) Expressio unius est exclusio Alterius

- Express mention of one thing implies exclusion of another.
- Do not Assume if anything is not present (it is excluded)
- Failure to make an expression may arise from accident

Can met be applied if plain & clear meaning is given

(*Paushani Transport Co-operative society Ltd. vs. Regional transport authority*)

(b) Contemporanea expositio est optima et fortissinia in lege

- best and strongest in law
- When words are used in statute have undergone alteration in course of time.
- Interpretation only if wrong meaning is attached to it from many years and courts will give exact meaning.

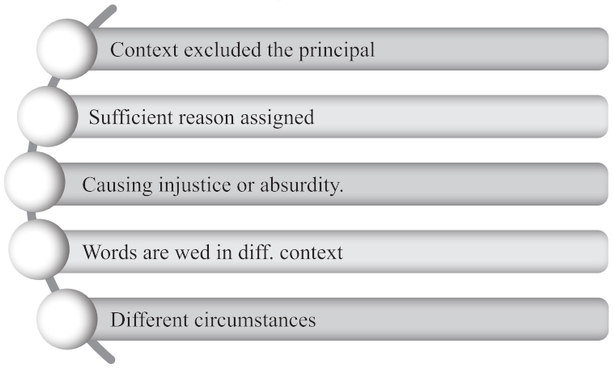
(c) Noscitur a sociis

- It is known by associates
- Meaning of a word is known by its associates
- Much relevance in understanding impact of words in statutory provision.

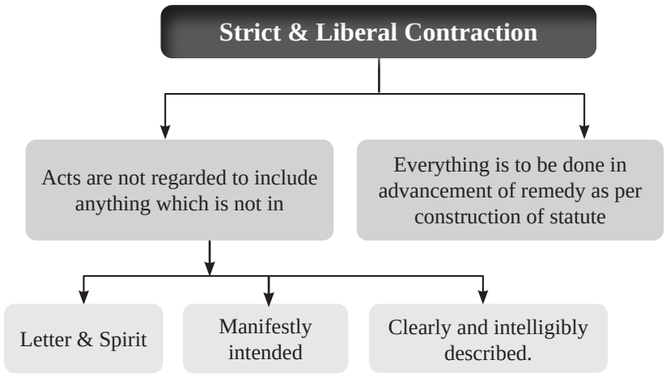
(*K. Bhagirathi vs. K.P. Balla Kuroya*)

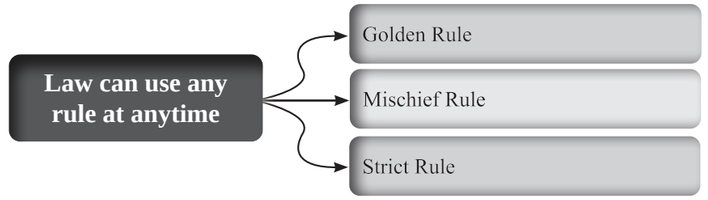
Two or more words which are susceptible of analogous meaning are coupled together (in cognate sense)

Same words have same meaning in same statute.



(d) Strict & Liberal Construction



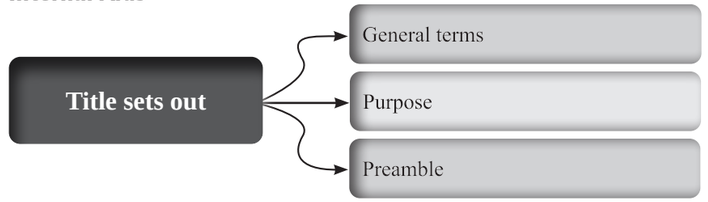


Presumptions

- ❖ Precise words used
- ❖ Vested right
- ❖ Mens Ria
- ❖ Not effected by other law (unless mentioned)
- ❖ Not inconsistent with international law
- ❖ Legislature knows state of law
- ❖ Law never concepts man to do anything which is futile / fruitless
- ❖ Delegation of powers (as per duties)

AIDS TO INTERPRETATION

(a) Internal Aids

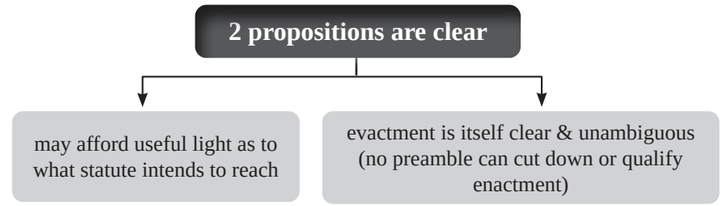


- ❖ Supreme Court Advocates practice in High Court Act, 1951
- ❖ An act to authorise advocates of Supreme Court to practice in any High Court.

Ascertain general scope and throw light on construction

Preamble (Key for interpretation)

Contains natives & Inducement



HEADING & TITLE OF CHAPTER

- Series of enactment applicable to some special object.
- Key to interpretation of clauses

Preambles to provisions follow them

Referred as an aid for construing the provision.

MARGINAL NOTES

- Can not be referred for purpose of construction
- Can not be invoked when meaning is clear & unambiguous (Western Theatre Ltd. Vs. Municipal Corporation of Puna).
- May not be relevant in all cases, sought to be interpreted differently

Interpretation of clauses (Definitions)

- Necessary to avoid frequent repetitions in describing all subject matter.
- Either restrictive or extensive
- May be ambiguous and have to be interpreted with provisions of the Act.
- Gives precision and certainty to a word

PROVISO

- To except & deal with a case and enacting poet of statute

(falling within main enactment)

Proviso	Exception	Saving clause
Provide special cases	Restrain the enacting clause	Preserve from destruction certain rights, remedies, privileges.

ILLUSTRATION OR EXPLANATION (ATTACHED TO SECTION)

Explain the meaning of words in section

Part or parcel of evactment

must depends on terms and should be inhereted from language used (Lalla Ballanmal Vs. Ahmad Shah)

to harmonise and clear up ambiguity

SCHEDULES (PART OF STATUTE)

- Read together with statute.
- Cannot prevail or control express enactment.
- Inconsistency between schedule and enactment, enactment will prevail.

2 principles

- Schedules are used for certain purpose
- Heading part of Schedule [devoted for the purpose only]

COURTS WILL INQUIRE TO CHECK WHAT IS PASSED BY THE LEGISLATURE?

1. What was law before (disputed act was passed)
2. What was mischief or defect
3. Remedy for statute
4. Reason for statute

EXTERNAL AIDS

Resources outside the act

(a) Parliamentary History

used by English Courts in resolving questions of construction.

Necessary to understand subject matter of statute or to know surrounding circumstances

REFERENCE TO REPORTS OF COMMITTEES

- To check background of act
- Parliament decides to do something to cure mischief but we should not be unduly influenced by report ***(Letang vs. cooper)***
- To ascertain intention behind provision (Davis vs. johnson)

REFERENCE TO OTHER STATUTES

- Statutes in pari materia means relating to same person or same thing
- Law made in same context but at different times
- Well Accepted legislative practice
- Court can consider provisions from repealed act, in case of any ambiguity.

DICTIONARIES

to find out general sense in which meaning is understood

Meaning of words must take colour from context in which they appear

Dictionaries are not dictators of statutory construction where benevolent meaning of law and definition clause furnish different denotation (Primary Meaning)

USE OF FOREIGN DECISION

Use of foreign decision → permitted in Indian courts

READING A BARE ACT AND CITATION OF CASE

Text of legislation passed by parliament or state legislature requires skills and command on language

- Interpretational
- Comprehensive
- Analytical

READ ACCORDING TO CONTEXT

Definition from the act & refer

- Para materia statutes
- General clauses Act

- Initially, liberal interpretation is given
- Break sentence
- Read - understood - apply rule
- Read updated version

4 ADMINISTRATIVE LAWS

Kenneth Culp Davis: An administrative agency, is a government authority, which affects the rights of private parties either through adjudication or rule-making. He further adds that apart from judicial review, the manner in which public officials handle business unrelated to adjudication or rule-making is not a part of administrative law.

Ivor Jennings: It determines the organization, powers and duties of administrative authorities.

NEED FOR ADMINISTRATIVE LAW

The modern state has three organs-legislative, executive and judiciary, Traditionally, the legislature was tasked with the making of laws, the executive (administrative body) with the implementation of the and judiciary with the administration of justice and settlement of disputes.

Sources of Administrative Law

- Constitution of India (Article 73 - powers to executive and state to make laws)
- Acts/Statutes (passes by CG & SG - make bodies to make rules like SEBI)
- Ordinances, Administrative directions, Notifications Circulars; (when legislature is not in session tab ye aega)
- Judicial decisions (Ladai hogi governments and citizens)

RULE OF LAW

Developed by British Jurist A.V. Dicey. He derived this term from French Principle 'La principle' de legalite' which means the principle of legality. Each country should follow legality of law.

Three major principles given by Dicey in his book "Rule of Law" are:-

- Supremacy of law (Absolute predominance of law on discretionary powers)
- Equality before the law (All classes must be equal before ordinary law of land)
- The predominance of a legal spirit (means judicial precedents upon any dispute raised)

Rule of Law in India can be traced to British concept

- Preamble (basic structure of COI)
- Part III: Fundamental Rights (duty of state for welfare of people)
- Part IV: Directive Principles of State Policy (guidelines to be following by Govt of India

CASE LAWS

Kesavananda Bharati Sripadagalvaru vs. State of Kerala

An amendment cannot change its basic structure, nor relinquish to the State those which already have been granted to it".

ADMINISTRATIVE DISCRETION

The government cannot function without the exercise of some discretion by its officials. It is necessary because it is humanly impossible to lay down a rule for every conceivable eventuality that may arise in day-to-day affairs of the government. However, equally true that discretion is prone to abuse. Administrative discretion gives freedom to authority to select the best alternative available for them among various situations.

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

Constitutional → Statutory → Ordinary or Equitable

1. CONSTITUTIONAL

An Act passed by the legislature is required to be in conformity with the requirements of the constitution and it is for the judiciary to decide whether or not that Act is in conformity with the Constitutional requirements.

CASE LAWS

Airport Authority of India vs. Centre for Aviation Policy, Safety and Research Administration/policy decisions of the tender making authority and as such are not open to judicial scrutiny unless they are arbitrary, discriminatory or mala fide.

S. PRATAP SINGH VS. THE STATE OF PUNJAB

"The Court is not an appellate forum where the correctness of an order of Government could be canvassed. The only question which could be considered by the Court is whether the authority vested with the power has acted in mala fide for satisfying a private or personal grudge of the authority against the officer.

HIND CONSTRUCTION AND ENGINEERING CO. LTD. VS. THEIR WORKMEN

"The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. Treat the imposition of such punishment as itself showing victimization or unfair labour practice."

Judicial review is exercised at two stages

- At the stage of delegation of discretion and
- At the stage excrcise of administrative discretion

Judicial Review - Judicial review is the authority of Courts to declare void the acts of the legislature and executive, it is the power of the both Supreme and High Court to determine the validity of the legislature and executive actions of the government.

STATE OF WEST BENGAL V. ANWAR ALI, (SPEEDY TRIAL OF CASES)

"No yardstick or measure for the grouping either of persons or of cases or of offences", "speedier trial" was held to be too vague, uncertain and indefinite criterion to form the basis of a valid and reasonable classification.

ADMINISTRATIVE DISCRETION AND ARTICLE 19

Article 19 guarantees certain freedoms to the citizens of India, but they are not absolute. Article 19(1)(b) and 19(1)(e) (the right to assemble peacefully and without arms and the right to reside and settle in any part of the territory of India)

CASE LAW

Dr. Ram Manohar v. State of Delhi,

D.M. was empowered under East Punjab Safety Act, 1949, externment from an area in case he was satisfied that such an order was necessary to prevent a person from acting in any way prejudicial to public peace and order, law in the instant case was of temporary nature

HARI V. DEPUTY COMMISSIONER OF POLICE

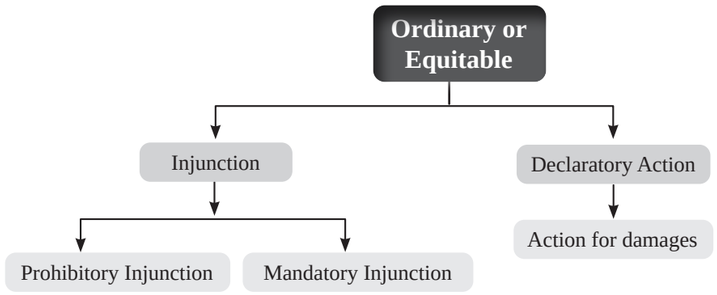
Section 57 of the Bombay Police Act officers specified therein to extern convicted persons from the area of his jurisdiction if he had reasons to believe that they are likely to commit any offence similar to that of which they were convicted. The right of hearing and the right to file an appeal to the State Government against the order.

2. STATUTORY

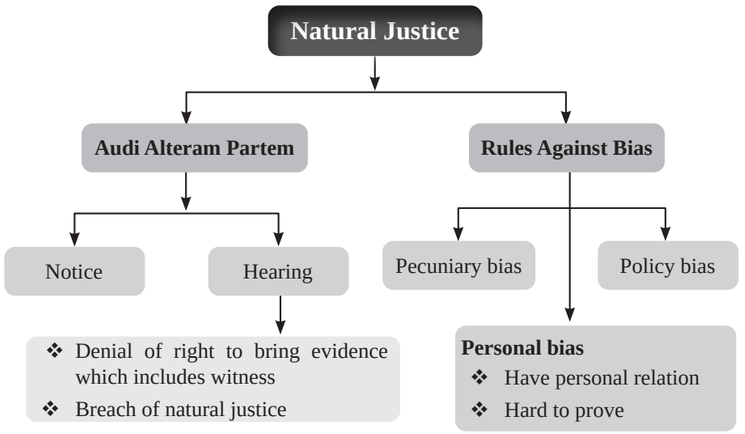
(*i*) Statutory appeals (NCLT> NCLAT> Supreme Court)

(*ii*) Reference to the High Court or statement of case

3. ORDINARY OR EQUITABLE



PRINCIPLES OF NATURAL JUSTICE



Justice must not only be done but also seen to be done.

Rule against bias (nemo judex in cause sua) - No person should be made a judge in his own cause. The rule against bias has two main aspects- one, that the judge must not have any direct personal stake in the matter at hand and two, there must not be any real likelihood of bias.

Bias can be of the following three types:

(1) PECUNIARY BIAS

Any financial interest of the adjudicatory authority in the matter,

J. MOHAPATRA AND CO. VS. STATE OF ORISSA

The Odisha government formed an assessment committee to recommend books of certain authors to be sent to government schools. Committee consisted of authors whose books were recommended. The Supreme Court struck down the recommendation.

(2) PERSONAL BIAS

He may be a friend of the party, or related to him through family, professional or business ties.

MINERAL DEVELOPMENT LTD. V. STATE OF BIHAR

Petitioner company was owned by Raja Kamakhya Narain Singh, who was a lessee for 99 years of 3026 villages, situated in Bihar, for purposes of exploiting mica from them. The minister of revenue acting under Bihar Mica Act canceled his license. The owner of the company Raja Kamakhya Narain Singh, had opposed the minister in the general election of 1952 and the minister had filed a criminal case under section 500, Indian Penal Code, against him.

MANEK LAL V. PREM CHAND

The respondent had filed a complaint of professional misconduct against Manek Lal who was an advocate of Rajasthan High Court. The Chief Justice of the High Court appointed a Bar Council tribunal to enquire into the alleged misconduct of the petitioner. The tribunal consisted of the Chairman who had earlier represented the respondent in a case. The Supreme Court held the view that even though Chairman had no personal contact with his client and did not remember that he had appeared on his behalf in certain proceedings, and there was no real likelihood of bias, justice not only be done but must appear to be done to the litigating public.

(3) SUBJECT MATTER BIAS

Such bias can be classified into four categories.

(1)	Partiality or connection to the issue
(2)	Departmental bias
(3)	Prior utterances and pre-judgment of issues
(4)	Acting under dictation

RULE OF FAIR HEARING (AUDI ALTERAM PARTEM)

The second principle of natural justice is audi alteram partem (hear the other side) i.e. no one should be condemned unheard.

1. Right to notice

   Before the proceedings start, the authority concerned is required to give to the affected person the notice of the case against him. Without giving notice to the affected party, would violate the principles of natural justice.

   The notice must give sufficient time to the person concerned to prepare his case.
2. Right to present case and evidence
3. Right to rebut adverse evidence:
   (i) Cross-Examination
   (ii) Legal Representation

SUNIL BATRA V. DELHI ADMINISTRATION

Implied duty on the jail superintendent to give reasons for putting bar fetters on a prisoner to avoid invalidity of that provision under Article 21 of the Constitution.

EXCEPTIONS TO NATURAL JUSTICE

1. **Statutory Exclusion:** The statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate. Parliament is not supreme and therefore statutory exclusion is not final. The statute must stand the test of constitutional provision.
2. **Emergency:** Maneka Gandhi v. Union of India - A passport may be impounded in public interest without compliance with the principles of natural justice but as soon as the order impounding the passport has been made,
3. **Interim disciplinary action:** Abhay Kumar v. K. Srinivasan - Order was passed by the college authority debarring the student from entering the premises of the college and attending the class till the pendency of a criminal case against him for stabbing a student. It was preventive in nature.
4. **Academic evaluation:** Supreme Court has made it clear that if the competent academic authority assesses the work of a student over the period of time and thereafter declare his work unsatisfactory the rule of natural justice may be excluded but this exclusion
5. **Impracticability:** Where the authority deals with a large number of persons it is not practicable to give all of them the opportunity of being heard and therefore in such a condition the court does not insist on the observance of the rules of natural justice.

EFFECT OF FAILURE OF NATURAL JUSTICE

Generally speaking, a voidable order means that the order was legally valid at its inception, and it remains valid until it is set aside or quashed by the courts, that is, it has legal effect up to the time it is quashed. On the other hand, a void order is no order at all from its inception; it is nullity and void ab initio.

NAWABKHAN V. GUJARAT

Section 56 of the Bombay Police Act, 1951 ***Police Commissioner to extern any undesirable person on certain grounds set out therein. An order passed by the Commissioner on the petitioner was disobeyed by him and he was prosecuted for this in a criminal court.*** The High Court took the position that the order in question was not void ab initio; the appellant had disobeyed the order much earlier than date it was infringed by him;

An order infringing a constitutionally guaranteed right made without hearing the party affected, where hearing was required, would be void ab initio and ineffectual to bind the parties where hearing is obligated by statute which affects the fundamental right of a citizen, ***the duty to give the hearing sound in constitutional requirement and failure to comply with such a duty is fatal.***

LIABILITY OF THE GOVERNMENT, PUBLIC CORPORATION

The liability of the government can either be contractual or tortious. According to its provisions a contract with the Government of the Union or state will be valid and binding only if the following conditions are followed:

1. The contract with the Government must be made in the name of the President or the Governor,
2. The word executed indicates that a contract with the Government will be valid only when it is in writing.
3. A person duly authorized by the President or the Governor of the State, as the case may be, must execute the contract.

Article 299 (2) of the Constitution makes it clear that neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of the Constitution or for the purposes of any enactment relating to the Government of India. Contract made in contravention thereof is void and therefore cannot be ratified and cannot be enforced even by invoking the doctrine of estoppel.

According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. Therefore, if the agreement with the Government is void as the requirements of Article 299(1) have not been complied with, the party receiving the advantage under such agreement is bound to restore it or to make compensation for it to the person from whom he has received it.

GUJARAT STATE FINANCIAL CORPORATION V. LOTUS HOTELS

Govt can commit breach of a solemn undertaking on which the other side has acted and then contend that the party suffering by the breach of contract may sue for damages by writ of mandamus and cannot compel specific performance of the contract through mandamus.

QUASI-CONTRACTUAL LIABILITY

Section 70 of the Indian Contracts Act, 1872, even the Government will be liable to pay compensation for the work actually done or services rendered by the State. 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. It is a liability, which arises on equitable grounds even though express agreement or contract may not be proved.

SUIT AGAINST STATE IN TORTS

The essential requirement for the tort is a breach of duty towards people in general. 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 the public in general.

When the responsibility of the act of one person falls on another person, it is called vicarious liability.

DAMAGES

Rudal Shah v. State of Bihar.

Here the petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full dressed trial. The court awarded Rs. 30,000 as damages to the petitioner.

Bhim Singh v. State of J&K.

A member of Legislative Assembly was arrested while he was on his way to Srinagar to attend Legislative Assembly in gross violation of his constitutional rights under Articles 21 and 22(2) of the Constitution, the court awarded monetary compensation of Rs. 50,000 by way of exemplary costs to the petitioner.

Sahell a Women's Resource Centre v. Commissioner of Police,

where the death of a nine years old boy took place on account of unwarranted atrocious beating and assault by a police officer in New Delhi, the State Government was directed by the court to pay Rs. 75,000 as compensation to the mother of the victim.

THE MAIN FEATURES OF STATUTORY CORPORATIONS ARE AS FOLLOWS

- It is incorporated under a special Act of Parliament or State legislative Assembly
- It is an autonomous body and is free from government control in respect of its internal management. However, it is accountable to the Parliament or the state legislature.
- It has a separate legal existence
- It is managed by Board of Directions, which is composed of individuals who are trained and experienced in business management. The member of board of Directors are nominated by the government
- The employees of the enterprises are recruited as per their own requirements by following the terms and conditions of recruitment decided by the Board.

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.

The requirements of a valid contract laid down in Article 299 are not required to be complied with. On principles of vicarious liability, corporations are liable to pay damages for wrong done by their officers or servants.

5 LAW OF TORTS

"Law is the great civilizing machinery. It liberates the desire to build and subdues the desire to destroy. And if war can tear us apart, Law can unite us – out of fear, or love or reason, or all three. Law is the greatest human invention. All the rest, give man mastery over his world. Law gives him mastery over himself". ***Lyndon B. Johnson***

Section 2(m) of the Limitation Act, 1963, states: "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."

Salmond defines it as" a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation."

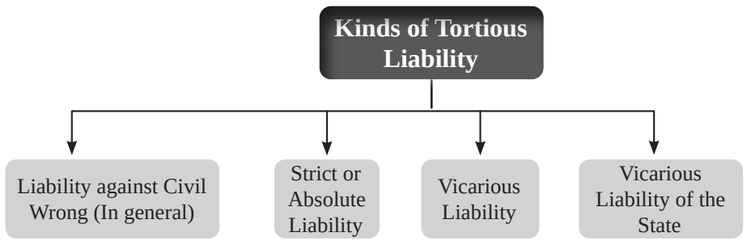
Elements of Tort

- A civil wrong
- This civil wrong is not a breach of contract or breach of trust.
- This wrong is redressible by an action for unliquidated damages.

Damage and Damages: Damage means the legal loss or violation of legal right, i.e; infringement of legal right. Damages means monetary, pecuniary (money) compensation.

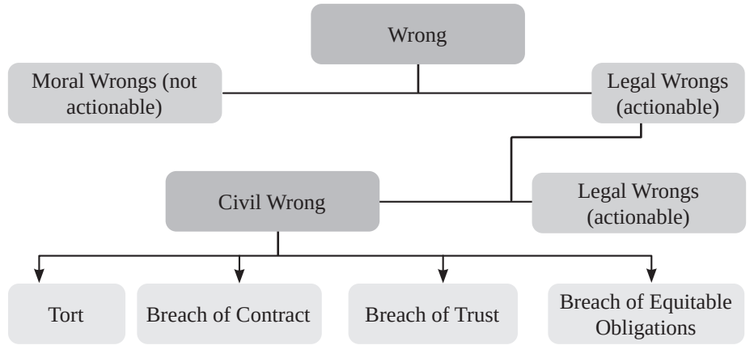
Liquidated Damages	Unliquidated Damages
Pre-determined or fixed compensation in case of breach	Damages which are not predetermined or decided by parties
Defined under Section 74 of Indian Contract Act,1872	Defined under Section 73 of Indian Contract Act,1872
No requirement of proof of loss	Proof of loss is mandatory

Kinds of Tortious Liability and General Conditions:–



1. LIABILITY AGAINST CIVIL WRONG

Civil wrong refers to those, which satisfies the condition of liabilities and are remedied by law, when someone loses money due to the negligence of another, this is known as a civil wrong. Damage to property or reputation, failure to fulfill contractual duties, physical or mental harm, etc. are all examples of wrongful losses.



General Conditions of Liability for a Tort

- A wrongful act or omission of the defendant;
- The wrongful act must result in causing legal damage to another, and
- The wrongful act must be of such a nature as to give rise to a legal remedy.

(*i*) **Wrongful Act:** Thus, every person whose legal rights are violated without legal excuse, has a right of action to the person who violated them, whether loss results from such violation or not.

(*ii*) **Legal Damages:** It is not every damage that is a damage in the eye of the law. there should be legal injury or invasion of the legal right. In the absence of an infringement of a legal right, an action does not lie.

Two maxims, namely:

(*a*)	**Damnum sine injuria** (Damage without injury), and Harm, loss or damage in respect of money, comfort, health, etc. Injuria means infringement of a right conferred by law on the plaintiff. **(*Gloucester Grammar School Case*)**
(*b*)	**Injuria sine damnum** (Injury without damage), It means injury without damage, i.e., where there is no damage resulted yet it is an injury or wrong in tort, i.e. when there is an invasion of an "absolute" private right of an individual, there is an injuria and the plaintiff's action will succeed even if there is no Damnum or damages. **(*Ashby Vs. White Case*)**

(*iii*) **Legal Remedy:** The main remedy for a tort is an action for unliquidated damages, although some other remedies, e.g., injunction, may be obtained in addition to damages or specific restitution may be claimed.

Mens Rea: Mens Rea or guilty mind creates liability on the principle that mere act of the person is not enough to create his liability. "actus non facit reum nisi mens sit rea" i.e. the act itself creates no guilt in the absence of a guilty mind.

Mens rea can be interpreted into two ways:-

(*a*)	Fault/state of mind when relevant	Many branches of law of torts ***like assault, battery, false imprisonment, deceit, malicious prosecution and conspiracy***, the state of mind of another person is considered to ascertain his liability.
(*b*)	Liability without fault	There are cases wherein the mental state of the doer stands irrelevant and the liability still falls on the shoulder of the doer even if that act was done without any wrongful intentions or malice.

2. STRICT OR ABSOLUTE LIABILITY

The defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part. The defendant is held liable without fault.

(*i*)	Liability for Inevitable Accident	Where damage is done by the escape of dangerous substances brought or kept by anyone upon his land.
(*ii*)	Liability for Inveritable Mistake	Such cases are where a person interferes with the property or reputation of another
(*iii*)	Vicarious Liability for Wrongs committed by others	Such cases are imputed by law on grounds of social policy or expediency.

Rule in Rylands Vs. Fletcher (1868),

The defendant constructed a reservoir on his land, which caused water to escape and flood the plaintiff's coal mine. The House of Lords held that the defendant was liable for the damages caused, even though he had not been negligent. The court established the doctrine of strict liability for activities that are inherently dangerous and likely to cause harm if they escape the defendant's control. This landmark case laid the foundation for the legal principle of strict liability for non-natural use of land, which has since been applied in various contexts.

That two conditions are necessary in order to apply the rule in Ryland Vs. Fletcher are:

(*i*) Escape from the Control

(*ii*) Non-natural use of Land

Exceptions to the Rule of Strict Liability

❖ Damage the to Natural use of the Land
❖ Consent of the plaintiff
❖ Act of third Party
❖ Statutory Authority
❖ Act of God
❖ Escape due to plaintiff own Default

M.C. Mehta Vs. Union of India

Oleum gas leak at Shriram Foods and Fertilizers Ltd. in Delhi, the Supreme Court of India intervened to protect the right to a clean environment under Article 21 of the Constitution. The court held the company liable for compensation and directed it to take preventive measures, emphasizing the "strict liability" principle from Rylands v. Fletcher.

3. VICARIOUS LIABILITY

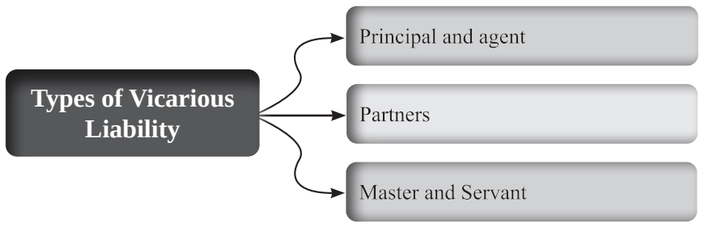
The tortfeasor is liable for his tort. But in some cases a person may be held liable for the tort committed by another. A master is vicariously liable for the tort of his servant.

Principle of Liability

- By ratification - having ratified through particular law, act or statute
- By relation - through standing of one person to another by the relation they share
- By abetment - having abetted any tortious act committed by others.

Essential elements of vicarious Liability

(*a*)	There must be an existing relationship
(*b*)	Servant has committed some tortious act
(*c*)	Must be done during the course of employment



4. VICARIOUS LIABILITY OF THE STATE

(*a*)	The Position in England	The Crown is liable for the torts committed by its servants just like a private individual. the Crown is now vicariously liable for the torts of its servants.
(*b*)	The Position in India	If it is a sovereign function it could claim immunity from the tortious liability, the activities of commercial nature or those which can be carried out by the private individual are termed as non-sovereign functions.

Torts or Wrongs to Personal Safety and Freedom

- Battery
- Assault
- Bodily Harm
- False Imprisonment
- Malicious Prosecution
- Nervous Shock
- Defamation
- Negligence

(*a*) 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:

(*i*) Use of force, however, trivial it may be without the plaintiff's consent, and

(*ii*) Without any lawful justification.

(*b*) Assault: Assault is any act of the defendant which directly causes the plaintiff immediately to apprehend a contact with his person. When the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him, the tort of assault is committed. When there is a battery, there will also be assault.

(*c*) Bodily Harm: A wilful act (or statement) of the defendant, calculated to cause physical harm to the plaintiff and in fact causing physical harm to him, is a tort.

(*d*) False Imprisonment: It means unauthorized restraint on a person's body. It is a serious violation of a person's right and liberty whether being confined within the four walls or by being prevented from leaving the place where he is. If a man is restrained, by a threat of force from leaving his own house or an open field there is false imprisonment.

(*e*) 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.

The following are the essential elements of this tort:

(*i*)	There must have been a prosecution of the plaintiff by the defendant.
(*ii*)	There must have been a want of reasonable and probable cause for that prosecution.
(*iii*)	The defendant must have acted maliciously (i.e. with an improper motive and not to further the end of justice).
(*iv*)	The plaintiff must have suffered damages as a result of the prosecution.
(*v*)	The prosecution must have terminated in favour of the plaintiff.

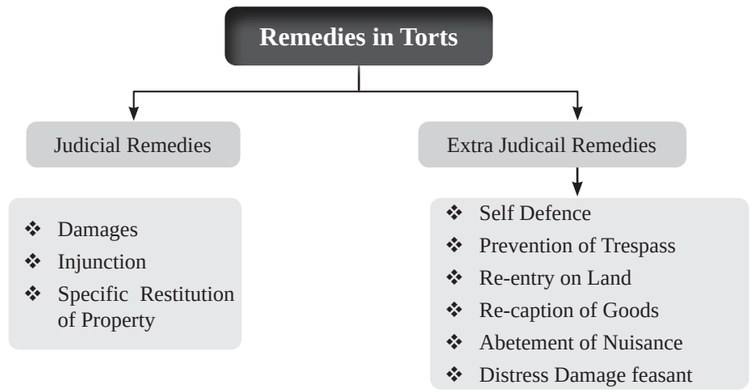
(*f*) Nervous Shock : It provides relief when a person may get physical injury not by an impact, through what he has seen or heard.

(*g*) 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: (*i*) Libel and (*ii*) Slander

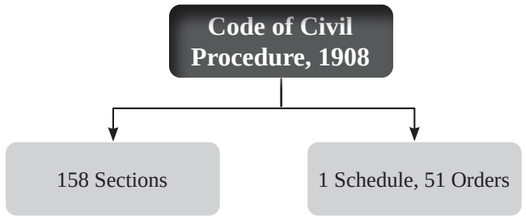
(*h*) Negligence: Negligence refers to the situation when a person might be innocent but has failed to act in a reasonable manner. Negligence has been defined by Winfield "Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff.

Remedies in Torts



6 LAWS RELATING TO CIVIL PROCEDURE

The Civil Procedure Code consolidates and amends the law relating to the procedure of the Courts of Civil jurisdiction. *The Code is the general law so that in case of conflict between the Code and the special law the latter prevails over the former. Where the special law is silent on a particular matter the Code applies, but consistent with the special enactment.*



Cause of Action

"Cause of action" means every fact that it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. It means all the essential facts constituting the rights and its infringement. It means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment.

Judgment

"Judgment" as defined in Section 2(9) of the Civil Procedure Code means the statement given by the Judge on the grounds of a decree or order.

"Decree" is defined in Section 2(2) of the Code as:

The formal expression of an adjudication which, so far as regards the Court expressing it;

Determines the rights of the parties;

with regard to all or any of the matters in controversy;

But decree does not include:

(*a*)	Any adjudication from which an appeal lies as an appeal from an Order, or
(*b*)	Any order of dismissal for default.

Essentials of a decree are

There must be formal expression of adjudication.

There must be a conclusive determination of the rights of parties.

The determination must be with regard to matters in controversy.

The adjudication should have been given in the suit.

	Decree	Judgment
Legal Provisions	Section 2 (2)	Section 2(9)
Nature	Can be preliminary or final	Always final
Applicability	For civil cases only	For civil and criminal cases
Sequence	Decree follows judgment	Judgment comes before decree
Purpose	Consequences	Adjudication

Decree-holder

"Decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made. [Section 2(3)]

Judgment-debtor

"Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made. [Section 2(10)]

Order

It means the formal expression of any decision of the Civil Court which is not a decree is known as Order.

According to Section 104 of the Code, no appeal lies against orders other than what is expressly provided in the Code or any other law for the time being in force. Under the Code appealable orders are:

(*i*)	An order under Section 35A, i.e., for compensatory costs in respect of false or vexatious claims within pecuniary jurisdiction of the Court,
(*ii*)	An order under Section 91 or Section 92 refusing leave to institute a suit under Section 91 (Public nuisances and other wrongful acts affecting the public) or Section 92 (alleged breach of trust created for public purposes of a charitable or religious nature).
(*iii*)	An order under Section 95, i.e., compensation for obtaining arrest attachment or injunction on insufficient grounds.

Vidyacharan shukla vs. Khubchand Baghel

The court stated that "***a decree is a formal expression of adjudication conclusively determining the rights of parties with regard to all or any of the controversies in a suit, whereas order is a formal expression of any decision of a civil court which is not a decree. Judgment is a statement given by the judge of his grounds in respect of a decree or order.***

Decree	Order
Section 2 (2)	Section 2 (14)
May be primary or final	Always final
Mostly appealable	Not appealable
Only one decree	Multiple orders
Determines substantial rights and liabilities	Procedural rights and liabilities

STAY OF SUIT (DOCTRINE OF RES SUB JUDICE)

Section 10 provides that 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.

To prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue,

A suit was instituted by the plaintiff company alleging infringement by the defendant company by using the trade name of medicine and selling the same in wrapper and carton of identical design with same color combination etc. as that of plaintiff company. A subsequent suit was instituted in a different Court by the defendant company against the plaintiff company with the same allegation. The Court held that subsequent suits should be stayed as simultaneous trials of the suits in different Courts might result in conflicting decisions as the issue involved in two suits was totally identical (M/s. Wings Pharmaceuticals (P) Ltd. and another v. M/s. Swan Pharmaceuticals.

Essential Conditions for Stay of Suits

- The matter must be two suits instituted at different times
- The matter in issue in the latter suit should be directly and substantially in issue in the earlier suit
- Such suit should be between the same parties
- Each earlier suit is still pending either in the same Court or in any other competent Court but not before a foreign Court

For the applicability of Section 10, the two proceedings must be suits, e.g. suit for eviction of tenant in a rent control statute cannot be sought to be stayed under Section 10 of Civil Procedure Code on the ground that tenant has earlier filed a suit for specific performance against the landlord on the basis of agreement of sale of disputed premises in favor of the tenant.

RES JUDICATA

Section 11 of the Civil Procedure Code deals with the doctrine of Res Judicata. According to this provision of no Court shall try any suit or issue in which the matter has been directly and substantially in issue in a former suit (i.e., suit previously decided) either between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and finally decided by such Court. 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

(S.B. Temple v. V.V.B. Charyulu, (1971). The doctrine of res judicata prevails over the doctrine of lis pendens where there is a conflict between the two. For the applicability of the principle of res judicata embodied in Section 11, the following requirements are necessary:

1.	The matter directly and substantially in issue in the former suit shall also be directly and substantially in issue in later suit. ***In the matter of taxation for levy of municipal taxes, there is no question of res judicata as each year's assessment is final for that year and does not govern latter years (Municipal Corporation v. Madan Mohan)***
2.	The former suit has been decided – former suit means which is decided earlier.
3.	The said issue has been heard and finally decided.
4.	Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above (Isher Singh v. Sarwan Singh, AIR 1965 SC 948).

Basis	Res Judicata	Res Sub Judice
Meaning	Matter adjudged as final	Matter is still under consideration
Purpose	To prevent re-litigation and bring finality	To avoid parallel proceedings and save time
Applicability	After a case has been conclusively decided	When a case is still pending before a court
Conditions	The suit had been decided by the competent court. The issue must be the same in subsequent and former suits. The suit must be filed between the same parties. The court must have jurisdiction. The former and subsequent suits have the same title.	There must be two suits and one must have already commenced. The matter in issue is the same. The suit was filed in a competent court. The suit must be pending in court. The title of the suit and the parties are the same.
Provisions of Act	Section 11	Section 10

Doctrine of res Judicata is based on these grounds of public policy			
There should be an end to litigation.	The parties to a suit should not be harassed to agitate the same issues or matters already decided between them	The time of Court should not be wasted over the matters that ought to have been and should have been decided in the former suit between the parties	It is a rule of convenience and not a rule of absolute justice.

Any relief claimed in the plaint but not expressly granted shall be deemed to have been refused. The principles of res judicata apply to execution proceedings.

CONDITIONS OF RES JUDICATA

- The matter must be directly and substantially in issue in two suits
- The prior suit should be between the same parties or persons claiming under them
- The parties should have litigated under the same title
- The court which determines the earlier suit must be competent to try the later suit
- The same question is directly and substantially in issue in the later suit

JURISDICTION OF COURTS AND VENUE OF SUITS

A limitation on jurisdiction of a Civil Court may be of four kinds.

Jurisdiction over the subject matter	Place of suing or territorial jurisdiction	Jurisdiction over persons	Pecuniary jurisdiction depending on pecuniary value of the suit
The jurisdiction to try certain matters by certain courts is limited by statute; Example: a small-cause court can try suits for money due under a promissory note or a suit for price of work done.	A territorial limit of jurisdiction for each court is fixed by the Government. Thus, it can try matters falling within the territorial limits of its jurisdiction.	All persons of whatever nationality are subject to the jurisdiction of the Civil Courts of the country except a foreign State, its ruler or its representative except with the consent of the Central Government.	Section 6 of the Code of Civil Procedure, 1908 deals with Pecuniary jurisdiction and lays down that save in so far as is otherwise expressly provided Courts shall only have jurisdiction over suits the amount or value of which does not exceed the pecuniary limits of any of its ordinary jurisdiction. There is no limit on pecuniary jurisdiction of High Courts and District Courts

Jurisdiction may be further classified into following categories depending upon their powers:

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

The Civil Court has jurisdiction to decide the question of its jurisdiction although as a result of the enquiry it may be found that it has no jurisdiction over the matter. Jurisdiction depends not on the truth or falsehood of facts, but upon their nature. Jurisdiction is determinable at the commencement not at the conclusion of the inquiry ***Rex v. Boltan***

A suit is expressly barred if a legislation expressly says so and it is impliedly barred if a statute creates new right or liability and prescribes a particular tribunal or forum for its assertion.

A.R. Antulay vs. R.S. Nayak

Whether a case triable by Special Judge as provided under Criminal Law Amendment Act, 1952 could be transferred to High Court or not. The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no Court, whether superior or inferior or both combined can enlarge the jurisdiction of a Court or divest a person of his rights of revision and appeal.

(court ki jurisdiction kitni hai aur kitni nahi ye parliament decide krega)

PLACE OF SUING (TERRITORIAL)

According to Section 16, subject to the pecuniary or other limitations prescribed by any law, the following suits (relating to property) shall be instituted in the Court within the local limits of whose jurisdiction the property is situated:

(*a*)	For recovery of immovable property with or without rent or profits;
(*b*)	For partition of immovable property;
(*c*)	For foreclosure of sale or redemption in the case of a mortgage or charge upon immovable property;
(*d*)	For the determination of any other right to or interest in immovable property;
(*e*)	For compensation for wrong to immovable property
(*f*)	For the recovery of movable property actually distrait or attachment.

Where immovable property is situated within the jurisdiction of different Courts:	The suit may be instituted in any Court within the local limits of whose jurisdiction the property is situated provided the value of the entire claim is cognizable by such Court.
Where local limits of jurisdiction of Courts are uncertain:	any of the said Courts may proceed to entertain the suit
Where wrong done to the person or to movable property:	Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court,

other suits:	Section 20 delineates the territorial jurisdiction of courts for instituting suits based on the residence, business activities, or the location where the cause of action arises for defendants, with specific provisions for bodies corporate or companies.

SET-OFF, COUNTER-CLAIM AND EQUITABLE SET-OFF

Set-off	Set-off which is a reciprocal acquittal of debts between the plaintiff and defendant. It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant as a counter claim. where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff not exceeding the pecuniary jurisdiction of the Court
Effect of set-off	The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off,
Counterclaim	A defendant in a suit may, set up by way of counter- claim 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 defence or before the time limited for delivering his defence 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.
Equitable set-off	The defendant is permitted to claim set-off in respect of an unascertained sum of money where the claim arises out of the same transaction, or transactions which can be considered as one transaction, or where there is knowledge on both sides of an existing debt due to one party and a credit by the other party found on and trusting to such debt as a means of discharging it.

Basis	Set off	Counter Claim
Nature	Statutory Defense	Cross action initiated by defendant
Basis	Arises from same transaction (ascertained sum of money)	May not be from same transaction
Purpose	Defense against claim made by plaintiff	Offensive measure against claim
Pleadings	Pleaded in written statement	Treated as Separate Claim
Limit	Should not exceed claim made by plaintiff	Can exceed the claim made by plaintiff

Jitendra Kumar Khan and Ors. vs. The Peerless General Finance and Investment Company Limited

The court stated that equitable set-off is different from legal set-off. Equitable set-off is based on the principle of justice, equity and good conscience.

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS (ORDER XXXIX)

Temporary Injunction

The Court may grant temporary injunction to restrain any such act (as set out below) or make such other order 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

- That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- The defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors, or
- That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

Interlocutory Orders

The Court may, on the application of any party to a suit order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit,

Dalpat Kumar vs. Prahlad Singh three main requirements are to be satisfied while granting temporary injunction-

1. There should be Prima facie case
2. If injunction not granted, it would lead to irreparable loss and,
3. Balance of convenience

DETENTION, PRESERVATION, INSPECTION ETC. OF SUBJECT-MATTER OF SUIT

The Court may, on application of any party to a suit, and on such terms as it thinks fit:

(*a*)	Make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or as to which any question may arise therein;
(*b*)	Authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and
(*c*)	Authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. (Rule 7)

Deposit of Money etc. in the Court

Rule 10 allows the court, in cases where the subject matter of a suit involves money or some deliverable item, and where a party acknowledges holding such money or item for another party, to order its deposit in court or delivery to the rightful party, with or without security, as per the court's direction.

Moreover, parties can seek a temporary injunction from the court to prevent the defendant from committing a breach of contract or causing harm. The court has the discretion to grant such an injunction if it believes there is a significant issue to be investigated and that maintaining the status quo is necessary until the matter is finally resolved.

INSTITUTION OF SUIT (ORDER IV)

The main essentials of the suit are–

The Opposing Parties → *The cause of action* → *The subject matter of the suit* → *The releif(s) claimed*

The plaint consists of a heading and title, the body of plaint and the relief(s) claimed. Every suit shall be instituted in the Court of the lowest grade competent to try it,

Claim for recovery of any immovable property could be for:

- Mesne profits or arrears of rent;
- Damages for breach of contract under which the property or any part thereof is held; and
- Claims in which the relief sought is based on the same cause of action.

They shall be instituted in a Court within the local limits of whose jurisdiction:

(*a*)	The defendant or each of the defendants if there are more than one at the time of the commencement of the suit actually or voluntarily resides or carries on business or personally works for gain; or
(*b*)	Any of the defendants, where there are more than one at the time of the commencement of the suit, actually or voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
(*c*)	The cause of action wholly or in part arises.

Misjoinder of Parties – Where more than one person(s) joined in one suit as plaintiffs or defendants in whom or against whom any right to relief does not arise or against whom separate suits are brought, no common question of law or fact would arise, it is a case of 'misjoinder of parties'. To avoid such misjoinder, two factors are essential viz.,

(*i*)	The right to relief must arise out of the same act or transaction brought by the plaintiffs or against the defendants,
(*ii*)	There is a common question of law or fact.

"Cause of action" means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. Thus, cause of action is a bundle of essential facts which the plaintiff has to prove in order to sustain his action. The cause of action must be antecedent to the institution of the suit. It consists of two factors (a) a right, and (b) an infringement for which relief is claimed.

Every breach of contract gives rise to a cause of action and a suit may be instituted to secure the proper relief in the place

(*a*)	Where the contract was made, or
(*b*)	Where the breach has occurred, or
(*c*)	The place where money is payable.

Misjoinder of Causes of Action – If the plaintiffs are not jointly interested in all the causes of action there is misjoinder of causes of action.

STAGES OF SUIT

DELIVERY OF SUMMONS BY COURT

When the suit has been duly instituted, the Court issues an order (known as summons***) to the defendant to appear and answer the claim and to file the written statement of his defense if any within a period of 30 days from the date of service of summons***. No summons is to be issued when the defendant has appeared at the presentation of plaint and admitted the plaintiff's claim.

Every summons must be signed by the judge or an authorized officer of the Court and sealed with the seal of the Court and be accompanied by a copy of the plaint.

The summons must contain a direction that it is for the settlement of issues only or for the final disposal of the suit. *Every summons must be accompanied by a copy of the plaint.*

1.	Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, be delivered or sent either to the proper officer, who may be an officer of a Court other than that in which the suit is instituted,
2.	*The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court shall be made at the expenses of the plaintiff.*
3.	Where the defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons
4.	The defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant;

When a person being summoned avoids service or cannot be served in the usual manner, the court can order the summons to be affixed in a conspicuous place in the courthouse and at the person's last known residence, business place, or where they worked. For defendants who are public officers, railway or local authority employees, the court may send the summons to their office head. In cases against corporations, the summons can be served to the secretary, director, or principal officer, or sent by post to the registered office or business place. When suing partners in a firm, the summons can be served on one or more partners or at the principal place of business in India.

Defence	The defendant must file a written statement of defense within 30 days of receiving the summons, with a maximum extension of 90 days. If relying on any document, the defendant must list and produce it with the written statement. Failure to produce necessary documents may lead to their exclusion from evidence without court permission. Any counterclaim must be clearly stated, and new facts must be explicitly pleaded. General denials are not allowed, and each fact not admitted must be specifically addressed, or it will be presumed true.
Appearance of parties and consequence of non-appearance	If both parties fail to appear for the hearing, the court may dismiss the suit. If the defendant doesn't appear despite being served summons and the plaintiff is present, the court may proceed with the case ex-parte. If the defendant hasn't been served summons, the court will order a second summons. If summons is served with insufficient time, the court may postpone the hearing. The defendant can still participate even if they can't file a written statement. A defendant can apply to set aside an ex-parte decree if summons wasn't served or if they had a valid reason for not appearing, and the court may set aside the decree on certain terms and schedule a new hearing.

A defendant has four remedies available if an ex-parte decree is passed against him:

(*i*)	He may file an appeal against the ex-parte decree under Section 96 of the C.P.C.
(*ii*)	He may file an application for review of the judgment. (O.47, R.1)
(*iii*)	He may apply for setting aside the ex-parte decree.
(*iv*)	A suit can also be filed to set aside an ex-parte decree obtained by fraud but no suit shall lie for non- service of summons.

Discovery and Interrogatories and Production of Documents

"Discovery" means finding out material facts and documents from an adversary in order to know and ascertain the nature of the case or in order to support his own case or in order to narrow the points at issue or to avoid proving admitted facts. Discovery may be of two kinds – (*a*) by interrogatories (*b*) by documents.

The objects of discovery are to:

(*a*)	Ascertain the nature of the case of the adversary or material facts for the adversary's case.
(*b*)	Obtain admissions of the adversary for supporting the party's own case or indirectly by impeaching or destroying the adversary's case
(*c*)	Narrow the points at issue.
(*d*)	Avoid expense and effort in proving admitted facts.

Discovery by Interrogations

The court may deliver interrogatories in writing for the examination of the opposite parties. But interrogatories will not be allowed for the following purposes:

(*i*)	For obtaining discovery of facts which relates exclusively to the evidence of the adversary's case or title.
(*ii*)	To interrogate any confidential communications between the adversary and his counsel.
(*iii*)	To obtain disclosures injurious to public interests
(*iv*)	Interrogatories that are of a 'fishing' nature, i.e., which do not relate to some definite and existing state of circumstances but are resorted to in a speculative manner to discover something which may help a party making the interrogatories.

Discovery by Documents

Any party may apply to the Court for an order directing any other party to the suit to make discovery on oath the documents which are or which have been in his possession or powers relating to any matter in question.

A party may refuse to produce the document for inspection on the following grounds:

(*i*)	Where it discloses a party's evidence;
(*ii*)	When it enjoys a legal professional privilege;
(*iii*)	When it is injurious to public interest;
(*iv*)	Denial of possession of documents.

If a party denies by an affidavit the possession of any document, the party claiming discovery cannot cross- examine upon it, nor adduce evidence to contradict it, because in all questions of discovery the oath of the party making the discovery is conclusive [Kedarnath v. Vishwanath, (1924) 46 All. 417].

Admission by Parties

"Admission" means that one party accepts the case of the other party in whole or in part to be true. Admission may be either in pleadings or by answers to interrogatories, by agreement of the parties or admission by notice.

Issues

Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Issues may be either of fact or of law.

Issues are to be framed on material proportions of fact or law which are to be gathered from the following

(*i*)	Allegations made in the plaint and written statement,
(*ii*)	Allegations made by the parties or persons present on their behalf or their pleaders on oath,
(*iii*)	Allegations in answer to interrogatories
(*iv*)	Contents of documents produced by the parties,
(*v*)	Statements made by parties or their representatives when examined,
(*vi*)	From examination of a witness or any documents ordered to be produced

Hearing of the Suit

The party beginning has an option to produce his evidence on those issues or reserve it by way of an answer to the evidence produced by the other party, and in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence.

Affidavit

An affidavit is a written statement of the deponent on oath duly affirmed before any Court or Magistrate or any Oath Commissioner appointed by the Court or before the Notary Public. An affidavit can be used in the following cases:

(*i*)	The Court may at any time of its own motion or on application of any party order that any fact may be proved by affidavits (Section 30).
(*ii*)	The Court may at any time order that the affidavit of any witness may be read at the hearing unless either party bona fide desires to cross-examine him and he can be produced (O.19, R.1).
(*iii*)	Upon application by a party, evidence of a witness may be given on affidavit, but the court may at the instance of either party, order the deponent to attend the court for cross-examination unless he is exempted from personal appearance. Affidavits are confined to such facts as the deponent is able of his own knowledge to prove except on interlocutory applications. (O.19, R.2&3).

Judgment

The Court after the case has been heard shall pronounce judgment in an open court either at once or on some future day as may be fixed by the court for that purpose of which due notice shall be given to the parties or their pleaders every endeavor shall be made by the Court to pronounce the judgment within a period of 30 days from the date on which the hearing of the case was concluded.

In Kanhaiyalal v. Anup Kumar, AIR 2003 SC 689, where the High Court pronounced the judgment after two years and six months, the judgment was set aside by the Supreme Court observing that it would not be proper for a Court to sit tied over the matter for such a long period.

The judgment must be dated and signed by the judge. Once the judgment is signed it cannot afterwards be altered or added to except as provided under Section 152 or on review.

Decree

On judgment a decree follows. Every endeavor must be made to ensure that decree is drawn up expeditiously and in any case within a period of 15 days from the date on which the judgment is pronounced. It should contain the:

(*i*)	Number of the suit(s);
(*ii*)	Names and descriptions of the parties and their registered addresses;
(*iii*)	Particulars of the claim;
(*iv*)	Relief granted or other determination of the suit;
(*v*)	Amount of cost incurred and by whom is to be paid.

Execution

A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution.

APPEALS

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

APPEAL

- ***Appeal from original decree (Sections 96-99 Order 41)***
- ***Second Appeal (Sections 100-103 Order 42)***
- ***Appeal from orders (Sections 104-106, Order 43 rule 1-2)***
- ***Appeal to the Supreme Court (Sections 109-112, Order 45)***

Appeals from original decrees	These appeals may be preferred in the Court superior to the Court passing the decree. An appeal may lie from an original decree passed ex parte. Where the decree has been passed with the consent of parties, no appeal lies
Second appeal	As per Section 100 of the Civil Procedure Code, an appeal lies to the High Court from every decree passed in appeal by any subordinate Court if the High Court is satisfied that the case involves a substantial question of law. The High Court is empowered to hear the appeal on any other substantial question of law not formulated by it if it is satisfied that the case involves such a question. As a general rule the second appeal is on questions of law alone (Section 100). The Privy Council in Durga Choudharain v. Jawaher Singh, (1891) 18 Cal. 23 P.C., observed that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact,

APPEAL FROM ORDERS

These appeals would lie only from the following orders on grounds of defect or irregularity in law

(*i*)	An order under Section 35A of the Code allowing special costs, and order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92,
(*ii*)	An order under Section 95 for compensation for obtaining attachment or injunction on insufficient ground,
(*iii*)	An order under the Code imposing a fine or directing the detention or arrest of any person except in execution of a decree.
(*iv*)	Appealable orders as set out under Order 43, R.1. However no appeal shall lie from following orders
	Any order specified in clause (*a*) and
	From any order passed in appeal under Section 100.

APPEALS TO THE SUPREME COURT

These appeals would lie in the following cases:

(*i*)	From any decree or order of Civil Court when the case is certified by the Court deciding it to be fit for appeal to the Supreme Court or when special leave is granted under Section 112 by the Supreme Court itself,
(*ii*)	From any judgment, decree or final order passed on appeal by a High Court or by any other court of final appellate jurisdiction,
(*iii*)	From any judgment, decree or final orders passed by a High Court in exercise of original civil jurisdiction.

But the appellate court has a discretion to allow additional evidence in the following circumstances

(*i*)	When the lower court has refused to admit evidence which ought to have been admitted
(*ii*)	When the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment.
(*iii*)	For any other substantial cause.

REFERENCE, REVIEW AND REVISION

Reference to high Court

At any time before judgment a court in which a suit has been instituted may state a case and refer the same for opinion of the High Court and the High Court may make such order thereon as it thinks fit.

Review

Any person considering himself aggrieved by a decree or order may apply for a review of judgment to the court which passed the decree or made the order on any of the grounds as mentioned in Order 47 Rule 1, namely

(*i*)	Discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
(*ii*)	On account of some mistake or error apparent on the face of the record, or
(*iii*)	For any other sufficient reason, and

Revision

Section 115 deals with revision. 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

(*i*)	To have exercised a jurisdiction not vested in it by law, or
(*ii*)	To have failed to exercise a jurisdiction so vested, or
(*iii*)	To have acted in the exercise of its jurisdiction illegally or with material irregularity, The High Court may make such order as it thinks fit.

A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or proceeding is stayed by the High Court

SUITS BY OR AGAINST A CORPORATION

signature or verification of pleading

By the secretary or by any director or other principal officer of the corporation who is able to depose to the facts

Service of Summons

The summons may be served:

(*a*)	On the secretary or any director or other principal officer of the corporation, or
(*b*)	By leaving it or sending it by post addressed to the corporation at the registered office or if there is no registered office then at the place where the corporation carries on business. (O.29, R. 2)

SUITS BY OR AGAINST MINORS AND LUNATICS

A minor is a person (*i*) who has not completed the age of 18 years and (*ii*) for whose person or property a guardian has been appointed by a Court, or whose property is under a Court of Wards, the age of majority is completed at the age of 21 years.

A suit by a minor shall be instituted in his name by a person who in such a 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. However, the interest of such a person is not adverse to that of the minor and that he is not in the case of a next friend, a defendant for the suit.

Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor

A person appointed as guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continues as such throughout all proceeding arising out of the suit including proceedings in any appellate or revisional court and any proceedings in the execution of a decree

When Minor Attains 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 the former course, 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. If he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant apply for an order to dismiss the suit on repayment of the costs incurred by the defendant or opposite party etc.

If a person before or during the pendency of the suit is found to be of unsound mind. It shall also be applicable to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

Ram Chandra Arya vs. Man

The Court held that a decree passed against a minor or lunatic without appointed legal guardian is void and not voidable.

SUMMARY PROCEEDINGS/PROCEDURE

A trial in summary way is a trial in which issues are to be resolved quickly by applying the speedy procedure. Sections 260-265 of the Code of Criminal Procedure, 1908 provides the provisions relating to summary trials. It facilitates the parties to seek justice for minor offences in a shorter time.

The following offences may be tried in a summary way:

(*i*)	Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years
(*ii*)	Theft where the value of the property stolen does not exceed two thousand rupees
(*iii*)	Receiving or retaining stolen property, where the value of the property does not exceed two thousand rupees
(*iv*)	Assisting in the concealment or disposal of stolen property where the value of such property does not exceed two thousand rupees
(*v*)	Offences under sections 454 and 456 of the Indian Penal Code relating to Lurking house-trespass or house-breaking
(*vi*)	Insult with intent to provoke a breach of the peace and criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both
(*vii*)	Abetment of any of the foregoing offences
(*viii*)	An attempt to commit any of the foregoing offences, when such attempt is an offence
(*ix*)	Any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871.

The High Court may confer on any Magistrate of the second class, power to try summarily any offence punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

A procedure by way of summary suit applies to suits upon bill of exchange, hundis or promissory notes, or to suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,-

(*i*)	On a written contract; or
(*ii*)	On an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
(*iii*)	On a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only. The object is to prevent unreasonable obstruction by a defendant.

Institution of Summary Suits

Such suit may be instituted by presenting a plaint containing the following essentials:

1.	A specific averment to the effect that the suit is filed under this order;
2.	That no relief which does not fall within the ambit of this rule has been claimed;
3.	The inscription immediately below the number of the suit in the title of the suit shows that the suit is being established under Order 37 of the CPC.

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.

However, such leave shall not be granted where:

1.	The Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence or that the defences are frivolous or vexacious, and
2.	The part of the amount claimed by the plaintiff and admitted by the defendant to be due from him is deposited by him in the Court.

Uma Shankar Kamal Narain and Ors. vs. M.D. Overseas Ltd.

The appellants were directed to deposit the amount of Rs. 39,30,856/- to the registry of the division bench of High Court.

The High Court refused to accede to the prayer.

The position of law was noted and highlighted relating to summary suits by the Supreme Court as under:

(*a*) If the defendant satisfied the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.

(*b*) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend.

(*c*) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff's claim, the Court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or made of trial but not as to payment into Court or furnishing security.

(*d*) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave to defend.

(*e*) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

B.l. Kashyap and sons ltd. vs. JMs steels and Power Corporation and ors.

The Supreme Court held that leave to defend should only be granted in exceptional cases. The leave to defend shall be denied only on the grounds that there is no fair or reasonable defence.

SUMMARY JUDGMENT

One of the significant amendments which has been brought into the CPC by the Commercial Courts Act, 2015 is the insertion of Order 13A for summary judgment. Order 13A of the Commercial Courts Act, 2015 provides that disputes which are recognized as commercial disputes under the Act, can be disposed off by the commercial court established under the Act without a full-fledged trial. Previously, suits which had more or less a clear outcome based on merits would still have to go through the entire procedure enumerated under the CPC before the case could be disposed of.

The application for summary judgment can be made by either party after the service of summons to the defendant and before the framing of issues. Upon consideration and satisfaction of the Court, a summary judgment may be given that (a) the plaintiff/defendant has no real prospect of succeeding on the claim/defence, as the case may be; and (b) there is no other compelling reason as to why the claim should not be disposed of before the recording of oral evidence.

Supreme Court in the case K.K. Velusamy v. N. Palanisamy, as follows:

(*a*)	Section 151 CPC is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is "right" and undo what is "wrong", that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.
(*b*)	Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such a situation or aspect, if the ends of justice warrant it.
(*c*)	A court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers.
(*d*)	The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the legislature.
(*e*)	While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and in the facts and circumstances of the case.
(*f*)	The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

POWERS OF CIVIL COURTS AND THEIR EXERCISE BY TRIBUNALS

Tribunals are quasi-judicial authorities established by law. Generally, they are established for speedy disposal of cases and possess expertise on certain subject matters. These tribunals are empowered with certain powers of Civil Procedure in order to effectively discharge the functions assigned to them.

National Company Law Tribunal and National Company Law Tribunal has, for the purposes of discharging their functions under the Companies Act or under the Insolvency and Bankruptcy Code, 2016, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:-

(*a*) Summoning and enforcing the attendance of any person and examining him on oath;

(*b*) Requiring the discovery and production of documents;

(*c*) Receiving evidence on affidavits;

(*d*) Subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

(*e*) Issuing commissions for the examination of witnesses or documents;

(*f*) Dismissing a representation for default or deciding it ex parte;

(*g*) Setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(*h*) Any other matter which may be prescribed.

Few major enactments empowering the tribunals with the power of civil court are:

The Companies Act, 2013

The Securities Exchange Board of India

Income-tax Act, 1961

The information Technology Act, 2000

The Prevention of Money-Laundering Act, 2002

COMMERCIAL COURTS ACT, 2015

The Government of India introduced the 'The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015' (Commercial Courts Act, 2015 for short) to reduce the burden on judiciary with respect to commercial disputes. This not only unburdened the judiciary but also enabled prospective foreign investors to gain more trust over their investments in the Indian market.

To expedite the process of disposal of cases of large economic value or commercial cases, the Commercial Courts Act, 2015 (the Act) was introduced. It is an Act to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts

According to Section 3 of the Act, the State Government may with the consultation of respective High Court constitute the constitute Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act.

State Government, after consultation with the High Court may-

1.	Specify pecuniary value which shall not be less than three lakh rupees or such higher value. [Section 3(1A)]
2.	Extend, alter, and reduce the jurisdiction of such court within local limits. [Section 3(2)]
3.	Appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of such Courts.

Determination of Specified Value

The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined by-

In case of recovery of money
In case of Movable Property or right in it
In case of immovable Property or right in it
In case of other intangible right

Pre-Institution Mediation and Settlement

The very purpose of this Act was to resolve the commercial disputes without bringing them to the court of law through mediation. Prior to approaching a commercial court for dispute commercial in nature, the Act requires that parties attempt to settle their issues through mediation.

Time Period	The process of pre-litigation mediation shall be completed within a period of three months from the date of application made. It can be extended for a further period of two months with the consent of the parties.
Award/ settlement	The award or settlement of pre-litigation mediation shall be in writing and signed by the parties to the dispute and the mediator. The award shall have the same status and effect as of an arbitral award under section 30(4) of the Arbitration and Conciliation Act, 1996.

Appeals

Any person aggrieved by the judgment or order of a Commercial Court shall within sixty days of such judgment may file an appeal

He may appeal to the Commercial Appellate Court
If he is aggrieved by the judgment of Commercial court at District Judge or Commercial Division of a High Court, he may appeal to the Commercial Appellate Division of that High Court

All the appeals filed shall be disposed of within a period of six months from the date of filing.

7 LAWS RELATING TO CRIME AND ITS PROCEDURE

CRIMINAL OFFENCE VS. CIVIL WRONG

The difference between a criminal offence and a civil wrong is that while the former is considered a wrong: against the society because of their grave nature, a civil wrong is a wrong done to an individual.

Civil Law is a general law which solves disputes between 2 organizations or individuals. As per Civil Law the wrongdoer will have to compensate the affected organization or individual.	Criminal Law deals with offences that are committed against the society. It meets out varying degrees of punishment commensurate with the crime committed
Civil Law deals with Property, Money, Housing, Divorce, custody of a child in the event of divorce etc.	Criminal Law will deal with serious crimes such as murder, rapes, arson, robbery, assault etc.
Civil Law is initiated by the aggrieved individual or organization or also known as 'plaintiff.'	The Government files the petition in case of criminal law.
In case of Civil Law, to start a case, the aggrieved party needs to file a case in the Court or Tribunal	As per Criminal Law, to start a case, a petition cannot be filed directly in a court, rather the complaint should be first registered with the police, and the crime needs to be investigated by the Police. Thereafter a case can be filed in the court.
The purpose of civil law enforcement is to protect the rights of the citizens of the country, make sure that nothing wrong happens to them, and provide compensation for the wrong that has been done.	The purpose of the criminal law is to take care of the criminal offences and punish those who have been proved guilty for that. Thus, the maintenance of law and order in society is the sole aim of the law.
No such plans	New act in force - Bharatiya Nagrik Suraksha Sanhita, 2023

Indian Penal Code

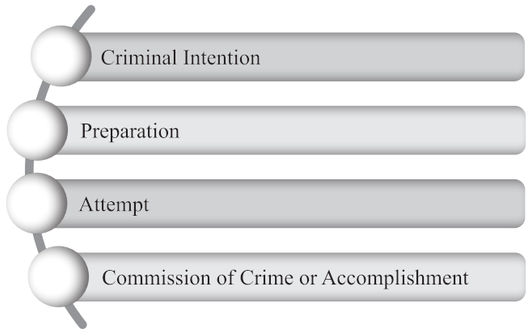
The Indian Penal Code (IPC) is a colonial legislation which was retained as the main penal law of the country even after India became independent in 1947. The Indian Penal Code was passed in the year 1860 but it came into force on 1st January, 1862 and it applies to the whole of India.

The Indian Penal Code, 1860 is a substantive law of crime. It defines acts which constitute an offence and lays down punishment for the same.

Code of Criminal Procedure

The Code of Criminal Procedure, 1898 (Cr. P.C.) was repealed by the Code of 1973 enacted by Parliament on 25th January, 1974 and made effective from 1.4.1974 so as to consolidate and amend the law relating to Criminal Procedure. it is necessary that company secretaries and other secretarial staff should be familiar with some of the relevant features of the Criminal Procedure Code. Its object is to provide a machinery for determining the guilt of and imposing punishment on offenders under the substantive criminal law,

STAGES OF CRIME



1. Criminal Intention

Intention is the conscious exercise of mental faculties of a person to do an act for the purpose of accomplishing or satisfying a purpose. Intention means doing any act with one's will, desire, voluntariness, malafide and for some purpose.

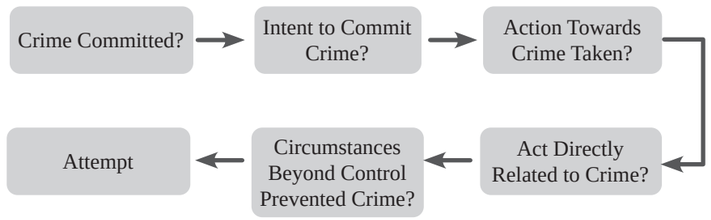
2. Preparation

Preparation means to arrange necessary measures for commission of intended criminal acts. Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence. Some of them are as follows:

(*i*)	Preparation to wage war against the Government (section 122).
(*ii*)	Preparation for counterfeiting of coins or Government Stamps (sections 233 to 235, 255 and 257).
(*iii*)	Making preparation to commit dacoity (section 399).

3. Attempt

Attempt has been called as a preliminary crime. Attempt means the direct movement towards commission of a crime after necessary preparations have been made. the sections on attempt can be divided into four broad categories:



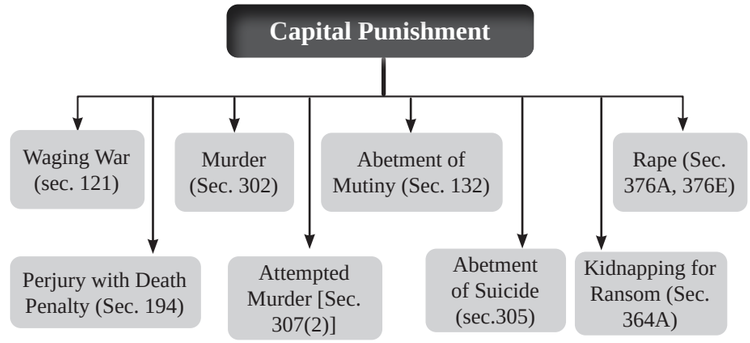
4. Commission of Crime or Accomplishment

If the accused succeeds in his attempt, the result is the commission of crime and he will be guilty of the offence.

TYPES OF PUNISHMENTS

Punishments

1. **Death:** (judicial killing) Involves the judicial killing or taking the life of the accused as a form of punishment. **only in the 'rarest of rare cases'.** The IPC provides for capital punishment for the following offences.

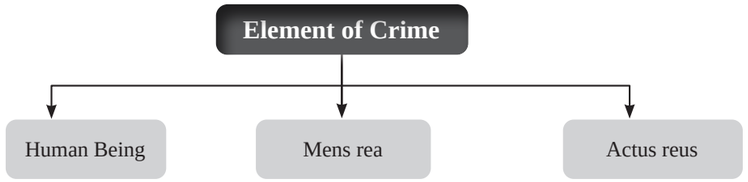


2. **Life Imprisonment:** Rigorous imprisonment, till the last breath of the convict.
3. **Imprisonment:**
   (*i*) Rigorous Imprisonment, that is hard labour;
   (*ii*) Simple Imprisonment (holiday ke jaisa)
4. **Forfeiture of property:** Without compensation in consequence of some default or act forbidden by law.
5. **Fine:** Fine is forfeiture of money by way of penalty.

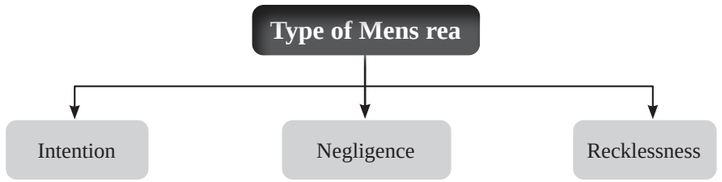
Difference between Fine and Penalty

Basis	Fine	Penalty
Purpose	Fine in monetary punishment for committing offence	Penalty is payment of sum either for law or for non-compliance
Authority	Decided by court	Decided by Adjudicating or Regulating Authority
Scope	Includes Monetary compensation only	Broader term which includes fine, restrictions, sanctions, other forms of punishment like imprisonment
Imposed	It is imposed for commission of crime or offence	A penalty is imposed for breaking a certain, law, rule or contract.

ELEMENTS OF CRIME: MENS REA AND ACTUS REUS



1. **Human being:** Only a human being under legal obligation and capable of being punished can be the proper subject of criminal law.
2. **Mens rea:** Legal maxim 'actus non facit reum, nisi mens sit rea'. It means 'the act alone does not amount to guilt; the act must be accompanied by a guilty mind'.



CASE LAW

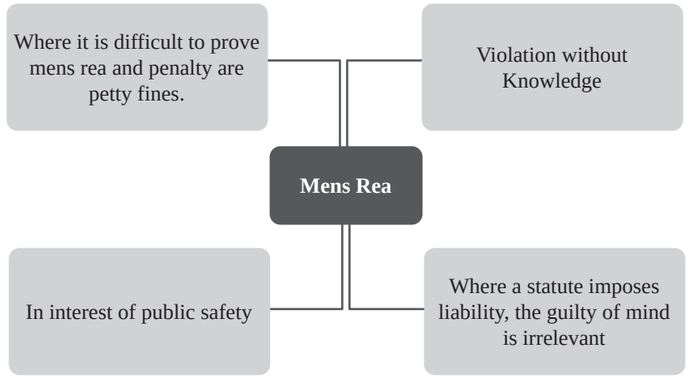
GirjaNath v. state mens rea is a loose term that covers a wide range of mental status Intention, Negligence and recklessness are the important forms of mens rea.

(*i*) **Intention:** The purpose or design with which an act is done'.

(*ii*) **Negligence:** Negligence is not taking care, where there is a duty to take care. What amounts to reasonable care differs from thing to thing depending on the situation of each case.

(*iii*) **Recklessness:** Recklessness occurs when the actor does not desire the consequence, but foresees the possibility and consciously takes the risk.

Exceptions to MENS REA:

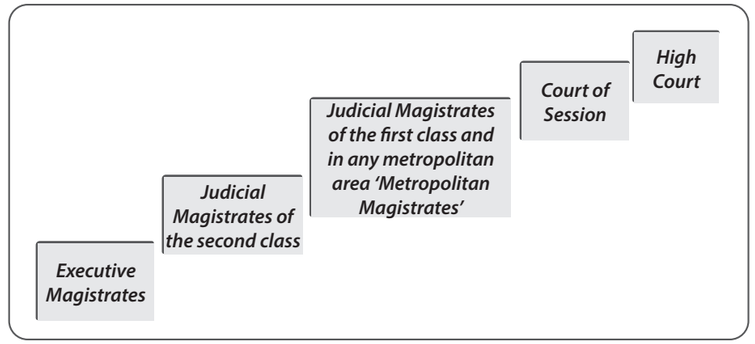


3. **Actus reus (act or omission):** Overt act or unlawful commission must be done in carrying out a plan with the guilty intention. Actus Reus is defined as a result of voluntary human conduct which law prohibits. An 'act' is a willed movement of the body.

Difference between Cognizable and Non-Cognizable Offences

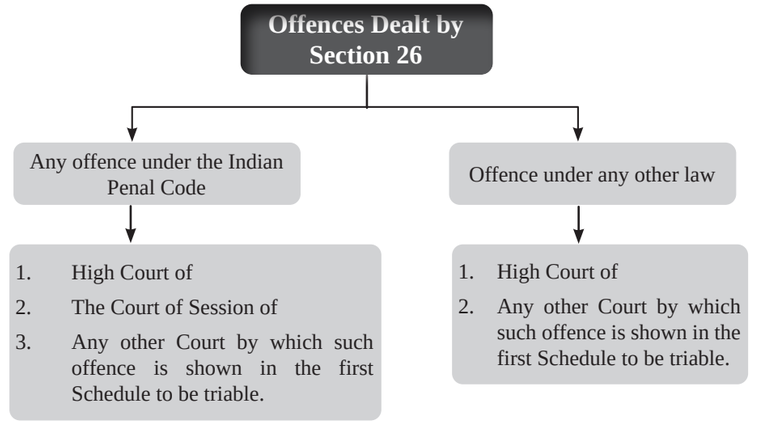
Basis of Difference	Cognizable Offence	Non-Cognizable Offence
Warrant	Warrant is not necessary in case of Cognizable offence	Warrant is necessary in case of Non- Cognizable Offences.
Nature of offence	Nature of offence is serious in cognizable offence	Nature is not much serious in case of Non-Cognizable Offences.
Information of Cases	Generally, Information relating to the cognizable offence, should be reduced to writing and be read over to the informant, if given orally. Information, whether given in writing or reduced to writing as aforesaid, should be signed by the person giving it.	The substance of the Information given should be entered in a book to be kept by such officer and refer the informant to the Magistrate. Police officers should not investigate a non-cognizable case without the order of a concerned Magistrate.
Permission of Court	Not required, investigation can begin with filing of FIR	Required, Investigation can begin only after court issues order
Examples	Rioting, Murder, Being a thug, Voluntarily causing grievous hurt etc.	Giving or fabricating false evidence in a judicial proceeding, Intentional insult or interruption to in any stage Voluntarily a of public a servant sitting judicial causing Cheating, Forgery etc.

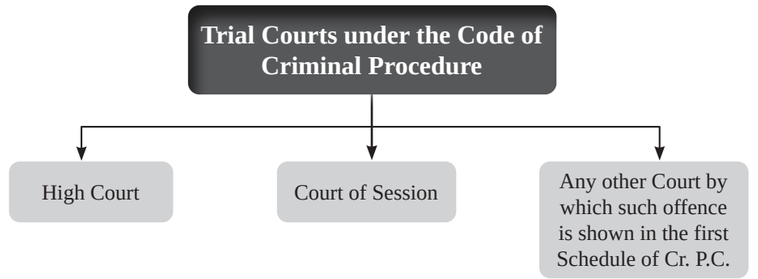
CLASSES OF CRIMINAL COURTS



POWER OF COURTS

Courts by Which Offence Triable





Sentencing Power of Different Courts	
Supreme Court	Any sentence authorised by the law
High Court	Any sentence authorised by the law u/s. 28(1) Cr. PC
Session Judge, Additional Session Judge	Any sentence authorized by law, but any sentence of death passed by any such judge shall be subject to confirmation by the High Court u/s. 28(2) Cr. PC

Assistant Session Judge	Any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years u/s. 28(3) Cr. PC
Chief Judicial Magistrate, Chief Metropolitan Magistrate	Any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years u/s. 29(1)(4) Cr. PC
Judicial Magistrate First Class, Metropolitan Magistrate	Any sentence of imprisonment for a term not exceeding three years or of a fine not exceeding ten thousand rupees, or of both u/s. 29(2) Cr. PC
Judicial Magistrate Second Class	Any sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both u/s. 29(3) Cr. PC
Special Judicial Magistrate	Any sentence of imprisonment for a term not exceeding three years or of fine not exceeding five thousand rupees, or of both u/s. 29(2) Cr. PC Any sentence of imprisonment for a term not exceeding One year or of fine not exceeding five thousand rupees, or of both u/s. 29(3) Cr. PC

Inherent Power of High Court

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Partly administrative and partly judicial. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under section 482 of Cr. P. C.

CASE LAW

Supreme Court in the case Madhu Limaye v. State of Maharashtra,

Power is not to be resorted to, a specific provision

It should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice

It should not be exercised as against the express bar of the law engrafted in any other provision of the code.

ARREST OF PERSONS

Arrest by Police Officer without warrant

The word "arrest" consists of taking into custody another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge and preventing the commission of a criminal offence.

Section 41 of the Criminal Procedure Code, 1973 states that, any police officer may without an order from a Magistrate and without a warrant, arrest any person

(*a*) Who commits, in the presence of a police officer, ***a cognizable offence;***

(*b*) Against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied.

(*i*) **The police officer has reason to believe**

(*ii*) **The police officer is satisfied that such arrest is necessary**

(*a*)	To prevent such person from committing any further offence; or
(*b*)	For proper investigation
(*c*)	To prevent such person from causing the evidence of the offence to disappear or tampering with such evidence
(*d*)	To prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer
(*e*)	His presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest,
(*f*)	Who has been proclaimed as an offender either under Cr. P.C. or by order of the State Government;
(*g*)	In whose possession anything is found which may reasonably be suspected to be stolen property
(*h*)	Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;
(*i*)	Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union;
(*j*)	A reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India
(*k*)	For whose arrest any requisition, has been received from another police officer, provided that the requisition specifies the person to be arrested

Certain measures to be Followed in the Exercise of Power Under Section 41

Power granted to the police to make arrests without warrant was misused that must be followed by police while exercising its powers to make arrest.

Following are Some of Those Safeguards

1. When it's not necessary to arrest someone under Section 41(1), the police can issue a notice for them to appear if there's a reasonable complaint, credible information, or suspicion of their involvement in a cognizable offence. If the person fails to comply with the notice or refuses to identify themselves, the Police officers making an arrest must:
2. Police officers making an arrest must:
   (*a*) Clearly display their name for easy identification.
   (*b*) Prepare an arrest memorandum, attested by a witness from the person's family or the local community, and countersigned by the person arrested.
3. An arrested person has the right to meet with an advocate of their choice during interrogation, though not necessarily throughout the entire process.

Arrest on refusal to give name and residence

Which the police officer feels to be false, he may be taken into custody. Such a person cannot be detained beyond 24 hours.

Arrest by a Private Person

ARREST BY A PRIVATE PERSON FOR ARRESTABLE & NON-BAILABLE OFFENCES

- *In limited situations, the law allows private individuals who are not police officers to arrest a person who has committed an offence under certain circumstances. This is known as an 'arrest by a private person', or sometimes.*
- *Section 66 (1) of the Criminal Procedure Code (CPC) stipulates two conditions that must be satisfied before a private individual is permitted conditions that must be satisfied before a private individual is permitted by law to arrest a person who commits an arrestable and non-bailable offence.*

A private person may arrest or cause to be arrested any person who is in his. presence commits a non-bailable and cognizable offence or who is a proclaimed offender. The Magistrate has been given power to arrest a person who has committed an offence in his presence and also commit him to custody.

Exceptions for Armed Forces (section 45)

Arrest how made

Such a police officer or other person may use all necessary means to effect the arrest if it is forcible. Resistance.

Arrest of woman by police officer

Unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest. no woman shall be arrested after sunset and before sunrise.

Person arrested

Persons arrested are to be taken before the Magistrate or officer-in-charge of a police station without unnecessary delay Article 22(2) of the Constitution of India also provides for producing the arrested person before the Magistrate within 24 hours to Nearest Magistrate, who can order his detention for a term not exceeding 15 days, such Magistrate can remand him to custody for a term which may exceed 15 days but not more than 60 days.

Officers in-charge of the concerned police stations shall report to the Magistrate, the cases of all persons arrested without warrant,

A person arrested by a police officer shall be discharged only on his own bond or on bail or under the special order of a Magistrate

SUMMONS AND WARRANTS UNDER CR.P.C

Issuance of summons	To an accused person or witness either for appearance or for producing a document thing. **Shall be in writing**, **signed by the Presiding Officer** of such Court and shall **bear the seal of the Court** clear at which, the day and time of the day when, the attendance of the person summoned is required.
Service of summons	The person summoned cannot be found by the exercise of due diligence, served by **leaving one of the duplicates for him with some adult male member of his family residing with him,**
Service of summons on corporate bodies, and societies	By serving it on the **secretary, local manager or other principal officer of the corporation, or by letter sent by registered post,**

Substituted service	The serving officer can perform substituted service **by affixing one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides**.
Service on summons on Government servant	Copy of the summons shall be sent to the head of the office by the Court.
Service of summons on witness by post	Direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain
Summons to Produce	A person should produce a document or other thing compelled to be produced by issuing summons

Warrant of Arrest

Such warrant shall remain in force until it is canceled by the Court which issued it, or until it is executed (Section 70).

The requisites of a warrant are as follows:

- It must be in writing
- It must bear the name and designation of the person who is to execute it:
- It must give full name and description of the person to be arrested;
- It must state the offence charged;
- It must be signed by the presiding officer; and
- It must be sealed

Such a warrant is only for production of a person before the concerned Court and not before the police officer. The police officer or other person executing the warrant of arrest shall bring the person arrested before the Court without unnecessary delay provided that such delay shall not in any case exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Proclamation and Attachment

Issuing a Proclamtion (Section 82) → ***Attachment and sale of Property (Section 83)***

If a Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so ***that such warrant cannot be executed, the Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation.*** *At any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person. The object of attaching property is not to punish him but to compel his appearance.*

Search Warrant

- ***To whom a summons or a requisition is addressed, will not produce the document or thing***
- Where such ***document or thing is not known to the Court*** to be in the possession of any person
- ***The purposes of any inquiry, trial or other proceeding*** de will be served by a general search or inspection
- The Court may specify in the warrant the particular place or part thereof to be searched

Search Warrants in other cases	
Search for places suspected to contain stolen property, forged documents, etc.	District Magistrate, Sub-divisional Magistrate or Magistrate of the first class on information and necessary inquiry
Search for persons wrongfully confined	District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe

Search by Police Officer

If the police officer has reason to believe that anything necessary for the purpose of an investigation may be found. According to section 165(4), search-warrants apply to a search made under this section.

State of Punjab v. Balbir Singh, Supreme Court held that ***non-compliance*** of these provisions i.e. Sections 100 and 165 CrPC ***would amount to an irregularity and the effect of the same on the main case depends upon the facts and circumstances of each case.***

Whenever any person is arrested or detained in custody and **it appears that the investigation cannot be completed within the period of twenty four hours** and that there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or other competent investigation officer shall promptly transmit to the nearest judicial Magistrate ,a copy of the entries in the diary relating to the case, and shall forward the accused to such Magistrate at the same time (required to be mentioned day by day under Section 172). ***The Magistrate may then authorize the detention of the accused in custody for a term not exceeding fifteen days***. (Section 167)

Every investigation must be completed without undue delay. ***On completion of investigation, the competent police officer under the Code shall forward a police report with the prescribed details to a Magistrate*** empowered to take cognizance of the offence and send along with the report all documents or relevant extracts on which the prosecution intends to rely. (Section 173)

SUMMARY TRIALS

Summary trial is a speedy trial by dispensing with formalities or delay in proceedings. By summary cases is meant a case which can be tried and disposed of at once. Generally, it will apply to such offences not punishable with imprisonment for a term exceeding two years.

(*a*) Any Chief Judicial Magistrate;

(*b*) Any Metropolitan Magistrate;

(*c*) Any Magistrate of the First class who is specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:

(*i*)	Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
(*ii*)	Theft under Section 379, Section 380 or Section 381 of the Indian Penal Code, where the value of the property stolen does not exceed Rs. 2,000;
(*iii*)	Receiving or retaining stolen property, under Section 411 of the Indian Penal Code, where the value of such property, does not exceed Rs. 2,000;
(*iv*)	Assisting in the concealment or disposal of stolen property, under Section 414 of the Indian Penal Code, where the value of such property does not exceed Rs. 2,000;
(*v*)	Offences under Sections 454 and 456 of the Indian Penal Code;
(*vi*)	Insult with intent to provoke a breach of the peace, under Section 504 of the Indian Penal Code;
(*vii*)	Abatement of any of the foregoing offences
(*viii*)	An attempt to commit any of the foregoing offences, when such attempt is an offence;
(*ix*)	Any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871.

COMPOUNDING OF OFFENCES

Compounding means settlement of offence committed by a person. The settlement must be with the consent of the court of law. There may be the times when parties to a suit do not want to continue further proceedings in the court and they want to settle it out of the court amicably, then the compounding comes into picture.

Section of IPC	Name of the offence	Who can compound the offence
Section 325, 337, 338 IPC)	Voluntarily causing grievous hurt.	To whom hurt has been caused
Section 357 IPC	Assault or criminal force in attempting wrongfully to confine a person.	The person assaulted or to whom the force was used
Section 381 IPC	Theft, by clerk or servant of property in possession of master.	The owner of the property was stolen.
Section 406, 408 IPC	Criminal breach of trust.	The owner of the property on which a breach of trust has occurred.
Section 418 IPC	Cheating with knowledge that wrongful loss may ensue to a person whose interest offender is bound to protect.	The person who has been cheated.
Section 420 IPC	Cheating and dishonestly inducing delivery of property	The person who has been cheated.

BAIL

Bail means the release of the accused from the custody and entrusting him to the private custody of persons who are sureties to produce the accused to answer the charge at the stipulated time or date.

Bail in Cases of Bailable Offences (Section 436)

Person is arrested or detained ***without warrant*** by an officer in charge of a police station, or appears or is brought before a Court, and he is prepared to give bail, such person shall be released on bail.

Where a person is unable to give bail within a week of the date of his arrest, where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail,

Types of Bail		
Regular Bail	Interim Bail	Anticipatory Bail
A bail granted after the offence is committed.	A bail given during pendency of application.	A bail given when a person has apprehension that he may be arrested on an accusation of having committed a non-bailable offence.

Bail in cases of Non-bailable Offences (Section 437)

(*i*) He may be released on bail but subject to such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(*ii*) Such person shall not be so released if such offence is a cognizable offence

(*a*)	He had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or
(*b*)	He had been previously convicted on two or more occasions of a cognizable offence punishable *with imprisonment for three years or more but not less than seven years.*

Be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.

The Bail may also be Canceled.

If, in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

If, at any time, after the conclusion of the trial and before judgment is delivered, **the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused,** if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

Bail to Require Accused to Appear before next Appellate Court

Shall require the accused to execute bail bonds with sureties, to appear before the higher Court in respect of any appeal or petition filed against the judgment of the respective Court and **such bail bonds shall be in force for six months.**

Anticipatory Bail (Section 438)

When a person has reason to believe that he may be arrested on an accusation of non-bailable offence, he may apply to the High Court or the Court of Session for a necessary direction and that Court may, direct that in the event of such arrest, he shall be released on bail.

It may include such conditions

- Person shall make himself available for interrogation by a police officer as and when required;
- Person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
- A condition that the person shall not leave India without the previous permission of the Court;

CONTINUING OFFENCES

The offence which is happening and continuing again and again comes in the category of continuing offence.

Balakrishna Savalram Pujari Waghmare & Ors. v. Shree Dnyaneshwar Maharaj Sansthan the Court observed that **a continuing offence is an act which creates a continuing source of injury, and renders the doer of the act responsible and liable for the continuation of the said injury.**

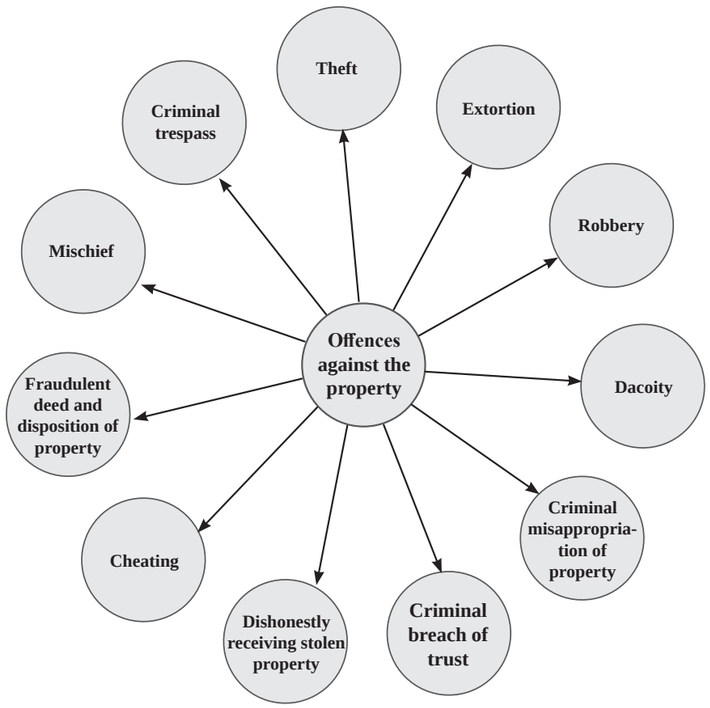
If the wrongful act is of such character that the injury caused by it itself continues, then the said act constitutes a continuing wrong.

State of Bihar v. Deokaran Nenshi AIR 1973

The distinction between the ***two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."***

OFFENCES AGAINST PROPERTY

The Property is of two kinds i.e. movable and immovable.



Theft (Section 378)

The essentials elements of theft are:

- An intention to dishonestly take the property
- Movable property
- Property should be taken out of the possession without person's consent.
- The property should be moved in order to take that property.

Punishment for theft

Situation	Punishment
Theft in dwelling house, etc	Imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Theft by clerk or servant of property in possession of master	Imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft	Rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine

Extortion (Section 383)

The essentials elements of theft are:

1.	There should be an intention to put any person in fear of any injury.
2.	By that fear of injury, dishonestly induces the person so put in fear to deliver any property, or valuable security or anything signed or sealed which may be converted into a valuable security.

Punishment for extortion

Situation	Punishment
Putting person in fear of injury in order to commit extortion	Imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Extortion by putting a person in fear of death or grievous hurt	Imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
Putting person in fear of death or of grievous hurt, in order to commit extortion	Imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.	Imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

Putting person in fear or accusation of offence, in order to commit extortion	Imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

Jadunandan singh v. Emperor (AIR 1941 Pat 129), *the accused, along with others, assaulted two persons and forcibly took their thumb impressions on three blank papers. The forcible taking of the victim's thumb impression does not necessarily involve inducing the victim to deliver papers with thumb impressions. Therefore, the offence of extortion is not established.*

Distinction between Extortion and Theft

Basis	Theft	Extortion
Consent	Taking moveable property without consent	Consent obtained by coercion
Number of offenders	Can be committed by one person	Can be committed by one or more persons
Element of fear	Not essential	Crucial Element
Property	Moveable	Moveable or Immovable
Element of force	Not necessary	Necessary

Robbery (Section 390)

When theft is robbery. -	Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint
When extortion is robbery. -	Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.
Punishment for Robbery	Section 392 of IPC provides the punishment for robbery and states that whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.
Punishment for attempt of robbery	As per section 393 of IPC, whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Dacoity (Section 391)

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

The essentials elements of Dacoity are

There should be at least five persons by active participation or aiding.

They will commit robbery or its attempt

Every person whether committing or aiding is said to commit dacoity.

Emperor v. lashkar (1921), a gang of five dacoits, one of whom had a gun, raided the house of X. After looting, while they were running away with their booty, they shot down one villager. It was held that the murder committed by the dacoits while carrying away the stolen property was murder committed in the commission of dacoity, and every offender was therefore liable for the murder

Punishment for Dacoity

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly Receiving Stolen Property

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal/Dishonest Misappropriation of Property

Section 403 of the Indian Penal Code deals with the offence of Dishonest Misappropriation of Property. It states that whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment for a term extending up to two years, or with a fine, or with both.

Essential ingredients of this offence include dishonesty and misappropriation of property. Dishonesty is defined as doing anything with the intention of causing wrongful gain to oneself or wrongful loss to another. Misappropriation refers to the intentional, illegal use of another person's property for one's own use or unauthorized purpose.

In the case of ***Bhagiram Dome v. Abar Dome***, it was held that even if possession of the property was innocently acquired, if there is a subsequent change of intention or the retaining becomes wrongful and fraudulent, it constitutes criminal misappropriation.

In ***Mohammad Ali v. State***, it was ruled that merely lacking a receipt for the purchase of property does not amount to an offence under Section 403 if there is no evidence to prove that the property was stolen.

In ***U. Dhar v. State of Jharkhand***, the Supreme Court held that disputes of a civil nature, such as those arising from contractual obligations, do not fall under the purview of criminal misappropriation.

Additionally, Sections 404 and 405 of the IPC deal with related offences such as misappropriation of property possessed by a deceased person and criminal breach of trust, respectively. These sections outline punishments for offences involving dishonest misappropriation or conversion of property.

Section 403 of the IPC addresses the offence of Dishonest Misappropriation of Property, requiring dishonesty and misappropriation for conviction. Several case laws illustrate the application and interpretation of this section in various contexts.

Essential Ingredients of Criminal Breach of Trust

The essential ingredients of the offence of criminal breach of trust are as under:

1.	The accused must be entrusted with the property or with dominion over it,
2.	The person so entrusted must use that property, or;
3.	The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation, (*i*) Of any direction of law prescribing the mode in which such trust is to be discharged, or; (*ii*) Of any legal contract made touching the discharge of such trust

Punishment for Criminal Breach of Trust. (Section 406)

Imprisonment may extend to three years, or with fine, or with both.

In Bagga Singh v. State of Punjab, the appellant was a taxation clerk in the Municipal Committee, Sangrur. He had collected arrears of tax from tax-payers but the sum was not deposited in the funds of the committee after collection but was deposited after about 5 months. He pleaded that money was deposited with the cashier Madan Lal, a co-accused, who had defaulted on the same but the cashier proved that he had not received any such sum and was acquitted by lower court. The mere fact that the co-accused cashier was acquitted was not sufficient to acquit the accused in the absence of any proof that he had discharged the trust expected of him. As such the accused was liable under section 409 of Indian Penal Code, 1860.

In Bachchu Singh v. State of Haryana, AIR 1999 SC 2285, the appellant was working as 'Gram Sachiv' for eight gram panchayats. He collected a sum of Rs. 648 from thirty villagers towards the house tax and executed receipts for the same. As he was a public servant, and in that capacity he had collected money as house tax but did not remit the same, he was charged under Section 409 of Indian Penal Code, 1860. It was held that the appellant dishonestly misappropriated or converted the said amount for his own use and his conviction under section 409 of Indian Penal Code, 1860 was upheld by the Supreme Court.

In Girish Saini v. State of Rajasthan, a public servant was accused of neither depositing nor making entries of stationery required for official purpose. Accused public servant was in charge of the store in the concerned department at the time of commission of offence. Hence entrustment was proved. It was held that the accused could not take the benefit of misplacing one of the registers of the company as he could not prove maintenance of two registers by department. Therefore, the accused was held guilty of committing a criminal breach of trust.

Cheating (Section 415 to 420)

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Main Ingredients of Cheating:

1.	Deception of any person.
2.	(*a*) Fraudulently or dishonestly inducing that person: (*i*) To deliver any property to any person; or (*ii*) To consent that any person shall retain any property; or
	(*b*) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived,

Supreme Court in ***Iridium India Telecom Ltd. v. Motorola Incorporated*** and Ors. deception is a necessary ingredient under both parts of the section. It was held that non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.

Supreme Court in ***M.N. Ojha v. Alok Kumar Srivastav***, intention on the part of the accused is to wrongfully retain the excise duty which the State is empowered under law to recover from another person who has removed non-duty paid tobacco from one bonded warehouse to another, they are held guilty of cheating.

Cheating by Personation

As per section 416 a person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

The offence is committed whether the individual personated is a real or imaginary person.

Punishment for cheating	Shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect	Shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
Punishment for cheating by personation	Imprisonment for a term which may extend to three years, or with fine, or with both.
Cheating and dishonestly inducing delivery of property	Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kuriachan Chacko v. State of Kerala,

The money circulation scheme was allegedly mathematical impossibility and promoters knew fully well that scheme was unworkable and false representations were being made to induce persons to part with their money. The Supreme Court held that it could be assumed and presumed that the accused had committed an offence of cheating under section 420 of the IPC.

Mohd. Ibrahim v. State of Bihar the accused was alleged to have executed false sale deeds and a complaint was filed by the real owner of property. The accused had a bonafide belief that the property belonged to him and purchaser also believed that suit property belonged to the accused. It was held that the accused was not guilty of cheating as ingredients of cheating were not present.

Shruti Enterprises v. State of Bihar

It was held that mere breach of contract cannot give rise to criminal prosecution under section 420 unless fraudulent or dishonest intention is shown right at the beginning of transaction when the offence is said to have been committed.

FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY

Fraudulent Deeds and Dispositions of Property are covered under section 421 to 424 of the Indian Penal Code, 1860.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

Shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ramautar Chaukhany v. Hari Ram Todi following essential ingredients:

(*a*)	accused removed, concealed or delivered the property or that he transferred, it caused it to be transferred to someone;
(*b*)	That such a transfer was without adequate consideration;
(*c*)	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;
(*d*)	That he acted dishonestly and fraudulently. It applies to movable as well as immovable properties.

Dishonestly or fraudulently preventing debt being available for creditors

Imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Commissioner of Wealth Tax v G.D. Naidu, essential requisites of debt are-

(1)	Ascertained or ascertainable
(2)	An absolute liability, in present or future, and
(3)	An obligation which has already accrued and is subsisting. All debts are liabilities but all liabilities are not debt.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration

Shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. The essential ingredient of an offence under section 423 is that the sale deed or a deed subjecting a property to a charge must contain a false statement relating to the consideration or relating to the person for whose use or benefit it is intended to operate.

Dishonest or Fraudulent Removal or Concealment of Property

Section 424

The essential ingredients to bring an offence under section 424 are as follows:

(*i*)	There is a property;
(*ii*)	That the accused concealed or removed the said property or assisted in concealing or removing the said property;
(*iii*)	That the said concealment or removal or assisting in removal or concealment was done dishonestly or fraudulently.
	OR
(*i*)	That the accused was entitled to a demand or claim;
(*ii*)	That the accused released the same;
(*iii*)	That he was released dishonestly or fraudulently.

OFFENCES RELATING TO DOCUMENTS AND PROPERTY MARKS

Forgery (Section 463)

According to ***Section 463, whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.***

Punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

First, – Who dishonestly or fraudulently

(*a*) Makes, signs, seals or executes a document or part of a document;

(*b*) Makes or transmits any electronic record or part of any electronic record;

(*c*) Affixes any electronic signature on any electronic record;

(*d*) Makes any mark denoting the execution of a document or the authenticity of the electronic signature with the intention of causing it to be believed that such document or part of document, electronic record or

Secondly

Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof

Thirdly

Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot,

Ramchandran v. State, has held that to constitute an offence of forgery, a document must be made with dishonest or fraudulent intention. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. ***Parminder Kaur v. State of UP***, mere alteration of document does not make it a forged document. Alteration must be made for some gain or for some objective.

Balbir Kaur v. State of Punjab, the allegation against the accused was that she furnished a certificate to get employment as ETT teacher which was found to be bogus and forged in as much as school was not recognized for the period given in the certificate. say that school was recognized. It was held that merely indicating teaching experience of the accused, per se, cannot be said to indicate wrong facts. So the direction which was issued for prosecution is liable to be quashed.

Offences relating to Property Mark

A mark used for denoting that movable property belongs to a particular person is called a property mark

Using a false property mark

punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

DEFAMATION

Section 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,

Explanation 1	It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.
Explanation 2	It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
Explanation 3	An imputation in the form of an alternative or expressed ironically, may amount to defamation
Explanation 4	No imputation is said to harm a person's reputation, unless lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person,

Exceptions to Defamation

First Exception.– Imputation of truth which public good requires to be made or published.
Second Exception. – Public conduct of public servants.
Third Exception. – Conduct of any person touching any public question.
Fourth Exception. – Publication of reports of proceedings of courts.
Fifth Exception. – Merits of case decided in Court or conduct of witnesses and others concerned.
Sixth Exception. – Merits of public performance.
Seventh Exception. – Censure passed in good faith by a person having lawful authority over another.
Eighth Exception. – Accusation preferred in good faith to authorised person.
Ninth Exception. – Imputation made in good faith by a person for protection of his or other's interests.
Tenth Exception. – Caution intended for the good of the person to whom conveyed or for public good.

Punishment for defamation

Punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Kinds of Defamation

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

In libel, the defamatory statement is made in some permanent and visible form, such as writing, printing or pictures. In slander it is made in spoken words or in some other transitory form, whether visible or audible, such as gestures or inarticulate but significant sounds.

Section 501 provides that whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

In Sankaran v. Ramkrishna Pillai, the defamatory matter was printed in Malayalam and the accused did not know the language, his mens rea was absent and he was not guilty.

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 under section 502, it must be:

(*i*) That the published material was defamatory as per section 499 of the IPC.

(*ii*) That the published material was either printed or engraved.

(*iii*) That the accused knew that such matter contained defamatory imputation.

(*iv*) That the accused sold or offered for sale the defamatory matter

8 LAW RELATING TO EVIDENCE

Extension	**Indian Evidence Act, 1872 extends to the whole of India.**
Applicability	All Judicial proceedings in the court or before the court. Court Martials
Non-applicability	(i) Court-Martial convened under the Army Act, the Naval Discipline Act or the Indian Navy Discipline Act, 1934 or the Air Force Act (ii) Affidavits presented to any Court or officer. (iii) To proceedings before an arbitrator.

JUDICIAL PROCEEDINGS

Section 2(i) of the Criminal Procedure Code as "a proceeding in the course of which evidence is or may be legally taken on oath". The proceedings under the Income Tax are not "judicial proceedings". For the purpose of Indian Evidence Act, 1872. The Act is also not applicable to the proceedings before an arbitrator.

An affidavit is a declaration sworn or affirmed before a person competent to administer an oath. Thus, an affidavit per se does not become evidence.

Meaning of Evidence as per Interpretation clause of Indian Evidence, Act, 1872

Type of definition	**"means and includes". It includes two type of evidences i.e. Oral Evidence and Documentary Evidence.**
Oral Evidence	(i) All statements which the Court permits or requires to be made before it; (ii) The statements are to be made by witnesses; (iii) The statements should be related to a matter of fact under inquiry;
Documentary Evidence	All the documents (including electronic records) produced for the inspection of the Court.

Evidence under Section 3 of the Indian Evidence Act, 1872 may be either oral or personal (i.e. all statements which the Court permits or requires to be made before it by witnesses, and documentary (documents produced for the inspection of the court), which may be adduced in order to prove a certain fact (principal fact) which is in issue.

There must be an open and visible connection between principal and incidental facts , facts forming a part of the same transaction, though not in issue please or at different times and places.

Different Types of Evidence

Proof of facts by oral evidence:	All facts may be proved by oral evidence.
Proof of contents of document:	Contents of documents may be proved either by primary or by secondary evidence. Primary evidence means the document itself produced for the inspection of the Court.
	Secondary evidence inter-alia includes certified copies, copies made from the original by mechanical processes, copies made from or compared, counterparts of documents
Evidence relating to electronic record:	Admissibility of electronic records in court is permissible

Scheme of the Act, Relevancy & Admissibility

The act is divided into three parts:

PART-I

Relevancy of facts chapter-I containing Section 1 to 4 deals with preliminary points and relevancy of facts is dealt with in Chapter-II containing Section 5 to 55.

PART-II

On proof (Chapters III to VI) containing Section 56 to 100

PART-III

Production and effect of evidence (Chapter VII to XI) containing Sections 101 to 167.

A fact is also known as Factum probans or a fact that proves. Fact means and includes:

Evidence may be given of facts in issue and relevant facts.

According to Section 5, evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Anything, state of things, or relation of things capable of being perceived by the senses;

Any mental condition of which nay person is conscious. Thus facts are classified into physical and psychological facts.

Relevant fact	One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts. (Section 3) Where in a case direct evidence is not available to prove a fact in issue then it may be proved by any circumstantial evidence and in such a case every piece of circumstantial evidence would be an instance of a "relevant fact".
Logical relevancy and legal relevancy	A fact is said to be logically relevant to another when it bears such casual relation with the other as to render probably the existence or non-existence of the latter.
	A judge might, in ordinary transaction, take one fact as evidence of another and act upon it himself, when in Court, he may rule that it was legally irrelevant. And he may exclude facts, although logically relevant, if they appear to him too remote to be really material to the issue. Under Indian Evidence Act, 1872, Legal relevancy is to be considered as against logical relevancy.

Logical Relevancy	*Legal Relevancy*
Application of logic	*Application of law*
More probabilistic	*More actual*
Related to evidence in question	*Evidence allowed under law or not*

Legal relevancy and admissibility	A fact may be legally relevant, similarly every admissible fact is not necessarily relevant. A fact may be relevant yet not admissible.

Relevance	*Admissibility*
Section 5 to 55	*Section 56*
More logical and probable	*Only rule of law*
What is relevant and what's not	*Only relevant evidences are admitted in law*
Every relevant fact may not be admitted	*Once admitted, it was only relevant*
Sub specie of Admissibility	*Generic having wider scope*

Facts in issue	"facts in issue" means and includes-any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows. The fact which constitutes the right or liability called "fact in issue" and in a particular case the question of determining the "facts in issue" depends upon the rule of the substantive law which defines the rights and liabilities claimed.
Facts in issue and issues of fact	Under Civil Procedure Code, the Court has to frame issues on all disputed facts which are necessary in the case. These are called issues of fact but the subject matter of an issue of fact is always a fact in issue. it is an 'issue of fact' and when described in the language of Evidence Act it is a 'fact in issue'.

Classification of Relevant Facts

	Details	**Sections**
(*a*)	Facts connected with the facts to be proved	Sections 6 to 16
(*b*)	Statement about the facts to be proved e.g. admission, confession	Sections 17 to 31

(*c*)	Statements by persons who cannot be called as witnesses	Sections 32 to 33
(*d*)	Statements made under special circumstances	Sections 34 to 38
(*e*)	How much of a statement is to be proved	Section 39
(*f*)	Judgements of Courts of justice, when relevant	Sections 40 to 44
(*g*)	Opinions of third persons, when relevant	Sections 45 to 51
(*h*)	Character of parties in Civil cases and of the accused in criminal cases	Sections 52 to 55

Fundamental Rules of Law of Evidence

1. No facts other than those having rational probative value should be admitted in evidence.

2. All facts having rational probative value are admissible in evidence unless excluded by a positive rule of paramount importance

PRESUMPTIONS

Presumption has been defined as an inference, affirmative or affirmative of the existence of some fact, drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed, admitted or established by legal evidence to the satisfaction of the tribunal. It is an inference of the existence of some fact, which is drawn, without evidence, from some other fact already proved or assumed to exist (wills). Presumption is either a fact or law.

RELEVANCY OF FACTS CONNECTED WITH THE FACT TO BE PROVED

The facts coming under this category are as follows:

1.	Res gestae or facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction.	Acts or declarations accompanying the transaction or the facts in issue are treated as part of the res gestae and admitted as evidence.
2.	Facts constituting the occasion, or effect of, or opportunity or state of things (section 7)	Facts which are the occasion, cause or effect of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant. This section makes occasion, cause, effect and opportunity as relevant.
3.	Motive, preparation and previous or subsequent conduct.	According to Section 8, any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. Motive means which moves a person to act in a particular way. It is different from intention. The substantive law is rarely concerned with motive, but the existence of a motive, from the point of view of evidence, would be a relevant fact, in every criminal case. That is the first step in every investigation. Motive is a psychological fact and the accused's motive will have to be proved by circumstantial evidence. When the question is as to whether a person did a particular act, the fact that he made preparations to do it, would certainly be relevant for the purpose of showing that he did it.

(4) Facts necessary to explain or introduce relevant facts

According to Section 9, such facts are

(*i*)	Which are necessary to explain or introduce a fact in issue or relevant fact, or
(*ii*)	Which support or rebut an inference suggested by a fact in issue or relevant fact, or
(*iii*)	Which establish the identity of a person or thing whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or
(*iv*)	Which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

STATEMENTS ABOUT THE FACTS TO BE PROVED

The general rule known as the hearsay rule is that what is stated about the fact in question is irrelevant. To this general rule there are three exceptions which are:

- Admissions and confessions
- Statements as to certain matters under certain circumstances by persons who are not witnesses
- Statements made under special circumstances

(I) ADMISSIONS AND CONFESSIONS

Sections 17 to 31 lay down the exceptions to the general rule known as "admissions" and "confessions". as a statement, oral or documentary or contained in electronic form which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, ***Thus admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc. An admission may be made by a party, by the agent or predecessor-in-interest of a party, by a person having joint propriety of pecuniary interest in the subject matter.***

An admission is the best evidence against the party making the same unless it is untrue and made under the circumstances which does not make it binding on him.

An admission by the Government is merely relevant and non-conclusive, unless the party to whom they are made has acted upon and thus altered to his detriment.

BASANT SINGH V. JANKY SINGH

Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admission.

All the statements made in the plaint are admissible as evidence.

Admission means conceding something against the person making the admission. That is why it is stated as a general rule (the exceptions are in Section 21), that admissions must be self-harming; and because a person is unlikely to make a statement which is self-harming unless it is true evidence of such admissions as received in Court.

These Sections deal only with admissions oral and written.

Confessions

Confessions are a special form of admission. Whereas every confession must be an admission but every admission may not amount to a confession. A confession is relevant as an admission unless it is made:

Person in Authority by inducement, threat or promise	(*i*) to a person in authority in consequence of some inducement, threat or promise held out by him in reference to the charge against the accused; or
Police Officer	(*ii*) to a Police Officer; or
In custody of police officer without the presence of magistrate	(*iii*) to any one at a time when the accused is in the custody of a Police Officer and no Magistrate is present.

Thus, a statement made by an accused person if it is an admission, is admissible in evidence. The confession is evidence only against its maker and against another person who is being jointly tried with him for an offence.

The confession made in front of the magistrate recorded is admissib\le against its maker is also admissible against co-accused under Section 30.

PAKALA NARAYANASWAMI V. EMPEROR

All confessions are admissions but not vice versa.

A confession must, either admit, in terms of the offence, or substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, is not of itself a confession. A confession cannot be construed as meaning a statement by the accused suggesting the inference that he committed the crime.

According to Section 24, confession caused by inducement, threat or promise is irrelevant. Act the following six facts must be established:

(*i*)	That the statement in question is a confession;
(*ii*)	That such confession has been made by an accused person;
(*iii*)	That it has been made to a person in authority;
(*iv*)	That the confession has been obtained by reason of any inducement, threat or promise proceeded from a person in authority;
(*v*)	Such inducement, threat or promise, must have reference to the charge against the accused person;
(*vi*)	The inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confessions	Admissions
Only in criminal proceedings	In civil and criminal proceedings
Voluntary	Need not to be voluntary
Made by accused only	Made by agent, stranger, anybody etc
Means guilty of crime	Means providing relevant information
Made to authorities in legal sitting	Can be made at any place, anywhere
To be made in writing and recorded	May be oral or written
Classified into 2 types – Judicial and Non-Judicial	No further division or types

Ra1m Khilari V. State Of Rajasthan, the Supreme Court held that where an extra-judicial confession was made before a witness who was a close relative of the accused and the

testimony of said witness was reliable and truthful, the conviction on the basis of extra judicial confession is proper.

Where the Court finds that the confession made by the accused to his friend was unambiguous and unmistakably conveyed that the accused was the perpetrator of the crime and the testimony of the friend was truthful, reliable and trustworthy, a conviction based on such extra-judicial confession is proper and no corroboration is necessary. Much importance could not be given to minor discrepancies and technical errors **(*Vinayak Shivajirao Pol V. State of Maharashtra, R. Kuppusamy V*. State,** the accused murdered and then went to the Vice- President of the panchayat Board and confessed his crime. The court observed that legal provisions well settled that an extra- judicial confession is capable of sustaining a conviction provided that given case which will, the confession is made, the person to whom it is alleged to have been made and the facts available as to truth of such confession that will determine whether together the extra judicial confession ought to be made a basis for holding the accused guilty or not.

(II) STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

Certain statements made by persons who are dead, or cannot be found or produced without unreasonable delay or expense, makes the second exception to the general rule. However, the following conditions must be fulfilled for the relevancy of the statements:

(*a*) That the statement must relate to a fact in issue or relevant fact,

(*b*) That the statement must fall under any of following categories:

(*i*)	The statement is made by a person as to the cause of this death or as to any of the circumstances resulting in his death;
(*ii*)	Statement made in the course of business;
(*iii*)	Statement which is against the interest of the maker;
(*iv*)	A statement giving the opinion as to the public right or custom or matters of general interest;
(*v*)	A statement made before the commencement of the controversy as to the relationship of persons, alive or dead, if the maker of the statement has special means of knowledge on the subject;
(*vi*)	A statement made before the commencement of the controversy as to the relationship of persons deceased, made in any will or deed relating to family affairs to which any such deceased person belong;
(*vii*)	A statement in any will, deed or other document relating to any transaction by which a right or custom was created, claimed, modified, etc.;
(*viii*)	A statement made by a number of persons expressing their feelings or impression;
(*ix*)	Evidence given in a judicial proceeding or before a person authorised by law to take it, provided that the proceeding was between the same parties or their representatives in interest and the adverse party in the first proceeding had the right and opportunity to cross examine and the questions in issue were substantially the same as in the first proceeding.

(III) STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

The following statements become relevant on account of their having been made under special circumstances:

(*i*)	Entries made in books of account, including those maintained in an electronic form regularly kept in the course of business. Such entries, though relevant, cannot, alone, be sufficient to charge a person with liability; (Section 34)
(*ii*)	Entries made in public or official records or an electronic record made by a public servant in the discharge of his official duties, or by any other person in performance of a duty specially enjoined by the law; (Section 35)
(*iii*)	Statements made in published maps or charts generally offered for the public sale, or in maps or plans made under the authority of the Central Government or any State government; (Section 36)
(*iv*)	Statement as to fact of public nature contained in certain Acts or notification; (Section 37)
(*v*)	Statement as to any foreign law contained in books purporting to be printed or published by the Government of the foreign country, or in reports of decisions of that country. (Section 38)

OPINION OF THIRD PERSONS WHEN RELEVANT

The general rule is that the opinion of a witness on a question whether of fact or law, is irrelevant. However, there are some exceptions to this general rule. These are:

(i) Opinions of experts. (Section 45):

Witness has to state the facts which he has seen, heard or perceived, and noted the conclusion, form of observations. The function of drawing inferences from facts is a judicial function and must be performed by the Court. There are some exceptions as indicated in Section 45. Opinions of experts are relevant upon a point of:

(a) foreign law (b) science (c) art (d) identity of handwriting (e) finger impression special knowledge of the subject matter of enquiry become relevant.

- Foreign law
- Science
- Art
- Identity of hand writing
- Finger impression special knowledge of the subject matter of enquiry become relevant.

(*ii*)	Opinion of Examiner of Electronic Evidence (Section 45A):	When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.
(*iii*)	Facts which support or are inconsistent with the opinions of experts are also made relevant. (section 46):	The Facts which are not otherwise relevant become relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

(IV) OTHERS

In addition to the opinions of experts, opinion of any other person is also relevant in the following cases:

(*a*)	Opinion as to the handwriting of a person if the person giving the opinion is acquainted with the handwriting of the person in question; (Section 47)
(*b*)	Opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate; (Section 47A)
(*c*)	Opinion as to the existence of any general right or custom if the person giving the opinion is likely to be aware of the existence of such right or custom; (Section 48)
(*d*)	Opinion as to usages etc. words and terms used in particular districts, if the person has special means of knowledge on the subject; (Section 49)
(*e*)	Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject. (Section 50)

WITNESSES

Who may testify?

All persons shall be competent to testify (Give evidence) they are prevented from understanding the questions put to them, or from giving rational answers to those questions,

(*i*)	By tender years,
(*ii*)	Extreme old age,
(*iii*)	Disease, whether of body or mind, or
(*iv*)	Any other cause of the same kind.

Witness Unable to Communicate

He should make it intelligible such as by writing or by signs. However, such writing must be written and the signs made in open Court. The evidence so given shall be deemed to be oral evidence.

Spouse as a witness

In civil proceedings, the spouse of the parties is a competent witness.

Facts of Which Evidence Cannot be Given (Privileged Communications)

There are some facts of which evidence cannot be given though they are relevant, such as facts

Types of privileged communications	
(*i*)	Evidence of a Judge or Magistrate in regard to certain matters; (Section 121)
(*ii*)	Communications during marriage; (Section 122)
(*iii*)	Affairs of State; (Section 123)
(*iv*)	Official communications; (Section 124)
(*v*)	Source of information of a Magistrate or Police officer or Revenue officer as to commission of an offence or crime; (Section 125)
(*vi*)	Professional communication between a client and his barrister, attorney or other professional or legal advisor (Sections 126 and 129). This is not absolute and may be waived by the clients.

Evidence of Judges and Magistrates	No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate;

Communications during marriage	Under Section 122 of the Act, communication between the husband and the wife during marriage is privileged and its disclosure cannot be enforced.
Evidence as to affairs of State	Section 123 applies only to evidence derived from unpublished official records relating to affairs of State.
Professional communications	A client cannot be compelled and a legal adviser cannot be allowed without the express consent of his client to disclose oral or documentary communications passing between them in professional confidence. Under Sections 126 and 127 neither a legal adviser i.e. a barrister, attorney, pleader or vakil (Section 126) nor his interpreter, clerk or servant (Section 128) can be permitted to disclose any communication made to him in the course and for the purpose of professional employment of such legal adviser or to state the contents or condition of any document with which any such person has become acquainted in the course and for the purpose of such employment.

RTI Act is aimed at and intended to obtain information from the public authorities, whereas Section 126 of the evidence Act deals with the client- lawyer relationship in their inter se professional dealings. Section 126 of Evidence Act is a special provision and RTI Act is a general Law. Section 3 read with Section 22 of RTI Act is a general provision in the special statute. Section 126 of Evidence Act is not obliterated. It has to be given effect notwithstanding RTI Act. (KARAMJIT SINGH V. STATE OF PUNJAB)

ORAL, DOCUMENTARY AND CIRCUMSTANTIAL EVIDENCE

The Act divides the subject of proof into two parts: (i) proof of facts other than the contents of documents; (ii) proof of documents including proof of execution of documents and proof of existence, condition and contents of documents.

Thus, the two broad rules regarding oral evidence are:

All facts except the contents of documents may be proved by oral evidence;

Oral evidence must in all cases be "direct".

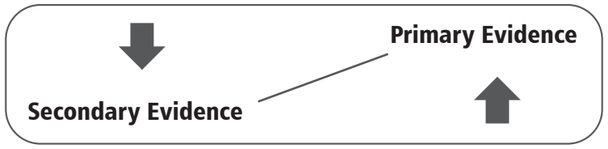
DIRECT EVIDENCE

According to Section 60 oral evidence must in all cases whatever, be direct; that is to say:

- If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
- If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
- If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
- If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

DOCUMENTARY EVIDENCE

A "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter. Documents produced for the inspection of the Court is called Documentary Evidence. Section 61 provides that the contents of a document must be proved either by primary or by secondary evidence.



PRIMARY EVIDENCE

"Primary evidence" means the document itself produced for the inspection of the Court (Section 62). The rule that the best evidence must be given of which the nature of the case permits has often been regarded as expressing the great fundamental principles upon which the law of evidence depends. The general rule requiring primary evidence of producing documents is commonly said to be based on the best evidence principle and to be supported by the so-called presumption that if inferior evidence is produced where better might be given, the latter would tell against the withholder.

SECONDARY EVIDENCE

Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 63 defines the kind of secondary evidence permitted by the Act. According to Section 63, "secondary evidence" means and includes;

1.	Certified copies given under the provisions hereafter contained;
2.	Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies
3.	Copies made from or compared with the original;
4.	Counterparts of documents as against the parties who did not execute them;
5.	Oral accounts of the contents of a document given by some person who has himself seen it

CIRCUMSTANTIAL EVIDENCE

In English law the expression direct evidence is used to signify evidence relating to the 'fact in issue' (factum probandum) whereas the terms circumstantial evidence, presumptive evidence and indirect evidence are used to signify evidence which relates only to "relevant fact" (facta probandum). However, under Section 60 of the

Evidence Act, the expression "direct evidence" has altogether a different meaning and it is not intended to exclude circumstantial evidence of things which could be seen, heard or felt. Thus, evidence whether direct or circumstantial under English law is "direct" evidence under Section 60. Before acting on circumstances put forward are satisfactorily proved and whether the proved circumstances are sufficient to bring the guilt to the accused the Court should not view in isolation the circumstantial evidence but it must take an overall view of the matter.

BURDEN OF PROOF

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

IMPROPER ADMISSION & REJECTION OF EVIDENCE

The improper admission or rejection of evidence is not a ground for the start of a new trial or reversal of any decision. But the court should have the view that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

PRESUMPTIONS

Three Categories of Presumptions		
(i) Presumptions of law, It is a rule of law that a particular inference shall be drawn by a court from particular circumstances.	(ii) Presumptions of fact, it is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved.	(iii) Mixed presumptions, they consider mainly certain inferences between the presumptions of law and presumptions of fact.

ESTOPPEL

The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing (Section 115).

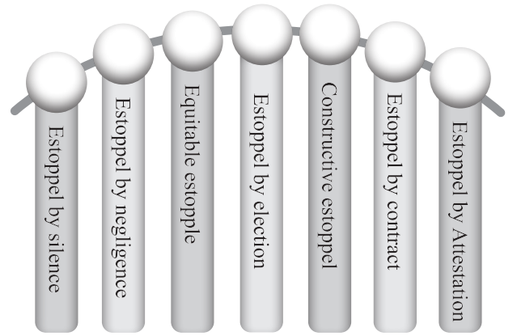
PRINCIPLE OF ESTOPPEL

Estoppel is a legal principle based on the idea that a person should not be allowed to contradict their own previous statements or actions if it would cause harm to another party. It prevents someone from saying one thing at one time and then later saying something contradictory. Essentially, if someone induces another person to act based on a representation or conduct, they cannot later deny or repudiate that representation to the detriment of the other party.

Estoppel is a rule of evidence, not a cause of action, and it typically arises from the judgment of a competent court. However, there are exceptions, such as when the person being represented knows the true facts and is not misled by the representation.

In a case involving Biju Patnaik University of Tech. Orissa v. Sairam College, a university permitted students to take a special examination under certain conditions. After the examination, the university refused to issue degree certificates to the students, citing additional requirements. The court held that once the students had taken the examination and their results were declared, the university was estopped from withholding their degree certificates. This means that the university could not change its decision after the students had already acted based on the initial representation.

DIFFERENT KINDS OF ESTOPPEL



ELECTRONIC EVIDENCE (E-EVIDENCE)

Legal framework for electronic evidence

Under **Section 65B(1)**, any information contained in an electronic record, which has been stored, recorded or copied as a computer output, shall also be deemed as a 'document' – and shall be admissible as evidence without further proof or production of the originals, if the conditions mentioned are satisfied. Section 65B(2) lays down the criteria that must be satisfied for the information to be categorized as a 'computer output.'

The electronic evidence is to be used in any judicial proceeding, a certificate shall have to be produced which identifies the electronic record, and gives particulars of the device involved in the production of the electronic record .

This signature shall be evidence of the authenticity of the certificate. Section 65B(4) also mentions that the contents of the certificate should be stated "to the best of the knowledge and belief of the person stating it."

In ***Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal,*** Supreme Court, the Court had to adjudicate on an election petition which challenged the election of a a candidate from Jalna-101 Legislative Assembly Constituency, on the ground that the nomination papers were filed after the stipulated deadline. The Respondents wished to rely on video camera recordings to prove that the candidate had filed his nomination after the stipulated deadline. The Election Commission produced CDs which contained a copy of the video camera recordings, in accordance with the direction given by the High Court. However, the necessary certificates were not produced in accordance with Section 65B(4) by the Election Commission, despite multiple requests made by the Petitioner.

During the cross examination, an officer of the Election Commission testified that the video camera recordings were authentic. Based on this testimony, the High Court admitted the evidence of the video recordings even though the certificate in accordance with Section 65B (4) had not been produced. The High Court held that it was satisfied that there was "substantial compliance" with Section 65B, as a competent officer had testified that the video recordings were authentic.

The Supreme Court had to interpret Section 65B(4) for determining the following issues:

Whether a certificate under Section 65B(4) must be produced even when an original record of the electronic evidence is available, or does it have to be given only when a secondary record of the electronic evidence is produced?

Whether compliance with Section 65B(4) is mandatory even in a situation when it is not possible to obtain the certificate from the competent entity?

It was noted that Section 65B(1) differentiates between the 'original' electronic record, which is contained in the computer in which the information is first stored – and the secondary copies that are made from the primary electronic record. The CDs where the content of the video recording is copied shall constitute the secondary copies of the electronic record. Section 65B(4) shall have to be obtained only when the secondary copies of the electronic record are produced before the Court.

The original electronic record can be adduced directly as evidence if the owner of the computer/tablet/mobile phone steps into the witness box and establishes that the device where the information is first stored is owned/operated by him. If the "computer" where the electronic record was first stored happens to be part of a "computer network" or "computer system" (as defined under the Information Technology Act, 2000), and it is not possible to bring such a network/system physically to the Court, then secondary copies can be produced along with the certificate stipulated by Section 65B(4).

9 LAWS RELATING TO SPECIFIC RELIEF

The expression 'specific relief' means a relief in species. It is a remedy which aims at the exact fulfillment of an obligation. It is provided when monetary compensation can not fulfill the claim.

Under the Specific Relief Act, 1963, remedies have been divided as specific relief (Sections 5-35) and preventive relief (Sections 36-42). These are:

(*i*) Recovering possession of property (Sections 5-8);
(*ii*) Specific performance of contracts (Sections 9-25);
(*iii*) Rectification of Instruments (Section 26);
(*iv*) Rescission of contracts (Sections 27-30);
(*v*) Cancellation of Instruments (Section 31-33);
(*vi*) Declaratory decrees (Sections 34-35); and
(*vii*) Injunctions (Sections 36-42).

SPECIFIC RELIEF AND DEFENSE

Recovery of Specific Immovable Property

According to Section 5 of the Specific Relief Act, 1963 a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Suit by Person Dispossessed of Immovable Property

Section 6 provides that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, shall be brought–

- After the expiry of six months from the date of dispossession; or
- Against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under section 6, nor shall any review of any such order or decree be allowed.

Recovery of Specific Movable Property

Section 7 and 8 provide for recovery of specific movable properties.

Explanation 1. A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2. A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession

Section 8 provides that any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases

- When the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
- When compensation in money would not afford the plaintiff relief for the loss of the thing claimed;
- When it would be extremely difficult to ascertain the actual damage caused by its loss;
- When the possession of the thing claimed has been wrongfully transferred from the plaintiff.

SPECIFIC PERFORMANCE OF CONTRACTS AND DEFENSE

Defenses Respecting Suits for Relief Based on Contract

May plead by way of defense any ground which is available to him under any law relating to contracts. The contract in question should be valid and enforceable.

Katta sujatha reddy and ors. vs. siddamsetty infra Projects Pvt. ltd.

Whether the amendment made to Section 10 of the Specific Relief Act in 2018 is prospective or retrospective in nature. We do not have any hesitation in holding that the 2018 amendment to the Specific Relief Act is prospective and cannot apply to those transactions that took place prior to its coming into force. It is clear that the 2018 Amendment Act is prospective and cannot be applied to the present set of facts. However, it was mandated that such discretion ought to be used in a principled manner without leaving scope for any arbitrary application."

Cases in which specific performance of contracts connected with trusts enforceable

Specific performance of a contract shall be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

Specific Performance of Part of Contract

Court shall not direct the specific performance of a part of a contract. The exceptions to this general rule as follows:

(*i*)	Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the Court may, at the suit of the either party, direct the specific performance of so much of the contract as can be performed and award compensation in money for the deficiency.
(*ii*)	Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either (*a*) forms a considerable part of the whole, though admitting of compensation in money; or (*b*) does not admit of compensation in money; he is not entitled to obtain a decree for specific performance; but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the party (*i*) in a case falling under clause (*a*), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (*b*), pays or has paid the consideration for the whole of the contract without any abatement, and (*ii*) in either case, relinquishes all claims to the performance of the remaining part of the contract and all rights to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.
(*iii*)	When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Rights of purchaser or lessee against person with no title or imperfect title

The purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely

(*a*)	If the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
(*b*)	Where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;
(*c*)	Where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;
(*d*)	Where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject-matter of the contract.

Contracts not Specifically Enforceable

Section 14 lays down the contracts which cannot be specifically enforced. The following contracts cannot be specifically enforced, namely:-

- Where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;
- A contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
- A contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
- A contract which is in its nature determinable.

Power of Court to Engage Experts

Where the court considers it necessary to get expert opinion to assist it on any specific issue involved in the suit, it may engage one or more experts and direct to report to it on such issue and may secure attendance of the expert for providing evidence, including production of documents on the issue.

The court may require or direct any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

Who may Obtain Specific Performance

Section 15 lays down that the specific performance of a contract may be obtained by–

(*a*) Any party thereto;

(*b*) The representative in interest or the principal, of any party thereto:

It may be noted that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party.

(*c*) Where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(*d*) Where the contract has been entered into by a tenant for life in due exercise of a power, the remainder man;

(*e*) A reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(*f*) A reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(*fa*) When a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership arises out of the amalgamation.

(*g*) When a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(*h*) When the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

UNENFORCEABLE CONTRACTS

According to Section 16 Specific performance of a contract cannot be enforced in favour of a person–

(*a*)	Who has obtained substituted performance of contract under section 20; or
(*b*)	Who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed,
(*c*)	Who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Contract to sell or let Property by one who has no title, not Specifically Enforceable

As per Section 17, a contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor–

(*a*)	Who, knowing himself not to have any title to the property, has contracted to sell or let the property;
(*b*)	Who, though he entered into the contract believing that he had a good title to the property, cannot at the time be fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

The above provisions shall also apply, as far as may be, to contracts for the sale or hire of movable property.

Relief against parties and persons claiming under them by subsequent title

Section 19 lays down that specific performance of a contract may be enforced against–

(*a*) Either party thereto;

(*b*) Any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(*ca*) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.

(*d*) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(*e*) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company. It may be noted that the company has accepted the contract and communicated such acceptance to the other party to the contract.

Substituted Performance of Contracts, etc.

Act, 1872, and, except as otherwise agreed upon by the parties, where the contract is broken due to non- performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

Party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency.

Raman (Dead) by l.RS. vs. R. Natarajan

Court cannot grant the relief of specific performance against a person compelling the other person to enter into an agreement with a third party and seek specific relief against such a third party

A Court cannot grant the relief of specific performance against a person compelling him to enter into an agreement with a third party and seek specific relief against such a third party.

Special Provisions for Contract Relating to Infrastructure Project

No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, every notification issued under the Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect.

Section 20B empowers the State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects

Expeditious Disposal of Suits

Section 20C a suit filed under the provisions of this Act shall be disposed of by the court within a period of twelve months from the date of service of summons to the defendant: may be extended for a further period not exceeding six months in aggregate after recording reasons in writing for such extension by the court.

Power to Award Compensation in Certain Cases

The Court is empowered to award compensation in certain cases. They are as follows:

- In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, in addition to, such performance.
- If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.
- In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.
- No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint. However, where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Power to Grant Relief for Possession, Partition, Refund of Earnest Money, etc.

Any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for–

Possession, or partition and separate possession, of the property in addition to such performance; or

Any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

No relief under clause shall be granted by the court unless it has been specifically claimed. Where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

Liquidation of Damages not a bar to Specific Performance

If the court is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

Bar of Suit for Compensation for Breach after Dismissal of Suit for Specific Performance

But shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

Rectification of Instruments

Rectification means correction of an error in an instrument in order to give effect to the real intention of the parties. Section 26 of the Specific Relief Act, 1963 contains the law as to rectification of instruments.

(*a*) Either party or his representative in interest may institute a suit to have the instrument rectified; or

(*b*) The plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(*c*) A defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

The court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

The term 'instrument' has been defined under Section 2(14) of the Indian Stamp Act, 1899. According to the definition, 'instrument' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:

RESCISSION OF CONTRACTS (SECTIONS 27-30)

Section 27 deals with when rescission may be adjudged or refused

"Rescission" means putting an end to a contract which is still operative and making it null and void ab initio. It does not apply to void contracts.

Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:

- ❖ Where the contract is voidable or terminable by the plaintiff;
- ❖ Where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

The Court may Refuse to Rescind the Contract

- Where the plaintiff has expressly or impliedly ratified the contract; or
- Where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or
- Where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or
- Where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed

Purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded

Where a Contract is Rescinded

- ❖ Shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor; and
- ❖ May direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee unit restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

Award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:

- ❖ The execution of a proper conveyance or lease by the vendor or lessor;
- ❖ The delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

Alternative Prayer for Rescission in Suit for Specific Performance

If the contract cannot be specifically enforced, it may be rescinded and delivered up to be canceled;

Cancellation of Instruments (Sections 31-33)

Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and canceled.

As per Section 30(2), if the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

What Instruments may be Partially Canceled

cancel it in part and allow it to stand for the residue.

Power to require benefit to be restored or compensation to be made when instrument is canceled or is successfully resisted as being void or voidable

Where a defendant successfully resists any suit on the ground–

(*a*)	That the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;
(*b*)	That the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872, the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

DECLARATORY DECREES (SECTIONS 34-35)

A declaratory decree is a decree whereby any right as to any property or the legal character of a person is judicially ascertained.

Supreme Court in State of Madhya Pradesh v. Mangilal Sharma, held that a declaratory decree merely declares the right of the decree holder vis-a-vis the judgment debtor and does not in terms direct the judgment debtor to do or refrain from doing any particular act or thing.

Discretion of Court as to Declaration of Status or Right

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Jagdish Prasad Patel (Dead) and Ors. vs. Shivnath

Supreme Court

"the burden is on the Plaintiffs-Respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The Plaintiffs-Respondents have neither produced the title document i.e. patta-lease which the Plaintiffs-Respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for a few Khataunis are not proof of title; but are mere statements for revenue purposes. They cannot confer any right or title on the party relying on them for proving their title.``

PREVENTIVE RELIEF (SECTIONS 36-41)

Injunction: Preventive relief is granted at the discretion of the court by way of an injunction.

Characteristics of an Injunction

An injunction has three characteristic features;

(*a*)	It is a judicial process.
(*b*)	The object of this judicial process is to restrain or to prevent.

(*c*)	The act restrained or prevented is a wrongful act. An injunction acts or operates always in personam.

If the wrongful act has already taken place, the injunction prevents its repetition. If it is merely threatened, the threat is prevented from being executed.

Injunction	Specific Performance
Orders a party not to do something	Orders a party to perform a particular task
Interference in rights of another party	One party infringes in perfuming contract
Negative remedy	Positive Remedy
To prevent violation of negative act	Compelling performance of one party
Much broader coverage	Narrow coverage

Temporary and Perpetual Injunctions

- Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.
- A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Perpetual Injunction when Granted

- Where the defendant is trustee of the property for the plaintiff;
- Where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- Where the invasion is such that compensation in money would not afford adequate relief;
- Where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Mandatory Injunctions

It is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Damages in lieu of, or in Addition to, Injunction

Section 40 dealing with damages in lieu of, or in addition to, injunction. It states that the plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

Temporary Injunction	Permanent Injunction
Granted for specific time, as adjudged by court.	Granted by decree of court upon examination of merits of case
Governed by Order 39 of CPC, 1908	Governed by Section 38-42 of Specific Relief Act, 1963
Non-conclusive and temporary order	Conclusive and permanent solution to dispute in hand
May be revoked by same court as its temporary in nature	Can not be revoked, it can be set aside by higher authority or courts
Simple order of court	It forms a part of Decree
May be granted at any stage of suit	Granted by decree made at hearing upon merits of suit

Injunction to Perform Negative Agreement

Where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement

Injunction When Refused

Section 41 gives a list of cases when injunction cannot be granted. It says that an injunction cannot be granted–

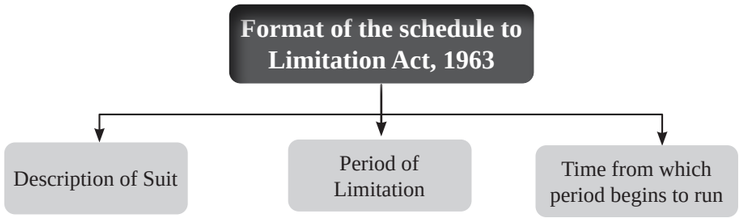
- To restrain any person from prosecuting a judical proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceeding.
- To restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injection is sought;
- To restrain any person from applying to any legislative body.
- To restrain any person from instituting or prosecuting any proceeding in a criminal matter.
- To prevent the breach of a contract the performance of which would not be specifically enforced;
- To prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- To prevent a continuing breach in which the plaintiff has acquiesced;
- When equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust:
- if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
- When the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;
- When the plaintiff has no personal interest in the matter

10 LAW RELATING TO LIMITATION

can be taken in a Court of law. The Act extends to the whole of India.

The Law of limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process, in ***Bombay Dying & Mfg. Co. Ltd. v. State of Bombay, AIR 1958 SC 328***. Thus, if a claim is satisfied outside the Court of law after the expiry of the period of limitation, that is not illegal.

COMPUTATION OF THE PERIOD OF LIMITATION FOR DIFFERENT TYPES OF SUITS



BAR OF LIMITATION

Section 3 of the Act stipulates that any legal action, such as a lawsuit, appeal, or application, must be initiated within the prescribed time limit. It is incumbent upon the Court to refrain from proceeding with such legal actions if they exceed the specified limitation period, regardless of whether the defense of limitation has been raised by the parties. The provisions of Section 3 are obligatory and the Court has the authority to independently consider the issue of limitation. The determination of whether a lawsuit is time-barred should be based on the circumstances as they existed at the time the complaint was filed. This section is fundamental to the efficacy of the entire Limitation Act.

S.M. Ghogbhai vs. Schedulers Logistics India Pvt. Ltd.

"We are satisfied that for the limitation for filing Section 9 application it is Article 137 of the Limitation Act, 1963 which is attracted. Under Article 137, time from which period begins to run is "when the right to apply accrues" the right to apply accrues when invoices issued by the Appellant to the Corporate Debtor were not paid. Invoices on the basis of which payment is claimed are more than three years earlier from the date of filing of Section 9 Application which is the basis for rejection of the Application of the Appellant by the Adjudicating Authority.

EXTENSION OF TIME IN CERTAIN CASES

Doctrine of sufficient cause

Section 5 of the Limitation Act, 1963, embodies the doctrine of "sufficient cause" for the condonation of delay in filing appeals or making applications after the prescribed time period has lapsed. Essentially, if there's a valid reason for the delay, the court may extend the deadline. However, this provision does not apply to applications made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, or to suits.

The rationale behind this exclusion is that the limitation period for most suits is considerably longer, ranging from 3 to 12 years, compared to appeals and applications, which typically have shorter time frames not exceeding 6 months. To apply this section 5, the prescribed time period must have expired. This prescribed period refers to any duration specified by any existing law.

In the significant case of ***Ramlal v. Rewa Coal-Fields Ltd., AIR 1962 SC 361***, it was established that when the limitation period expires, the appellant must provide a thorough explanation for any delay in filing the appeal or application. Even a minor delay of a single day without satisfactory justification may lead the court to conclude that there was insufficient cause for the delay, resulting in the dismissal of the appeal or application.

What is sufficient cause and what is not may be explained by the following observations:

1.	Wrong practice of High Court which misled the appellant or his counsel in not filing the appeal should be regarded as sufficient cause under Section 5
2.	In certain cases, mistakes of counsel may be taken into consideration in condonation of delay. But such mistake must be bona fide
3.	Wrong advice given by advocate can give rise to sufficient cause in certain cases
4.	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;
5.	Imprisonment of the party or serious illness of the party may be considered for condonation of delay;
6.	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.
7.	Non-availability of the file of the case to the State counsel or Panel lawyer is no ground for condonation of inordinate delay (Collector and Authorised Chief Settlement Commissioner v. Darshan Singh and others, AIR 1999 Raj. 84).
8.	Ailment of father during which period the defendant was looking after him has been held to be a sufficient and genuine cause [Mahendra Yadav v. Ratna Devi & others, AIR 2006 (NOC) 339 Pat].

The quasi-judicial tribunals, labour courts or executive authorities have no power to extend the period under this Section.

- ❖ The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of 'sufficient cause' delightfully undefined thereby leaving to the court a well-intended discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such. R B Ramlingam v. R B Bhvansewari (2009) 2 SCC 689
- ❖ G. Ramegowda, Major, Etc. v. Special Land Acquisition Officer ,

  The Supreme Court held that the expression 'sufficient cause' in Section 5 of the Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice and

  where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

In the case of ***B.K. Educational Services Private Limited v. Parag Gupta and Associates***, the central question was whether the Limitation Act, 1963 applies to applications filed under Sections 7 and 9 of the Insolvency and Bankruptcy Code, 2016. The court clarified that indeed, the Limitation Act is applicable to such applications since the inception of the Insolvency and Bankruptcy Code. Consequently, Article 137 of the Limitation Act becomes pertinent, dictating the time frame for initiating such applications. As per Article 137, the "right to sue" arises upon occurrence of a default. Applications filed more than three years after the default occurred would be barred under Article 137, except in instances where Section 5 of the Limitation Act can be invoked to justify the delay.

In cases involving individuals under legal disability, Section 6 of the Limitation Act allows them to pursue their legal rights within a specified time frame. When the limitation period elapses before the disability ends, such as in the transition from minority to adulthood, Section 8 provides for a fresh limitation period commencing from the cessation of the disability. This extension applies to all legal actions except those related to pre-emption rights. The three-year period under Section 6 begins not from the date the individual under disability attains adulthood, but from the date the disability ceases. This ensures that individuals with disabilities have adequate time to pursue their legal rights following the end of the disability.

Disabilities are Being a Minor or Insane, or an Idiot.

Section 7 deals with the situation where there is joint entitlement of filling a suit or application. It give rise to two situation:

When Discharge may be given by any other person without concurrence: In this situation, time will run against them all

When discharge cannot be given by any other person without concurrence: In this situation, 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

CONTINUOUS RUNNING OF TIME

According to **Section 9** of the Act where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover debt shall be suspended while the administration continues.

Section 9 it is essential that the cause of action or the right to move the application must continue to exist and subsisting on the date on which a particular application is made. If a right itself had been taken away by some subsequent event, no question of bar of limitation will arise as the starting point of limitation for that particular application will be deemed not to have been commenced.

Thus, time runs when the cause of action accrues. True test to determine when a cause of action has accrued is to ascertain the time, when plaintiff could have maintained his action to a successful result first if there is an infringement of a right at a particular time, the whole cause of action will be said to have arisen then and there.

COMPUTATION OF PERIOD OF LIMITATION

Exclusion of certain days or exclusion of time in legal proceedings

While computing the Period of Limitation certain day/days are to be excluded.

Section 12 prescribes the time which shall be excluded in computing the time of limitation in legal proceedings.

(*i*)	Computation of period of limitation for a suit, appeal or application:	The day which is to be excluded in computing period of limitation is the day from which the period of limitation is to be reckoned
(*ii*)	Computation of period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment:	Day of judgment shall be excluded
(*iii*)	Computation of period for an application made for leave to appeal from a decree or order:	Time required for obtaining copy of judgment shall also be excluded
(*iv*)	Computation of limitation period for an application to set aside an award:	The time required for obtaining copy of award shall be excluded

Supreme Court in the case of *Udayan China Bhai v. R.C. Bali,*

the time that elapsed between the pronouncement of the judgment and the signing of the decree should be excluded.

Exclusion of time during which leave to sue or appeal as a pauper is applied for (Section 13)

In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the court fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court fees had been paid in the first instance.

Exclusion of time bona fide taken in a court without jurisdiction (Section 14)

The following conditions must co-exist for the applicability of this Section:

- That the plaintiff or the applicant was prosecuting another civil proceedings against the defendant with due diligence in the above said
- That the previous suit or application related to the same matter in issue;
- That the plaintiff or the applicant prosecuted in good-faith in that court; and
- That the court was unable to entertain a suit or application on account of defect of jurisdiction or other like cause.

Exclusion of time in certain other cases

(*a*)	When a suit or application for the execution of a decree has been stayed by an injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn shall be excluded. [Section 15(1)].
(*b*)	The time required to obtain the sanction or consent of the Govt. required, or a notice period shall also be excluded in case of suits. [Section 15(2)].
(*c*)	In a suit or an application for execution of a decree by any receiver or interim receiver or any liquidator, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of their appointment shall be excluded. [Section 15(3)].
(*d*)	The time during which a proceeding to set aside the sale has been prosecuted shall be excluded in case of a suit for possession by a purchaser at a sale in execution of a decree. [Section 15(4)].
(*e*)	The time during which the defendant has been absent from India and from the territories outside India administered by the Central Government, shall also be excluded. [Section 15(5)].
(*f*)	In case of death of a person before the right to institute a suit accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application. The same rule applies in case if defendant dies. [Sections 16(1) and (2)]. However, the above rule does not apply to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office. [Section 16(3)].
(*g*)	Where the suit or application is based upon the fraud or mistake of the defendant or respondent or his agent or in other cases as mentioned in Section 17, the period of limitation shall not begin to run until the plaintiff or applicant has discovered fraud or mistake or could with reasonable diligence have discovered it or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production.

EFFECT OF ACKNOWLEDGEMENT ON THE PERIOD OF LIMITATION

- There must be a admission or acknowledgement
- Such acknowledgement must be in respect of any property or right
- It must be made before the expiry of period of limitation
- It must be writing and signed by the party against whom such property or right is claimed

Laxmi Pat Surana vs. Union Bank of India

The Supreme Court ruled that a fresh period of limitation begins when a principal borrower acknowledges their debt. In the case of Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal, it was questioned whether an entry in a corporate debtor's balance sheet counts as an acknowledgment of liability under Section 18 of the Limitation Act. The court stated that while a balance sheet entry may constitute an acknowledgment, it depends on the specifics of each case. Whether it's a clear acknowledgment or made with reservations needs to be determined individually. This decision may extend the limitation period under Section 18 of the Limitation Act.

EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR OF INTEREST ON LEGACY

As per Section 19 of the Act where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

(*a*)	Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;
(*b*)	'Debt' does not include money payable under a decree or order of a court for the purpose of this Section.

COMPUTATION OF TIME MENTIONED IN INSTRUMENTS

All instruments shall for the purposes of this Act be deemed to be made with reference to the Gregorian Calendar. (Section 24).

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 twenty years (thirty years if property belongs to Government) shall be absolute and indefeasible. Such a period of twenty years shall be a period ending within two years next before the institution of the suit.

Ravinder Kaur Grewal vs. Manjit Kaur

The question was whether a person claiming the title by virtue of adverse possession can maintain a suit Under Article 65 of Limitation Act, 1963 for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the Defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a Defendant whose title has been extinguished by virtue of the Plaintiff remaining in the adverse possession or in case of dispossession by some other person?

Court held that there is no bar under the Limitation Act, 1963 to file a suit.

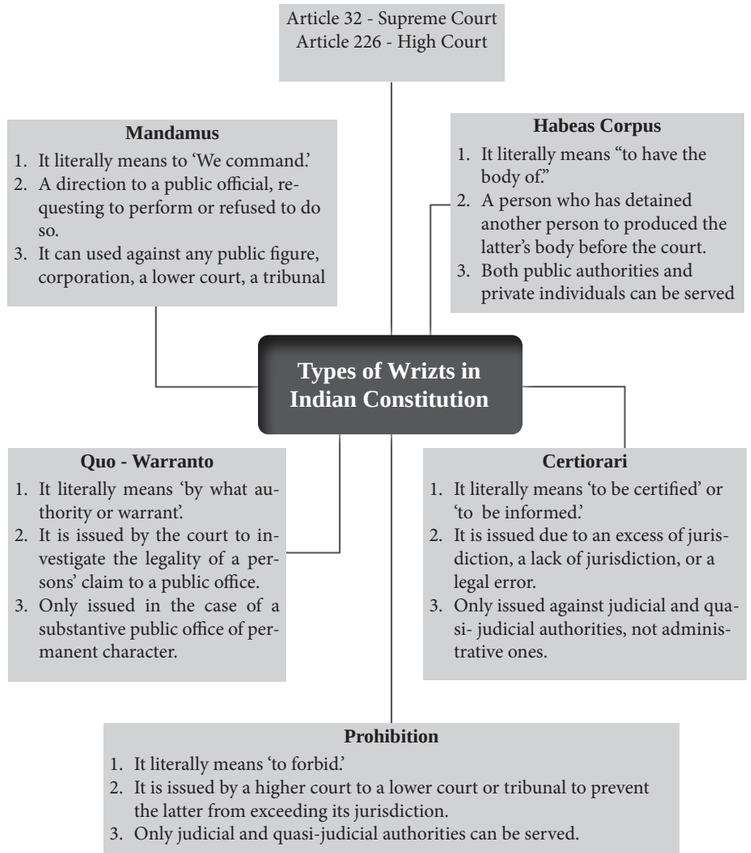
LIMITATION AND WRITS UNDER THE CONSTITUTION

The subject of limitation is dealt with in entry 13, List III of the Constitution of India.

The Statute of Limitation is not unconstitutional since it applies to the right of action in future. It is a shield and not a weapon of offence.

The State cannot place any hindrance by prescribing a period of limitation in the way of an aggrieved person seeking to approach the Supreme Court of India under Article 32 of the Constitution. To put curbs in the way of enforcement of Fundamental Rights through legislative action might well be questioned under Article 13(2) of the Constitution. It is against the State action that Fundamental Rights are claimed. (Tilokchand Motichand v. H.P. Munshi, AIR 1970 SC 898)

The Limitation Act does not in terms apply to a proceeding under Article 32 or Article 226 of the Constitution. But the Courts act on the analogy of the statute of limitation and refuse relief if the delay is more than the statutory period of limitation (State of M.P. v. Bhai Lal Bhai, AIR 1964 SC 1006).



THE SCHEDULE

S. No.	Description of suit	Period of limitation	Time from which period begin storun
	First Division – SUITS		
	PART I – SUITS RELATING TO ACCOUNTS		
1.	For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years	The close of the year in which the last time admitted or proved is entered in the account, such year to be computed as in the account.
2.	Against a factor for an account.	Three years	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
3.	By a principal against his agent for movable property received by the latter and not accounted for.	Three years	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
4.	Other suits by principals against agents for neglect or misconduct.	Three years	When the neglect or misconduct becomes known to the plaintiff.
5.	For an account and a share of the profits of a dissolved partnership.	Three years	The date of the dissolution.
	PART II — SUITS RELATING TO CONTRACTS		
6.	For a seaman's wages.	Three years	The end of the voyage during which the wages are earned.
7.	For wages in the case of any other person.	Three years	When the wages accrue due.
8.	For the price of food or drink sold by the keeper of a hotel, tavern or lodging- house.	Three years	When the food or drink is delivered.
9.	For the price of lodging.	Three years	When the price becomes payable.
10.	Against a carrier for compensation for losing or injuring goods.	Three years	When the loss of injury occurs.
11.	Against a carrier for compensation for non- delivery of, or delay in delivering goods.	Three years	When the goods sought to be delivered.
12.	For the hire of animals, vehicles, boats or household furniture.	Three years	When the hire becomes payable.
13.	For the balance of money advanced in payment of goods to be delivered.	Three years	When the goods ought to be delivered.
14.	For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Three years	The date of delivery of the goods.
15.	For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years	When the period of credit expires.
16.	For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Three years	When the period of the proposed bill elapses.
17.	For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years	The date of the sale.
18.	For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years	When the work is done.
19.	For money payable for money lent.	Three years	When the loan is made.
20.	Like a suit when the lender has given a cheque for the money.	Three years	When the cheque is paid.
21.	For money lent under an agreement that it shall be payable on demand.	Three years	When the loan is made.
22.	For money deposited under an agreement that it shall be payable on demand including money of a customer in the hands of his banker so payable.	Three years	When the demand is made.
23.	For money payable to the plaintiff for money paid for the defendant.	Three years	When the money is paid.
24.	For money payable by the defendant to the plaintiff for money received by the defendant, for the plaintiff's use.	Three years	When the money is received.
25.	For money payable for interest on money due form the defendant to the plaintiff.	Three years	When the interest becomes due.
26.	For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years	When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
27.	For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years	When the time specified arrives or the contingency happens.
28.	On a single bond, where a day is specified for payment.	Three years	The day so specified.
29.	On a single bond, where no such day is specified.	Three years	The date of executing the bond
30.	On a bond subject to a condition.	Three years	When the condition is broken
31.	On a bill of exchange or promissory note payable at a fixed time after date.	Three years	When the bill or note falls due.
32.	On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years	When the bill is presented.
33.	On a bill of exchange accepted payable at a particular place.	Three years	When the bill is presented at that place.
34.	On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years	When the fixed time expires
35.	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years	The date of the bill or note
36.	On a promissory note or bond payable by installments.	Three years	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.

37.	On a promissory note or bond payable by installments, which provides that, if default be made in payment of one or more installments, the whole shall be due.	Three years	When the default is made unless where the payee or obligee waives the benefit of the provision and then when fresh default is made in respect of which there is no such waiver.
38.	On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years	The date of the delivery to the payee
39.	On a dishonored foreign bill where protest has been made and notice given.	Three years	When the notice is given
40.	By the payee against the drawer of a bill of exchange, which has been dishonored by non-acceptance.	Three years	The date of the refusal to accept
41.	By the acceptor of an accommodation – bill against the drawer.	Three years	When the acceptor pays the amount of the bill.
42.	By a surety against the principal debtor	Three years	When the surety pays the creditor.
43.	By surely against a co-surety.	Three years	When the surety pays anything in excess of his own share.
44.	(a) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years	The date of the death of the deceased or where the claim on the policy is denied, either partly or wholly, the date of such denial.
	(b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.	Three years	The date of the occurrence causing the loss, or where the claim on the policy is denied, either partly or wholly, the date of such denial.
45.	By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years	When the insurers elect to avoid the policy.
46.	Under the Indian Succession Act, 1925, Section 360 or Section 361, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years	The date of the payment or distribution.
47.	For money paid upon an existing consideration which afterwards fails.	Three years	The date of the failure.
48.	For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-shares.	Three years	The date of the payment in excess of the plaintiff's own share.
49.	By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years	When the right to contribution accrues.
50.	By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Three years	The date of the payment.
51.	For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years	When the profits are received.
52.	For arrears of rent.	Three years	When the arrears become due.
53.	By a vendor of immovable property for personal payment of unpaid purchase- money.	Three years	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
54.	For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused.
55.	For compensation for the breach of any contract, express or implied not herein specially provided for.	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.
	PART III — SUITS RELATING TO DECLARATIONS		
56.	To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.
57.	To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Three years	When the alleged adoption becomes known to the plaintiff.
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.
	PART IV — SUITS RELATING TO DECREES AND INSTRUMENTS		
59.	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree canceled or set aside or the contract rescinded first becomes known to him.
60.	To set aside a transfer of property made by the guardian of a ward —		
	(*a*) by the ward who has attained majority;	Three years	When the ward attains majority.
	(*b*) by the ward's legal representative —		
	(*i*) When the ward dies within three years from the date of attaining majority;	Three years	When the ward attains majority.
	(*ii*) when the ward dies before attaining majority.	Three years	When the ward dies.
	PART V — SUITS RELATING TO IMMOVABLE PROPERTY		
61.	By a mortgagor —		
	(*a*) to redeem or recover the possession of immovable property mortgaged;	Thirty years	When the right to redeem or to recover possession accrues.
	(*b*) to recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
	(*c*) to recover surplus collection received by the mortgagee after the mortgage has been satisfied.	Three years	When the mortgagor re-enters on the mortgaged property
62.	To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years	When the money sued for becomes due.
63.	By a mortgagee:		
	(*a*) for foreclosure;	Thirty years	When the money secured by the mortgagee becomes due.
	(*b*) for possession of immovable property mortgaged.	Twelve years	When the mortgagee becomes entitled to possession.
64.	For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
65.	For possession of immovable property or any interest herein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
	Explanation — For the purposes of this article		
	(*a*) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;		

	(*b*) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (*c*) where the suit is by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment debtor who was out of possession.		
66.	For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.
67.	By a landlord to recover possession from a tenant	Twelve years	When the tenancy is determined.
	PART VI — SUITS RELATING TO MOVABLE PROPERTY		
68.	For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion.	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
69.	For other specific movable property	Three years	When the property is wrongfully taken.
70.	To recover movable property deposited or pawned from a depository or pawnee.	Three years	The date of refusal after demand.
71.	To recover movable property deposited or pawned, and afterwards bought from the depository or pawnee for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.
	PART VII — SUITS RELATING TO TORT		
72.	For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends.	One year	When the act or omission takes place.
73.	For compensation for false imprisonment.	One year	When the imprisonment ends
74.	For compensation for a malicious prosecution.	One year	When the plaintiff is acquitted or the prosecution is otherwise terminated.
75.	For compensation for libel.	One year	When the libel is published.
76.	For compensation for slander.	One year	When the words are spoken, or if the words are not actionable in themselves, when the special damage complained of results.
77.	For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year	When the loss occurs.
78.	For compensation for inducing a person to break a contract with the plaintiff.	One year	The date of the breach.
79.	For compensation for an illegal, irregular or excessive distress.	One year	The date of the distress.
80.	For compensation for wrongful seizure of movable property under legal process.	One year	The date of the seizure.
81.	By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	One year	The date of the death of the person wronged.
82.	By executors' administrators or representatives under the Indian Fatal Accidents Act, 1855.	Two years	The date of the death of the person killed.
83.	Under the Legal Representatives' Suits Act, 1855, against an executor, an administrator or any other representative.	Two years	When the wrong complaint is done.
84.	Against one who has a right to use property for specific purposes, perverts it to other purposes.	Two years	When the perversion first becomes known to the person injured thereby.
85.	For compensation for obstructing a way or a water-course.	Three years	The date of the obstruction.
86.	For compensation for diverting a water- course.	Three years	The date of the diversion.
87.	For compensation for trespass upon immovable property.	Three years	The date of the trespass.
88.	For compensation for infringing copyright or any other exclusive privilege.	Three years	The date of the infringement.
89.	To restrain waste.	Three years	When the waste begins.
90.	For compensation for injury caused by an injunction wrongfully obtained.	Three years	When the injunction ceases.
91.	For compensation —		
	(*a*) for wrongfully taking or detaining any specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion;	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
	(*b*) for wrongfully taking or injuring or wrongfully detaining any other specific movable property.	Three years	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
	PART VIII — SUITS RELATING TO TRUSTS AND TRUST PROPERTY		
92.	To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
93.	To recover possession of movable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Three years	When the transfer becomes known to the plaintiff.
94.	To set aside a transfer of immovable property comprising a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
95.	A set aside a transfer of movable property in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years	When the transfer becomes known to the plaintiff.
96.	By the manager of a Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of movable or immovable property in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years	The date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment whichever is later.
	PART IX — SUITS RELATING TO MISCELLANEOUS MATTERS		
97.	To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract	One year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject- matter of the sale does not admit of physical possession of the whole or part of the property when the instrument of sale is registered.
98.	By a person against whom (an order referred to in Rule 63 or Rule 103) of Order XXI of the Code of Civil Procedure, 1908 or an order under Section 28 of the Presidency Small Cause Courts Act, 1882, has been made, to establish the right which he claims to the property comprised in the order.	One year	The date of the final order.

99.	To set aside a sale by a Civil or Revenue Court or a sale for arrears of Government revenue or for any demand recoverable as such arrears.	One year	When the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought.
100.	To alter or set aside any decision or order of a Civil Court in any proceeding other than a suit or any act or order or an officer of Government in his official capacity.	One year	The date of the final decision or order by the Court or the date of the act or order of the officer, as the case may be.
101.	Upon a judgment including a foreign judgment, or a recognisance.	Three years	The date of the judgment or recognition.
102.	For property which the plaintiff has conveyed while insane.	Three years	When the plaintiff is restored to sanity and has knowledge of the conveyance.
103.	To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years	The date of the trustee's death or if the loss has not then resulted, the date of the loss.
104.	To establish a periodically recurring right	Three years	When the plaintiff is first refused the enjoyment of the right
105.	By a Hindu for arrears of maintenance	Three years	When the arrears are payable.
106.	For a legacy or for a share of a residue bequeathed by a testator or for a distributive share of the property of an interstate against an executor or an administrator or some other person legally charged with the duty of distributing the estate.	Twelve year	When the legacy or share becomes payable or deliverable.
107.	For possession of a hereditary office. Explanation — A hereditary office is possessed when the properties thereof are usually received or if there are no properties when the duties thereof are usually performed.	Twelve years	When the defendant takes possession of the office adversely to the plaintiff.
108.	Suit during the life of a Hindu or Muslim female by a Hindu or Muslim who if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Twelve years	The date of the alienation
109.	By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years	When the alienee takes possession of the property.
110.	By a person excluded from a joint family property to enforce a right to share therein.	Twelve years	When the exclusion becomes known to the plaintiff.
111.	By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years	The date of the dispossession or discontinuance.
112.	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu & Kashmir.	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.
	PART X — SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD		
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues
	Second Division — Appeals		
114.	Appeal from an order of Acquittal —		
	(*a*) under Sub-section (1) or Sub-section (2) of Section 417 of the Code of Criminal Procedure, 1898;	Ninety days	The date of the order appealed from
	(*b*) under Sub-section (3) of Section 417 of that Code.	Thirty days	The date of the grant of special leave.
115.	Under the Code of Criminal Procedure, 1898.		
	(*a*) from a sentence of death passed by a Court of Session or by a High Court in exercise of its Original Criminal Jurisdiction;	Thirty days	The date of the sentence
	(*b*) from any other sentence or any order not being an order of acquittal		
	(*i*) to the High Court;	Sixty days	The date of the sentence or order.
	(*ii*) to any other Court.	Thirty days	The date of the sentence or order.
116.	Under the Code of Civil Procedure, 1908–		
	(*a*) to a High Court from any decree or order;	Ninety days	The date of the decree or order.
	(*b*) to any other Court from any decree or order.	Thirty days	The date of the decree or order.
117.	From a decree or order of any High Court to the same Court.	Thirty days	The date of the decree or order
	Third Division — Applications		
118.	For leave to appear and defend a suit under summary procedure.	Ten days	When the summons is served.
119.	Under the Arbitration Act, 1940.		
	(*a*) for the filing in the Court of an award.	Thirty days	The date of service of the notice of the making of the award.
	(*b*) for setting aside an award or getting an award remitted for reconsideration.	Thirty days	The date of service of the notice of the filing of the award.
120.	Under the Code of Civil Procedure, 1908, to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.	Ninety days	The date of death of the plaintiff, appellant, defendant or respondent as the case may be.
121.	Under the same Code for an order to set aside an abatement.	Sixty days	The date of abatement.
122.	To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of dismissal.
123.	To set aside a decree passed ex parte or to re-hear an appeal decree or heard ex parte. Explanation: For the purpose of this article, substituted service under rule 20 of Order V of the Code of Civil Procedure, 1908, shall not be deemed to be due service.	Thirty days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.
124.	For a review of judgment by a Court other than the Supreme Court.	Thirty days	The date of the decree or order.
125.	To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126.	For the payment of the amount of a decree by installments.	Thirty days	The date of the decree.
127.	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Sixty days	The date of the sale.
128.	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession

129.	For possession after removing resistance or obstruction to delivery of possession of immovable property decree or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
130.	For leave to appeal as a Pauper —		
	(*a*) to the High Court;	Sixty days	The date of decree appealed from
	(*b*) to any other Court.	Thirty days	The date of decree appealed from.
131.	To any Court for the exercise of its powers of revision under the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973.	Ninety days	The date of the decree or order or sentence sought to be revised
132.	To the High Court for a certificate of fitness to appeal to the Supreme Court under Clause (1) of Article 132, Article 133 or sub- clause (*c*) of clause (1) of Article 134 of the Constitution or under any other law for the time being in force.	Sixty days	The date of the decree, order or sentence.
133.	To the Supreme Court for special leave to appeal—		
	(*a*) in a case involving death sentence;	Sixty days	The date of the judgment, final order or sentence.
	(*b*) in a case where leave to appeal was refused by the High Court	Sixty days	The date of the order of refusal
	(*c*) in any other case.	Ninety days	The date of the judgment or order.
134.	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
135.	For the enforcement of a decree granting a mandatory injunction.	Three years	The date of the decree or where a date is fixed for performance, such date.
136.	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
137.	Any other application for which no period of limitation is provided elsewhere in this Division	Three years	When the right to apply accrues.

CLASSIFICATION OF PERIOD OF LIMITATION

Depending upon the duration, period of limitation for different purposes may be classified as follows:

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:

- Suits by mortgagors for the redemption or recovery of possession of immovable property mortgaged;
- Suits by mortgagee for foreclosure;
- Suits by or on behalf of the Central Government or any State Government including the State of Jammu and Kashmir.

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. Period of leave to appeal as a pauper from the date of the decree is 60 days when application for leave to appeal is made to the High Court and 30 days to any other Court.

11 LAW RELATING TO ARBITRATION, MEDIATION AND CONCILIATION

The new Law is based on the United Nations Commission on International Trade Law (UNCITRAL), model law on International Commercial Arbitration.The Arbitration and Conciliation Act, 1996 aims at streamlining the process of arbitration and facilitating conciliation in business matters.

A recent amendment has been made in section 36 of Arbitration and Conciliation Act, 1996 in 2021. The amendment provides that where the Court is satisfied that a Prima facie case is made out that,-

The arbitration agreement or contract which is the basis of the award; or

The making of the award, was induced or effected by fraud or corruption,

It shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Types of Arbitration

(1)	Ad hoc arbitration	That is not handled by a formal organisation; rather the number of arbitrators, mode of selection, and how the arbitration will be conducted, may be decided by the parties. The procedural aspects should also be decided by the parties.
(2)	Domestic arbitration -	The arbitration in which the disputes are subject to Indian laws and the cause of action is entirely based in India are called Domestic arbitration.
(3)	International arbitration	It is an arbitration relating to disputes where at least one of the parties is:
		(*i*) An individual who is a national of, or habitually resident in, any country other than India; or
		(*ii*) A body corporate which is incorporated in any country other than India; or
		(*iii*) An association or a body of individuals whose central management and control is exercised in any country other than India; or
		(*iv*) The Government of a foreign country.
(4)	Institutional arbitration -	In Institutional arbitration, the matter is to be administered by established arbitration institutions

Essentials of Arbitral Process

(1)	Seat of Arbitration	The parties are free to select any location as the arbitration's seat.
(2)	venue of Arbitration	The Venue or location for the sessions of the arbitral proceedings may be decided by the parties.
(3)	Arbitral Institution	The parties may select the arbitral institution for conducting the proceedings. The rules of such arbitration institutions will apply to proceedings.
(4)	Law	The parties may by agreement choose any law .
(5)	Language	The parties may also agree on the language of the arbitration proceedings.
(6)	Number of arbitrators -	The parties are free to determine the number of arbitrators, provided that such number shall not be an even number. However, Failing the determination, the arbitral tribunal shall consist of a sole arbitrator
(7)	Cost	The Court or arbitral tribunal have the discretion to determine the cost which includes the decision as to:
		(*a*) Whether costs are payable by one party to another;
		(*b*) The amount of such costs; and
		(*c*) When such costs are to be paid.

IMPORTANT DEFINITIONS

Arbitrator

The term "arbitrator" lacks a specific definition in the Arbitration and Conciliation Act. However, an "arbitrator" refers to an individual designated to resolve disputes and differences between two or more parties through their mutual agreement.

Court means,

In the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

In the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court. [Section 2(1)(e)].

International Commercial Arbitration

International commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in for in India and where at least one of the parties is:

- 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.

Under Section 7, the Arbitration agreement has been defined to mean an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

- 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 document signed by the parties;
  - An exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
  - An exchange of statements of claim and defense 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

Specimen ADR Clause

The agreement stipulates that in case of any dispute, the parties will initially attempt to resolve it through discussion or mediation. If unresolved within seven days, either party may refer the matter to arbitration after a 15-day period. Arbitration will be conducted in accordance with the Arbitration and Conciliation Act, 1996, with English as the language. The sole arbitrator will be appointed by mutual agreement, and proceedings will be held in New Delhi, India, with costs shared equally.

POWER TO REFER PARTIES TO ARBITRATION WHERE THERE IS AN ARBITRATION AGREEMENT

Section 8(1) mandates that if a party to an arbitration agreement or someone claiming through them applies before submitting their first statement on the dispute, a judicial authority must refer the matter to arbitration, unless it finds prima facie evidence of no valid arbitration agreement.

INTERIM MEASURES BY COURT

Section 9(1) states that a party may, before, or during arbitral proceedings or at any time after making of the arbitral award but before it is enforced in accordance with section 36, apply to a court,

For the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

For an interim measure of protection in respect of any of the following matters, namely,

(*a*)	The preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
(*b*)	Securing the amount in dispute in the arbitration;
(*c*)	The detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any part) or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(*d*)	Interim injunction or the appointment of a receiver;
(*e*)	Such other interim measure of protection as may appear to the Court to be just and convenient,

And the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

GROUNDS FOR CHALLENGE

Section 12(1) provides that when a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,

Such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

Which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

According to Section 12(2), an arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in, unless they have already been informed of them by him. Section 12(3) states an arbitrator may be challenged only if,

- Circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
- He does not possess the qualifications agreed to by the parties

Section 12(4) provides that a party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reason, of which he becomes aware after the appointment has been made.

Jivan Kumar Lohia v. Durgadutt Lohia AIR 1992 SC 188

In this case, revocation of the authority of the arbitrator was sought by the respondent applicants before the High Court on the ground of bias on the part of the arbitrator. It was stated that "reasonable apprehension of bias or likelihood of bias in the mind of either party is a ground for termination of the arbitrator."

BCC Developers & Promoters ltd v. DMRC

In this case, it was observed that just because the appointed arbitrators happen to be ex-employees of one of the parties, it shall not make them ineligible for such appointment. "*The plea urged by petitioner seeking appointment of sole Arbitrator and disqualification of panel of proposed/nominated Arbitrators by the respondent being hit by provision of Section12 of the Act, is not maintainable*."

CHALLENGE PROCEDURE

Section 13 of the Act outlines the procedure for challenging an arbitrator.

- the parties are free to agree on the method for challenging an arbitrator, subject to the provisions.
- stipulates that if a challenge under any agreed procedure or under the procedure outlined is unsuccessful, the arbitral tribunal will proceed with the arbitral proceedings and issue an award.
- The party making the challenge retains the right to apply to the Court to set aside the award in accordance with Section 34 of the Act.

In Section 13, a party intending to challenge an arbitrator must, within 15 days of becoming aware of the formation of the arbitral tribunal or of any circumstances outlined in Section 12, submit a written statement detailing the reasons for the challenge to the arbitral tribunal.

FAILURE OR IMPOSSIBILITY TO ACT AS AN ARBITRATOR

As per Section 14(1), the mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator,

- If he becomes de jure or de facto unable to perform his functions, or fails to act without undue delay due to some other reasons; and
- If he withdraws from his office, or the parties agree to the termination of his mandate.

Further, if there is a controversy about an arbitrator's inability to function or occurrence of undue delay, a party may seek intervention of the Court under Section 14(2).

TERMINATION OF MANDATE AND SUBSTITUTION OF ARBITRATOR UNDER SECTION 15

(1)	In addition to the circumstances referred to in Section 13 or Section 14, the mandate of an arbitrator shall terminate,
	(*a*) where he withdraws from office for any reasons; or
	(*b*) by or pursuant to agreement of the parties.
(2)	Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to such appointment being replaced.
(3)	Unless otherwise agreed by the parties, where an arbitrator is replaced under Sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.
(4)	Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this Section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal [Section 15].

According to section 16(1) the arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

INTERIM MEASURES ORDERED BY ARBITRAL TRIBUNAL

(*i*) For the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(*ii*) For an interim measure of protection in respect of any of the following matters, namely:

(*a*)	The preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;
(*b*)	Securing the amount in dispute in the arbitration;
(*c*)	The detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(*d*)	Interim injunction or the appointment of a receiver;
(*e*)	Such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity to present this case

Determination of Rules of Procedure

Section 19 deals with determination of rules of procedure. It says that:

The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of' any evidence.

PLACE OF ARBITRATION

In the ***Brahmani River Pellets Limited vs. Kamachi Industries Limited*** case, the parties disagreed over the sale of Iron Ore Pellets. When the disagreement couldn't be resolved, one party wanted to go to arbitration as per their agreement, but the other party refused to appoint an arbitrator. So, the party wanting arbitration asked the Madras High Court to appoint one, as allowed by law. However, the other party challenged this decision in the Supreme Court.

The Supreme Court said that it's important for parties to have the freedom to choose where arbitration happens. Even if the dispute could involve multiple courts, parties can agree to use one court. The Supreme Court explained that the term "subject matter" in the law means which court has control over the arbitration. So, as per the law, parties can decide where arbitration should take place.

The Court found that since the parties had agreed to have arbitration in Bhubaneswar, the Madras High Court shouldn't have taken the case. Only the Orissa High Court could have handled it. Therefore, the Madras High Court's decision was wrong, according to the Supreme Court.

LANGUAGE

Section 22 of the Arbitration and Conciliation Act says that parties in arbitration can decide which language they want to use. If they can't agree, the arbitrator will decide. Whatever language is chosen will apply to all written statements, hearings, and awards, unless they decide otherwise.

STATEMENTS OF CLAIM AND DEFENCE

Section 23 of the Arbitration and Conciliation Act says that when there's a dispute, both sides have to present their arguments and evidence within the agreed-upon time or as decided by the arbitrator. They can include relevant documents or refer to evidence they plan to submit. The respondent can also make counterclaims or set-offs. Once the proceedings start, neither side can change their arguments or evidence unless the arbitrator allows it because of delays.

HEARINGS AND WRITTEN PROCEEDINGS

Section 24(1) provides that unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

- Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.
- Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.

DEFAULT OF A PARTY

Section 25 provides that unless otherwise agreed by the parties, where, without showing sufficient cause,

Failure under the act	Consequence
Claimant fails to communicate his statement of claim	Arbitral tribunal shall terminate the proceedings
Respondent fails to communicate his statement of defence	Arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegation of the allegation by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited
Party fails to appear an oral hearing or to produce documentary evidence	Arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it

EXPERT APPOINTED BY ARBITRAL TRIBUNAL

The arbitral tribunal may

Appoint one or more expert to report to it on specific issues to be determined by the arbitral tribunal, and

Require a party to give the expert any relevant information or to produce or to provide access to, any relevant documents, goods or other property for his inspection.

The request of a party, made available to that party for examination of all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

COURT ASSISTANCE IN TAKING EVIDENCE

According to Section 27(1) the arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

Under Section 27 (2) the application shall specify,

(*a*)	The names and addresses of the parties and the arbitrators,
(*b*)	The general nature of the claim and the relief sought,
(*c*)	The evidence to be obtained, in particular,
	(*i*) The name and addresses of any person to be heard as witness or expert witness and a statement of the subject- matter of the testimony required;
	(*ii*) The description of any document to be produced or property to be inspected.

RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(*a*)	In an arbitration other than an international commercial arbitration,
(*b*)	In international commercial arbitration,
	(*i*) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;
	(*ii*) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;
	(*iii*) failing any designation of the law under clause (*a*) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

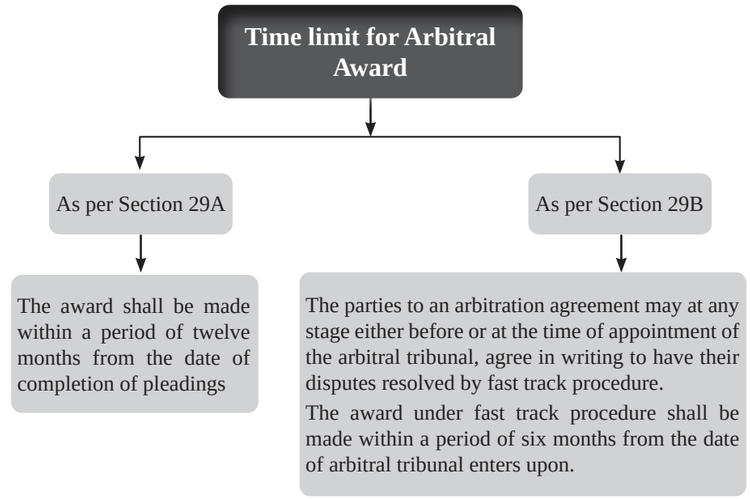
DECISION MAKING BY PANEL OF ARBITRATORS

As per section 29(1) unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

ESSENTIAL OF AWARDS

Essential features of arbitral award		
(1)	Written and stamped	An arbitration agreement is required to be in writing. Similarly, a reference to arbitration and award is also required to be made in writing.
(2)	Signed	The award is to be signed by the members of the arbitral tribunal. However, the signature of the majority of the members of the tribunal is sufficient if the reason for any omitted signature is stated.
(3)	Reasoned	The making of an award is a rational process which is accentuated by recording the reasons. The award should contain reasons. However, there are two exceptions where an award without reasons is valid i.e. (*a*) Where the arbitration agreement expressly provides that no reasons are to be given, or (*b*) Where the award has been made under Section 30 of the Act i.e. where the parties settled the dispute and the arbitral tribunal has recorded the settlement in the form of an arbitral award on agreed terms.
(4)	Dated	The award should be dated i.e. the date of making of the award should be mentioned in the award.
(5)	Mention of Place	Place of arbitration is important for the determination of rules applicable to the substance of dispute, and recourse against the award. The arbitral tribunal is under obligation to state the place of arbitration as determined in accordance with Section 20. Place of arbitration refers to the jurisdiction of the Court of a particular city or State.
(6)	Clarity of value and Interest	The arbitral tribunal may include in the sum for which award is made, interest up to the date of award and also a direction regarding future interest.
(7)	Cost of Arbitration	The award may also include decisions and directions of the arbitrator regarding the cost of the arbitration.
(8)	Delivery of copies	After the award is made, a signed copy should be delivered to each party for appropriate action like implementation or recourse against arbitral award.

TIME LIMIT FOR ARBITRAL AWARD



Section 29A of the Arbitration and Conciliation Act allows parties to agree to a fast-track procedure for resolving disputes. They can also extend the time for making an award with consent. If the arbitration process is delayed because of the arbitrator's fault, the court

can reduce their fees. The court can also impose costs on parties for causing delays. Any applications under this section should be resolved quickly, ideally within 60 days.

FAST TRACK PROCEDURE

Section 29B of the Arbitration and Conciliation Act allows parties to agree to resolve their dispute using a fast-track procedure. They can make this agreement either before or when appointing the arbitrator.

SETTLEMENT

Section 30 of the Arbitration and Conciliation Act says that during arbitration, the arbitrators can suggest ways to settle the dispute, like mediation or conciliation. If the parties agree and settle the dispute during the arbitration process, the arbitrators will end the proceedings. They can also write down the settlement as an official agreement if the parties ask for it.

FORM AND CONTENTS OF ARBITRAL AWARD

Section 31 of the Arbitration and Conciliation Act says that an arbitration award must be written down and signed by the arbitrators. If there's more than one arbitrator, the signatures of most of them are enough as long as the reason for any missing signatures is explained. The award should also explain the reasons behind it, unless-

For the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

The award is an arbitral award on agreed terms under section 30.

After the arbitral award is made, a signed copy shall be delivered to each party.

(*a*)	Where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
(*b*)	A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent, higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

REGIME FOR COSTS

Section 31A(1) of the Arbitration and Conciliation Act says that in any arbitration proceeding, the court or arbitral tribunal can decide certain matters, even if the rules of the Civil Procedure Code don't specifically cover them.

- Whether costs are payable by one party to another;
- The amount of such costs; and
- When such costs are to be paid.

Section 31A (3) provides that in determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including,

- ❖ The conduct of all the parties;
- ❖ Whether a party has succeeded partly in the case;
- ❖ Whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings; and
- ❖ Whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

Under Section 31A (4) the Court or arbitral tribunal may make any order under this section including the order that a party shall pay,

- A proportion of another party's costs;
- A stated amount in respect of another party's costs;
- Costs from or until a certain date only
- Costs incurred before proceedings have begun;
- Costs relating to particular steps taken in the proceedings;
- Costs relating only to a distinct part of the proceedings; and
- Interest on costs from or until a certain date

Termination of Proceedings

Under section 32 (2) the arbitral tribunal shall issue an order for the termination of the arbitral proceedings where,

the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in, obtaining a final settlement of the dispute,

the parties agree on the termination of the proceedings, or

the arbitral tribunal finds that the continuation of the proceedings has for any other mason become unnecessary or impossible.

CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

Section 33 provides that within 30 days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties

- ❖ A party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;
- ❖ If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

Section 33 of the Arbitration and Conciliation Act says that if a party asks for corrections or clarifications to an arbitral award, and the tribunal agrees, they must make the changes within thirty days. These changes become part of the award. Section 33 adds that the tribunal can also fix any errors they notice themselves within the same timeframe.

APPLICATION FOR SETTING ASIDE ARBITRAL AWARD

Section 34 provides that recourse to a Court against an arbitral award may be made only by an application for setting aside such award.
Section 34 states that 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, failing any indication thereon, under the law for the time being in force; or
	(*iii*) 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
	(*iv*) 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 matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
	(*v*) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(*b*)	The Court finds that,
	(*i*) The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
	(*ii*) The arbitral award is in conflict with the public policy of India.

Oil and Natural Gas Corpn. ltd v. saw Pipes AIR 2003

It was decided that 'public policy' should not be interpreted in narrow terms with respect to just the Indian Laws, it should be interpreted in a way that aims at broadening public interest and fairness.

"*Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. It must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality. If the arbitral tribunal does not dispense justice, a Court would be well within its right in upholding the challenge to the award on the ground that it is in conflict with the public policy of India.*"

FINALITY OF ARBITRAL AWARDS AND ENFORCEMENT

Section 35 provides that an arbitral award made under the Act is final and binding on the parties and persons claiming under them respectively.

Enforcement

Section 36 says that if the time limit to challenge an arbitral award has passed, the award can be enforced like a court decree. Section 36 clarifies that just applying to challenge the award doesn't stop it from being enforced. It only stops if the court orders a stay, as explained in Section 36.

Provided further that where the Court is satisfied that a Prima facie case is made out that,—

- The arbitration agreement or contract which is the basis of the award; or
- The making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award..

APPEALABLE ORDERS

Section 37 provides that notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely,

- Refusing to refer the parties to arbitration under section 8;
- Granting or refusing to grant any measure under section 9;
- Setting aside or refusing to set aside an arbitral award under section 34.

State of Chhattisgarh v. M/s. sal udyog Private ltd. (dated 08.11.2021)

It was held that "patent illegality" serves as a ground available under section 37 of the Arbitration and Conciliation Act, 1996 and can be raised as a fresh ground under an appeal. A party is not barred from raising a fresh ground of challenge in an appeal.

Deposits

Section 38 allows the arbitral tribunal to ask the parties to pay a deposit for the expected costs of the arbitration. If one party doesn't pay their share, the other party can cover it. If someone doesn't pay, the tribunal can pause or end the proceedings. The tribunal must return any extra deposit money.

Also, the tribunal has a right to keep the award until all costs are paid. If they refuse to give the award until costs are paid, the court can order them to hand over the award if the applicant pays the demanded costs into the court. Any extra money is refunded to the applicant.

Arbitration Agreement not to be Discharged by Death of Party Thereto

Section 40 provides that an arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or, as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

ARBITRATION COUNCIL OF INDIA (ACI)

Establishment and incorporation of Arbitration Council of India

Section 43B empowers the Central Government to establish the Arbitration Council of India to perform the duties and discharge the functions under the Arbitration Conciliation Act, 1996.

The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued. The head office of the Council shall be at Delhi. The Council may, with the prior approval of the Central Government, establish offices at other places in India.

Composition of Council

According to Section 43C of the Act, 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 Central Government in consultation with the Chief Justice of India – Chairperson;
(*b*)	An eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the Central Government – 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 Central Government 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 recognised body of commerce and industry, chosen on rotational basis by the Central Government – Part-time Member; and
(*g*)	Chief Executive Officer – Member-Secretary, ex officio.

The Chairperson and Members of the Council, other than ex officio Members, shall hold office as such, for a term of three years from the date on which they enter upon their office.

Chairperson or Member, other than ex officio Member, shall not hold office after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member.

Duties and Functions of Council

For the purposes of performing the duties and discharging the functions under this Act, the Council may–

(*a*)	Frame policies governing the grading of arbitral institutions;
(*b*)	Recognise professional institutes providing accreditation of arbitrators;
(*c*)	Review the grading of arbitral institutions and arbitrators;
(*d*)	Hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
(*e*)	Frame, review and update norms to ensure satisfactory level of arbitration and conciliation;
(*f*)	Act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust center for domestic and international arbitration and conciliation;
(*g*)	Make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;
(*h*)	Promote institutional arbitration by strengthening arbitral institutions;
(*i*)	Conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;
(*j*)	Establish and maintain depository of arbitral awards made in India;
(*k*)	Make recommendations regarding personnel, training and infrastructure of arbitral institutions; and
(*l*)	Such other functions may be decided by the Central Government.

Vacancies, etc., not to invalidate proceedings of Council

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

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

Resignation of Members

The Chairperson or the Full-time or Part-time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office. continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

Removal of Member

Section 43 provides that the Central Government 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 Central Government, 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.

Appointment of Experts and Constitution of Committees There of General Norms Applicable to Arbitrator

- The arbitrator shall be a person of general reputation of fairness, integrity and capable to apply objectivity in arriving at settlement of disputes;
- The arbitrator 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;

- ❖ The arbitrator should not involve in any legal proceeding and avoid any potential conflict connected with any dispute to be arbitrated by him;
- ❖ The arbitrator should not have been convicted of an offence involving moral turpitude or economic offence;
- ❖ The arbitrator shall be conversant with the Constitution of India, principles of natural justice, equity, common and customary laws, commercial laws, labor laws, law of torts, making and enforcing the arbitral awards;
- ❖ The arbitrator should possess robust understanding of the domestic and international legal system on arbitration and international best practices in regard thereto;
- ❖ The arbitrator 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
- ❖ The arbitrator should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication.

Depository of Awards

According to the Section 43 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.

Chief Executive Officer

Section 43 states that there shall be a Chief Executive Officer of the Council, who shall be responsible for day- to-day administration of the Council.

The Chief Executive Officer shall discharge such functions and perform such duties as may be specified by the regulations.

There shall be a Secretariat to the Council consisting of such number of officers and employees as may be prescribed by the Central Government.

CHAPTER I - NEW YORK CONVENTION AWARDS

Awards Made under New York Convention or Geneva Convention	Any foreign award, whether under the New York Convention or Geneva Convention, enforceable under Indian law, is considered binding on the parties involved. It can be used as a defense or set off in legal proceedings in India.
Power of Judicial Authority to Refer Parties to Arbitration	Section 45 states that if a judicial authority is dealing with a matter covered by an arbitration agreement under Section 44, it must refer the parties to arbitration upon the request of one party unless it finds the agreement to be null, void, or impossible to carry out.
When Foreign Award binding	Section 46 establishes that any foreign award enforceable under this Chapter is considered binding on the parties involved and can be used as a defense or set off in legal proceedings in India. Additionally, references to enforcing a foreign award in this Chapter also include relying on such an award.

Evidence

Section 47 provides that the party applying for the enforcement of a foreign award shall, at the time of the application, produces 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.

Conditions for Enforcement of Foreign Awards

Section 48 of the Act enumerates the conditions for enforcement of foreign awards and provides that the party, against whom the award is invoked, may use one or more of the following grounds for the purpose of opposing enforcement of a foreign award, namely,

- ❖ The parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- ❖ The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

- ❖ The award deals with a difference not contemplated by or not failing within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matter submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or
- ❖ The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- ❖ The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which. or under the law of which, that award was made; or

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.

Appealable Orders

Section 50 provides that "notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the order refusing to

Refer the parties to arbitration under section 45;

Enforce a foreign award under section 48,

To the court authorized by law to hear appeals from such order.

CHAPTER II: GENEVA CONVENTION AWARDS

Section 54 states that a judicial authority, when dealing with a dispute related to a contract covered by section 53 and containing an arbitration agreement, must refer the matter to arbitration if the agreement is valid and enforceable. This referral to arbitration can be requested by either party involved in the dispute or by anyone connected to them. However, this referral does not affect the authority of the judicial body in case the arbitration agreement cannot be executed or becomes invalid.

Foreign Awards When Binding

A foreign award that can be enforced under this law is considered legally binding between the parties involved. This means that any of those parties can use it as a defense or counterclaim in legal proceedings in India. Additionally, when this law mentions enforcing a foreign award, it also means relying on it in legal matters.

Evidence

That the party applying for the enforcement of a foreign award shall, at the time of 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;

Evidence proving that the award has become final; and

Such evidence as may be necessary to prove that the conditions mentioned in clauses (a) and (c) of sub- section (1) of section 57 are satisfied.

Conditions for Enforcement of Foreign Awards

Section 57 provides that in order that a foreign award may be enforceable under the Act, it shall be necessary that,

- ❖ The award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- ❖ The subje-matter of the award is capable of settlement by arbitration under the law of India;
- ❖ The award has been made by the arbitral tribunal provided for in the submission to arbitration or consttituted in the manner agreed upon by the parties and in conformity with the law governing the arbital procedure;
- ❖ The award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- ❖ The enforcement of the award is not contrary to the public policy or the law of India

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

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

Enforcement of the award shall be refused if the Court is satisfied that

The award has been annulled in the country in which it was made;

The party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

The award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration:

CONCILIATION

Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement. He does this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement. Mediation is a structured process in which the mediator assists the disputants to reach a negotiated settlement of their differences. Mediation is usually a voluntary process that results in a signed agreement which defines the future behavior of the parties. The mediator uses a variety of skills and techniques to help the parties reach the settlement, but is not empowered to render a decision.

COMMENCEMENT OF CONCILIATION PROCEEDINGS

Section 62 outlines the process for initiating conciliation proceedings. It states that the party wishing to conciliate must send a written invitation to the other party, briefly stating the subject of the dispute. Conciliation begins when the other party accepts this invitation in writing. If the other party rejects the invitation, conciliation does not proceed. If the initiating party doesn't receive a reply within thirty days, or within the specified period in the invitation, they can consider it a rejection and inform the other party in writing.

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

Section 64 provides

- In conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
- In conciliation proceedings with two conciliators, each party may appoint one conciliator;
- 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

Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,

- ❖ A party may respect such an institution or person to recommend the names of suitable individuals to act as conciliator, or
- ❖ The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person: Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

Submission of Statements to Conciliator

Conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

The conciliator may request a party to submit to him such additional information as he deems appropriate.

Role of Conciliator	The conciliator must assist the parties impartially and independently to settle their dispute. They should adhere to principles of objectivity, fairness, and justice, considering the parties' rights, trade practices, and circumstances. The conciliator has flexibility in conducting proceedings based on the case's needs and parties' preferences, including allowing oral statements. They can propose settlements at any stage without providing written reasons.
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.
Communication between Conciliator and Parties	Section 69 allows the conciliator to interact with the parties either collectively or individually, either in person or through written communication. If there's no prior agreement on the meeting location, the conciliator decides it after consulting with the parties, considering the circumstances of the conciliation process.
Disclosure of Information	The conciliator must share relevant information provided by one party with the other party to allow them to respond appropriately. However, if a party shares information with the conciliator with a specific confidentiality condition, the conciliator cannot disclose it to the other party.
Suggestions by Parties for Settlement of Dispute	Section 72 provides that each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute
Settlement Agreement	When the conciliator identifies potential terms for a settlement acceptable to both parties, they'll propose these terms for the parties' review. After receiving feedback, the conciliator may adjust the terms accordingly. If the parties agree to the terms, they can formalize them into a written settlement agreement, which the conciliator may help draft if requested. Once signed by both parties, the settlement agreement becomes final and binding, and the conciliator authenticates it, providing each party with a copy.
Confidentiality	Section 75 mandates that all aspects of conciliation proceedings, including the settlement agreement, must be kept confidential by the conciliator and the parties involved. However, disclosure of the settlement agreement is permitted when necessary for its implementation and enforcement.

TERMINATION OF CONCILIATION PROCEEDINGS

The conciliation proceedings shall be terminated,

- ❖ 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; or
- ❖ By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
- ❖ By the signing of the settlement agreement by the parties, on the date of the agreement; or
- ❖ 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 the declaration; or

By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

ROLE OF CONCILIATOR IN OTHER PROCEEDINGS

The conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings

The conciliator shall not be presented by the parties as a witness inany arbitral or judicial proceedings

Admissibility of Evidence in other Proceedings

Section 81 provides that the parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,

- Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- Admissions made by the other party in the course, of the conciliation proceedings;
- Proposals made by the conciliator;
- The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

MEDIATION

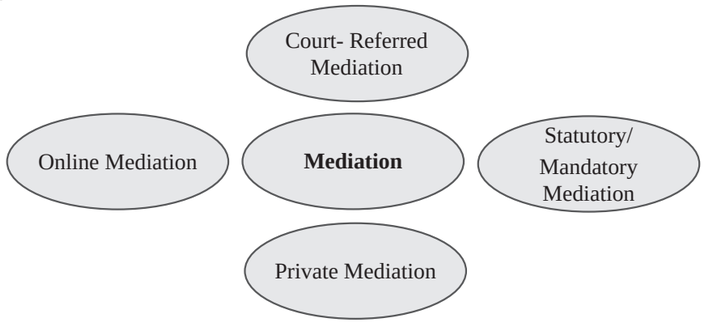
The adversarial method of resolving disputes involves presenting opposing claims to a neutral third party for resolution. In contrast, non-adversarial Alternative Dispute Resolution (ADR) methods such as mediation are characterized by informality, friendliness, and simplicity. Mediation allows parties to communicate directly, identify shared interests, and focus on reaching a resolution independently, leading to time and cost savings.

As per the Civil Procedure ADR and Mediation Rules, 2003, "Mediation" refers to a process where a mediator, appointed either by the parties or the Court, facilitates discussions, assists in issue identification, reduces misunderstandings, explores compromise areas, and emphasizes the parties' responsibility for decision-making.

Mediation is a voluntary, party-centered negotiation process where a neutral third party helps parties resolve disputes through specialized communication and negotiation techniques. While the mediator, advocates, and other participants play active roles, the parties are central to the process.

Essentially, mediation is an assisted negotiation process addressing factual/legal issues and underlying dispute causes, including personal, business, family, and community interests. Its goal is to find a mutually acceptable solution satisfying parties' needs, desires, and interests, offering an efficient, effective, speedy, and less costly resolution with dignity and respect.

Types of Mediation



Merits of Mediation

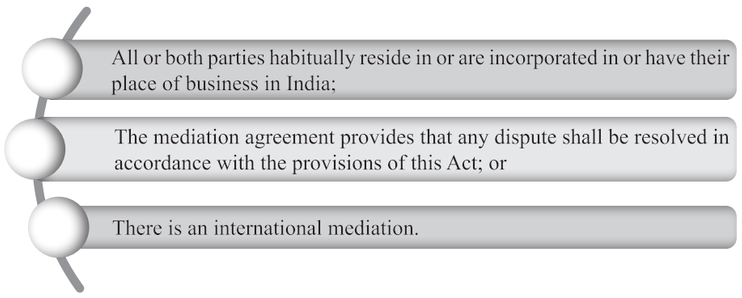
Mediation is:

Quick and responsive.
Economical.
There is no extra cost.
Harmonious settlement.
Creating solutions and remedies.
Confidential and informal.
Parties controlling the proceedings

Mediation Bill 2021

The Indian government is addressing the backlog of cases in legal forums by promoting alternative dispute resolution methods like mediation. After prolonged debate, the Mediation Bill, 2021 was introduced in the Rajya Sabha, with 65 clauses covering various aspects such as institutional mediation, regulatory bodies, mediator credentials, online mediation, cross-border disputes, pre-litigation mediation, and enforcement of settlement agreements.

This bill when becomes Act shall apply where mediation is conducted in India, and –



Mediation Under Various Laws

There are various laws that provide for mediation as a dispute redressal mechanism. An inclusive list of laws along with the related provisions covering the subject matter is provided below:

(1)	The Companies Act, 2013
(2)	Industrial Disputes Act, 1947
(3)	Code of Civil Procedure, 1908
(4)	Legal Services Authority Act, 1987 read with Section 89 of CPC
(5)	Micro, Small and Medium Enterprises (MSME) Development Act, 2006
(6)	Hindu Marriage Act, 1955 and Special Marriage Act, 1954
(7)	Real Estate (Regulation and Development) Act, 2016
(8)	Commercial Courts Act, 2015 and the Commercial Courts (Pre- Institution Mediation and Settlement) Rules, 2018
(9)	The Consumer Protection Act, 2019

Afcons infrastructure ltd. and Ors. v. Cherian Varkey Construction Co. (P) ltd.

The court examined whether Section 89 of the Civil Procedure Code allows referring parties to arbitration without their explicit consent and clarified the scope of this section. The court explained that if parties do not agree to arbitration or conciliation, which require unanimous consent, the court should consider other ADR methods like Lok Adalat, Mediation, and Judicial Settlement, which do not need unanimous consent. If mediation facilities are unavailable, the court must choose between Lok Adalat or judicial settlement. When mediation facilities are available, it becomes an option, especially for complex or lengthy cases, whereas straightforward cases are better suited for Lok Adalat. The court can also refer the matter to another judge if judicial intervention is needed. The court must judiciously select the ADR process based on the nature of the dispute, the interests of the parties, and the goal of resolving the dispute quickly.

Arbitration v. Mediation

Since both options looks appealing to resolve business disputes, there is a need to distinguish between the two

Basis	**Arbitration**	**Mediation**
Meaning	Arbitration is like litigation which is outside the court and which results in an award like an order.	Mediation is when a neutral third party aims to assist the parties in arriving at a mutually agreeable solution
Nature	More collaborative	More adversarial
Process	More formal	Very informal
Outcome	Is controlled by arbitrator	Is decided by parties only
Dispute resolution	Settled in either of favour of parties	May or may not be resolved
Nature of award	Binding on parties	Not binding on parties
Number of third party	One or more, should be in odd number	Only one mediator

MEDIATION RULES MADE BY HIGHER COURTS

Supreme Court Manual

The Supreme Court has made a Mediating Training Manual with regards to the benefits and/or suitability of ADR methods of dispute resolution. It aims at facilitating and helping guide mediation in growing not as an alternative dispute resolution mechanism, but as another effective mode of disputes resolution. It is a uniform Training Manual applicable throughout India, which can be used by the Trainers, Mediators, Referral judges, Litigants etc. So far as formal litigation system is concerned, mediation, along with other methods of Alternative Disputes Resolution, has been statutorily recognized by the Civil Procedure Code (Amendment) Act, 1999 which introduced amendment in section 89 thereto.

Mediation is a dynamic process in which the mediator assists the parties to negotiate a settlement for resolving their dispute. In doing so, the mediator uses the four functional stages of mediation, namely,

(*i*)	Introduction and Opening Statement
(*ii*)	Joint Session;
(*iii*)	Separate Session; and
(*iv*)	Closing

These functional stages are used in an informal and flexible manner so that the mediation process gains momentum.

Mediation Rules Made by High Court

High Courts in India, like the Chandigarh High Court, have established their own Alternative Dispute Resolution (ADR) Rules for efficient case disposal. The Alternative Disputes Resolution Rules, 2003, include provisions for arbitration, conciliation, and mediation.

- ❖ Arbitration: An arbitrator appointed by the parties or the court adjudicates disputes and issues an award under the Arbitration and Conciliation Act, 1996.
- ❖ Conciliation: A conciliator appointed by the parties or the court facilitates dispute resolution by making settlement proposals and formulating settlement terms as per Sections 67 and 73 of the Act.
- ❖ Mediation: A mediator appointed by the parties or the court mediates disputes following the Mediation Rules outlined in Part II of the ADR Rules.

Rule 2 and 3 talks about appointment and panel of mediators or conciliators. Whereas, Rule 4 enumerates the qualification of such mediator or conciliator, which are as under:

(*a*)	(*i*)	Retired Judges of the Supreme Court of India;
	(*ii*)	Retired Judges of the High Courts;
	(*iii*)	Retired District and Sessions judges / Additional District and Sessions Judges and retired Civil Judges. Legal practitioners with at least five years standing at the Bar in the Supreme Court/High Court/ District Court
(*b*)	Experts or other professionals with at least fifteen years standing or retired senior bureaucrats or retired senior executives.	
(*c*)	Institutions which are themselves experts in mediation and have been recognized as such by the High Court.	

Rule 5, talks about the disqualification of such mediator or conciliator. These are as under:

- Any person who has been adjudged insolvent;
- Any person against whom criminal charges involving moral turpitude have been framed by a criminal court and are pending ; or
- Any person who has been convicted by a criminal court for any offence involving moral turpitude;
- Any person against whom disciplinary proceedings have been initiated by the competent authority or who has been punished in such proceedings;
- Such other categories of persons as may be notified by the High Court.

Alternative Dispute Resolution (ADR)

There is growing recognition that the judiciary cannot manage all aspects of the justice system alone. Many disputes can be resolved through alternative dispute resolution (ADR) methods like arbitration, mediation, conciliation, and negotiation, which offer flexibility, save time and costs, and reduce stress. Therefore, promoting ADR services in India for both domestic and international disputes is crucial, ensuring they are based on strong principles and executed with expertise and modern facilities.

The International Centre for Alternative Dispute Resolution (ICADR) is a key institution in this field. It advances ADR through teaching, research, and global services. Registered under the Societies Registration Act, 1860, ICADR operates as an independent, non-profit organization with panels of experts skilled in ADR processes.

Areas in which ADR Works

Almost all disputes including commercial, civil, labor and family disputes, in respect of which the parties are entitled to conclude a settlement, can be settled by an ADR procedure. ADR techniques have been proven to work in the business environment, especially in respect of disputes involving joint ventures, construction projects, partnership differences, intellectual property, personal injury, product liability, professional liability, real estate, securities, contract interpretation and performance and insurance coverage.

Basis	Arbitration	Conciliation
Relevant section	Section 11	Section 64
Meaning	The arbitrator is the person chosen to oversee the arbitration process	"conciliator" refers to the person chosen to facilitate the conciliation procedure
Requirement	A prior agreement is necessary to resolve the dispute through the arbitration process	While no prior agreement is necessary to resolve the disagreement through the Conciliation process.
Future disputes referred	Arbitration is also an option for current and future disputes.	Conciliation is accessible
Legally Binding	It is valid and enforceable and binding on parties	Not necessarily binding
Legal representation	Can have legal representation	No legal representation is required

Basis	Mediation	Conciliation
Meaning	Mediation refers to a process of settling disputes by independent and impartial third party who assists the parties to reach a common outcome	Conciliation is an alternative dispute resolution method in which an expert is appointed to resolve a dispute by convincing the parties to agree upon an agreement.
Governing Acts	Mediation primarily refers to the Code of Civil Procedure of 1908.	Conciliation refers to the 1996 Arbitration and Conciliation Act
Process	Disputes settled by mediation	Dispute settled and come to settlement agreement
Enforceable	Enforceable by law	Not enforceable
Number of parties	One or more conciliator	One mediator only

Amendments

The Mediation Act, 2023, received the President's assent on September 14, 2023, and aims to promote and facilitate mediation, enforce mediated settlement agreements, register mediators, encourage community mediation, and make online mediation cost-effective. The Act will come into effect on dates notified by the Central Government. Key sections effective from October 9, 2023, include:

Section 1: Short Title, Extent, and Commencement

- This Act is called the Mediation Act, 2023.
- It extends to all of India.
- It will come into force on dates appointed by the Central Government, which may vary for different provisions.

Sections 31 to 38: Mediation Council of India

- The Central Government will establish the Mediation Council of India via notification.
- Section 32 outlines the Council's composition.

Sections 45 to 47: Mediation Fund, Accounts and Audits, and Central Government Directions

- Section 45: Establishes a "Mediation Fund" and specifies funding sources.
- The Council's accounts will be audited by the Comptroller and Auditor-General of India, with related expenses borne by the Council.

Sections 50 to 54: Protection, Rule-Making Powers, and Removal of Difficulties

- Section 50: Provides immunity from suits, prosecutions, or legal proceedings for actions done in good faith under this Act by government officers, Council members, mediators, mediation institutes, and service providers.

Sections 56 and 57: Effect on Pending Proceedings and Transitory Provisions

- The Act does not apply to mediations or conciliations commenced before its enactment.
- Existing rules for court-annexed mediation remain effective until new regulations are issued under Section 15(1), and they will continue to govern ongoing court-annexed mediations until the new regulations come into force.

12 INDIAN STAMP LAW

INTRODUCTION

The Indian Stamp Act, 1899 is the law relating to stamps which consolidates and amends the law relating to stamp duty. It is a fiscal legislation envisaging levy of stamp duty on certain instruments. The Act is divided into eight Chapters and there is a schedule which contains the rates of stamp duties on various instruments .

Union List	The State Legis-lature	Amendments, entry 44
Union List, Entry 91 gives power to the Union Legislature to levy stamp duty with regard to certain instruments (mostly of a commercial character). They are bills of exchange, cheques, promissory notes, bill of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipt. The power to reduce or remit duties on these instruments is vested in the Union Government as per Section 9 of the Act.	State List, entry 63 confers on the States power to prescribe the rates of stamp duties on other instruments. As per "Principles" for levy of duty' fall in tire Concurrent List, entry 44.	The amendments to the Central Act affected by the States are in the shape of amendment of sections of the Central Act, adding new sections, adding separate schedules, modifying in schedules, etc. Some States, for their convenience, have passed separate legislation to cover the matters coming under the State's domain. As a result, the rates of stamp duties in different States on other instruments category differ from State to State for the same instrument.

Allotment List(Section 2(1)]

'allotment list" means a list containing details of allotment of the securities intimated by the issuer to the depository under sub-section (2) of section 8 of the Depositories Act, 1996.

Bill of Lading- [Section 2(4)]

"Bill of Lading" includes a 'through bill lading' but does not include a mate's receipt.

A bill of lading is a receipt by the master of a ship for goods delivered to him for delivery to a certain person or his assignments. Three copies are made, each signed by the master. One is kept by the consignor (a person or company that sends goods to someone) of the goods, one by the master of the ship and one is forwarded to that person, the consignee (the person or company to whom goods or documents are officially sent or delivered), who, on receipt of it, acquires property in the goods. It is written evidence of a contract for the carriage and delivery of goods by sea, for certain freight.

Conveyance- [Section 2(10)]

The term "conveyance" includes a conveyance on sale and every instrument by which property (whether movable or immovable) is transferred inter vivos1 and which is not otherwise specifically provided for by Schedule. It does not include a will.

Thus, all transfers of property whether movable or immovable, on sale (which are not otherwise specially provided for by the Schedule), are chargeable as conveyances. Transfers which are otherwise provided for in the Schedule.

are Composition Deed, Exchange of Property, Gift, Lease, Mortgage, Reconveyance, Release, Settlement, Transfer, Transfer of Lease and (Declaration of) Trust.

Debenture-[Section 2(10A)]

Debenture includes–

- Debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not
- Bonds in the nature of debenture issued by any incorporated company or body corporate;
- Certificate of deposit, commercial usance bill, commercial paper and such other debt instrument of original or initial maturity upto one year as the Reserve Bank of India may specify from time to time;
- Securitised debt instruments; and
- Any other debt instruments specified by the Securities and Exchange Board of India from time to time.

Duly stamped-[Section 2(11)]

According to Section 2(11), "Duly stamped" as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with law for time being in force in India.

- The amount of stamp to be used is governed by provisions and schedule to the Stamp Act.
- The manner of stamping is governed by section 10 to 19 of the Act and also by the rules framed by the Government. Under this head are included particulars as to the description of state ps and the number of stamps to be used.

Signature includes marks by an illiterate person. [Section 3(52), General Clauses Act, 1897]

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

The Collector can receive the stamp duty without penalty and certify an instrument as duly stamped, as from the date of execution. (Sections 37 and 40)

Impressed stamp [Section 2(13)]

According to Section 2(13), "impressed stamp" includes:

- ❖ Labels affixed and impressed by the proper officer; and
- ❖ Stamps embossed or engraved on stamp paper.

The rules framed under the Act invariably prescribe to what documents impressed stamps are to be used. The term includes both a stamp impressed by the Collector and also a stamp embossed on stamp paper. Special adhesive stamps are labels (Ganga Devi v. State of Bihar, 1 LR 45 Pat. 198).

The instrument is duly stamped if it has been duly stamped at the time of execution and is admissible in evidence, though the stamp is subsequently removed or lost (Mt. Mewa Kunwari v. Bourey, AIR 1934 All. 388).

Adhesive stamp: Adhesive stamps are those stamps which can be stuck to a document using any form of adhesive. There are two types of adhesive stamps and they are:

Postal stamps-	Postal stamps have their limited application. Postal stamps are used for post office related transactions.
Non-postal stamps	Non-postal stamps have wider applications compared to postal stamps. Non-postal stamps are revenue stamps, court fee stamps, insurance policy stamps etc.

Instrument [Section 2(14)]

Instrument includes –

- Every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;
- A document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and
- Any other document mentioned in Schedule I.

Following instances may be noted:

(*i*)	An unsigned draft document is not an "instrument" (because it does not create or purport to create any right, etc).
(*ii*)	A letter which acknowledges receipt of a certain sum as having been borrowed at a particular rate of interest and for a particular period and that it will be repaid with interest on the due date is an "instrument". [These examples show that the law looks to the substance and effect (or intended effect) of the text of the instrument and not the physical medium through which it is recorded.]

(*iii*)	Photocopy of an agreement is not an instrument as defined under Section 2(14) of the Act. Ashok Kalam Capital Builders v. State & Anr., AIR 2010 (NOC) 736 (Del).
(*iv*)	'Instrument' does not include ordinary letters.

Bill of Exchange [Section 2(2)]

According to Section 2(2), "bill of exchange" means a bill of exchange as defined in the Negotiable Instruments Act, 1881 and includes also a Hundi and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money. The Negotiable Instruments Act, defines a "bill of exchange" as an instrument in writing, containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Bill of Exchange Payable on Demand [Section 2(3)]

Under Section 2(3) of the Stamp Act, a "bill of exchange payable on demand" includes:

- An order for the payment of any sum of money by a bill of exchange or promissory note or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or in the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;
- An order for the payment of any sum of money weekly, monthly or at any other said period; and
- A letter of credit, that is to say, any instrument by which one person authorises any other person to give credit to the person in whose favour it is drawn.

It may be noted that a bill of exchange payable on demand includes even a letter of credit, as per above definition.

Thus, the definition in the Stamp Act includes many instruments which could not be classed as 'bills of exchange' within the definition given by the Negotiable Instruments Act, 1881.

Bond [Section 2(5)]

Under Section 2(5), a "bond" includes–

- ❖ Any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
- ❖ Any instrument attested by a witness not payable to order or bearer, whereby a person obliges himself to pay money to another; and
- ❖ Any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another

But it does not include a debenture.

Lease [Section 2(16)]

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

- A patta;
- 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;
- Any instrument by which tolls of any description are let;
- Any writing on an application for a lease intended to signify that the application is granted.

Section 105 of the Transfer of Property Act, 1882, defines a lease as the transfer of the right to enjoy a property for a specified period, either explicitly or implicitly, or in perpetuity. This transfer is made in exchange for a payment, whether it be a price paid upfront, promised payment, money, a share of crops, services, or any other valuable consideration periodically or on specific occasions, from the transferee to the transferor, who accepts the transfer under these terms.

A patta is a document issued by the Collector of District or any other revenue receiver to a cultivator. It outlines the conditions under which the land is to be held and specifies the value or proportion of the produce to be paid as compensation.

A Kabuliyat is a document executed by the lessee, indicating acceptance of the terms of the lease and agreement to abide by them. Though not considered a lease under Section 105 of the Transfer of Property Act, it is explicitly included in the definition for stamp duty purposes.

Toll refers to a tax paid for the privilege or liberty granted, such as passage over a bridge or ferry, use of a highway, or selling articles in a market or fair. However, it does not encompass taxes like 'octroi' or 'chungi'.

Market value [Section 2(16B)]

"Market Value", in relation to an instrument through which –

- ❖ Any security is traded in a stock exchange, means the price at which it is so traded;
- ❖ Any security which is transferred through a depository but not traded in the stock exchange, means the price or the consideration mentioned in such instrument;
- ❖ Any security is dealt otherwise than in the stock exchange or depository, means the price or consideration mentioned in such instrument.

Promissory Note [Section 2(22)]

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 [Section 2(23)]

"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.

A mere acknowledgement in writing of the receipt of immovable property will not attract sub-clause (b). Under sub-clause (c), any acknowledgement in satisfaction or discharge of any debt or demand or any part thereof is covered; for instance, a receipt given by the secretary or other manager of a club acknowledging payment of the club dues comes within the sub-clause.

Settlement [Section 2(24)]

"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 a disposition. **[Section 2(24)]**

The definition of "settlement" excludes a will. A will is intended to operate only on death, while a settlement operates immediately.

Article 246(2) of the Constitution, along with items 6 and 47 of List III of the Seventh Schedule, empowers the State Legislature/Parliament to enact laws for the registration of deeds and documents, as well as for the imposition and collection of fees for registering such deeds and documents.

General Principles Governing Levy of Stamp Duty

Duties on Instruments	The basic principle of the Indian stamp Act is that it levies the duty on the instruments and not on the transaction covered by the instruments
Real nature on substance	The stamp duty on an instrument depends on the real nature of the substance of the transactions recorded in the instruments and not on any title or description or nomenclature given by the parties who execute the instruments.
Valuation	Sufficiency of stamp duty leviable on a document must be determined by looking at the document and what is stated therein and not on any other evidence. The valuation for the purpose of stamp duty is also to be based on the value on the date the instrument is executed and not with reference to subsequent changes.
Incidence of payment of duty and penalty	Stamp duty chargeable on an instrument should be determined with reference to law in force on the date of execution of the instrument but the levy of penalty is to be determined with reference to the law in force at the time of the presentation of the document in evidence.
Law relating to payment	Schedules specifying the rates of stamp duty form part of the statute and must be read together with it, if there is any inconsistency between the schedule and the stamp Act, the latter prevail.

INSTRUMENTS CHARGEABLE WITH DUTY

The following instruments shall be chargeable with a duty of the amount indicated in that Schedule as the proper duty therefore, namely:

- Every instrument mentioned in Schedule I of the Act which are executed in India on or after the 1st July, 1899;
- Every bill of exchange or promissory note drawn or made out of India on or after 1st July, 1899 and accepted or paid or presented for so or negotiated in India; and
- Every instrument except a bill of exchange or promissory note mentioned in the Schedule, which is executed outside India on or after 1st July, 1899, but it relates to any property or service situated or rendered 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.

In the case of ***Re Swadeshi Cotton Mills, AIR 1932 All 291***, it was emphasized that the taxable entity under consideration is an instrument. If a transaction of purchase and sale can be conducted without the use of an instrument, no tax is imposed. The focus is on the instrument employed to effect the purchase and sale, rather than the transaction itself. If parties to a contract of sale refrain from executing a deed of conveyance afterward, they can avoid paying higher duty, even though this may lead to a loss of revenue for the government.

This principle was articulated by Esher M.R. in ***Commissioners of Inland Revenue v. G. Angus***, where it was stated that goodwill can be transferred without the need for a formal conveyance. If a vendor can transfer property without executing an instrument, they can avoid paying duty under Section 70. The Crown must demonstrate its right to duty, and if there's a means of circumventing stamp duty, those who can do so benefit.

EXTENT OF LIABILITY OF INSTRUMENTS TO DUTY (SEVERAL INSTRUMENTS IN SINGLE TRANSACTION OF SALE, MORTGAGE OR SETTLEMENT)

Section 4 provides that, where in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction –

Only the principal instrument shall be chargeable with the duty prescribed for the conveyance, mortgage or settlement; and ➡ Each of the other instruments shall be chargeable with a duty of one rupee (instead of the duty if any prescribed fr the other instruments

However, an exception to the above is added w.e.f. 01st July 2021 in the form of below mentioned non-obstante clause.

In the case of any issue, sale or transfer of securities, the instrument on which stamp-duty is chargeable under section 9A(for transactions in stock exchanges and depositories) shall be the principal instrument for the purpose of this section and no stamp-duty shall be charged on any other instruments relating to any such transaction.

Section 4 not Applicable

- A lease is executed and got registered. A second document is executed altering the terms of the first document. The second document has to be stamped as a lease. Section 4 does not apply.
- A purchaser of land executes a mortgage of the land in favour of the vendor for a portion of the purchase money. The mortgage is liable to full duty as a separate instrument. Section 4 does not apply.

Instruments Relating to Several "Distinct Matters"- Section 5

Under Section 5, an instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties with which each separate instrument, relating to one of such matters, would be chargeable under the Act (This is the reverse of the situation governed by Section 4).

The Section deals with multifarious instruments. The expression "distinct matter" means distinct transactions **[*Ram Swarup v. Joti,* (1933) *Allahabad Law Journal 427; Board of Revenue, Madras v. Narasimhan, AIR 1961 Mad 504*].**

Section 5 applies even where the two (or more) matters are of the same description.

Principal and Ancillary

The test is – "What is the leading object?

Which is principal and which is ancillary? If an instrument taken with reference to its primary object is exempted then stamp duty cannot be charged merely because matter ancillary to it is included and that matter is chargeable to stamp duty.

Thus, the test usually adopted is the test of "leading object". If there is only one leading object, Section 5 will not apply. But if there are several distinct contracts, each is taxable.

Instruments Coming within Several Descriptions in Schedule- I- Section 6

Section 6 of the Act provides that the instrument shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. Provided that nothing in the Act shall render chargeable, with duty exceeding one rupee, a counterpart or duplicate, of any instrument chargeable with duty, in respect of which the proper duty has been paid.

Section 6 is subject to the provisions of Section 5.

Section 6 applies only:

- Where the instrument contains only one matter, but falls within two or more items in the Schedule.
- Where the instrument does not cover distinct matters but is ambiguous in regard to the various entries given in Schedule-I to the Act.

In such cases, Section 6 clearly provides that the highest of the duties mentioned against the various descriptions against which the instrument is likely to fall is to be paid.

Bonds, Debentures, etc. Issued Under the Local Authorities Loan Act, 1879 – Section 8

Section 8 provides that notwithstanding anything contained in the Indian Stamp Act, any local authority raising a loan under the provisions of the Local Authorities Loans Act, 1879 or of any other law for the time being in force by the issue of bonds, debentures or other securities, shall, in respect of such loans, be chargeable with a duty of one percent on the total amount of the bonds, debentures or other securities issued by it. Such bonds, debentures or other securities need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

Section 8A of the Act says that securities traded electronically through a depository don't need a stamp and are exempt from stamp duty. This applies to three situations:

1. When a company issues securities to a depository (like shares to a digital storage), they only pay stamp duty on the total amount of securities issued, not on each individual security. The individual securities themselves don't need a stamp.
2. If a company issues a replacement security certificate, the stamp duty is the same as for getting a duplicate copy of any other document under the Act.
3. Transfers of ownership of these electronic securities are exempt from stamp duty. This applies to:
   - Moving securities from a person's account to a depository or vice versa.
   - Buying and selling these securities within the depository system.
   - Buying and selling units of mutual funds held electronically.

CORPORATISATION and DEMUTUALISATION Schemes and Related Instruments not Liable to Duty- Section 8B

Section 8B has been inserted by the Finance Act, 2005, w.e.f. 13.5.2005. Section 8B states that, Notwithstanding anything contained in this Act or any other law for the time being in force-

A scheme for corporatisation or demutualisation, or both of a recognized stock exchange; or

Any instrument, including an instrument of, or relating to, transfer of any property, business, asset whether movable or immovable, contract, right, liability and obligation, for the purpose of, or in connection with, the corporatisation or demutualisation, or both of a recognized stock exchange pursuant to a scheme,

As approved by the Securities and Exchange Board of India under Sub-section (2) of Section 4B of the Securities Contracts (Regulation) Act, 1956 shall not be liable to duty under this Act or any other law for the time being in force.

Reduction, Remission and Compounding of Duties- Section 9

Section 9 empowers the Government, (Central or the State as the case may be), to reduce or remit, whether prospectively, or retrospectively, the duties payable on any instrument or class of instruments or in favour of a particular class of persons or members of such class.

Section 9(1)(b) also empowers the Central Government to provide for the composition or consolidation of duties of policies of insurance and in the case of issues by any incorporated company or other body corporate or of transfers where there is single transferee (whether incorporated or not) of debentures, bonds or other marketable securities.

Instruments chargeable with Duty for transactions in Stock Exchanges and Depositories – Section 9A

For transactions through stock exchanges and depositories:

- The stock exchange, clearing corporation, or depository collects the stamp duty on your behalf.
- They base the duty on the market value of the securities at the time of the transaction.
- You don't need to pay any separate stamp duty.
- This applies whether the trade involves actual delivery of securities or not.
- There's no stamp duty on transactions happening in International Financial Services Centres (IFSCs).

For transactions outside stock exchanges and depositories:

- The issuer (company issuing securities) or seller pays the stamp duty on the total market value (for issuance) or consideration amount (for sales and transfers).
- They pay it at the place where the company is registered.

Certain instruments connected with Mortgages of Marketable Securities to be chargeable as Agreements – Section 23A

Where an instrument (not being a promissory note or bill of exchange) –

- Is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or
- Makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

Valuation for Duty Under the Act- Section 20 To 28

According to Section 20, where an instrument is chargeable with ad-valorem duty in respect of any money expressed in any currency other than that of India, such duty shall be calculated on the value of such money in the currency of India, according to the current rate of exchange on the date of the instrument. The Central Government notifies from time to time, in the Official Gazette the rate of exchange for conversion of certain foreign currencies into Indian currency for this purpose and such rate shall be deemed to be the current rate.

Section 21 provides that in the case of an instrument chargeable with ad-valorem duty in respect of any stock or any marketable or other security, such duty shall be calculated on the the market value of such stock or security.

The market value for calculating the stamp-duty shall be, in the case of –

- Options in any securities, the premium paid by the buyer;
- Repo on corporate bonds, interest paid by the borrower; and
- Swap, only the first leg of the cash flow.

When shares or stocks are listed on a stock exchange, determining their price is straightforward. However, when they are not listed, valuation relies on the average of recent private transactions, typically obtained from the principal officer of the relevant company or corporation. In the absence of any transactions, the value is taken as par, unless reliable evidence of market value is presented. Section 22 of the Act presumes the price or value mentioned in the instrument for duty calculation to be correct until proven otherwise.

Section 23 states that if interest is explicitly payable as per the instrument, the duty charged should not exceed what it would have been without the mention of interest.

According to Section 24, if property is transferred in consideration of a debt owed, the debt becomes part of the consideration subject to ad-valorem duty. However, this doesn't apply to a certificate of sale as per Article 18 of the Act's First Schedule.

The aim of Section 24 is to ensure that ad-valorem duty is paid on the entire consideration representing the value of the property sold. This includes any debt charged on the property, as ruled in ***Collector of Ahmedabad v. Deepak Textile Industries, AIR 1966 Guj. 227.***

Section 25 addresses the computation of duty for annuities. It is relevant when annuity payments are secured by an instrument or when an annuity is the consideration for a conveyance. In such cases, the amount secured by the instrument or the consideration for the conveyance is deemed the value for duty calculation.

- Where the sum payable is for a definite period so that the total amount to be paid can be previously ascertained such total amount;
- Where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance – the total amount which, according to the terms of such instrument or conveyance will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and
- Where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance – the maximum amount which will be or which may be payable as aforesaid during the period of 12 years calculated from the date on which the first payment becomes due.

Section 26 of the Indian Stamp Act deals with situations where the value of what's being agreed upon is unknown at the time the document is created. This can potentially lead to lost tax revenue. Here's what the section does:

(1) **Limits Claims based on Stamp Duty Paid:** You can estimate a value for the document and pay stamp duty accordingly. However, you cannot claim more than that estimated value under the agreement.

(2) **Fixes Mistakes:** If you accidentally underpay the stamp duty, you can go through a process to pay the difference. Once corrected, the amount you can claim is based on the total amount of duty paid, not the initial amount.

Consideration to be Set Out- Section 27

Section 27 provides that the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable shall be fully and truly set forth in the instrument.

"Value of any property" would mean the real value of the property in the open market at the time the document was executed and not at the time when the executant acquired it. Where there is no value set forth in the instruments, there would be contravention of Section 27, but the omission does not render the document inadmissible or liable to be impounded and taxed in the manner provided in Section 35 ***(Vinayak v. Hasan Ali, AIR 1961 MP 6).***

The Collector cannot proceed to ascertain the value of the property with a view to causing the instrument to be stamped with reference to the value so ascertained by the Collector. The Act does not provide for any powers to the revenue authority to make an independent enquiry into the value of the property conveyed for determining the duty chargeable. ***(In Re. Muhammad Muzaffar Ali AIR 1922 All 82)***

APPORTIONMENT- (SECTION 28)

Section 28 of the Indian Stamp Act deals with how stamp duty is applied when property is sold in parts or under special circumstances:

- **Dividing the Consideration (Section 28(1):** If a property is sold whole but conveyed in parts, the total price can be divided any way both parties agree to. Each conveyance (document transferring ownership) needs to specify its share of the price, and stamp duty is paid on that amount.
- **Multiple Buyers (Section 28(2):** If property is sold to multiple people together but conveyed in parts, each part's conveyance is taxed based on its specified price.
- **Reselling Before Getting Ownership (Section 28(3):** If you buy property but then sell it to someone else before it's officially transferred to you, only the final sale price is taxed.
- **Selling in Parts Before Ownership (Section 28(4):** If you agree to sell property and then sell parts of it to different people before it's officially transferred to you, each conveyance from the original owner to each buyer is taxed based on their purchase price (minimum tax of Re. 1).
- **Conflicting Sales (Section 28(5):** If you agree to sell property to someone but then sell it to someone else who gets the ownership first, the tax is based on the price you received, with a maximum of Rs. 5/-, if you later also transfer ownership to the original buyer.

PERSONS LIABLE TO PAY DUTY- SECTION 29

(a) In the case of any instrument described in any of the following articles of Schedule-I, namely, -

(Administration Bond),
(Agreement relating to Deposit of Title-deeds, Pawn or Pledge),
(Bill of Exchange),
(Bond),
(Bottomry Bond),

(Customs Bond),
(Further Charge),
(Indemnity-bond),
(Mortgage-deed),
(Promissory-note),
(Release),
(Respondentia Bond),
(Security Bond or Mortgage-deed),
(Settlement),
(Transfer of any interest secured by a bond, mortgage-deed of policy of insurance),

by the person drawing, making or executing such instrument;

(*b*)	In the case of a policy of insurance other than fire insurance by the person effecting the insurance;
(*bb*)	In the case of a policy of fire-insurance – by the person issuing the policy;
(*c*)	In the case of a conveyance (including re-conveyance of mortgaged property) by the grantee: in the case of a lease or agreement to lease – by the lessee or intended lessee:
(*d*)	In the case of a counterpart of a lease – by the lessor;
(*e*)	In the case of an instrument of exchange 6 [including swap] –by the parties in equal shares
(*f*)	In the case of a certificate of sale – by the purchaser of the property to which such certificate relates;
(*g*)	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.
(*h*)	In the case of sale of security through stock exchange, by the buyer of such security
(*i*)	In the case of sale of security otherwise than through a stock exchange, by the seller of such security;
(*j*)	In the case of transfer of security through a depository, by the transferor of such security;
(*k*)	In the case of transfer of security otherwise than through a stock exchange or depository, by the transferor of such security;
(*l*)	In the case of issue of security, whether through a stock exchange or a depository or otherwise, by the issuer of such security; and
(*m*)	In the case of any other instrument not specified herein, by the person making, drawing or executing such instrument

Receipts - Section 30

Under Section 30 of the Act any person receiving any money exceeding twenty rupees in amount or any bill of exchange, cheque or promissory note for an amount exceeding five hundred rupees or receiving in satisfaction of a debt any movable property exceeding five hundred rupees in value, shall on demand by the person paying or delivering such money, bill, cheque, note, or property, give a duly stamped receipt for the same.

MODE OF STAMPING- SECTION 10 TO 16

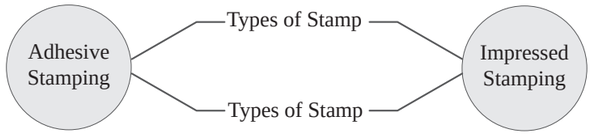
Duties how to be paid- Section 10

All duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps –

- According to the provisions herein contained; or
- When no such provision is applicable thereto-as the State Government may be rule direct.

Types of stamping

There are two types of stamping, namely:



Use of Adhesive Stamps – Section 11

Section 11 deals with the use of adhesive stamps. This Section provides that the following instruments may be stamped with adhesive stamps, namely –

- Instrument chargeable with a duty not exceeding 10 naya paisa excepts parts of bills of exchange payable otherwise than on demand and drawn in sets
- Bills of exchange and promissory notes drawn or made out of India
- Entry as an advocate, vakil or attorney on the roll of a High Court
- Notarial acts
- Transfer by endorsement of shares in any incorporated company or other body corporate

Cancellation of Adhesive Stamps – Section 12

This section talks about cancelling adhesive stamps affixed to legal documents in India. Here's the gist:

- ❖ Anyone who puts an adhesive stamp on a legal document that someone else already signed must cancel the stamp to prevent reuse. (Section 12(1)(a))
- ❖ The person signing a document with an adhesive stamp also needs to cancel it if it hasn't been done already. (Section 12(1)(b))
- ❖ If you don't cancel the stamp, you could face a penalty. (Section 63 - not mentioned here)
- ❖ Any document with an uncancelled adhesive stamp is considered unstamped and might not be valid. (Section 12(2))
- ❖ To cancel the stamp, you can write your name, initials, company initials, or the date across the stamp. There are other acceptable methods as well. (Section 12(3))

Mode of Cancellation of Adhesive Stamps

Valid Mode of Cancellation	Invalid Mode of Cancellation	Reference
Writing on or across the stamp his name or initials, or the name or initials of his firm with the true date of his writing or in any other effectual manner.	–	Section 12(3)
By merely drawing a line across it	–	Mahadeo Koeri v. Sheoraj Ram Teli, ILR 41 All 169; AIR 1919 All 196
–	If it is possible to use a stamp a second time, inspite of a line being drawn across it, there is no effectual cancellation.	Hafiz Allah Baksh v. Dost Mohammed, AIR 1935 Lah. 716
Drawing of diagonal lines right across the stamps with ends extending on to the paper of the document	–	Melaram v. Brij Lal, AIR 1920 Lah. 374
A cross marked by an illiterate person indicating his acknowledgement.	–	Kolai Sai v. Balai Hajam, AIR 1925 Rang. 209
–	Putting a date across the stamp by a third party on a date subsequent to the date on which the bill had been drawn	Daya Ram v. Chandu Lal, AIR 1925 Bom. 520 Cf. Rohini v. Fernandes, AIR 1956 Bom. 421, 423
–	Crossing by drawing lines and signing on the adjacent stamp was held to be not a cancellation of the first stamp	U. Kyaw v. Hari Dutt, AIR 1934 Rang. 364

In ***Mahadeo Koeri v. Sheoraj Ram Teli, ILR 41 All 169; AIR 1919 All 196,*** it was established that a stamp can be effectively cancelled by simply drawing a line across it.

Similarly, in ***Melaram v. Brij Lal, AIR 1920 Lah. 374,*** it was ruled that drawing diagonal lines across the stamps, extending onto the paper of the document, is a highly effective method of cancellation. In ***Kolai Sai v. Balai Hajam, AIR 1925 Rang. 209,*** it was affirmed that even a cross mark made by an illiterate individual to acknowledge the stamp can effectively cancel it.

In a case where adhesive stamps on a promissory note were cancelled by drawing lines in different directions, stretching beyond the stamp's edge onto the paper, it was deemed that the stamp had been adequately cancelled.

In another instance, where four stamps on an instrument were cancelled with varying numbers of lines drawn across them, it was concluded that the stamps were sufficiently cancelled to prevent reuse (In re ***Tata Iron Steel Company, AIR 1928 Bom. 80***). It was also affirmed that putting two lines crossing each other is an effective cancellation (AIR 1961 Raj. 43).

However, in ***Daya Ram v. Chandu Lal, AIR 1925 Bom. 520***, it was ruled that putting a date across the stamp by a third party after the bill's drawing date is not considered proper cancellation.

Instruments Stamped with impressed Stamps how to be written (Writing on Stamp Paper) – Section 13

Section 13 provides that every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

The expression, 'face of the instrument' is not to be interpreted as meaning that the document must commence on the side on which the stamp is impressed or that both sides of the paper or parchment may not be written upon. In Dowlat Ram Harji v. Vitho Radhoji, 5 Bom. 188, it was held when the face of a deed or document is mentioned, no particular side of the parchment or paper, on which the deed or document is written, is thereby indicated. Even the last line may constitute the face (Westroph, CJ.).

Only one Instrument to be on same Stamp – Section 14

Section 14 prohibits the use of stamp paper on which an instrument already charged with duty has been written for any subsequent instrument, except for specific endorsements. The intention behind this section is to prevent the reuse of stamped paper for another instrument, thereby avoiding the payment of duty for the second instrument.

An alteration to the original instrument, if significant enough to necessitate a new stamp, falls under this prohibition. The definition of a "material alteration" is crucial, as it determines whether an alteration converts the original instrument into a second one under Section 14. A material alteration is one that changes the nature of the instrument itself, impacts the contract it contains, alters evidence of any charge, or modifies the liability under the instrument. Additionally, an alteration that renders the instrument invalid or alters its operation is considered material. Any alteration with the potential to affect the contract contained in the instrument is deemed material.

Denoting Duty- Section 16

Section 16 of the Act deals with denoting duty. The object of this section is to spare parties to an instrument, the inconvenience of having to produce (in cases in which the duty payable on an instrument depends upon the duty already paid on another instrument), and the original or principal instrument in order to prove that the second instrument has been duly stamped.

Section 16 provides that where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty, shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first mentioned instrument, by endorsement under the hand of the Collector of Stamps or in such other manner as the State Government may by rule prescribe.

TIME OF STAMPING INSTRUMENTS- SECTION 17 TO 19

Instruments executed inside India:

Section 17 provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.

Instruments executed outside India:

Section 18 relates to foreign instruments (other than bills and notes), received in India; Whereas Section 19 deals with Foreign bills and notes received in India.

According to Section 18(1), every instrument chargeable with duty executed only out of India and (not being a bill of exchange or promissory note) may be stamped within three months after it has been first received in India.

The object of Section 18 is to facilitate the stamping of the documents within a period of three months, in as much as, by the very nature of things, Section 17 relating to instruments executed in India cannot be complied with. Section 18 is intended to mitigate the inconvenience and hardship that will entail if the instrument concerned is required to be stamped before or at the time of execution as laid down in Section 17. Instrument executed in India is not within Section 18 **(Nath Bank v. Andhar Mamik Tea Co., AIR 1960 Cal 779).**

As far as bills of exchange and promissory notes are concerned, Section 19 makes an elaborate provision. Any bill of exchange payable otherwise than on demand or promissory note drawn or made out of India must be stamped and the stamp cancelled, before the first holder in India deals with the instrument, i.e., presents the same for acceptance or payment, or endorses transfers or otherwise negotiates the same in India.

INSTRUMENTS NOT DULY STAMPED – TREATMENT AND CONSEQUENCES (IMPOUNDING)- SECTION 33 to 48

Examination and Impounding of Instruments- Section 33

Section 33 contains a mandate on certain officials to impound an instrument which is not duly stamped. Section 33(1) provides that every person having by law or consent of parties, authority to receive evidence and every person in charge of a public office, except an officer of police before whom any instrument, chargeable in his opinion, with duty is produced or comes in the performance of his functions, shall, if it appears to him that the instrument is not duly stamped, impound the same.

Section 33(2) provides that, for that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that –

> Nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;
>
> In the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The term "produced" must be interpreted accurately. It refers to documents presented in response to a summons or voluntarily for a judicial purpose, such as supporting evidence. It does not encompass documents that happen to come into a judge's possession incidentally. Therefore, a court is not justified in impounding a document that a witness has not been called upon to produce (***Narayandas v. Nathuram***).

Similarly, if a party has produced a copy of a document before a court, the court cannot compel the party to produce the original document for impounding, even if it receives information that the copy is inadequately stamped. The party has the right to refuse to comply with the court's order in this regard (***Uttam Chand v. Permanand***).

In a case where a Magistrate issued a warrant to discover registers maintained by the accused containing unstamped documents, and during the search, the registers were seized and presented before the Magistrate, it was ruled that such documents could be impounded. The term "comes" is broad enough to include documents produced during a search conducted under a warrant (***Emperor v. Balu Kuppayyan, ILR 25 Mad. 525***). However, it's important to note that this ruling should be limited to the specific circumstances of the case.

Unstamped Receipts-Section 34

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 a discretion either to impound or to require the receipt to be stamped. This section applies where the receipt is chargeable with a duty not exceeding 10 naya paisa. The officer concerned can, instead of impounding the receipt, require a duly stamped receipt to be substituted therefore.

Instruments not duly Stamped inadmissible in Evidence- Section 35

(*a*)	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.
(*b*)	The proviso to Section 35 provides as under:
	(*i*) Any instrument not being an instrument chargeable with a duty not exceeding 10 naya paisa only, or a bill of exchange, or promissory note, subject to all such expectations, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of Rs. 5/- or when ten times the amount of the proper duty or deficient portion thereof exceeds Rs. 5/-, on a sum equal to ten times such duty or portion;
	(*ii*) Where any person from whom a stamped receipt could have been demanded has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, on payment of a penalty of Re. 1/- by the person tendering it;
	(*iii*) Where a contract or agreement of any kind is affected by the correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
	(*iv*) Nothing contained in Section 35 shall prevent the admission of any instrument in evidence in any proceeding in a criminal Court other than the proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;
	(*v*) Also nothing contained in Section 35 shall prevent the admission of any instrument in the Court, when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by Section 32 or any other provision of the Act.
(*c*)	The words 'shall not be admissible in evidence' used in this Section only means that the document shall not be made the basis of the decision or should not be relied upon to support any finding (Sheonath Prasad v. Sorjoo Nonia, 1943 ALJ, 189; AIR 1943 All 220 (FB)). There is no embargo upon proving the surrounding circumstances.

(*d*)	The words 'for any purpose' used in this Section would have their natural meaning. Where an unstamped document is admitted in proof of some collateral matter, it is certainly admitted in evidence for that purpose, which the Act prohibits. In Ram Ratan v. Parmanand, ILR 1946 Lah. 63, it was held that an unstamped partition deed cannot be used to corroborate the oral evidence for the purpose of determining even the factum of partition as distinct from its term. The words 'for any purpose' would in effect mean 'for each and every purpose whatsoever without any exception'.
(*e*)	It is immaterial whether the purpose is the main purpose or a collateral one. The words 'acted on' means that nothing can be recovered under the instrument unless it has a proper stamp. Similarly, where a suit is brought upon an instrument which is not duly stamped, the admission of the contents of the instrument made by the defendant does not avail the claimant and a decree cannot be based on such instruments. Admitting an instrument in evidence also amounts to acting upon it and an instrument which should have been stamped but is not stamped is not admissible in evidence for any purpose whatsoever.
(*f*)	Where an unstamped instrument is lost, the party relying on it is helpless and no payment of penalty can enable admission of secondary evidence.
(*g*)	The provisions of Section 35 are not attracted to a case where the contention about improper stamping of the instrument forming the subject matter of a suit was not raised at the trial stage.

An insufficiently stamped instrument is not an invalid document and it can be admitted in evidence on payment of penalty. [K. Narasimha Rao v. Sai Vishnu,

ADMISSION OF INSTRUMENTS (WHERE NOT TO BE QUESTIONED) - SECTION 36

Section 36 provides that where an instrument has been admitted in evidence, such an admission shall not (except as provided in Section 61) be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the Court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. (Javer Chand and ors. v. Pukhraj Surana, AIR 1961 SC 1665

ADMISSION OF IMPROPERLY STAMPED INSTRUMENTS - SECTION 37

Under Section 37, opportunity is given to a party, of getting a mistake rectified when a stamp of proper amount, but of improper description has been used. Under this section, the State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, the instrument may, on payment of the duty with which the stamp is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

DEALING WITH INSTRUMENTS IMPOUNDED

Section 38 deals with instruments impounded under Section 33.

When the person impounding an instrument under Section 33 and receiving the same in evidence (upon payment of penalty under Section 35 or, of duty under Section 37) shall send, to the Collector of Stamps, an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof and shall send such amount to the Collector or to such person as the Collector may appoint in this behalf.

Subsection (2) states that in every other case, the person so impounding an instrument shall send it in original to the Collector.

Collector's Power to Refund Penalty paid Under Section 38, (1) - Section 39

Section 39 vests the Collector with certain powers to refund penalty recovered by a court on impounding a document not duly stamped when produced before it.

Under Section 38, the court impounding the instrument and realising the penalty has to forward an authenticated copy of the instrument and the amount of penalty recovered to the Collector. The Collector, on examining the instrument so received by him may, in his discretion, refund the whole penalty if it had been imposed for contravention of Section 13 or Section 14 of the Act and in any other case any portion of the penalty in excess of Rs. 5/- in cases where a copy of the instrument under Section 38(1) has been sent to him. The Collector can act suo motu without any application in this behalf being made by a party affected.

When such an instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

Collector's Power to Stamp Instrument Impounded

Section 40 deals with Collector's powers to stamp an instrument which is impounded.

Under Section 40(1), the Collector when impounding any instrument under Section 33, or receiving any instrument under Section 38(2) not being an instrument chargeable with duty not exceeding 10 naya paisa only or a bill of exchange or promissory note, shall adopt the following procedure:

- If he is of the opinion that instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable as the case may be;
- If he is of the opinion that such instrument, is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of Rs. 5/-, if he thinks fit and amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of Rs. 5/-

Instruments unduly Stamped by Accident- Section 41

Section 41 addresses situations where an individual voluntarily informs the Collector that an instrument lacks proper stamping. If the Collector determines that the failure to pay the correct duty was due to accident, mistake, or urgent necessity, they may accept the deficient amount and endorse the instrument certifying that the proper duty has been imposed. To benefit from this provision, the instrument must be presented to the Collector within one year from its execution or first execution. If the instrument is brought to the Collector's attention after this one-year period, Section 47 does not apply, and the Collector must proceed under Section 42 along with Sections 33 and 40. If, within the one-year period, the Collector is uncertain about the duty amount, they may refer the matter to the Chief Controlling Revenue Authority and act based on their decision. However, if no such reference is made, the Collector's decision stands final, and the Chief Controlling Revenue Authority cannot overturn it.

Endorsement of Instrument on which duty has been paid under Sections 35, 40 and 41- Section 42

Section 42 addresses situations where duty and penalty, if applicable, have been collected by the court, another authority, or the Collector. In such cases, the entity collecting the duty and penalty is required to endorse the instrument indicating the amount paid and the name and residence of the payer. Once this endorsement is made, the instrument becomes admissible in evidence and can be registered and acted upon as if it had been properly stamped. The duty and penalty referred to in this section pertain to those outlined in Sections 35, 40, or 41, depending on the circumstances. However, instruments admitted in evidence upon payment of duty and penalty under Section 35 cannot be returned to the person who surrendered them to the impounding officer until one month has elapsed from the date of impounding, unless the Collector has certified that further detention is necessary and has not revoked such certification. Additionally, Section 42 does not impact the provisions of clause (3) of Section 144 of the Code of Civil Procedure, 1889, which corresponds to the proviso to Order 13, Rule 9(1) in the present Code.

PROSECUTION FOR OFFENCES AGAINST STAMP LAW- SECTION 43

Section 43 deals with prosecutions for offences against the Stamp Law. This section provides that a levy of a penalty or payment thereof in respect of an unstamped or insufficiently stamped document (as provided for in Chapter IV) does not necessarily exempt a person from liability for prosecution for such offence. However, the proviso to the section clarifies that no such prosecution shall be instituted in the case of any instrument in respect of which a penalty has been paid, unless it appears to the Collector that the offence was committed with the intention of evading the payment of proper duty. On receipt of a copy of the instrument impounded under Section 38, the Collector can initiate criminal proceedings if he sees reasons therefor.

RECOVERY AND REFUNDS

Recovery of Duty or Penalty in certain cases- Section 44

The remedy is available to a person who, under the Act, was not bound to bear the expense of providing the proper stamp for such instrument. Such a person shall be entitled to recover, from the person bound to bear such expense, the amount of duty or penalty, if any, paid. For the purpose of such recovery, any certificate granted in respect of such instruments under the Act shall be conclusive evidence of the matters therein certified. Sub-section (3) of Section 44 further provides that the amounts so recoverable may, if the court thinks fit, be included in any order as to cost in any suit or proceedings to which such persons are parties and in which such instrument has been tendered in evidence. If the court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

Refund of Duty or Penalty in certain cases by Revenue Authority- Section 45

Section 45 pertains to the authority of the Revenue Authority to reimburse penalties exceeding the duty payable on an instrument in specific situations. Section 39 of the Act authorizes the Collector to refund a portion or, in certain cases, the entirety of the penalty paid under Section 35. Additionally, Section 45 empowers the Chief Controlling Revenue Authority to issue refund orders. This additional authority granted to the Chief Controlling Revenue Authority aims to rectify any errors or oversights made by the Collector in ordering refunds in deserving cases. The Section stipulates that if a penalty is paid under Section 35 or Section 40, the Chief Controlling Revenue Authority may, upon receiving a written application within one year from the payment date, decide to refund the penalty entirely or partially. Furthermore, if, in the Chief Controlling Revenue Authority's view, stamp duty in excess of the legally chargeable amount has been collected and paid under Section 35 or Section 40, the authority may, upon receiving a written application within three months of the order imposing the charge, refund the surplus amount.

Powers of the Collector under section 39	Powers of Controlling Revenue Authority under section 45
Refund of penalty only.	Refund of Penalties and duties where they have been paid in excess.
Power to refund penalty is restricted only to two cases mentioned in Section 39.	Powers under Section 45 are not subject to any such limitation.
There is no time limit for the Collector to exercise his powers to refund.	Section 45 provides for the time limits.
The power under Section 39 is routine function of the Collector.	The power under Section 45 is to be exercised only when an application is made by a party.
The collector may also use his discretion.	The power under Section 45 is a purely discretionary one and the Chief Controlling Revenue Authority cannot be compelled to exercise his power by any further proceedings.

Non-liability for loss of Instruments sent under Section 38- Section 46

Section 46 provides that where any instrument sent to the Collector under Section 38(2) is lost, destroyed during transmission, the person sending the same, shall not be liable for such loss, destruction or damage.

However, Section 38(2) provides that when any instrument is to be sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at his expense and authenticated by the person impounding such instruments.

Power to Stamp in certain cases- Section 47

Under Section 47 when any bill exchange or promissory note chargeable with a duty not exceeding 10 naya paise is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in the manner provided in the Act, may pay the sum payable upon such bill or note and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid and such bill or note shall, so far as respects the duty, be deemed good and valid. However, nothing contained in this section shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill or note.

Recovery of Duties and Penalties- Section 48

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. This section provides for the mode of realization of duty or penalty or other sums not voluntarily paid.

Allowance for Spoiled Stamps- Section 49

Section 49 deals with different circumstances in which refund would be admissible in respect of impressed stamps not used.

The section applies only to impressed stamps and not adhesive stamps.

Section 49 provides that subject to such rule as may be made by the State Government, as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in Section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:

Clause (a) of the section refers to cases where the stamp paper is spoiled before any document has been written thereon, or is spoiled in the course of writing and before execution:

Clause (b) refers to cases where the document has been written out wholly or in part but not executed.

Clause (c) refers to bills of exchange payable otherwise than on demand and promissory notes, when these have not been accepted or made use of.

Clause (d) deals with refunds after execution

(d) The stamp used for an instrument executed by any party thereto which–

(1)	Has been afterwards found to be absolutely void in law from the beginning;
(2)	Has been afterwards found unfit, by reason of any error or mistake therein, for purpose originally intended;
(3)	By reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;
(4)	For want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;
(5)	By reason of the refusal of any person to act under the same or to advance any money intended to be thereby secured or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;
(6)	Becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;
(7)	Is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;
(8)	Is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped

Time Limits- Section 50

Section 50 prescribes the time limit within which an application for relief in respect of impressed stamps spoiled, can be made; different time limits have been specified for the purpose, namely:

- In the cases mentioned in clause (d)(5) of Section 49, within two months of the date of the instrument;
- In the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;
- In the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Unused Forms- Section 51

Section 51 of the Act enables the Chief Controlling Revenue Authority or the Collector if authorised by the Chief Controlling Revenue Authority, for such purpose to allow refunds in cases where refunds of stamps on printed forms used by bankers, incorporated companies/bodies corporate if required. Allowance may be made without limit of time, for stamped papers used for printed forms of instruments any bankers or by any incorporated company or other body corporate, if for any sufficient reasons such forms have ceased to be required by the said banker, company or body corporate: provided that the Chief Controlling Revenue Authority or the Collector, as the case may be, is satisfied that the duty in respect of such stamped papers has been duly paid.

Misused Stamps- Section 52

Section 52 deals with allowance for misused stamps and applies to both impressed and adhesive stamps in the following instances:

- When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or
- When any stamp used for an instrument has been inadvertently rendered useless under Section 15, owing to such instrument having been written in contravention of the provisions of Section 13

The Collector may, on application made within six months after the date of instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being restamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance for Spoiled or Misused Stamps (how to be made)- Section 53

Under Section 53, in any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof:

- Other stamps of the same description and value; or
- If required and he thinks fit, stamps of any other description to the same amount in value; or

At his discretion, the same value in money, deducting ten naya paisa for each rupee or fraction of a rupee.

Allowance for Stamps not Required for use- Section 53

Section 54 of the Act enables a person to obtain a refund of the value of stamps purchased by him, if he has no immediate use thereof. Under this section, when any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting ten naya paise for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled and proving to the Collector's satisfaction:

- That such stamp or stamps were purchased by such person with a bona fide intention to use them; and
- That he has paid the full price thereof; and
- That they were so purchased within the period of six months next preceding the date on which they were so delivered.

Allowance on Renewal of Certain Debentures - Section 55

Section 55 is intended to relieve companies renewing debentures issued by them from the liability to pay stamp duty on both the original and the renewed debenture

A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes:

- The issue of two or more debentures in place of one original debenture, the total amount secured being the same;
- The issue of one debenture in place of two or more original debentures, the total amount secured being the same;
- The substitution of the name of the holder at the time of renewal for the name of the original holder; and
- The alteration of the rate of interest of the date of payment hereof.

Reference and Revision- Section 56 to 61

Section 56(2) allows any Collector, when uncertain about the duty amount applicable to an instrument under Sections 31, 40, or 41, to draft a case statement and submit it, along with their opinion, to the Chief Controlling Revenue Authority for resolution. The Authority will review the case and communicate its decision to the Collector, who will then assess and levy the duty accordingly.

Under Section 57(1), the Chief Controlling Revenue Authority can present any case referred to it under Section 56(2) or otherwise encountered, along with its opinion, to the High Court for adjudication by a panel of at least three Judges, with the majority decision prevailing.

Section 58 allows the High Court to return a case to the Revenue Authority for further clarification if it deems the statements insufficient. After deliberation, the High Court will issue its judgment to the Authority for case resolution.

Section 60 permits subordinate Courts to refer similar cases to the High Court, albeit through proper channels. Additionally, Section 61(1) empowers a Court to consider, either on its own initiative or upon the Collector's request, an order from a lower Court regarding the instrument's stamping status. If the Court disagrees with the lower Court, it can request the instrument's production and may impound it if necessary, with copies of its order sent to the Collector and the originating office or Court.

PROSECUTION

As per Section 61(4), the Collector has got the power notwithstanding anything contained in the order of the lower court, to prosecute a person if any offence against the Stamp Act which he considers that the person has committed in respect of such an instrument. The prosecution is instituted when he is satisfied that the offence is committed with an intention of evading the proper stamp duty. The order of the lower Court as to the instrument shall be valid except for the purposes of prosecution in this respect.

OFFENCES AND PENALTIES

The provisions are as under:

Penalty for executing, etc., instrument not duly stamped

As per Section 62(1), any person

Drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or 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

Executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or

Voting or attempting to vote under any proxy not duly stamped shall, for every such offence, shall be punishable with fine which may extend to five hundred rupees.

Sub-section (2) of Section 62, provides that if a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, its managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

Penalty for Failure to Comply with Provisions of Section 9A

According to section 62A(1), Any person who:

Being required under section 9A(1) to collect duty, fails to collect the same; or

Being required under section 9A(4) to transfer the duty to the State Government within fifteen days of the expiry of the time specified therein, fails to transfer within such time,

Shall be punishable with fine which shall not be less than one lakh rupees, but which may extend up to one per cent. of the collection or transfer so defaulted.

Penalty for Failure to Cancel Adhesive Stamp

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 one hundred rupees (Section 63). The criminal intention is necessary for an offence under this Section.

Penalty for omission to comply with provisions of section 27

As per Section 64, any person who, with intent to defraud the Government-

- Executes any instrument in which all the facts and circumstances required by Section 27 to be set forth in such instrument are not fully and truly set forth; or
- Being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or
- Does any other Act calculated to deprive the Government of any duty or penalty under this Act;

Shall be punishable with fine which may extend to five thousand rupees.

Penalty for Refusal to Give Receipt, And for Devices to Evade Duty on Receipts

Upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered shall be punishable with fine which may extend to one hundred rupees (Section 65).

Penalty for not Making out Policy or Making one not Duly Stamped

As per Section 66, any person shall be punishable with fine which may extend to Rs. 200/- if he

- Receives, or takes credit for any premium or consideration for any contract of insurance and does not, within one month after receiving or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or
- Makes, executes or delivers out any policy which is not duly stamped or pays or allows in account, or agees to pay or to allow in account, any money upon, or in respect of, any such policy.

Penalty for not drawing full number of bills or marine policies purporting to be in set

As per Section 67, if any person drawing or executing a bill of exchange (payable otherwise than on demand) or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

Penalty for post-dating bills, and for other devices to defraud the revenue

Any person who, (a) with intent to defraud the Government, of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or (b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note; or in any manner negotiates the same; (c) with the like intent, practices or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force; shall be punishable with fine which may extend to one thousand rupees. Intention to defraud is an essential ingredient for offence under Section 68.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale

If any person appointed to sell stamps who disobeys any rule made under Section 74, and any person not so appointed who sells or offers for sale any stamp other than a ten naya paise or five naya paise adhesive stamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both (section 69). Before instituting criminal proceedings under this section against any person, sanction of the Collector must be obtained. Otherwise, the proceedings will be vitiated. A criminal court having jurisdiction to try offences under Cr. P.C. can try such offences.

CONCEPT OF E-STAMPING E-STAMP

E-stamping is a computer based application and a secured electronic way of stamping documents. The prevailing system of physical stamp paper/franking is being replaced by the E-stamping system. To reduce the instances of counterfeits and errors, the government introduced the e-stamping facility in 2013. The Stock Holding Corporation of India Limited (SHCIL) is the Central Record Keeping Agency (CRA).

Through modernisation, there has been an introduction of E-stamp or as known as an electronic stamp. E-Stamping is a computer-based procedure and a secure manner for the state to pay non-judicial stamping duties. The prevailing system of physical stamp paper / franking is being replaced by the E-Stamping system. The benefits of e-Stamping are as under :

Benefits of E-stamp

1.	E-stamps are less time-consuming;
2.	They are very easily accessible;
3.	They are cost saving;
4.	e-Stamp Certificate generated is tamper proof;
5.	e-Stamp Certificate generated has a Unique Identification Number;
6.	Easy accessibility;
7.	Security;
8.	Cost savings and User friendly.

Government of India, Ministry of Finance, Department of Economic Affairs appointed Stock Holding Corporation of India Limited (SHCIL) to act as Central Record Keeping Agency (CRA).

Verification of e-stamping

An e-Stamp can be verified online by clicking on verify e-Stamp certificate and entering the required details i.e

1.	State
2.	Certificate Number (UIN)
3.	Stamp Duty Type (Description of Document)
4.	Certificate Issue Date
5.	6 character alphanumeric string

UIN is a Unique system generated number mentioned on the e-Stamp Certificate. Anybody, having the Unique Identification Number, can check the authenticity of the Certificate through www.shcilestamp.com.

Authorised Collection Center (ACC)

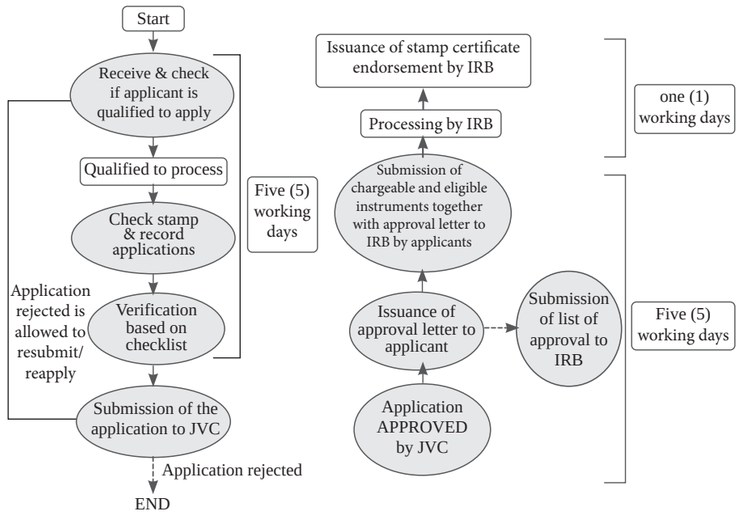
ACC means Authorised Collection Center (ACC). Its an agent appointed by SHCIL. ACC is the intermediary between the CRA and Stamp Duty payer. Schedule Banks and Post Offices can become ACCs by completing the registration process.

Mode of Payment of Stamp Duty

The stamp duty may be paid through the following modes:

1.	Cash
2.	Cheque
3.	Demand Draft
4.	Pay Order
5.	RTGS
6.	NEFT
7.	Account to Account transfer.

PRACTICAL ASPECTS WITH REGARD TO THE CALCULATION AND PAYMENT OF STAMP DUTY



Notes:

1.	You will not be demanded for payment unless the form got approved from the SDM office.
2.	Once the form is approved, you need to make the payment electronically and generate the challan.
3.	Print the challan after payment and visit either SDM office, Sham Nath Marg, Delhi or any nearest office of SHCIL.
4.	They will issue a Stamp paper equivalent to the amount of stamp duty.
5.	Submit the stamp paper to the SDM office, Sham Nath Marg, Delhi.
6.	The SDM office will provide you the certificate of payment of stamp duty.

The certificate issued by the department will be under the seal of the SDM. Nowadays, the certificate is issued electronically.

Adjudication as to proper Stamp – Section 31

Under Section 31(1) when

- An instrument, (whether executed or not and whether previously stamped or not), is brought to the Collector, and
- The person bringing it applies to have the opinion of that officer as to the duty if any, with which it is chargeable, and
- Pays a fee (not exceeding Rs. 5 and not less than 50 naya paise as the Collector may direct),

The Collector shall determine the duty if any with which in his judgment, the instrument is chargeable.

Certificate by Collector – Section 32

When an instrument is brought to the Collector with an application for having an opinion as to the proper duty chargeable thereon, and

- ❖ The Collector is of the opinion that the instrument is already fully stamped or
- ❖ The duty determined by the Collector under Section 31 or such a sum as (with the duty already paid in respect of the instrument), is equal to the duty so determined, has been paid,

The Collector shall certify by endorsement on such instrument, that the full duty (stating the amount) with which it is chargeable has been paid.

The Collector shall not make any endorsement on any instrument under Section 32, where –

- Any instrument is executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;
- Any instrument is executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or
- Any instrument chargeable with a duty not exceeding 10 naya paise or any bill of exchange or promissory note, is brought to him after the drawing or execution thereof, on paper not duly stamped.

In effect, the proviso to Section 32(3) lays down the time limit within which the Collector of Stamps can make any endorsement on any instrument brought to him, for his opinion as to the duty chargeable thereon.

13 LAW RELATING TO REGISTRATION OF DOCUMENTS

The Registration Act provides the provisions relating to registration of the documents with the respective authority. Both i.e. Stamping and Registration play a vital role in transferring a property. These two makes a document much more authentic and allows them to function smoothly without any hindrance. The Registration Act, 1908 lays down all essential amendments that show the importance of registering a document. The Registration Act, 1908 is the law relating to registration of documents. The registration is of a document and not of a transaction.

Documents which are Compulsorily Registrable – Section 7

There are certain documents which are compulsorily registrable. Section 7 of the Registration Act, 1908 lays down all the documents which are compulsorily required to be registered and those documents are:

(*a*)	Instruments of gift of immovable property	In Kalyana Sundram v. Karuppa, AIR 1927 PC 42, the Privy Council held that while registration is required for enforcing a gift of immovable property, it does not delay the gift until registration occurs. Once the donor hands over the gift instrument to the donee and it is accepted, the donation is complete. If the instrument is presented for registration by an interested person within the prescribed time, the Registrar must register it. The donor's death or express revocation does not prevent registration if other conditions are met.
(*b*)	Another non-testamentary instrument	Non-testamentary instruments that aim to create, declare, assign, limit, or extinguish any present or future right, title, or interest in immovable property, valued at one hundred rupees or more, must be registered.
(*c*)	Non-testamentary instruments which acknowledge the receipt or payment:	Non-testamentary instruments that acknowledge the receipt or payment of consideration related to the creation, declaration, assignment, limitation, or extinction of any right, title, or interest in immovable property must be registered. To be registrable, a receipt must
		(*i*) it must be the receipt of a consideration; and
		(*ii*) It must clearly acknowledge the payment or consideration for creating, declaring, assigning, limiting, or extinguishing an interest of Rs. 100 or more in immovable property.
(*d*)	Lease of immovable property from year to year:	Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
	Exception:	A lease for one year that includes an option for the tenant to renew for an additional year or another term is not considered a lease exceeding one year and does not require registration under this clause.
(*e*)	Non-testamentary instruments transferring or assigning any decree or order of a Court:	Non-testamentary instruments transferring or assigning any court decree, order, or award that creates, declares, assigns, limits, or extinguishes any right, title, or interest of Rs. 100 or more in immovable property must be registered.

A distinction should be drawn between

A right in or to property and

such rights as are merely incidental to the ownership of property and are really in the nature of powers or options which every owner is free to exercise in dealing with his property in a particular way. The latter may be described as rights in relation to the property, but strictly speaking, they are not rights in or to property.

Exceptions to Section 17(1)

The registration of the non-testamentary documents mentioned in clauses (b) and (c) of Section 17(1) is subject to the exceptions provided in Section 17. These are as follows:

(*i*)	any composition deed, i.e., every deed the essence of which is composition; or
(*ii*)	any instrument relating to shares in Joint Stock Company; or
(*iii*)	any debentures issued by any such Company; or
(*iv*)	any endorsement upon or transfer of any debenture; or
(*v*)	any document other than the documents specified under clause (e) above creating merely a right to obtain another document which will, when executed create, declare, assign, limit or extinguish any such right, title or interest; or
(*vi*)	any decree or order of a court; or
(*vii*)	any grant of immovable property by the Government; or
(*viii*)	any instrument of partition made by Revenue-officer; or
(*ix*)	any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
(*x*)	any order granting loan made under the Agriculturists Loans Act, 1884 or instrument for securing the repayment of a loan made under that Act; or
(*xi*)	any order made under the Charitable Endowments Act, 1890 vesting any property in a treasurer of a charitable endowment or divesting any such Treasurer of any property; or
(*xii*)	any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money, due under a mortgage when the receipt does not purport to extinguish the mortgage; or
(*xiii*)	any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

Documents of which registration is optional – Section 18

All the documents that are not included in Section 17 of The Registration Act, 1908 have the option of the optional registration.

- 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.

Time Limit for Registration

Document Executed in India	Document Executed Outside India
A document other than a will must be presented within four months of its execution. In case of urgent necessary, etc. the period is eight months, but higher fee has to be paid.	It has been for registration within four months after its arrival in India.

A document other than a will must be presented within four months of its execution. But in any case, the delay shall not exceed four months. That means a document shall be presented before the concerned Registering Officer for registration within four months without any penalty; and within eight months by paying penalty. But no document shall be accepted for registration after the lapse of eight months from the date of signing (execution) by the parties. These limits are mandatory (Ram Singh v. Jasmer Singh, AIR 1963 Punj. 100).

Re-registration	Section 23A provides for the re-registration of certain documents. The section is mainly intended to deal with situations where the original presentation was by a person not duly authorised.
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 The registration is "partial" in regard to each party.
Documents Executed Out of India- Section 26	As per Section 26, where the registering officer 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 document for registration on payment of proper registration fee. Section 26 indicates that the Act applies to ex-India documents relating to property in India.
Place of Registration-Section 28	Section 28 states that documents affecting immovable property, as specified in Sections 17(1) and (2) and Sections 17(1)(a)(b)(c)(d)(e), must be presented for registration at the Sub-Registrar's office within the sub-district where the property is located. Other documents can be registered either where they were executed or at any Sub-Registrar's office chosen by the executors. Registering such documents elsewhere is void, as established in Harendra Lal Roy Chowdhuri v. Hari Dasi Debi, (1914) ILR 41 Cal. 972, 988 (PC);

Place for Registering Other Documents- Section 29

Every document not being a document referred to in section 28 or a copy of a decree or order, may be presented for registration:

- ❖ Either in the office of the Sub-Registrar in whose sub-district the document was executed, or
- ❖ In the office of any other Sub-Registrar under the State Government at which all the persons executing and claiming under the document desire the same to be registered.

Copy of a decree or order

According to section 29 of the Registration Act, a copy of a decree or order may be registered with the Sub–Registrar within whose sub-district it was made. If the decree or order does not affect immovable property, it may be presented for registration in the office of any other Sub-Registrar under the State Government at whose office all persons claiming under the decree or order desire it to be registered.

Presenting of Documents for Registration

Section 32 specifies the persons who can present documents for registration at the proper registration office. Such persons are as follows:

- some person executing or claiming under the same, or in the case of a copy of a decree or order, claiming under the decree or order, or
- The representative or assign of such person, or
- The agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in the manner hereinafter mentioned.

It is immaterial whether the registration is compulsory or optional; but, if it is presented for registration by a person other than a party not mentioned in Section 32, such presentation is wholly inoperative and the registration of such a document is void ***(Kishore Chandra Singh v. Ganesh Prashad Bhagat, AIR 1954 SC 316).***

Compulsory affixing of photographs, etc.

Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document:

However, where such a document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.

Enquiry before Registration by registering officer

For registering a document, the persons executing such document or their representatives, assigns or authorised agents must appear before the registering officer within the time allowed for presentation. (Section 34)

Section 34, the expression "person executing" not only includes the agent who has signed (with authority), but also the principal who is a party ***(Puran Chand v. Manmotho Nath, AIR 1928 PC 38)***

Who is entitled to present Wills and authorises to adopt	The testator, or after his death, any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration. In case of authority for adoption, the donor or (after his death) the donee, or any authority to adopt, or the adoptive son, may present it to any Registrar or SubRegistrar for registration. (Section 40) Thus, even a legatee can present a will.
Registration of will and authority to adopt	❖ A will, or an authority to adopt, if presented by the testator or the donor, may be registered in the same manner as any other document. [Section 41(1)] ❖ If presented by any other person entitled to present it, it shall be registered if the registering officer is satisfied about the particulars mentioned in Section 41(2)

Deposit of Wills (Sections 42 to 46)

Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent, if any, and with a statement of the nature of the document.

On receiving such documents, the Registrar on being satisfied shall transcribe in his Register Book No. 5, the superscription and shall note the date, time, month, etc. of such receipt and shall then place and retain the sealed cover in his fire-proof box.

However, the testator may withdraw it by applying for the same and the Registrar shall deliver it accordingly.

Register document when operative

- ❖ A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its 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, although the former deed is registered subsequently to the later one (K.J. Nathan v. S.V. Maruthi Reddy, AIR 1965 SC 430; Mulla page 207).

Registered document relating to property when to take effect against oral Agreement

Priority to rights accorded by different transfers is governed by the principles embodied in the maxim qui prior tempore potior est jure that is "he who is first in time is better in law". But this general rule is subject to exceptions created by Sections 48 and 50. Section 48 refers to the priority of the registered agreements over oral agreements and Section 50 refers to the priority of registered agreements over non-registered agreements. (Section 48)

Effect of prior notice

In spite of the explicit wording of Section 48, it has for a long time been held, that a subsequent registered deed will not prevail over a prior unregistered deed or a prior oral transaction if the subsequent transferee had notice of the prior transaction.

CONSEQUENCES OF NON-REGISTRATION OF DOCUMENTS REQUIRED TO BE REGISTERED

Section 49 of the Registration Act provides that no document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall:

- Affect any immovable property comprised therein; or
- Confer any power to adopt; or
- Be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

K. Narasimha Rao v. Sai Vishnu, AIR 2006 NOC (A.P.)

Case Specifics:

- ❖ The settlement deed in question was both unregistered and insufficiently stamped.
- ❖ The plaintiff raised an objection regarding the insufficient stamping of the document.

Court's Order:

- ❖ The court ordered the impounding of the document due to insufficient stamping.
- ❖ The defendant did not comply with the court's order to properly stamp the document.

Duties and powers of registering officer

The following books must be kept in the several offices as follows:

A – In all Registration Offices
Book 1 – "Register of non-testamentary documents relating to immovable property";
Book 2 – "Record of reasons for refusal to register";
Book 3 – "Register of wills and authorities to adopt";
Book 4 – "Miscellaneous Register";
B – In the Offices of Registrars
Book 5 – "Register of deposits of Wills".

PROCEDURE ON ADMISSION TO REGISTRATION

Particulars to be endorsed on documents admitted to registration:

(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under Section 89, there shall be endorsed from time to time the following particulars, namely:

The signature and addition of every person admitting the execution of the document and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

The signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

Any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document and any admission of receipt of consideration, whole or in part, made in his presence in reference to such execution.

Certificate of Registration

- After the provisions of Sections 34, 35, 58 and 59 as applicable to the document are complied with, the registering officer shall endorse thereon a certificate containing the word "registered" along with the number, and page of the book in which the document has been copied. The certificate shall be signed, sealed and dated by the registering officer.
- The certificate of registration in respect of a document is prima facie an evidence that the document has been legally registered and raises a presumption that the registering officer proceeded in accordance with the law. (Section 60) [See Mulla (1998), pages 296, 297]

PROCEDURE AFTER REGISTRATION OF DOCUMENTS RELATING TO LAND

Forwarding Memorandum to Sub–Registrar	On registering any non-testamentary document relating to immovable property the Registrar shall forward a memorandum of such document to each Sub–Registrar subordinate to himself in whose sub- district any part of the property is situated.
Forwarding copy to other registrars	The Registrar shall also forward a copy of such document, together with a copy of map or plan (if any) mentioned in Section 21 to every Registrar in whose district any part of such property is situated.
Registrar shall file in Book No. 1	Such Registrar, on receiving any such copy, shall file it in his Book No. 1 and shall also send a memorandum of the copy to the Sub-Registrar subordinate to him within whose sub-district any part of the property is situated.
Sub- Registrar shall file in Book No. 1	Every Sub-Registrar receiving any memorandum under this Section shall file it in his Book No. 1. (Sections 64 to 65)

PRECAUTIONS/ PREREQUISITES FOR REGISTRATION

Following are some of the prerequisite for registration of document:

Attest blanks, erasures, alterations:

The parties shall attest them with their signatures or initials.

Full and identifiable property description:

In case of agriculture property, the survey number (old and new), full extent of survey number, extent of property under transaction, village name, panchayat name, mandal name, district name shall be written clearly. The details like pattadar pass book and title deeds may also be recorded to link the ownership with the details of property.

In respect of house property, the details like door number (old and new), assessment number of the property, street name, and village/ city name shall be mentioned.

In respect of vacant lands situated in remote places the property description requires a lot more caution and effort. The people are cheated by fraudsters by creating multiple documents by selling the same property with various descriptions

Check whether property is Assigned/ Government/ Waqf/ Endowment Lands, etc.:	Purchase or otherwise dealing with the government, assigned, Wakf, Endowment, Scheduled Areas lands is prohibited and entails criminal proceedings. Therefore, it is advised to check and ensure that the property under transaction is not one of these lands.
Document shall be presented for registration within four months from the date of signing:	Document other than will deed shall be presented for registration within four months from signing by the parties. In case of delay in presenting within the stipulated four months citing unavoidable circumstances by the parties, the Registrar may condone the delay after collecting the penalty. But in any case, the delay shall not exceed four months. That means a document shall be presented before the concerned Registering Officer for registration within four months without any penalty; and within eight months by paying penalty. But no document shall be accepted for registration after the lapse of eight months from the date of signing (execution) by the parties. Therefore, the parties are advised to present the document before the Registering Officer concerned at the earliest possible day after execution of the document.
Will deeds can be presented at any time:	There is no time limit to present will deeds. A will can be presented for registration even after 50 years. A Will can be presented by the beneficiary/executor even after The death of the testator/testatrix. The Registering Officer will conduct enquiry as per the provisions of Registration Act, and may register the will if he is satisfied that the will was properly executed by the deceased testator.
Competent Registrar/ Sub Registrar Office:	Documents in respect of immovable property transactions such as sale, lease, mortgage, release, partition, agreement/development agreements etc shall be presented to the jurisdiction Registrar/Sub Registrar Office for registration. It is always advisable to get the documents registered with the jurisdiction Sub Registrar. Documents other than immovable property transactions like movable property transactions, affidavits, etc., may be registered in any Registrar/Sub Registrar Office.
Persons competent to present the document for registration:	Person signing the document is called the executant of the document. The executant can present the document for registration. If there is more than one executant in the document, then any one of the executants can present the document. But admission of execution shall be done by all the executants.
Affixing of photograph and fingerprints:	In respect of sale deed, the photographs and fingerprints of both the seller and buyer shall be affixed in the prescribed format under Section 32A of Registration Act, 1908.
Route Map :	A map/sketch shall be enclosed with the non-testamentary document affecting immovable properties clearly drawing the route leading to the scheduled property. This route map shall be drawn so that even a stranger can locate the property by using the landmarks mentioned in the map. The map must indicate where exactly the property is located and the nearby landmarks such as post office, police station, temple, mosque, chowrastha etc.
Address proof of parties, witnesses/ identifying witnesses:	Along with the document, the parties shall also enclose copies of address proof of the executing, claiming parties, attesting witnesses and identifying witnesses. The address proof recognizable by the department includes passport, ration card, Aadhar card (UID), bank passbook containing the full address of the person, driving license etc.
Production of PPBs & TDs at the time of registration and to get entries made :	The parties shall produce pattadar passbooks and title deeds issued by the revenue department if the document affects agricultural land. Now, production of pattadar passbooks and title deeds is made compulsory. Parties shall ensure that relevant entries are made by the Registering Officer in these books regarding the transaction.

REFUSAL TO REGISTER BY THE SUB-REGISTRAR

Reasons for refusal to register to be recorded

- Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words "Registration refused" on the document; and, on application made by any person executing or claiming under the document, shall without payment and unnecessary delay, give him a copy of the reasons so recorded.
- Registration cannot be refused on the ground of undervaluation for stamp or any other extraneous reason. (Mulla (1998), page 308)

APPEAL TO REGISTRAR

Section 72 allows an appeal against a Sub-Registrar's order refusing to register a document, whether registration is compulsory or optional, to the Registrar within thirty days of the order. The Registrar can reverse or alter the order, except when refusal is due to denial of execution.

Section 72 states that if the Registrar orders the document to be registered and it is presented within thirty days, the Sub-Registrar must comply and follow the procedures in Sections 58, 59, and 60. The registration will then be effective as if the document was initially registered on its first presentation.

PROCEDURE BEFORE THE REGISTRAR

In the case falling under Section 73 (refusal to register on the ground of denial of execution before the Sub Registrar) and also where denial of registration is made before the Registrar himself, the Registrar shall inquire:

Whether the document has been executed; and

Whether the requirements of the law have been satisfied so as to entitle the document to registration. (Section 74)

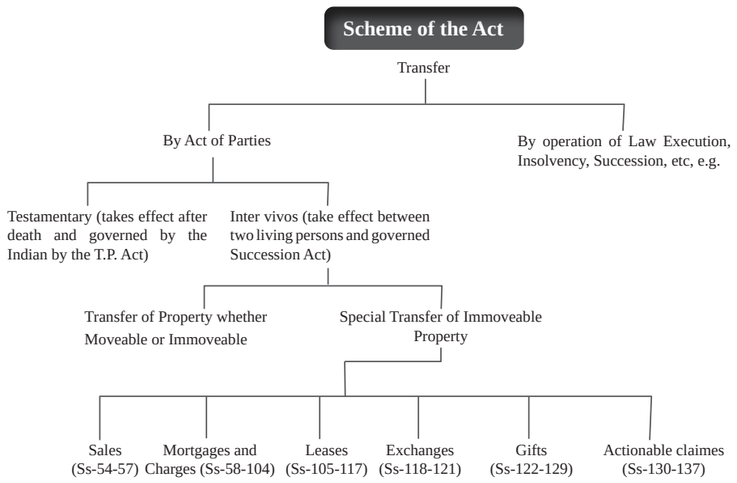
EXEMPTION OF CERTAIN DOCUMENTS EXECUTED BY OR IN FAVOUR OF GOVERNMENT

Documents issued, received or attested by any officer engaged in making a settlement or revision of settlement 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.
Sanads, inam, title deeds and other documents purporting to be 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.

PROVISIONS OF TRANSFER OF PROPERTY ACT, 1882 AND REGISTRATION OF DOCUMENTS

The Transfer of Property Act was enacted with the object to amend the law relating to the transfer of property by act of parties i.e. from one person to another person. The Act excludes from its purview the transfers by operation of law, i.e. by sale in execution, forfeiture, insolvency or intestate succession. The scope of the Act is limited, as it is confined to transfers inter vivos and excludes testamentary succession, i.e. transfers by will.

Scheme of the Act



Attached to the earth

Attach to the earth means:

Rooted in the earth, as in the case of trees and shrubs;

Imbedded in the earth, as in the case of walls or buildings; or

Attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

Absolute Interest

When a person owns property, he has an "absolute interest" in the property. Ownership consists of a bundle of rights, the right to possession, right to enjoyment and right to do anything such as selling, mortgaging or making a gift of the property.

Reversion and Remainder

A "reversion" is the residue of an original interest which is left after the grantor has granted the lessee a small estate	When the owner of the property grants a limited interest in favour of a person or persons and gives the remaining to others, it is called a "remainder".

Vested and Contingent Interests

Ground of Difference	Vested Interest	Contingent Interest
Section Meaning	Section 19 of the Transfer of Property Act, 1882. An interest is said to be vested when it is not subject to any condition, precedent, i.e., when it is to take effect on the happening of an event which is certain	Section 21 of the Transfer of Property Act, 1882. An estate is contingent when the right to enjoyment depends upon the happening of an event which may or may not happen.
Condition	The condition involves a specified certain event. A certain event means an event that will eventually happen.	The condition involves a specified uncertain event. There is a chance of the happening or non-happening of that particular event.
Right of Ownership	This right is created as soon as the interest is vested.	There is a mere chance to have the ownership rights.
Death of transferee	Death of the person who is having this interest will not have any effect over that interest as after the deceased, the interest will vest in his legal heirs.	Death of the transferee before getting the possession of the property will result in the failure of continent interest and the property will remain with the transferor
Transferable and heritable?	Vested interest is a Transferable and heritable right.	Contingent interest is a Transferable right, but whether it is heritable or not, it depends upon the nature of such transfer and the condition.
The present right of enjoyment.	There is a present, immediate right even when its enjoyment is postponed.	There is no present right of enjoyment, there is mere expectancy of having such a right.

MOVEABLE AND IMMOVEABLE PROPERTY

Moveable property

- The Transfer of Property Act does not define the term "moveable property".
- According to General Clauses Act, 1897, movable property means "property of every description except immoveable property".
- According to The Registration Act, 1908, movable property includes property of every descrip

Immoveable property

- The term "immoveable property" is also not defined under the Act
- According to General Clauses Act, 1897, "immoveable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to any thing attached to the earth"
- According to The Registration Act, 1908, immovable property includes under immoveable property.

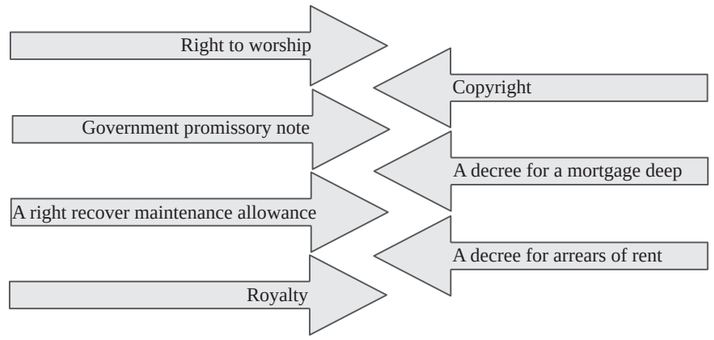
Growing crops: It includes all vegetable growths which have no existence apart form their produce such as pan leaves, sugar cane etc.

Grass: Grass is moveable property, but if it is a right to cut grass it would be an interest in land and hence forms immoveable property.

The following have been recognized as immovable property:

- Right to collect rents of immoveable property
- A right to way
- A right to collect dues from fair on a piece of land
- Hereditary offices
- The equity of redemption
- The interest of mortgages
- Right to collect lac from trees
- A right of ferry
- A right of fishery
- Right to receive future rents and profits of land
- Reversion in property leased
- A factory

The following have been held not to be immovable property:



FORMALITIES OF TRANSFER

Property can be transferred orally or in writing. Movable property can be transferred by delivering possession or through registration. Section 54 specifies that the transfer of tangible immovable property valued at one hundred rupees or more, or intangible property, must be done by a registered instrument. For tangible immovable property valued less than one hundred rupees, the transfer can be done either by a registered instrument or by delivering the property.

When a transfer is in writing, the person signing the document to transfer the property is the executant. Execution involves signing the document to indicate the property transfer. An illiterate person may direct a literate person to sign on their behalf in their presence, with the illiterate person adding their thumb impression.

(i) Attestation

Attestation is an important formality in connection with the execution of transfer. "Attest" means to testify a factor, to bear witness to a fact. Attestation, in relation to a document, signifies the fact of authentication of the signature of the executant of that document by the attestator by putting down his own signature on the document in testimony of the fact of its execution. All transfers do not require attestation. For example, a sale or a lease does not require attestation. But a mortgage or a gift requires that a mortgage deed or a gift deed must be attested by two or more witnesses.

Attestation is valid and complete when two witnesses sign the instrument. According to the definition given in the Transfer of Property Act (Section 3), the following essentials are required for a valid attestation:

(*a*)	There must be at least two or more witnesses;
(*b*)	Each witness must see
	(*i*) the executant's sign or affix his mark to the instrument, or
	(*ii*) some other person sign the instrument in the presence and by the direction of the executant, or
	(*iii*) receive from the executant a personal acknowledgement of his signature or mark or of the signature of such other person; and
(*c*)	Each witness must sign the instrument, (i.e. document), in the presence of the executant.

The instrument may be attested after its execution by each of the attestators at different times. Attestation cannot take place before the execution of the deed. The Act does not insist on any particular form of attestation. The attesting witness may not be described as such on the face of the document ***(Yakub v. Kalzurkan),***. However, the attesting witness must have put his signature animus testandi, i.e., with intention to attest

(ii) Registration

Registration is an essential legal formality to effect a valid transfer in certain cases. The advantage of registering a document is that any person who deals with the property would be bound by the rights that are created in earlier registered documents.

(iii) Notice

Notice, may be actual or constructive. If a person knows about a fact, he has an actual notice. But, in certain circumstances law treats a man who ought to have known a fact even though he did not in fact know it. This is called constructive notice.

A person is considered to have constructive notice of a fact if they would have known it but for willful abstention from a reasonable inquiry or search, or due to gross negligence. Constructive notice stems from an irrefutable presumption when:

1. There is a willful failure to make necessary inquiries about certain facts.
2. Gross negligence is shown in the matter.

In case, a purchaser knew title deeds were with a bank for safekeeping but failed to inquire at the bank, showing gross negligence and thus had constructive notice of the bank's rights ***(Imperial Bank of India vs. Rai Gyand, I A 283)***.

Moreover, if someone avoids making further inquiries about another's rights or fails to search for encumbrances at the Sub-Registrar's office, this willful omission or gross negligence means they have constructive notice of prior encumbrances ***(Rangappa Goundan vs. Marapa Goundan, AIR 1958 Madras 515).***

RESTRAINT ON TRANSFERS OR RULE AGAINST INALIENABILITY

Section 10 of the Act says that when property is transferred, the transferee should not be restrained absolutely from alienating the property. One may give property to another subject to a condition, but the condition should not be one which absolutely prevents the transferee from alienating the property. Suppose, B gives property to A and his heirs adding a condition that if the property is alienated it should revert to B. This condition is invalid and the transferee can ignore such conditions. The transfer takes effect and is valid, and the condition not to alienate the property is void.

In ***Trichinpoly Varthaga Sangum vs. Shunmoga Sunderam, (1939) Madras 954***, there was a partition between a Hindu father and his five sons. The deed of partition provided that if any one of the sons wanted to sell his share, he should not sell it to a stranger but to one of his brothers who should have the option to buy for a sum not exceeding Rs.1,000. It was held by the Court that the condition absolutely prevented the son from selling the property to any one for good value. In this case the market value of the property of the son was far greater than Rs.1,000. Hence, the condition was declared invalid.

Partial restraint valid	While absolute restraints on alienation are illegal, partial restraints are considered valid. For instance, conditions limiting the transferee from selling the property outside the family are deemed partial restraints and upheld by courts. However, restrictions on alienation for a specific period are seen as absolute restraints and thus deemed invalid.
When is absolute restraint valid?	There are two exceptions to the rule that absolute restraints are invalid. Firstly, in leases, lessors can prohibit lessees from subletting or selling their leasehold interests, which is considered valid due to the lessor's confidence in the lessee. Secondly, for non-Hindu, Buddhist, or Muslim women, a condition restricting their power to transfer property during marriage is also deemed valid.
Restraint on enjoyment	Section 11 of the Act establishes that any conditions imposed by the transferor on the transferee regarding the enjoyment of the property are invalid.

WHO CAN TRANSFER THE PROPERTY?

Section 7 of the Transfer of Property Act establishes that any person who is competent to contract and has ownership or authorization to dispose of property can transfer it. Competence to contract is defined by the Indian Contract Act as being of sound mind, not a minor, and not disqualified by any applicable law. Minors can be transferees, and transfers to minors are valid unless exceptions apply, such as holding out or representing oneself as the owner.

PROPERTIES WHICH CANNOT BE TRANSFERRED

Section 6 of this Transfer of Property Act contains some exceptions to the general rule that property of any kind may be transferred. Consequently, the following properties cannot be transferred, namely:

(*a*)	the chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature cannot be transferred.
(*b*)	A mere right of re-entry for breach of a condition subsequently cannot be transferred to any one except the owner of the property affected thereby.
(*c*)	An easement cannot be transferred apart from the dominant heritage.
(*d*)	An interest is property restricted in its enjoyment to the owner personally cannot be transferred by him.
(*e*)	A right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred.
(*f*)	A mere right to sue cannot be transferred.
(*g*)	A public office cannot be transferred nor can the salary of a public officer, whether before or after it has become payable.
(*h*)	Stipends allowed to military, naval, air force and civil pensioners of the Government and political pensions cannot be transferred.

TRANSFER FOR BENEFIT OF UNBORN PERSON

Section 13 of the Transfer of Property Act lays down that were on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect unless it extends to the whole of the remaining interest of the transferor in the property. Thus if a property is given to an unborn person, two conditions should be satisfied:

- ❖ It should be preceded by a life estate in favour of person living.
- ❖ It should comprise the whole of the remaining interest of the transferor so that there can be no further interest in favour of others.

RULE AGAINST PERPETUITY

Section 14 of the Act provides that no transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration for that period, and to whom, if he attains full age, the interest created is to belong.

The rule against perpetuities applies to both moveable and immoveable property.

Thus, the rule against perpetuity contains two propositions, i.e.:

No transfer is valid after the life-time of one or more persons living at the date of such transfer. Transfer can remain in effect only during the life time of an existing person

Transfer can be extended to a person who is not in existence at the time of termination of the period of last transfer. The moment the person is born he shall have contingent interest and after minority i.e. after the age of 18 years, he shall have vested interest. Barring these two conditions, a restriction on alienation of a property is void

ACCUMULATION OF INCOME

Section 17 does not allow accumulation of income from the land for an unlimited period without the income being enjoyed by the owner of the property. The law allows accumulation of income for a certain period only. The period for which such accumulation is valid is :

(*a*) The life of the transferor, or

(*b*) Eighteen years from the date of transfer.

Any direction to accumulate the income beyond the period mentioned above is void except where it is for:

(*i*) The payment of the debts of the transferor or any other person taking any interest under the transferor,

(*ii*) Portions for children or any other person taking any interest in the property under the transfer, and

(*iii*) For the preservation and maintenance of the property transferred.

DOCTRINE OF LIS PENDENS - SECTION 52

Lis means dispute, Lis pendens means a pending suit, action, petition or the like. Section 52 of the Transfer of Property Act incorporates the doctrine of Lis pendens. It states that during the pendency of a suit in a Court of Law, property which is subject to a litigation cannot be transferred.

Essentials

The rule is based on the doctrine of expediency i.e., the necessity for final adjudication. A plea of lis pendens will be allowed to be raised even though the point is not taken in the pleadings or raised as an issue.

A suit in foreign Court cannot operate as lis pendens. The doctrine of lis pendens does not apply to moveables. It is the essence of the rule that a right to immovable property is directly and specifically in question in the suit. The doctrine is not applicable in favour of a third-party.

- There must be suit or proceeding in a Court of completent jurisadiction
- The suit or proceeding must not be collusive
- The litigation must be one in which right to immoveable property is directly and specifically in question.
- There must be transfer of or otherwise dealing with the property in dispute by any party to the litigation
- Such transfer must effect the rights of the other party that may ultimatelt acrue under the terms of the decree or order.

Effect

If the parties to the litigation are completely prevented from transferring the property in litigation, it would cause unnecessary delay and hardship, as they would have to wait till the final disposal of the case. So, Section 53 creates a limitation over the transfer by making it subject to the result of the litigation. The effect of this doctrine is not to invalidate or avoid the transfer, or to prevent the vesting of title in the transfer, but to make it subject to the decision of the case, and the rule would operate even if the transferee pendente lite had no notice of the pending suit or proceeding at the time of the transfer.

DOCTRINE OF PART - PERFORMANCE

A contract for the sale of land has been entered into between A and B. The transferee has paid the price entering into possession and is willing to carry out his contractual obligations.

The rule did not exist in the statute book before 1929. Section 53A, was inserted by an amendment to the Act in 1929. Followings are the essential conditions for the operation of the doctrine of part-performance according to Section 53A.

1. There must be a contract to transfer immovable property.
2. It must be for consideration.
3. The contract should be in writing and signed by the transferor himself or on his behalf.
4. The terms necessary to constitute the transfer must be ascertainable with reasonable certainty from the contract itself.
5. The transferee should have taken possession of the property in part performance of the contract. In case he is already in possession, he must have continued in possession in part performance of the contract and must have done something in furtherance of the contract.
6. The transferee must have fulfilled or be ready to fulfill his part of the obligation under the contract.

The right conferred by this section is a right only available to a defendant to protect his possession. This section does not create a title on the defendant. It merely operates as a bar to the plaintiff asserting his title. It is limited to cases where the transferee had taken possession, and against whom the transferor is debarred from enforcing any right other than that expressly provided by the contract. The section imposes a bar on the transferor. When the conditions mentioned in the sections are fulfilled, it debars him from enforcing against the transferee any right or interest expressly provided by the contract. So far as the transferee is concerned, the section confers a right on him to the extent it imposes a bar on the transferor ***[Delhi Motor Co. v. Basurkas, (1968) SCR 720]***

SALE

Under Section 54 of the Transfer of Property Act, "sale" has been defined as a transfer of ownership in exchange for a price paid or promised or part paid and part-promised

Essentials

(*a*)	The seller must be a person competent to transfer. The buyer must be any person who is not disqualified to be the transferee under Section 6(h)(3).
(*b*)	The subject matter is transferable property.
(*c*)	There is a transfer of ownership. This feature distinguishes a sale from mortgage, lease etc., where there is no such transfer of ownership.
(*d*)	It must be an exchange for a price paid or promised or part paid and part promised.
(*e*)	There must be a money consideration. If the consideration is not money but some other valuable consideration it may be an exchange or barter but not a sale.

Mode of transfer by sale

Sale of an immovable property can be affected,

- Where such property is tangible (i) by a registered instrument if it is of the value of Rs. 100 and upwards, and (ii) by a registered instrument or by delivery of property when it is less than Rs. 100 in value, and
- Where the property is tangible or a reversion, only by a registered instrument

Contract for sale

A contract for the sale of immovable property differs from a contract for the sale of goods in that the Court will grant specific performance of it unless special reasons to the contrary are shown.

The rights and liabilities of a seller and buyer are dealt with in Section 55 of the Transfer of Property Act

Exchange

Sections 118 to 121 of the Transfer of Property Act, 1882 deal with "Exchanges".

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

Essentials

This Section applies to both moveable and immoveable property

- The person making the exchange must be competent to contract.
- There must be mutual consent.
- There is a mutual transfer of ownership though things and interests may not be identical.
- Neither party must have paid money only.

MORTGAGES

Sections 58 to 104 of the Act deal with "Mortgages".

Definition and nature of mortgage:

According to Section 58 of the Transfer of Property Act, a "mortgage" is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give rise to pecuniary liability.

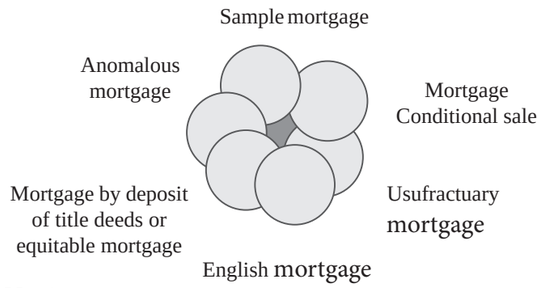
The transferor is called a mortgagor, the transferee a mortgagee. The principal money and interest the payment of which is secured for the time being are called the mortgage money and the instrument by which the transfer is affected is called a mortgage deed.

Essentials of a mortgage:

(1)	Transfer of interest	A mortgage involves transferring an interest in specific immovable property. The mortgagor, as the property owner, retains ownership but transfers a portion of his interest to the mortgagee to secure a loan. This reduces the mortgagor's interest in the property by the amount transferred. If the mortgagor subsequently transfers the property, the new owner acquires it subject to the mortgagee's right to recover the loan amount plus interest.
(2)	Specific immovable property	For a mortgage to be valid, the property must be specifically mentioned in the mortgage deed. General descriptions like "all of my property" are insufficient and not considered a mortgage. The specific mention is crucial so that, if the mortgagor fails to repay the loan, the court can grant a decree for the sale of the particular property in a suit filed by the mortgagee.
(3)	To secure the payment of a loan	A mortgage involves securing the payment of a loan or the performance of an obligation that may result in financial liability. It can be to obtain a loan or to secure the repayment of an existing loan. This creates a debtor-creditor relationship between the mortgagor and mortgagee. For instance, if A borrows 100 bags of paddy plus additional interest, it constitutes a mortgage transaction for fulfilling an obligation.

KINDS OF MORTGAGES:

There are in all six kinds of mortgages in immoveable property, namely



(a) Simple Mortgage

In a simple mortgage, the mortgagor binds himself personally to pay the debt and agrees in the event of his failure to pay the mortgage money, the mortgagee shall have the right to cause the property to be applied so far as may be necessary by means of a decree for the sale of property. If the mortgaged property is not sufficient to discharge the debt, the mortgagee can bring a personal action against the mortgagor and obtain a decree which, like any other money decree, can be executed against other properties of the mortgagor. In simple mortgage, no right of possession or foreclosure is available to the mortgagee

(b) Mortgage by conditional sale

- If the loan is repaid, the sale becomes void.
- If the loan is not repaid at the stipulated time, the sale will become absolute and binding.
- When the debt has been repaid at the stipulated time, the mortgagee shall re-transfer the property to the mortgagor

It may be noted that the mortgagor transfers the property with the following three conditions:

In a mortgage by conditional sale, there is no personal obligation for the mortgagor to repay the debt, unlike in a simple mortgage. The mortgagee does not take possession of the property, similar to a simple mortgage. The mortgagee's remedy in this case is foreclosure, meaning the mortgagee becomes the owner of the property if the mortgagor defaults on payment. To achieve this, the mortgagee must file a suit in court to permanently bar the mortgagor from redeeming the property.

(c) Usufructuary mortgage

Section 58(d) defines a "usufructuary mortgage" as a mortgage where the mortgagor delivers or agrees to deliver possession of the mortgaged property to the mortgagee. The mortgagee retains possession until the mortgage money is paid, receiving and using the rents and profits from the property to cover interest, repay the mortgage money, or both. This type of mortgage is also known as a mortgage with possession.

Thus, a usufructuary mortgage has the following characteristics:

- Possession of property must be delivered to the mortgagee;
- There is no personal liability on the part of the mortgagor to pay;
- The mortgagee is entitled to rents and profits in lieu of interest or principal or both; and
- The mortgagee however is not entitled to foreclose the mortgagee or to sue for sale.

(d) English mortgage

Section 58(e) states that: "where the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee but subject to a proviso that he will retransfer it to the mortgagor upon payment of the money as agreed, the transaction is called an English mortgage".

The essential features of an English mortgage are as under:

- The mortgagor binds himself to repay the mortgage money on a certain day. In other words, there should be a personal undertaking to pay
- The mortgaged property is absolutely transferred to the mortgagee.
- Such absolute transfer is subject to a proviso that the mortgagee will reconvey the property to the mortgagor upon payment by him of the mortgage money on the fixed day.

Distinction between English mortgage and mortgage by conditional sale

An English mortgage looks like a mortgage by conditional sale but there are obvious differences between the two:

- ❖ In English mortgage there is a personal liability undertaken by the mortgagor to pay the debt. In a mortgage by conditional sale there is no personal covenant (agreement for payment of the mortgage money and mortgagee has his remedy against the mortgaged property only;
- ❖ In English mortgage the ownership in the mortgaged property is absolutely transferred to the creditor (i.e. mortgagee) which however, may be divested on repayment of the loan on the fixed day

In a mortgage by conditional sale, the mortgagee gets only a qualified ownership which may, however, ripen into an absolute ownership in default of payment of the mortgage money.

(e) Mortgage by deposit of title deeds

This type of mortgage is called an equitable mortgage in English law. In this transaction, a person delivers to the creditor or his agent documents of title of his immoveable property with an intention to create a security, and obtains a loan. The requisites of such a mortgage are (i) a debt, (ii) deposit of title deeds, and (iii) an intention that the deeds shall be security for the debt.

It should be noted that this type of mortgage can be created only in certain towns and not everywhere in India. The facility to create a valid mortgage is available in the following towns in India: Calcutta, Madras, Bombay, Adoni, Ajmer, Allahabad, Alwar, Bangalore, Bellary, Cochin, Coimbatore, Delhi, Jaipur, Jodhpur, Kanpur, Rajahmundry, Udaipur, Vellor, Ellora, Pali, Bhilwara, Bikaner, Kakinada, Narayanganj, Mysore, and Madurai. Though this type of mortgage is limited to specific cities it is at par with any other legal mortgage (K.J. Nathan v. S.V. Maruthi Rao, A.I.R. 1965 S.C. 443).

(f) Anomalous mortgage

Section 58(g) of the Transfer of Property Act defines an "anomalous mortgage" as any mortgage that does not fit the categories of simple mortgage, mortgage by conditional sale, usufructuary mortgage, English mortgage, or mortgage by deposit of title deeds. An anomalous mortgage combines features of various other mortgages. For instance, it may grant the mortgagee both possession and the right to sell the property, unlike a standard usufructuary mortgage, which only grants possession. Additionally, while a usufructuary mortgage does not impose personal liability on the mortgagor, an anomalous mortgage may include such liability.

Sub-Mortgage

Where the mortgagee transfers by mortgage his interest in the mortgaged property, or creates a mortgage of a mortgage the transaction is known as a sub-mortgage. For example, where A mortgages his house to B for Rs. 10,000 and B mortgage his mortgagee right to C for Rs. 8,000. B creates a sub-mortgage.

Puisne Mortgage

Where the mortgagor, having mortgaged his property, mortgages it to another person to secure another loan, the second mortgage is called a puisne mortgage. For example, where A mortgages his house worth Rs. one lakh to B for Rs.40,000 and mortgages the same house to C for a further sum of Rs.30,000, the mortgage to B is first mortgage and that to C the second or puisne mortgage. C is the puisne mortgagee, and can recover the debt subject to the right of B, the first mortgagee, to recover his debt of Rs.40,000 plus interest.

Rights of Mortgagor:

By mortgaging the property the mortgagor does not cease to be its owner, he only transfers an interest in it. The law, therefore, grants him the following rights:

(*a*)	Right of redemption:	The mortgagor's primary right is the right to redeem the mortgaged property by repaying the mortgage money after the stipulated repayment date. Section 60 of the Transfer of Property Act states that the mortgagor can redeem the property any time after the principal amount is due. However, this right must be exercised before it is extinguished by the Act of parties, a court decree, or becomes barred by the Limitation Act. The Law of Limitation allows redemption within 60 years after the debt becomes due. This right, known as the Right of Equity or Redemption, arises only when the mortgage money is due, not before.
(*b*)	Right against clog on equity of redemption:	The right of redemption, or equity of redemption, is fundamental to a mortgage. Any provision in a mortgage deed that prevents, evades, or hampers this right is void, as it is considered a "clog" on the equity of redemption. The rule of equity, "once a mortgage, always a mortgage," ensures that no condition in the mortgage deed can impede the mortgagor's right to redeem the property or repay the loan.
(*c*)	Right of partial redemption:	Typically, a mortgage is indivisible, meaning the mortgagor must redeem the entire property, not parts of it. However, Section 61 of the Act allows for partial redemption in cases where the mortgagor has executed multiple mortgages with the same mortgagee. In such instances, the mortgagor, unless otherwise agreed, can redeem any one mortgage separately or any combination of multiple mortgages together.

Implied Contract by Mortgagor

The parties are free to enter into any terms they like. Where, however, the contract does not contain all the terms, Section 65 provides for implied terms as follows:

In the absence of a contract to the contrary, the mortgagor shall be deemed to have contracted with the mortgagee that the:

- Mortgagor is entitled to transfer the interest (covenant for title);
- Mortgagor will assist the mortgagee to enjoy quiet possession;
- Mortgagor will pay public charges in respect of the mortgaged property;
- Mortgagor covenants as to payment of the rent due on lease where, the mortgaged property is leased;
- Mortgagor covenants as to payment of interest and principal on prior encumbrances, where the mortgage is a second or subsequent encumbrance on the property.

Rights of Mortgagee and his Remedies:

If the mortgagor does not pay the mortgage money, the mortgagee may proceed to recover

- ❖ From the mortgaged property, or
- ❖ Sue for recovery from the mortgagor personally.

Thus the mortgagor has two remedies: one against the property and the other against the mortgagor personally

CHARGE

"Charge" has been defined under Section 100 as follows: "Where immoveable property of one person is by the act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property"

As is evident from the above definition, a charge comes into existence either by the act of parties or by operation of law

Charge by act of parties	When in a transaction for value, both the parties (debtor and creditor) intend that the property existing or future shall be made available as security for the payment of a debt and that the creditor shall have a present right to have it made available, there is a charge.

Charge by Operation of Law	Charges created by law are those which arise on account of some statutory provisions. They are not created by the voluntary action of parties but arise as a result of some legal obligation.
Floating charge	A charge can be either fixed or floating. A fixed charge is on specific property, while a floating charge is equitable and applies to a company's current and future assets. It's common among companies that can borrow without asset interference as long as they operate. The floating charge covers a class of assets, moving with them without attaching to any specific property until it crystallizes.

A floating charge is created by debentures on the company's undertaking or its estate, property and effects. It is not necessary that the charge should be on all company's assets. Thus a mortgage of a cinema and of the chattels used in the cinema premises was held to be a floating charge as to the chattels [National Provincial Bank of England Limited v. Charteb Electric Theatres Limited, (1916) Ch. 132]. Similarly, a floating charge was created by a mortgage of book and other debts which shall become due during the continuance of this security [Reyork Shive Wool Combers Association (supra)].

Crystallisation of Floating Charge

A floating charge becomes fixed or crystallises in the following cases:

- When the money becomes payable under a condition in the debenture and the debenture holder, (i.e., the creditor) takes some steps to enforce the security;
- When the company ceases to carry on business; and
- When the company is being wound-up.

Distinction between Mortgage and Charge

Mortgage	Charge
A mortgage is transfer of an interest in the property made by the mortgagor as a security for the loan,	the charge is not the transfer of any interest in the property though it is security for the payment of an amount
A mortgage can only be created by the act of parties.	A charge may be created by act of parties or by operation of law.
A mortgage deed must be registered and attested by two witnesses,	a charge need not be made in writing, and if reduced to writing, it need not be attested or registered.
a mortgage, the transferee of mortgaged property from the mortgagor, can only acquire the remaining interest of the mortgagor, and is therefore, only bound by the mortgage	a charge as a general rule, cannot be enforced against a transferee for consideration without notice.
a mortgage, there can be security as well as personal liability. In fact, the absence of a personal liability is the principal test that distinguishes a charge from a simple mortgage.	charge created by act of parties the specification of the particular fund or property negates a personal liability and the remedy of the charge-holder is against the property only.

LEASE

Meaning and Nature of Lease

According to Section 105, a "lease" of immovable property is a transfer of a right to enjoy property. Since it is a transfer to enjoy and use the property, possession is always given to the transferee. The lease of immovable property must be made for a certain period. For example, you may give a lease of property for a definite number of years, or for life, or even permanently.

Essentials

The essentials of a lease are:

- It is a transfer of a right to enjoy immoveable property
- Such transfer is for a certain time or perpetuity;
- It is made for consideration which is either premium or rent or both;
- The transfer must be accepted by the transferee.

Lease and license

A lease and a license are distinct legal concepts. A license grants permission to do something on another's property without transferring any interest or possession. It can be revoked by the grantor. In contrast, a lease involves the transfer of interest and possession for a specific period. The distinction is based on the parties' intention rather than the terminology used in the document.

Basis	Lease	License
Meaning	A Lease is an agreement between a landlord and a tenant that gives the tenant an exclusive interest in a property	A license is a right to do or continue to do in or upon the immoveable property of the grantor
Transfer of Interest	A Lease of Immovable Property is a transfer of a right to enjoy such property, made for a certain time, express or implied	A license does not transfer any interest in the property and the licensee has no right to possession
End of lease	Lease can come to an end only in accordance with the terms and conditions stipulated in the contract of tenancy agreement.	A license can be revoked by the grantor at any time,
Sale of property	A lease is unaffected by the transfer of the property by sale in favour of a third party	In a License, if the property is sold to a third party, it comes to an end immediately.
Possession	It creates an interest of possession and enjoyment in Favor of lessee	It is a license because it does not create any interest in that property
Applicable laws	The term lease defined under section 105 of Transfer of Property Act	license defined under section 52 of The Indian Easement Act

Requirements of a valid notice

For a notice to quit to be valid, it must clearly indicate the intention to terminate the entire tenancy and specify the date of termination. The duration of the notice period depends on the type of lease: 15 days for monthly leases and 6 months for yearly leases. Leases of movable property for agricultural or manufacturing purposes are considered yearly leases. The notice should align with the end of the lease period. If it's a monthly lease, the tenant should be asked to leave at the end of the month. The landlord cannot demand eviction before the completion of the month or year of the tenancy.

Determination of leases

Section 111 of the Transfer of Property Act spells out the various contingencies in which a lease comes to an end. A lease is determined, i.e., comes to an end in the following ways:

1.	**By efflux of time or lapse of time**	A lease for a fixed term, like a year or multiple years, ends on the final day of the term, allowing the lessor or their representative to reclaim the property without notice. If a lessee passes away during the lease period, their heirs have the right to maintain the lease until its conclusion.
2.	**By the happening of a special event**	A lease granted contingent upon an event terminates when that event occurs. For example, if a lease is for the duration of a person's life, it ends upon their death. Similarly, a lease tied to the duration of a war ends when the war concludes. If the lessor's interest is restricted or lost, the lease terminates accordingly.
3.	**Merger**	A lease comes to an end when the lessee buys the property of the lessor or when the lessee takes the lessor's interest by succession. Here the right of the lessee merges in that of the lessor. Naturally, the lessee becomes the owner of the property after he acquires it. So there will be no more a lease.
4.	**By surrender**	A lease can end through surrender, which can be either expressed or implied. Express surrender occurs when the lessee willingly gives up their interest in the lease with mutual agreement. Implied surrender happens when a new lease is granted during the existing lease period, effectively replacing the old lease. Additionally, if the landlord retains possession without objection from the tenant, it implies surrender. Simply not paying rent does not constitute surrender.
5.	**By forfeiture**	A lease can also end through forfeiture, which happens when the lessee breaches a condition in the lease contract. Forfeiture occurs when the lessee breaks an express condition outlined in the lease agreement, such as failure to pay rent regularly, insolvency, or subletting the property without permission. Only express conditions incorporated into the lease contract can lead to forfeiture, allowing the lessor to re-enter the property and declare the lease forfeited.

Forfeiture can occur due to non-payment of rent or breach of other lease conditions. If the breach involves rent, the court may allow the lessee to pay arrears and continue the lease. However, for breaches like subletting without permission, the lessor can terminate the lease. If the lessor doesn't terminate, the lease remains valid. Another case of forfeiture happens if the tenant denies the landlord's title to the property, claiming ownership themselves or by another. In order that a denial of the landlord's title should work as a forfeiture of the lease, three things are necessary:

- The tenant must set up title either in himself or in a third-party;
- The denial must be direct and not casual;
- It must be made known to the landlord.

Duties of the Lessor

Following are some of the duties of the lessor:

- ❖ The lessor is bound to disclose to the lessee any material defect in the property with reference to its intended use of which the lessor is and the lessee is not aware. This rule applies only to physical defects of the property such as the condition and the nature of the property leased. You will note that the lessor is not bound to disclose whether or not he has title to the property.
- ❖ The next duty of the lessor is to put the lessee in possession of the property. A lease is a transfer of possession the consideration being rent and, therefore, it follows that the landlord cannot recover the rent unless he has delivered possession to the tenant. If a contract of lease has been executed and the lessor does not give possession of the property to the lessee, the lessee can sue the lessor for possession.
- ❖ The next duty that is cast on the lessor is what is usually called convenant for quiet enjoyment. The covenant, that is the right to undisturbed possession, so long as the lessee pays the rent, presupposes possession and, therefore, no action can be brought on this convenant unless the lessee has first obtained possession. The covenant for possession gives the lessee the right to obtain possession; the covenant for quiet enjoyment gives the lessee a right to continue in such possession. If the lessee's possession is disturbed, he can sue for damages or, in case a part of the leased property is taken possession of either by the lessor or by any third-party; the lessee can hold a part of the leased property and pay a proportionate rent.

Duties of the lessee

The lessee has the following duties:

(*a*)	The lessee is bound to disclose to the lessor any fact as to nature or extent of the interest that the lessee is about to take, of which the lessee is, and the lessor is not aware and which materially increases the value of such interest.
(*b*)	The lessee is bound to pay or tender at the proper time and place, the premium or rent to the lessor or his agent on this behalf. We have already seen that in case the lessee does not pay the rent, he may incur forfeiture of the tenancy. The liability to pay the rent commences from the date the tenant is put into possession.
(*c*)	The next duty of the lessee is that he uses the property as a person of ordinary prudence would make use of. But he shall not permit another person to use the property for purposes other than that for which it was leased.
(*d*)	He should not do any act which is destructive of or permanently injurious to the property.
(*e*)	The lessee must not, without the lessor's consent, erect on the property any permanent structure except for agricultural purpose. If he wants to erect certain fixtures or chattel on the leased property, it must be done without causing any damage to the property. Before the termination of the lease, he can remove all the things attached to the earth. If permanent fixtures are to be made, the lessee must obtain the consent of the landlord.
(*f*)	If the lessee comes to know of any proceedings by way of suit to recover the property of the lessor, the lessee should immediately inform the lessor. Since, the tenant is in possession of the property he is the person who is not likely to know of any encroachment on the landlord's property and he should therefore inform the landlord.
(*g*)	The lessee should hand over the property at the end of the lease.

Rights of the lessee

1. The lessee enjoys the following rights:

- ❖ If during the continuance of the lease any accession is made to the property, such accession is deemed to be comprised in the lease, the lessee has a right to enjoy the accretions of the leased property.
- ❖ Where, under the contract, the landlord has agreed to repair the property, the lessee can carry out the repairs and deduct the expenses from the rent if the landlord fails to do so.
- ❖ If the lessee has made payment which the lessor is bound by law to pay such as payment of Government revenues or municipal taxes on the property, the lessee can deduct the amount from the rent and pay the balance to the lessor. He can even take interest on the amount he has paid.
- ❖ The lessee has a right to remove the fixtures he has erected-during the term of the lease.
- ❖ If, due to no fault of his, the lease comes to an end (i.e., when the lease is of uncertain duration), the lessee or his legal representatives are entitled to all the crops planted or grown by the lessee. The lessee or his representatives have got a right to come and carry away the crops, etc., which are growing on the land. If the lease is of a definite period, such a right cannot be claimed, particularly, when lessee has committed a fault, e.g., where he has committed a breach of a condition entailing forfeiture.
- ❖ The lessee may avoid the lease, if property is wholly or partly destroyed by tempest, flood, or fire so as to make it impossible to continue the lease for the purpose for which it was let.
- ❖ The lessee has right to transfer absolutely or by way of mortgage or sub-lease, the whole or any part of his interest in the property. We have also noticed that the lessee's rights are transferable.

GIFT

The provisions relating to "Gift" have been stipulated under Sections 122 to 128 of the Act. Section 122 of the Transfer of Property Act defines "gift" as follows:

"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration by one person called the donor, to another called the donee and accepted by or on behalf of the donee.

Essentials

- There must be a transfer of ownership.
- The subject matter of gift must be a certain existing moveable or immoveable property.
- The transfer must be made voluntarily.
- It must be done without consideration.
- There must be acceptance by or on behalf of the donee, and such acceptance must be made during the lifetime of the donor and while he is capable of giving.

There are two parties to the gift: donor and donee. The donor must be a person competent to transfer; whereas the donee may be any person. The gift can be made to any one, to an incompetent person or even to a juridical person. The essence of a gift is that it is a gratuitous transfer

Onerous gift: An onerous gift involves transferring items with both beneficial and burdensome aspects. Section 127 dictates that the donee must fully accept the gift, or they receive nothing from it. If multiple independent transfers are made in one gift, the donee can accept some and reject others. The Transfer of Property Act's gift rules don't apply to gifts by Muslims, which are judged by Muslim law.

ACTIONABLE CLAIMS

A claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Illustrations of actionable claims:

- Arrears of rent accrual constitute a 'debt' so it is an actionable claim (Sheu Gobind Singh v. Gauri Prasad, AIR 1925 Pat. 310).
- Provident Fund that is standing to the credit of a member of the Provident Fund.
- Money due under the Insurance Policy.
- A partner's right to sue for accounts of dissolved partnership is an actionable claim being a beneficial interest in moveable property not in possession (Thakardas vs. Vishindas).

NON-ACTIONABLE CLAIMS

- ❖ Debentures are secured debts and therefore not regarded as actionable claims.
- ❖ Copy right though a beneficial interest in immoveable property is not an actionable claim since the owner has actual or constructive possession of the same [Savitri Devi v. Dwarka Bhatya, (1939) All 305].

A comparison of both these Sections would show that a lease of immovable property is compulsory registrable:

(*a*)	If it is from year to year; or
(*b*)	If it is for a term exceeding one year; or
(*c*)	If it reserves a yearly rent. If a lease is of a very high value but is neither from year to year, nor for any term exceeding one year, nor reserving a yearly rent, it does not require registration under Section 17(1)(d).
(*d*)	Non-testamentary instruments transferring or assigning court decrees or awards, if they establish interests in immovable property valued at Rs. 100 or more, must be registered. However, leases not exceeding five years and with annual rents under Rs. 50 can be exempted by the State Government.
(*e*)	Documents containing contracts to transfer immovable property, relevant to Section 53A (Part performance) of the Transfer of Property Act, 1882, must be registered if executed after the enactment of the Registration and other Related Laws (Amendment) Act, 2001. Failure to register such documents renders them ineffective for the purposes of Section 53A.

EASEMENT RIGHT- SECTION 6(C)

As conferred above, transfer of easement right is not possible by virtue of clause (c) of the Section 6 of the Transfer of Property Act. An easement includes a right to enjoy a profit out of the land of another. An easement exists for the accommodation and better enjoyment of the land to which it is annexed. The land owned by the possessor of the land is known as dominant tenement and the land over which the right is enjoyed is known as the servient tenement.

In Re. Ganesh Prakash v. Khandu Baksh [8], it was held that the right to dry clothes over the flat masonry and roofs of shops is a right of easement.

14 RIGHT TO INFORMATION LAW

In the case of ***Reliance Petrochemicals Limited v. Indian Express Newspapers (1989 AIR 90),*** the Supreme Court interpreted Article 21 of the Indian Constitution to encompass the right to know. It emphasized that the right to know is crucial for a participatory democracy, especially in an increasingly interconnected world marked by shrinking distances and heightened international cooperation. The court underscored that the right to know forms an integral part of the broader right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. While the state can impose reasonable restrictions on this right in the interest of factors such as national security and public order, it also bears the responsibility of ensuring that citizens can effectively exercise their rights. The right to freedom of speech and expression inherently includes the right to receive information, as access to knowledge and information is indispensable for the meaningful exercise of this fundamental right.

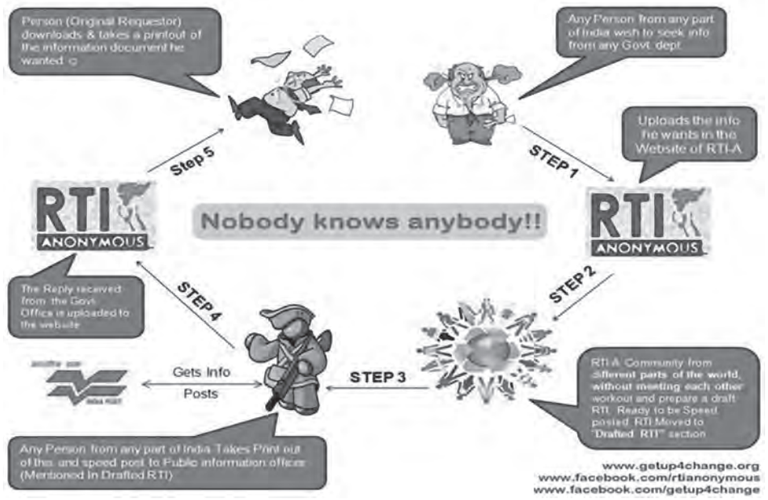
THE RIGHT TO INFORMATION (RTI) ACT, 2005

Salient Features of the Act

- The RTI Act extends to the whole of India
- It provides a very definite day for its commencement i.e. 120 days from enactment
- It shall apply to public authorities
- All citizens shall have the right to information, subject to provisions of the Act
- The Public information Officers/Assistant Public Information Officers will be responsible to deal with the requests for information and also to assist persons seeking information
- Fee will be payable by the applicant depending on the nature of information sought
- Certain categories of information have been exempted from disclosure under section 8 and 9 of the Act.
- Intelligence and security agencies specified in Schedule 11 to the Act have been exempted from the ambit of the Act, Subject to certain conditions.

In the case of ***Anjali Bhardwaj and Others Vs. Union of India and Others in Writ Petition (Civil) No. 436 of 2018*** Judgment dated February 15, 2019 the Hon'ble Supreme Court of India in Paragraph 18, 19 and 68 observed that there is a definite link between right to information and good governance. In fact, the RTI Act itself lays emphasis on good governance and recognises that it is one of the objectives which the said Act seeks to achieve. The RTI Act would reveal that four major elements/objectives required to ensure good governance are:

- Greater transparency in functioning of public authorities;
- Informed citizenry for promotion of partnership between citizens and the Government in decision making process;
- Improvement in accountability and performance of the Government; and
- Reduction in corruption in the Government departments..



DEFINITIONS

Public Authority

"Public authority" means any authority or body or institution of self-government established or constituted –

- By or under the Constitution;–
- By any other law made by Parliament;–
- By and other law made by State Legislature;
- By notification issued or order made by the appropriate Government, and includes any
- body owned, controlled or substantially financed;
- non-Government organisation substantially financed,

Directly or indirectly by funds provided by the appropriate Government [Section 2(h)]

Right to Information

"Right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to–

- Taking notes, extracts, or certified copies of documents or records;
- Inspection of work, documents, records;
- Taking certified samples of material;
- Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device; [Section 2(j)]

Section 3 of the Act provides that subject to the provisions of this Act, all citizens shall have the right to information.

OBLIGATIONS OF PUBLIC AUTHORITY

As per Section 4(1)(b), every public authority has to publish within one hundred and twenty days of the enactment of this Act:

The particulars of its organization, functions and duties;
The powers and duties of its officers and employees;
The procedure followed in its decision making process, including channels of supervision and accountability;
The norms set by it for the discharge of its functions
The rules, regulations, instructions, manuals and records used by its employees for discharging its functions;
A statement of the categories of the documents held by it or under its control;

The particulars of any arrangement that exists for consultation with, or representation by the members of the public, in relation to the formulation of policy or implementation thereof;
A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or the minutes of such meetings are accessible to the public;
A directory of its officers and employees;
The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
The manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
Particulars of recipients of concessions, permits or authorizations granted by it;
Details of the information available to, or held by it, reduced in an electronic form;
The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
The names, designations and other particulars of the Public Information Officers;
Such other information as may be prescribed; and thereafter update the publications every year. and thereafter update these publications every year.

DESIGNATION OF PUBLIC INFORMATION OFFICERS (PIO)

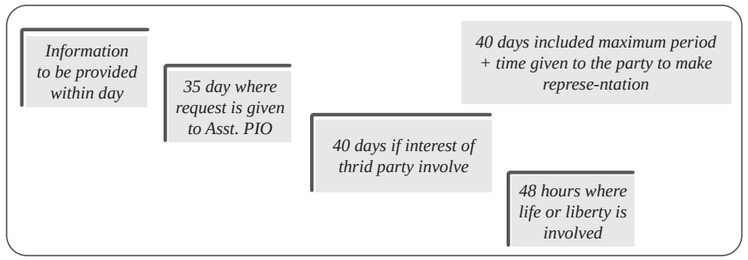
Every public authority has to–

Designate in all administrative units or offices Central or State Public Information Officers to provide information to persons who have made a request for the information.

Designate at each sub-divisional level or sub-district level Central Assistant or State Assistant Public Information Officers to receive the applications for information or appeals for forwarding the same to the Central or State Public Information Officers.–

No reason to be given by the person making request for information except those that may be necessary for contacting him. (Section 5)

REQUEST FOR OBTAINING INFORMATION



DUTIES OF A PIO

This statement outlines the duties of a Public Information Officer (PIO) under the Right to Information (RTI) Act. The PIO can seek assistance from other officers to fulfill their duties. When they receive a request for information, they must respond within 30 days, providing the information or rejecting the request based on specified reasons. If the requested information is related to someone's life or liberty, it must be provided within 48 hours. If the PIO doesn't respond within the specified time frames, it's considered a refusal of the request. These provisions are covered under Section 7 of the RTI Act.

Where a request has been rejected, the PIO shall communicate to the requester –

- ❖ The reasons for such rejection,
- ❖ The period within which an appeal against such rejection may be preferred, and
- ❖ The particulars of the Appellate Authority.

PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question. If allowing partial access, the PIO shall give a notice to the applicant, informing:

That only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

The reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

The name and designation of the person giving the decision;

The details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

His or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.

In the case of ***Central Board of Secondary Education and Anr vs. Aditya Bandopadhyay and Ors.,*** the Supreme Court of India made several observations regarding the Right to Information (RTI) Act. It emphasized that the RTI Act shouldn't be used to demand irrelevant information that doesn't relate to transparency, accountability, or fighting corruption in public authorities. Indiscriminate requests could overwhelm government offices and hinder their efficiency.

The Court clarified that the RTI Act grants access only to existing information held by public authorities. It doesn't require them to collect new information or provide opinions or advice. Additionally, the right to access information doesn't extend beyond the period during which the information is normally retained by the public authority. For instance, in the case of exam answer-books, the obligation to provide information only extends to the period specified by the rules and regulations governing the authority.

Overall, the RTI Act aims to promote transparency and accountability, but it shouldn't be misused to burden authorities or disrupt their functioning. These observations are in line with Section 8 of the RTI Act, which outlines exemptions to information disclosure.

EXEMPTION FROM DISCLOSURE

Certain categories of information have been exempted from disclosure under the Act. These are:

Disclosure Prejudicially affecting	Where disclosure prejudicially affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.
Expressly forbidden by court or tribunal	Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court.
Breach of privilege of Parliament of State Legislature	Where disclosure would cause a breach of privilege of Parliament or the State Legislature.
Harming competitive position	Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants.
Confidence from a third party	Information received in confidence from a foreign government.
Disclosure endangering life or physical safety	Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance.
Impede the process of investigation or apprehension or prosecution	Information that would impede the process of investigation or apprehension or prosecution of offenders.
Cabinet Papers	Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.
Personal Information	Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

Kayalvizhi vs. CPio, office of the income Tax officer, Ward-1 (19.10.2022 - CiC) : (2022)

In this case, the application was filed since the Appellant has sought income related details of her brother and her mother in response to averred RTI Application(s) which impinges on the privacy of the concerned third parties and therefore, the information has been denied to her under Section 8(1)(j) of RTI Act. Further, the other issue raised by the Appellant in the instant Appeal pertains to her family dispute which cannot be redressed from the RTI platform. The appeal was denied and it was observed that

"....in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information……"

"……..Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied....."

PARTIAL DISCLOSURE ALLOWED

Under Section 10 of the RTI Act, only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided.

Chief information Commissioner vs. high Court of Gujarat and ors. (04.03.2020 -SC): (2020)4SCC702

In this case, an appeal was filed with regards to the right of a third party to apply for certified copies to be obtained from the High Court by invoking the provisions of Right to Information Act without resorting to Gujarat High Court Rules prescribed by the High Court. Court observed that

"*We do not find any merit in the above submission and that such cumbersome procedure has to be adopted for furnishing the information/certified copies of the documents. When there is an effective machinery for having access to the information or obtaining certified copies which, in our view, is a very simple procedure i.e. filing of an application/ affidavit with requisite court fee and stating the reasons for which the certified copies are required, we do not find any justification for invoking Section 11 of the RTI Act and adopt a cumbersome procedure. This would involve wastage of both time and fiscal resources which the preamble of the RTI Act itself intends to avoid.*"

WHO IS EXCLUDED?

The Act excludes certain Central Intelligence and Security agencies listed in the Second Schedule, such as IB, R&AW, and others, as well as those specified by State Governments through a Notification. However, these organizations still have a duty to provide information related to allegations of corruption and human rights violations. Information concerning human rights violations requires approval from the Central Information Commission within 45 days of receiving the request. This provision is outlined in Section 24 of the Act.

Central Information Commission

The Central Information Commission (CIC) is formed by the Central Government through a Gazette Notification. It consists of the Chief Information Commissioner and Central Information Commissioners, who should not exceed 10 in number. They are appointed by the President of India based on recommendations from a committee comprising the Prime Minister, the leader of Opposition in the Lok Sabha, and a Union Cabinet Minister nominated by the Prime Minister.

The Chief Information Commissioner and Information Commissioners must be individuals with distinguished backgrounds in public life, possessing broad knowledge and experience in fields like law, science and technology, social service, management, journalism, mass media, administration, or governance. They cannot be Members of Parliament or the Legislature of any State or Union Territory, nor can they hold any other office of profit, be affiliated with any political party, or engage in any business or profession.

Term of office and conditions of service of Central Information Commission

(1)	The Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment: Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.
(2)	Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner: Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in section 12: Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.
(3)	The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him on that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.
(4)	The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.
(5)	The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government: Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment:
(6)	The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to, and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

State Information Commission

The State Information Commission will be constituted by the State Government through a Gazette notification. The State Information Commission consists of one State Chief Information Commissioner (SCIC) and not more than 10 State Information Commissioners (SIC). These shall be appointed by the Governor on the recommendations of a committee consisting of the Chief Minister who is the Chairman of the committee. Other members include the Leader of the Opposition in the Legislative Assembly and one Cabinet Minister nominated by the Chief Minister.

Term of office and conditions of service of State Information Commission

(1)	The State Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment: Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.
(2)	Every State Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner: Provided that every State Information Commissioner shall, on vacating his office under this subsection, be eligible for appointment as the State Chief Information Commissioner in the manner specified in section 15(3): Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.
(3)	The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.
(4)	The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office: Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.
(5)	The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government:
(6)	The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

POWERS OF INFORMATION COMMISSIONS

The Central Information Commission/State Information Commission has a duty to receive complaints from any person

Non appointment of PIO	❖ who has not been able to submit an information request because a PIO has not been appointed;
Refusal of Information	❖ who has been refused information that was requested;
Breach of privilege of parliament or State Legislature	❖ where disclosure would cause a breach of privilege of Parliament or the State Legislature;
No response	❖ who has received no response to his/her information request within the specified time limits;
Unreasonable fees	❖ Who thinks the fees charged are unreasonable;
Incomplete or Misleading Informations	❖ Who thinks information given is incomplete or false or misleading and
Any other matter	❖ Any other matter relating to obtaining information under this law.

APPELLATE AUTHORITIES

Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under the Act.

Third Party appeal	❖ Third Party appeal against PIO's decision must be filed within 30 days before first Appellate Authority: and, within 90 days of the decision on the first appeal, before the appropriate Information Commission which is the second appellate authority.
Officer senior in rank to the PIOs	❖ First Appeal: First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).

Central Information Commission or the State Information Commission	❖ Second Appeal: Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown).

N.N. Dhumane vs. PIO, Department of Posts (10.04.2018 - CIC) 2018 SCC Online CIC 21

In the case of N.N. Dhumane vs. PIO, Department of Posts, the appellant's pension for March 2017 was withheld due to Aadhaar linking issues, along with 55 other pensioners. The appellant filed an RTI application regarding this issue, questioning the sudden linking of Aadhaar to her pension account without prior notice, leading to payment delays. The judgment emphasized that public authorities cannot delay pension payments to senior citizens and retired employees due to Aadhaar linking or any other conditions. Pensioners rely on their pensions for livelihood, and delaying payments is inhumane and violates their fundamental right to life. Even if Aadhaar linking is necessary, it should not result in pension payment delays or denial of pension-related information.

PENALTIES

Section 20 of the Act imposes a stringent penalty on a Public Information Officer (PIO) for failing to provide information. Every PIO will be liable for fine of Rs.250 per day, up to a maximum of Rs.25,000/-, for–

- Not accepting an application;
- Delaying information release without reasonable cause;
- Malafidely denying information;
- Knowingly giving incomplete, incorrect, misleading information;
- Destroying information that has been requested; and Obstructing furnishing of information in any manner.

The Information Commission (IC) at the Centre and at the State levels will have the power to impose this penalty. They can also recommend disciplinary action for violation of the law against the PIO for persistently failing to provide information without any reasonable cause within the specified period.

JURISDICTION OF COURTS

Role of Central/State governments

Section 26 contemplates the Role of Central/State Governments. It authorizes the Central/State Governments to:

- ❖ Develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;
- ❖ Encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;
- ❖ Promote timely and effective dissemination of accurate information by public authorities about their activities; and
- ❖ Train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

HN Malviya vs. CPIO, Department of Personnel and Training on 31st October, 2022 (Central Information Commission)

In the first case, the appellant filed an RTI application seeking information about employee seniority, but the Chief Information Commission found the request to be speculative and not in line with the RTI Act. Despite this, the CPIO and FAA tried to assist the appellant within the spirit of the Act. The Commission cautioned against stretching the interpretation of the RTI Act to include deductions and inferences, as it could put undue pressure on CPIOs.

In the second case, Mr. Raj Kumar filed an RTI application seeking salary and DA implementation records. The CPIO provided some information, but Mr. Raj Kumar was dissatisfied and filed a complaint. Despite being absent during the hearing, the Commission directed the respondent to provide complete and accurate information within 21 days, emphasizing transparency and accountability. The Commission also reminded the CPIO to be more careful in the future to avoid such lapses and ensure compliance with the RTI Act.

These cases illustrate how RTI applications must be handled carefully, ensuring transparency and accountability, as mandated by the RTI Act, 2005.

15 LAW RELATING TO INFORMATION TECHNOLOGY

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 and other 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

According to Section 1 (4) of the Information Technology Act, 2000 nothing in Information Technology Act, 2000, shall apply to documents or transactions specified in the First Schedule. The documents or transactions mentioned in first schedule are as under:

1.	Negotiable Instruments with exceptions	A negotiable instrument (other than a cheque, a Demand Promissory Note or a Bill of Exchange issued in favour of or endorsed by an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority) as defined in Section 13 of the Negotiable Instrument Act, 1881.
2.	Power of Attorney with exceptions	A power-of-attorney as defined in section 1A of the Powers-of Attorney Act, 1882 but excluding those power-of-attorney that empower an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority to act for, on behalf of, and in the name of the person executing them.
3.	Trusts	A trust as defined in section 3 of the Indian Trust Act, 1882.
4.	Wills	A will as defined in section 2(h) of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.

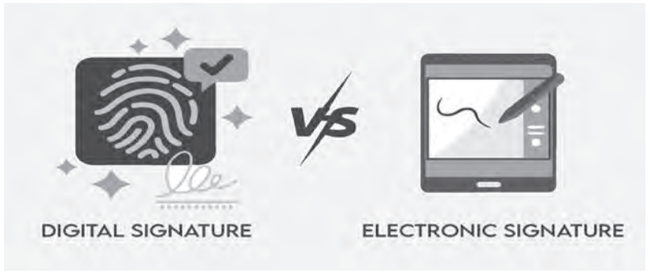
Syed Asifuddin and Ors. vs. The state of Andhra Pradesh and Ors. Andhra Pradesh high Court, 2006 (1) AlD Cri 96, 2005 Cri. LJ 4314

In the case of Syed Asifuddin and Ors. vs. The state of Andhra Pradesh and Ors. in the Andhra Pradesh High Court in 2006, the argument was made that a telephone handset is not considered a computer or a system containing a computer program under Section 65 of the Information Technology Act. Additionally, without any law requiring the maintenance of computer source code, the accusation of concealing, destroying, or altering computer source code lacks substance, thus negating the offence of hacking. However, the court noted that cell phones rely on essential functions performed by the Mobile Telephone Switching Office (MTSO), which involves coordinating various transmitters and antennas with cell phone functions. All of this is made possible by a computer, which receives, analyses, and distributes data through radio or electrical signals in a fraction of a second.

"Computer network"	means the interconnection of one or more computers through
	(*i*) The use of satellite, microwave, terrestrial line or other communication media; and
	(*ii*) Terminals or a complex consisting of two or more interconnected computers, whether or not the interconnection is continuously maintained. [Section 2(1)(j)]
"Computer resource"	means computer, computer system, computer network, data, computer database or software. [Section 2(1) (k)]
"Computer system"	means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data, and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions. [Section 2(1)(l)]
"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-marketplaces and cyber cafes. [Section 2(1) (w)]
"Key pair"	in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key. [Section 2(1) (x)]
"Originator"	means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person, but does not include an intermediary. [Section 2(1)(za)]
"Public Key"	means the key of a key pair, used to verify a digital signature and listed in the Digital Signature Certificate. [Section 2(1)(zd)]
"Secure System"	means computer hardware, software, and procedure that-
	(*a*) Are reasonably secure from unauthorised access and misuse;
	(*b*) Provide a reasonable level of reliability and correct operation;
	(*c*) Are reasonably suited to performing the intended functions; and
	(*d*) Adhere to generally accepted security procedures.
"Verify"	in relation to a digital signature, or electronic record or its grammatical variations and cognate expressions, means to determine whether
	(*a*) The initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;
	(*b*) The initial electronic record is retained intact, or has been altered since such electronic record was so affixed with the digital signature. [Section 2(1)(zh)]

DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE

As per **section 2(1)(ta) of the Information Technology Act, 2000**, "electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the second Schedule and includes digital signature.



Section 35, Electronic Signature Certificates are issued under section 35 and includes Digital Signature Certificate and Digital Signature Certificate are issued under **section 35(4)** of the Act.

[Sections 3(1), 3(2)] - Digital signature (i.e. authentication of an electronic record by a subscriber, by electronic means) is recognised as a valid method of authentication. The authentication is to be affected by the use of "asymmetric crypto system and hash function", which envelop and transform an electronic record into another electronic record.

For the purposes of above any electronic signature or electronic authentication technique shall be considered reliable if—

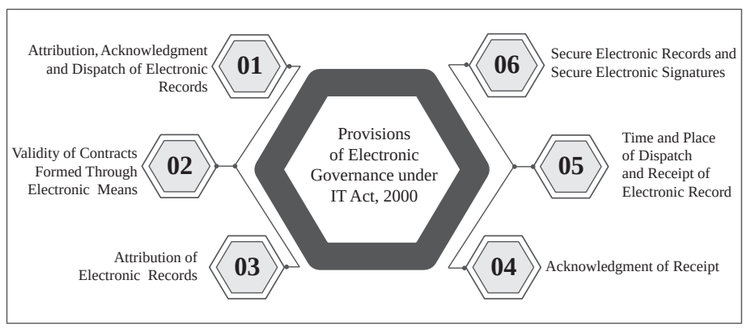
- The signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and to no other person;
- The signature creation data or the authentication data were, at the time of signing, under the control of 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)

The Act grants legal recognition to electronic records by laying down that where (by any law) "information" or any other matter is to be in:

(*a*)	Writing or
(*b*)	Typewritten form or
(*c*)	Printed form, then, such requirement is satisfied, if such information or matter is:
	(*i*) Rendered or made available in an electronic form; and
	(*ii*) Accessible, so as to be usable for a subsequent reference. (Section 4)

It may be pointed out that "information", as defined in **Section 2(1) (v)** of the Act, includes data, text, images, sound, voice, codes, computer programmes, software and data-bases or microfilm or computer-generated "microfiche".



PRIVATE TRANSACTIONS

Thus, Section 4 of the Information Technology Act, practically equates electronic record with a manual or typed or printed record. Section 5 deals with legal recognition of electronic signatures. It states that where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.

It may be noted that "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

Public Records

The provisions of the Act mainly focus on regulating private transactions. However, it also introduces rules for electronic records and electronic signatures in public records. This means that electronic records and signatures are recognized in cases where existing laws require signatures or authentication, extending the same recognition to electronic forms. This provision is outlined in a specific section of the Act.

- The filing of any form, application or any other document with a Governmental office or agency; or
- The grant of any licence, permit etc.; or
- The receipt or payment of money in a particular manner. (Section 6)

Delivery of Services by Service Provider

Section 6A of the Information Technology Act allows the government to authorise service providers to use electronic means for delivering public services efficiently. This authorization can be given through an official order published in the Official Gazette. Service providers can include individuals, private agencies, companies, partnerships, or any other organisation permitted by the government to offer services electronically, following the relevant policies.

PUBLICATION OF SUBORDINATE LEGISLATION IN ELECTRONIC GAZETTE

Subordinate legislation is also authorised, by the Act, to be published in the Official Gazette or the electronic Gazette, and the date of its first publication in either of the two Gazette shall be deemed to be the date of publication. (Section 8)

But the provisions summarised above shall not confer any right upon any person to insist, that any Government agency shall accept, issue etc. any document in electronic form or effect any monetary transaction in electronic form. (Section 9)

VALIDITY OF CONTRACTS FORMED THROUGH ELECTRONIC MEANS

The 2008 amendment to the IT Act introduced Section 10A, which ensures that electronic contracts are legally valid. This means that if proposals, acceptances, or revocations in a contract are communicated electronically or through electronic records, the contract cannot be considered unenforceable just because electronic methods were used. This supports the growing trend of e-commerce and electronic signatures in businesses and organisations.

The Supreme Court in the 2010 case of ***Trimex International FZE Ltd. Dubai vs. Vedanta Aluminium Ltd., India.*** *("Trimex Case") provided this clarity with regard to contracts concluded on emails. In the Trimex Case the Supreme Court held that inference can be drawn from documents exchanged on telegram, emails etc. ("Telecommunication") that a valid contract subsists given that intention of the party to be bound by the terms of such Tele-communications and essential elements of a valid contract are present.*

ATTRIBUTION AND DISPATCH OF ELECTRONIC RECORDS

Since, in an electronic record, the maker remains behind the curtain, it was considered desirable to make a provision for "attribution" of the record. An electronic record is attributed to the "originator". [Defined in Section 2(1)(za)]

Broadly, the "originator" is the person at whose instance it was sent in the following cases–

- If it was sent by the originator himself; or
- If it was sent by a person authorised to act on behalf of the originator in respect of that electronic record; or
- If it was sent by an information system programmed by or on behalf of the originator to operate automatically. (Section 11)

Regarding acknowledgement of receipt of electronic records, the Act provides that where there is no agreement that the acknowledgment be given in a particular form etc. then the acknowledgement may be given by:

- Any communication by the addressee (automated or otherwise); or
- Any conduct of the addressee which is sufficient to indicate to the originator that the electronic record has been received. [Section 12(1)]

Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgement must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent. [Section 12(2)]

TIME AND PLACE OF DISPATCH

Time of Receipt [Section 13(1), 13(2)]

As regards the time of receipt of electronic records, two situations are dealt with, separately. Subject to agreement, if the addressee has designated a computer resource for receipt, then receipt occurs when the electronic record enters the designated resource. However, if the record is sent to a computer resource of the addressee which is not the designated resource, then receipt occurs at the time when the electronic record is retrieved by the addressee. [Section 13(2)(a)]

If the addressee has not designated a computer resource (with or without specified timings), then receipt is deemed to occur, when the electronic record enters the computer resource of the addressee.

SECURE ELECTRONIC RECORDS AND SIGNATURES

An electronic signature shall be deemed to be a secure electronic signature, if—

- The signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
- The signature creation data was stored and affixed in such exclusive manner as may be prescribed. (Section 15)

CERTIFYING AUTHORITIES

The Information Technology Act (Sections 17-34) lays out rules for Certifying Authorities (CAs). These authorities are responsible for verifying the identity of individuals applying

for digital signature certificates. They confirm that a digital signature belongs to a specific person through a certificate. The Controller of Certifying Authorities (CCA), appointed by the Central Government (Section 17), oversees these authorities. The CCA issues certificates for CAs' public keys, allowing users to verify certificates in cyberspace. The CCA also maintains the Repository of Digital Certificates, which stores all certificates issued to CAs in the country.

Licenced Certifying Authorities

ELECTRONIC SIGNATURE CERTIFICATES

Sections 35-39 of the Act deal with Electronic Signature Certificates. As per section 35 of the Act, Certifying authority to issue electronic signature Certificate. Followings are the procedure of obtaining electronic signature Certificate:

Any person may make an application in prescribed form to the Certifying Authority for the issue of electronic signature Certificate in such form as may be prescribed by the Central Government.

Every such application shall be accompanied by prescribed fees

Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

On receipt of an application , the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the electronic signature Certificate or for reasons to be recorded in writing, reject the application.

Suspension of Digital Signature Certificate (DSC)

The Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,–

(*a*)	On receipt of a request to that effect from–
	(*i*) the subscriber listed in the Digital Signature Certificate; or
	(*ii*) any person duly authorised to act on behalf of that subscriber;
(*b*)	If it is of opinion that the Digital Signature Certificate should be suspended in public interest

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

Revocation of Digital Signature Certificate (DSC)

A Certifying Authority may revoke a Digital Signature Certificate issued by it in the following circumstances:

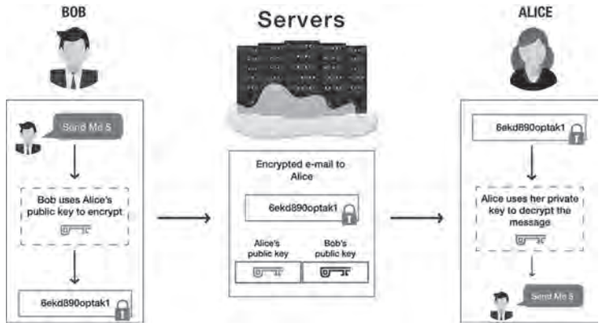
- Where the subscriber or any other person authorised by him makes a request to that effect; or
- Upon the death of the subscriber; or
- Upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

Further, a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that

- ❖ A material fact represented in the Digital Signature Certificate is false or has been concealed;
- ❖ A requirement for issuance of the Digital Signature Certificate was not satisfied;
- ❖ The Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;
- ❖ The subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

Control of Private Key

Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure.



If the private key corresponding to the public key listed in the Digital Signature Certificate has been compromised, then, the subscriber shall communicate the same without any delay to the Certifying Authority in such manner as may be specified by the regulations.

The subscriber is liable till he has informed the Certifying Authority that the private key has been compromised.

PENALTIES AND ADJUDICATIONS

Section 43 provides that if any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,

(*a*)	Accesses or secures access to such computer, computer system or computer network or computer resource;
(*b*)	Downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;
(*c*)	Introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;
(*d*)	Damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;
(*e*)	Disrupts or causes disruption of any computer, computer system or computer network;
(*f*)	Denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;
(*g*)	Provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;
(*h*)	charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network;
(*i*)	Destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;
(*j*)	Steal, conceal, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;

For the Purposes of Section 43

(*i*)	"Computer contaminant" means any set of computer instructions that are designed
	(*a*) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or
	(*b*) by any means to usurp the normal operation of the computer, computer system, or computer network.
(*ii*)	"computer data-base" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;
(*iii*)	"Computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;

(*iv*)	"Damage" means to destroy, alter, delete, add, modify or rearrange any computer resource by any means;
(*v*)	"Computer source code" means the listing of programme, computer commands, design and layout and programme analysis of computer resource in any form.

COMPENSATION FOR FAILURE TO PROTECT DATA

Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.(Section 43A)

It may be noted that:

- "Body corporate" means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities;
- "Reasonable security practices and procedures" means security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit;
- "Sensitive personal data or information" means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.

Residuary Penalty (Section 46)

Whoever contravenes any rules or regulations made under Information Technology Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

Adjudicating Officer

An adjudication officer is to be appointed by the Central Government for adjudging whether any person has committed a contravention of the Act or of any rule, regulation, direction or order issued under the Act. He may impose penalty or award compensation in accordance with the provisions of the relevant section (Section 46).

The Act takes-care to set out the factors to be taken into account by the Adjudicating officer, in adjudging the quantum of compensation under this Chapter. He has to have due regard to the following factors:

- The amount of gain of unfair advantage (wherever quantifiable), made as a result of the default;
- The amount of loss caused to any person as a result of the default; and
- The repetitive nature of the default.

However, the adjudicating officer may exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore. The jurisdiction in respect of the claim for injury or damage exceeding rupees five crores is vested with the competent court

CYBER REGULATION APPELLATE TRIBUNAL

Chapter X of the Act (Sections 48-62) establishes the Appellate Tribunal. The Telecom Disputes Settlement and Appellate Tribunal, as established by the Telecom Regulatory Authority of India Act, 1997, also serves as the Appellate Tribunal for this Act. If someone disagrees with a decision by the Controller of Certifying Authorities or an adjudicator, they can appeal to the Appellate Tribunal within 45 days (Section 57). If they're unhappy with the Tribunal's decision, they can appeal to the High Court within 60 days. Civil Courts cannot intervene in matters within the jurisdiction of the adjudicating officer or the Appellate Tribunal.

OFFENCES

Tampering with computer source documents

Section 65 of the Information Technology Act deals with tampering with computer source documents. It states that if someone knowingly or intentionally hides, destroys, or changes computer source code, and if keeping or maintaining that code is required by law, they can be punished with up to three years in prison, a fine of up to two lakh rupees, or both. "Computer source code" refers to the programming instructions, commands, design, layout, and analysis of computer resources in any form.

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, etc., in electronic form
Publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form
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.

Shreya Singhal v. union of India (2015) 5 SCC 1

In the case, petitions were filed challenging Section 66A of the Information Technology Act of 2000, arguing that it violated the fundamental right of free speech and expression (Article 19(1)(a)) and the Right to Equality (Article 14) of the Indian Constitution. The court observed that Section 66A was vague and overly broad, encompassing a wide range of protected speech. The court ruled that Section 66A violated Article 19(1)(a) and was not justified under Article 19(2). They also found that the wider reach of the internet should not restrict the right to free speech. As a result, Section 66A was struck down entirely as unconstitutional.

EXEMPTION FROM LIABILITY OF INTERMEDIARY IN CERTAIN CASES

According to section 79(1) of the Act, an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him. However, this provision is subject to section 79 (2) & (3) of the Act provided below.

According to section 79(2), the provisions of sub-section (1) shall apply if:

(*a*)	The function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or
(*b*)	The intermediary does not:
	(*i*) Initiate the transmission,
	(*ii*) Select the receiver of the transmission, and
	(*iii*) Select or modify the information contained in the transmission.
(*c*)	The intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

LAW OF PERSONAL DATA PROTECTION

The Digital Personal Data Protection Act, 2023, received the President's approval on August 11, 2023. This law aims to regulate the handling of digital personal data, balancing individuals' rights to protect their data with the lawful processing of such data. The Act defines a "personal data breach" as any unauthorized processing or accidental exposure, acquisition, sharing, alteration, or loss of access to personal data that compromises its confidentiality, integrity, or availability. "Processing" of personal data refers to automated or manual operations like collection, storage, use, sharing, or destruction of digital personal data. The Act will be supported by rules created by the Central Government.

Application of the Act

According to section 3, subject to the provisions of this Act, it shall–

(*a*)	Apply to the processing of digital personal data within the territory of India where the personal data is collected–
	(*i*) In digital form; or
	(*ii*) In non-digital form and digitised subsequently
(*b*)	Also apply to processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India;
(*c*)	Not apply to–
	(*i*) Personal data processed by an individual for any personal or domestic purpose; and
	(*ii*) Personal data that is made or caused to be made publicly available by–
	(A) The Data Principal to whom such personal data relates; or
	(B) Any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.

Digital Data Protection Act, 2023 will come into force only after notification in the Official Gazette by the Central Government which is yet to be notified.

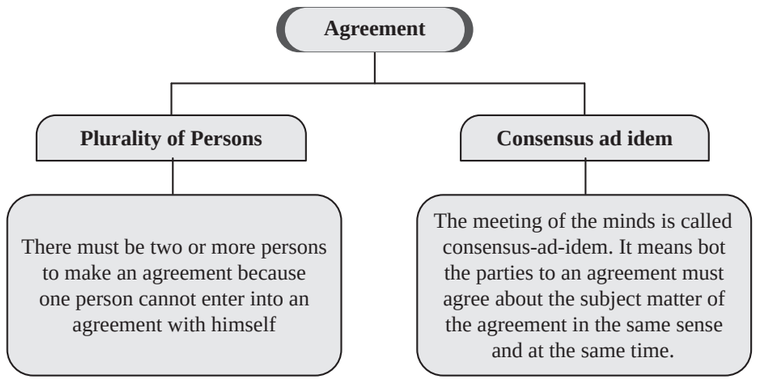
16 CONTRACT LAW

MEANING AND NATURE OF CONTRACT

A contract therefore, is a combination of the two elements; (1) an agreement and (2) an obligation.

AGREEMENT

An agreement gives birth to a contract. As per Section 2(e) of the Indian Contract Act "every promise and every set of promises, forming the consideration for each other, is an agreement. It is evident from the definition given above that an agreement is based on a promise. What is a promise? According to Section 2(b) of the Indian Contract Act "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. An agreement, therefore, comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto. In nutshell, an agreement is the sum total of offer and acceptance."



Obligation

An obligation is the legal duty to do or abstain from doing what one has promised to do or abstain from doing. A contractual obligation arises from a bargain between the parties to the agreement who are called the promisor and the promisee. Section 2(b) says that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted; and a proposal when accepted becomes a promise. In broad sense, therefore, a contract is an exchange of promises by two or more persons, resulting in an obligation to do or abstain from doing a particular act, where such obligation is recognised and enforced by law.

Agreements which are not Contracts

Agreements in which the idea of bargain is absent and there is no intention to create legal relations are not contracts. These are :

- Agreements relating to social matters
- Domestic arrangements between husband and wife

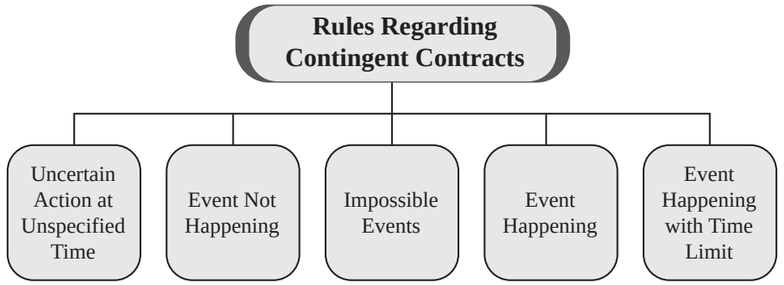
Intention to Create Legal Relations

The passage emphasizes that intending legal consequences is key to a valid contract.

- ❖ Agreements made for social or domestic purposes, like sharing dinner plans, aren't considered contracts because they lack the intention to be legally binding.
- ❖ To form a contract, both the offer and acceptance need to show an intention of creating legal obligations.
- ❖ Courts assess this intention objectively, considering what a reasonable person would infer from the situation, not the parties' private thoughts. They may look at the parties' actions to determine their presumed intent.

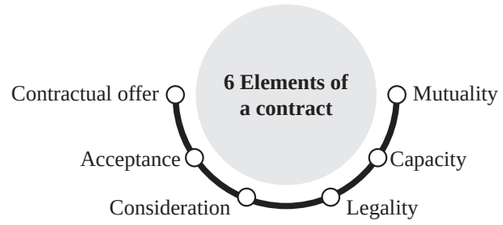
CONTINGENT CONTRACT (SECTION 31)

As per Section 31, a contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen. Contracts of insurance and contracts of indemnity and guarantee are popular instances of contingent contracts.



ESSENTIAL ELEMENTS OF A VALID CONTRACT

Section 10 of the Indian Contract Act, 1872 provides that "all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void".



Kinds of Offer, Communication, Acceptance and Revocation of Offer and Acceptance

Offer or Proposal and Acceptance

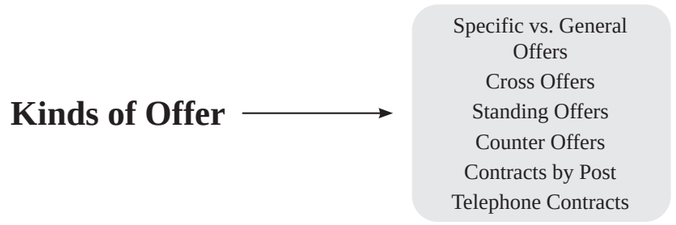
One of the early steps in the formation of a contract lies in arriving at an agreement between the contracting parties by means of an offer and acceptance. Thus, when one party (the offeror) makes a definite proposal to another party (the offeree) and the offeree accepts it in its entirety and without any qualification, there is a meeting of the minds of the parties and a contract comes into being, assuming that all other elements are also present.

What is an Offer or a Proposal?

A proposal is also termed as an offer. The word 'proposal' is synonymous with the English word "offer". An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance. The person making the proposal or offer is called the proposer or offeror and the person to whom the proposal is made is called the offeree.

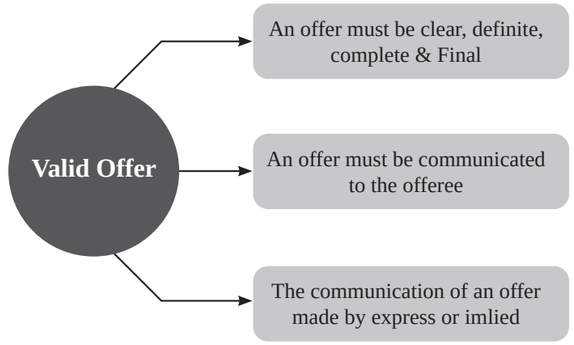
Kinds of Offers

There are generally 7 types of Offers with differences as to type of offers and their parties. They are as under:



Rules Governing Offers

A valid offer must comply with the following rules:



CASE LAWS

Carlill v. Carbolic Smoke Ball Co.: This case established that a general offer through advertisement (like a reward for using a product) can be accepted by anyone who fulfills the conditions. Multiple people can claim the reward if the offer is ongoing.

HarbhajanLal v. HarcharanLal: This Indian case follows the same principle. Here, anyone who returned a lost boy could claim the reward offered through a public announcement.

Offer and invitation to Offer

Invitation to offer is a communication to invite a certain person(s) or public for making an offer. The same may be understood from below mentioned examples:

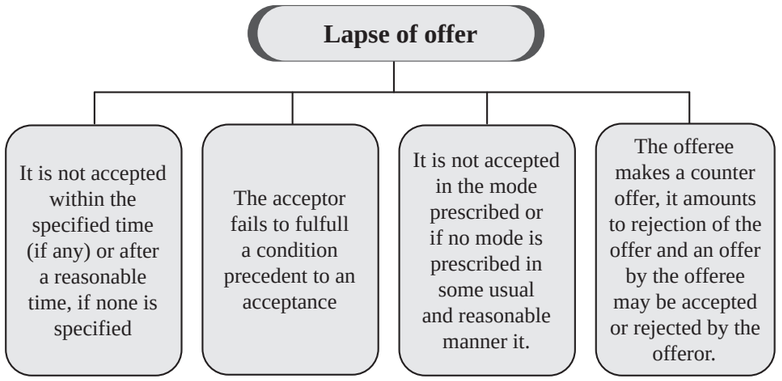
(a) An invitation to treat or an invitation to make an offer

(b) A mere statement of intention: e.g., an announcement of a coming auction sale. Thus, a person who attended the advertised place of auction could not sue for breach of contract if the auction was cancelled [Harris v. Nickerson (1873) L.R. 8 QB 286].

(c) A mere communication of information in the course of negotiation: e.g., a statement of the price at which one is prepared to consider negotiating the sale of a piece of land [Harvey v. Facey (1893) A.C. 552].

Lapse of Offer

Section 6 deals with various modes of lapse of an offer. It states that an offer lapses if-



Revocation of Offer by the Offeror

An offer may be revoked by the offeror at any time before acceptance.

Mode of Revocation

A proposal may be revoked in different ways. Revocation may be revoked either by act or by omission. Section 6 provides the following modes for revocation:

(1) by the communication of notice of revocation by the proposer to the other party.

(2) by the lapse of the time prescribed in such a proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance.

(3) by the failure of the acceptor to fulfill a condition precedent to acceptance.

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offeree to an offer. Under Section 2(b) of the Contract Act when a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.

Rules Governing Acceptance

(a) Acceptance may be expressed i.e. by words spoken or written or implied from the conduct of the parties.

(b) If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner.

(c) Acceptance must be unqualified and absolute and must correspond with all the terms of the offer.

(d) A counter offer or conditional acceptance operates as a rejection of the offer and causes it to lapse

(e) Acceptance must be communicated to the offeror, for acceptance is complete the moment it is communicated. Where the offeree merely intended to accept but does not communicate his intention to the offeror, there is no contract. Mere mental acceptance is not enough.

(f) Mere silence on the part of the offeree does not amount to acceptance.

(g) If the offer is one which is to be accepted by being acted upon, no communication of acceptance to the offeror
is necessary, unless communication is stipulated for in the offer itself.

(h) Acceptance must be given within a reasonable time and before the offer lapses or is revoked. An offer becomes irrevocable by acceptance.

An acceptance never precedes an offer. There can be no acceptance of an offer which is not communicated. Similarly, performance of conditions of an offer without the knowledge of the specific offer, is no acceptance. Thus in ***Lalman Shukla v. Gauri Dutt (1913),*** where a servant brought the boy without knowing of the reward, he was held not entitled to reward because he did not know about the offer.

CONSIDERATION

- Both legal systems agree that consideration is essential for a contract to be valid. It's essentially the "price" exchanged for a promise.
- There are two main definitions:
  - Sir Fredrick Pollock's view - consideration is what one party gives up (or promises to give up) in exchange for the other party's promise.
  - Indian Contract Act definition - consideration is the act, forbearance, or promise done or given by the promisee (or someone else) at the promisor's desire.

Key Differences:

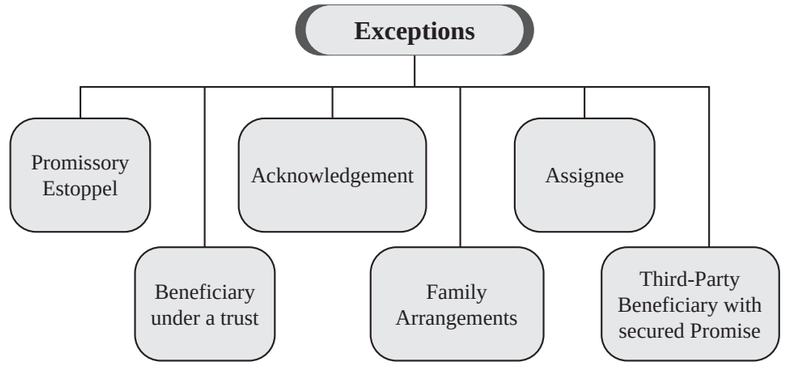
- **Who Can Provide Consideration (Promisee vs. Anyone):**
  - English Law - Only the promisee (the one receiving the promise) can provide consideration. A third party cannot enforce the contract.
  - Indian Law - Consideration can come from the promisee or anyone else. Even a stranger to the contract can enforce it if they provided the consideration desired by the promisor.

Doctrine of Privity of Contract and of Consideration

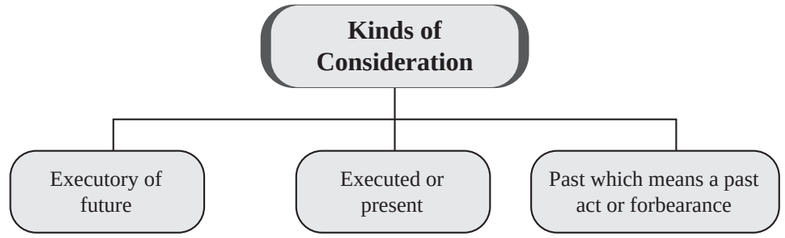
Privity of Contract

- Generally, only parties directly involved in a contract (not strangers) can sue or be sued based on the contract.

Exceptions to Privity:



Kinds of Consideration



Rules Governing Consideration

Essential for Simple Contracts: Most contracts (except some exceptions) require valuable consideration to be enforceable.

Action or Promise: Consideration can be an act of doing something, refraining from doing something, or a promise to do either.

Mutuality: Both parties must exchange something of value (promise or act). Gratuitous promises (like charity donations) are not enforceable.

Real and Definite: Consideration must be clear and specific, not vague or illusory.

Adequacy Not Required: The value exchanged doesn't need to be perfectly balanced. A party can agree to sell something for less than its market value.

Lawful: Consideration cannot be based on illegal activity.

Not Pre-Existing Duty: You can't get extra compensation for doing what you were already obligated to do under another contract.

WHEN CONSIDERATION NOT NECESSARY

Thus, an agreement without consideration is valid :

If it is expressed in writing and registered and is made out of natural love and affection between parties standing in a near relation to each other; or

If it is made to compensate a person who has already done something voluntarily for the promisor, or done something which the promisor was legally complellable to do; or

If it is a promise in writing and signed by the person to be charged therewith, or by his agent, to pay a debt barred by the law of limitation

Besides, according to Section 185 of the Indian Contract Act, consideration is not required to create an agency

In the case of gift actually made, no consideration is necessary. There need not be nearness of relation and even if it is, there need not be any natural love and affection between them

Whether Gratuitous Promise can be Enforced

A gratuitous promise to subscribe to a charitable cause cannot be enforced, but if the promise is put to some detriment as a result of his acting on the faith of the promise and the promisor knew the purpose and also knew that on the faith of the subscription an obligation might be incurred, the promisor would be bound by promise ***(KedarNath V. Gorie Mohan 64).***

Terms Must be Certain

Agreements to negotiate future terms (e.g., promising to set a salary "mutually later") or contracts with vague terms aren't enforceable.

Courts won't enforce uncertain contracts.

"Agreement to agree" isn't a valid contract (e.g., "subject to contract" means no binding deal exists).

Thus, a contract is always based upon:

(i) Agreement (consensus ad idem) an unqualified acceptance of a definite offer;

(ii) An intent to create legal obligations; and

(iii) Consideration.

Void, Voidable & Illegal Contracts : Flaws in Contract and Free Consent

Capacity to Contract

(a) Void Agreement

A void agreement is one which is destitute of all legal effects. It cannot be enforced and confers no rights on either party. It is really not a contract at all, it is non-existent. Technically the words 'void contract' are a contradiction in terms. But the expression provides a useful label for describing the situation that arises when a 'contract' is claimed but in fact does not exist. For example, a minor's contract is void.

(b) Voidable Contract

A voidable contract is one which a party can put to an end. He can exercise his option, if his consent was not free. The contract will, however be binding, if he does not exercise his option to avoid it within a reasonable time. The consent of a party is not free and so he is entitled to avoid the contract, if he has given his consent due to misrepresentation, fraud, coercion or undue influence.

(c) Illegal Agreement

An illegal agreement is an unlawful agreement. The law prohibits agreements made with unlawful object or consideration. Such an agreement, like the void agreement has no legal effects as between the immediate parties. Further, transactions collateral to it also become tainted with illegality and are, therefore, not enforceable. Parties to an unlawful agreement cannot get any help from a Court of law, for no polluted hands shall touch the pure fountain of justice. On the other hand, a collateral transaction can be supported by a void agreement.

Flaw in Capacity – Capacity and Persons

In law, persons are either natural or artificial. Natural persons are human beings and artificial persons are corporations. Contractual capacity or incapacity is an incident of personality.

The general rule is that all natural persons have full capacity to make binding contracts. But the Indian Contract Act, 1872 admits an exception in the case of :

(i) minors,

(ii) Lunatics, and

(iii) Persons disqualified from contracting by any law to which they are subject

MINOR'S CONTRACT

The legal status of contracts entered into by minors (people below 18 years old) according to the Indian Majority Act, 1875 and the Indian Contract Act, 1872.

Key Points:

- **Age of Majority:** As per the Indian Majority Act (Section 3), a minor is anyone below 18 years old. Under court guardianship, the age extends to 21.
- **Incapacity to Contract:** The Indian Contract Act (Section 11) states that minors lack the capacity to form binding contracts (Mohori Bibi v. Dharmodas Ghose, 1903).
- **Void Contracts:** Minor's contracts are void ab initio (from the beginning), meaning they have no legal effect. (Mohori Bibi v. Dharmodas Ghose)
- **No Ratification:** Even upon reaching adulthood, a minor cannot ratify (approve) a void contract.
- **Estoppel Exception:** Minors can always plead to the minority to avoid liability, even if they misrepresented their age.
- **Exceptions:**
  - **Necessaries (Section 68):** Minors' estates are liable for the reasonable cost of essential goods and services (necessaries) for themselves or dependents, based on their social status. Examples include food, clothing, education, and legal defense.
  - **Parental/Guardian Agreements:** Parents or guardians can enter binding contracts on a minor's behalf if it benefits the minor or is a legal necessity. Examples include marriage contracts (Rose Fernandez v. Joseph Gonsalves) and apprenticeships in certain communities.
- **Other Restrictions:**
  - Minors cannot be sued for breach of contract.
  - Minors cannot be declared insolvent.
  - Minors can be agents but not principals or partners in a business. They can, however, receive benefits from a partnership.

LUNATICS AGREEMENT

Definition: A person of unsound mind is someone who, at the time of the contract, cannot understand the contract or form a rational judgment about its consequences (lunacy).

Void Contracts: Contracts entered into by a person of unsound mind are void [Indian Contract Act, Section 11].

Lucid Intervals: If a person with an unsound mind has a clear mental state (lucid interval) when making a contract, it can be valid.

Temporary Conditions: Similar to unsound mind, contracts are void if someone is:

- Delirious from fever
- Extremely intoxicated
- Under hypnosis
- Mentally impaired due to old age or disease

Necessary Exception: A lunatic's estate (if any) can be liable for the cost of essential goods and services (necessaries) provided to them or their family.

One-Sided Enforcement: If a contract with a person of unsound mind benefits them, it can be enforced against the other party (Jugal Kishore v. Cheddu, 1903). There's no enforcement against the unsound mind person.

Other Persons qualified and disqualified from contracting

Alien Enemies

Some statues disqualify certain persons governed by them, to enter into a contract. For example, Oudh Land Revenue Act provides that where a person in Oudh is declared as a 'disqualified proprietor under the Act, he is incompetent to alienate his property.

A person who is not an Indian citizen is an alien. An alien may be either an alien friend or a foreigner whose sovereign or State is at peace with India, has usually contractual capacity of an Indian citizen. On the declaration of war between his country and India he becomes an alien enemy. A contract with an alien enemy becomes unenforceable on the outbreak of war.

For the purposes of civil rights, an Indian citizen of the subject of a neutral state who is voluntarily resident in hostile territory or is carrying on business there is an alien enemy. Trading with an alien enemy is considered illegal, being against public policy.

Foreign Sovereigns and Ambassador

Foreign sovereigns and accredited representatives of foreign states, i.e., Ambassadors, High Commissioners, enjoy a special privilege in that they cannot be sued in Indian Courts, unless they voluntarily submit to the jurisdiction of the Indian Courts. Foreign Sovereign Governments can enter into contracts through agents residing in India. In such cases the agent becomes personally responsible for the performance of the contracts.

Professional Persons

In England, barristers-at law are prohibited by the etiquette of their profession from suing for their fees. So also are the Fellow and Members of the Royal College of Physicians and Surgeons. But they can sue and be sued for all claims other than their professional fees. In India, there is no such disability and a barrister, who is in the position of an advocate with liberty both to act and plead, has a right to contract and to sue for his fees [Nihal Chand v. Dilawar Khan, 1933 All. L.R. 417].

Corporations

A corporation is an artificial person created by law, e.g., a company registered under the Companies Act, public bodies created by statute, such as Municipal Corporation of Delhi. A corporation exists only in contemplation of law and has no physical shape or form.

Married Women

In India there is no difference between a man and a woman regarding contractual capacity. A woman married or single can enter into contracts in the same ways as a man. She can deal with her property in any manner she likes, provided, of course, she is a major and is of sound mind.

Free Consent : Flaw in Consent

The basis of a contract is agreement, i.e., mutual consent. In other words, the parties should mean the something in the same sense and agree voluntarily. It is when there is consent, that the parties are said to be consensus ad idem i.e. their minds have met. Not only consent is required but it must be a free consent. Consent is not free when it has been caused by coercion, undue influence, misrepresentation, fraud or mistake. These elements if present, may vitiate the contract.

Mistake (Section 20 and 21)

The law believes that contracts are made to be performed. The whole structure of business depends on this as the businessmen depend on the validity of contracts. Accordingly, the law says that it will not aid any one to evade consequences on the plea that he was mistaken.

On the other hand, the law also realises that mistakes do occur, and that these mistakes are so fundamental that there may be no contract at all. If the law recognises mistake in contract, the mistake will render the contract void.

Effect of Mistake

A mistake in the nature of miscalculation or error of judgment by one or both the parties has no effect on the validity of the contract. For example, if A pays an excessive price for goods under a mistake as to their true value, the contract is binding on him **[Leaf v. International Galleries (1950) 1 All E.R. 693].**

Therefore, a mistake must be a "vital operative mistake", i.e. it must be a mistake of fact which is fundamental to contract. To be operative so as to render the contract void, the mistake must be:

(a) of fact, and not of law or opinion;

⬇

(b) the fact must be essential to agreement, i.e., so fundamental as to negative the agreement; and

⬇

(c) must be on the part of both the parties.

Mistake of Law and Mistake of Fact

Mistakes are of two kinds: (i) mistake of law, and (ii) mistake of fact. If there is a mistake of law of the land, the contract is binding because everyone is deemed to have knowledge of law of the land and ignorance of law is no excuse (ignorantia juris non-excusat).

Unilateral Mistake as to Nature of the Contract

The general rule is that a person who signs an instrument is bound by its terms even if he has not read it. But a person who signs a document under a fundamental mistake as to its nature (not merely as to its contents) may have it avoided provided the mistake was due to either-

the blindness, illiteracy, or senility of the person signing, or

⬇

a trick or fraudulent misrepresentation as to the nature of the document.

Unilateral Mistake as to the Identity of the Person Contracted

Mistake as to the identity of the person with whom the contract is made will operate to nullify the contract only if:

the identity is for material importance to the contracts; and

⬇

the mistake is known to the other person, i.e., he knows that it is not intended that he should become a party to the contract.

MISREPRESENTATION (SECTION 18)

Innocent Misrepresentation

If a person makes a representation believing what he says is true he commits innocent misrepresentation. Thus, any false representation, which is made with an honest belief in its truth, is innocent. The effect of innocent misrepresentation is that the party misled by it can avoid the contract, but cannot sue for damages in the normal circumstances.

The term "misrepresentation" is ordinarily used to connote both "innocent misrepresentation" and "dishonest misrepresentation". Misrepresentation may, therefore, be either (i) Innocent misrepresentation, or (ii) Wilful misrepresentation with intent to deceive and is called fraud.

But in order to avoid a contract on the ground of misrepresentation, it is necessary to prove that:

- ❖ there was a representation or assertion.
- ❖ such assertion induced the party aggrieved to enter into the contract.
- ❖ the assertion related to a matter of fact (and not of law as ignorance of law is no excuse).
- ❖ the statement was not a mere opinion or hearsay, or commendation (i.e., reasonable praise). For example an advertisement saying, "washes whiter than the whitest".
- ❖ the statement which has become or turned out to be untrue, was made with an honest belief in its truth. Damages for Innocent Misrepresentation.

Damages for Innocent Misrepresentation

Generally the injured party can only avoid the contract and cannot get damages for innocent misrepresentation. But in the following cases, damages are obtainable:

- ❖ From a promoter or director who makes innocent misrepresentation in a company prospectus inviting the public to subscribe for the shares in the company;
- ❖ Against an agent who commits a breach of warranty of authority:
- ❖ From a person who (at the Courts discretion) is estopped from denying a statement he has made where he made a positive statement intending that it should be relied upon and the innocent party did rely upon it and thereby suffered damages;
- ❖ Negligent representation made by one person to another between whom a confidential relationship, like that of a solicitor and client exists.

WILFUL MISREPRESENTATION OR FRAUD (SECTION 17)

Fraud is an untrue statement made knowingly or without belief in its truth or recklessly, carelessly, whether it be true or false with the intent to deceive.

The chief ingredients of Fraud →

a false representation or assertion,
of fact (and not a mere opinion),
made with the intention that it should be acted upon,
the representation must have actually induced the other party to enter into the contract and so deceived him,
the party deceived must thereby be indemnified, for there is no fraud without damages.

Contracts uberrimae fidei are:

(a) Contract of insurance of all kinds: The assured must disclose to the insurer all material facts and whatever he states must be correct and truthful.

(b) Company prospectus: When a company invites the public to subscribe for its shares, it is under statutory obligation to disclose truthfully the various matters set out in the Companies Act. Any person responsible for non-disclosure of any of these matters is liable to damages. Also, the contract to buy shares is voidable where there is a material false statement or non- disclosure in the prospectus.

(c) Contract for the sale of land: The vendor is under a duty to the purchaser to show good title to the land he has contracted to sell.

(d) Contracts of family arrangements: When the members of a family make agreements or arrangements for the settlement of family property, each member of the family must make full disclosure of every material fact within his knowledge.

Difference between Fraud and Innocent Misrepresentation

Fraud implies an intent to deceive, which is lacking if it is innocent misrepresentation.

In case of misrepresentation and fraudulent silence, the defendant can take a good plea that the plaintiff had the means of discovering the truth with ordinary diligence. This argument is not available if there is fraud (Section 19- exception).

In misrepresentation the plaintiff can avoid or rescind the contract. In fraud, the plaintiff can claim damages as well.

If there is fraud, it may lead to prosecution for an offence of cheating under the Indian Penal Code.

Coercion

Coercion as defined in Section 15 means "the committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement". Simply stated, the doing of any act forbidden by the Indian Penal Code is coercion even though such an act is done in a place where the Indian Penal Code is not in force.

Undue Influence

A contract is induced by undue influence when:

1. One party has a dominant position over the other.
2. The dominant party uses this position to gain an unfair advantage.

Elements

Dominant Position: The influencer can control the other party's will due to their relationship or circumstances.

Examples (presumed dominance): Guardian-minor, trustee-beneficiary, solicitor-client.

No presumption for creditor-debtor, husband-wife (except secluded wife), landlord-tenant.

Unfair Advantage: The dominant party exploits the situation for personal benefit.

Lord Kingston's View:

Undue influence applies whenever trust is betrayed and influence is misused, regardless of whether the transaction seems fair on its surface.

Mentally Vulnerable Parties (Section 16):

Contracts with someone whose mental capacity is weakened by age, illness, or distress are especially scrutinized for undue influence.

Where there is a presumption of undue influence, the presumption can be rebutted by showing that

- full disclosure of all material facts was made,
- the consideration was adequate, and
- the weaker party was in receipt of independent legal advice.

Legality of Object

One of the requisites of a valid contract is that the object should be lawful. Section 10 of the Indian Contract Act, 1872, provides, "All agreements are contracts if they are made by free consent of parties competent to contract for a lawful consideration and with a lawful object..." Therefore, it follows that where the consideration or object for which an agreement is made is unlawful, it is not a contract.

Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is

- ❖ lawful unless it is forbidden by law; or
- ❖ it is of such nature that if permitted it would defeat the provisions of law; or
- ❖ is fraudulent; or
- ❖ involves or implies injury to the person or property of another; or
- ❖ the Court regards it an immoral or opposed to public policy.

Void and Illegal Contracts

A void contract is one which is destitue of legal effects altogether. An illegal contract too has no legal effect as between the immediate parties to the contract, but has the further effect of tainting the collateral contracts also with illegality.

Consequence of Illegal Agreements

(i) an illegal agreement is entirely void;

(ii) no action can be brought by a party to an illegal agreement. The maxim is "Ex turpi cause non-oritur action" - from an evil cause, no action arises;

(iii) money paid or property transferred under an illegal agreement cannot be recovered. The maxim is in parti delicto potierest condition defendeties- In cases of equal guilt, more powerful is the condition of the defendant;

(iv) where an agreement consist of two parts, one part legal and other illegal, and the legal parts is separable from the illegal one, then the Court will enforce the legal one. If the legal and the illegal parts cannot be separated the whole agreement is illegal; and

(v) any agreement which is collateral to an illegal agreement is also tainted with illegality and is treated as being illegal, even though it would have been lawful by itself ***[Film Pratapchand v. Firm Kotri Re. AIR (1975) S.C. 1223].***

Exception to General Rule of no Recovery of Money or Property

In the following cases, a party to an illegal agreement may sue to recover money paid or property transferred:

(a) Where the transfer is not in pari delicto (equally guilty) with the defendant, i.e. the transferee. For example, where is induced to enter into an illegal agreement by the fraud of may recover the money paid if he did not know that the contract was illegal.

(b) If the plaintiff can frame a cause of action entirely dependent of the contract.

(c) Where a substantial part of the illegal transaction has not been carried out and the plaintiff is truly and genuinely repentant. ***[Bigos v. Bonstead (1951), All E.R. 92].***

Agreements Void as being Opposed to Public Policy

The head public policy covers a wide range of topics. Agreements may offend public policy by tending to the prejudice of the State in times of war, by tending to the abuse of justice or by trying to impose unreasonable and inconvenient restrictions on the free choice of individuals in marriage, or their liberty to exercise lawful trade or calling.

The following agreements are void as being against public policy but they are not illegal :

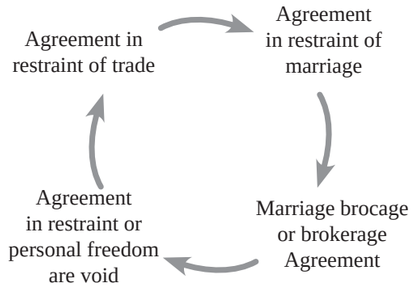
(a) Agreement in restraint of parental rights: Agreements giving up child custody are not enforceable

(b) Agreement in restraint of marriage: Contracts forbidding marriage entirely or to specific people are void.

(c) Marriage brokerage or brokerage Agreements: Agreements to find a spouse for money are not valid.

(d) Agreements in restraint of personal freedom are void: Contracts restricting someone's residence, employment, property use, or credit access are void.

(e) Agreement in restraint of trade: An agreement in restraint of trade is one which seeks to restrict a person from freely exercising his trade or profession.



Agreements In Restraint of Trade Void

Section 27 of the Indian Contract Act states that every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is, to that extent, void.

Our courts are not consistent on the point whether reasonable restraints are permitted or not. In Madhub Chunder v. RaCoomar (1874) 14 Bang. L.R. 76, A paid Rs. 900 to B's workman. B undertook to stop his business in a particular locality in Calcutta. He did not keep his promise. A's suit for the sum was dismissed since the agreement was void under Section 27. The reasonableness or otherwise of the restraint was not discussed. However, if a restrictive meaning is adopted, most of the ordinary mercantile agreements may be hit. Thus, the Courts have held that if the restraint is one which is really necessary for the carrying on business, the same is not prohibited. In Mackenzie v. Sitarmiah, (1891) 15 Mad. 79, A agreed to sell to B all the salt he manufactured and B agreed to buy such salt. A further agreed not to sell salt to third-parties. The Court held that the agreement wasvalid.

WAGERING AGREEMENTS

The literal meaning of the word "wager" is a "bet". Wagering agreements are nothing but ordinary betting agreements.

The essence of gaming and wagering is that one party is to win and the other to lose upon a future event which at the time of the contract is of an uncertain nature that is to say, if the event turns out one way will lose; but if it turns out the other way he will win **[Thacker v. Hardy, (1878) 4 OBD 685].**

Wagering Agreements Void

Generally Void: Wagering agreements (bets) are void throughout India except for Mumbai.

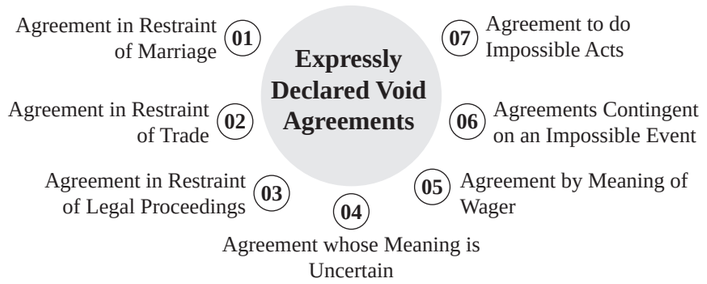
Mumbai Case: In Mumbai, the Avoiding Wagers (Amendment) Act, 1865 makes them illegal, voiding not just the main agreement but also any related agreements.

Test for Validity: Real transactions involving delivery of goods are valid. Pure bets where only the difference in value is exchanged are unenforceable.

Mutuality Required: Both parties must have a chance to win and lose based on an uncertain event.

Void Agreements

The following types of agreements are void under Indian Contract Act:



When contract becomes void

An agreement not enforceable by law is void ab-initio - Section 2(g).

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable - Section 2(j) A contract becomes void when, by reason of some event which the promisor could not prevent, the performance of the contract becomes impossible, e.g., by destruction of the subject- matter of the contract after the formation of the contract. A contract becomes void by reason of subsequent illegality. A in India agrees to supply goods to B in Pakistan. After the formation of the contract war breaks out between India and Pakistan and the supply of goods to Pakistan is prohibited by legislation. The contract becomes void.

A contingent contract to do or not do anything if an uncertain future event happens becomes void if the event becomes impossible.

Restitution

When a contract becomes void, it is not to be performed by either party. But if any party has received any benefit under such a contract from the other party he must restore it or make compensation for it to the other party. Restitution is also provided for by Section 65 where an agreement is discovered to be void.

Certain Relations Resembling Those of Contract (Quasi Contracts)

The concept of a quasi-contract arises from the principle of fairness. It's not a true contract but a legal obligation created even without an agreement. This happens when someone possesses another person's money or equivalent in a way that keeping it would be unjust enrichment. In simpler terms, if someone has something that rightfully belongs to another, the law steps in to ensure it's returned. A common example is getting money back that you mistakenly paid to someone. Essentially, it's about preventing unfair situations where one person gains at the expense of another.

Quasi-Contracts or Implied Contracts under the Indian Contract Act

The following types of quasi-contracts have been dealt within the Indian Contract Act-

(a) Necessaries supplied to person incapable of contracting or to anyone whom he is illegally bound to support - Section 68.
(b) Suit for money had and received - Section 69 and 72.
(c) Quantum Meruit.
(d) Obligations of a finder of goods - Section 71.
(e) Obligation of person enjoying benefit of a non-gratuitous act - Section 70.

Necessaries

Contracts by minors and persons of unsound mind are void. However, Section 68 of the Indian Contract Act provides that their estates are liable to reimburse the trader, who supplieds them with necessaries of life.

Suit for money had and received

The right to file a suit for the recovery of money may arise

(a) Where the plaintiff paid money to the defendant

(b) Payment to third-party of money which another is bound to pay.

(c) Money obtained by the defendant from third-parties.

Quantum

"Quantum meruit" translates to "as much as earned" and is invoked when someone seeks reasonable compensation for services rendered without an explicit agreement on payment. It implies that if circumstances suggest payment, reasonable compensation should be granted. Typically, one cannot sue for partial performance unless the contract is indivisible, requiring completion for payment. However, if one party is prevented from completing the contract by the other, they can sue for the value of the work done. This claim arises when a contract is abandoned or when work is done under a void contract.

Obligations of finder of lost goods

The liability of a finder of goods belonging to someone else is that of a bailee. This means that he must take as much care of the goods as a man of ordinary prudence would take of his own goods of the same kind. So far as the real owner of the goods is concerned, the finder is only a bailee and must not appropriate the goods to his own use. If the owner is traced, he must return the goods to him. The finder is entitled to get the reward that may have been offered by the owner and also any expenses he may have incurred in protecting and preserving the property.

Obligation of a person enjoying benefit of non-gratuitous act

Section 70 of the Indian Contract Act provides that where a person lawfully does something for another person or delivers anything to him without any intention of doing so gratuitously and the other person accepts and enjoys the benefit thereof, the latter must compensate the former or restore to him the thing so delivered.

Discharge or Termination of Contracts

- Performance of Contracts
- Mutual Consent or agreement
- Lapse of time
- Operation of law
- Impossibility of performance
- Breach of contract

(a) Performance of Contracts (Section 37)

Section 37 of the Act provides that the parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provision of the Indian Contract Act, or any other law. In case of death of the promisor before performance, the representatives of the promisor are bound to perform the promise unless a contrary intention appears from the contract.

OFFER OF PERFORMANCE (SECTION 38)

In case of some contracts, it is sometimes sufficient if the promisor performs his side of the contract. Then, if the performance is rejected,the promisor is discharged from further liability and may sue for the breach of contract if he so wishes. This is called discharge by tender.

Types of Performance

Performance

Actual Performance
Offer of performance is accepted by the promisee.

Attempted Performance
Offer of performance is not accepted by the promisee.

By whom contract must be performed

Under Section 40 of the , if it appears from the nature of the case that it was the intention of the parties to a contract that it should be performed by the promisor himself such promise must be performed by the promisor himself. In other cases, the promisor or his representative may employ a competent person to perform it.

Devolution of Joint Liabilities

Under Section 42 of the Indian Contract Act, when multiple individuals make a joint promise, they are all obligated to fulfill it. If one of them dies, their representatives, along with the surviving promisors, must fulfill the promise. After the death of the last survivor, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee, in the absence of an agreement to the contrary, to compel any one or more of the joint promisors to fulfill the entire promise. Each joint promisor can also compel the others to contribute equally to the promise's performance. If one promisor fails to contribute, the remaining promisors must share the loss equally.

Assignment

The promisee has the right to assign the benefits of a contract to an assignee, who can then demand performance from the promisor. However, this assignment must be in writing to be valid. Obligations or liabilities under a contract cannot be assigned. For instance, if A owes B Rs. 500 and attempts to transfer the liability to C without C's consent, it wouldn't bind C. However, if B consents to accept performance from C, a new contract is formed, known as novation, and the old contract is discharged, extinguishing all rights and liabilities under it.

(b) Discharge by Mutual Agreement or Consent (Section 62 and 63)

A contract may be discharged by the agreement of all parties to the contract, or by waiver or release by the party entitled to performance.

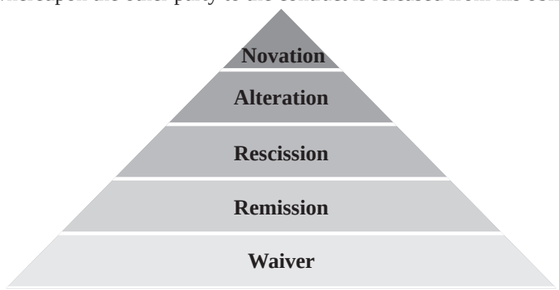
Novation - when a new contract is substituted for existing contract either between the same parties or between different parties, the consideration mutually being the discharge of the old contract.

Alteration - change in one or more of the material terms of a contract.

Rescission - by agreement between the parties at any time before it is discharged by performance or in some other way.

Remission - acceptance of a lesser sum than what was contracted for or a lesser fulfillment of the promise made.

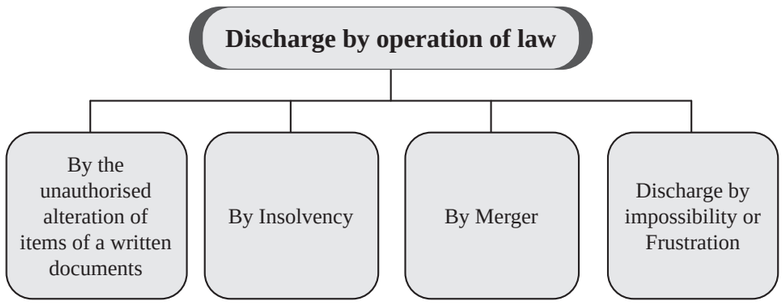
Waiver - deliberate abandonment or giving up of a right which a party is entitled to under a contract, whereupon the other party to the contract is released from his obligation.



(c) Discharge by Lapses of Time

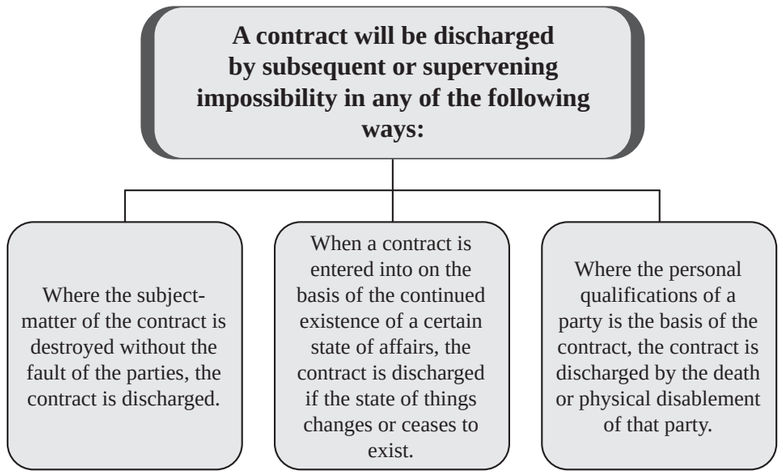
The Limitation Act, in certain circumstances, affords a good defence to suits for breach of contract, and infact terminates the contract by depriving the party of his remedy to law. For example, where a debtor has failed to repay the loan on the stipulated date, the creditor must file the suit against him within three years of the default. If the limitation period of three years expires and he takes no action he will be barred from his remedy and the other party is discharged of his liability to perform.

(d) Discharge by Operation of the Law



In the case of Satyabarta Ghose v. Mugnuram (A.I.R. 1954 S.C. 44), the Supreme Court interpreted the term "impossible" as used in the second paragraph of Section 56 of the Indian Contract Act. The Court clarified that "impossible" doesn't necessarily mean physical impossibility but can include impracticability and uselessness in achieving the intended purpose of the contract due to unforeseen events. In this case, A agreed to sell land to B, but before development could occur, the land was requisitioned by the government due to war. A offered to return earnest money to B, but B sued for specific performance. A pleaded discharge by frustration, but the Court ruled that Section 56 didn't apply because the requisition was temporary, and there was no time limit for A to perform the contract. The impossibility didn't fundamentally undermine the contract.

(e) Discharge by Supervening Illegality



Discharge by Supervening Illegality

A contract that goes against the law at its formation is void. However, if after formation, due to a change in the law or an action by someone with statutory authority, fulfilling the contract becomes impossible, the contract is discharged. This occurs because the promise's performance is hindered or prohibited by a subsequent legal change. For instance, if A contracts with B to cut trees, but a new law prohibits tree cutting without a license, and A's license application is denied, the contract is discharged.

(f) Discharge by Breach

Where the promisor neither performs his contract nor does he tender performance, or where the performance is defective, there is a breach of contract. The breach of contract may be (i) actual; or (ii) anticipatory.

Anticipatory Breach of Contract

Breach of contract may occur, before the time for performance is due. This may happen where one of the parties definitely renounces the contract and shows his intention not to perform it or does some act which makes performance impossible. The other party, on such a breach being committed, has a right of action for damages.

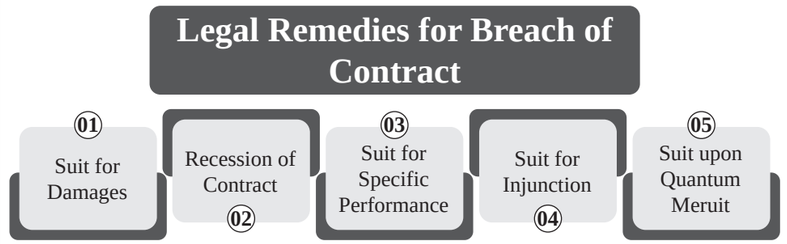
He may either sue for breach of contract immediately after repudiation or wait till the actual date when performance is due and then sue for breach.

Hochester v. De La Tour (1853): B can sue right away. Repudiation itself is a breach, even before the performance date.

Avery v. Bowden (1856): A loses the right to sue for damages because of the delay. He should have acted upon the repudiation.

Frost v. Knight (1872): Choosing to wait keeps the contract alive for both parties. The breaching party can still fulfill the contract or benefit from future circumstances that excuse them from performance.

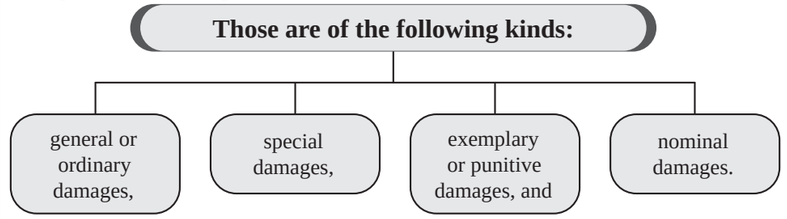
REMEDIES FOR BREACH OF CONTRACT



(i) Damages for Breach of Contract

- **Section 73 of the Indian Contract Act:** A non-breaching party can claim compensation for losses caused by the breach.
  - The loss must be:
    - Natural consequence of the breach.
    - Or, something both parties knew at the time of contracting was likely to result from the breach.
  - Remote and indirect losses are not compensated.
- **Hadley v. Baxendale (1854):** Established a two-part test for recoverable damages:
  - **Usual course of things:** Damages that naturally flow from the breach itself.
  - **Special circumstances:** Damages that both parties could reasonably foresee at the time of contracting, considering any special circumstances communicated.

Unliquidated Damages



Ordinary Damages

Damages for breach of contract in India are limited to financial compensation. The goal is to put the harmed party back in the same financial position they would have been in if the contract was completed. This means only the actual losses incurred are considered, not any indirect or remote consequences.

Special Damages

Special damages are those resulting from a breach of contract under some peculiar circumstances. If at the time of entering into the contract, the party has notice of special circumstances which makes special loss the likely result of the breach in the ordinary course of things, then upon his-breaking the contract and the special loss following this breach, he will be required to make good the special loss.

Exemplary Damages

These damages are awarded to punish the defendant and are not, as a rule, granted in case of breach of contract. In two cases, however, the court may award such damages, viz.,

Nominal Damages

Nominal damages consist of a small token award, e.g., a rupee of even 25 paise, where there has been an infringement of contractual rights, but no actual loss has been suffered. These damages are awarded to establish the right to decree for breach of contract.

- breach of promise to marry; and
- wrongful dishonour of a customer cheque by the banker.

Liquidated Damages and Penalty

Liquidated damages are predetermined, agreed-upon damages that parties to a contract agree to in advance as a reasonable estimation of potential losses in the event of a breach of contract.	Penalties are punitive measures imposed on a party in the event of a breach of contract, aiming to punish the breaching party and deter future breaches.
The purpose of liquidated damages is to provide certainty and avoid the need for lengthy and costly legal proceedings to determine the actual losses in the event of a breach.	The purpose of penalties is to deter breaches of contract and discourage non-performance by imposing a financial burden on the breaching party.
Liquidated damages are often used in contracts where it is difficult to determine the precise amount of damages in the event of a breach, such as construction contracts or intellectual property licensing agreements.	Penalties may be found in contracts as a means of ensuring compliance and performance, particularly in agreements involving high-stakes transactions, non-disclosure agreements, or restrictive covenants.
Liquidated damages are generally applicable in civil law jurisdictions, where the concept of pre-estimated damages is recognized and enforceable.	Penalties can be found in both civil law and common law jurisdictions, although their enforceability and application may vary based on legal principles and specific statutory provisions.

(ii) Specific Performance

Specific performance is usually granted in contracts connected with land, e.g., purchase of a particular plot or house, or to take debentures in a company. In case of sale of goods, it will only be granted if the goods are unique and cannot be purchased in the market, e.g., a particular race horse, or one of special value to the party suing by reason of personal or family association, e.g., an heirloom.

Specific performance will not be ordered:

- where monetary compensation is an adequate remedy;
- where the Court cannot supervise the execution of the contract, e.g., a building contract;
- where the contract is for personal service; and
- where one of the parties is a minor

(iii) Injunction

An injunction is an order of a Court restraining a person from doing a particular act. It is a mode of securing the specific performance of a negative term of the contract, (i.e., where he is doing something which he promises not to do), the Court may in its discretion issue an order to the defendant restraining him from doing what he promised not to do. Injunction may be prohibitory or mandatory. In prohibitory, the Court restrains the commission of a wrongful act whereas in mandatory, it restrains continuance of a wrongful commission.

Contract of Indemnity and Guarantee (Sections 124 to 147)

Meaning of Indemnity : -A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person (Section 124).

The person who promises to indemnify or make good the loss is called the indemnifier and the person whose loss is made good is called the indemnified or the indemnity holder. A contract of insurance is an example of a contract of indemnity according to English Law. In consideration of premium, the insurer promises to make good the loss suffered by the assured on account of the destruction by fire of his property insured against fire.

Rights of Indemnity Holder when Sued

Under Section 125, the promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

- all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as if it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit; and
- all sums which he may have paid under the terms of any compromise of any such suit, if the compromisewas not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Meaning of Contract of Guarantee

A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the Surety, the person for whom the guarantee is given is called the Principal Debtor, and the person to whom the guarantee is given is called the Creditor (Section 126) A guarantee may be either oral or written, although in the English law, it must be in writing.

Distinction between Indemnity and Guarantee

Indemnity	Guarantee
In an indemnity contract, there are two parties: the indemnifier and the indemnified	A guarantee involves three parties: the surety, the principal debtor, and the creditor.
In an indemnity contract, the indemnifier's liability is primary	a guarantee, the surety's liability is secondary, triggered by the principal debtor's default.
The indemnifier may act without the debtor's request	the surety guarantees at the debtor's request.
indemnity covers potential losses	A guarantee secures an existing debt

Extent of Surety's Liability

The liability of the surety is co-extensive with that of the principal debtor unless the contract otherwise provides (Section 128). A creditor is not bound to proceed against the principal debtor. He can sue the surety without suing the principal debtor. As soon as the debtor has made default in payment of the debt, the surety is immediately liable. But until default, the creditor cannot call upon the surety to pay. In this sense, the nature of the surety's liability is secondary.

Kinds of Guarantees

A contract of guarantee may be for an existing debt, or for a future debt. It may be a specific guarantee, or it may be a continuing guarantee. A specific guarantee is given for a single debt and comes to an end when the debt guaranteed has been paid.

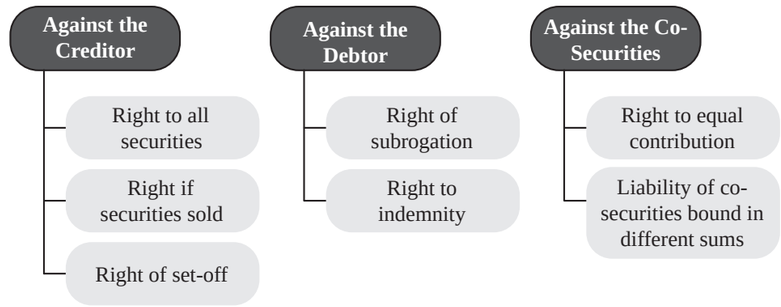
Revocation of Continuing Guarantee

A continuing guarantee is revoked in the following circumstances:

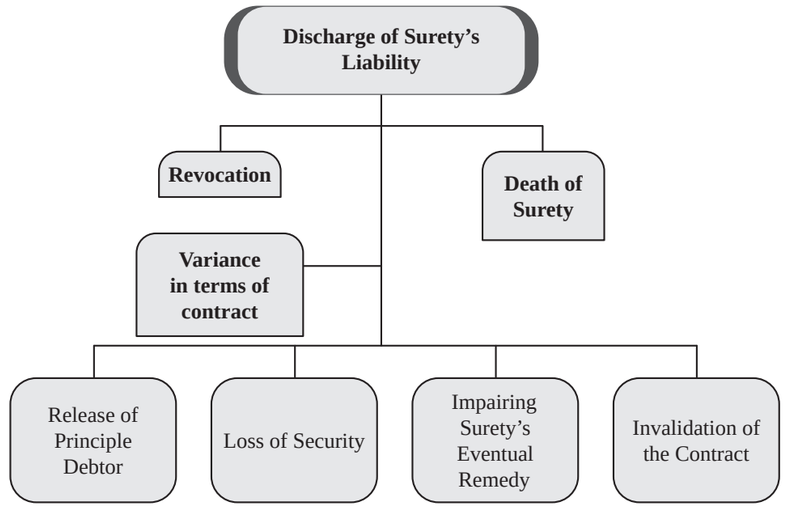
(a) By notice of revocation by the surety (Section 130): The notice operates to revoke the surety's liability as regards future transactions. He continues to be liable for transactions entered into prior to the notice [Offord v. Davies (1862) 6 L.T.S. 79].

(b) By the death of the surety: The death of the surety operates, in the absence of contract [Lloyds v. Harper (188) 16 Ch. D. 290] as a revocation of a continuing guarantee, so far as regards future transactions (Section 131). But for all the transactions made before his death, the surety's estate will be liable.

Rights of Surety



Discharge of Surety



Contract of Bailment and Pledge

(a) Bailment

A bailment is a transaction whereby one person delivers goods to another person for some purpose, upon a contract that they are, when the purpose is accomplished to be returned or otherwise disposed of according to the directions of the person delivering them (Section 148). The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee.

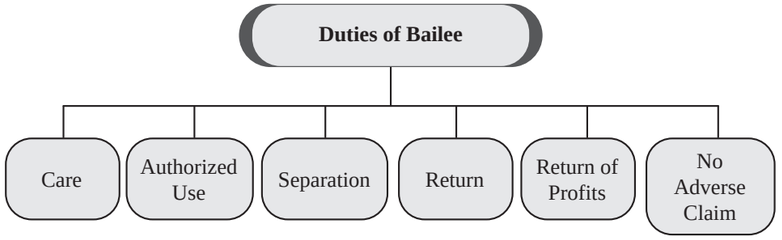
Bailment is a voluntary delivery of goods for a temporary purpose on the understanding that they are to be returned in specie in the same or altered form.

Gratuitous Bailment

A gratuitous bailment is one in which neither the bailor nor the bailee is entitled to any remuneration. Such a bailment may be for the exclusive benefit of the bailor.

A gratuitous bailment terminates by the death of either the bailor or the bailee (Section 162).

Duties of Bailee



BAILEES PARTICULAR LIEN (SECTION 170)

When goods are bailed for a specific purpose and the bailee, in performing the bailment, expends labor and skill, the bailee has a lien on the goods. This means that the bailee can retain the goods until the charges for the labor and skill are paid by the bailor.

Particular and General Lien

A particular lien allows the holder to retain property only for charges related to labor or expenses on that specific property, as in the case of a bailee's lien.	A general lien permits the retention of any property of another in possession, for a general balance of accounts.

Duties of bailor

The bailor has the following duties:

(a) Disclosure of Faults: The bailor must disclose all known faults in the goods. Failure to do so makes the bailor liable for any resulting damages directly caused by those faults. In bailments for hire, the bailor is even more responsible and liable for defects, regardless of their knowledge.

(b) Payment of Extraordinary Expenses: The bailor is responsible for paying any extraordinary expenses incurred by the bailee. For instance, if a horse is lent for a journey and becomes ill during the journey, the bailor must pay for the expenses of treating the horse.

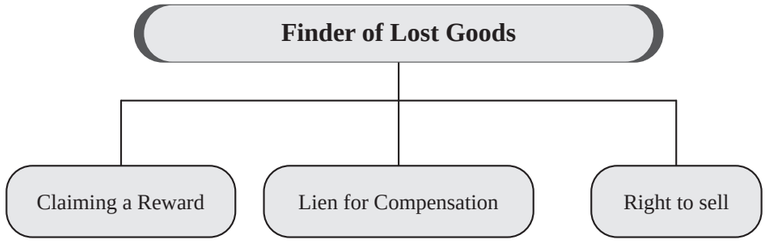
(c) Indemnification for Defective Title: The bailor must indemnify the bailee for any costs incurred due to the defective title of the goods bailed. If the bailee faces costs because of a defective title, the bailor is obligated to cover these expenses.

Termination of bailment

Termination of bailment occurs under various circumstances:

- Wrongful Use or Disposal
- Expiry of Period or Achievement of Objective
- Destruction or Incapacity
- Gratuitous Bailment

FINDER OF LOST GOODS



Carrier as Bailee

A common carrier agrees to transport goods for anyone willing to pay their usual or reasonable rates, with an obligation to ensure safe delivery and compensate for losses, except those caused by acts of God or public enemies. This applies to carriers by land, including railways, and carriers by inland navigation. However, carriers by sea for hire can limit their liability. Railways in India are considered common carriers.

Innkeepers, on the other hand, are governed by Sections 151 and 152 of the Contract Act and are liable as ordinary bailees regarding the property of their guests.

Pledge

Pledge, also known as pawn, is a contract where an item is deposited with a lender as security for a loan or promise. The bailor, or depositor, is called the pawnor, while the bailee, or depositee, is the pawnee. As a form of bailment, the pawnee must exercise reasonable care over the pledged goods. Almost any type of goods, valuables, documents, or securities can be pledged, though government securities like promissory notes must be pledged through endorsement and delivery.

The following are the essential ingredients of a pledge

- The property pledged should be delivered to the pawnee.
- Delivery should be in pursuance of a contract
- Delivery should be for the purpose of security.
- Delivery should be upon a condition to return.

Rights of the Pawnee

No property in goods pawned passes to the pawnee, but the pawnee gets a "special property to retain possession even against the true owner until the payment of the debt, interest on the debt, and any other expense incurred in respect of the possession or for preservation of the goods pledged" (Section 173). The pawnee must return the goods to the pawnor on the tender of all that is due to him. The pawnee cannot confer a good title upon a bona fide purchaser for value.

Should the pawnor make a default in payment of the debt or performance of the promise at the stipulated time, the pawnee may-

- file a suit for the recovery of the amount due to him while retaining the goods pledged as collateral security; or
- sue for the sale of the goods and the realisation of money due to him; or
- himself sell the goods pawned, after giving reasonable notice to the pawnor, sue for the deficiency, if any, after the sale.

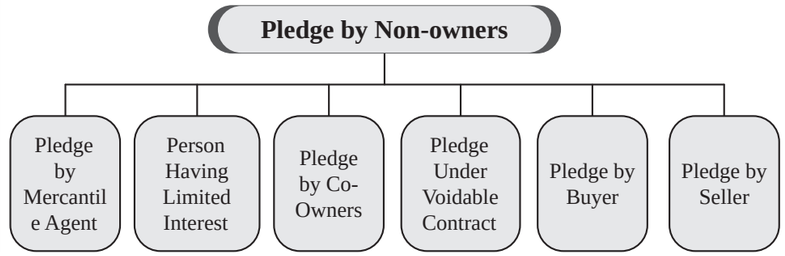
Rights of Pawnor

On default by pawnor to repay on the stipulated date, the pawnee may sell the goods after giving reasonable notice to the pawnor. If the pawnee makes an unauthorised sale without giving notice to the pawnor, the pawnor has the following rights

He can file a suit for redemption of goods by depositing the money treating the sale as if it had never taken

place; or He can ask for damages on the ground of conversion.

Pledge by Non-owners

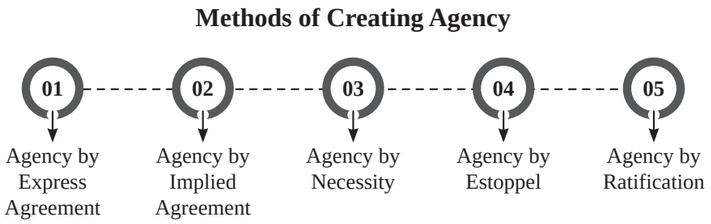


Law of Agency

Definition of Agent (Section 182)

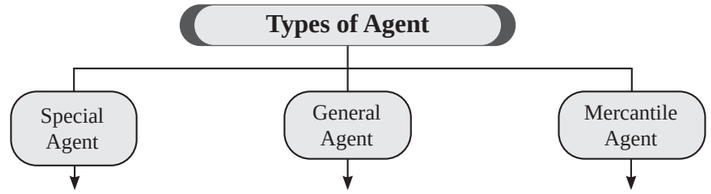
An agent is a person who is employed to bring his principal into contractual relations with third-parties. As the definition indicates, an agent is a mere connecting link between the principal and a third-party. But during the period that an agent is acting for his principal, he is clothed with the capacity of his principal.

Creation of Agency



Classes of Agents

Agents can be classified as special, general, or mercantile agents:



Appointed for a specific act or function, a special agent has no authority beyond this task. Third parties cannot assume unlimited authority for the agent, and acts beyond the specified authority do not bind the principal.

Empowered to act within the authority given by the principal in all transactions or in all transactions related to a specified trade or matter, a general agent can perform all usual tasks in the business involved. Third parties are not affected by any private restrictions on the agent's authority

Section 2(9) of the Sale of Goods Act, 1930, defines a mercantile agent as "a mercantile agent having in the customary course of business as such agent authority either to sell goods or consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods". This definition covers factors, brokers, auctioneers, commission agents etc.

Del Credere Agent

A del credere agent is a mercantile agent, who is in consideration of an extra remuneration guarantees to his principal that the purchasers who buy on credit will pay for the goods they take. In the event of a third-party failing to pay, the del credre agent is bound to pay his principal the sum owned by the third-party.

Duties of the Agent

An agent's duties towards their principal include:

(a) Acting within the scope of authority and following instructions strictly.
(b) Adhering to prevailing customs in the relevant business.
(c) Performing the work with reasonable skill and diligence, especially if claiming special skills.
(d) Promptly disclosing material information likely to influence the contract.
(e) Maintaining confidentiality of information entrusted by the principal.
(f) Avoiding conflicts of interest, such as competition with the principal.
(g) Keeping accurate accounts and providing them upon reasonable notice.
(h) Not making secret profits and disclosing any extra profits.
(i) Not delegating authority to a sub-agent.

Breach of these duties allows the principal to sue for damages. If an agent is discovered taking secret profits, the principal can dismiss them, recover the amount of secret profit, refuse to pay remuneration, and even repudiate the contract and claim damages if a third party is involved in the secret profit. Additionally, an agent cannot delegate their authority to a sub-agent based on the principle of "Delegatus non-potest delegare" (a delegate cannot further delegate).

But there are exceptions to this rule and the agent may delegate

(i) where delegation is allowed by the principal,
(ii) where the trade custom or usage sanctions delegation,
(iii) where delegation is essential for proper performance,
(iv) where an emergency renders it imperative,
(v) where nature of the work is purely ministerial, and
(vi) where the principal knows that the agent intends to delegate.

Rights of Agents

Where the services rendered by the agent are not gratuitous or voluntary, the agent is entitled to receive the agreed remuneration, or if none was agreed, a reasonable remuneration. The agent becomes entitled to receive remuneration as soon as he has done what he had undertaken to do (Section 219).

Extent of Agent's Authority

The extent of the authority of an agent depends upon the terms expressed in his appointment or it may be implied by the circumstances of the case. The contractual authority is the real authority, but implied authority is to do whatever's incidental to carry out the real authority. This implied authority is also known as apparent or ostensible authority, Thus, an agent having an authority to do an act has authority to do everything lawful which is necessary for the purpose or usually done in the course of conducting business.

Responsibilities of Principal to Third-parties

The effect of a contract made by an agent varies according to the circumstances under which the agent contracted.

There are three circumstances in which an agent may contract, namely-

- the agent acts for a named principal;
- the agent acts for an undisclosed principal; and
- the agent acts for a concealed principal.

Personal Liability of Agent to Third-party

An agent is personally liable in the following cases:

(a) Where the agent has agreed to be personally liable to the third-party.
(b) Where an agent acts for a principal residing abroad.
(c) When the agent signs a negotiable instrument in his own name without making it clear that he is signing it only as agent.
(d) When an agent acts for a principal who cannot be sued (e.g., he is minor), the agent is personally liable.
(e) An agent is liable for breach of warranty of authority. Where a person contracts as an agent without any authority there is a breach of warranty of authority. He is liable to the person who has relied on the warranty of authority and has suffered loss.

Meaning of Authority Coupled with Interest (Section 202)

An agency is coupled with an interest when the agent has an interest in the authority granted to him or when the agent has an interest in the subject matter with which he is authorised to deal. Where the agent was appointed to enable him to secure some benefit already owed to him by the principal, the agency was coupled with an interest.

The principal laid down in Section 202 applies only if the following conditions are fulfilled:

(a) The interest of the agent should exist at the time of creation of agency and should not have arisen after the creation of agency.
(b) Authority given to the agent must be intended for the protection of the interest of the agent.
(c) The interest of the agent in the subject matter must be substantial and not ordinary.
(d) The interest of the agent should be over and above his remuneration. Mere prospect of remuneration is not sufficient interest.

TERMINATION OF AGENCY

An agency comes to an end or terminates-

- By the performance of the contract of agency; (Section 201)
- By an agreement between the principal and the agent;
- By expiration of the period fixed for the contract of agency;
- By the death of the principal or the agency; (Section 201)
- By the insanity of either the principal or the agent; (Section 201)
- By the insolvency of the principal, and in some cases that of the agent; (Section 201)
- Where the principal or agent is an incorporated company, by its dissolution;
- By the destruction of the subject-matter; (Section 56)
- By the renunciation of his authority by the agent; (Section 201)
- By the revocation of authority by the principal. (Section 201)

When Agency is Irrevocable

Revocation of an agency by the principal is not possible in the following cases:

(a) Where the authority of agency is one coupled with an interest, even the death or insanity of the principal does not terminate the authority in this case (Section 202).

(b) When an agent has incurred personal liability, the agency becomes irrevocable.

(c) When the authority has been partly exercised by the agent, it is irrevocable in particular with regard to obligations which arise from acts already done (Section 204).

When Termination Takes Effect

Termination of an agency becomes effective when it is known to the agent. If the principal revokes the agent's authority, it takes effect when the agent becomes aware of it. For third parties, termination occurs when they become aware of it. If an agent, whose authority has been terminated, contracts with a third party who acts in good faith, the contract binds the principal against the third party. Termination of an agent's authority also ends the authority of any sub-agent appointed by the agent.

Joint Venture/Foreign Collaboration/Multinational Agreements

"Modes of entry" refer to methods used by international business professionals to enter foreign markets. One such method is the joint venture, where multiple organizations collaborate to achieve common business objectives. Joint ventures are widely used and effective in international business. Critical to their success are the joint venture documents and agreements, which establish the understanding among the parties involved. These documents outline roles, rights, responsibilities, and remedies, ensuring clarity and alignment. While joint ventures begin in good faith, the documents are closely scrutinized if issues arise.

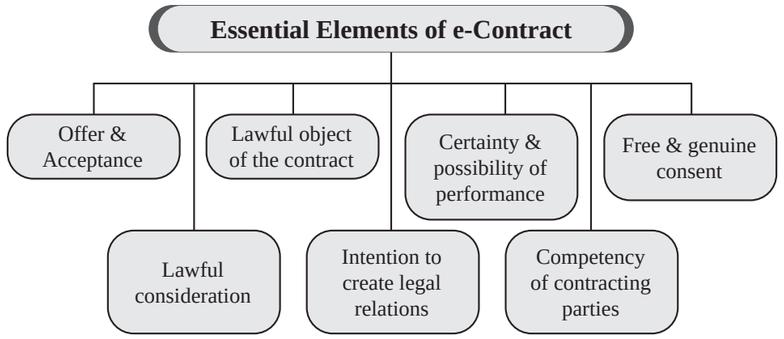
While drafting a foreign collaboration agreement, the following factors should be kept in mind:

- ❖ Clearly define the capabilities of the collaborator and the party's requirements.
- ❖ Provide precise definitions of technical terms.
- ❖ Specify whether the product will be manufactured or sold exclusively or non-exclusively.
- ❖ Detail terms regarding technical know-how, disclosure of documents, and provision of technical information.
- ❖ Include provisions for the availability of engineers or skilled workers from the collaborator, along with related expenses.
- ❖ Specify product specifications and quality standards, as well as trademarks to be used.
- ❖ Determine the collaborator's responsibility for establishing or maintaining assembly plants.

E-CONTRACT

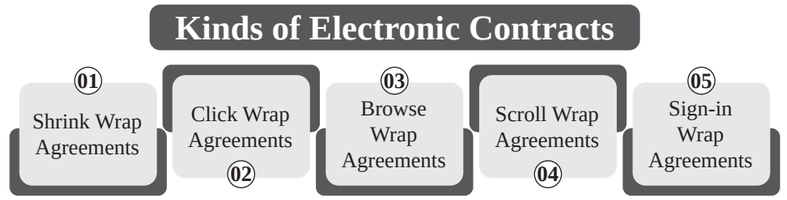
Electronic contracts, facilitated by digital technology, offer speed, convenience, and efficiency compared to traditional paper-based contracts. Initially met with skepticism, many countries have now enacted laws to recognize electronic contracts. The Information Technology Act, 2000 addresses some unique issues related to their formation and authentication.

Essential elements of an electronic contract include:



Basic Type of e-contracts

An electronic contract is an agreement made online that creates a mutual obligation between two parties and is enforceable under certain legal requirements. In electronic contracts, agreements are made online. Rather than interacting in person or by phone, the parties communicate digitally.



1. Click-Wrap Contracts

Click-wrap contracts are digital contracts that users must agree to by clicking an "I agree" button before using a service or software. They are widely utilized in digital platforms such as mobile applications and websites. It requires active consent of the user.

2. Browse-Wrap Contracts

A browse-wrap agreement is a type of contract formed when a user interacts with a website, where the terms and conditions of use are typically provided through a hyperlink or a separate webpage. Such types of contracts assume user consent through their continued use of the website.

3. Shrink-Wrap Contracts

Shrink-wrap contracts are licensing agreements commonly found with packaged products, particularly software, where the terms and conditions are enclosed within the product's packaging.

4. Scroll Wrap Agreements

A scroll-wrap agreement, also known as a click-wrap agreement, is a contract formed online where the user agrees to the terms and conditions by clicking a button, such as "I agree" or "Accept".

5. Sign-in Wrap Agreement

A sign-in wrap agreement is a type of online contract where the user agrees to the terms and condition simply by signing into a website or platform.

17 LAW RELATING TO NEGOTIABLE INSTRUMENTS

DEFINITION OF A NEGOTIABLE INSTRUMENT

A negotiable instrument may be defined as "an instrument, the property in which is acquired by anyone who takes it bona fide, and for value, notwithstanding any defect of title in the person from whom he took it, from which it follows that an instrument cannot be negotiable unless it is such and in such a state that the true owner could transfer the contract or engagement contained therein by simple delivery of instrument"

According to this definition the following are the conditions of negotiability:

- The instrument should be freely transferable. An instrument cannot be negotiable unless it is such and in such state that the true owner could transfer by simple delivery or endorsement and delivery.
- The person who takes it for value and in good faith is not affected by the defect in the title of the transferor.
- Such a person can sue upon the instrument in his own name.

But the Act recognises only three types of instruments viz., a Promissory Note, a Bill of Exchange and a Cheque as negotiable instruments. However, it does not mean that other instruments are not negotiable instruments provided that they satisfy the following conditions of negotiability:

1.	The instrument should be freely transferable by the custom of trade. Transferability may be by
	(i) Delivery or
	(ii) Endorsement and delivery.
2.	The person who obtains it in good faith and for consideration gets it free from all defects and can sue upon it in his own name.
3.	The holder has the right to transfer. The negotiability continues till maturity.

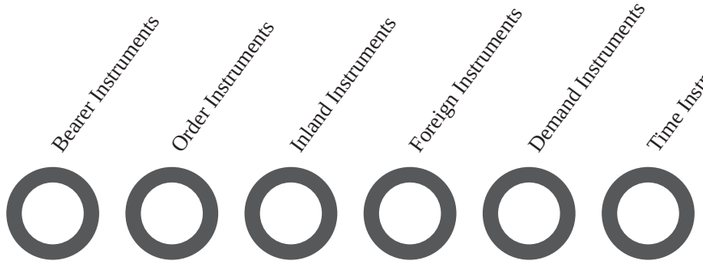
IMPORTANT CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS

Following are the important characteristics of negotiable instruments:

- The holder of the instrument is presumed to be the owner of the property contained in it.
- They are freely transferable
- A holder in due course gets the instrument free from all defects of title of any previous holders.
- The instrument is transferable till maturity and in case or cheques till it becomes stale on the expiry of 6 months from the date of issue
- Certain equal presumptions are applicable to all negotiable instruments unless the contrary is proved.

Classification of Negotiable Instruments

The negotiable instruments may be classified as under:



1.	Bearer instruments	A promissory note, bill of exchange or cheque is payable to bearer when (i) it is expressed to be so payable, or (ii) the only or last endorsement on the instrument is an endorsement in blank. A person who is a holder of a bearer instrument can obtain the payment of the instrument
2.	order instruments	A promissory note, bill of exchange or cheque is payable to order (i) which is expressed to be so payable; or (ii) which is expressed to be payable to a particular person, and does not contain any words prohibiting transfer or indicating an intention that it shall not be transferable.
3.	inland instruments	A promissory note, bill of exchange or cheque drawn or made in India, and made payable, or drawn upon any person resident in India shall be deemed to be an inland instrument. Since a promissory note is not drawn on any person, an inland promissory note is one which is made payable in India. Subject to this exception, an inland instrument is one which is either: (i) drawn and made payable in India, or (ii) drawn in India upon some persons resident therein, even though it is made payable in a foreign country.
4.	foreign instruments	An instrument which is not an inland instrument, is deemed to be a foreign instrument. The essentials of a foreign instrument include that: (i) it must be drawn outside India and made payable outside or inside India; or (ii) it must be drawn in India and made payable outside India and drawn on a person resident outside India.
5.	Demand instruments (section 19)	A promissory note or a bill of exchange in which no time for payment is specified is an instrument payable on demand.
6.	Time instruments	Time instruments are those which are payable at some time in the future. Therefore, a promissory note or a bill of exchange payable after a fixed period, or after sight, or on specified day, or on the happening of an event which is certain to happen, is known as a time instrument. The expression "after sight" in a promissory note means that the payment cannot be demanded on it unless it has been shown to the maker. In the case of bill of exchange, the expression "after sight" means after acceptance, or after noting for non-acceptance or after protest for non- acceptance.

AMBIGUOUS INSTRUMENTS (SECTION 17)

Certain financial documents can be unclear if they function as a bill of exchange (instructing payment) or a promissory note (direct promise to pay). These are "ambiguous instruments." In India's Negotiable Instruments Act, the holder can choose how to treat such instruments if the drawer (creator) and drawee (payer) are the same, or if the drawee has issues. Similar ambiguities exist in other situations, like bills drawn by a bank branch on itself.

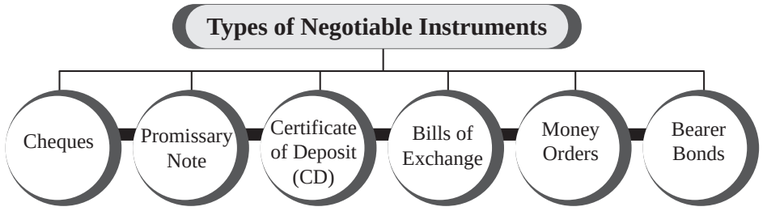
INCHOATE OR INCOMPLETE INSTRUMENT (SECTION 20)

This law deals with incomplete payment forms (like checks) that are stamped and signed by one person and given to another. The person who signs gives the receiver temporary permission to fill out the missing details, up to the limit of the stamp value. There are two types of people who can cash this completed form:

- **Regular holder:** This person can only cash the form for the amount the signer originally intended to pay.
- **Holder in due course:** This person, who acted in good faith, can cash the form for the full amount written on it, as long as it doesn't exceed the stamp value, even if it's more than what the signer originally intended.

KINDS OF NEGOTIABLE INSTRUMENTS

The Act recognises only three kinds of negotiable instruments under Section 13 but it does not exclude any other negotiable instrument provided the instrument entitles a person to a sum of money and is transferable by delivery. Instruments written in oriental languages i.e. hundis are also negotiable instruments.



Parties to a Promissory Note:

A promissory note has the following parties:

The maker: the person who makes or executes the note promising to pay the amount stated therein.

The payee: one to whom the note is payable.

The holder: is either the payee or some other person to whom he may have endorsed the note.

The endorser.

The endorsee.

Essentials of a Promissory Note:

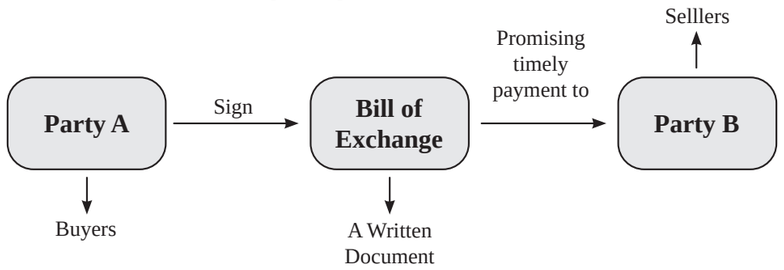
To be a promissory note, an instrument must possess the following essentials:

a.	It must be in writing. An oral promise to pay will not do.
b.	It must contain an express promise or clear undertaking to pay. A promise to pay cannot be inferred. A mere acknowledgement of debt is not sufficient. If A writes to B "I owe you (I.O.U.) Rs. 500", there is no promise to pay and the instrument is not a promissory note.
c.	The promise or undertaking to pay must be unconditional.
d.	The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.
e.	The maker must be a certain person, i.e., the note must show clearly who the person is engaging himself to pay.
f.	The payee must be certain. The promissory note must contain a promise to pay to some person or persons ascertained by name or designation or to their order.
g.	The sum payable must be certain and the amount must not be capable of contingent additions or subtractions.
h.	Payment must be in the legal money of the country.
i.	It must be properly stamped in accordance with the provisions of the Indian Stamp Act, 1899. Each stamp must be duly canceled by the maker's signature or initials.
j.	It must contain the name of place, number and the date on which it is made. However, their omission will not render the instrument invalid, e.g. if it is undated, it is deemed to be dated on the date of delivery.

Bills of Exchange

A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of, a certain person or to the bearer of the instrument. (Section 5)

The definition of a bill of exchange is very similar to that of a promissory note and for most of the cases the rules which apply to promissory notes are in general applicable to bills. There are, however, certain important points of distinction between the two.



Parties to bills of exchange

The following are parties to a bill of exchange:

(a)	The Drawer: the person who draws the bill.
(b)	The Drawee: the person on whom the bill is drawn.
(c)	The Acceptor: one who accepts the bill. Generally, the drawee is the acceptor but a stranger may accept it on behalf of the drawee.
(d)	The payee: one to whom the sum stated in the bill is payable, either the drawer or any other person may be the payee.
(e)	The holder: is either the original payee or any other person to whom the payee has endorsed the bill. In case of a bearer bill, the bearer is the holder.
(f)	The endorser: when the holder endorses the bill to any one else he becomes the endorser.
(g)	The endorsee: is the person to whom the bill is endorsed.
(h)	Drawee in case of need: Besides the above parties, another person called the "drawee in case of need", may be introduced at the option of the drawer. The name of such a person may be inserted either by the drawer or by any endorser in order that resort may be had to him in case of need, i.e., when the bill is dishonored by either non-acceptance or non-payment.
(i)	Acceptor for honour: Further, any person may voluntarily become a party to a bill as acceptor. A person, who on the refusal by the original drawee to accept the bill or to furnish better security, when demanded by the notary, accept the bill supra protest in order to safeguard the honour of the drawer or any endorser, is called the acceptor for honour.

Distinction between bill of Exchange and Promissory Note

The following are the important points of distinction between a bill of exchange and a promissory note:

PROMISSORY NOTE	BILL OF EXCHANGE
A promissory note is a two-party instrument, with a maker (debtor) and a payee (creditor).	In a bill there are three parties—drawer, drawee and payee, though any two out of the three capacities may be filled by one and the same person. In a bill, the drawer is the maker who orders the drawee to pay the bill to a person called the payee or to his order. When the drawee accepts the bill he is called the acceptor.
A note cannot be made payable to the maker himself	A bill, the drawer and payee may be the same person.
A note contains an unconditional promise by the maker to pay to the payee or his order;	A bill there is an unconditional order to the drawee to pay according to the directions of the drawer.
A note is presented for payment without any prior acceptance by the maker.	A bill payable after sight must be accepted by the drawee or someone else on his behalf before it can be presented for payment.
The liability of the maker of a pro-note is primary and absolute.	but the liability of the drawer of a bill is secondary and conditional.
but no such notice needs to be given in the case of a note.	When a bill is dishonoured, due notice of dishonour is to be given by the holder to the drawer and the intermediate endorsee.
A bill can be drawn payable to the bearer provided it is not payable on demand.	A promissory note cannot be made payable to bearer, even if it is made payable otherwise than on demand.

INLAND BILLS (SECTIONS 11 AND 12)

A bill of exchange is an inland instrument if it is (i) drawn or made and payable in India, or (ii) drawn in India upon any person who is a resident in India, even though it is made payable in a foreign country. But a promissory note to be an inland should be drawn and payable in India, as it has no drawee.

Two essential conditions to make an inland instrument are:

The instrument must have been drawn or made in India; and

The instrument must be payable in India or the drawee must be in India.

Foreign bills	All bills which are not inland are deemed to be foreign bills. Normally foreign bills are drawn in sets of three copies.
Trade bill	A bill drawn and accepted for a genuine trade transaction is termed as a trade bill. When a trader sells goods on credit, he may make use of a bill of exchange.
Accommodation bill	All bills are not genuine trade bills, as they are often drawn for accommodating a party. An accommodation bill is a bill in which a person lends or gives his name to oblige a friend or some person whom he knows or otherwise. In other words, a bill which is drawn, accepted or endorsed without consideration is called an accommodation bill. The party lending his name to oblige the other party is known as the accommodating or accommodative party, and the party so obliged is called the party accommodated. An accommodation party is not liable on the instrument to the party accommodated because as between them there was no consideration and the instrument was merely to help. But the accommodation party is liable to a holder for value, who takes the accommodation bill for value, though such holder may not be a holder in due course.
Bills in sets	Foreign bills are usually drawn in sets to avoid the danger of loss. They are drawn in sets of three, each of which is called "Via" and as soon as any one of them is paid, the others become inoperative. All these parts form one bill and the drawer must sign and deliver all of them to the payee. The stamp is affixed only on one part and one part is required to be accepted. But if the drawer mistakenly accepts all the parts of the same bill, he will be liable on each part accepted as if it were a separate bill

Right to Duplicate bill	Where a bill of exchange has been lost before it was overdue, the person who was the holder to it may apply to the drawer, to give him another bill of the same tenor. It is only the holder who can ask for a duplicate bill, promissory note or cheque.
Bank Draft	A bill of exchange is also sometimes spoken of as a draft. It is called a bank draft when a bill of exchange is drawn by one bank on another bank, or by itself on its own branch, and is a negotiable instrument. It is very much like the cheque with three points of distinction between the two. A bank draft can be drawn only by a bank on another bank, usually its own branch. It cannot so easily be countermanded. It cannot be made payable to the bearer.

Cheques

The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and Negotiable Instrument (Amendment) Act, 2015 have broadened the definition of cheque to include the electronic image of a truncated cheque and a cheque in the electronic form. Section 6 of the Act provides that a 'cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Despite the amendment as is evident the basic definition of the cheque has been retained and the definition has only been enlarged to include cheques in the above form as well.

As per explanation appended to the section, the expression:

"a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;

"a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing. (Explanation i).

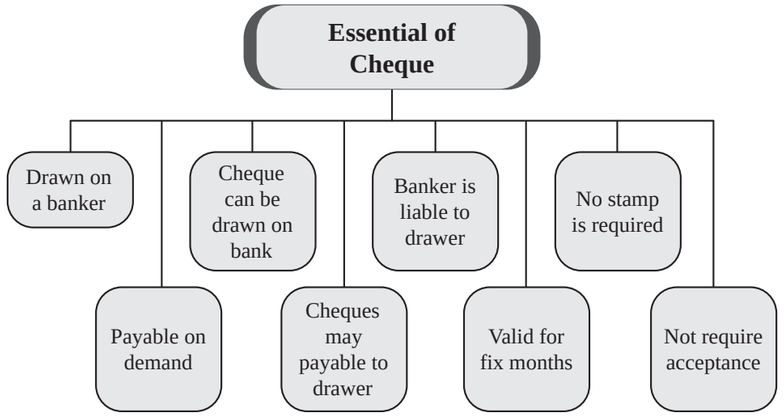
The expression 'clearing house' means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India. (Explanation ii).

Parties to a cheque

The following are the parties to a cheque:

- The drawer: The person who draws the cheque.
- The drawee: The banker of the drawer on whom the cheque is drawn.
- The payee, holder, endorser and endorsee: same as in the case of a bill.

Essentials of a Cheque



Distinction between Cheques and bills of Exchange

As a general rule, the provisions applicable to bills payable on demand apply to cheques, yet there are few points of distinction between the two, namely:

Cheques	Bill of Exchange
A cheque is a bill of exchange and always drawn on a banker	a bill may be drawn on any one, including bankers.
A cheque can only be drawn payable on demand	a bill may be drawn payable on demand, or on the expiry of a specified period after sight or date.
a cheque does not require acceptance and is intended for immediate payment.	A bill payable after sight must be accepted before payment can be demanded
no grace is given in the case of a cheque, for payment.	A grace of 3 days is allowed in the case of time bills
The drawer of a cheque is discharged only if he suffers any damage by delay in presentation for payment.	The drawer of a bill is discharged, if it is not presented for payment
The cheque being a revocable mandate, the authority may be revoked by countermanding payment, and is determined by notice of the customer's death or insolvency.	This is not so in the case of bills.
A cheque may be crossed	but not a bill.

BANKER

A banker is one who does banking business. Section 5(b) of the Banking Regulation Act, 1949 defines banking as, "accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft or otherwise." This definition emphasizes two points:

That the primary function of a banker consists of accepting of deposits for the purpose of lending or investing the same;

That the amount deposited is repayable to the depositor on demand or according to the agreement. The demand for repayment can be made through a cheque, draft or otherwise, and not merely by verbal order.

CUSTOMER

The term "customer" is neither defined in Indian nor in English statutes. The general opinion is that a customer is one who has an account with the bank or who utilises the services of the bank.

The special features of the legal relationship between the banker and the customer may be termed as the obligations and rights of the banker. These are:

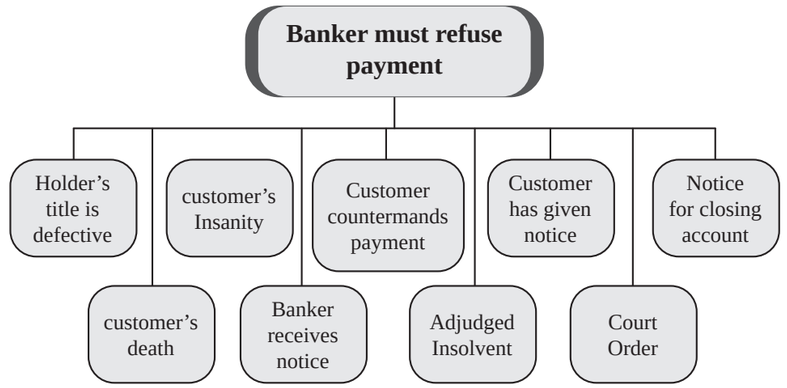
1.	Obligation to honour cheques of the customers.
2.	Obligation to collect cheques and drafts on behalf of the customers.
3.	Obligation to keep proper record of transactions with the customer.
4.	Obligation to comply with the express standing instructions of the customer.
5.	Obligation not to disclose the state of customer's account to anyone else.
6.	Obligation to give reasonable notice to the customer, if the banker wishes to close the account.
7.	Right of lien over any goods and securities bailed to him for a general balance of account.
8.	Right of set off and right of appropriation.
9.	Right to claim incidental charges and interest as per rules and regulations of the bank, as communicated to the customer at the time of opening the account

Liability of a banker

When you open a current account, the bank owes you the money you deposit and must honor your checks as long as you have enough funds. If they refuse a valid check without reason, they are liable to compensate you for any damages. However, the person you try to pay with the check (payee) has no right to sue the bank if the check bounces. The bank is also obligated to keep accurate records and can refuse to honor a check in certain situations, though the details of those situations are not given here.

When banker must Refuse Payment

In the following cases the authority of the banker to honour customer's cheque comes to an end, he must refuse to honour cheques issued by the customer:



When banker may Refuse Payment

In the following cases the banker may refuse to pay a customer's cheque:

a.	When the cheque is post-dated.
b.	When the banker has no sufficient funds in the drawer with him and there is no communication between the bank and the customer to honour the cheque.
c.	When the cheque is of doubtful legality.
d.	When the cheque is not duly presented, e.g., it is presented after banking hours.
e.	When the cheque on the face of it is irregular, ambiguous or otherwise materially altered. (f) When the cheque is presented at a branch where the customer has no account.
f.	When some persons have a joint account and the cheque is not signed jointly by all or by the survivors of them.
g.	When the cheque has been allowed to become stale, i.e., it has not been presented within six months of the date mentioned on it.

Protection of Paying banker (Sections 10, 85 and 128)

Endorsements (Section 85):

- The bank is generally safe if it pays a check made out to a specific person (order cheque) even if the endorsement (signature on the back) is forged. This is because the bank isn't expected to know everyone's signature.
- Exceptions exist if the drawer's signature (the person writing the check) is forged. The bank can still debit the customer's account if they can prove the customer's negligence was directly linked to the forgery.

Bearer Cheques:

- If a cheque is originally written out to be payable to anyone (bearer cheque), the bank can ignore any endorsements and is safe paying it out as long as everything else is in order.
- However, a cheque that becomes payable to anyone due to a blank endorsement on the back (originally order cheque) doesn't fall under this protection.

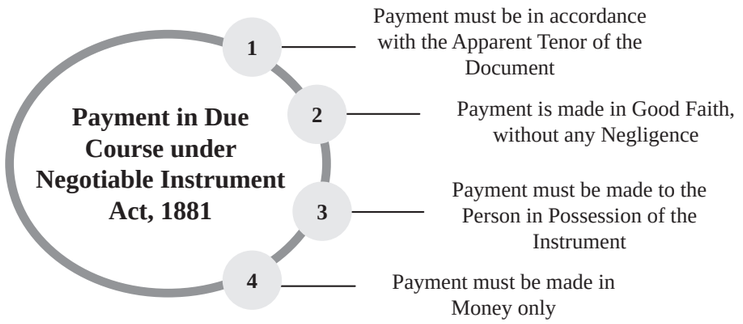
Crossed Cheques:

- The bank is not liable if it pays a crossed cheque (has two parallel lines across the front) as long as the payment follows proper procedures.

PAYMENT IN DUE COURSE (SECTION 10)

Any person liable to make payment under a negotiable instrument, must make the payment of the amount due thereunder in due course in order to obtain a valid discharge against the holder.

A payment in due course means a payment in accordance with the apparent tenor of the instrument, in good faith and without negligence to any person in possession thereof.



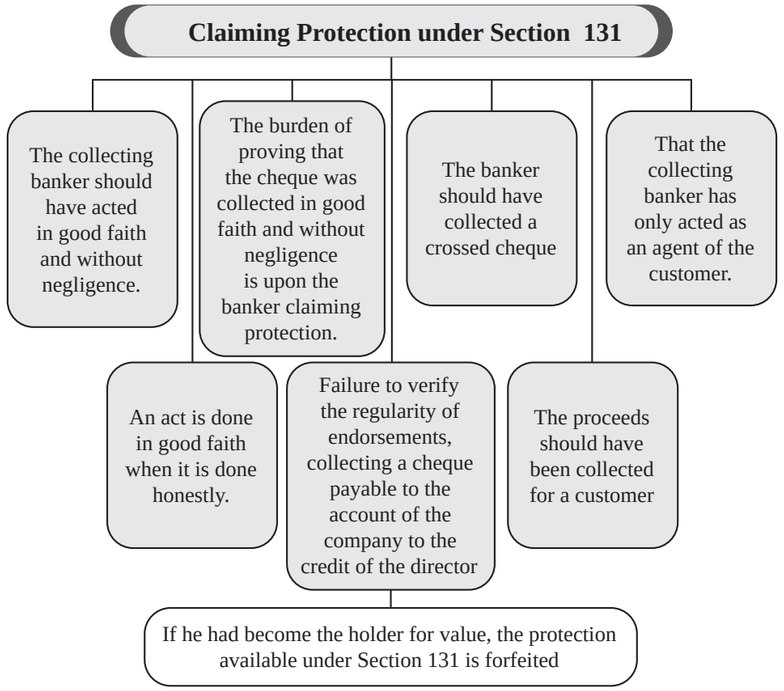
A payment will be a payment in due course if:

- It is in accordance with the apparent tenor of the instrument, i.e., according to what appears on the face of the instrument to be the intention of the parties;
- It is made in good faith and without negligence, and under circumstances which do not afford a ground for believing that the person to whom it is made is not entitled to receive the amount;
- It is made to the person in possession of the instrument who is entitled as holder to receive payment;
- Payment is made under circumstances which do not afford a reasonable ground believing that he is not entitled to receive payment of the amount mentioned in the instrument; and
- Payment is made in money and money only.

Collecting banker

A bank that collects a cheque for a customer (collecting banker) acts as a service but has legal obligations. They must follow crossing restrictions (who the cheque can be paid to) set by the drawer. Even if the customer has no rightful claim to a cheque they deposited, the collecting bank isn't expected to verify endorsements (signatures on the back). However, the true owner can sue the bank if they collect a stolen cheque. The Negotiable Instruments Act protects the collecting bank from being liable for forged endorsements as they can't be expected to know everyone's signature. It reads as follows:

The requisites of claiming protection under Section 131 are as follows:



In order to be a holder in due course, a person must satisfy the following conditions:

- He must be the holder of the instrument.
- He should have obtained the instrument for value or consideration.
- He must have obtained the negotiable instrument before maturity.
- The instrument should be complete and regular on the face of it.
- The holder should take the instrument in good faith.

CAPACITY OF PARTIES

The capacity to incur liability as a party to a negotiable instrument is equivalent to the capacity to contract. According to Section 26, anyone who can legally contract may bind themselves by making, drawing, accepting, endorsing, delivering, and negotiating a promissory note, bill of exchange, or cheque. However, minors, lunatics, idiots, drunken persons, and those disqualified by personal law cannot incur liability as parties to negotiable instruments. The incapacity of one or more parties does not affect the abilities and liabilities of competent parties. If a minor is an endorser or payee of an instrument, all parties, except the minor, are liable if the instrument is dishonoured.

Liability of Parties

The provisions regarding the liability of parties to negotiable instruments are laid down in Sections 30 to 32 and 35 to 42 of the Negotiable Instruments Act.

As a cheque is a bill of exchange, drawn on a specified banker, the drawee of a cheque must always be a banker. The banker, therefore, is bound to pay the cheque of the drawer, i.e., customer, if the following conditions are satisfied:

- The banker has sufficient funds to the credit of customer's account.
- The funds are properly applicable to the payment of such cheque, e.g., the funds are not under any kind of lien etc.
- The cheque is duly required to be paid, during banking hours and on or after the date on which it is made payable.

Negotiability and Assignability Distinguished

A transfer by negotiation differs from transfer by assignment in the following respects:

Negotiability	Distinguished
Negotiation requires mere delivery of a better instrument and endorsement and delivery of an instrument to effectuate a transfer.	Assignment requires a written document signed by the transferor.
No such notice is necessary in a transfer by negotiation.	Notice of transfer of debt must be given by the assignee to the debtor in order to complete his title.

In case of negotiation the transferee, as holder-in-due course, takes the instruments free from any defects in the title of the transferor.	On assignment, the transferee of an actionable claim takes to all the defects in the title of, and subject to all the equities and defence available against the assignor, even though he took the assignments for value and in good faith.

IMPORTANCE OF DELIVERY

Negotiation is affected by mere delivery of a bearer instrument and by endorsement and delivery of an order instrument. This shows that "delivery" is essential in negotiable instruments. Section 46 expressly provides that making acceptance or endorsement of a negotiable instrument is not complete until delivery, actual or constructive, of the instrument. Delivery made voluntarily with the intention of passing property in the instrument to the person to whom it is given is essential.

Negotiation by Mere Delivery

A bill or cheque payable to the bearer is negotiated by mere delivery of the instrument. An instrument is payable to bearer:

- Where it is made so payable, or
- Where it is originally made payable to order but the only or the last endorsement is in blank.
- Where the payee is a fictitious or a non-existing person.

ENDORSEMENT (SECTIONS 15 AND 16)

Where the maker or holder of a negotiable instrument signs the same otherwise than as such maker for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto (called Allonge), or so, signs for the same purpose, a stamped paper intended to be completed as a negotiable instrument, he is said to endorse the same (Section 15), the person to whom the instrument is endorsed is called the endorsee.

In other words, 'endorsement' means and involves the writing of something on the back of an instrument for the purpose of transferring the right, title and interest therein to some other person.

Classes of endorsement

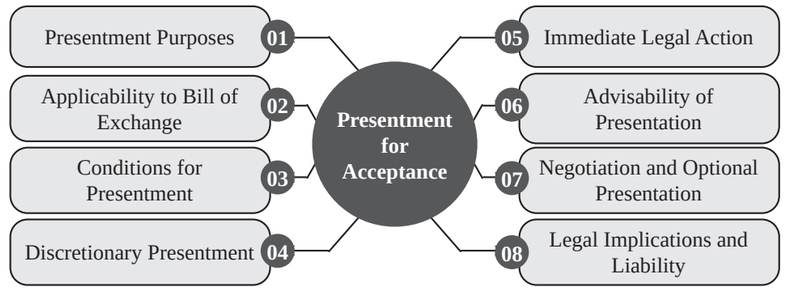
An endorsement may be (a) Blank or General, (b) Special or Full, (c) Restrictive, or (d) Partial, and (e) Conditional or Qualified.

(a)	blank or general	An endorsement is to be blank or general where the endorser merely writes his signature on the back of the instrument, and the instrument so endorsed becomes payable to bearer, even though originally it was payable to order. Thus, where the bill is payable to "Mohan or order", and he writes on its back "Mohan", it is an endorsement in blank by Mohan and the property in the bill can pass by mere delivery, as long as the endorsement continues to be a blank. But a holder of an instrument endorsed in blank may convert the endorsement in blank into an endorsement in full, by writing above the endorser's signature, a direction to pay the instrument to another person or his order.
(b)	Special or Full	If the endorser signs his name and adds a direction to pay the amount mentioned in the instrument to, or to the order of a specified person, the endorsement is said to be special or in full. A bill made payable to Mohan or Mohan or order, and endorsed "pay to the order of Sohan" would be specially endorsed and Sohan endorses it further. A blank endorsement can be turned into a special one by the addition of an order making the bill payable to the transferee.
(c)	Restrictive	An endorsement is restrictive which prohibits or restricts the further negotiation of an instrument. Examples of restrictive endorsement: "Pay A only" or "Pay A for my use" or "Pay A on account of B" or "Pay A or order for collection".
(d)	Partial	An endorsement partial is one which purports to transfer to the endorsee a part only of the amount payable on the instrument. A partial endorsement does not operate as negotiation of the instrument. A holds a bill for Rs. 1,000 and endorses it as "Pay B or order Rs. 500". The endorsement is partial and invalid.
(e)	Conditional or qualified	An endorsement is conditional or qualified which limits or negatives the liability of the endorser. An endorser may limit his liability in any of the following ways:
	(i)	By sans recourse endorsement, i.e. by making it clear that he does not incur the liability of an endorser to the endorsee or subsequent holders and they should not look to him in case of dishonour of instrument. The endorser excludes his liability by adding the words "sans recourse" or "without recourse", e.g., "pay A or order sans recourse".
	(ii)	By making his liability depending upon happening of a specified event which may never happen, e.g., the holder of a bill may endorse it thus: "Pay A or order on his marrying B". In such a case, the endorser will not be liable until A marries B.

Negotiation back	Where an endorser negotiates an instrument and again becomes its holder, the instrument is said to be negotiated back to that endorser and none of the intermediary endorsees are then liable to him. The rule prevents a circuity of action.
Negotiation of Lost Instrument or that Obtained by Unlawful Means	When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or endorsee, who claims through the person who found or obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor, or holder from any party prior to such holder unless such possessor or endorsee is, or some person through whom he claims was, a holder in due course.
Forged Endorsement	The case of a forged endorsement is worth special notice. If an instrument is endorsed in full, it cannot be negotiated except by an endorsement signed by the person to whom or to whose order the instrument is payable, for the endorsee obtains title only through his endorsement. Thus, if an instrument is negotiated by means of a forged endorsement, the endorsee acquires no title even though he is a purchaser for value and in good faith, for the endorsement is a nullity. Forgery conveys no title.
Acceptance of a bill of Exchange	The person a bill of exchange is drawn on (drawee) isn't initially liable to accept or pay it (Negotiable Instruments Act, 1881 - implicit). Their refusal doesn't create obligations for the holder. The drawee only becomes liable by formally accepting the bill, typically by writing "accepted" and signing it. This acceptance can be general (unconditional) or qualified (with conditions). The holder can reject a qualified acceptance and treat the bill as dishonored, allowing them to sue the drawer (implicit).
Acceptance for Honour	The Negotiable Instruments Act (implicit) allows a non-party to a bill of exchange to step in and accept or pay it under certain circumstances. Such a person, acting as a stranger to the bill, can: Accept for Honor: Pay Supra Protest:

PRESENTMENT FOR ACCEPTANCE

It is only bills of exchange that require presentment for acceptance and even these of certain kinds only. Bills payable on demand or on a fixed date need not be presented. Thus, a bill payable 60 days after the due date on the happening of a certain event may or may not be presented for acceptance. But the following bills must be presented for acceptance otherwise, the parties to the bill will not be liable on it:



Section 15 provides that the presentment for acceptance must be made to the drawee or his duly authorized agent. If the drawee is dead, the bill should be presented to his legal representative, or if he has been declared an insolvent, to the official receiver or assigner.

The following are the persons to whom a bill of exchange should be presented:

(i)	The drawee or his duly authorized agent.
(ii)	If there are many drawers, a bill must be presented to all of them.
(iii)	The legal representatives of the drawee if drawee is dead.
(iv)	The official receiver or assignee of insolvent drawee.
(v)	To a drawee in case of need, if there is any. This is necessary when the original drawee refuses to accept the bill.
(vi)	The acceptor for honour. In case the bill is not accepted and is noted or protested for non-acceptance, the bill may be accepted by the acceptor for honour. He is a person who comes forward to accept the bill when it is dishonoured by non-acceptance.

The presentment must be made before maturity, within a reasonable time after it is drawn, or within the stipulated period, if any, on a business day within business hours and at the place of business or residence of the drawee. The presentment must be made by exhibiting the bill to the drawee; mere notice of its existence in the possession of the holder will not be sufficient.

When presentment is compulsory and the holder fails to present for acceptance, the drawer and all the endorsers are discharged from liability to him.

Presentment for Acceptance when Excused

Compulsory presentment for acceptance is excused and the bill may be treated as dishonoured in the following cases:

- Where the drawee cannot be found after reasonable search.
- Where drawee is a fictitious person or one incapable of contracting.
- Where although the presentment is irregular, acceptance has been refused on some other ground.

Presentment for Payment

The Negotiable Instruments Act (Section 64) outlines how negotiable instruments (bills, notes, and cheques) must be presented for payment. Generally, they must be presented during business hours of both the holder and the person who needs to pay (maker or acceptor), and within bank hours if at a bank (Section 64(1)).

The Act has been updated to consider electronic cheque images. While the amendment acknowledges these images as valid for presentation, it allows the bank receiving them to request the original truncated cheque if they doubt the instrument's authenticity (Section 64(2)). Additionally, if the bank suspects fraud, forgery, tampering, or destruction, they can demand the original truncated cheque for verification.

Presentment for Payment when Excused

No presentment is necessary and the instrument may be treated as dishonoured in the following cases:

(a)	Where the maker, drawer or acceptor actively does something so as to intentionally obstruct the presentment of the instrument, e.g., deprives the holder of the instrument and keeps it after maturity.
(b)	Where his business place is closed on the due date
(c)	Where no person is present to make payment at the place specified for payment.
(d)	Where he cannot, after due search be found. (Section 61)
(e)	Where there is a promise to pay notwithstanding non-presentment.
(f)	Where the presentment is express or impliedly waived by the party entitled to presentment.
(g)	Where the drawer could not possibly have suffered any damage by non-presentment.
(h)	Where the drawer is a fictitious person, or one incompetent to contract.
(i)	Where the drawer and the drawee are the same person.
(j)	Where the bill is dishonoured by non-acceptance.
(k)	Where presentment has become impossible, e.g., the declaration of war between the countries of the holder and drawee.
(l)	Where though the presentment is irregular, acceptance has been refused on some other grounds.

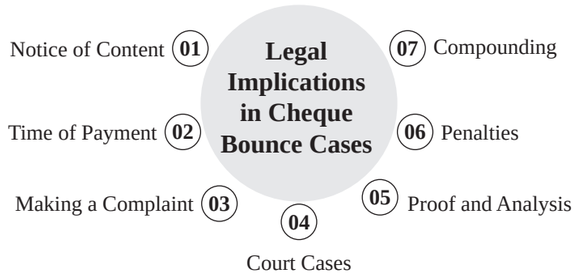
DISHONOR BY NON-ACCEPTANCE

Section 91 provides that a bill is said to be dishonoured by non-acceptance:

- When the drawee does not accept it within 48 hours from the time of presentment for acceptance.
- When presentment for acceptance is excused and the bill remains unaccepted.
- When the drawee is incompetent to contract.
- When the drawee is a fictitious person or after reasonable search can not be found.
- Where the acceptance is a qualified one.

DISHONOUR AND ITS REMEDIES

The Negotiable Instruments Act (Section 92) defines dishonor by non-payment of bills, notes, and cheques. It occurs when the person who owes money (maker of note, acceptor of bill, or drawee of cheque) fails to pay upon proper request. Additionally, a negotiable instrument is considered dishonored if it's overdue, hasn't been paid, and presenting it for payment wasn't required. The consequence of dishonor by non-payment is that the drawer (who initiated the bill) and all endorsers (who signed the back) are liable to the holder (who currently owns it) as long as the holder informs them of the dishonor. However, the drawee (who the bill was drawn on) is only liable if they fail to pay the instrument itself.



Notice of Dishonour (Sections 91-98 and Sections 105-107)

The Negotiable Instruments Act (implicit) emphasizes the importance of giving notice of dishonor (Section 102 - not directly mentioned) when a bill or note is dishonored (not accepted or paid). The holder or someone liable on the instrument must notify everyone else they intend to hold responsible. Anyone receiving such a notice must then notify prior parties within a reasonable timeframe to hold them liable. The purpose isn't to demand payment, but to inform parties of their potential liability and allow the drawer (who initiated the bill) to take action against the person who dishonored it. Failing to provide notice releases everyone from liability except the maker (promissory note) or acceptor (bill of exchange). This discharge applies not just to the instrument itself, but also to the original reason for creating it. Notice can be written or oral, but it must be formal and delivered within a reasonable time after the dishonor occurs.

Notice of Dishonour Unnecessary

No notice of dishonour is necessary:

(a)	When it is dispensed with or waived by the party entitled thereto, e.g., where an endorser writes on the instrument such words as "notice of dishonour waived".
(b)	When the drawer has countermanded payment.
(c)	When the party charged would not suffer damage for want of notice.
(d)	When the party entitled to notice cannot after due search be found.
(e)	When the omission to give notice is caused by unavoidable circumstances, e.g., death or serious illness of the holder.
(f)	Where the acceptor is also a drawer, e.g., where a firm draws on its branch.
(g)	Where the promissory note is not negotiable. Such a note cannot be endorsed.
(h)	Where the party entitled to notice promises to pay unconditionally.

NOTING AND PROTEST (SECTIONS 99-104 A)

Noting	When a bill or promissory note isn't paid (dishonoured), the holder can sue the drawer (initiator) and endorsers (guarantors on the back) after giving them proper notice. The Negotiable Instruments Act (Section 99) offers a "noting" option to officially document the dishonour. This involves a notary public making a record on the instrument itself or an attached paper.
Protest	A protest is a formal document created by a notary public to officially record that a bill of exchange wasn't accepted or paid (dishonoured). It relies on a prior "noting" that marks the dishonour. Protests can also be used to demand extra security (better security protest) if the acceptor seems unlikely to pay before the bill matures. The law requires protests for dishonoured foreign bills of exchange, but not for promissory notes. If a protest is required, notice of the protest is given instead of a regular notice of dishonour.
Discharge	The discharge in relation to a negotiable instrument may be either (i) discharge of the instrument or (ii) discharge of one or more parties to the instrument from liability.

Discharge of the Instrument

A negotiable instrument is discharged:

- By payment in due course;
- When the principal debtor becomes the holder;
- By an act that would discharge simple contract;
- By renunciation;
- And by cancellation.

Discharge of a Party or Parties

When any particular party or parties are discharged, the instrument continues to be negotiable and the undischarged parties remain liable on it. For example, the non-presentment of a bill on the due date discharges the endorsers from their liability, but the acceptor remains liable on it.

A party may be discharged in the following ways:

(a)	By cancellation by the holder of the name of any party to it with the intention of discharging him.
(b)	By release, when the holder releases any party to the instrument
(c)	Discharge of secondary parties, i.e., endorsers.
(d)	By the operation of the law, i.e., by insolvency of the debtor.
(e)	By allowing drawee more than 48 hours to accept the bill, all previous parties are discharged. (f) B y non-presentment of cheque promptly the drawer is discharged.
(f)	By taking qualified acceptance, all the previous parties are discharged.
(g)	By material alteration.

MATERIAL ALTERATION (SECTION 87)

An alteration is material which in any way alters the operation of the instrument and the liabilities of the parties thereto. Therefore, any change in an instrument which causes it to speak a different language in legal effect from that which it originally spoke, or which changes legal character of the instrument is a material alteration.

A material alteration renders the instrument void, but it affects only those persons who have already become parties at the date of the alteration. Those who take the altered instrument cannot complain. Section 88 provides that an acceptor or endorser of a negotiable instrument is bound by his acceptance or endorsement notwithstanding any previous alteration of the instrument.

There is no material alteration and the instrument is not vitiated in the following cases:

(i) Correction of a mistake,

(ii) to carry out the common intention of the parties,

(iii) an alteration made before the instrument is issued and made with the consent of the parties,

(iv) crossing a cheque,

(v) addition of the words "on demand" in an instrument where no time of payment is stated.

Section 89 affords protection to a person who pays an altered note bill or cheque. However, in order to be able to claim the protection, the following conditions must be fulfilled:

- the alteration should not be apparent;
- the payment must be made in due course; and
- the payment must be by a person or banker liable to pay

PRESUMPTIONS OF LAW

A negotiable instrument is subject to certain presumptions. These have been recognised by the Negotiable Instruments Act under Sections 118 and 119 with a view to facilitate the business transactions. These are described below:

It shall be presumed that:

1.	Every negotiable instrument was made or drawn for consideration irrespective of the consideration mentioned in the instrument or not.
2.	Every negotiable instrument having a date was made on such date.
3.	Every accepted bill of exchange was accepted within a reasonable time before its maturity.
4.	Every negotiable instrument was transferred before its maturity.
5.	The instruments were endorsed in the order in which they appear on it.
6.	A lost or destroyed instrument was duly signed and stamped.
7.	The holder of the instrument is a holder in due course.
8.	In a suit upon an instrument which has been dishonoured, the Court shall presume the fact of dishonour, or proof of the protest.

Payment of Interest in case of dishonour

The Negotiable Instruments Act, 1881 was amended in the year 1988, revising the rate of interest as contained in Sections 80 and 117, from 6 per cent to 18 per cent per annum payable on negotiable instruments from the due date in case no rate of interest is specified, or payable to an endorser from the date of payment on a negotiable instrument on its dishonour with a view to discourage the withholding of payment on negotiable instruments on due dates.

Penalties in case of dishonour of cheques

Dishonour of Cheque for Insufficiency, etc., of Funds in the Account

Section 138 of the Act provides that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both.

Provided that nothing contained in this section shall apply unless-

Nothing

the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Dayawati vs. Yogesh Kumar Gosain

This passage discusses two court cases related to cheque bouncing and the Negotiable Instruments Act (NI Act).

Case 1: Mediation for Settling Cheque Bounce Cases

- The court ruled that cheque bounce cases under Section 138 of the NI Act can be settled through mediation even though the law doesn't explicitly mention it.
- This is because the Criminal Procedure Code (Cr.P.C.) allows for settlements without restricting the method used and allows use of ADR options

Case 2: Compounding Cheque Bounce Offences

- This case clarifies that even if both parties don't agree (compounding), the court can close the case if the complainant is compensated.
- Cheque bounce offences are seen as primarily civil wrongs, aimed at compensating the payee.
- The court balances the rights of both parties and aims to provide a speedy remedy for the payee while considering the drawer's situation.

In essence, these cases provide more flexibility in resolving cheque bounce cases, allowing for mediation and closure based on compensation, not just punishment.

Presumption under Section 139

- Section 138 of the Negotiable Instruments Act deals with cheque bouncing offences.
- Section 139 creates a presumption that if someone holds a cheque, they received it for a legitimate reason, like paying off a debt (in whole or part).
- This presumption simplifies legal proceedings by assuming the cheque wasn't issued without reason, unless proven otherwise (based on the case Basalingappa vs. Mudibassapa).

Offences by Companies (Section 141)

- This section deals with companies committing cheque bounce offences under Section 138.
- If a company bounces a cheque, people in charge of the company's business at the time can be held liable along with the company itself.
- However, these individuals can avoid punishment by proving they didn't know about the offence or took reasonable steps to prevent it.
- Additionally, government-appointed directors are generally not liable for prosecution under this section.

A.R. Radha Krishna vs. Dasari Deepthi and Ors. (28.02.2019 - SC) : air 2019 SC 2518

The case (A.R. Radha Krishna vs. Dasari Deepthi) revolves around when a court can quash a complaint under Section 482 of the Criminal Procedure Code (Cr.P.C.).

Here, quashing means dismissing the case before trial.

The Supreme Court ruled that the High Court can dismiss the complaint if the director can prove:

- The accusations in the complaint are insufficient.
- There's clear evidence showing they weren't responsible for the company's business at the time of the cheque bounce.

Cognizance of Offences

As per Section 142(1) of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973

(a)	No court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
(b)	Such complaint is made within one month of the date on which the cause of action arises under clause of the proviso to Section 138.

(c)	No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138. Further, Section 142(2) provides that the offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction—
	(*i*) If the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
	(*ii*) If the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Consolidation of Cheque Bounce Cases against Same Drawer

- Section 142A aims to ensure complaints against a single drawer (who writes the cheque) for bouncing cheques are consolidated in one court.

Power of Court to try Cases Summarily

Court: Trials are held by a Judicial Magistrate of the first class or a Metropolitan Magistrate (ignoring the usual Criminal Procedure Code guidelines for assigning courts).

Procedure: Sections 262 to 265 of the Criminal Procedure Code (CrPC) are generally followed for these trials.

Sentencing: Upon conviction in a summary trial:

- Maximum imprisonment: 1 year
- Maximum fine: Exceeds ₹5,000

Switching to Regular Trial: If the Magistrate believes a sentence exceeding 1 year is likely or a summary trial is unsuitable, they can:

- Hear arguments from both parties.
- Record an order explaining the switch.
- Recall any witnesses already examined.
- Proceed with a regular trial as per CrPC procedures.

Continuations: Trials should ideally continue day-to-day unless the court finds a justified reason (recorded in writing) to adjourn for a longer period.

G.J. Raja vs. Tejraj Surana (30.07.2019 - SC) : (2019) 19 SCC 469

Section 143A (Retrospective Applicability)

- *The case (G.J. Raja vs. Tejraj Surana) clarifies that Section 143A, allowing courts to order interim compensation from the accused, applies only to offences committed after its introduction.*

Section 144 (Service of Summons)

- *This section outlines how summons (court orders to appear) can be delivered to accused or witnesses.*
- *It allows service by speed post, courier services, or in person at their residence, workplace, etc.*

Section 148 (Power of Appellate Court)

- *This section deals with the power of appellate courts during appeals against cheque bounce convictions.*
- *If the appellant is ultimately acquitted, the court can order the complainant to repay the released amount with bank rate interest.*

Surinder Singh Deswal vs. Virender Gandhi Case

- *This case contradicts the earlier case regarding Section 143A.*
- *Here, the Supreme Court ruled that Section 148, allowing appellate courts to order deposit during appeals, can be applied retroactively.*
- *The court justified this by considering the amendment's purpose and deeming it procedural (not affecting existing rights).*

In essence, this passage highlights how certain sections of the NI Act and court interpretations impact how cheque bounce cases are handled in India.

Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & Ors.

Appellate Court's Power Under Section 148 of the NI Act:

- The case involved cheque bounce offences under Section 138 of the NI Act.
- The appellants (accused) appealed their conviction and compensation order.
- Lower courts asked them to deposit 20% of the compensation as a condition for appeal (based on Section 148).
- The Supreme Court clarified the use of Section 148:
  - Generally, the appellate court can require a 20% deposit as security.
  - However, there can be exceptions. The court can waive the deposit if it believes it would be unfair or prevent the appellant from appealing (reasons must be documented).

National Electronic Funds Transfer (NEFT) vs. Real Time Gross Settlement (RTGS):

- The passage explains the difference between two electronic fund transfer systems in India.
- NEFT:
  - Settles transactions in batches throughout the day.
  - More common and suitable for smaller transactions.
- RTGS:
  - Settles transactions individually and continuously during business hours.
  - Faster and more secure, but may have fees for smaller transactions.

In essence, the passage highlights considerations for appeals in cheque bounce cases and provides a basic explanation of NEFT and RTGS for electronic payments.

Advantages of NEFT

Round the clock availability on all days of the year.
Near-real-time funds transfer to the beneficiary account and settlement in a secure manner.
Pan-India coverage through large network of branches of all types of banks.
The beneficiary need not visit a bank branch for depositing the paper instruments. Remitter can initiate the remittances from his / her home / place of work using internet banking, if his / her bank offers such service.
Positive confirmation to the remitter by SMS / e-mail on credit to beneficiary account.
Penal interest provision for delay in credit or return of transactions No levy of charges by RBI from banks.
No charges to savings bank account customers for online NEFT transactions.
The transaction charges have been capped by RBI. l Besides funds transfer, NEFT system can be used for a variety of transactions including payment of credit card dues to the card issuing banks, payment of loan EMI, inward foreign exchange remittances, etc.
The transaction has legal backing.

Benefits of RTGS

It is a safe and secure system for funds transfer.
RTGS transactions / transfers have no amount cap set by RBI.
The system is available on all days on a 24x7x365 basis. There is real time transfer of funds to the beneficiary account.
The remitter need not use a physical cheque or a demand draft
The beneficiary need not visit a bank branch for depositing the paper instruments.
The beneficiary need not be apprehensive about loss / theft of physical instruments or the likelihood of fraudulent encashment thereof.
Remitter can initiate the remittances from his / her home / place of work using internet banking, if his / her bank offers such service.
The transaction charges have been capped by RBI.
The transaction has legal backing.

18 LAW RELATING TO SALE OF GOODS

LAW RELATING TO SALE OF GOODS ACT

The Sale of Goods Act, 1930 in India came about to establish a clear legal framework for transactions involving the sale of goods. Prior to this Act, the laws around such sales were scattered and unclear. The Act aimed to define essential elements of a sales contract, obligations of buyers and sellers, and provide remedies in case of breaches.

"Buyer" means a person who buys or agrees to buy goods;

"Delivery" means voluntary transfer of possession from one person to another;

Goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

"Document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, 1[multimodal transport document,] warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

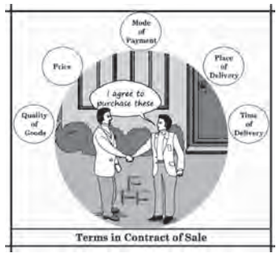
"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

CONTRACT OF SALE OF GOODS

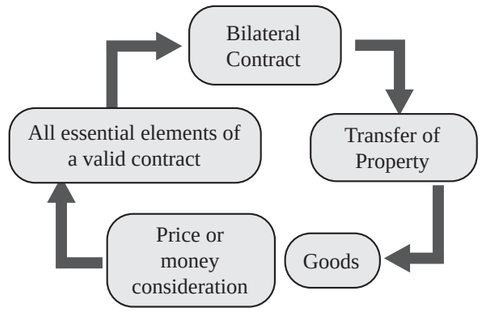
According to Section 4, a contract of sale of goods is a contract whereby the seller:

- Transfers or agrees to transfer the property in goods,
- To the buyer,
- For a money consideration called the price.

It shows that the expression "contract of sale" includes both a sale where the seller transfers the ownership of the goods to the buyer, and an agreement to sell where the ownership of goods is to be transferred at a future time or subject to some conditions to be fulfilled later on.



Terms in Contract of Sale



DISTINCTION BETWEEN SALE AND AGREEMENT TO SELL

The following points will bring out the distinction between sale and an agreement to sell:

SALE AND BAILMENT

A "bailment" is a transaction under which goods are delivered by one person (the bailor) to another (the bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished (Section 148 of the Indian Contract Act, 1872).

The property in the goods is not intended to and does not pass on delivery though it may sometimes be the intention of the parties that it should pass in due course. But where goods are delivered to another on terms which indicate that the property is to pass at once the contract must be one of sale and not bailment.

SALE AND CONTRACT FOR WORK AND LABOUR

The distinction between a "sale" and a "contract for work and labor" becomes important when the question of passing of property arises for consideration.

However, these two are difficult to distinguish. The test generally applied is that if as a result of the contract, property in an article is transferred to one who had no property therein previously for a money consideration, it is a sale, where it is otherwise it is a contract for work and labor.

SALE AND HIRE PURCHASE AGREEMENT

Differences Between Sales and Hire Purchases

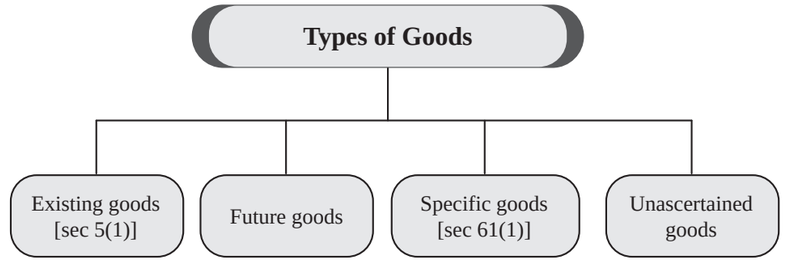
Basis of Difference	Sales	Hire Purchase
1. Governing Act	Sale of goods act 1930	Hire Purchase act 1972
2. Transfer of ownership	The ownership of the goods transferred to the buyer immediately signing into contract.	The ownership of the goods transferred to the buyer on payment of all instalments
3. Modes of payments	Buyer makes payment in either lump sum (cash sales), or in instalment (credit sales)	Buyer makes payment in instalment (credit sales)

According to **Section 2(7) of the Sale of Goods Act**, "goods" encompass all movable property except actionable claims and money. This includes stocks, growing crops, and items attached to land intended for separation before sale. Money refers to recognized currency in circulation, excluding old or rare coins, while an actionable claim refers to something not currently usable but recoverable through legal action.

In ***H. Anraj and Ors. vs. Government of Tamil Nadu and Ors. (04.10.1985 - SC) : AIR 1986 SC 63,*** it was held that lottery tickets were goods and not actionable claims. Thus, the sale of lottery tickets is the sale of goods.

Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned. Under the provisions of the Transfer of Property Act, 1882, goodwill, trade marks, copyrights, patents are all goods, so is a ship. As regards water, gas, electricity, it is doubtful whether they are goods (Rash Behari v. Emperor, ***(1936) 41 C.W.N. 225; M.B. Electric Supply Co. Ltd. vs. State of Rajasthan, AIR (1973) Raj. 132)***.

Further, In the case of ***Commissioner of Sales Tax, Madhya Pradesh, Indore vs. Madhya Pradesh Electricity Board, Jabalpur (26.11.1968 - SC): AIR 1970 SC 732,*** the Supreme Court observed that the electricity can be transmitted, transferred, delivered, stored, possessed, etc., in the same way as any other movable property. If there can be sale and purchase of electric energy like any other movable object, we see no difficulty in holding that electric energy was intended to be covered by the definition of goods.



MODES OF FIXING PRICE (SECTIONS 9 AND 10)

- At the time of contract by the parties themselves
- May be left to be determined of dealings between the parties
- May be left of be fixed in some way stipulated in the contract
- May be left to be fixed by some third-party

Where the contract states that the price is to be fixed by a third-party and such third-party fails to do so, the contract is void. But if the buyer has already taken the benefit of the goods, he must pay a reasonable price for them. If the third-party's failure to fix the price is due to the fault of the seller or buyer, then that party is liable for an action for damages.

Where nothing is said by the parties regarding price, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent upon the circumstances of each particular case. Generally, the market price would be a reasonable price.

Conditions and Warranties (Sections 12-17)	Contracts can be built with any terms both parties agree on. Before finalizing a sale, discussions might involve statements that can be either stipulations, becoming binding parts of the contract, or simply expressions of opinion with no legal weight. To be a stipulation, a seller's statement must be something the buyer relies on to agree to the purchase. A seller's praise about their product typically doesn't count. These stipulations can function as either conditions (essential terms for the contract) or warranties (lesser guarantees). A separate section of the law (not discussed here) explains the difference in consequences if a condition or warranty is broken.
Conditions	When a statement in a contract forms the foundation of the agreement or is essential for its main purpose, it becomes a "condition." If this condition is broken by the seller, the buyer has significant rights. They can consider the contract void (as if it never existed), reject the goods, and get a refund if they've already paid. Additionally, they can seek compensation for the breach of contract. This gives the buyer considerable leverage if the seller fails to deliver on a critical aspect of the agreement.
Warranties	Compared to conditions, warranties are less critical promises within a contract. They act as secondary guarantees, and if broken by the seller, the buyer cannot cancel the contract. Instead, the buyer's remedy is limited to claiming damages for the breach. For instance, if a warranty regarding delivery time is broken, the buyer must still accept the goods but can seek compensation for the delay.

Aron & Co. v. Comptoir Wegimont, 1921-3 KB 435 There was an offer of sale of goods c.i.f. Antwerp to be shipped in October. The vendor was not to reject delivery even if there was any difference in the type or value or grade specified. The goods couldn't be transported till November by virtue of strike at the port. It was held that the purchaser could decline to take delivery of the goods.

Implied Warranties [Section 14(b), 14(c) and 16(3)]

- **Implied warranty of quiet possession:** If the circumstances of the contract are such as there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- **Implied warranty against encumbrances:** There is a further warranty that the goods are not subject to any right in favour of a third-party, or the buyer's possession shall not be disturbed by reason of the existence of encumbrances. This means that if the buyer is required to, and does discharge the amount of the encumbrance, there is breach of warranty, and he is entitled to claim damages from the seller.

Implied Conditions [Sections 14(a), 15(1), (2), 16(1) and Proviso 16(2), and Proviso 16(3) and 12(b) and 12(c)].

Difference between conditions and warranties:

The following are important differences between conditions and warranties.

Point of Difference	Condition	Warranty
Meaning	A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.
Conversion of stipulations	A breach of condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of condition.

IMPLIED CONDITIONS AS TO TITLE

There is an implied condition that the seller, in an actual sale, has the right to sell the goods, and, in an agreement to sell, he will have a right to sell the goods at the time when property is to pass. As a result, if the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the full price paid by him.

In this case (Rowland v. Divall), a car dealer (complainant) unknowingly bought a stolen car from the defendant. The dealer then sold the car to a customer before the police recovered it for the rightful owner. Even though neither the dealer nor the initial seller knew the car was stolen, the court ruled in favor of the dealer. Since the defendant couldn't transfer ownership (due to not having it themself), they breached the condition of title. This allowed the dealer to recover the full purchase price from the defendant, despite using the car for two months and spending money on its presentation. The dealer couldn't claim compensation for the work done, and the defendant wasn't obligated to pay for using the stolen car.

Implied conditions under a sale by description

In a sale by description there are the following implied conditions:

(a)	**Goods must correspond with description:**	It is provided under Section 15 of the Act that when there is a sale of goods by description, there is an implied condition that the goods shall correspond with description. In a sale by description, the buyer relies for his information on the description of the goods given by the seller, e.g. in the contract or in the preliminary negotiations. Where 'A' buys goods which he has not seen, it must be sale by description, e.g., where he buys a 'new Fiat car' from 'B' and the car is not new, he can reject the car.

Beale v. Taylor (1967)[2] The defendant announced a 1961 Triumph Herald 1200 car for sale which he believed to be real. The plaintiff tested the car and saw a metal disc in the back of the car written "1200" and bought the car. The car was subsequently found to consist of a rear 1961 Herald Triumph 1200 sold to the front of a former Triumph Herald 948 model. It was held to be a breach of Section 13 despite the fact that claimant had inspected the car as he relied on the description in the advertisement and the metal disc at the rear of the car.

Nagan Das Mathura Das v. N.v. valimahomed (1930)[6] air 1930 Bombay 249

If a buyer orders goods of a certain description, and the seller delivers goods of a different description, it is open to the buyer to reject them. But if he does not reject them but keeps the goods, even if he does so in ignorance of the fact that they are of a description different from that provided for by the contract he is debarred from rejecting the goods thereafter, and can only fall back upon a claim for damages, as upon a breach of warranty.

Wallis, son & Wells v. Pratt & haynes [1911] a. C. 394 In this case, the buyer could recover loss, as there was a breach of condition on contract for sale of seeds referred to as Sainfoin' the seeds supplied to the purchaser were of a different quality.

Baldry v. Marshall l.r. [1925] 1 K.B. 260

A consulted a car seller for the acquisition of a car appropriate for touring purposes. The vendor sold a car saying that it will deliver the needs of a buyer. The car ended up being unfit for touring purposes. It was held that the purchaser can restore the car and get back the cost as well as damages, on the ground of breach of condition. In this case, the contract will not be void if the purchaser demands for a good car.

(b)	Goods must also be of merchantable quality:	If they are bought by description from a dealer of goods of that description. [Section 16(2)] Merchantable quality means that the goods must be such as would be acceptable to a reasonable person, having regard to prevailing conditions. They are not merchantable if they have defects which make them unfit for ordinary use, or are such that a reasonable person knowing of their condition would not buy them. 'P' bought black yarn from 'D' and, when delivered, found it damaged by the white ants. The condition of merchantability was broken. But, if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. If, however, examination by the buyer does not reveal the defect and he approves and accepts the goods, but when put to work, the goods are found to be defective, there is a breach of condition of merchantable quality. The buyer is given a right to examine the goods before accepting them. But a mere opportunity without an actual examination, however, cursory, would not suffice to deprive him of this right.

Mareli v fitch and Gibbons

A buyer bought a Stone's Ginger Wine. While he was attempting to draw its cork with a corkscrew and with due care, the bottle broke off and injured the hand of the buyer. It was held that the bottle was not of merchantable quality, so the seller was liable.

Effect of buyer examining goods: If the buyer has examined the goods there shall be no implied condition with regard to defects, which such inspection ought to have revealed. However, the implied condition as to merchantability will continue to apply so far as latent defects in the goods are concerned, since such defects cannot be discovered by ordinary examination of the goods.

(c)	**Condition as to wholesomeness:**	The provisions (i.e., eatables) supplied must not only answer the description, but they must also be mercantile and wholesome or sound. 'F' bought milk from 'A' and the milk contained typhoid germs. 'F's wife became infected and died. 'A' was liable for damages. Again, 'C' bought a bun at 'M's bakery, and broke one of his teeth by biting on a stone present in the bun. 'M' was held liable.
(d)	**Condition as to quality or fitness for a particular purpose:**	Ordinarily, in a contract of sale, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied. But there is an implied condition that the goods are reasonably fit for the purpose for which they are required if:

		(i) the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill and judgment, and
		(ii) the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not). There is no such condition if the goods are bought under a patent or trade name.

In Priest v. Last (1903) 2 K.B. 148, a hot water bottle was bought by the plaintiff, a draper, who could not be expected to have special skill knowledge with regard to hot water bottles, from a chemist, who sold such articles stating that the bottle will not stand boiling water but was intended to hold hot water. While being used by the plaintiff's wife, the bottle bursted and injured her. Held, the seller was responsible for damages as the bottle was not fit for use as a hot water bottle.

IMPLIED CONDITIONS UNDER A SALE BY SAMPLE (SECTION 17)

In a contract of sale by sample:

There is an implied condition that the bulk shall correspond with the sample in quality;

There is another implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

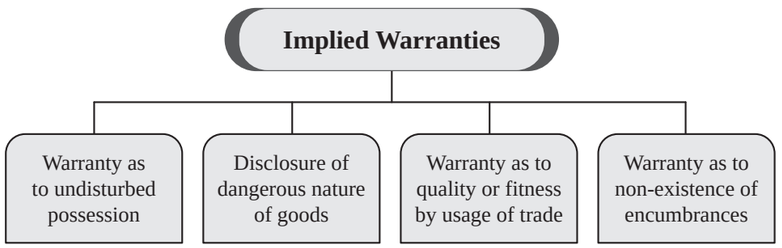
It is further an implied condition of merchantability, as regards latent or hidden defects in the goods which would not be apparent on reasonable examination of the sample. "Worsted coating" quality equal to sample was sold to tailors, the cloth was found to have a defect in the fixture rendering the same unfit for stitching into coats. The seller was held liable even though the same defect existed in the sample, which was examined.

James Drummond & sons v. Eh van ingen & Company

In this case it was observed that the buyer can abandon the contract on discovering the defect in the supply of cloth (not as per sample) by the seller.

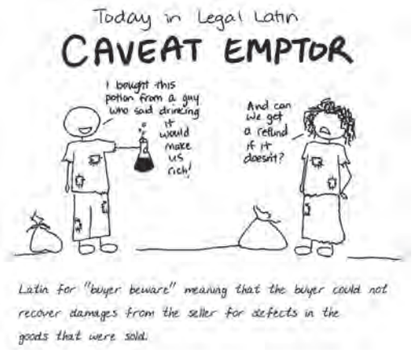
IMPLIED WARRANTIES

Implied warranties are those which the law presumes to have been incorporated in the contract of sale inspite of the fact that the parties have not expressly included them in a contract of sale. Subject to the contract to the contrary, following are the implied warranties in a contract of sale:



DOCTRINE OF CAVEAT EMPTOR

The doctrine of caveat emptor asserts that the responsibility lies with the buyer to ensure that the goods being purchased meet their desired quality and purpose. Specifically, if a buyer acquires goods for a specific use, they are accountable for verifying that the goods are suitable for that intended purpose. Section 16 of the Act encapsulates this principle by stating that, unless otherwise specified by the law or the contract, there is no implicit warranty or guarantee regarding the quality or suitability of goods in a sales agreement. In essence, it is not the obligation of the seller to provide goods tailored to the buyer's requirements. If the buyer makes an incorrect choice, they cannot hold the seller responsible if the goods are defective or fail to fulfill their intended purpose. This principle was exemplified in the case of ***Ward vs. Hobbs, (1878) 4 A.C. 13,*** where pigs were auctioned without any warranties regarding their health. Despite the buyer paying for apparently healthy pigs, they turned out to be sick, with most of them dying from typhoid fever and infecting the buyer's own pigs. The court ruled that there was no implied assurance of the pigs' good health, emphasizing the buyer's responsibility to ensure their condition before purchase.



Exceptions: Section 16 lays down the following exceptions to the doctrine of Caveat Emptor:

- Where the seller makes a false representation and the buyer relies on it.
- When the seller actively conceals a defect in the goods which is not visible on a reasonable examination of the same.
- When the buyer, relying upon the skill and judgment of the seller, has expressly or impliedly communicated to him the purpose for which the goods are required.
- Where goods are bought by description from a seller who deals in goods of that description.

Position of the doctrine of Caveat Emptor as enshrined in the present era.

With the enactment of Consumer Protection Act, 2019, the legislature corroborated the rights of buyers as against the misleading and delusive practices of the vendors. It has been established that goods being transacted in large numbers and online purchases are two of the most crucial reasons behind why Caveat Emptor in isolation will not be feasible for modern day contracts. However, this does not mean that Caveat Emptor should be eradicated in absolute sense. A blend of both the doctrines should be applied to ensure that the blanket immunity which the doctrine of Caveat Emptor places on the sellers is being restricted with the help of Caveat Venditor which confers accountability on sellers as well.

In the case of ***Mandava Krishna Chaitanya vs. UCO Bank, Asset Management Branch (21.02.2018 - HYHC): [2018 (3) ALD 266]*** It was opined that the rule of Caveat Emptor has become insignificant instead the doctrine of Caveat Venditor has gained momentum within the commercial contracts. However, with the help of detailed interpretation of the relevant sections of the statute along with perusal of some of the landmark judgments by the Indian judiciary, it can be said that Caveat Venditor has relieved consumers from exercising utmost caution and has essentially divided the responsibility between both the parties.

EFFECTS OF CONTRACTS (SECTION 18-20)

Passing of Property or Transfer of Ownership (Sections 18-20)

The sole purpose of a sale is the transfer of ownership of goods from the seller to the buyer. It is important to know the precise moment of time at which the property in the goods passes from the seller to the buyer for the following reasons:

The general rule is that risk follows the ownership, whether the delivery has been made or not. If the goods are lost or damaged by accident or otherwise, then, subject to certain exceptions, the loss falls on the owner of the goods at the time they are lost or damaged.

When there is a danger of the goods being damaged by the action of third parties, it is generally the owner who can take action.

The rights of third parties may depend upon the passing of the property if the buyer resells the goods to a third-party, the third-party will only obtain a good title if the property in the goods has passed to the buyer before or at the time of the resale. Similarly, if the seller, in breach of his contract with the buyer, attempts to sell the goods to a third party in the goods, has not passed to the buyer, e.g., where there is only an agreement to sell.

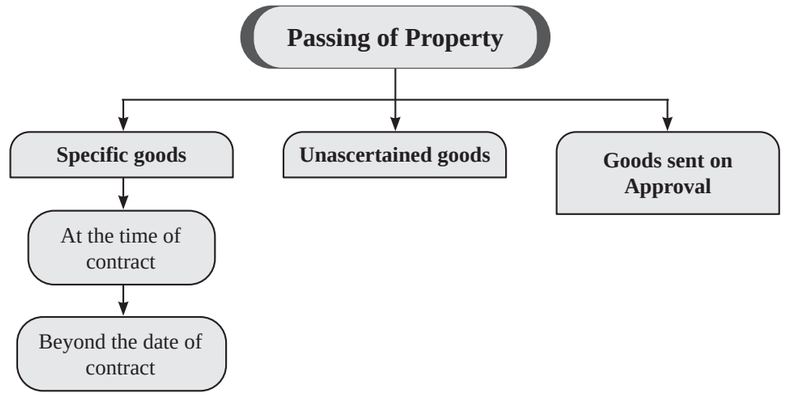
In case of insolvency of either the seller or the buyer, it is necessary to know whether the goods can be taken over by the official assignee or the official receiver. It will depend upon whether the property in the goods was with the party adjudged insolvent.

Thus in this context, ownership and possession are two distinct concepts and these two can at times remain separately with two different persons.

Passing of property in specific goods

In a sale of specific or ascertained goods, the property in them passes to the buyer as and when the parties intended to pass. The intention must be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case.

Unless a contrary intention appears, the following rules are applicable for ascertaining the intention of the parties:



Ownership in unascertained goods

The property in unascertained or future goods does not pass until the goods are ascertained.

Unascertained goods are goods defined by description only, for example, 100 quintals of wheat; and not goods identified and agreed upon when the contract is made.

Unless a different intention appears, the following rules are applicable for ascertaining the intention of the parties in regard to passing of property in respect of such goods:

(a)	The property in unascertained or future goods sold by description passes to the buyer when goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be expressed or implied and may be given either before or after the appropriation is made. (Section 23)
(b)	If there is a sale of a quantity of goods out of a large quantity, for example, 50 quintals of rice out of a heap in B's godown, the property will pass on the appropriation of the specified quantity by one party with the assent of the other.
(c)	Delivery by the seller of the goods to a carrier or other buyer for the purpose of transmission to the buyer in pursuance of the contact is an appropriation sufficient to pass the property in the goods.
(d)	The property in goods, whether specific or unascertained, does not pass if the seller reserves the right of disposal of the goods. Apart from an express reservation of the right of disposal, the seller is deemed to reserve the right of disposal in the following two cases:
	(i) where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, the goods are deliverable to the order of the seller or his agent.
	(ii) when the seller sends the bill of exchange for the price of the goods to the buyer for this acceptance, together with the bill of lading, the property in the goods does not pass to the buyer unless he accepts the bill of exchange.

PASSING OF RISK (SECTION 26)

The general rule is that goods remain at the seller's risk until the ownership is transferred to the buyer. After the ownership has passed to the buyer, the goods are at the buyer's risk whether the delivery has been made or not.

But the parties may agree that risk will pass at the time different from the time when ownership passed. For example, the seller may agree to be responsible for the goods even after the ownership is passed to the buyer or vice versa.

In ***Consolidated Coffee Ltd. v. Coffee Board, (1980 3 SCC 358),*** one of the terms adopted by coffee board for auction of coffee was the property in the coffee knocked down to a bidder would not pass until the payment of price and in the meantime the goods would remain with the seller but at the risk of the buyer, In such cases, risk and property passes on at different stages.

In ***Multanmal Champalal v. Shah & Co., AIR (1970) Mysore 106,*** goods were despatched by the seller from Bombay to Bellary through a public carrier. According to the terms of the contract, the goods were to remain the property of the seller till the price was paid though the risk was to pass to the buyer when they were delivered to a public carrier for despatch. When the goods were subsequently lost before the payment of the price (and the consequent to the passing of the property to the buyer), the Court held that the loss was to be borne by the buyer.

Transfer of Title by Person not the Owner (Section 27-30)

The general rule is that only the owner of goods can sell the goods. Conversely, the sale of an article by a person who is not or who has not the authority of the owner, gives no title to the buyer. The rule is expressed by the maxim; "Nemo Dat Quod Non Habet '' i.e. no one can pass a better title than he himself has. As applied to the sale of goods, the rule means that a seller of goods cannot give a better title to the buyer than he himself possesses. Thus, even a bona fide buyer who buys stolen goods from a thief or from a transferee from such a thief can get no valid title to them, since the thief has no title, nor could he give one to any transferee.

Exception to the general Rule

The Act, while recognizing the general rule that no one can give a better title than he himself has, laid down important exceptions to it. Under the exceptions the buyer gets a better title to the goods than the seller himself. These exceptions are given below:

(a)	**Sale by a mercantile agent**	A buyer will get a good title if he buys in good faith from a mercantile agent who is in possession either of the goods or documents of title to the goods with the consent of the owner, and who sells the goods in the ordinary course of his business.
(b)	**Sale by a co-owner**	A buyer who buys in good faith from one of the several joint owners who is in sole possession of the goods with the permission of his co-owners will get a good title to the goods.
(c)	**Sale by a person in possession under a voidable contract**	A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not been rescinded at the time of the sale.
(d)	**Sale by seller in possession after sale**	Where a seller, after having sold the goods, continues or is in possession of the goods or of the documents of title to the goods and again sells them by himself or through his mercantile agent to a person who buys in good faith and without notice of the previous sale, such a buyer gets a good title to the goods.
(e)	**Sale by buyer in possession**	If a person has brought or agreed to buy goods obtains, with the seller's consent, possession of the goods or of the documents of title to them, any sale by him or by his mercantile agent to a buyer who takes in good faith without notice of any lien or other claim of the original seller against the goods, will give a good title to the buyer. In any of the above cases, if the transfer is by way of pledge or pawn only, it will be valid as a pledge or pawn.
(f)	**Estoppel**	If the true owner stands by and allows an innocent buyer to pay over money to a third-party, who professes to have the right to sell an article, the true owner will be estopped from denying the third- party's right to sell.
(g)	**Sale by an unpaid seller**	Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.
(h)	**Sale by person under other laws**	A pawnee, on default of the pawnee to repay, has a right to sell the goods, pawned and the buyer gets a good title to the goods. The finder of lost goods can also sell under certain circumstances. The Official Assignee or Official Receiver, Liquidator, Officers of Court selling under a decree, Executors, and Administrators, all these persons are not owners, but they can convey better title than they have.

PERFORMANCE OF THE CONTRACT OF SALE

Delivery **(Sections 33-39)**

Delivery refers to the voluntary transfer of possession from one party to another and can take three forms: actual, constructive, or symbolic. Actual delivery occurs when the seller physically hands over the goods to the buyer or their authorized agent. Constructive delivery occurs when the person currently in possession of the goods acknowledges holding them on behalf of the buyer. For instance, if the seller retains possession of the goods as a bailee for the buyer after the sale, constructive delivery is established. Symbolic delivery, on the other hand, involves the transfer of means to obtain possession rather than the goods themselves. This can include actions like handing over keys to a warehouse where the goods are stored or providing a bill of lading entitling the holder to receive the goods upon the ship's arrival.

Rules as to delivery

The following rules apply regarding delivery of goods:

(a)	Delivery should have the effect of putting the buyer in possession
(b)	The seller must deliver the goods according to the contract.
(c)	The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.
(d)	Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.
(e)	The seller should tender delivery so that the buyer can take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.
(f)	The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract of sale and if not then in existence they are to be delivered at the place at which they are manufactured or produced.
(g)	The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of putting the goods into deliverable state must be borne by the seller. In other words, in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.
(h)	If the goods are to be delivered at a place other than where they are, the risk of deterioration in transit will, unless otherwise agreed, be borne by the buyer.

Acceptance of goods by the buyer

Acceptance of the goods by the buyer takes place when the buyer:

(a)	intimates to the seller that he has accepted the goods; or
(b)	retains the goods, after the lapse of a reasonable time without intimating to the seller that he has rejected them; or
(c)	does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells. If the seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may:
	(*i*) reject the whole; or
	(*ii*) accept the whole; or
	(*iii*) accept the quantity ordered and reject the rest.

If the seller delivers with the goods ordered, goods of a wrong description, the buyer may accept the goods ordered and reject the rest, or reject the whole.

Where the buyer rightly rejects the goods, he is not bound to return the rejected goods to the seller. It is sufficient if he intimates the seller that he refuses to accept them. In that case, the seller has to remove them.

INSTALLMENT DELIVERIES

When there is a contract for the sale of goods to be delivered by stated installments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

Suits for breach of Contract

1. If the buyer has already taken ownership of the goods, the seller can sue them for the agreed price.
2. If payment is due on a specific date regardless of delivery, the seller can sue for non-payment even if ownership hasn't transferred.
3. If the buyer refuses to accept the goods and pay, the seller can sue for damages due to non-acceptance.
4. If the seller fails to deliver the goods, the buyer can sue for damages due to non-delivery.
5. If there's a breach of warranty or a condition is treated as a warranty, the buyer can't reject the goods but can reduce the price or sue for damages exceeding the price.
6. If the buyer has paid but not received the goods, they can sue for a refund. In some cases, they can also seek a court order for specific delivery of the goods.

Case: - ***Chhunna Mal ram Nath vs. Mool Chand ram Bhagat (1928) 30 BoMlr 837***

Facts

Plaintiffs entered into contract for taking deliveries of the goods packed in wooden boxes from the defendants, which latter was to secure from London. Since the British government prohibited the supply of such goods in wooden boxes, hence, defendants offered to supply the goods in bales to which plaintiffs refused and "cancel[ed] the goods" without claiming any compensation thereof in any of the correspondences. Plaintiffs later claimed damages for non-delivery.

Decision

Plaintiffs upon the ancillary breach of defendants claimed to have 'put an end to the contract' u/s 39; however, it is the plaintiffs themselves who by wrongfully refusing to take deliveries under the contract have given a chance to defendants to 'put an end to it'. Nevertheless, defendants did not exercise this option and by acquiescence continued it; but Plaintiffs by insisting on "cancellation of goods" to be supplied by the defendants, had expressly dispensed with the performance by the latter such that no claim for damages could be brought against any breach by latter.

Anticipatory breach

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

- His right of performance on the due date in spite of his prior repudiation; or
- His rights to set up any defence for non-performance which might have actually arisen after the date of the prior repudiation.

Suresh Kumar rajendra Kumar v. K assan Koya & sons (1990)[8]

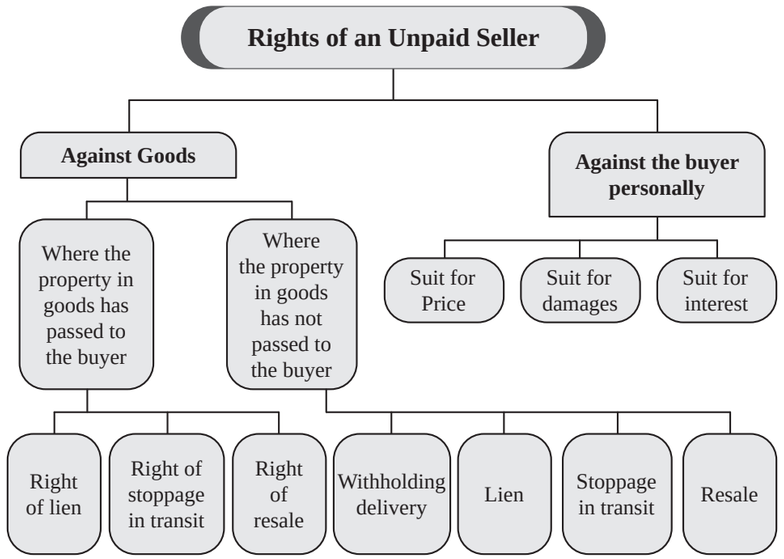
The plaintiff sold, through the commission agents, the goods and claimed compensation from the buyer who had rejected them. While doing so the plaintiff had taken all the measures necessary to sell the goods urgently in the ordinary course of business. In the absence of any records to show that the sale was conducted in an improper manner, it was held by the court that the plaintiff was entitled to claim the difference between the price at which the rice was supposed to be sold to the defendants, and the price at which it was finally sold.

UNPAID SELLER (SECTIONS 45-54)

Who is an unpaid seller? (Section 45)

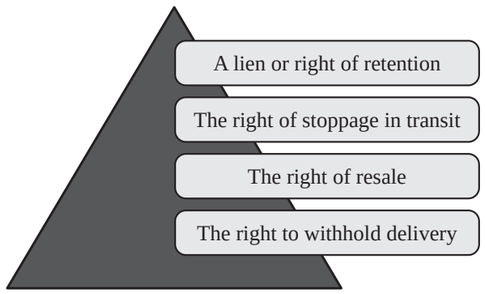
The seller of goods is deemed to be unpaid seller:

- When the whole of the price has not been paid or tendered; or
- When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonoured.



Rights of an Unpaid Seller against the goods

An unpaid seller's right against the goods are:



(a)	Right of lien (Sections 47-49 and 54):	An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfillment or tender of the price in cases where:
		(i) the goods have been sold without stipulation as to credit; or
		(ii) the goods have been sold on credit, but the term of credit has expired; or
		(iii) the buyer becomes insolvent.

The lien depends on physical possession. The seller's lien is a possession lien, so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.

A lien is lost–

- When the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods;
- When the buyer or his agent lawfully obtains possession of the goods;
- By waiver of his lien by the unpaid seller.

(b)	stoppage in transit (Sections 50-52):	The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

- When the buyer becomes insolvent; and
- The goods are in transit.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehouse keeper for the purpose of transmission to the buyer and until the buyer takes delivery of them. The transit comes to an end in the following cases:

- If the buyer obtains delivery before the arrival of the goods at their destination;
- If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;
- If the carrier wrongfully refuses to deliver the goods to the buyer

If the buyer rejects the goods and they remain in the possession of the carrier or another custodian, the transit is considered ongoing, even if the seller declines to take them back.

The seller's right to halt the goods in transit can be exercised by either physically taking possession of the goods or notifying the carrier or custodian of the seller's claim. Upon receiving such notice, the carrier must return the goods to the seller, who is responsible for the expenses incurred in the process.

The seller's right of lien or stopping goods in transit remains intact unless the seller has agreed to a sale by the buyer. However, if the seller's bill of lading or similar document is transferred to a legitimate purchaser for value, this transfer is valid against the seller's rights.

(c)	Right of resale (Section 54)	The unpaid seller may re-sell:
	(i)	Where the goods are perishable;
	(ii)	Where the right is expressly reserved in the contract;
	(iii)	Where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realised, he is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

(d)	Rights to withhold delivery	If the property in the goods has passed, the unpaid seller has the right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

RIGHTS OF AN UNPAID SELLER AGAINST THE BUYER (SECTIONS 55 AND 56)

An unpaid seller holds certain rights against the buyer as outlined in Sections 55 and 56.

If the buyer breaches the contract by either refusing to pay the price as per the agreement or failing to fulfill their obligations, the seller has the right to take legal action for the price of the goods. This applies regardless of whether the buyer has taken ownership of the goods.

Additionally, if the price is due on a specific date and the buyer fails to pay, the seller can still sue for the price even if ownership hasn't been transferred.

Section 56 provides the seller with further recourse. If the buyer wrongfully refuses to accept and pay for the goods, the seller can sue for damages resulting from the breach of contract.

Auction Sales (Section 64)

An auction sale is a public event where goods are offered to potential buyers who compete by making successive bids, aiming to secure the purchase of the items. Section 64 outlines the regulations governing auction sales.

When goods are presented for sale in separate lots, each lot is considered to be the subject of an individual sales contract by default. The sale is finalized when the auctioneer signals its completion, typically by the fall of the hammer or other customary means. Before this announcement, any bidder has the right to retract their bid.

The seller or their representative may explicitly reserve the right to bid. In such cases, the seller or their representative can participate in the bidding process. However, if the sale is not explicitly stated to allow seller bidding, it is unlawful for the seller or their agent to bid or for the auctioneer to accept bids from them. Any sale conducted in violation of this rule may be deemed fraudulent by the buyer.

Trading Contracts Involving Rail or Sea Transit

In the case of a contract for the sale of goods which are to be shipped by sea a number of conditions are attached by the parties or by custom and practice of merchants. Some of the important types of such contracts are given below:

(a)	F.O.b.(Free on board)	Under an F.O.B. contract, it is the duty of the seller to put the goods on board a ship at his own expenses. The property in goods passes to the buyer only after the goods have been put on board the ship, and they are at buyer's risk as soon as they are put on board the ship, usually named by the buyer. The seller must notify the buyer immediately that the goods have been delivered on board, so that the buyer may insure them. If he fails to do so the goods shall be deemed to be at seller's risk during such sea transit.
(b)	F.O.R. (Free on Rail)	Similar position prevails in these contracts as in the case of F.O.B. contracts.
(c)	C.I.F. or C.F.I. (Cost Insurance and Freight)	A CIF contract is a contract for the sale of insured goods lost or not lost to be implemented by transfer of proper documents. In such types of contracts, the seller not only bears all the expenses of putting the goods on board the ship as in an F.O.B. contract, but also to bear the freight and insurance charges. He will arrange for an insurance of the goods for the benefit of the buyer. On the tender of documents, the buyer is required to pay and then take delivery. He has a right to reject the goods if they are not according to the contract.
(d)	Ex-Ship	Here the seller is bound to arrange the shipment of the goods to the port of destination, and to such further inland destination as the buyer may stipulate. The buyer is not bound to pay until the goods are ready for unloading from the ship and all freight charges paid. The goods travel at the seller's risk, but he is not bound to insure them.