



lec 2 Competition Act 2002.

\* Definition of Competition.

- As per world bank & OECD
- It is a situation in a market
- in which firm or seller
- Independently strive for buyer's patronage
- To achieve particular business objective.

In simple words -

- Competition is process of economic rivalry between market players to attract the customer.

\* Importance of competition.

- Widest range of product
- Innovation in product & reduction in cost
- Does not lead to creation of monopoly.
- Improvement in quality of product
- Economic growth
- No competition No progress.

\* Objective of competition Act 2002.

- Prevent any trade practice which have adverse effect on competition
- Promote & sustain the competition
- Ensure freedom of trade.
- To protect consumer interest
- Establishment of CCI

lec 4.

\*

### Difference.

#### MRTP Act

- First competition law
- Pre-liberalisation law
- To prevent monopoly & restrictive trade practice
- To prevent monopoly
- It prevent dominated position
- Restrictive in nature

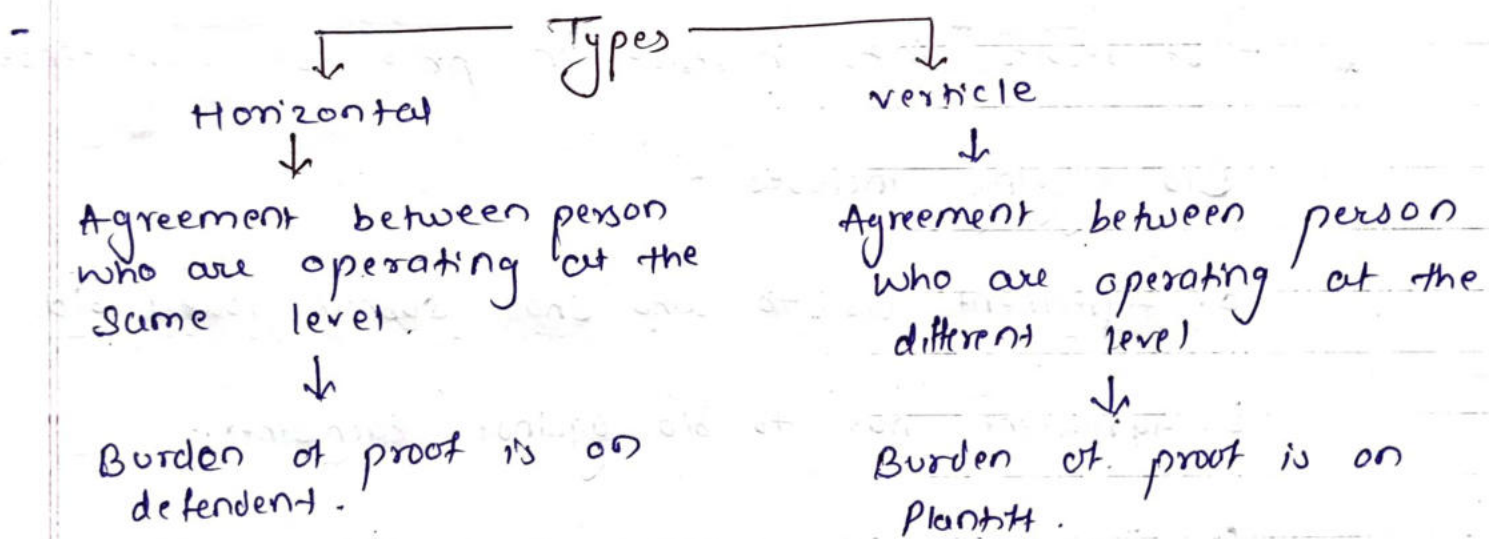
#### Competition Act

- Repeal & Replaced the MRTP Act
- Post liberalisation law
- Any trade practice which have adverse effect on competition.
- Prevent the Bad intention behind the monopoly.
- Prevent the dominant abuse of dominant position.
- Facilitating in nature (Supportive)

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## \* Anti competitive agreement

- Agreement between enterprise or association of enterprises or person or association of person.
- Who entered into agreement in respect of production, supply, distribution, storage, control, price.
- Which have appreciable adverse effect on competition (AAECC) & such agreement are void.



## \* Horizontal agreement.

1. Price fixation = Agreement that directly or indirectly leads to determination of purchase or sale price.
2. Market sharing = Enterprise divide the market on the basis of geographical area, or no. of customer or other similar manner.

3. Output control / production control - Enterprises by agreement limit or control the production, supply, distribution.

4. Bid Rigging :- Parties agreed in similar goods or services tries to eliminate the competition on bids.

- also known as collusive bidding where competing parties collude to manipulate the bidding.

- It results into increase in price of Govt. tender.

• Bid rigging includes -

a. Agreement as to who shall submit lowest bid.

b. Agreement not to bid against each other.

c. Agreement on common norms for bidding.

d. Agreement which decide the winner of bid.

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\* Vertical agreement

a) Tie in agreement / arrangement

→ It requires a purchaser to purchase some other goods.

b. Exclusive supply agreement.

→ Restriction from acquiring or dealing in goods other than those of seller.

c. Exclusive distribution agreement.

→ Limit or restrict or withhold the output or allocate the area or market.

d. Refusal to deal

→ Likely to restrict or restrict any person from whom the goods can be sold or bought

e. Resale Price maintenance.

→ Price for resale is stipulated by seller however agreement can specify that price lower than the stipulated price can be charge.

Exception - IPR or JV (Intellectual property rights or Joint venture)

## \* Unfair trade practices.

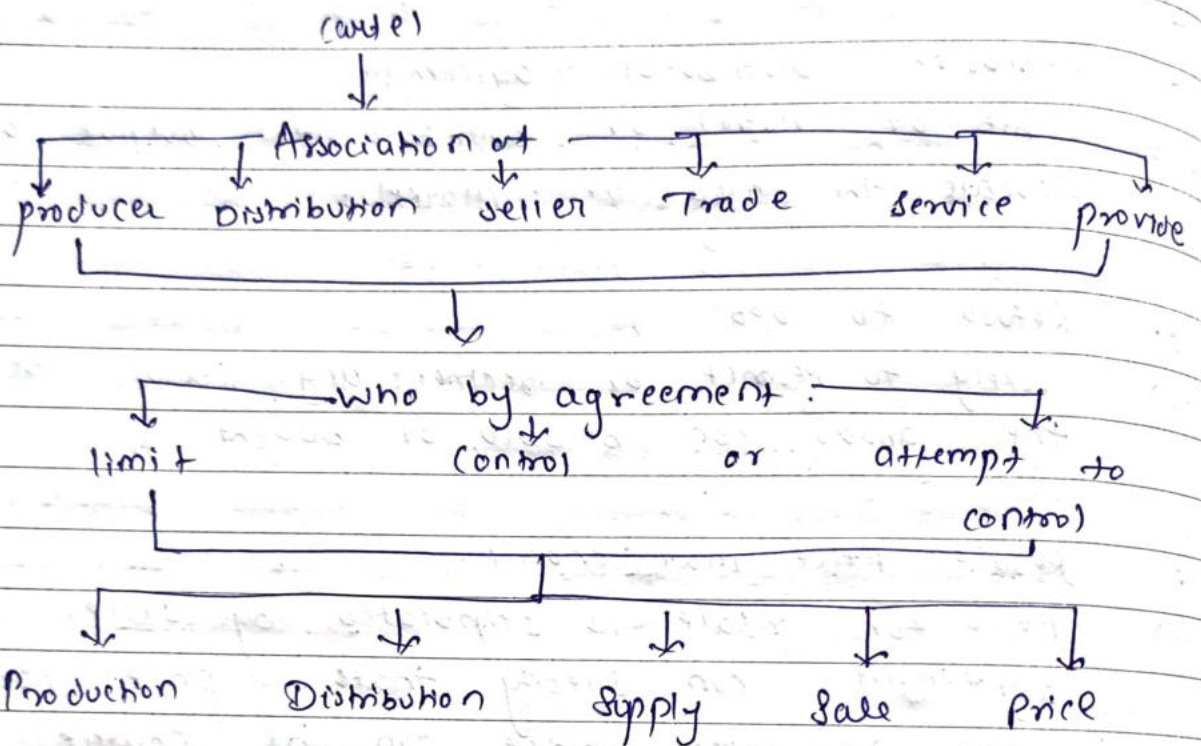
Trade practices which used unfair method to promote the sale, use or supply goods or services which includes

- a. Misleading adv.
- b. false representation
- c. Bargain sale
- d. offer gifts with the intension of not providing them.

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## Cartel



- Difficult to found in competitive market.

- objective of cartel is to raise price hence ~~Anti competition~~ competitive.

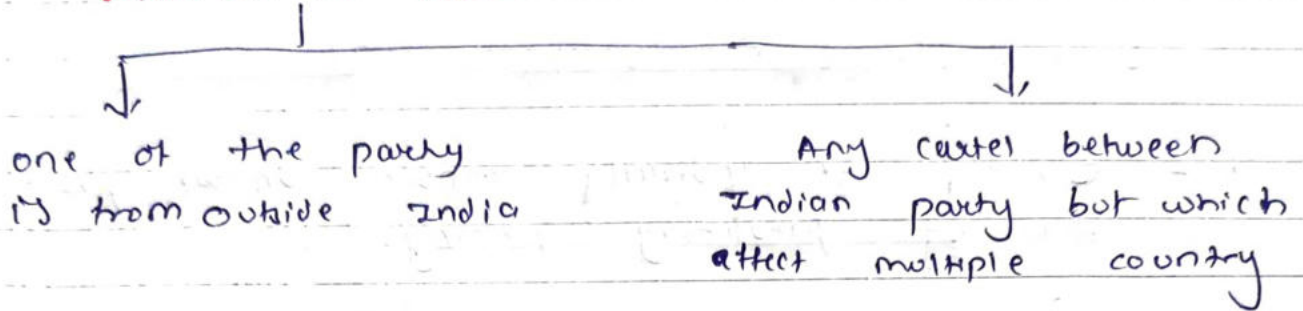
### Condition of cartelization

- Few competition
- Homogeneous product
- Dependence of consumer
- history of collusion
- Barrier of entry or ~~exact~~ exit

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### \* International cartel



### \* Restrictive trade practices.

- Horizontal fixation of price
- Vertical fixation of price
- Allocation of market between seller
- Boycott.
- exclusive dealing contract.
- Tie-up - arrangement.

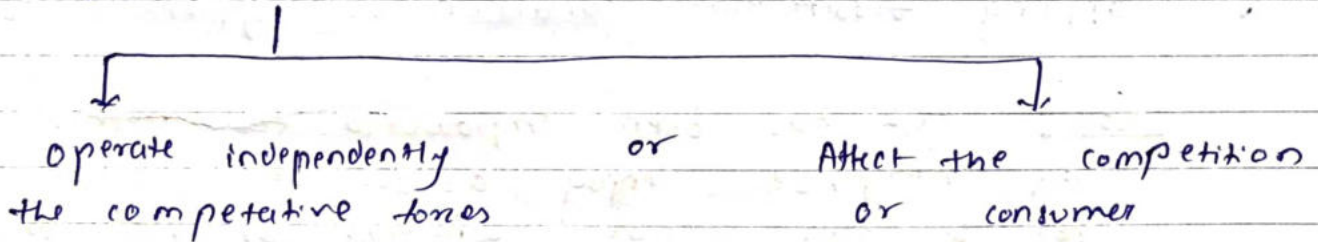
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### \* Abuse of Dominant Position (Sec 4)

→ Dominant position

→ Position of strength in the relevant market which enable it to

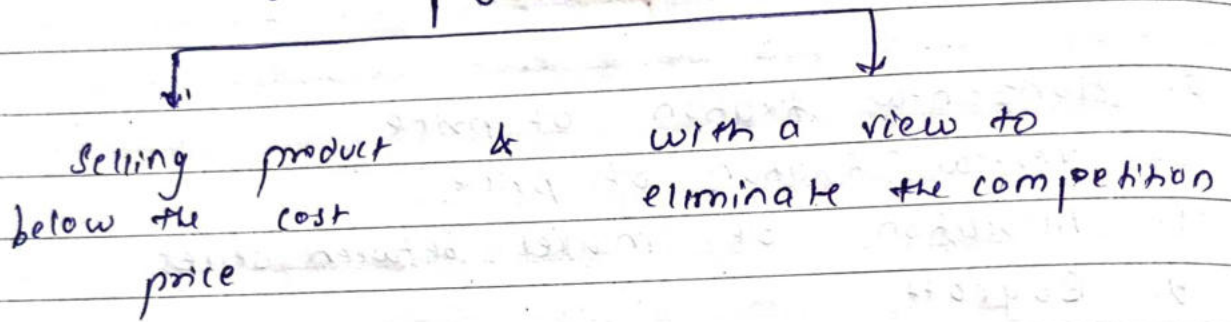


## \* Prohibition on abuse of dominant position.

a. Deemed to abuse its position if

(i) - Directly or indirectly impose unfair practices including predatory pricing.

- Predatory pricing means.



(ii) - limit or restrict production of goods or services or scientific technological development

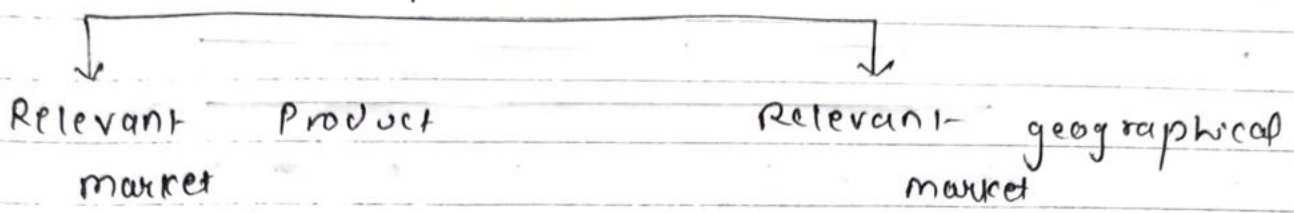
(iii) Denial of market access

(iv) uses its dominant position in one market to enter into another relevant market.

(v) applying ~~dissimilar~~ <sup>dissimilar</sup> condition or supplement obligation

Note :- CCI has been empowered to determine that any enterprises enjoy a dominant position or not & also decides whether or not there has been abuse of dominant position.

\* Relevant market



It comprise the product which are substitutable or inter changeable to each other due to features price or intended use of such product

It comprises the area in which Product are distinctively homogeneous eg. local market national market.

Sec 10.

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\* Combination Sec-5

- Acquisition of shares, voting rights or control over the assets & which includes merger & amalgamation.
- Govt. Control combination to promote competition
- Combination having appreciably adverse effect on competition (AAEC) shall be void.

\* When notice is required.

- Notice is required when the combination size exceeds the given monetary limit

Limits.

Particular	Assets		Turnover
	In India	Enterprise	2000 cr
	Group	8000 cr	26,000 cr

		Assets		Turnover	
		Total	In India	Total	In India.
World wide	Enterprise	1 Billion	1000 cr	3 Billion	3000 cr
	Group.	4 Billion	1000 cr	12 Billion	3000 cr

Amendments -

In addition to above limit value of any transaction which includes merger amalgamation or turnover exceeds ₹ 2000 cr & such Enterprise is having substantial Business operation in India.

Sec 11

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**\* ~~Produce~~ Procedure for investigation of combination.**

- a. Company shall give Notice of combination to CCI
- b. CCI shall form prima facie opinion within 30 days that such combination has cause an appreciable adverse effect of competition (AAEC)

- c. CCI shall give show cause notice to the party
- d. Party shall respond within 15 days.
- e. CCI shall appoint DG for Inquiry into the combination.
- f. CCI within 7 days from receipt of response from parties or report by DG whichever is later shall direct to party to give public advertisement
- g. CCI may invite objection from any person within 10 days.
- h. CCI within 7 days from expiry of 10 days may call additional information from the parties.
- i. Additional information shall be furnished by the parties within 10 days from expiry of 7 days.
- j. CCI may pass the following order.

↓  
 If CCI thinks that combination has AA EOC

↓  
 If CCI think modification can eliminate the AA EOC

↓  
 Issue statement to parties and give 25 days of time for explanation.

Parties can submit the modification proposal.

CCI accept the modification

CCI reject the modification

Intimate to party within 7 day

Revise modification by parties within 12 days from communication

CCI can accept the revised modification

Can reject the modification within 12 days.

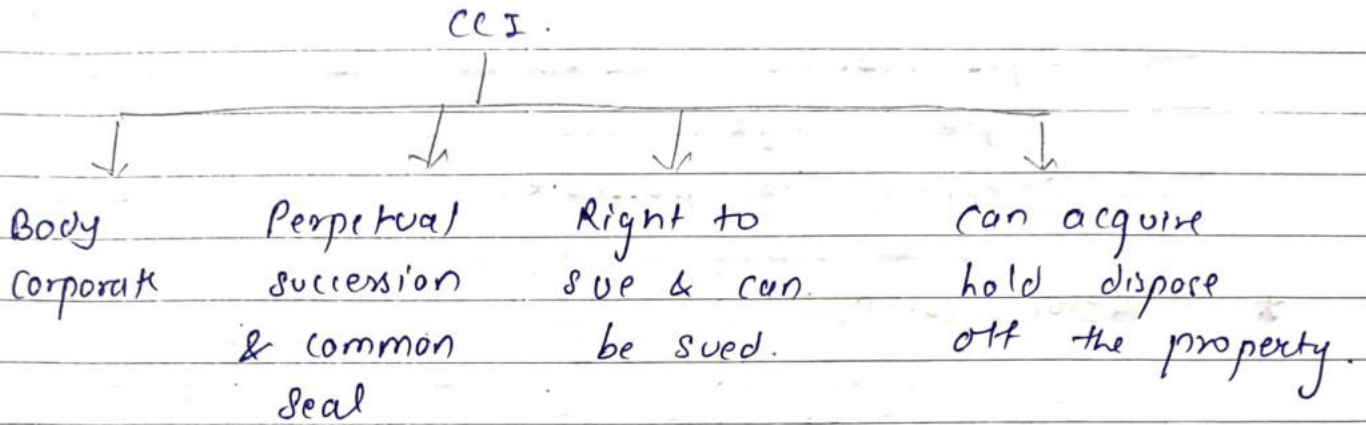
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Sec 12.

CCI shall evaluate the proposal within 12 days from receipt.

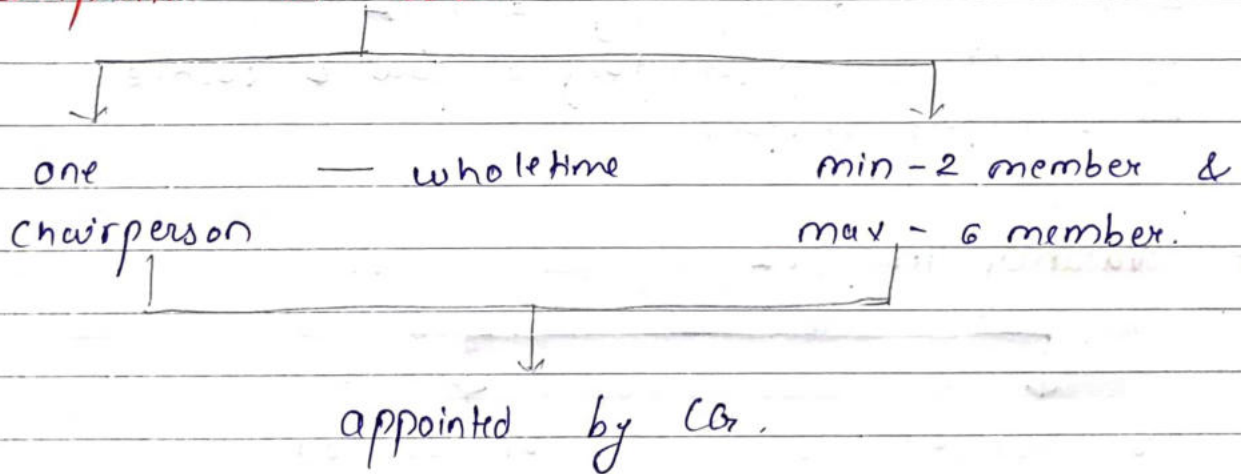
1. CCI after considering the proposal or modification may accept the combination if such combination does not have AAFC

2. If no order is passed or direction issued by CCI within a period 150 days from notice, deemed to be approved by CCI

\* CCI



\* Composition of CCI.



- Chairperson & other member shall have atleast 15 years of experience in law, finance, international trade, economics, management, etc

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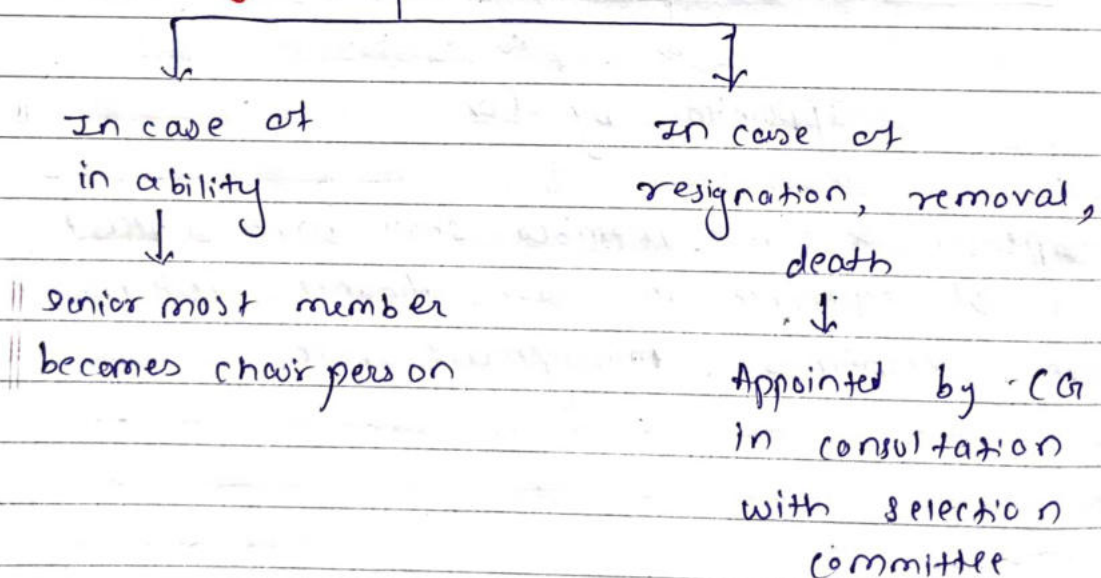
\* Term of Chairperson & other member.

- 5 yrs or } earlier
- 65 yrs of age
- Reappoint is possible.

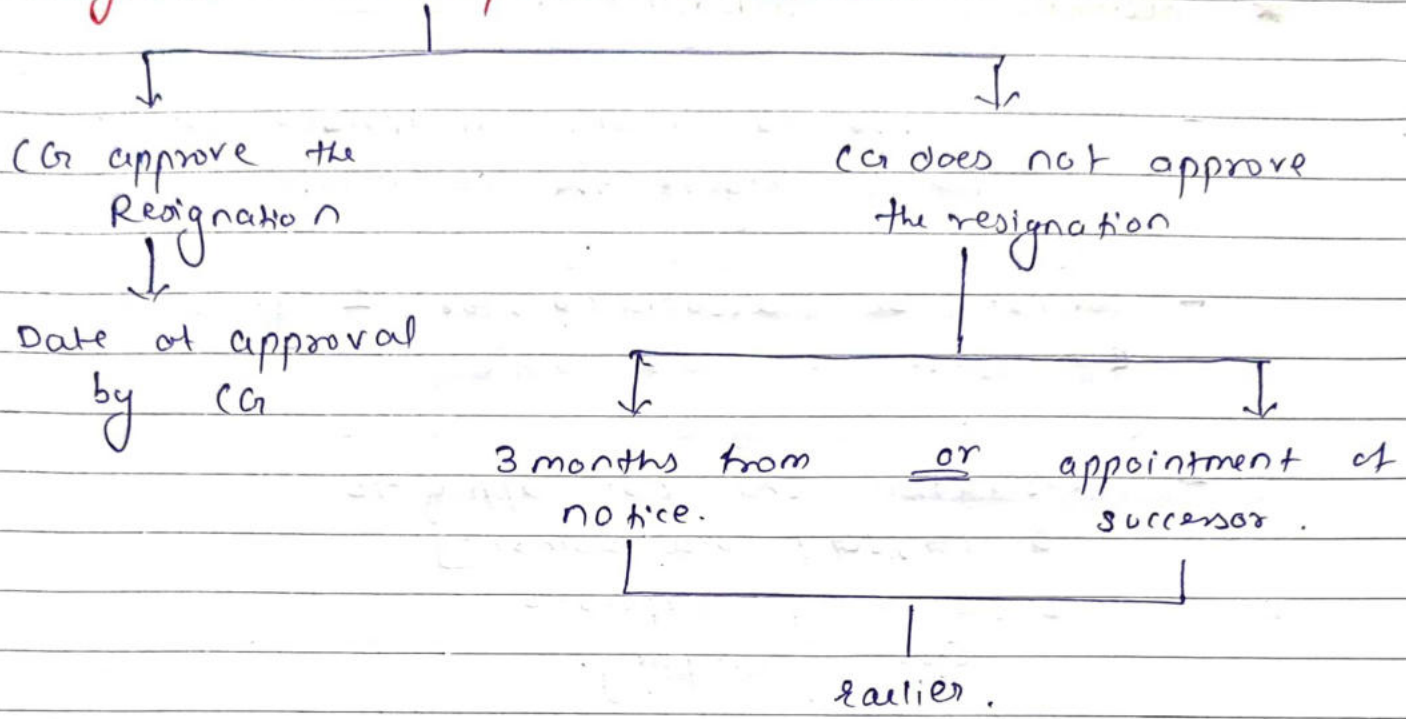
\* Selection committee.

- Chair person → chief Justice of India or his nominee
- member → secretary of MCA
- member → secretary of law & Justice
- 2 expert member

\* Vacancy in CCI



### \* Resignation of chairperson & member.



### \* Removal of chair person.

- Adjudged as an insolvent
- Engage in paid employment
- convicted under offence involving moral turpitude.
- Acquire financial or other Int.
- Abuse his position which affect public Int.

In last 2 points removal after inquiry by Supreme Court.

## \* Restriction on employment.

- Cannot appointed in any enterprises which was party before the commission.
- cannot be associated for 2 years from ~~the~~ cease to hold office.
- Restriction shall not apply to
  - a. CG / SC / local authority
  - b. statutory corporation
  - c. Govt company.

## \* Consumer.

- Any person who buys the goods which includes user of goods and
- who hire the services which include the person who avail the services for the consideration.
- Consideration may be paid, partly paid or partly promise to pay or promise to pay.
- It also includes a person who buys or avails the goods & services for commercial use

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\* Inquiry into certain agreement & dominant position

CCI has power to inquiry either

↓  
Suo  
moto

↓  
App from  
any person,  
consumer,  
association  
of consumer  
or trade  
association

↓  
Reference  
by Sr / Cr  
Statutory  
Authority

↓  
however  
Do is not  
vested the  
right to move  
the application.

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\* Factors To be considered by CCI while determining  
The AAEC

- Accrual of benefit to consumer.
- Creation of barriers to new entrants.
- Foreclosure of competition by hindering entry into market.
- Driving existing competitors out of the market.
- Improvement in production or distribution of goods.
- Improvement of technical scientific or economic development.

\* Factors to be considered by CCI while determining dominant position.

- Market share of enterprise.
- size & resources of enterprise
- size & importance of competition.
- commercial advantages over competition.
- Dependence of consumer on the enterprise.
- social obligation & social cost.

\* Factors to be considered to determine the adverse effect of combination.

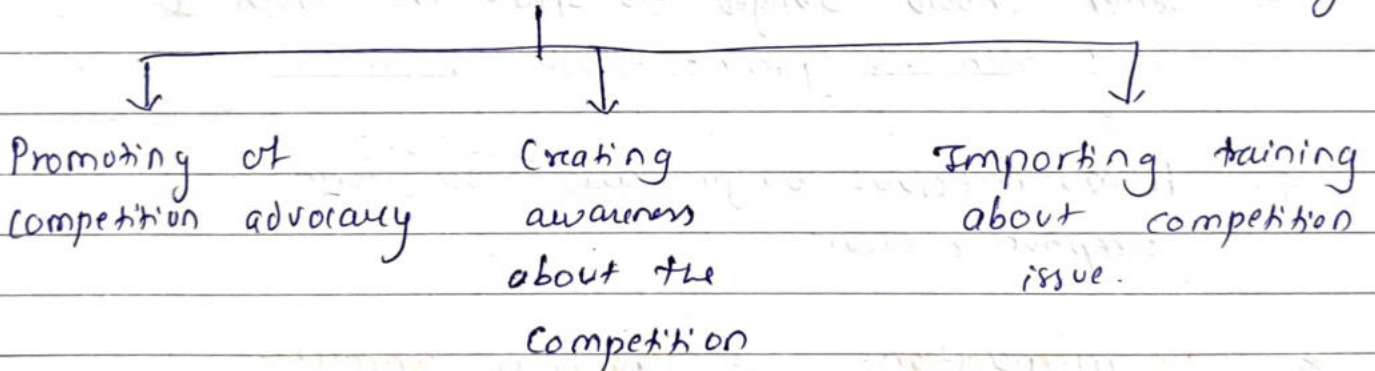
- Actual & potential level of competition through import.
- Extent of barrier to entry - entry restricted.
- combination being able to significantly & sustainable increase in price or profit.
- Possibility of failing business.
- Relative advantage of combination
- Size & level of combination.

\* Who can appeal before CCI

1. Complainant
2. Defendant
3. Director General
4. on behalf of client : PCA / PCG / PCMA.

## \* Competition Advocacy

- Central govt. / state govt. may seek the opinion of CCI before formulation of competition policy.
- Government shall make reference to CCI to give its opinion.
- CCI shall give its opinion within 60 days from such reference.
- Government shall proceed with such policy.
- The role of CCI is advisory & opinion given CCI is not binding on govt.
- CCI shall also empowered to take suitable measure for:



## \* Appeal against CCI.

- Aggrieved party may file appeal to NCLAT.
- Appeal within 60 days from receipt of order.
- Extension - 60 days in case of sufficient ground
- Dispose of appeal within 6 months

- Appeal against NCLAT lies to Supreme Court within 90 days.
- Extension by Supreme Court in case of sufficient cause.

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### \* Recommendation of Sachar Committee.

- Appointed by CoI (Govt. of India) in Aug 1977.
- Under the chairmanship of Justice Rajendra Sachar.
- Objective - To protect the consumer from unfair practices adopted by Industry.
- According to such committee adv. or sales promotion shall not be in the nature to **deceive** consumer.
- Seller should be obliged to speak the truth & avoid half truth & prevent false & misleading info.
- ~~fictitious~~ Fictitious bargain was also form of deception → धोखा.

### \* Recommendation of Raghavan Committee.

- After LPG Govt. realise monopoly is not appropriate to economic growth.
- Raghavan committee has formed under the leadership of Mr. S.V.S Raghavan.

- It submit the report on 22<sup>nd</sup> may & recommended the replace-ment of MRTP Act with the modern competition Act
- Eliminating anti competitive Practices.
- Prevent abuse of dominant position of India.
- After such recommendation Govt., has introduced competition act.

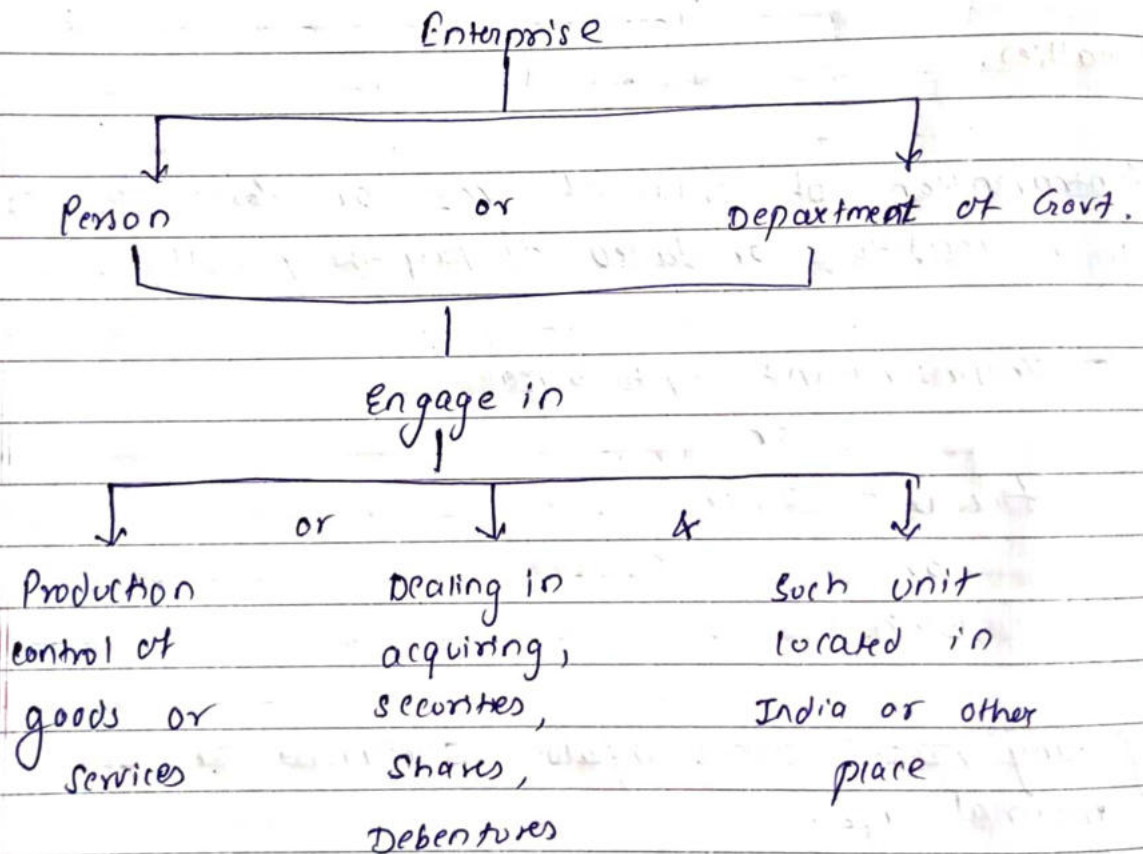
**\* Penalties.**

- Contravention of order of CCI or fails to comply with condition or failed to pay the penalty.
  - Imprisonment upto 3 years  
or
  - fine upto 25 cr  
or
  - Both
- If any person makes a false statement or omit any material info.
  - min fine 50 L may extend to 1 cr

**\* Power to impose lesser penalty.**

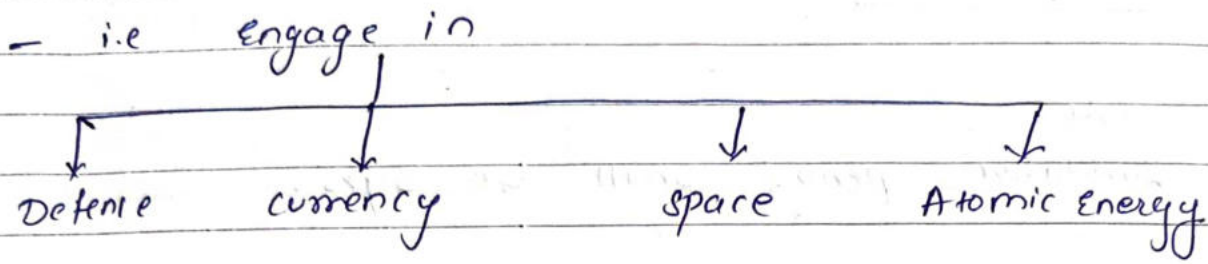
- If defaulted party made full disclosure to CCI about the default & such disclosure shall be made before DG (Director or general) submit its investigation report in such case CCI may impose lesser penalty

**\* Enterprise**



It excludes

- Govt department performing sovereign function



• Order by CCI after inquiry into agreement or abuse of dominant position.

- ~~Order~~ Discontinue such agreement & shall not be entered into such agreement.

- Penalty up to 10% of average turnover of last 3 preceding financial year upon each such person.

- Modification of agreement

- Give such other direction including payment of cost.

### \* Division of enterprise enjoying dominant position

- Transfer or vesting of property rights or obligation

- winding up or formation of an enterprise

- Amendment of MOA & AOA

- Creation, allotment, surrender of securities.

Dec 19

## Amendment.

### \* Note.

Limitation period shall be 3yrs.

### \* Settlement & Commitment frameworks.

- It applies to contravention related to anti-competitive agreement & abuse of dominant position.

- An application for settlement may be filed only after receipt of investigation but before passing of order by CCI.

- CCI may impose certain conditions which includes settlement amount.

### \* Hub & Spoke arrangement under presumptive rule of Appreciable adverse effect on competition (AAEOC)

- It provides for presumption of AAEOC against participation, who may not be engaged in identical trade to be part of ACA if they participate or intend to participate in furtherance of such agreement.

# Ch. 6. Special Economic Zones.

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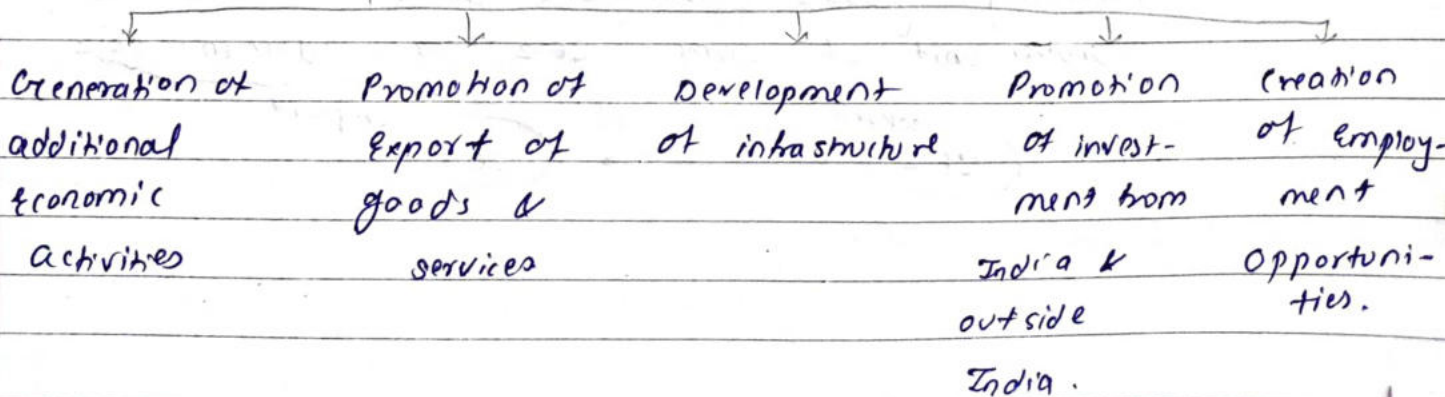
## \* SEZ

- Specially designated duty free enclave
- Treated as deemed to be foreign territory for trade operating & duties.

## \* Features of the Act

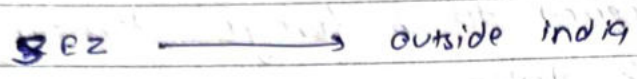
- Establishment of SEZ & setting up of units.
- Setting up of offshore banking units
- Tax regime for developer & units in units.
- establishment of SEZ authority for each Special Economic zone.
- Single window clearance at zone level
- Designation of Special court

## \* Objective of this Act.

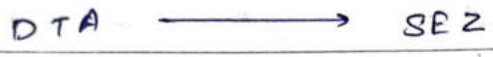


**\* Export**

a. Taking goods / services out of India from SEZ by air, road or sea.



b. Supply of goods from DTA to SEZ



c. Supply of goods from one unit of SEZ to another unit of same or different SEZ

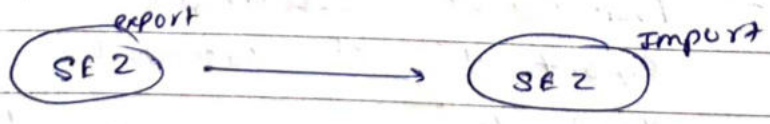


**\* Import**

- Bringing goods or services in SEZ from outside India.



- Receiving goods from one unit of SEZ to another unit of same SEZ or different SEZ.



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## ★ Constitution of Board of Approval (BoA)

- constituted by CG
- function & power
  - a] Approve, reject, modify the proposal for establishment by SEZ
  - b] Approving authorised operation to be carried out in SEZ
  - c] Approving foreign collaboration & approval of FDI
  - d] Approve, reject, modify the Infrastructure facility in SEZ.
  - e] Suspension the letter of approval granted to developer.
  - f] Appointment of administrator.
  - g] Disposing of appeal.

## ★ Suspension of letter of approval.

- Board of approval may suspend the letter of approval for whole or part of the area.
- max period - 1 year
- During suspension - BoA may approval appoint the administrator to discharge the function of developer.

• Grounds .

- a. Unable to discharge the function,
- b. Default in complying the direction of board
- c. Violate the terms of condition
- d. Poor financial position that he cannot discharge his duties efficiently.

- Before suspension shall give 3m advance time notice.

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\* 2<sup>nd</sup> Approval committee.

- constitute by CG for every SEZ
- Power & function

- a) Approve the import from DTA to developer.
- b) Approve the import & service from DTA or outside india to SEZ
- c) Approve, modify, reject the proposal for setting up of unit in SEZ.

\* Development Commissioner (DC)

1. CG may appoint DC for one or more SEZ
2. function of DC :-

- Guide the entrepreneur for setting up of units in SEZ.
- Promotion for export from SEZ.
- Co-ordinate with CCI/SGI or other agencies
- Monitor the performances of developer & units of SEZ
- Other function delegated by BOA or CG.

### \* SEZ Authority

1. CG to constitute SEZ authority for every SEZ.
2. CG can supersede for max. 6 months if authority failed to discharge the function

Function :-

- a. Development of infrastructure in SEZ.
- b. Promoting export from the SEZ
- c. Review the performance of SEZ.
- d. Levy user or service charge or rent for the use of property belonging to authority.
- e. Such other function as may be prescribed.
- f. Direction given by CCI shall be binding on SEZ.

### \* Establishment of SEZ

- a) by CCI
- b) by SGI
- c) CCI & SGI or both
- d) Any other person even by foreign company

## \* Modes of applying for SFZ :-

### Option 1:-

#### (i) Proposal to SG.

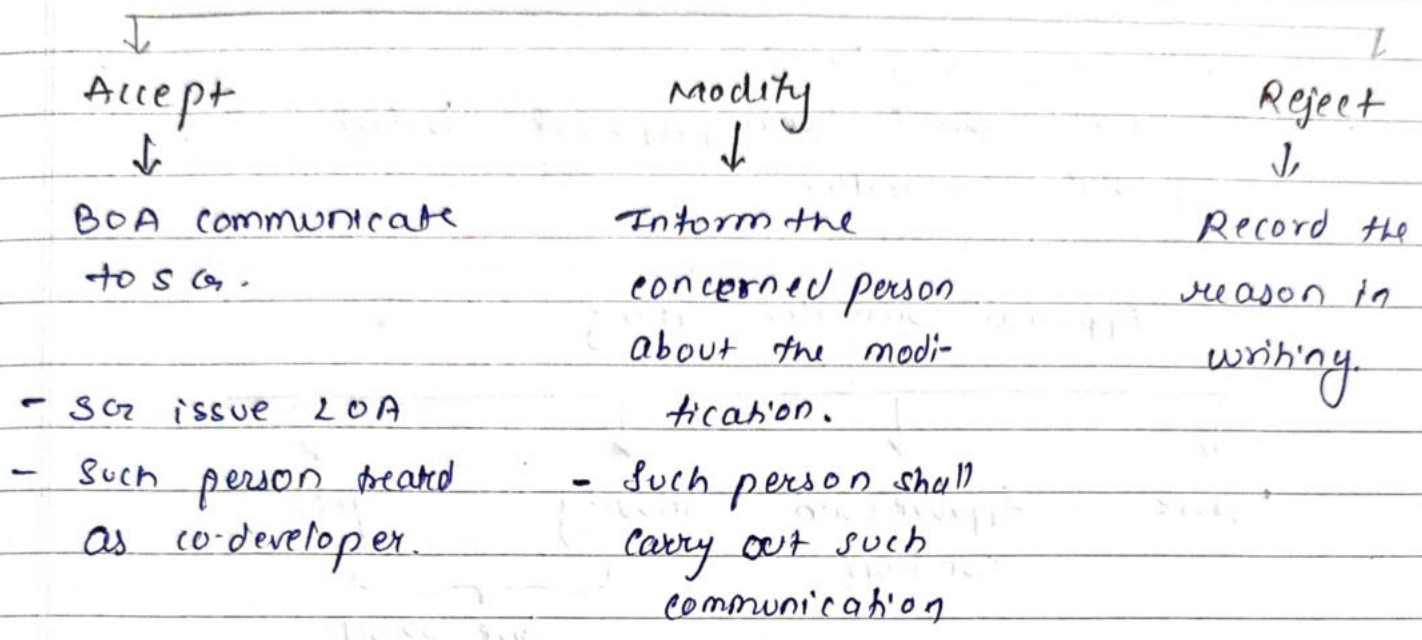
- Identify the area
- Give proposal to SG
- SG will forward such proposal along with recommendation to BOA.
- BOA either approve / approval with condition or modify or reject the application

### Option 2 :-

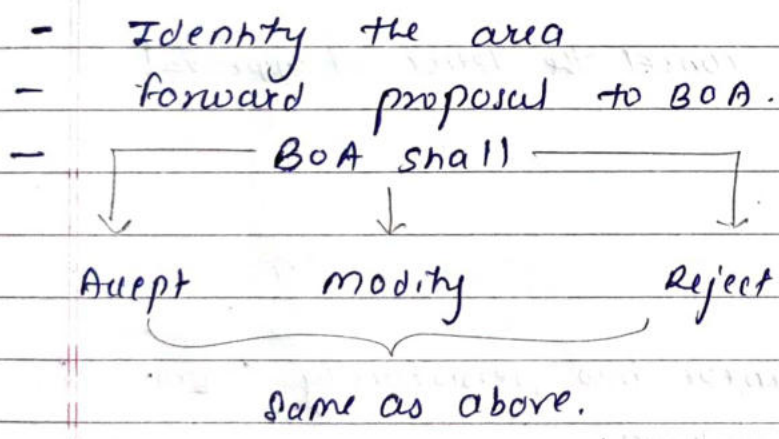
#### (ii) Proposal to Board.

- Identify the area
- Application to BOA
- BOA may approve / approval with condition modify, reject the proposal.
- obtain concurrence with S.G.

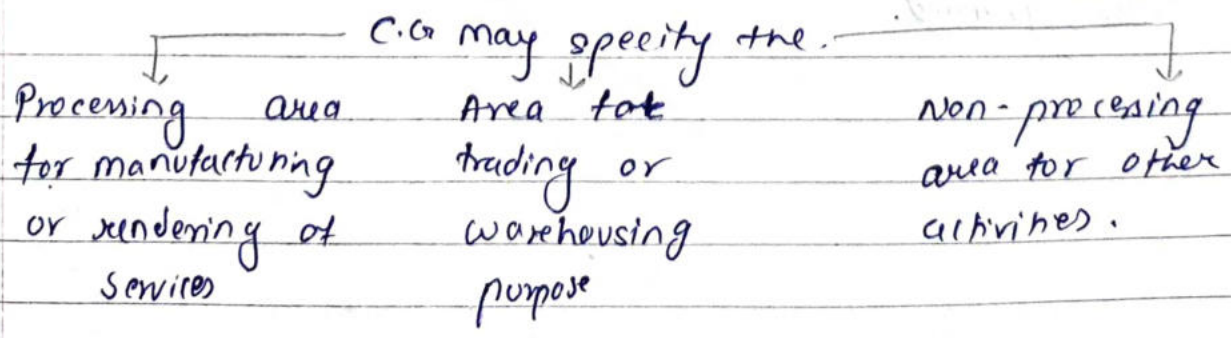
## Proposal



### \* Proposal by S.G.

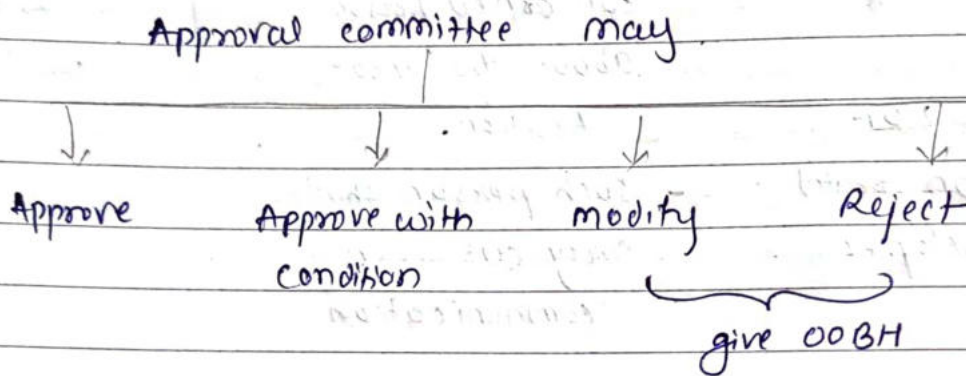


### \* Demarcation as processing and Non-processing.



### \* Setting up units in SFZ

- Submit proposal to D.C.
- D.C shall submit such proposal before approval committee.



### \* Cancellation of letter of approval granted to entrepreneur.

- Approval committee may cancel the letter of approval after giving OOBH.

Grounds.

- Any reason that entrepreneur has persistantly contravened any of the terms & condition

or its.

obligation subject to which letter of approval was granted.

## \* Withdrawal of Benefits.

Once the letter of approval has been cancelled the units shall not from the date of such cancellation be entitled to any exemption.

# Ch 9. Law relating to fugitive economic offender.

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## \* Fugitive Economic offender (FEO)

- Any individual against whom warrant of arrest is issued under any scheduled offence by any court & such person

has left India  
to avoid criminal  
prosecution

or being in abroad & refuses  
to return to India to  
avoid criminal prosecution

can be declared as FEO

Scheduled offence  $\rightarrow$  Total value involved in offences is  
100 cr or more

## \* Procedure for Declaration of FEO

- Director or Deputy Director (DD) has reasons to believe in writing that an individual is a fugitive economic offender, he may file an app. to special court
- The application shall contain
  - a. Reasons to believe that the person is FEO
  - b. Info available about the FEO
  - c. List & value of properties involved in crime & includes the property situated outside India
  - d. List of benami properties
  - e. List of person involved or have interest.

- Special court shall issue notice to

Individual supposed or other person who has interest to offender in the property.

- Individual shall appear in the court within 6 weeks from issue of notice.

- Notice shall be forwarded to such other authorities in contracting state & such authority shall make efforts to serve the notice within 2 week.

- When the appearance is through counsel (adv.), one week time is given to counsel for reply.

- If the Individual or counsel fails to appear & court is satisfied that

Notice has affected / served to such party

or

Notice could not be served inspite of best efforts coz Individual has evaded services of notice

### \* Declaration of fugitive Economic offender

- After hearing the application if special court is satisfied that an individual is a FEO it may declare such person as FEO

- special court may order to CO that any of the following properties can be confiscated.

(a) Proceeds of crime in India or abroad owned by FEO or other person

(b) Benami property in India or outside India owned by FEO

- special court may issue letter of request to authority in contracting state for execution of such order.

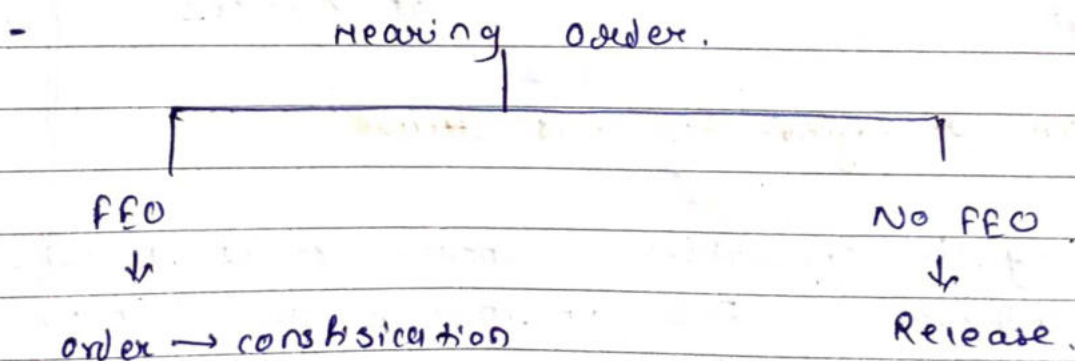
- special court may exempt any property from confiscation if such property is held by other person & has acquired such property bonafide.

- All rights of confiscated property vest with CG & freely from all encumbrances

- on conclusion of proceeding if, special court finds that the individual is not a FEO, then special court may released the property.

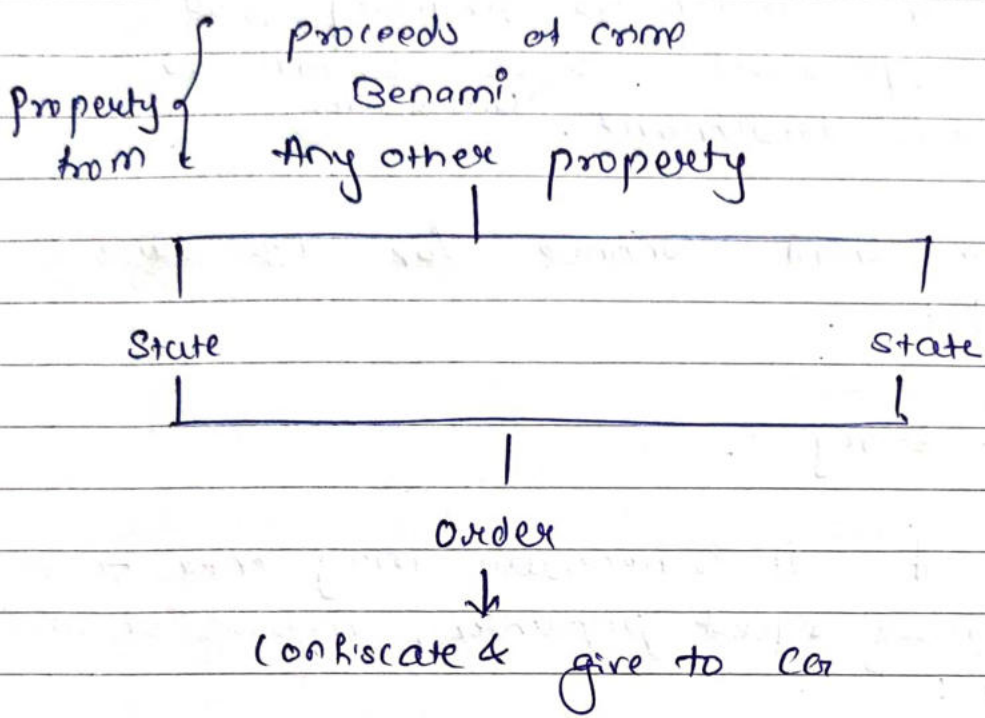
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\* Hearing order



\* Power to disallow civil claims

- If individual is FEO any court or tribunal may disallow individual from putting civil claim.
- If individual filing claim on behalf of co. or LLP any promoter or any kmp the court may disallow defending the civil claim.

\* Attachment of property

- Director or officer not below the rank of deputy director attach by an Order in writing :-
  - the property is proceed of crime or benami or owned by FEO

b) It is likely to sell the property  
Director who attach the property shall  
file an application to SC within 30  
days from attachment. (Special court)

Attachment shall continue for 180 days  
from order

### \* Power of survey

The director if it is necessary may enter to any  
place & may request proprietor, employee or other  
person to :

- Afford facility to inspect record available
- verify transaction related to proceed of crime
- furnish information related to proceeding

### \* Search of seizure :-

A director or any authorised officer may

- i. enter & search any building, place, vessel or aircraft,  
when he has reason to inspect.
- ii. Break & open the lock of door, box, locker safe  
or almirah.

- iii. Seize any record or property
- iv. Examine on oath any person
- v. Place marks of identification

**★ Search of person: -**

- i) If authority has reason to believe that any person has secreted about the FEO the authority may search that person & seize such record or property.
- ii) Take such person to nearest gazzetted office or Magistrate, within 24 hours exclude time of travelling.
- iii)  $\tau$
- iii) If there is no reasonable grounds for search the officer can discharge ~~#~~ such person
- iv) Authority shall call two or more person to attend witness of such person & search shall made under the presence of person.
- v) Prepare list of property seized & signature of the witness on list.
- vi) Shall record the statement of person searched.
- vii) Female shall searched by female officer only.

\* Appeal :-

- 1) An appeal can be made against the order of SC to the high court on fact & on law
- 2) Appeal shall be made within a period of 30 days.
- 3) HC may entertain an appeal after the expiry of 30 days if there is any sufficient cause.
- 4) No appeal can be made after expiry of 90 days.

# Ch 1. Foreign Exchange Management Act.

Recd.

## \* Foreign Exchange :-

→ Foreign Exchange means foreign currency  
it includes :-

- |                      |  |
|----------------------|--|
| a) balance payable   | } - Payable in foreign currency                                  |
| b) Deposit           |  |
| c) Credit            |  |
| d) traveller cheque  | } Draw in Indian currency<br>but payable in foreign<br>currency. |
| e) Bills of Exchange |  |
| f) Draft             |  |
| g) letter of credit  |  |

## \* Person Resident in India. → PRI

- Any person who residing in India for more than 182 days or in previous FY

- It includes :-

Person comes in India

- for taking employment.
- for taking business or vacation
- for a stay of un certain period.

It excludes :-

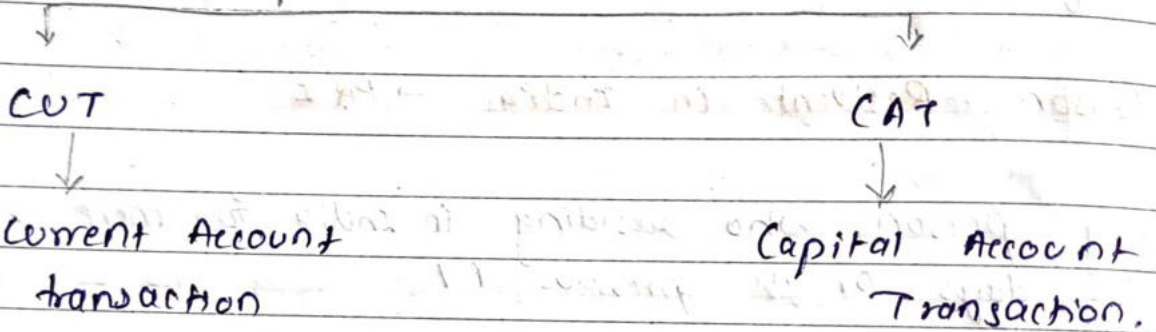
- Person gone outside India

- for taking employment.
- for carrying on business or vacation
- for stay of un certain period.

It also includes :-

- Body corporate registered in India.
- Any branches office or agency in India but controlled outside India.
- Any branches, office or agency Outside India but controlled in India

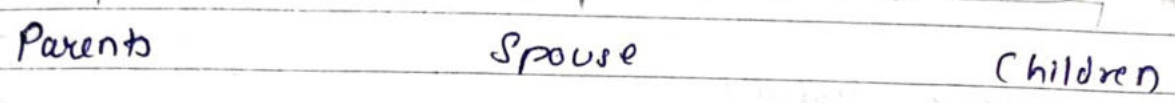
\* Transactions



\* Current Account Transaction

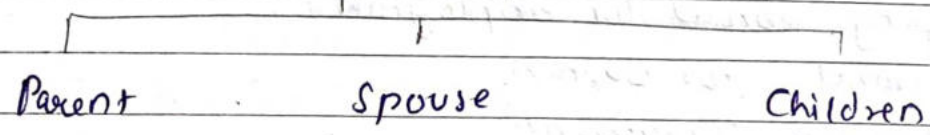
- Any transaction other than capital A/c transaction
  - It includes
    - a) Payment in relation foreign trade in goods & services.
    - b) Short term borrowing in ordinary course of business
    - c) Interest on loan
    - d) Net Income from investment i.e, dividend after tax

### e. Remittance of living expenses of



### f. Remittance for

- travel
- education
- Medical exp.



Lec 4

10/9/24

### \* ~~Prohibited~~ Prohibited Current Account transaction

- withdrawal of foreign currency is prohibited

- a] Travel to nepal & Bhutan or transaction with the person resident in nepal or bhutan.
- b] Remittance out of the lottery winning.
- c] Remittance for purchase of lottery ticket - banned magazine, footballs pools.
- d] Payment of commission on export towards wholly owned subsidiary joint venture abroad
- e] Commission on export under rupee state credit route except 10% of invoice value on export of tea & tobacco
- f] Payments related to call back securities
- g] Remittance of interest on fund held in non-resident special rupees scheme account.

**\* Prior approval of RBI for certain transaction**

- a). Studies abroad
- b. Gift or donation
- c. Emigration
- d. Private visit to any country except Nepal & Bhutan
- e. going abroad for employment.
- f. Travel for Business
- g. Medical Treatment
- h. maintenance of close relative abroad.

**LRS** → under this scheme Individual can withdraw upto 250000 USD per person per financial year for permissible current & capital account transaction.

**\* Permitted transaction for a person other than individual.**

→ Prior approval is required from RBI above such limit.

1) Donation

Exceeding.

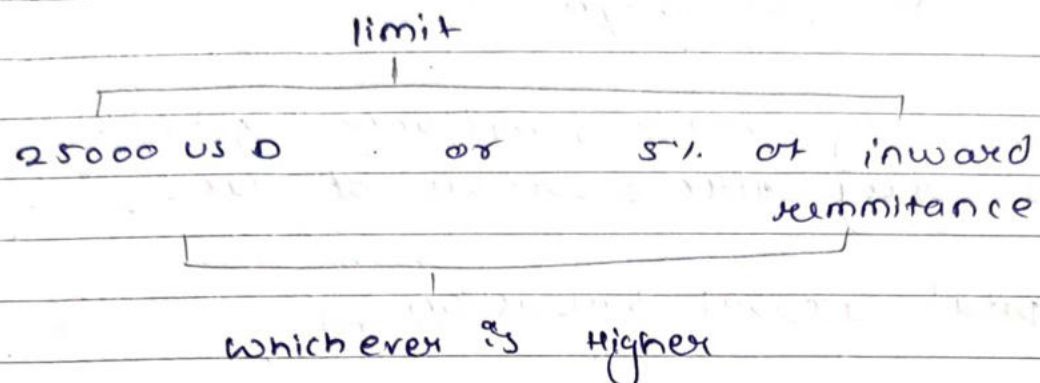
1% of foreign exchange **(or)** 5000000 USD  
exceeding in last 3 yrs

Which ever is lower.

Donation for creation of chara contribution to education institution

LeCS

2. Commission



Commission per transaction to Agent for sale of residential / commercial plot

3. Consultation

Infrastucture project - 10000000 USD  
per project  
other project - 1000000 USD

4. Pre-in corporation Expenses

5% investment in India or 100000 USD

which ever is ~~low~~ higher

\* A person who is resident but not permanent resident in India

- a. citizen of a foreign state other than Pak.
- b. citizen of India whose branch or office of a foreign co. or subs. co. or Joint venture in india

of such foreign co.  
↓

may make remittance up to his  
net salary after deduction of taxes.

Sec 6.

14/9/24.

### \* capital account transaction

- Any transaction which alter assets, liability including contingent liability of RTI, outside India.

or

- Alter assets or liability in India of PROI

### Imp. \* capital Account transaction.

a. Prohibited capital account transaction. for PROI

- chit fund
- Nidhi co.
- Agriculture or plantation activities
- Real estate & construction of farm house
- Trading in TOR (transferable development rights).

**[NOTE]** → Real estate does not include

- Township
- Residential & commercial project
- Roads & bridge
- Real estate investment transaction

Note 2 - TOR → Certificate issued by Govt in respect of land acquired from owner for development purpose

→ TOR are transferable.

### \* Permitted Capital Account transaction for PRI

S → acquisition of foreign security.

A → Remittance of capital assets outside India

La → Loan / over Draft to PROI

M → maintenance of foreign currency account in India / outside India.

I → Transfer of Immovable property outside India.

G → Guarantee in favour of PROI by PRI

O → Overdraft or loan from PROI to PRI

L → foreign currency loan in India or outside India

I → Insurance policy from a company outside India

DE → Sale & Purchase of foreign exchange derivative.

### \* Permitted capital account transaction

- Investment in Indian Security by PROI.
- Investment in the Capital of Partnership firm or sole proprietorship.
- Acquisition & transfer of IP in India.

- Guarantee in favour of PRI by PROI
- Import & Export of currency in India.
- Deposit between PRI & PROI
- opening of foreign currency account in India
- Remittance of capital assets in India

Lec 7.

16/8/24.

### \* Repatriation

- Bringing into India the realised foreign exchange

Selling to authorised person or Holding upto specified amt. or use to discharge the debt in foreign currency.

- Surrender of foreign exchange.

Person other than individual → Remuneration Settlement amt, Income on foreign assets, Inheritance, gift → within 7 days from receipt.

→ other cases → 90 days from receipt

2) other than individual → unused foreign exchange → 60 days from acquisitory purchase

3) other than resident individual acquired foreign currency for travel → unspent amt in the form of coin / currency → 90 days from returning to India

→ unspent amt in traveler cheque → 180 days from returning to India.

4) PAI → unspent amt in any form → 180 days.

\* Authorized person :-

It means

- Authorized dealer
- money changer
- off shore banking unit
- other specified person

\* Application for appointment as unauthorised person -

- Application to RBI in prescribe form.
- RBI shall consider the app.

→ can grant the authorisation in writing  
subject to condition <sup>laid</sup> ~~set~~ down by RBI

\* ~~Revocation of authorisation by RBI~~

lec - 8.

20/9/24

\* Acquisition or transfer of immovable property in India :-

a]. PRI

PRI can hold, own, transfer immovable property if such property is acquired when he was PRI or inherited from PRI.

b]. NRI / OCI

- can purchase immovable property other than agriculture, plantation & farm house
- May acquire immovable property from relative by way of gift from PRI / NRI / OCI other than A/P/F.
- can acquire or transfer immovable property in India from PRI.
- NRI / OCI may transfer immovable property except A/P/F to an NRI by way of gift

if they are relative.

- Payment through normal banking channel or by debit from authorised amount.

1. NRI / OCI  $\xrightarrow[\text{Purchase of IP}]{\text{acquire}}$  except A/P/F
2. NRI / OCI  $\xleftarrow[\text{IP}]{\text{GIFT of}}$  from PRI / NRI / OCI  $\neq$  except A/P/F.
3. NRI / OCI  $\xleftarrow[\text{IP including A/P/F}]{\text{Inheritance}}$  PRI  $\rightarrow$  acquired as Per FEMA
4. NRI / OCI  $\xleftarrow[\text{including A/P/F}]{\text{Inheritance any Property}}$  PRI
5. NRI / OCI  $\xrightarrow[\text{Property including}]{\text{Transfer any}}$  PRI
6. NRI / OCI  $\xrightarrow[\text{except A/P/F}]{\text{GIFT of IP}}$  NRI / OCI

\* Acquisition of IP by long term visa-holder :-

- a. Minority citizen of Bangladesh, Pakistan, Afghanistan (Hindu, Jain, Sikh, Buddhist, Parsi, Christians)

- b. Property shall not be located in restricted prohibited area.
- c. Submit declaration to revenue authority of such district about the source of fund
- d. Registration document shall specify nationality of the person.
- e. Can sell such property only after acquisition of Indian citizenship.

★ Acquisition of IP by foreign embassies or diplomats.

- a. can acquire IP other than A/P/F.
- b. clearance from ministry of external affairs
- c. Payment through normal banking channel.

★ Acquisition of IP by PROI for carrying on permitted activities

- Branch office except liaison office establish can acquire the IP.
- file declaration to RBI within 90 days from acquisition

- can mortgage with authorised dealer.
- Person of Pakistan, Bangladesh, Sri Lanka, China, Iran, Afghanistan, Hong Kong, Nepal, Bhutan, obtain prior approval from RBI.

lec 9.

21/9/24

### \* Revocation of authorised by RBI

- Authorised failed to comply with condition.
- failed to follow the provision of this act or regulation.

### \* Duties of Authorised person

- comply the RBI direction
- not to engage in transaction which are not in conformity with the condition of RBI or obtain prior approval from RBI
- Duty to comply with FEMA Act

## ★ Power of RBI :-

### a. Power of Issue direction

making  
the  
payment

Doing an  
act

Desist  
from doing  
any act

furnish  
such  
information

### b. Power to inspect the authorised person

Verify,  
the correctness  
of any  
Statement

Obtain  
the information

Securing  
compliance.

## ★ Adjudication & Appeal.

- Appointment of AA by CA
- AA will adjudicate & impose penalty
- Before imposing penalty give COBH.

## ★ Appeal to special director.

- CA by notification in official gazette may appoint special director.
- Special director is appointed to accept appeal against the order of AA or assistant director or deputy director.

- Appeal within 45 days
- Special director may accept the appeal even after expiry of 45 days.

### \* Appellate tribunal

- accept appeal against the order of AA or special director.
- Before filing the appeal deposit penalty amount with the authority, however CA may dispense such deposit.
- Appeal within 45 days
- Extension on sufficient cause
- Dispose of the appeal within 180 days or record its reasons in writing if fails to dispose.

### \* Appeal to High court

- CA or aggrieved party may file appeal to HC within 60 days.
- Against the order of appellate tribunal.
- Extension on sufficient cause → 60 days.



- RBI shall examine the appeal & compare the compounding order
- may call additional information
- order within 180 days from such appeal
- contravention of similar nature cannot be compounded within the period of 3 yrs.

## \* RBI

### \* Preamble of RBI.

- To regulate the issuing of bank note.
- Secure monetary stability in India.
- Operate the currency & credit system.
- Meet the challenge of interesting complex economy.
- Maintain price stability.

### \* Central board of directors -

- RBI's affairs are governed by central board of directors.

- Term 4 yrs.
- It full time a governor & a deputy governor
- non official directors  
10 directors - nominated by CG & 2 govt officials  
4 directors - one from each board

\* Board for financial supervision

- RBI perform supervisory function under the guidance of board for financial supervision
- Undertake consolidate supervision of financial sector banking sector & other institution

\* Remittance of Assets :-

- a. Remittance by individual not being NRI / PIO.
- Remittance outside India of fund deposit with bank from company provident fund balance, super annuation benefit, Insurance claim & sale of share immovable property.
- Authorised dealer may allow remittance if
  - Such person retired from India
  - Such person is not resident window & has inherited from deceased spouse

- upto 1 million usd per yr.
- Balance in Basic a/c by a foreign student.

### \* Remittance by NRI / PIO :-

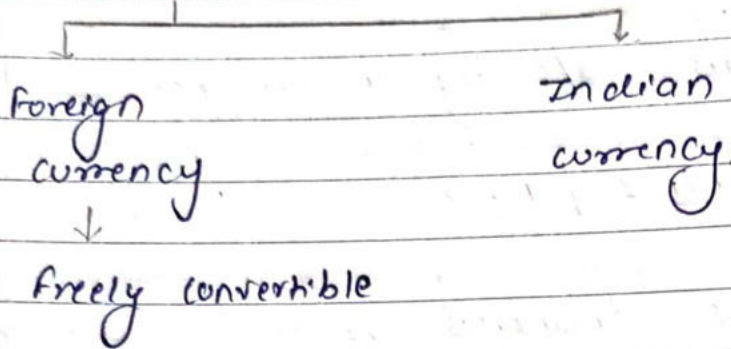
- upto 1 million per financial year is allowed.
- out of the balance held in non resident ordinary amount or from sale of assets in India.
- Assets acquired under deed of settlement made by relatives.

### \* Remittance by company.

- Remittance by Indian Company under Liquidation or direction by court after submitting following documents.
  1. Auditor's certificate confirming that all liability have been fully paid.
  2. Auditor's certificate that winding up is in accordance with companies Act.
  3. Auditor's certificate that no legal proceeding is pending.

Sec 1

\* ECB.



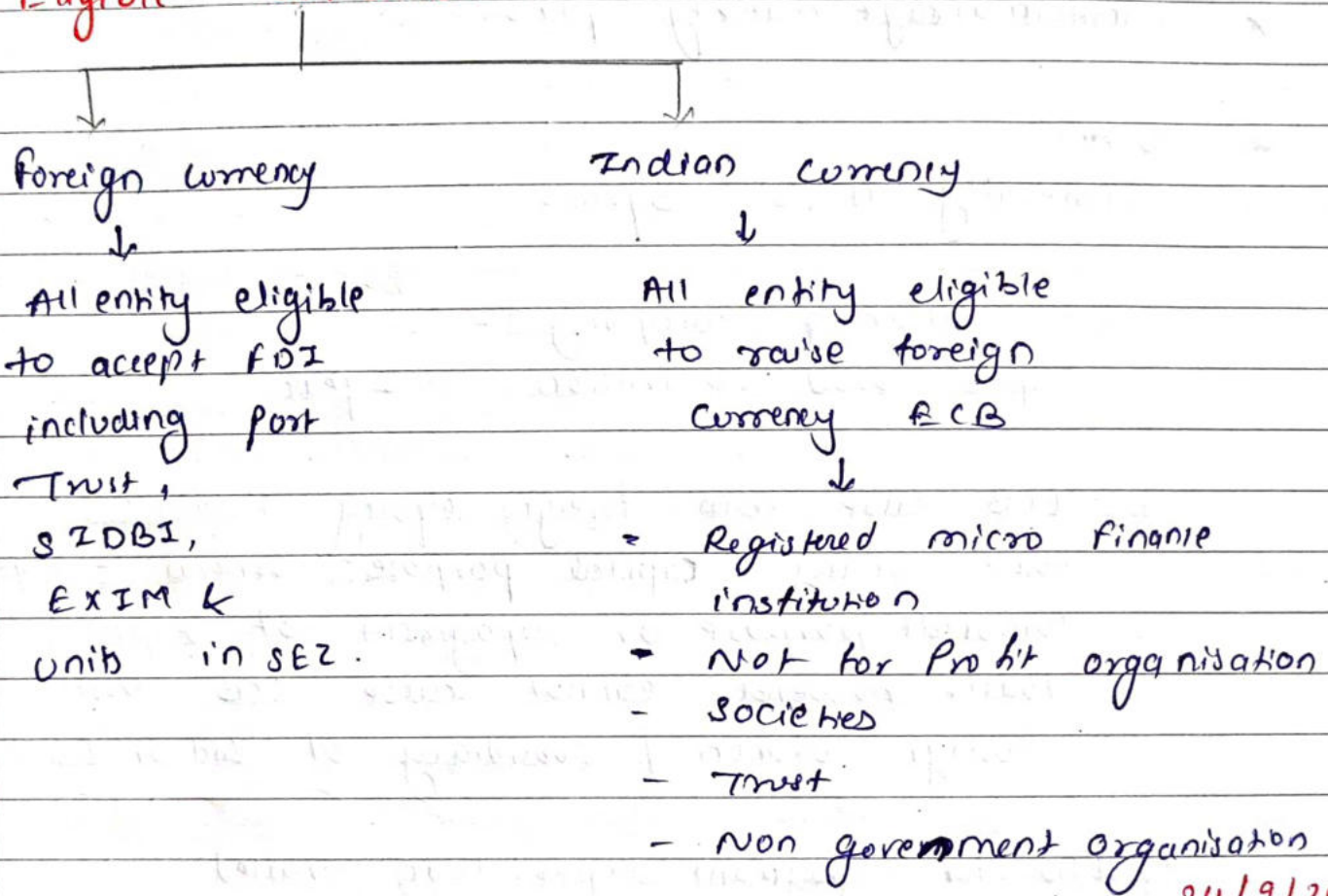
\* Forms of ECB.

Foreign currency	Indian currency
a. Bank loan	Bank loan
b. Trade credit services beyond 3 years	Trade credit services beyond 3 years.
c. Fixed & floating rate notes, loan-debenture except fully convertible debenture.	Fixed & floating rate notes, loan debenture except fully convertible debenture and financial lease
d. Foreign currency convertible bond & foreign currency exchangeable bonds & financial lease.	Plain Vanilla bond
e.	Rupee denominated bond issue overseas

\* **Plain Vanilla bonds.**

- Issued by government or government organisation to raise fund from outside India in Indian currency.
- Fixed rate of Interest & fixed maturity.

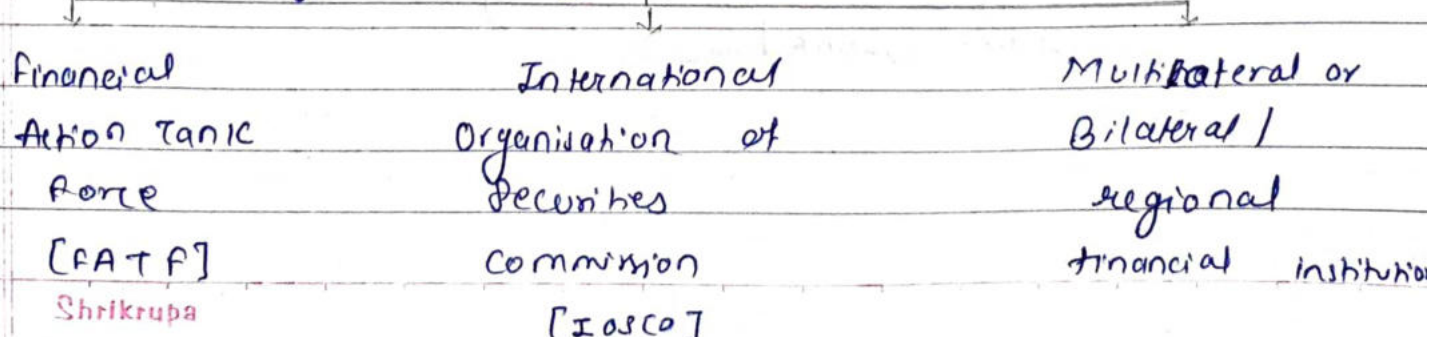
\* **Eligible Borrowers.**



Sec 2

\* **Eligible Lender.**

- Resident of a country who is a member of :-



24/9/24

- Individual if they are foreign equity holder, bond holder, debenture holder listed in abroad.
  - Foreign branches / subsidiary of Indian bank can act as under writer, market maker, arranges for rupee denominated bond issued abroad.
- \* Minimum average maturity periods.

a) A

- Generally it is 3 years

a) Manufacturing company :-  
upto USD 50 million - 1 year

b) ECB raise from foreign equity holder :-  
for working capital purpose General - 5 years  
Corporate purpose or repayment of rupee loan. however cannot raise ECB from foreign branch / subsidiary of Indian bank.

c) ECB for repayment rupee loan availed domestically for capital expenditure → 7 years or lending by NBFC for above purpose. [cannot raise from foreign branch / subsidiary of Indian bank]

D] ECB for working capital purpose or general corporate purpose or ECB by NBFC to lending for working capital purpose or general corporate purpose. → 10 years.

E] ECB raised for repayment of rupee loan availed domestically for purpose other than capital expenditure or on lending by NBFC for above purpose → 10 years.

**\* End Uses [Negative list]**

→ cannot utilise for below purpose

- a. Real Estate activities.
- b. Investment in capital market
- c. Equity investment.
- d. Working capital purpose
- e. General corporate purpose
- f. Repayment of rupee loan.

} → However can utilize for such purpose if raised for such purpose only.

lec 3

25/9/24

**\* Exchange rate**

- Conversion of foreign currency into Indian currency.

- Rate.

Rate prevailing on the date of agreement or lesser rate if

- Conversion of Indian currency into foreign currency shall be at prevailing rate.

\* Limit and leverage.

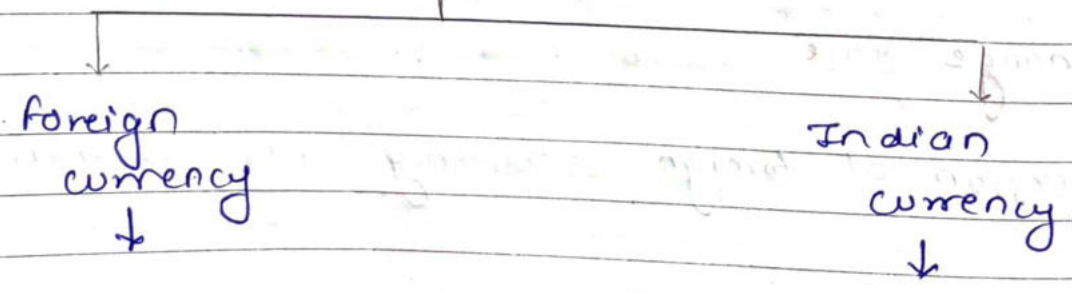
- All borrowers can raise ECB upto 750 million USD per financial year.

- ECB from foreign equity holder shall not exceed 7:1 [ECB: equity] under automatic route

ex :- equity = 100      ∴ that's 7 times.  
      ECB = 700

- Ratio shall not apply if ECB raised upto 5 million USD.

\* Parking of ECB proceeds.



1. Certificate of Deposit (FD)
  2. Normal Deposit
  3. Other product bank having AA rating.
  4. T-Bill and other monetary instrument having AA rating.
  5. Deposit with foreign branches or subsidiary of Indian bank abroad.
1. Repatriated in India immediately and deposit with AD bank for max 12 month.

### \* Procedure for raising ECB

- Check the route [either automatic or approval route]
- for approval route → approach to AD bank.
- AD bank shall forward the application to RBI
- RBI would place such application before empowered committee
- Empowered committee will have external and internal member.

- Such committee shall give recommendation to RBI about the ECB proposal.
- final decision shall be taken by RBI.

### \* Reporting requirement.

- obtain loan registration no. from RBI after filing form ECB through AD bank.
- file revised form ECB within 7 days from change in terms & condition of ECB.
- file ECB 2 within 7 working days from closing of month & report ECB transaction.

Sec 4.

26/9/24

### \* Untraceable entity.

Entity / promoter / director / auditor are not reachable over mail, letter, phone for atleast 2 quarter & with b reminder.

- Not operative at registered office &
- Not submitted statutory auditor certificate for 2 yrs.

### \* Action on untraceable entity.

- File ECB-2 without co's certificate & write untraceable entity on top
- No fresh ECB application process by AD.
- Inform Directorate of Enforcement.
- No inward remittance under automatic route.

### \* Conversion of ECB into Equity.

- Borrower is converted under automatic route no need to obtain government approval
- If covered under automatic route → obtain govt. approval.
- Obtain lender's consent & no additional cost.

#### Conversion

Partial conversion

Full conversion

- File FC-GPR &
- ECB-2 every month

- File FC - GPR
- ECB with fully converted remark.

- consent of other lenders if any.

## \* ECB for oil marketing companies.

- Public sector company.
- Object → working capital requirement
- Limit → upto 10 billion
- min maturity period → 3yrs.
- Board approval forex mark to market procedure

## \* ECB for start up.

- Recognised as a start up by CG
- minimum maturity period = 3yrs.
- Recognised lender - Resident of FATF compliant country.  
Except foreign branch / subsidiary / Entity having ODI.
- Form - loan or non-convertible / optional / partially convertible pref. shares.
- Currency - foreign or Indian.
- Amount - 3 million in fy
- All in cost - agreed by borrower & lender.
- End use - for business object only conversion is permitted

Conversion at market rate as on the date of agreement.

Sec 2.

## \* Foreign contribution

- Donation delivery or transport of any article (excluding gift upto ₹ 25000 for personal use of any currency or any security made by foreign source
- It includes interest & other income derived from foreign currency.
- It excludes any fees charged by educational institute from foreign students or amount received due to foreign trade

## \* Foreign sources.

- Foreign citizen
- Foreign trade union
- Foreign trust.
- Foreign society.
- Company incorporated under Indian companies rules Act but more than 50% of capital held by foreign citizen or trust or society foreign co. or govt.
- Foreign company.
- Foreign corporation
- Multinational corporation
- International agency (excluding UN, IMF, world bank)
- Foreign govt & agency of such govt.

lec 2.

\* Section 3.

- following person cannot accept foreign contribution :-

- candidate for election
- member of legislative
- Political party & office bearer thereof
- organisation of political nature.
- Judge.
- Public servant, Govt employee, employer of Govt organisation or company.
- Correspondent, columnist / cartoonist, editor, ~~the~~ owner, printer, publisher of registered newspaper.
- Association of company engage in the production or broadcast of auditor news, audio visual news, current affairs programme or correspondent, cartoonist, editor, owner of such news agency.

• Indirect foreign contribution is not allowed.

① Citizen of India cannot accept foreign contribution on behalf of political party.

② Person cannot accept foreign contribution on behalf of other person who intends to give such contribution to political party  
③ Indian citizen residing outside India cannot accept foreign on behalf of political party.

(d) Person cannot deliver foreign contribution to any person other than a person for which it was received

\* following person can accept foreign contribution without registration (sec 4)

- i) wages salary & other remuneration
- ii) payment received in the ordinary course of business (eg. import & export)
- iii) payment received from agent of foreign source as a part of transaction with (or & so).
- iv) Gift & presentation to any indian delegation
- v) from his relative.
- vi) remittance received in the ordinary course of business
- vii) through any official channel or under FEMA regulation
- viii) By way of scholarship, stipend or payment of like nature.

## \* foreign hospitality (सेहमाननाकी)

- Not offer not being casual one
- made in cash or kind by foreign source.
- Providing the cost of travel, free boarding lodging transport & medical treatment.

## \* Person who cannot accept foreign hospitality:

- member of legislature.
- Political party
- Judge
- Government servant
- Employees of govt organisation

## \* In case of medical aid:

= can accept the foreign hospitality however within 1 month from acceptance shall inform to CA.

Sec 3.

30/9/24

## \* Eligibility criteria for regulation

- Register under trust Act, society Act, or as a section 8 company
- Existence for atleast 3 years in reasonable activities for the benefits of society.

### \* Eligibility criteria for grant of Prior permission

- An organisation in formative stages is not eligible for registration however with prior approval of CA to accept the foreign contribution.

- Eligibility condition.

(a) Registered under trust Act or society Act or companies Act.

(b) Submit a commitment letter from donor indicating the amount & purpose of foreign contribution.

(c) Donor & Donee must have common member.

### \* Condition for grant of registration & prior permission.

- a. App. shall not be fictitious or benami.
- b. shall not engage in religious faith i.e., conversion from one caste to another caste.
- c. Prosecuted or convicted for creating communal tension
- d. Guilty of conversion or misutilisation of fund.
- e. shall not engage in propagation of sedition or advocate violent method.
- f. shall not contravenes the provision of the Act.
- g. shall not be prohibited by CA.
- h. Individual is convicted under any offence or prosecution is pending.
- i. Person is likely to affect sovereignty & integrity of India.

j. likely to affect the security, scientific or economic int.

k. Affect public interest.

l. Affect the freedom of election.

m. affect the friendly relation with foreign state.

n. leads to incitement of an offence.

### \* Power of C.A.

- C.A may prohibit any person from accepting foreign contribution
- Require to obtain prior approval from C.A before accepting foreign contribution.
- Report the details of foreign contribution received by any person.
- Require any person to obtain prior approval before accepting foreign hospitality
- Report the details of foreign hospitality received by any person.

### \* Suspension of certificate.

- Authority → C.A
- max time period of suspension → 180 days.
- If application for cancellation of certificate is pending the C.A can suspend the certificate.

- During the suspension, such person cannot accept the foreign contribution.
- Well as cannot utilise foreign contribution without CA approval.

### \* Cancellation of certificate.

→ Ground.

- Breach the provision of this Act.
- Breach the terms & condition on the basis of certificate is granted.
- Cancellation of certificate is in the Public Int.
- obtain certificate by submitting wrong or false
- Failed to discharge the function for the purpose of the certificate has been obtained for continuous 2 yrs or become default.
- once the certificate is cancelled such person shall not be eligible for registration or grant of prior permission for next 3 yrs

### \* Surrender of certificate.

- Such person may surrender such certificate.
- CA after enquiry may accept the surrender after being satisfied that such person has not contravened the Act.

### \* Management of foreign contribution whose certificate has been cancelled or surrendered.

- Central govt shall appoint authority to manage foreign contribution.
- Authority shall manage the activities
- Authority may utilise the foreign contribution or dispose off the assets to run the activities.
- If such person subsequently registered shall return such foreign contribution to person.

### \* Renewal of Certificate.

- Application for renewal before 6 months expiry of period.
- Renewal within 90 days from such application.
- valid for 5 yrs.

### \* Foreign contribution through scheduled bank

- Received foreign contribution through single account.
- Can utilise through several accounts
- cannot deposit other fund in such account except foreign contribution.

- Report the detail of foreign contribution to central government.

\* Reporting to central government.

- Amount of foreign contribution received.
- Source of foreign contribution
- Purpose of foreign contribution.

\* Procedure to notify an organisation of a political nature:

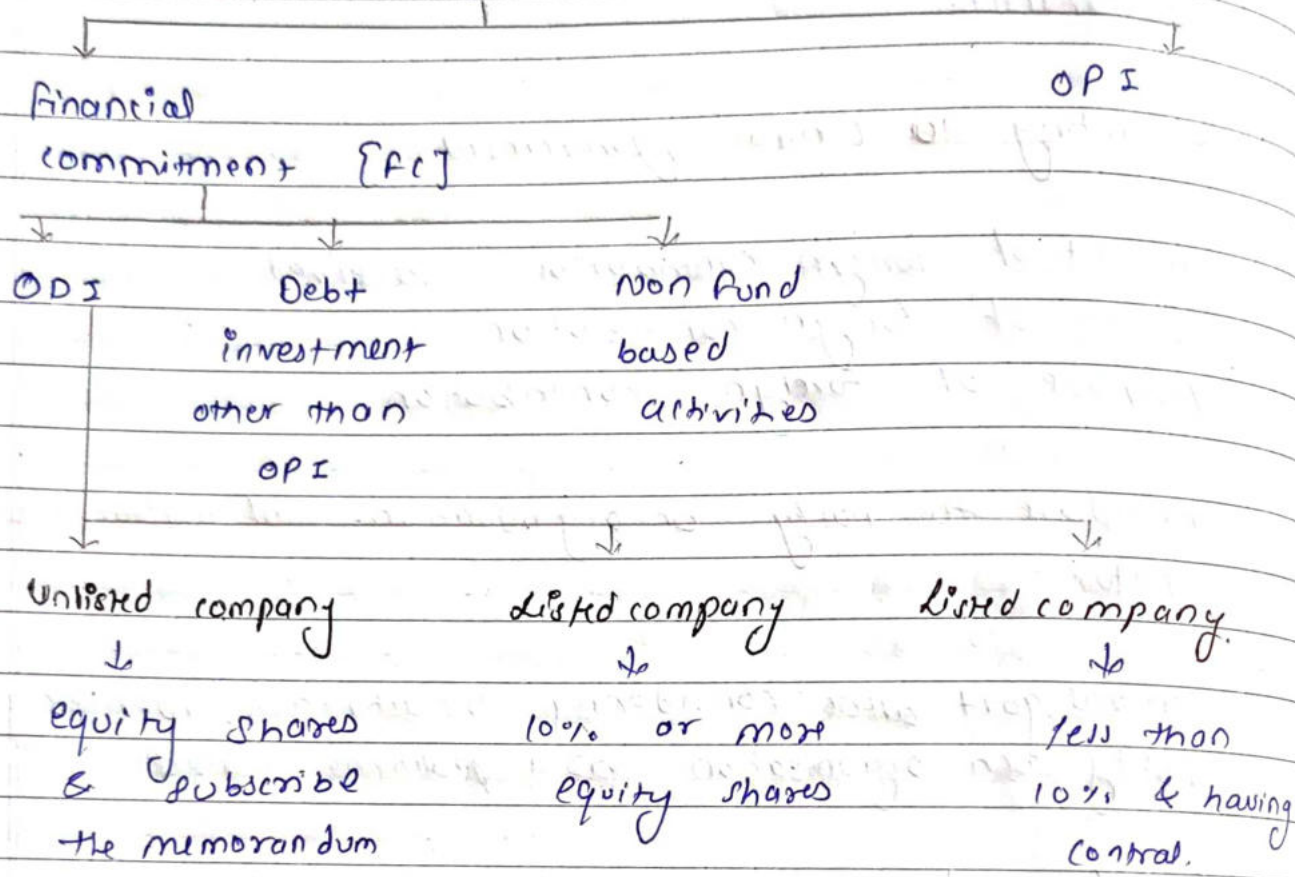
- Central govt after considering the activities, identity may notify such organisation as a political nature.
- Central govt. shall give written notice with reason to such organisation
- Organisation shall give representation within 30 days from such notice.
- C.G. After considering the representation may pass the order.

**Note :** 20% of total foreign contribution can be utilised for administrative purpose.

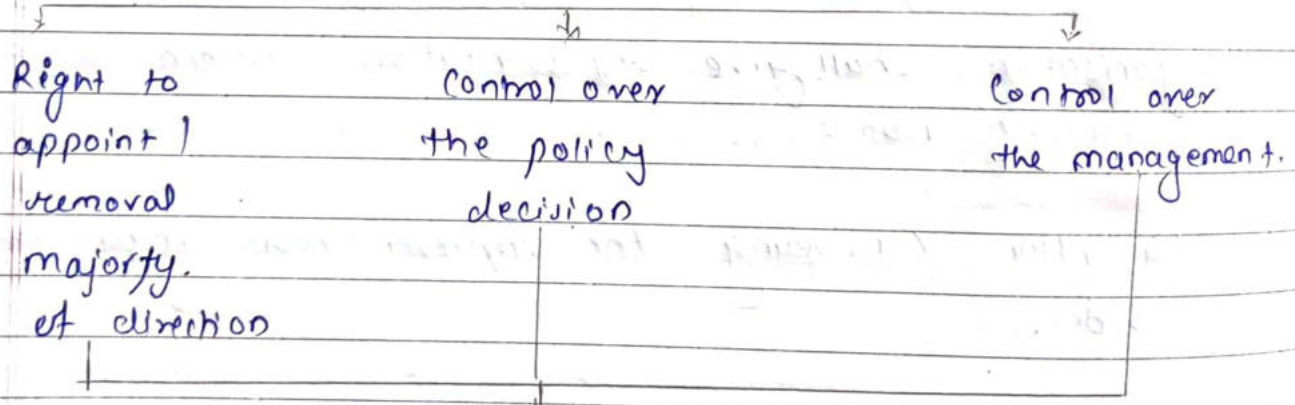
However above 20% → obtain central govt. approval.

# Ch. 3. Oversease Direct Investment.

## \* Oversease Investment.



## \* Control.



- By share holding
- By management.
- By shareholder agreement

## \* OPI

→ Shall not include.

- i) ODI
- ii) unlisted debt instrument.
- iii) investment issued by PRI.

but includes in OPI :-  
→ IFSC.

## \* Indian Entity.

- a. Company registered under companies act 2013.
- b. Body corporate.
- c. LLP
- d. Registered partnership firm

## \* Restriction on ODI.

- cannot invest in such entity engaged in following sector:-

- a. Real estate sector.  
[except construction of township, residential & commercial premises, bridges & roads, etc]
- b. company engaged in gambling activities.
- c. financial product linked with Indian rupees without RBI approval.

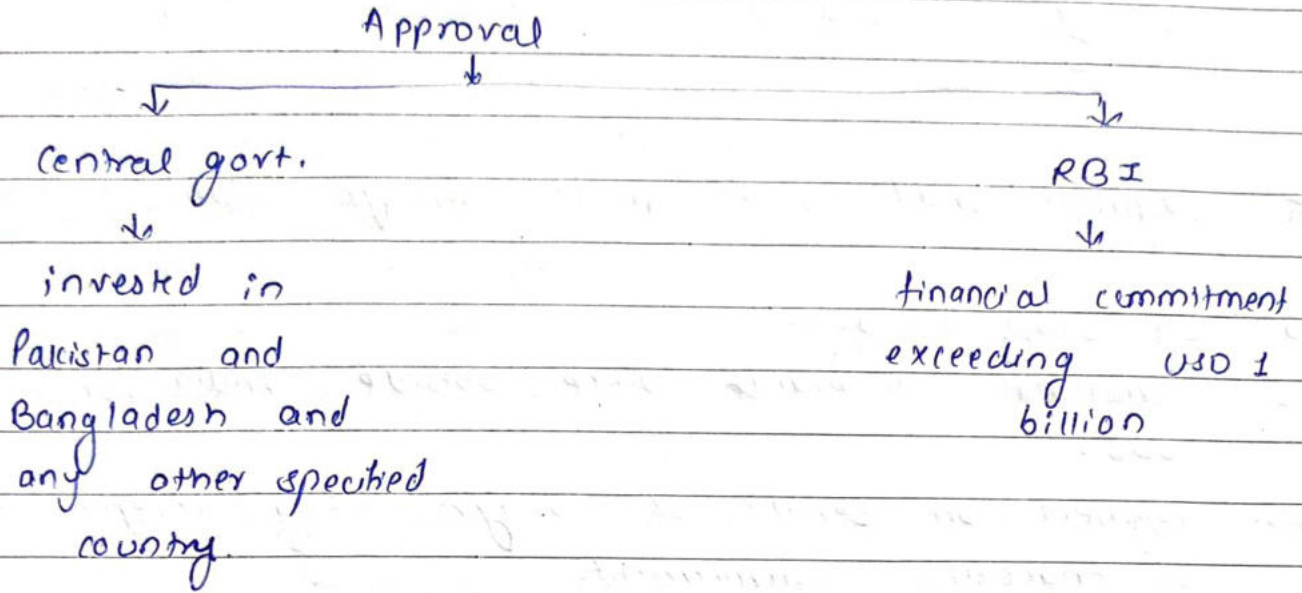
\* Exemption to following company, [restriction on no. of layers]

- i] Banking co.
- ii] Insurance co.
- iii] NBFC
- iv] Govt. co.

\* Procedure for making OOI.

- a. Fill up form fl duly supported by requisite document & submitted to AD Bank.
- b. AD bank shall forward such form to RBI along with recommendation.
- c. AD before forwarding such form generate OOI No. & Transaction Number.
- d. Submit following documents along with proposal.
  - Background & details of transaction.
  - reason for seeking approval.
  - observation by AD dealer bank about
- e. Recommendation confirming Board resolution is in place.

f. Diagrammatic representation of the organisation structure.



**\* NOC from Bank or investing authority**

- PRZ appearing as a NPA or willful defaulter or under investigation then before making ODI obtain NOC from such bank or investigation authority.
- Indian entity already issued a guarantee before investigation has began shall not required to obtain NOC.

**\* mode of Payment.**

1. Normal banking channels.
2. Fund held in permissible account as per FEMA example:-  
fund held in permissible account ~~as per~~ Resident foreign currency.

### 3. SWAP of security.

a. using the proceeds of ADR / GDR / EIB.

\* Payment shall not be made through following manner.

a. By way of cash.

b. Remittance to branch / office outside India for making OOI.

c. Payment on behalf of foreign entity except by way of financial commitment.

d. OI in Nepal & Bhutan shall be as per FEMA rules.

\* Obligation of PRI.

- submit the evidence of investment to AD Bank within 6 month from OOI & if failed to submit evidence then investment shall be repatriated within 6 such 6 month.

- evidence of investment obtained by AD.

- fill form FC to AD bank.

- AD bank shall generate UIN on or before OOI application.

- Allotment of UEN does not constitute approval of RBI it only signifies the taking record of investment.

**\* Manner of ODI.**

- ODI for bonafide business activity only.
- ODI by way of :-
  - a) subscribing the MOA.
  - b) Acquisition through bidding or tender offer
  - c) acquisition under right issue.
  - d) Capitalisation of amount due from foreign entity
  - e) SWAP of securities.
  - f) Merger & amalgamation.

**\* ODI in IFSC by PRI.**

- Approval from financial service regulation [IFSCA].
- Approval within 45 days from such application.
- Contribution or investment in IFSC shall be treated ODI.
- Resident individual may make ODI in IFSC or foreign entity in such entity does not have subsidiary outside India.

**\* ODI in financial securities activities.**

a. PRI engaged in financial services wants to make ODI in the foreign entity, engaged.  
Financial section need to follow following conditions :-

- Net profit in last 3 yrs.
- Register with the financial services regulator in India.
- obtain necessary approval from India & host country.
- entity not engage in financial services may make ODI in financial services activity except banking & insurance & net profit in last 3 yrs.

### \* Limit of financial commitment.

- upto 400% of Net worth of Indian entity with RBI approval.
- above limit 400% of net worth or 1 billion USD need to obtain RBI approval.
- No need to obtain RBI approval if ODI made by Navratna, Maharatna & miniratna.

### \* ODI by trust & society

1. Obtain Prior approval of RBI.
2. Registered under trust act & society act.
3. existence for atleast 3 yrs.
4. ODI is permitted by trust deed or MOA
5. obtain approval of trustee or governing body.
6. obtain necessary govt. approval.

## \* Reporting.

- Reporting through AD Bank about :-

- a. making of financial commitment or remittance of FC → whichever is earlier.
- b. Disinvestment → within 30 days from receipt of disinvestment proceeds.
- c. Restructuring - within 30 days of restructuring.
- d. In case of OPI - within 60 days from end of half year that is sept to march.
- e. file Annual performance report & shall be certified by CA.

# Ch. 5. Foreign Trade Policy and Procedure.

Date :  
Page : 86

## \* Introduction.

- Set of guidelines and instruction on matters relating to import and export from India
- Formulated for 5 years at a time [2020-2025]
- FTP 2023 promote ease of doing business in India.
- Recognition of new town through "Towns of export excellence scheme" and exports through status holder scheme.

## \* Indian trade classification

- Compilation of codes for all merchandise classified based on their group.
- Code of 2/4/6/8 digit. [ex. HSN code].
- 6 digit harmonised system maintain by world customs organisation.
- India maintain 8 digit harmonised system.
- It is a system used by India to classify goods for international trade.

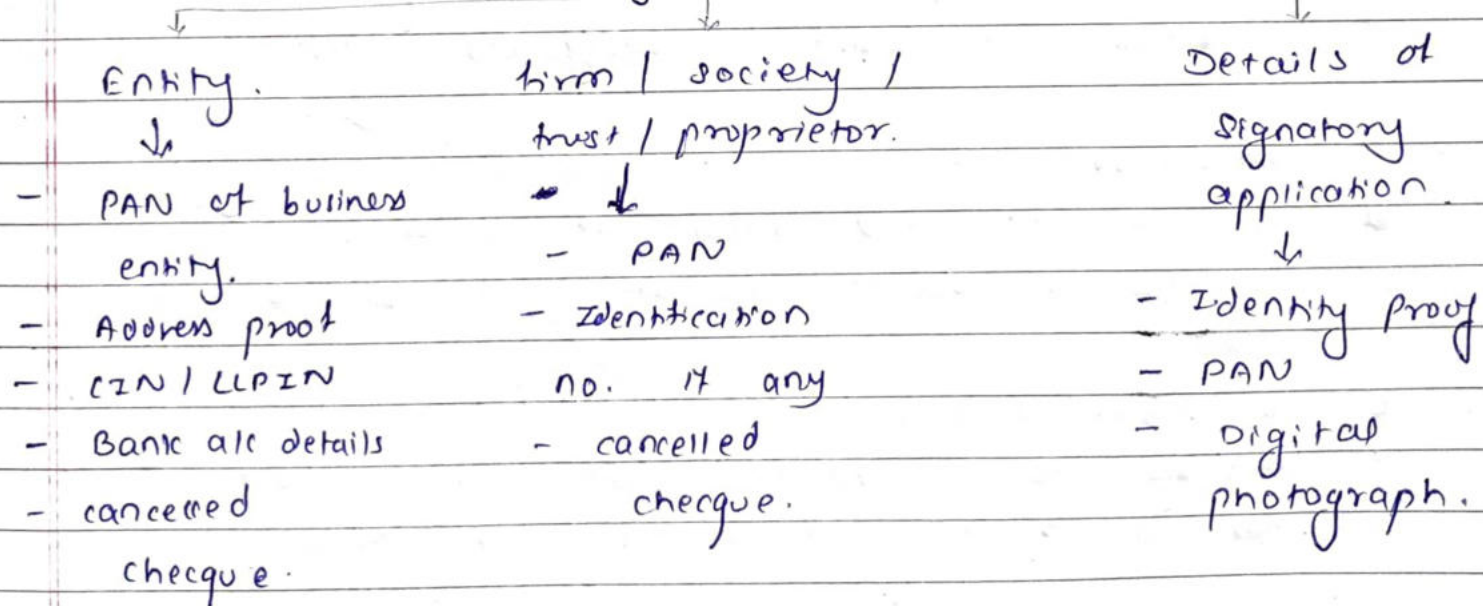
### \* Import export code [IEC] Imp\*\*

- 10 digit code & alpha numeric code.
- Mandatory for export & import of goods & services.
- Import export code is permitted against the PAN.
- Issued by Directorate general of foreign trade (DGFT)

### \* Procedure for obtaining - [IEC]

- Application to Directorate general of foreign trade either manually or online.
- Deficiency in application has to be removed by re-laying online.

- Details required along with the application.



- once application is approved informed through email.

### \* Exempted category for Import export Code.

- ministry / government department.
- Import / export for personal use.
- Import / export from or to Nepal and other specified country.

### \* Document requirement for export / import.

- Bill of lading / Airway bill (Railway receipt).
- commercial invoice cum packaging list.
- shipping bill / Bill of export & bill of entry in case of import.

### \* Principles of restriction

- DFT may impose restriction or may impose prohibitions.
- a. an export of foodstuff for preventing shortage.
- b. an import & export to safeguard external financial position.
- c. an import to promote a particular industry.
- d. on import and export of protection of public morals or protect human, animal or plant life.
- e. on export / import of gold / silver.
- f. relating to the product of prison labour.
- g. for conservation of natural resources.

\* Status holder. imp\*

- Business leaders excelled in international trade.
- Status holder are expected to contribute in foreign trade and also provide hand holding to new entrepreneurs.

	category.	export performance.
1.	One star. export house.	USD 3 million
2.	Two star. export house	USD 15 million
3.	Three star export house	USD 50 million
4.	Four star export house	USD 200 million
5.	Five star export house	USD 800 million.

\* Privileges of status holder.

- custom clearance on self declaration basis
- Exemption from furnishing bank guarantee for the scheme under FTP.
- Two star and above status holder can establish export ware house.

- Status holder would be entitled for preferential treatment & priority in handling of their consignment.

\* **Skilling and mentorship obligation.**

Status holder	Number of Trainees per year.
Two star	5 trainee
Three star	10 trainee
Four star	20 trainee
Five star	50 trainee

- model training program of a minimum duration of 6 weeks

\* **Duty free Import authorisation scheme**

(Raw material)

- duty free import of input <sup>↑</sup> and oil which so consumed in the production of export.
- Exemption from basic custom duty.
- Export shall be completed within 12 month from billing of application & generation no.
- Minimum value addition of 20% shall be required.
- Mention till number on export document.

- separate duty free import authorisation shall be issued for each application

\* Export promotion of capital goods scheme.  
[EPCG] IMP

- This scheme allow import of capital goods at zero custom duty

- Capital goods includes:

a. completely knocked down, semi knocked down.

b. Computer software.

c. Spare, modules, dies, fixture, tools.

- Export promotion of capital goods scheme facilitator import of capital goods to enhance export competitiveness.

- EPCG scheme shall be subject to export obligations equivalent to 6 times of duty save & to be fulfilled within 6 years from approval

- Import & export of restricted item authorisation shall be issued after DCFI approval.

- Submit annual report by 30<sup>th</sup> June every year along with prescribe fees.

### \* Export oriented units [EOU]

- Export oriented units, electronic hardware technology park, software technology park, Bio technology park established to export entire production of goods & services.
- Trading units are not covered under this scheme.
- Objective is to promote export enhance foreign earnings & attract FDI
- Export of gold & Jewellery which contain gold of min. 8 & max. 22 carats is permitted.
- Promotion material including hoarding poster upto max 1.5% of free on board value is allowed [1.5% of previous year export].
- Such units may import or procure raw material or services from DTA without payment of duty.

### \* Quality complaints & trade dispute objective.

- Exporter used to protect good image of country, maintaining good relationship with foreign buyer.

- Foreign buyers raise complaint about the quality of product.
- Settlement of Trade dispute amicably [friendly]

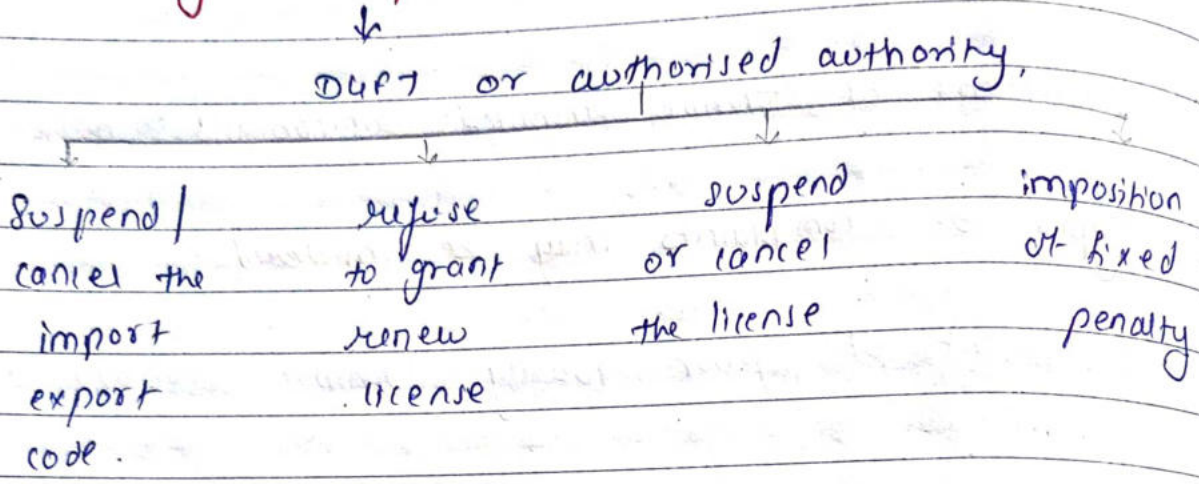
\* Types of complaints may be considered

- Complaints of poor quality product supplied by export.
- Complaints of importer against foreign supplier in respect of quality of product.
- Complaints of unethical dealing, non supply or partial supply or supply of different goods.

\* Committee on quality complaints & trade dispute.

- chair person + addition DQAT or Joint DQAT & other members
- Committee shall be responsible for enquiry & investigation into all quality related complaints & trade settlement.
- > 4 meeting in a year.

\* Action Against Exporter or Importer.



\* Deemed Export. Imp

- Deemed export under FTP refer to those transaction in which goods supplied do not leave country & payment received in Indian rupees or foreign currency.
- example : ① supply by manufacture to subcontractor  
                  ② supply of goods to EOV
- Deemed export under GST includes the supplies notified by GST council.

\* Benefit for Deemed export.

- Draw back of basic custom duty.
- Refund of terminal excise duty

# Ch 2. Foreign Direct Investment

Date: 11/10/24  
Page: 95

lec 1.

## \* FOI.

- Investment in Equity instrument by PFI in unlisted Indian co.
- Investment in Indian listed co. of 10% or more of post issue paid up equity.
- once it is considered as FOI, subsequent fall in holding does not change the status.
- fully Diluted basis :- total no. of shares if all conversion option are exercised

## \* General condition

• Eligible investor :-

- a. Citizen of Bangladesh → can invest under govt route only.
- b. Citizen of Pakistan → cannot invest defence, space, atomic energy & Prohibited sector except these only investment Govt route
- c. Citizen of Nepal & Bhutan can invest only in free foreign exchange through normal banking channel.

d. Overseas Corporate Body (OCB) has been derecognised as investor.

- OCB means a co., partnership firm, society & other body corporate in which at least 60% held by NRI.

e.] Co / Trust / firm incorporated outside India owned by NRI can invest in India with the special exemption available to NRI under FDI policy.

f.] NRI / OCI may subscribe to national pension fund governed by PFRA.

Sec 2.

12/10/24.

**\* Prohibited sector.**

- a. Lottery business including Govt, pvt, online lotteries
- b. Gambling, betting, casinos including licencing or franchise or brand use.
- c. Chit fund
- d. Nidhi Co.
- e. Real estate business or construction of farm house (Real estate does not include development of township, construction of residential & commercial premises, road, bridges, RETF → It means FDI is allowed)

f. TDR

g. M/T of cigars, cheroots & cigarettes of tobacco or tobacco substitutes.

h. Activities not open for pvt sector i.e., atomic energy & railway operator

\* **FDI in partnership firm/proprietary concern.**

- NRZ / PIO can invest on non repatriation basis

- cannot investment in firm or proprietary concern engage in agriculture, plantation real estate or print media.

- Payment through normal banking channel that is through authorised dealer bank.

- Investment with repatriation option, required prior approval of RBI.

- PROZ other than NRZ [PROZ may ~~invest~~ invest in firm or sole proprietorship after obtaining RBI approval.

\* **FDI in Trust.**

Not permitted in trust other than FVCI registered with SEBI.

### \* FDI in LLP.

- Permitted under automatic route if LLP is operating in sector where 100% FDI is allowed.
- No FDI linked performance condition.
- LLP can also make downstream investment in other company & LLP where 100% FDI is allowed under automatic route.
- Conversion of LLP into company & received FDI is allowed if operating in a sector where 100% FDI is allowed.

### \* FDI in Investment vehicle.

- Investment vehicle registered with SEBI can accept FDI.
- Permitted to receive FDI from PFI other than Pakistan & Bangladesh.

lec 3

14/10/24

### \* FDI in Startup.

- Foreign venture capital investor can invest in equity & equity linked startup.
- Startup can issue convertible note to PFI other than Pakistan & Bangladesh for an amount of ₹ 2500000 or more in a single transaction.

- Such co. must be recognised as a startup by central govt.
- Invest remittance through normal banking channel & Deposit in escrow account.
- Escrow account must be closed within 6 months or completion of requirement of escrow account whichever is earlier.
- furnish report to RBI

• Entry route of investment

↓  
automatic route

↓  
without approval of RBI or central Govt.

↓  
approval route

↓  
Prior approval from govt.

• Procedure under govt. route.

- India co. is being established with foreign investment & not assumed by resident entity or not controlled by resident entity.
- Company owned by resident citizen will be transferred to non-resident entity due to merger & amalgamation.

- Conversion of debt instrument shall be considered foreign investment.
- Investment by NRI, shall be treated as deemed to be domestic investment.
- any co. trust firm incorporated outside India but owned & controlled by NRZ will also be deemed domestic investment.

### \* FDI in E-commerce

- E-commerce means buying & selling of goods & services over digital & electronic network.

Inventory based model

↓  
Inventory of goods owned by e-commerce co. & sold to consumer directly.

market place based model.

↓  
providing a platform for buying & selling the product.

- Company is only acting as Facilitator between buyer & seller.

## \* FDI in E-commerce (Terms & conditions)

- 100% FDI in market place model
- FDI is not permitted in inventory based model.
- market place model can enter into transaction with seller to registered on its platform on B2B basis.
- Such E-commerce entity can not exercise ownership over inventory.
- Such E-commerce entity maximum sell 25% of total value from one vendor & their group company.
- Provide name, address, contact details of seller.
- Warranty & guarantee will be the responsibility of seller.

## \* FDI in Single Brand Product.

- 100% FDI is allowed under automatic route.
- Product to be sold through single brand only in India & internationally.
- Retail - Trading would cover only product which are branded during manufacturing.

- non resident entity can invest in India through legally enable agreement.

- FDI beyond 51%. in such case min 80% of Total goods purchased shall be done from India & preferably from MSME.

\* FDI in multi brand retail trading.

- 51% FDI under govt route.

- minimum FDI USD 100 million.

- Agriculture product, fruits, vegetable, flower, grains may be unbranded.

- 50% of total FDI brought shall be invested in backend infra within 3 years.

- atleast 30% product shall be sourced from MSME which have investment in Plant & Machinery not exceeding \$ 2 million

- outlet in cities with atleast 1000000 population & may also cover an area of 10km around the limit of such cities.

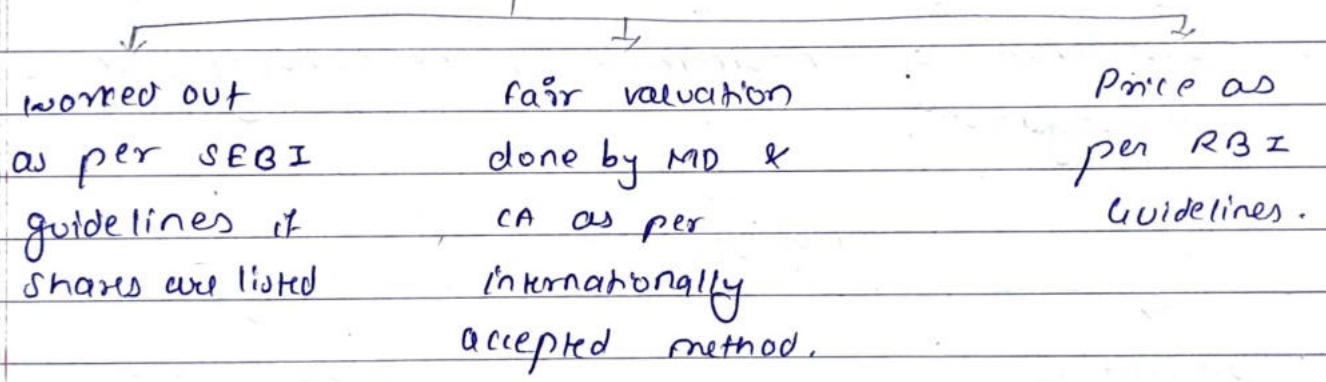
- govt. have first right to procurement of agriculture product.

### \* Issue of shares.

- Issue of shares within 60 days from receipt of inward remittance received through normal banking channel.
- Failed to issue shares within 60 days, amount shall be refunded immediately.
- In case of sufficient ground RBI may grant extension.

### \* Pricing of shares.

shall not be less than



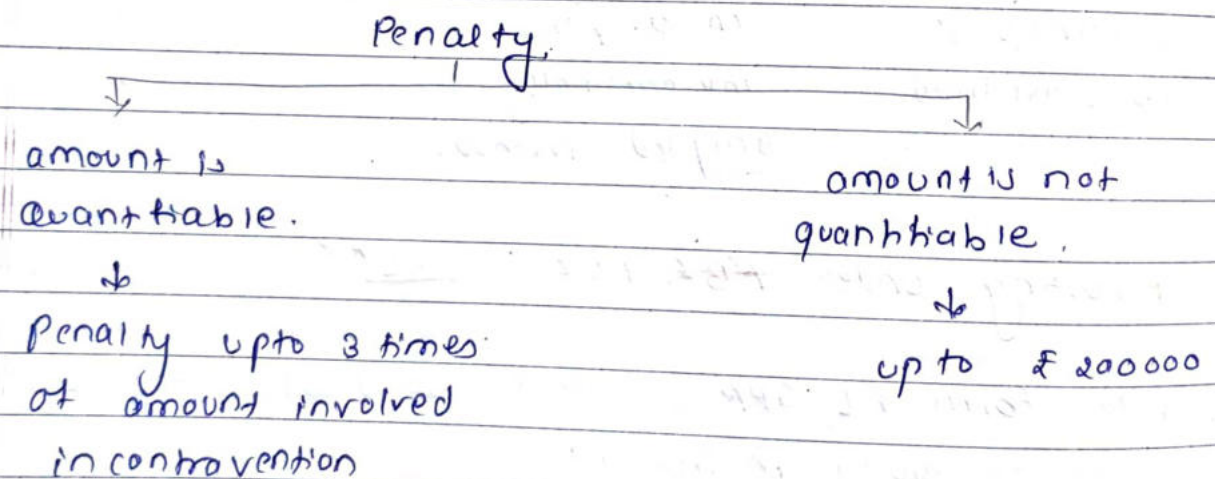
### \* Reporting under ~~RBI~~ FOZ: Imp

- file form FL AFR within 30 days from date of issue of equity instrument.
- file annual return on foreign assets & liability in form FIA to RBI on or before 1st July every year.

- File form FC - TRS within 60 days from transfer of equity instrument on stock exchange.
- File form ESOP within 30 days from issuance of Depository receipt.
- File form LLP (i) within 30 days from receipt of Capital contribution & file LLP (ii) within 60 days from disinvestment

### \* Penalties under FOI. imp

- FOI is capital account transaction hence valuation of FOI are covered by Penal Provision of FEMA.
- Directorate of enforcement is the authority for investigation.



- In case of continue defaults then penalty of ₹ 5000 every day & can also confised & currency or security.

### \* Sponsered ADR & GDR.

- Indian company can also sponsor & issue of ADR & GDR.
- The company offer its resident share holder a choice to submit their shares back to the company & company shall issue ADR / GDR against such shares.
- Proceeds of such issue shall distributed to resident investor who offered their shares.

### \* Two-way fungibility scheme

- limited two way - fungibility scheme has been intraduced by govt.
- Under the scheme Stock holder can purchase shares of indian company convert into ADR / GDR.
- Reinsurance of ADR / GDR is also permitted against the ADR / GDR previously redeemed into equity shares.

lec 2.

## Law Relating to Trade Mark.

## \* MARK.

The term mark is defined u/s 2(1)(m) it includes device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging, combination of colours or any combination thereof.

lec 4.

24/7/24

## \* case law. (Absolute grounds for refusal of Registration)

1. In case of Himalaya drug co. Vs SBL Ltd. Appellant file the suit for infringement its trade mark LIV-52 by using trade mark LIV-T the court dismiss the suit deeming LIV as generic & not distinctive. On appeal high court of delhi reversed its decision & court noted that LIV-52 had substantial sales & long term use so high court restrained the defendant from using LIV-T.

lec 5

27/7/24

2. In <sup>case of</sup> Amp Amritpal Singh Vs Lal babu priyadarshi.

Intellectual property Appellate Court refused registration of word 'Ramayan' as a trademark as it was likely to hurt Religious sentiment of class of society.

Q \* P. Y. June 2024 (06. (b) -5M

Provision :-

According to section 9(2) certain trademarks cannot be registered.

1. It trademarks deceive the public or cause any confusion.
2. If it hurts any religious sentiment of any society or section of society.
3. It contains scandalous or obscene matter.
4. It is prohibited under emblems & names prevention of Use Act, 1950.

In Amritpal Singh Vs Lal Babu Priya Dasw., Intellectual Property Appellate Board refused registration of word 'Ramayan' as trademark as it was likely to hurt religious sentiment of class of society.

Facts :-

Priya wants to start trading of incense sticks, she made application to Registrar of Trademarks to register name "Ramayan" as a trademark.

Conclusion :-

As decided in case of Amritpal Singh Vs Lal Babu Priya Dasw. The use of word Ramayan as trademark is likely to hurt religious sentiment of section of society then any word which hurt religious sentiment of class of society is not capable of being registered.

So, Prio will not succeed in Registering such a trademark.

\* PY June 24

Q6(d) What are the absolute grounds for refusal of Registration of trade mark under Section 9(1) of Trade mark Act, 1999?

→ The absolute grounds for refusal of Registration of trade mark under Section 9(1) of Trade mark Act, 1999 are :-

- The trademark that lacks distinctive character, (means not capable of distinguishing the goods or services from others).
- The trade mark which show characteristics of the goods or services like kind, quality, quantity, intended purpose, values, geographical origin.
- The trademark which consist exclusively of marks or indications which have become customary (bonafide).

Q.6 A (ii) What is meant by Trademark under the Intellectual Property Rights?

→ • Trade mark Act, 1999 is an act to amend and consolidate the law relating to trademark.

• And for better protection of trademark for goods & services

• Trade mark means a mark capable of being represented graphically & which is capable of distinguishing the goods or service of one enterprise from those of other enterprises

• Trade mark may be a word, signature, name, device, label, numerals or combination of colours.

• Function of a Trade mark are :-

→ Advertisises the goods / services

→ identifies goods / services

→ creates an image for goods / services

→ guarantees its unchanged quality

## \* Section 9(3)

Section 9(3) prohibits the registration of marks that consist exclusively of

1. The shape of goods resulting from their nature
2. The shape of goods necessary to obtain a technical result.
3. shape that adds substantial value to them

## \* Relative grounds for Refusal of Registration (Section 11)

Section 11(1) : A trade mark will not be registered if :

- 1) It is identical to an earlier trademark & goods & services are similar
- 2) It is similar to an earlier trademark & goods or services are identical or similar.

Section 11(2) : Trade mark will not be registered if it is identical or similar to well known trade mark.

[ It is also for goods or services that are not similar ]

Section 11 (3) : Trademark will not be registered if

- 1) It violates the law of passing off, which protects unregistered trademark from unfair use by others.
- 2) Infringes copy right law which protects original work

Section 11 (4) : A trademark can be registered even if it is similar to earlier one if the owner of earlier trademark agrees & registration is approved.

Lec 8

31/7/24

\* case law

of India

In Imperial tobacco Co., Ltd Vs the Registrar of Trade-mark Calcutta high court rejected imperial tobacco Co's appeal to register the trademark Simla for their cigarettes. The court ruled that Simla is famous geographical place & cannot be registered as a trademark. Simla is a well known hill station in India. It is neither an invented word nor it is a word having dictionary meaning.

\* Meaning of earlier trademarks.

A Registered trade mark or an application (including international registration or convention application) with an earlier filing date than the trade mark in question.

Sec 9. 1/8/24

\* Section 25.

Trade mark is registered for period of 10 years  
this can be renewed for successive period of 10 yrs  
If renewal fee is not paid trade mark may be removed from the register.

Removed trademark can be restored upon payment of removal fee.

Sec 10. 2/8/24

\* Case law.

In  
In Kaira district district co-operative milk union  
producers union Ltd. (Amul dairy) & Gujarat co-operative  
milk producers union Ltd marketing federation.

Lec 10

\* case law

1] In Kaira district co-operative milk producer's union Ltd. (Amul dairy) & Gujarat co-operative milk marketing federation. Amul's official & brand distributor files suit against Amul Canada they were using trademark Amul & slogan was Amul the taste of India. The Canadian court determine that neither Amul Canada no individuals involved had permission to use <sup>the</sup> trademarks.

As a result court awarded CAD 32733 approx. 19.5 lakh in damages to Amul & issued an injunction prohibiting the defendant from using the Amul trademark & slogan.

2] In case of Renaissance hotels holding Inc Vs B Vijay Sai.

Appeal was filed against highcourt decisions which found no infringement of appellants trademark Renaissance by respondent's use of Sai Renaissance. The Supreme court held that Respondant had infringe appellants trademark.

3] In Menkind Pharma Ltd Vs Novakind bioscience's Pvt Ltd. ~~Del~~ Delhi Highcourt Ruled that similar kind ~~with~~ suffix in both companies drugnames could cause confusion which is not allowed specially in medication & court held medication must be clearly distinguishable

## \* case law.

1. In *Consim Info Pvt Ltd. Vs Google India Pvt Ltd.* Madras High Court held that normative fair use of trademark requires

- 1) Product must not be identifiable without using of trademark
- 2) Only as much of the mark as necessary to identify the product may be used.
- 3) the use must not employ sponsorship or endorsement.

2. In *Samsung Electronic Co. Ltd Vs Kapil Wadhwa* Delhi High Court address a suit for trademark infringement regarding the mark Samsung. The court held that section 30(3) Act as a defence to infringement. This section specifies that selling goods or otherwise dealing in goods that are lawfully acquired or with proprietor's consent is not trademark infringement.

Passing off :- any one or

### 3. (Passing off)

In Mahendra & Mahendra Paper Mills Ltd & Vs Mahindra & Mahindra Ltd.

Supreme court outline factors for Determining deceptive similarity in passing off cases involving unregistered trademarks.

- i) Nature of mark
- ii) Degree of Resemblance
- iii) Nature of Goods.
- iv) Similarity in Goods.
- v) Class of purchasers.
- vi) Mode of Purchasing
- vii) Surrounding Circumstances.

Dec 12

6/8/24

#### \* Questions to solve.

1. What are benefits of trademark? & what is process for its registration.  
↳ (Sec 11)
2. What are relative grounds for refusal of registration?
3. When trademark is considered as infringement? (Sec 29)  
↳ if for more marks came you can add an example of movie.

### \* Limitation as to colour.

Trade mark is registered without <sup>limitation</sup> registration of colour; it shall be deemed to be registered for all the colours.

13/8/24.

LEC 13

### \* Section 46.

Section 46 empowers the registrar to allow registration of trade mark if he is satisfied that co. is about to be formed under companies Act, 2013 and applicant intends to assign trade mark to the company or proprietor intends trademark to be used by registered user after registration of trade mark.

### \* When trademark is considered as infringed? (section 29)

→ As per section 29(1) of trademark act infringement occurs when a person who is not a registered proprietor or a permitted user uses a mark identical or deceptively similar to the registered trademark in course of trade for goods or services for which trademark is registered.

As per section 29(2) infringement occurs by use of a mark that

- a. is identical to registered trademark & covers similar goods or services or

b. similar to registered trademark & covers identical ~~good~~ or similar goods or services.

c. Identical to registered trademark & covers identical goods or services.

Section 29(3) - Court presumes that if trademark is identical to registered trademark & covers identical goods or services that will cause confusion on part of public.

Section 29(4) - Infringement occurs when a person uses a mark that

- a] identical or similar to registered trademark.
- b] is used for goods or services dissimilar to those covered by registered trademark.
- c] ~~is~~ where registered trademark has reputation in India & use takes unfair advantage or is detrimental to repute of the trademark.

case law:

1. In case of Union of India Vs Granpati dealcom Pvt Ltd. Supreme court of India stated that article 301(2) of act is unconstitutional & violative of article 20(1).

Preamble of Act

An act to prohibit benami transaction & right to recover property held benami for matter connected there with or incidental there to.

categories of benami transaction.

1. Tripartite - B sells property to A (real owner) but sell deed mention C as the owner / benamidar
2. Bipartite - A sells property to B without intending to pass the title to B.

The 1st instance is termed as real benami transaction & 2nd transaction is considered as either as sham transaction or loosely benami transaction.

## \* Proceeding And Adjudication of Benami Property.

1. Initiating officer issues show cause notice to Benamidar and Beneficial owner.
2. If Benamidar is likely to dispose the property, the initiating officer may attach the property within the approval of Adjudicating Authority for 30 days.
3. Inquiry will be initiated and within 90 days Initiating officer may :-
  1. continue the attachment
  2. release the attachment
  3. Attach the property
4. After attachment intimation will be made to Adjudicating Authority within 15 days.
5. Adjudicating Authority will issue notice to parties within 30 days from intimation.
6. In case of Joint ownership of property notice can be given to any joint holder.
7. Parties will reply within 30 days with documents and evidences.
8. Adjudicating Authority will pass the order on the basis of reply received.

9. If Adjudicating Authority is of opinion that property is not benami property then can remove attachment.
10. If any property which is not referred by Initiating officer is benami then Adjudicating Authority can attach such property too.
11. Adjudicating Authority add or strike out name of any person involved in the case.
12. Every order shall be passed within 1 year from the date of reference made to Adjudicating Authority.

Note: AA shall pass order within expiry of 1 yr. from end of the month in which reference was received.

Initiating : Assistant commissioner  
officer deputy commissioner

### \* Special Court :

1. central government in consultation with chief Justice of high court has authority to designate one or more court of session as special court.

These courts are designated for trial of offences punishable under this act.

Imp

2. Special court is empower to try any other offences which may be charged under Code of criminal Procedure (CrPC) while trying offence under this act.

3. Special court shall take cognizance of any offence punishable under this act upon a written complaint.

4. Special court is required to conclude the trial within 6 months from date of filing of complaint.

#### Sec 4.

A real owner has no right to file a suit, claim or recover to enforce any right against legal owner.

#### Sec 5.

Central govt. will confiscate the Benami Property

#### Sec. 6.

Benami Dax shall not retransfer the property held by him to beneficial owner transfer is null & void.

## Offences By companies :-

section 62 relates to consequences in case of offences by companies :-

1. Where a person committing a contravention of any provision of this act, or any rule, direction or order is a company, every person who was responsible for the conduct of the business shall be deemed to be guilty of the contravention and punished accordingly.
2. Person will not be liable if he proves that contravention took place without his knowledge.
3. Director, manager, secretary, or any other officer shall also be deemed to be guilty of contravention if contravention has taken place with consent of or negligence of such person.

## Salient features :-

1. It define Benami Transaction & Benami property.
2. It lays down procedure to determine benami transaction.

3. It lays down penalty for entering into a benami transaction & providing false document.
4. It lays down consequences for entering into Benami transaction.
5. It empowers authorities to have power of Supreme Court.
6. It states about constitution of Appellate Tribunal.

### \* Benami Transaction means :- sec 2(9)

- where a property is held by one person & the consideration for such property has been paid by another person.  
The property is directly or indirectly held is for future or immediate benefit of the person who actually paid for it.
- where a property is made in fictitious name.
- A property where the owner is not aware of denies knowledge of such ownership.
- A property where the person who has been paid the consideration is not traceable.

sec 2.

### Author.

→ Author means

1. In relation to literary or dramatic work -  
Author of the work.
2. In relation to musical work -  
composer
3. In relation to artistic work -  
Artist
4. In relation to photograph - the person taking  
Photograph
5. In relation to cinematograph or sound recording -  
Producer.
6. In relation to any work which is computer  
generated - Person who causes the  
work to be created.

sec 3

21/8/24

### \* Term of Copyright

→ Copyright in published literary, dramatic, musical or artistic work subsists for 60 yrs from the beginning of calendar year next following year in which author dies.

→ If a literary, dramatic or musical work remains unpublished at time of author's death. Copyright lasts 60 yrs from beginning of calendar yr. following the yr. the work is 1<sup>st</sup> published.

\*\*\*  
\* It applies only to works that were unpublished at author's death

22/8/24

lec 4

\* case law

1. In case of Video Master Vs Mishi production  
Bombay HC ruled that assignment of video rights doesnot automatically include satalite broadcast rights. The court held that different forms of public communications such as video TV, satalite broadcasting have independent copy rights.

2. (Mode of Assignment [Section 19])

In KA Vennugopala ~~setty~~ Setty Vs Dr. Suryakanta V Kamath  
Court ruled that oral assignment of copy right is invalid & assignment should be in writting only & signed by by author or their agent

27/8/24

lec 8

\* case law

1. Inchanedlar, masters, scholars of university at oxford's Vs. Rameshwari photocopy services.

In this case oxford university sued Rameshwari photocopy services for making & selling photocopies of substantial portion of their copy righted book. as course packs for students at delw university

Plentiff argued that this is infringement of their copyright

Delhi H.C ruled that creation & distribution of these photo copied course packs for educational purposes did not infringe copyright

★ Copyright is deemed to be infringed (section 51)

1. Person without copy right owners perform any act which only copy right holder is authorised to do.
2. Sells or hires any infringing copies.
3. Distributes infringing copies that negatively impacts the author.
4. Exhibit infringing copy in public for trade.
5. Imports infringing copy in India for commercial purpose

★ Case law

1. In *Sr Dutt Vs Law Book Co.* it was held that Burden of proving copyright infringement lies with the plaintiff, if plaintiff did not prove infringement they will not get any relief from the Court or any damages.

lec 11

## \* Copyright Society.

It is registered under sec 33 of copyright Act, 1957.  
Such societies formed by authors & the other owners.  
Copyright Society can issue or grant licences  
in respect of any work for which it is authorised  
to.

5/9/24

lec 12

## \* Case laws.

1. **Jitendra prasad singh vs State of Assam**  
→ HC held that term 'punishable with imprisonment which may extend to 3 yrs' means imprisonment can be for a term as long as 3 yrs. Offence under section 63 are non-bailable and application for anticipatory bail will be maintainable.

(National Capital Territory)

2. In **Krit pro International vs State of NCT of Delhi** → SC clarified that offence under section 63 is cognisable & non-bailable. Rejecting Gauhati HC earlier view that it is non-cognizable.

Dec 23. (New) (Q6)

Q6. b. Manish assigned ----- revocation of assignment  
Discuss.

→ Provision:

As per section 18 A of Copyright Act, 1957 if Assignee fails to exercise the right assigned in him, commercial court may even receipt of complaint from assigner & after getting satisfied from inquiry that terms of assignment are harsh to assigner may revoke such assignment.

No order of revocation can be passed within periods of 5 yrs from the date of Assignment.

Fact: Manish assigned copyright to his niece Sujata in 2020,  
due to mis understanding he wants to revoke.

Conclusion:

Manish cannot revoke the assignment in 2022 if he has made assignment in 2020 as ~~license~~ <sup>assignment</sup> can be revoked only after 5 yrs from the date of assignment.

# Ch. 14. Real Estate Regulatory and Development Act.

Date: \_\_\_\_\_

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## \* obligation of authority consequent upon lapse of an revocation of registration section 8 :-

Upon lapse or revocation of registration authority may consult government to decide the next steps which include completing the remaining development work either by competent authority or by association of allottee.

Allottee shall have right to refuse to carry out remaining development work.

## \* Transfer of title deeds to allottee

If law does not specify a timeline, promoter must carry out conveyance deed within 3 months from the date occupancy certificate is issued.

Documents must be handed over within 30 days after obtaining occupancy certificate

## \* Return of amount & compensation :-

If allottee chooses not to withdraw from the project & continues with the purchase, promoter must pay monthly interest for delay in handing over possession, Interest continues until possession is handed over.

## \* Case laws.

1. In *Imperia structures ltd vs Anil Patri*,  
Supreme court held that if promotor fails to complete the project or deliver possession by specified date, allottee has unqualified right to withdraw from project & demand a refund with interest.

If allottee decide to remain in project still he will be entitled to interest.

2. In *M/s New tech promoters & developers pvt ltd vs State of UP*,  
Supreme court held that this act aims to ensure consumer protection, reduce fraud & improve transparency in real state sector.

The court confirms that RERA's retrospective application is constitutional allowing it to cover existing projects & contract to under long standing issues & protect allottees interest.

## \* Responsibilities of the appropriate Government :-

1. They are required to notify rules for implementation of the act.
2. They are required to establish appellate revenue.

g. They are required to constitute real estate regulatory fund.

h. They are required to establish central advisory council.

### \* case laws :-

1. In M/s Tech promoters & developers Pvt Ltd vs state of UP,

Supreme court held that under section 14 of RERA, authority has power to issue recovery certificates or not just penalties & interest but also for the principal amount paid by allottee.

2. In M/s New tech promoters & developers Pvt. Ltd vs State of UP,

Supreme court held that the requirement of pre-deposit for entertaining an appeal by promoter is valid & sustainable in law.

3. In M/s new tech promoters & developers Pvt Ltd, vs State of UP,

Supreme court clarified jurisdiction of RERA & adjudicating officer, Court held that RERA has jurisdiction to order a refund of the amount, interest on refund & impose penalties.

Adjudicating officer has exclusive jurisdiction to determine claims for compensation after conducting an

4. In M/s New Tech Promoters & Developers Pvt Ltd.  
vs State of UP,

Supreme court held that RERA is empowered to delegate its powers to its members except power to make regulations under section 85. This delegation includes power to delegate hearing complaints.

Q. Rajeer book @ the flat - - - - -  
- - - - - withdraw from the project?

→ Provision :- If the promoter fails to complete or is unable to give possession as per terms of the agreement then allottee can withdraw from the project & he is entitled to receive a refund of the amount paid with interest.

If allottees does not intend to withdraw, he shall be paid by promoter, interest for every month of delay till handing over possession

Conclusion :- Yes, Rajeer can withdraw from the project & he is entitled to receive an amount with in interest. If he does not want to with intres. If he does not want until he gets the possession.

Recd.

### \* Proprietor of Design

- In case of commissioned design - Person who pays the designer for creating design.
- In case of acquired design - Person who acquires the design.
- In all other cases author of the design.
- If rights are transferred, The owner becomes the proprietor.

### \* Case laws :-

In *Brighto Auto Industries Vs Shree Raj Chawla*.

Supreme court held that for a design to be new & original under section 4 it must not have been published or publically known before. change in design should be noticeable. and not just a small difference.

The key test is whether design looks clearly different to the eye from existance one.

Only significant difference from prior design, not minor variation qualify to registration.

Sec 2.

\* Registration to be in respect of particular Article [Section 6]

D] If a person applies for registration of design and:

- a. Design has already been registered by someone else for different article or.
- b. Design is similar previously registered design [with minor modifications]

Then: if the applicant later acquires the ownership of previously registered design then applicant is treated as original owner at the time of application.

Sec 3

23/9/24.

\* Effect of reg. of design.

- Registration of design confers upon registered proprietor  $\approx$  copyright in the design for period of registration.
- Here copyright means exclusive right to apply a design to the article belonging to the class in which it is registered.

## \* Industrial & international Exhibition.

Design exhibited at an approval event or published without the owners concern wouldn't invalidate it reg. it :-

- ① Notice is given to controller before the exhibition.
- ② Reg. is applied for within 6 months of first exhibition & publication.

## \* Case law.

In case of microfibres Inc Vs Girdhar and Co. Delhi High Court provided key guideline regarding overlap of copyright & design laws :-

1. Artistic work under copyright act as wide scope even abstract and simple drawings would qualify in Artist work.
2. Holder of artistic work has exclusive rights under copyright including right to reproduce it in any material form.
- \* 3. Copyright protection does not extend to 'industrially produced work once registered under design act. Design activities are considered commercial & granted lesser protection compared to pure artistic work.

\* a. An artistic work can still have copyright protection even if it is used for design unless applied for more than 50 times in industrially.

s. Once design is registered under design Act. it loses protection of copyright if design isn't reg. but use more than 50 times it also loses copyright protection.

lec-8-

\* Intingement of registered GI occurs when:

1. An unauthorised person uses GI in a way that mislead customer about the origin of good.
2. The use of GI results in unfair competition
3. Another GI is used in a way that fails represent origin of a good while literally true

lec-9.

\* Prohibition of Reg of GI as trademark

GI indicative goods with unique qualities originating from specific region while a trade mark distinguish goods or services of an enterprise of other

\* Case law:

1. Tea board India ltd vs ITC limited

Tea board claim that ITC uses of "DARJEELING LOUNGE" in a hotel in a hotel mislead customer & harmed darjeeling tea's reputation as a GI

The Calcutta HC ruled that there is likely hood of confusion or passing of as tom as widely used commercially. The court conclude that the tea board couldn't claim exclusivity over the name in all context.

## \* Section 38 :

Says that the person falsely apply GI if they :

① Use the GI or deceptively similar GI without authorised user consent

② Use ~~packing~~ packaging with misleading GI to sell not genuine products.

Rec 1.

- Patent under section 2(1)(m) of Patent Act 1970 is exclusive right granted for an invention for an invention to be novel (new) it must not have been disclosed in any prior publication or any public knowledge before patent filing date.

\* Case laws.

1. In *Bishwanath Prasad Radhey Shyam Vs Hindustan Metal Industries*:

Supreme court ruled that purpose of patent law is to encourage innovation by granting inventor a imp monopoly. In exchange innovation by granting invention is eventually made public promoting further technological progress.

2. In *Raj Prakash Vs Mangal Ram Chaudhary*.

Delhi HC held that invention involves discovering something new that has not been known before. The court emphasize that even simple invention can qualify as patent provided inventor first to create or adopt the invention.

Rec 2.

30/9/24.

\* How patent specification is prepared?

- 1.) Title → name your innovation.
- 2.) Field & prior art → describe the technology area & existing solution.

- 3). Drawbacks → explain what is wrong with the existing solutions.
- 4) your solution → Describe how your innovations solve the problems.
- 5). Description → explain your invention in detail including how it works & its benefits.
- 6). Drawings → include diagrams if needed.
- 7). Best method → Describe the most effective way to use your invention.
- 8) claims → clearly state what aspects of your invention you want to protect.

\* case law.

3. In *Novartis AG vs. Union of India*, the SC ruled that for a drug to get a patent, it must show improved therapeutic effectiveness, not just minor changes like better stability.

Novartis's drug *Cleever* was denied a patent because the new form doesn't make medicine work better for patients, which is required under the law to avoid unfairly extending patents.

Q. 3.

Q. When should an appl. be filed?

→ A patent application should be filed to secure the invention priority filing a provision early can protect the IORA while giving time to complete details. Delaying the appl can lead to risks:

1. Another inventor might file a patent for same invention first.

2. Invention might accidentally be made public losing the chance to patent it.

Sec 13.

+ Section 13 → Anticipation by previous publication

- Section 13 of IPA focus on checking if invention is truly new.

- The examiner must investigate the following :-

①. Checking for prior publication.

→ examiner looks for any published documents that describe the same invention before the date applicant file their patent.

②. Checking for prior claim.

→ also check if invention is claimed in other patent that were file before applicant app. but published after applicant filing date.

Sec 7.

- Reasonable requirements of the public shall be deemed not to have been satisfied if -

(1) Patent owner refuses grant licence in reasonable terms & this refusal.

(a) harms existing industries and stops new businesses established in India from being.

(b) fails to meet demand of patented products in India.

(c) Prevent development of export market.

(d) Harms development of others commercial activity in India.

(2). If patent owner places unfair condition such as:

(a) forcing buyer to purchase other material that are not patented.

(b) blocking the growth of Indian businesses due to restrictive condition.

(3). If patent owner imposes conditions like:

(a) exclusive grant back

(b) Prevention of challenges of validity of patent  
corrosive packaging licensing

④. Patent not worked in India  
it means it is not used or made in india on a  
commercial scale or not used to its fully potential.

⑤. if patent owner import the patented product  
instead of producing locally.

Sec 3.

## \* Declaration on Pre Packaged Commodities.

- Certain mandatory declarations are required to be made on all pre packed commodities. Like name & address of manufacturer, country of origin, name of commodity, net quantity, month & yr of manufacturing, retail sale price in form of MRP, customer care details.

## \* Rule 9 (3)

If product is inside an outer container or wrapper

1. Outer wrapper must have declaration like price, weight, etc unless outer wrapper is transparent & required information on inner package can be easily read through it.
2. If inner package has no info printed on it, then outer wrapper must contain all required details.

## \* Section 42.

- A legal metrology officer conduct a baseless search of a retail store without a valid reason & seizes goods unjustly then the officer could fined ₹10000 or face imprisonment upto 1 year.

lec 4.

## \* International Organization of Legal Metrology

International organization of legal metrology, (OIML) is inter governmental organisation established in 1955. to harmonise global legal metrology procedures.

### • Functions of OIML

- They develop model regulations which help the country to set national legislation on measuring instruments
- They promote mutual recognition system which reduce trade barriers
- They represent legal metrology interests of legal metrology community.
- It facilitates global sharing of knowledge & expertise in legal metrology.
- It cooperate with other metrology bodies provide awareness of how legal metrology supports a modern economy

### \* OIML certificate system

It was launched in 1991, it simplifies international trade by allowing manufacturers to obtain certificate for their measuring instrument that comply with OIML recommendations

• key benefits.

- ① It harmonizes international standards avoiding repeating testing.
- ② Supports mutual recognition of measuring among OIML member state.
- ③ Builds global trust among OIML members regarding accuracy & reliabilities.

# Intellectual Property Rights.

Date: \_\_\_\_\_  
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- Intellectual property means a property created by "Intellectual faculty" (created through brains).
- vital component of economic growth & a tool for corporate competitiveness.
- Area of intellectual property covers - Copyrights & rights related to Trademark, Geographical indications, Designs and Patents.
- It also includes new layout designs, trademark & trade data.

## Nature of Intellectual property.

- Tangible rights over Tangible property
- Right to sue.
- Rights & duties.
- Co existence of different rights
- Exhaustions of rights.
- Dynamist (changing).

\* GATS → General Agreement on Trade in Services

GATS is a first ever collection of legally binding multinational regulation governing global trade in services.

## • GATS Functions

GATS functions on three basic level -

- Contains basic principles & obligations.
- Annexes which deals with rules for particular sector & individual nations.
- It explicit commitments to allow access to their market.

## • Two key pillars to support the GATS.

- Increasing the expenses & predictability of pertinent rules & regulations.
- Fostering progressive liberalisation.

## • Objective of Gats.

- Idea of progressing liberalisation allowing developing nations to gradually expand market access.  
Freedom to developing nations to control, who can access & utilise their telly communications, transport network & services.  
They have a goal of supporting growing participation of developing nations in service trade

- \* WIPO : world Intellectual Property Organisation.
- The United Nation organization devoted to using the intellectual property as a tool to foster innovation & creativity is known as world Intellectual property organization.
- It was founded in 1970 with a mission from its member states to advance the protection of intellectual property all over the globe through intergovernmental & international organizations cooperation.
- its main office is in Geneva
- It signed a co-operative agreement with the WTO in 1996.

• Legal Framework under WIPO :-

- Patent Co-operation Treaty (PCT) : By this one can apply for protection of innovation in large no. of nation by submitting a single patent application under PCT
- Madrid agreement : This agreement was signed in 1891 & the protocol pertaining that the agreement was signed in 1989, by this agreement one can get international registration of marks across wide range of nations.

- Lisbon system / Agreement: By using this single reg. one can get internationally reg. of geographical indication.
- Vienna agreement: Marks which contains figurative features, this agreement creates an international classification of such marks known as Vienna agreement.
- Nice agreement: - The international classification of goods & services, for the reg of marks, nice agreement came into force.
- WIPO Copyright treaty (WCT) - Protection of works & the rights of the authors in a digital sphere & items must be covered by copyright protection.

- (i) computer programme
- (ii) Database.

★ TRIPS: Trade related Aspects of Intellectual Property Rights.

- How general rules & fundamental ideas of the global trade system apply to international intellectual property?
- What are the minimum protection criteria for intellectual property rights that member should offer.

- ~~total~~ are the minimum protection criteria for
- what mechanisms should members offer to defend those rights in home country.
- Specific interim framework for resolving Z.P disputes between WTO members in order to implement TRIPS requirements
- Special transitional arrangements for implementation of TRIPS provision

### \* National Intellectual Property Right Policy.

This right policy was put into place to encourage innovation, enhance the business climate and make it easier to commercially utilise Z.P.

This India's period were known as "Decade of innovation".

ZPR focus on -

Imporing → health care, food security, environmental protection among areas of social economical & technological.

Fostering Creativity & innovation outlines seven goals they are -

- 1) ZPR Awareness
- 2) ZPR Generation
- 3) Legal & Legislative framework.

- 4] Administration & Management.
- 5] Adjudication & enforcement.
- 6] Commercialisation of IPR
- 7] Human capital Development.