

CMA INTER

P5 BUSINESS LAWS & ETHICS

CONCEPT BOOK



Master Notes

CMA Inter Business Laws & Ethics - The Ultimate One-Stop Solution!

This book is the perfect blend of conceptual clarity, exam relevance, and concise presentation, **covering the entire CMA Inter Business Laws & Ethics** syllabus in just 360 pages without compromising on subject terminology.

It is designed to help students grasp concepts effortlessly and confidently score 80+ marks in exams.

- **Comprehensive Yet Concise** - Covers everything you need in just 360 pages, ensuring efficient preparation without unnecessary bulk.
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Wishing all students clarity, confidence, and outstanding success in their journey!

#0A6847 - Headings

#C84C32 - Key Words

#133E87 - Normal Text

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1. INTRODUCTION TO LAW AND LEGAL SYSTEM

1. Introduction to The Constitution of India

Content	
1.	Overview of Indian Constitution a. The Constitution of India came into force on 26-01-1950. b. It is the longest written Constitution, combining rigidity and flexibility, with a federal system having unitary features. c. The Constitution has a Preamble, 470 Articles grouped into 25 Parts, 12 Schedules, and 5 Appendices. d. It is the supreme law of the country providing a parliamentary form of Government and independent judiciary. e. It includes emergency provisions and key governance features.
2.	Preamble of the Constitution The Preamble was adopted by the Constituent Assembly and reads: a. We, the People of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens: b. Justice - social, economic and political c. Liberty - of thought, expression, belief, faith and worship d. Equality - of status and opportunity e. Fraternity - ensuring individual dignity and national unity f. In our constituent assembly this 26-11-1949, do hereby adopt, enact and give to ourselves this constitution.
3.	Purpose of the Preamble a. The Preamble is the key to understanding the makers' intent and the purpose behind the Constitution's provisions. b. The Preamble serves the following purposes: ▪ It discloses the source of the Constitution. ▪ It mentions the date of commencement of the Constitution. ▪ It sets out the rights and freedoms that the people of India aimed for. ▪ It declares the nature of the government.

2. Fundamental Rights

Introduction	
1.	a. Fundamental Rights are the basic human rights guaranteed by the Constitution of India to all citizens. b. The six Fundamental Rights are: ▪ Right to Equality - (Articles 14 to 18)



- Right to Freedom - (Articles 19 to 22)
 - Right against Exploitation - (Articles 23 and 24)
 - Right to Freedom of Religion - (Articles 25 to 28)
 - Cultural and Educational Rights - (Articles 29 and 30)
 - Right to Constitutional Remedies - (Articles 32 to 35)
- c. The Fundamental Rights are often called the **Magna Carta of India**.

Article 14- Equality before Law

1. Right to Equality - Article 14
 - a. The State shall not deny to any person equality before the law or equal protection of the laws within India.
 - b. It prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
 - c. Equality is a dynamic concept with many aspects and dimensions. It cannot be confined within traditional limits. From a legal point of view, equality is the antithesis of arbitrariness.
2. Exceptions to Equality Before Law - Article 361

Article 361 provides certain exceptions to the rule of equality before law:

 - a. The President and Governor are not answerable to any court.
 - b. No criminal proceedings shall be instituted or continued against the President or a Governor during their term in any court.
 - c. No Civil Proceeding for acts in personal capacity without prior notice during their term.

Article - 15 Prohibition on Discrimination on Certain Grounds

1. Prohibition of Discrimination (Article 15)
 - a. The State shall not discriminate against any citizen on the grounds only of Religion, Race, Caste, Sex, Place of birth, Or any combination of these grounds.
 - b. No citizen shall face restrictions based on these grounds in:
 - Access to shops, public restaurants, hotels, places of public entertainment; or
 - Use of wells, tanks, bathing ghats, roads, and places of public resort which are maintained by State funds or are meant for public use.
2. Article 15 - Exceptions
 - a. State may make special provisions for women and children.
 - b. State may provide for advancement of socially and educationally backward classes or Scheduled Castes, especially in matters of admission to educational institutions.

Article-16: Equality of Opportunity in matters of Public Employment

1. Article 16 - Equality in Public Employment
 - a. Equal opportunity for all citizens in public employment or office under the State.
 - b. No discrimination based on Religion, Race, Caste, Sex, Descent, Place of Birth, or Residence.



2. Exceptions - Article 16
 - a. Parliament may prescribe **residence requirements** for certain posts.
 - b. State may provide **reservation for backward classes** not adequately represented.
 - c. State may allow **reservation in promotions** (with consequential seniority) for **SCs/STs**.
 - d. Religious/denominational institutions can require **office-holders** to belong to a specific religion/denomination.

Article - 17 Abolition of Untouchability

1. **Abolition of Untouchability**
 - a. **Untouchability is abolished**, and its practice is forbidden.
 - b. Enforcing any disability based on Untouchability is an **offence, punishable** by law.
 - c. The term Untouchability is **not defined** in the **Constitution**. However, it refers to **social disabilities** imposed on certain persons due to their birth in **particular castes**.
 - d. It does **not include social boycotts** of a few individuals.

Article - 18 Abolition of Titles

1.
 - a. **State shall not** confer any **title**, except for military or academic distinction.
 - b. **Citizens** shall not accept **titles** from a **foreign State**.
 - c. A **non-citizen** who holds any office of profit or trust under the **State** shall **not accept** any title from a **foreign State** without the **consent** of the **President**.
 - d. **No person in State service** can accept gifts, emoluments, or offices from foreign States **without President's consent**.

Article 19(1) - Right to Freedom

1. Article 19(1) guarantees the following 6 fundamental freedoms to citizens of India:
 - a. Freedom of speech and expression
 - b. Freedom of assembly (to assemble peacefully and without arms)
 - c. Freedom to form associations or unions
 - d. Freedom of movement (to move freely throughout the territory of India)
 - e. Freedom to reside and settle in any part of the territory of India
 - f. Freedom to practise any profession, or carry on any occupation, trade, or business
2. **Reasonable Restrictions on the 6 Freedoms - Article 19(2) to 19(6)**
 The 6 freedoms are **not absolute**. They are subject to reasonable restrictions in the interest of:
 - a. Security of the State
 - b. Friendly relations with foreign States
 - c. Public order
 - d. Decency and morality
 - e. Contempt of court
 - f. Defamation



- g. Incitement to an offence
- h. Sovereignty and integrity of India

Article 20 Protection in Respect of Conviction for Offences

1. Ex-post facto law
 - a. No conviction for an act not an offence when committed.
 - b. No harsher penalty than what was prescribed at the time of the offence.
2. Double jeopardy
 - a. No person shall be prosecuted and punished for the same offence more than once.
 - b. This protection applies only to proceedings before a court or a judicial tribunal.
 - c. It does not apply to proceedings before departmental/administrative authorities.
3. Self-incrimination
 - a. No accused shall be compelled to be a witness against himself.
 - b. This protection covers both oral and documentary evidence.
 - c. Compelled evidence must not lead to self-incrimination.

Article 21 Right to Life & Personal Liberty

1. "No person shall be deprived of his life or personal liberty except according to procedure established by law."
2. Includes:
The Right to Life and Personal Liberty under Article 21 is an inclusive right and includes the following:
 - a. Right to travel abroad
 - b. Right to livelihood
 - c. Right to shelter
 - d. Right to privacy
 - e. Right to health and medical assistance
 - f. Protection of ecology and environment from pollution
 - g. Right to education under Article 21A
 - h. Prisoner's rights - If a prisoner dies due to police beating, his family is entitled to compensation.
 - i. Right to free legal aid
 - j. Right to speedy trial
 - k. Right against handcuffing
 - l. Right against delayed execution
 - m. Right to food
 - n. Right to marriage
 - o. Right to reputation
 - p. Right to Education - Article 21A
Article 21A declares that the State shall provide free and compulsory education to all children aged 6 to 14 years, in a manner the State may decide.



This makes only elementary education a Fundamental Right, not higher or professional education.

Right Against Exploitation

1. Article 23: Prohibition of traffic in human beings and forced labour
 - a. Article 23 prohibits traffic in human beings and all similar forms of forced labour.
 - b. This right is available to both citizens and non-citizens.
 - c. It offers protection not only against the State, but also against private individuals.
 - d. However, the State may impose compulsory service for public purposes, such as:
 - Military service, or
 - Social service
2. Article 24: Prohibition of Employment of Children in Factories, etc
 - a. Article 24 prohibits the employment of children below the age of 14 years in any factory, mine, or other hazardous activities.
 - b. However, it does not prohibit their employment in any harmless or innocent work.

Right to Freedom of Religion

1. Article 25 - Freedom of Religion
 - a. All persons are equally entitled to:
 - Freedom of conscience, and
 - The right to freely profess, practice, and propagate religion.
 - b. Implications of Article 25:
 - Freedom of conscience - Inner freedom to believe in any faith or religion.
 - Right to profess - To openly declare and follow one's faith.
 - Right to practice - To perform religious rituals and observances.
 - Right to propagate - To spread and communicate one's religious beliefs to others.
 - c. Note:
 - Article 25 covers not only religious beliefs but also religious practices.
 - This right is available to all persons, i.e., both citizens and non-citizens.
2. Article 26 - Rights of Religious Denominations

Every religious denomination or any of its sections shall have the right:

 - a. To establish and maintain institutions for religious and charitable purposes
 - b. To manage its own affairs in matters of religion
 - c. To own and acquire movable and immovable property
 - d. To administer such property according to law
3. Article 27 - Freedom from Taxation for Promotion of Religion
 - a. No person shall be compelled to pay taxes for the promotion or maintenance of any particular religion or religious denomination.
 - b. State cannot use public tax money for supporting any religion.

Note: This prohibits only a tax, not a fee.



4. Article 28 - Prohibition of Religious Instruction in State-Funded Institutions
 - a. No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
 - b. However, this does not apply to institutions:
 - Administered by the State, but
 - Established under any endowment or trust that requires religious instruction to be imparted.

Educational and Cultural Rights

1. Article 29 - Protection of Interests of Minorities
 - a. Citizens with a distinct language, script, or culture have the right to conserve it.
 - b. No citizen shall be denied admission to State or State aid institutions on the grounds of Religion, Race, Caste, Language, etc.
2. Article 30 - Right of Minorities to Establish and Administer Educational Institutions
 - a. Religious or linguistic minorities can establish and administer educational institutions of their choice.
 - b. If property is acquired, compensation must not restrict the above right.
 - c. No discrimination in aid to institutions solely for being minority-managed.

Right to Constitutional Remedies

1. Article 32 - Right to Constitutional Remedies
 - a. Right to move the Supreme Court for enforcement of Fundamental Rights is guaranteed.
 - b. The Supreme Court has the power to issue directions, orders, or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari for the enforcement of Fundamental Rights.
 - c. Parliament may empower other courts to exercise similar powers within local limits.
 - d. The right guaranteed shall not be suspended, except as per Constitution (e.g., Emergency under Article 359).

3. Sources of Law

Custom as a Source of Law

1.
 - a. A valid custom must be continuous and uninterrupted over a long period.
 - b. It must be ancient, generally accepted, and in line with morality. However, not every custom becomes law.
 - c. A custom is an unwritten, long-established practice with binding force.
 - d. In ancient times, it was primary source of law.
 - e. With modern legal systems, precedents and legislation have overtaken custom in importance.



2.	Kinds of Legal Customs a. Legal customs are generally classified into the following 3 types: ✓ General Customs: followed throughout the State. ✓ Local Customs: apply only to a specific region of the state. ✓ Conventional Customs: These customs arise from agreements between parties. When two or more persons enter into a contract related to a trade, it is legally assumed that they follow the established customs or usage of that trade. b. Not every custom is enforceable, courts apply tests of validity.
3.	Essential Tests for a Valid Custom To be recognized as a source of law, a custom must satisfy the following conditions: a. Antiquity ▪ A valid custom must exist since time immemorial. ▪ In India, there is no fixed time limit, but it must be shown that the custom has been practiced for a very long time. b. Continuity ▪ The custom must have been continuously practiced, without interruption. ▪ Long gaps or disrupted use cast doubt on its validity. ▪ It must be exercised openly and with public knowledge, not practiced in secret. c. Reasonableness ▪ A custom must be just and beneficial to the community. ▪ It must be rational and not cause more harm than good. ▪ If it creates inconvenience or mischief, it is considered invalid. d. Morality ▪ A custom must not be immoral or go against public policy. ▪ Courts have struck down customs that promote immoral practices.

Judicial Precedent as a Source of Law

1.	a. Judicial precedent refers to previous decisions of superior courts (like the High Courts and the Supreme Court) that are binding on lower courts, due to the constitutional hierarchy of courts in India. b. Judicial precedent is an important source of law, but: ▪ It is not as modern as legislation, and ▪ It is not as ancient as custom. c. It is a key feature of the English legal system and is followed in common law countries, including India. d. In developed legal systems, the judiciary is a vital State organ, tasked with interpreting and enforcing rights conferred by legislation. e. While interpreting laws and customs, judges develop new legal principles, which become binding precedents for lower courts.
2.	a. Supreme Court (SC) ▪ It is the highest judicial authority in India.



	- Its decisions are binding on all courts in the country. - However, it is not bound by its own past decisions. - It is not bound by decisions of the Privy Council or Federal Court. b. High Courts Binding on all lower courts within its jurisdiction. - For courts outside its jurisdiction, the decision holds only persuasive value (not binding). - If there is a conflict between two decisions of benches of equal strength, the matter is referred to a larger bench. Privy Council and Federal Court decisions remain binding, unless overruled by SC. c. Lower Courts - Must follow decisions of higher courts within their own state. - Local High Court decisions prevail over those of other states.
3.	Judicial decisions are divided into two parts: a. Ratio Decidendi: - It is the binding part of a judgment. - The term 'ratio decidendi' means the reason for the decision. - It refers to the legal principle derived by the court from the facts of a particular case. - It is generally binding on lower courts in future cases that involve similar legal questions. b. Obiter Dicta: - An 'obiter dictum' includes the general observations made by the judge. - These do not have binding authority, but the obiter from higher courts is given importance and has persuasive value. c. The doctrine of precedent works through ratio decidendi and obiter dicta, within the structured court hierarchy.

Legislation as a Source of Law

1.	a. In modern times, legislation is considered the most important source of law. b. The term 'legislation' comes from the Latin words legis meaning law, and latum meaning to make or to set. So, legislation means making of law. c. It carries the authority of the sovereign and is formally recognised by the State. d. The term 'legislation' is used in different senses: - Broadly, it includes all methods of law-making. - Strictly, it refers to laws made by the sovereign or its authorised bodies.
2.	Types of Legislation Primary Legislation: a. Laws that are directly enacted by the sovereign are called supreme legislation. b. No other authority can control or check it, except the sovereign itself. c. For example:



- Laws made by the British Parliament, as it is considered sovereign.
 - Laws made by the Indian Parliament also fall under this category.
- d. However, in India, the **Constitution regulates and controls** the powers of **Parliament**. But the **laws** enacted by the Indian Parliament are **not controlled** by any other **legislative body**.

Subordinate Legislation:

- a. Subordinate legislation refers to laws made by an **authority lower** than the **sovereign**.
- b. These laws are made under the **delegated authority** of the sovereign.
- c. The origin, validity, and **continuation** of **subordinate legislation** depends entirely on the will of the **sovereign authority**.

3. Subordinate Legislation Can Be Further Classified Into:

- a. Local Laws
 - In some countries, **local bodies** are given powers to make laws.
 - They can make **bye-laws** for their own areas.
 - In India, **Panchayats** and **Municipal Corporations** are given such powers under the 73rd and 74th Constitutional Amendments.
- b. Laws Made by the Executive
 - Normally, laws are made by the **sovereign**.
 - The sovereign power may lie with **one authority** or may be **shared** by **different organs** of the State.
 - In most modern countries, sovereignty is divided among the 3 organs of the State namely **Legislature, Executive, Judiciary**

4. Delegated Legislation

- a. Legislature, Executive, and Judiciary have different functions.
- b. **Law-making** is the duty of the Legislature; **implementation** lies with the Executive.
- c. When the **Legislature delegates** some law-making power to the Executive, it is called Delegated Legislation (a type of Subordinate Legislation).
- d. In modern welfare states, the **growing volume of laws** makes it hard for Legislatures to handle all details.
- e. Therefore, the Legislature provides the **basic framework**, and the Executive fills in the details.
- f. Though criticised, Delegated Legislation is widely used due to **lack of time, technical complexity**, and **emergency situations**. Hence, it is often called a necessary evil.

4. Primary and Subordinate Legislations

Content

1.
 - a. **Primary legislation** refers to an Act passed by the **Parliament**. In contrast, **subordinate legislation** is made by an authority **subordinate** to the **Legislature**.
 - b. Subordinate legislation derives power from the **sovereign** and exists at its **discretion**.



	c. Most Acts delegate powers to make rules, regulations, bye-laws, or other statutory instruments. d. Modern socio-economic laws outline policy but lack detailed provisions due to time constraints. e. Delegated legislation allows for flexibility, quick implementation, and experimentation. f. The Legislature sets policy and objectives. Executive, Experts, and Technocrats handle the technical details through rules, regulations, and other instruments. g. Hence, delegated legislation now plays an increasingly important role in the law-making. h. The Constitution empowers to various authorities to make rules, regulations, and schemes in different areas.
2.	a. Delegated legislation is ancillary which means it supports the parent law but cannot override or amend it. b. Indian democracy is based on 4 key pillars: Legislature, Executive, Judiciary, and Press. c. Each pillar is independent and should not interfere with the others. d. According to the Constitution: ▪ The Legislature makes laws ▪ The Executive implements laws ▪ The Judiciary settles disputes e. Legislature has many responsibilities. Hence, it focuses only on major policy matters and delegates detailed rule-making to the Executive or other authorities. f. In such cases, delegated legislation becomes essential. This delegation is justified due to the need for Flexibility, Adaptability & Speed.

5. Legislatives Processes in India

Importance of Law & the Constitution

1.	Law and the Constitution in India a. Every country is governed by laws to maintain order in society and regulate the behaviour of individuals and institutions. b. All decisions from citizenship and voting age to the functioning of the government are based on laws, whether Central, State, or local. c. The main purposes of law are to maintain order, resolve disputes, ensure safety, enforce citizens' rights. d. Laws are binding on everyone citizens, organizations, and even the Government.
2.	Law Making Process a. The Constitution of India is the supreme law and the source of all other laws. b. All laws must be in conformity with the Constitution; no law can override it. c. It provides the structure for governance, defines the powers and duties of institutions, and sets out the fundamental rights, duties, and Directive Principles.



	d. The Constitution declares India to be a Sovereign, Socialist, Secular, Democratic Republic and ensures justice, liberty, and equality for its citizens.
3.	Law Making Process: e. The Government of India , through its ministries, drafts policy proposals in line with its election goals and national priorities . a. Before introducing a bill in Parliament, the relevant ministry conducts a detailed study on social & financial costs , benefits, challenges before and after enactment.

Legislation making process	
1.	Pre-drafting stage: a. The concerned ministry initiates a legislative proposal after consulting stakeholders (financial and administrative impact). b. The proposal includes the need for the law and other relevant matters.
2.	The Pre-Legislative Consultation Policy was introduced after a Cabinet Secretary-led committee's decision on 10th January 2014. - The concerned ministry/department must publish the draft law with an explanatory note, either online or through other media. - It will be available to the public for at least 30 days.
3.	If the proposed law affects a specific group , it should be published in a way that reaches those affected.
4.	The feedback from stakeholders shall be considered while drafting the bill.
5.	The ministry then sends the proposal to the Ministry of Law and Justice for advice on: - the necessity of the proposed law, - its desirability considering existing laws, and - its constitutional validity. It does not comment on the merits of the proposal
6.	After this, the ministry sends all relevant documents to the Ministry of Law & Justice with an Office Memorandum .
7.	The Legislative Department in the Ministry of Law & Justice prepares the draft bill , after getting approval from the Department of Legal Affairs
8.	Once the draft is ready and reviewed by the concerned ministry, a note is sent to the Cabinet Secretary to place the bill before the Cabinet for approval.
9.	After the approval of the draft, the concerned ministry checks the cabinet's decision to see if any changes have been suggested. - If changes are suggested, the ministry sends them along with the cabinet's comments to the Ministry of Law and Justice for making those changes. - If no changes are suggested by the cabinet, then the concerned ministry prepares the Statement of Objects and Reasons for the bill, which is then signed by the Ministry of Law and Justice.
10.	To help the Ministry of Parliamentary Affairs plan the session , all details about the bill to be introduced must be sent at least 1 month before the session starts.



11.	As per Articles 109, 110(1), and 117(1) of the Indian Constitution: ▪ A Money Bill must be introduced first in the House of the People (Lok Sabha). ▪ For other types of bills, the house of introduction is decided in consultation with the Ministry of Parliamentary Affairs.

Article 107: Provisions as to Introduction and Passing of Bills

1.	a. Subject to Articles 109 and 117 (related to Money Bills and other Financial Bills), a Bill can be introduced in either House of Parliament. b. As per Articles 108 and 109, a Bill is considered passed by Parliament only when both Houses agree to it either without changes or with mutually agreed amendments.
2.	a. If a Bill is pending in Parliament, it does not lapse just because of the prorogation of the Houses. b. A Bill pending in the Rajya Sabha which has not been passed by the Lok Sabha shall not lapse on a dissolution of the Lok Sabha. c. A Bill pending in the Lok Sabha, or a Bill that has been passed by Lok Sabha but is pending in Rajya Sabha, shall lapse if Lok Sabha is dissolved, subject to Article 108.

Article 108: Joint Sitting of Both Houses in Certain Cases

1.	a. A joint sitting may be called when a Bill, passed by one House and transmitted to the other, faces: ▪ Rejection by the other House, or ▪ Disagreement on amendments, or ▪ No action by the other House for more than 6 months from the date of receipt. b. The President may notify both Houses (unless the Bill has lapsed due to dissolution of Lok Sabha) through: ▪ Message (if Houses are sitting), or ▪ Public notification (if not sitting). Exception: This clause does not apply to a Money Bill.
2.	While calculating the 6 months period, any time during which the House is prorogued or adjourned for more than 4 consecutive days shall be excluded .
3.	a. Once the President issues such notification, no further action on the Bill can be taken by either House. b. The President may summon a joint sitting, and the Houses must meet accordingly.
4.	If at the joint sitting of the two Houses, the Bill, with such amendments, if any, is to be considered Provided that at a joint sitting: a. If the Bill, after being passed by one House, has not been passed by the other House with amendments and returned to the originating House, then no amendment shall be proposed to the Bill except those amendments that are necessary due to the delay in passing the Bill. b. If the Bill has been passed and returned with amendments, then:



	- only amendments made necessary by the delay, and - such other amendments that are related to the issues on which the Houses have disagreed, may be proposed. c. The presiding officer's decision on admissibility of amendments is final.
5.	A joint sitting can still be held and the Bill passed, even if the Lok Sabha is dissolved after the President's notification has been issued.

Article 109: Special Procedure in respect of Money Bills

1.	A Money Bill cannot be introduced in the Council of States
2.	a. After a Money Bill is passed by the House of the People, it is sent to the Council of States for recommendations. b. The Council of States must return the Bill within 14 days with its recommendations. c. The House of the People can accept or reject all or any of those recommendations.
3.	If the House of the People accepts any of the recommendations , the Money Bill is considered passed by both Houses , with those accepted amendments.
4.	If the House of the People does not accept any recommendation, the Money Bill is considered passed by both Houses in the original form (i.e., without any amendments recommended by the council of states) passed by the House of the People.
5.	If the Council of States does not return the Money Bill within 14 days , it is deemed to have been passed by both Houses in the original form passed by the House of the People.

Article 111: Assent to Bills

1.	a. Once a Bill is passed by both Houses of Parliament, it is sent to the President. b. The President may either assent to the Bill or withhold assent. c. Note: - If the Bill is not a Money Bill, the President may return it to the Houses with a message requesting them to reconsider the Bill or specific provisions. - The message may also suggest amendments to be considered. - If both Houses reconsider and pass the Bill again, the President is bound to give assent.
2.	After the President's assent, the Ministry of Law & Justice: a. Publishes the Act in the Gazette of India Extraordinary b. Sends copies to all State Governments for publication in their official gazettes c. Gets printed copies made available for sale to the general public

6. Legal Methods including Judicial Alternative Dispute Resolution (ADR) Process in India

Alternative Dispute Resolution

1.	Alternative Dispute Resolution (ADR) refers to different ways of resolving legal disputes without filing a traditional court case, and aims to ensure timely justice .



2.	Due to court backlogs and delays , ADR was introduced to help parties settle disputes swiftly and amicably . It applies to civil, commercial, industrial, and family matters.
3.	ADR methods include Lok Adalat, arbitration, conciliation, and mediation.
4.	The Law Commission recommended that courts may direct parties to appear in person to promote mutual settlement .

Sec 89 of Civil Procedure Code

1.	Settlement of Disputes outside the Court a. If the Court feels that there is a scope for settlement, it shall: ▪ Formulate the terms of the settlement, and ▪ Share it with the parties for their observations. b. After receiving their observations , the Court may: ▪ Reformulate the terms of a possible settlement, and ▪ Refer the matter to any of the following modes of ADR: ✓ Arbitration ✓ Conciliation ✓ Judicial settlement, including Lok Adalat ✓ Mediation
2.	Where a dispute has been referred a. Arbitration or Conciliation Arbitration and Conciliation Act, 1996 applies as if referred under it. b. Lok Adalat If the dispute referred to a Lok Adalat, the Court shall do so u/s 20(1) of the Legal Services Authority Act, 1987 , and all provisions of that Act shall apply. c. Judicial Settlement If referred for judicial settlement, the Court shall send the matter to a suitable institution or person, that institution/person will be deemed to be a Lok Adalat , and the Legal Services Authority Act, 1987 will apply as if the case was referred to Lok Adalat. d. Mediation If referred for mediation, Court assists compromise as per prescribed mediation procedure.
3.	Refund of Fee: If the Court refers the suit u/s 89 CPC, the plaintiff gets a certificate for full refund of court fee from the Collector.

Arbitration & its Advantages

1.	a. Arbitration is a method of settling disputes outside the court through a neutral third party (arbitrator). b. Parties refer the dispute to one or more arbitrators and agree to be bound by the arbitral award, which is final and enforceable . c. The scope for appeal or review of an arbitration award is limited .



	d. Arbitration is distinct from court proceedings and other ADR methods. e. It may be voluntary (by agreement), mandatory (by law/contract), or court referred.
2.	Advantages of Arbitration: a. It is usually faster than going to court. b. Arbitral proceedings are generally private, and confidentiality can be maintained. c. Parties can appoint experts as arbitrators in technical matters.

Arbitration & Conciliation Procedures

1.	a. The Arbitration and Conciliation Act, 1996 governs arbitration and conciliation in India. b. Arbitration generally requires an arbitration agreement between the parties.
2.	Arbitration Agreement a. It is an agreement to refer present or future disputes to arbitration, relating to a defined legal relationship whether contractual or not. b. It may be: ▪ An arbitration clause within a contract, or ▪ A separate agreement altogether. c. The agreement must be in writing. d. An arbitration agreement is considered in writing if it is: ▪ In a document signed by the parties, or ▪ In an exchange of letters, telex, telegrams, or electronic communication that records the agreement, or ▪ In an exchange of claim and defence statements where one party refers to the arbitration agreement and the other does not deny it. e. If a written contract refers to another document containing an arbitration clause, and the reference clearly indicates the intention to incorporate it, it is treated as a valid arbitration agreement.
3.	Power to refer Parties to Arbitration where there is an Arbitration Agreement: a. If a matter before a judicial authority is the subject of an arbitration agreement, the authority shall refer it to arbitration, if a party applies for it before submitting their first statement. b. This applies even if there is an earlier judgment/decreed/order, unless no valid agreement exists prima facie. c. The application must include the original or certified copy of the agreement. d. If the applicant does not have the original or certified copy, he they may file a copy with a petition to direct the other party to produce the original. e. Arbitration can proceed even while such application is pending.
4.	Number of Arbitrators a. Parties may decide the number of arbitrators, but it must not be an even number. b. If not decided by the parties, arbitral tribunal shall consist of a sole arbitrator.



Appointment of Arbitrations

1.	Any person, regardless of nationality, can be an arbitrator, unless the parties agree otherwise.
2.	Parties are free to agree on a procedure for appointing the arbitrator(s)
3.	If there is no agreement and the arbitration involves 3 arbitrators: - Each party appoints one arbitrator, and - The two arbitrators appoint the third as the presiding arbitrator.
4.	If a party fails to appoint within 30 days, or the two arbitrators cannot agree on the third within 30 days, the court (or its nominee) will appoint.
5.	If there is no agreement, and the arbitration is to be conducted by a sole arbitrator, and the parties fail to agree on the arbitrator within 30 days of a request from one party to the other, then, upon request, Court (or its designee) shall make appointment.
6.	a. If the agreed process isn't followed, or parties/arbitrators/institutions fail to act, the court (or nominee) may take necessary action unless another method is specified in the agreement b. While considering any application, Court shall only examine whether an arbitration agreement exists, regardless of any court judgment, decree, or order. c. Designation of any person or institution by the Court does not amount to delegation of judicial power.
7.	Any decision made by the Court (or its designee) is final, and cannot be appealed

Conciliation

1.	Conciliation is a voluntary method of alternative dispute resolution, where parties seek the assistance of a conciliator to resolve their disputes by: - Interpreting the issues, - Giving technical help, - Exploring solutions, and - Helping the parties reach a negotiated settlement.
2.	a. It is a flexible process, allowing the parties to decide the time, structure, and content of the proceedings. b. The proceedings are private and confidential.
3.	The conciliator proposes a settlement by considering the legal, commercial, and financial positions of the parties. The conciliator is usually a qualified and neutral person who facilitates negotiation between the parties.
4.	The process involves discussions between the parties and the conciliator, aimed at finding sustainable and fair solutions. - The process targets the real issues in the dispute and helps in creating mutually acceptable settlement options. - The process is risk-free and not binding unless both parties sign the settlement agreement.



5.	Generally, one conciliator is appointed by mutual consent. a. There is no restriction on appointing two or more conciliators. b. In three-conciliator proceedings , each party appoints one conciliator, and the third is appointed by mutual consent .
6.	Unlike in arbitration (where the third arbitrator is the Presiding Arbitrator), in conciliation the third conciliator does not have such a title or role.
7.	The conciliator must be impartial , and conduct the proceedings fairly . He is guided by objectivity, fairness, justice, relevant trade practices , and the circumstances of the dispute, including past business practices between the parties.
8.	The conciliator is not bound by formal rules of procedure or evidence. a. The conciliator does not give an award or order . b. If the parties do not reach a mutual agreement , the conciliation ends without settlement.

Mediation

1.	Mediation is a voluntary and informal method of dispute resolution. a. It follows a party-centric approach , where a neutral third party helps the parties resolve their dispute amicably using communication and negotiation techniques. b. A unique feature of mediation is that the parties retain control over the entire process.
2.	The mediator acts only as a facilitator and does not make any decisions or awards . In the mediation process: a. Each side meets with an experienced neutral mediator . b. Session begins with each party explaining the issue and the resolution they seek. c. The mediator holds separate and joint meetings , guiding the discussion toward a final mutual agreement.
3.	The key advantages of mediation are: a. The agreement is made by the parties themselves . b. The dispute is resolved quickly , with less stress and cost . c. The relationship between the parties is preserved . d. The entire process remains confidential .

Lok Adalats

1.	Lok Adalats/People's Courts are a type of alternative dispute resolution set up by the government to settle disputes through compromise or conciliation.
2.	They function as both a judicial body and a community-driven settlement mechanism , promoting social justice via negotiated settlements
3.	Lok Adalats can accept even cases that are pending in regular courts , as long as they fall within their jurisdiction.
4.	U/s 89 of the Civil Procedure Code, courts can refer disputes to Lok Adalat , and then the provisions of the Legal Services Authorities Act, 1987 apply.



2. INDIAN CONTRACT ACT, 1872

2.1 ESSENTIAL ELEMENTS OF A CONTRACT, OFFER AND ACCEPTANCE

1. Definitions

Content	
1.	Contract: An agreement enforceable by law is called a contract.
2.	Agreement: Every promise and every set of promises forming the consideration for each other is an agreement.
3.	Reciprocal Promise: Promises that form the consideration or part of the consideration for each other are called reciprocal promises.
4.	Offer (Proposal): When one person signifies to another their willingness to do or abstain from doing anything , to obtain that other person's assent, it is called an offer or proposal.
5.	Consideration: Consideration means something in return (Latin maxim: Quid Pro Quo).
6.	Voidable Contract: An agreement enforceable by law at the option of one or more parties , but not at the option of the other(s) , is a voidable contract.

2. Essential Elements of Valid Contract

Content	
1.	According to sec 10, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object , and are not otherwise expressly declared to be void . Essential Elements of a Valid Contract are as follows
2.	Offer: A valid offer must exist to form an agreement.
3.	Acceptance: Once the offer is accepted, it becomes an agreement.
4.	Other Requirements for a Contract: To convert the agreement into a valid contract, the following other essentials must be satisfied: ▪ Consideration ▪ Lawful object ▪ Competence of parties ▪ Free consent, etc.



5.	Free Consent: a. Consent is free when it is not caused by Coercion, Undue Influence, Fraud, Misrepresentation, Mistake b. If consent is not free, the contract is not valid.
6.	Capacity of Parties: a. A person is competent to contract if he: - Is of the age of majority, - Is of sound mind, - Is not disqualified by any law. b. If any party is not competent, the contract is invalid.
7.	Lawful Consideration: Consideration means "something in return" (Quid Pro Quo). It must be lawful, i.e., not: a. Forbidden by law, b. Fraudulent, c. Injurious to person or property, d. Immoral, e. Against public policy.
8.	Lawful Object: The purpose or design (object) of the agreement must be lawful. Unlawful objects render the contract void.
9.	Agreement Not Expressly Declared Void: a. The agreement must not be declared void u/s 24 to 30. b. These include: - Agreements in restraint of marriage, - Agreements in restraint of legal proceedings, - Agreements in restraint of trade, Wagering agreements.
10.	Legal Enforceability: a. All contracts are agreements, b. But not all agreements are contracts, only those that are legally enforceable.

3. Types of Contracts

On the basis of Validity or Enforceability

1.	Valid Contract a. A contract that contains all essential elements as per sec 10 of the Indian Contract Act, 1872. b. It is legally enforceable in a court of law.
2.	Void Contract a. A contract that was valid at the time of its creation but later ceases to be enforceable by law due to the absence of one or more essential elements.



	b. It becomes void with the change of circumstances .
3.	Voidable Contract a. A contract which is enforceable by law at the option of one or more parties , but not at the option of the other(s) . b. Usually arises when free consent is missing due to coercion, fraud, undue influence, etc.
4.	Illegal Contract a. A contract that is forbidden by law , unlawful, or opposed to public policy. b. Such contracts are void ab initio (i.e., void from the beginning). c. Even collateral agreements to an illegal contract are void .
5.	Unenforceable Contract a. A contract that is valid in substance, but cannot be enforced due to technical defects like not in writing, not duly stamped, not registered, etc. b. It can become enforceable if the technical defects are removed .

On the basis of Creation or Formation

1.	Express Contract a. A contract made through spoken or written words. b. The offer and acceptance are clearly stated.
2.	Implied Contract Contract not made through words , but implied from conduct , actions, or circumstances.
3.	Tacit Contract Contract implied from conduct , particularly through use of machines or technology
4.	Quasi Contract a. These are not real contracts formed by offer and acceptance. b. Created by law to avoid unjust enrichment . c. There is no intention to contract, but legal obligation is imposed.
5.	E-Contract a. A contract formed online using the internet or electronic means. b. The offer and acceptance take place digitally , not in person.

On the basis of Execution or Performance

1.	Executed Contract a. A contract in which the consideration has already been given for an act done or forbearance (i.e., refraining from doing something). b. The contract is fully performed .
2.	Executory Contract a. A contract in which the consideration is to be given in the future . b. The contract is yet to be fully performed by one or both parties. c. Executory contracts are further divided into: ▪ Unilateral contract



In this contract, only **one party** has to **perform** their obligation.
The **other** party has already **performed** their part.

- **Bilateral contract**

In this contract, **both parties** still have **obligations** to perform.
There is a mutual exchange of promises yet to be fulfilled.

4. Offer and its Essential Elements

Content	
1.	Offer / proposal: Proposal or offer as when one person shows their willingness to do or abstain from doing anything, with the intention of getting the other person's consent to that act or abstinence.
2.	Offeror: The person making the proposal is called the ' offeror ' or proposer. Offeree: The person to whom the proposal is made is called the offeree .
3.	To be a valid offer: a. It must be clear, definite, complete , and final not vague or uncertain. b. It must be communicated to the offeree. c. It can be communicated either in writing or orally . d. It can be in express or implied terms.
4.	An offer can be general or specific : a. A specific offer is made to a particular person and can only be accepted by that person. b. A general offer is made to the public and can be accepted by anyone who meets the conditions of the offer.

5. Acceptance

Content	
1.	Acceptance means giving consent to an offer. It is the expression by the offeree of their willingness to be bound by the terms of the offer.
2.	Acceptance: When the person to whom the proposal is made signifies his assent , the proposal is said to be accepted.
3.	A proposal , when accepted , becomes a promise . In simple terms, acceptance is the consent given to an offer.
4.	Legal Rules of a Valid Acceptance: a. Acceptance can be oral or in writing . b. It can be express or implied . c. If a specific method of acceptance is mentioned , it must be followed . d. Acceptance must be unqualified , absolute, and match all terms of the offer. e. Conditional acceptance counts as a rejection of the offer. f. A counter-offer also rejects the original offer , though it may be accepted or rejected by the original offeror.



- g. Acceptance must be **communicated** to the **offeror**. It is complete when communicated.
- h. Mere **silence** does **not** count as **acceptance**.
- i. Acceptance must be given within the **time specified**, or within a **reasonable time**, and before the offer lapses or is revoked.

6. Communication of Offer & Acceptance

Content	
1.	Communication of offer is complete when it comes to the knowledge of the person to whom it is made.
2.	Communication of acceptance is considered complete at different times for the proposer and the acceptor: a. As against the proposer: ▪ The communication is complete when the acceptance is sent through a proper mode and is out of the control of the acceptor. ▪ In case of postal acceptance, the proposer is bound once the letter of acceptance is properly addressed, stamped, and posted, even if it is lost or delayed in the post b. As against the acceptor: ▪ Communication is complete only when acceptance reaches the proposer. ▪ So, in case of postal acceptance, the acceptor is bound only when the proposer receives the letter.
3.	Once an offer is properly communicated, it remains valid until it is: a. Accepted by the offeree (then it becomes a contract), b. Revoked by the offeror, c. Rejected by the offeree, or d. Lapsed (due to passage of time or other conditions). Note: An ideal offer should contain all the essentials of a valid contract, because once accepted, it becomes legally binding.

7. Revocation of Acceptance

Content	
1.	a. As against the person who makes it (Offeror/Proposer): Communication is complete when it is put into the course of transmission, i.e., when the message is sent. b. As against the person to whom it is made (Offeree/Acceptor): Communication is complete when it comes to the knowledge of that person, i.e., when the message is received.
2.	a. Proposal can be revoked: Before the communication of acceptance is complete against the offeror (i.e., before the acceptance is posted or dispatched by the offeree).



b. Acceptance can be revoked:

Before the communication of acceptance is complete against the offeree (i.e., before the acceptance reaches the proposer).

8. Modes of Revocation of Offer

Content	
1.	Lapse of Offer: An offer must be accepted before it lapses (i.e., comes to an end).
2.	By Revocation: The offeror can revoke (withdraw) the offer before it is accepted.
3.	By Lapse of Time: a. If the offer is not accepted within the specified time limit, it lapses. b. If no time is specified, it must be accepted within a reasonable time.
4.	By Death or Insanity of the Offeror or Offeree: a. If the offeror dies or becomes insane and this comes to the knowledge of the offeree before acceptance, the offer lapses. b. If the offeree dies or becomes insane before acceptance, the offer also lapses, since only the offeree can accept the offer.
5.	By Failure to Fulfil a Condition Precedent: An offer lapses if it is accepted without fulfilling the conditions of the offer.
6.	By Counter Offer: If the offeree makes a counter offer (i.e., changes the terms of the original offer), the original offer comes to an end.
7.	By Not Accepting in the Prescribed or Usual Mode: a. If the offer states a specific mode of acceptance and it is not followed, the offer may lapse. b. If no mode is prescribed, the acceptance should be in a reasonable and usual manner.
8.	By Rejection by the Offeree: a. If the offeree rejects the offer, it lapses. b. Once rejected, the offer cannot be revived.
9.	By Subsequent Illegality or Destruction of Subject Matter: If the offer becomes illegal or the subject matter is destroyed before acceptance, the offer lapses.



2.2 VOID AND VOIDABLE AGREEMENTS

1. Void Agreement

Content	
1.	Void Agreement An agreement not enforceable by law is said to be void.
2.	Agreements that are considered void: ✓ Sec 24 - If considerations or objects are unlawful in part ✓ Sec 25 - Agreements without consideration ✓ Sec 26 - Agreements in restraint of marriage ✓ Sec 27 - Agreements in restraint of trade ✓ Sec 28 - Agreements in restraint of legal proceedings ✓ Sec 29 - Agreements void for uncertainty ✓ Sec 30 - Agreements by way of wager

2. Unlawful Consideration or Objects

Content	
1.	If any part of a single consideration or any part of several considerations for a single object is unlawful , the whole agreement is void.
2.	This section doesn't apply to a single , indivisible agreement without contingent parts.

3. Agreement without Consideration

Content	
1.	An agreement made without consideration is void , unless it falls under any of the following exceptions :
2.	It is in writing and registered: a. The agreement is in writing, b. It is registered under the law in force, c. It is made on account of natural love and affection, d. Between parties who are near relatives.
3.	It is a promise to compensate for something already done: a. A person voluntarily did something for the promisor, or has done something which the promisor was legally bound to do, and b. The promisor now promises to compensate for it, wholly or partly.
4.	It is a promise to pay a time-barred debt: a. The promise is made in writing, b. Signed by the person making the promise (or their authorised agent), c. To pay a debt that is barred by limitation law, either wholly or in part.
5.	Note: a. This section does not affect the validity of completed gifts.



- b. **Inadequate consideration** doesn't void an agreement, but courts may consider it when assessing **free consent**.

4. Agreement in restraint of Marriage

Content

1. Any agreement that **restrains** a person from **marrying** (except in the case of a **minor**) is **void**.

5. Agreement in Restraint of Trade

Content

1. Any agreement that **restrains** a person from **carrying** on a **lawful trade, business, or profession** is **void** to that extent
2. Exception: Sale of Goodwill
 - a. If a person sells the goodwill of a business, they may **agree** with the **buyer** not to carry on a **similar business**:
 - Within **specified local limits**,
 - For as long as the **buyer** or any person claiming under him **carries** on a **similar business** in that area.
 - b. This restraint is valid only if the **local limits** are considered **reasonable** by the **Court**, keeping in view the nature of the business.

6. Agreement in Restraint of Legal Proceedings

Content

1.
 - a. Absolute restriction on legal proceedings:
Any agreement that **completely prevents** a party from **enforcing** their **legal rights** under a contract through ordinary **courts** or that **limits** the **time** within which they can do so, is **void** to that extent.
 - b. Extinguishment of rights or discharge of liability:
Any agreement that **ends** a **party's rights** or **discharges** a party from **liability** under a contract after a fixed time period in such a way that it **prevents legal enforcement**, is also **void** to that extent.
2. **Exceptions:** The following types of agreements are valid despite the general rule:
 - a. Arbitration for future disputes:
Agreements where two or more persons agree to refer **future disputes** to arbitration, and only the amounts awarded through **arbitration** are recoverable.
 - b. Arbitration for existing disputes:
Agreements in **writing** to refer any **existing dispute** between the parties to arbitration.
These two exceptions uphold the legality of arbitration as an **alternative dispute resolution method**.



c. Bank or financial institution guarantees:

Contracts in writing by banks or financial institutions that include a clause for extinguishment of rights or discharge from liability under a guarantee, after a specified period, that period must be not less than one year from the occurrence or non-occurrence of a specified event.

7. Agreements void for uncertainty

Content

1. Agreements, the meaning of which is not certain or capable of being made certain, are void.

8. Agreement by way of wager

Content

1. Agreement by way of wager
 - a. Agreements by way of wager are void.
 - b. No suit can be filed to recover:
 - Any winnings from a wager, or
 - Any amount entrusted to a person to be paid based on the outcome of a game or any other uncertain event.
2. Exception - Horse Racing Prizes
 - a. This provision does not apply to any subscription, contribution, or agreement to subscribe or contribute towards a plate, prize, or sum of ₹500 or more, given to the winner(s) of a horse race.
 - b. So, prizes for horse races of ₹500 or more are not considered wagers.
3. Section 294A of the Indian Penal Code Not Affected

This provision does not make legal any transaction connected with horse racing that is prohibited u/s 294A of the Indian Penal Code, which deals with unauthorised lotteries and prize schemes.



2.3 CONSIDERATION

1. Consideration

Content	
1.	Consideration means that - when, at the desire of the promisor, - The promisee or any other person has done, does, or promises to do or has abstained, abstains, or promises to abstain from doing something, - such act, abstinence, or promise is called consideration for the promise.
2.	Types of Consideration - Executory or Future Consideration - This is a promise to do something in the future. - Executed or Present Consideration - This is when an act or forbearance is already done in return for a promise. - Past Consideration - This refers to a past act or forbearance that has already been completed before the promise is made.
3.	Legal Rules Regarding Consideration - It must move at the desire of the promisor - It may move from the promisee or any other person - Consideration must be something of value. - It may be an act, abstinence or forbearance or a return promise. - It may be past, present or future which the promisor is already not bound to do. - It must not be unlawful. - Consideration need not be adequate. - It must not be illusory. - It must not be opposed to public policy. Pre-existing obligations.

2. No Consideration - No Contract

Content	
1.	- The general rule is "ex nudo pacto non oritur actio", which means an agreement without consideration is void. - Exception's u/s 25: - Promise made out of natural love and affection - Promise to compensate for voluntary services - Promise to pay a time-barred debt - Other situations where agreement without consideration is not void: ✓ Gift actually made ✓ Creation of agency ✓ Charitable subscription (<i>where liability has been incurred on the faith of the promise</i>).



2.4 LEGALITY OF OBJECT

1. Legality of Object (Sec 23)

Content	
1.	The object of a contract refers to the ultimate purpose that the contract is meant to serve. In a contract, the subject matter or agreement is considered its object .
2.	a. The consideration or object of an agreement is lawful, unless: ▪ it is forbidden by law; ▪ it is of such a nature that, if allowed, it would defeat the provisions of any law; ▪ it is fraudulent; ▪ it involves or implies injury to a person or property of another; ▪ it is regarded by the court as immoral or opposed to public policy. b. In any of these situations, the consideration or object is said to be unlawful, and any agreement with an unlawful object or consideration is void.

2.5 E-CONTRACTS - ESSENTIAL REQUIREMENTS FOR ENFORCEABILITY

1. E-Contracts

Content	
1.	Electronic Contracts a. Electronic Contracts (E-Contracts) are paperless contracts created and executed in electronic form. b. Due to technological advancement and legal developments, contracts can now be made digitally. c. An e-contract is a contract that is modelled, specified, executed, and deployed by a software system. d. It is conceptually similar to a traditional contract and must include all the essential elements of a valid contract.
2.	Essential Elements of an E-Contract: a. An offer must be made; b. The offer must be accepted; c. There must be lawful consideration; d. There should be an intention to create legal relations; e. The parties must be competent to contract; f. There must be free and genuine consent; g. The object of the contract must be lawful; h. There must be certainty and possibility of performance.
3.	Features of E-Contracts: a. They offer speed, accuracy, and reliability.



	b. Parties must obtain a digital signature from a competent authority and use it instead of manual signing. c. E-contracts are regulated by the Information Technology Act, 2000.
4.	a. In e-contracts, the offeror's website acts as a display to the public. b. Emails are commonly used to negotiate, agree on terms, and finalize the contract. c. An email contract is enforceable if all the required elements of a valid contract are met. d. An electronically signed contract cannot be denied legal validity simply because it is in electronic form or was delivered electronically.

2.6 CONSTRAINTS TO ENFORCE CONTRACTUAL OBLIGATIONS

1. Competent to Contract

Content	
1.	a. As per Section 11, every person is competent to contract who: - is of the age of majority according to the law applicable to them, - is of sound mind, and - is not disqualified from contracting by any law to which they are subject. b. From this, it follows that the following persons are not competent to contract: - A minor - i.e., a person who has not attained the age of majority. - A person of unsound mind. - A person who is disqualified by law from entering into a contract.

2. Minor

Content	
1.	Minor a. Every person in India is considered a minor if they have not attained the age of 18 years (<i>Sec 3 of the Indian Majority Act, 1875</i>). b. However, - if a guardian has been appointed for the person or property (or both) of the minor under the Guardian and Wards Act, 1890, or - if the minor's property is under the supervision of a Court of Wards, the age of majority becomes 21 years.
2.	Position of Minor's Agreement and Its Effects: a. Agreement with a minor is void ab initio: It has no legal effect from the beginning. b. Law of Estoppel does not apply: A minor can always claim minority, even if they earlier misrepresented themselves as a major. They cannot be held liable for such misrepresentation. c. Doctrine of Restitution does not apply: As per the Mohiri Bibi case, a minor's agreement is absolutely void, not merely voidable.



- Therefore, **sec 65 does not apply**, since that section deals with contracts that are discovered to be void, not ones that are void ab initio.
- d. No Ratification on Attaining Majority:
 - A minor **cannot ratify** an agreement made during minority once they attain majority.
 - A **fresh agreement** with **fresh consideration** is required.
- e. Contract Beneficial to Minor:
 - A minor can **enforce** a contract if it is for their **benefit**.
 - A minor can use their **status** to **protect themselves** and can bind others, even though they are not bound.
- f. Minor as an Agent: A minor can be appointed as an **agent**, but they are **not personally liable** for acts done as an agent.
- g. Minor's Liability for Necessities: If **necessaries** are supplied to a minor or their dependents, the **minor's property** can be held **liable**, but the minor cannot be personally held liable.
- h. Minor cannot be adjudged insolvent: As they cannot enter into contracts, they **cannot be declared insolvent**.
- i. Joint Agreement with Minor and Adult: If a minor and an adult jointly enter into a contract, the minor is not liable, and the contract can only be **enforced** against the **adult**.

3. Person of Sound Mind

Content	
1.	A person is considered to be of sound mind for making a contract if, at the time of making the contract, they are: ▪ capable of understanding the contract, and ▪ able to form a rational judgment about how it affects their own interests.
2.	The law also clarifies two situations: a. A person who is generally of unsound mind, but is occasionally of sound mind, can make a contract during the period when they are of sound mind. b. A person who is generally of sound mind, but is occasionally of unsound mind, cannot make a contract during the time they are of unsound mind.

4. Other Disqualified Persons

Content	
1.	Certain persons are disqualified from entering into contracts due to their legal, political, or corporate status. These include:
2.	Alien Enemy: An agreement with an alien enemy is void. a. An agreement with an alien friend is valid and enforceable. b. When a foreign government is at war with India, its citizens are treated as alien enemies.



	c. An alien enemy cannot enter into a contract with an Indian citizen without the permission of the Government of India, as it would be against public policy. d. Contracts made before the war with an alien are suspended during the war.
3.	Foreign Sovereigns and Ambassadors a. They enjoy privileges and immunities in India. b. They cannot enter into contracts directly, but can do so through their agents in India. c. They can sue Indian citizens, but cannot be sued by Indian citizens.
4.	Convicts A person undergoing imprisonment is disqualified from entering into a contract during the period of imprisonment.
5.	Insolvents a. An insolvent person is one who cannot pay his debts and is undergoing insolvency proceedings. b. He cannot enter into contracts related to his property, which is managed by an official assignee or receiver.
6.	Company or Statutory Bodies a. A company or statutory body can only enter into contracts within the scope of its MOA. b. Contracts beyond this scope are ultra vires (beyond authority) and void.

5. Free Consent

Content	
1.	Consent a. Consent means that two or more persons agree upon the same thing in the same sense. b. This is also known as "consensus-ad-idem" in English law, meaning meeting of minds. c. Consent must involve a common understanding about the subject matter of the contract. d. If both parties do not understand the same thing in the same way, then real consent is missing, and no contract is formed.
2.	Free Consent [Sec 14] a. Consent is free when it is not caused by Coercion, Undue Influence, Fraud, Misrepresentation, Mistake subject to sec 20, 21, and 22 b. If consent is obtained through any of the above, it is not free, and the contract may be void or voidable, depending on the situation.

6. Coercion

Content	
1.	Coercion: Coercion means ✓ Committing or threatening to commit any act forbidden by the IPC, or



	✓ Unlawfully detaining or threatening to detain any property, ✓ To the prejudice of any person, ✓ With the intention of causing that person to enter into an agreement. Explanation: It does not matter whether the IPC is in force in the place where the coercion is used.
2.	Effect of Coercion - When consent is caused by coercion, fraud, or misrepresentation, the agreement becomes voidable at the option of the party whose consent was so caused. This means the aggrieved party can choose to rescind (cancel) the contract (Sec 19). - If the party chooses to cancel the contract, he must restore any benefit received under the contract to the other party.
3.	Some special situations related to coercion: - A mere threat to sue someone or to file a lawsuit does not amount to coercion. - Charging a high price or high interest rate is not coercion because it is not prohibited by the Indian Penal Code. - If consent is obtained by threatening to commit suicide, it is considered coercion.

7. Undue Influence

Content	
1.	- A contract is said to be induced by undue influence when the relationship between the parties is such that one party is in a position to dominate the will of the other, and uses that position to gain an unfair advantage. - A person is considered to be in a position to dominate the will of another in the following cases: - When he has real or apparent authority over the other person, or is in a fiduciary relationship (a relationship based on trust). - When he makes a contract with someone whose mental capacity is temporarily or permanently affected due to age, illness, or mental or bodily distress. - If a person who can dominate another's will enters into a contract, and the contract seems unfair or unconscionable, then the burden of proof lies on that person to prove that the contract was not caused by undue influence. Note: This section does not affect the application of Sec 111 of the Indian Evidence Act, 1872.
2.	Presumption of Undue Influence Exists in the Following Relationships: - There is a presumption of undue influence in certain close or trust-based relationships, such as Parent and child, Guardian and ward, Doctor and patient, Solicitor and client, Trustee and beneficiary, Religious advisor and disciple, Fiancé and fiancée - In these cases, the law presumes that undue influence may have been used due to the nature of the relationship.



3.	No Presumption of Undue Influence Exists in the Following Relationships: a. In the following relationships, undue influence is not presumed automatically, it must be proved by the person alleging it: ▪ Landlord and tenant, Debtor and creditor ▪ Husband and wife unless the wife is a pardanashin woman (one who observes seclusion and is dependent on others for dealings). b. In these cases, the mere existence of the relationship is not enough to presume undue influence.
4.	Effect of Undue Influence a. When consent to an agreement is caused by undue influence, the agreement becomes voidable at the option of the party whose consent was so caused. b. The aggrieved party may choose to rescind (cancel) the contract. c. If the party chooses to cancel the contract, he must restore any benefit received under the contract to the other party.
5.	Burden of Proof in Cases of Undue Influence: a. In a case where a party wants to avoid a contract based on undue influence, they must prove: ▪ The other party was in a position to dominate their will, and ▪ That party actually used that influence to obtain consent. b. Once this is shown, the burden shifts to the defendant to prove that the consent was freely given.
6.	Presumption of Undue Influence Arises in: a. Unconscionable bargains b. Contracts with pardanashin women

8. Fraud

Content	
1.	Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with the intent to deceive the other party or to induce him to enter into the contract: a. Suggesting as a fact something which is not true, by a person who does not believe it to be true; b. The active concealment of a fact by one having knowledge or belief of the fact; c. A promise made without any intention of performing it; d. Any act that is fitted to deceive; e. Any act or omission that the law declares to be fraudulent.
2.	Effect of Fraud a. When consent to a contract is caused by coercion, fraud, or misrepresentation, the agreement becomes voidable at the option of the party whose consent was so caused.



- b. A party whose consent was caused by **fraud or misrepresentation** may choose to **insist on performance** of the contract and require that they be **placed** in the **position** they would have been in if the representation had been true.
- c. Exception:
If the consent was caused by misrepresentation or fraudulent **silence** u/s 17, the contract is **not voidable** if the aggrieved party had the **means** to **discover** the **truth** through **ordinary diligence**.

9. Silence amounts to Fraud

Content	
1.	As per the law, mere silence about facts that may affect a person's willingness to enter into a contract is not considered fraud , unless : - The circumstances impose a duty on the person to speak; or - The silence itself is equivalent to speech.
2.	Specific Situations Where Silence Equals Fraud: Change in Circumstances A statement that was true when made may become false due to change in facts or time. If this change is not communicated, it will amount to fraud. Half-Truths If a person voluntarily discloses part of the truth, but conceals the rest, and the undisclosed part makes the disclosed part misleading, this will be treated as fraud.

10. Misrepresentation

Content	
1.	A representation that is wrongly made, either innocently or unintentionally , is called misrepresentation . If it is made knowingly or deliberately , it is fraud .
2.	Misrepresentation means and includes— - A positive assertion, made in a manner not justified by the information of the person making it, of something that is not true, even if he believes it to be true. - Any breach of duty, done without the intention to deceive, that gives an advantage to the person committing it (or someone claiming under him), by misleading another person to his loss or to the loss of someone claiming under him. Causing, even innocently, a party to the agreement to make a mistake about the substance of the subject matter of the agreement.
3.	Effect of Misrepresentation ✓ If a party gives consent to an agreement because of misrepresentation, the agreement is voidable at the option of that party. ✓ The affected party may either: ▪ Cancel the contract, or



	Choose to continue with the contract and insist that it be carried out, and that he be placed in the position he would have been in if the representation had been true.
4.	Exception: If the misrepresentation (or fraudulent silence) led to the consent, the contract is not voidable if the party had the means to discover the truth by ordinary diligence .

11. Mistake

Content	
1.	Mistake means a wrong belief about something . Although the Indian Contract Act does not define "mistake," it is recognized in two forms: - Mistake of Law - Mistake of Fact
2.	Mistake of Law Mistake of law can be of two types: Mistake of Law of the Country (India): - When a party enters into a contract without knowing the law of India, the contract is not void. - A contract is not voidable just because one party made a mistake about a law in force in India. (<i>Ignorance of law is not an excuse</i>). - However, if one party was induced into the contract by the mistake of law, the contract may be avoided. Mistake of Law of a Foreign Country: A mistake regarding the law of a foreign country is treated as a mistake of fact. In such cases, the agreement is void.
3.	Mistake of Fact - Bilateral Mistake, or - Unilateral Mistake

Mistake of Fact	
1.	Bilateral Mistake - When both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. - A wrong opinion about the value of the subject matter is not considered a mistake of fact. - To make an agreement void due to bilateral mistake, two conditions must be satisfied: - Mistake must be mutual: Both parties must misunderstand each other and be at cross purposes. - Mistake must relate to an essential matter of fact: What is considered essential depends on the nature of the promise in each case.



2.	Mistake as to Subject Matter includes the following: Mistake as to existence of subject matter: If both parties wrongly believe the subject matter exists, the agreement is void. Mistake as to identity of subject matter: If both parties have different subject matters in mind, the agreement is void. Mistake as to quality of subject matter: If the subject matter is essentially different from what both parties thought, the agreement is void. Mistake as to quantity of subject matter: If there is a mutual mistake about the quantity, the agreement is void. Mistake as to title of subject matter: If there is a bilateral mistake regarding ownership or title, the agreement is void. Mistake as to price of subject matter: If both parties are mistaken about the price, the agreement is void.
3.	Mistake as to Possibility of Performance Mistake regarding the possibility of performing the contract can be: Physical impossibility: If the agreement cannot be carried out due to physical conditions like time, distance, or height, it is void. Legal impossibility: If the contract requires something legally not allowed, it is void.
4.	Unilateral Mistake as to Fact - A contract is not voidable just because one party is under a mistake of fact. - A unilateral mistake cannot be used as a defence to avoid a contract, unless it is caused by the fraud or misrepresentation of the other party.

2.7 QUASI-CONTRACTS, CONTINGENT CONTRACTS, TERMINATION OR DISCHARGE OF CONTRACTS

1. Quasi Contract

Content	
1.	Quasi Contract - A quasi-contract is based on the principle of equity, which means a person should not be allowed to benefit unfairly at the expense of another. - It is a legal obligation created by law, not by any agreement, when someone holds another person's money or equivalent in such a way that, in fairness and good conscience, they should not keep it. - In such cases, justice requires that the money or benefit should go to the rightful person. It is the duty imposed by law, not the agreement or intention, that defines a quasi-contract.



2. Circumstances in which Quasi Contracts arise

a. Supply of Necessaries

The person who supplies **necessaries** to

- someone who is **incompetent** to contract, or
- anyone who is **dependent** on such a person,

has the **right to claim** the **cost** of those necessities from the **property** of the **incompetent person**.

b. Right to recover money paid for another person

If a person, who has an **interest** in the **payment** of money which another person is **legally bound** to pay, **makes** that **payment**, then he has the **right to recover** the amount from the person who was legally bound to pay it.

c. Right to recover for Non-Gratuitous Act

The right to recover arises when the following three conditions are fulfilled:

- The act must have been done or the goods must have been **delivered lawfully**;
- The person doing the act or delivering the goods must **not** have **intended** to do it **gratuitously**;
- The person for whom the act is done or to whom the goods are delivered must have **enjoyed** the **benefit** of the act or goods.

d. Responsibility of Finder of Goods

- A person who finds **goods belonging** to **someone** else and takes them into his **custody** has the same **responsibilities** as a **bailee**.
- He must **not use** the goods for **personal** purposes and is obliged to find and **return** them to the **rightful owner**.

e. If a person **receives money** or anything by **mistake** or under **coercion**, he is required to **repay** the **money** or return the thing received.

2. Contingent Contract (Sec 31)

Content	
1.	Contingent Contract A contingent contract is a contract to do or not to do something, depending on the happening or not happening of a future event that is collateral to the contract.
2.	Essentials of a Contingent Contract: a. There must be uncertainty and the event must be in the future. b. The uncertain future event must be collateral (secondary or related) to the contract.

3. Enforcement of Contingent Contract

Content	
1.	Dependent on the "Happening" of a Future Uncertain Event a. A contingent contract that depends on the happening of a future uncertain event can be enforced only when that event actually happens.



	b. If the event becomes impossible , the contract becomes void .
2.	Dependent on the "Non-Happening" of a Future Uncertain Event a. A contingent contract that depends on the non-happening of a future uncertain event can be enforced only when the event does not happen or becomes impossible. b. If the event happens or does not become impossible, the contract becomes void.
3.	Dependent on the "Happening" of a Specified Uncertain Event Within Fixed Time - a. A contingent contract that depends on the happening of a specified uncertain event within fixed time can be enforced if the event happens within that time. b. If the event does not happen within the fixed time, or becomes impossible before that time ends, the contract becomes void.
4.	Dependent on the "Non-Happening" of a Specified Uncertain Event Within Fixed Time A contingent contract that depends on the non-happening of a specified uncertain event within fixed time can be enforced if the event does not happen within that time, or if it becomes certain that the event will not happen.
5.	Contingent Contract Dependent on an Impossible Event If a contingent contract depends on an impossible event, it is void and cannot be enforced because the event can never happen.

4. Discharge of Contracts

Content	
1.	When the rights and obligations created by a contract come to an end, the contract is said to be discharged or terminated. In simple terms, discharge of contract means the termination of the contractual relationship between the parties.
2.	Modes of Discharge of Contracts: - Discharge by performance - Discharge by agreement - Discharge by lapse of time - Discharge by operation of law - Discharge by impossibility of performance - Discharge by breach

5. Discharge by Performance

Content	
1.	Performance is the usual way in which a contract is discharged. - Performance can be of two types: - Actual performance - Attempted performance Actual performance means that the parties have fulfilled their obligations under the contract as per its terms.



- d. Offer of performance is also called attempted performance or tender of performance.
- e. A valid tender of performance is treated the same as actual performance.

6. Discharge by Agreement

Content	
1.	Novation: a. Novation means substitution of a new contract in place of the existing contract, which discharges the original contract. b. The new contract can be between the same parties or different parties, but it take place only with the consent of all parties.
2.	Alteration: a. Alteration means a change in one or more terms of the contract. b. In alteration, the parties remain the same, but the terms of the contract change.
3.	Rescission: a. Rescission means cancellation of all or some terms of the contract. b. Rescission results in discharge of the contract.
4.	Remission: a. Remission means accepting lesser performance than what was actually due under the contract. b. No consideration is needed for remission.
5.	Waiver: a. Waiver means giving up or foregoing rights under the contract. b. When a party gives up its rights, the contract is discharged.

7. Discharge by Lapse of time

Content	
1.	a. Every contract must be performed within a fixed or reasonable period of time. b. If that time passes, the contract is discharged due to lapse of time. c. The Indian Limitation Act specifies the time limits within which the existing rights under a contract can be enforced in a court of law.

8. Discharge by Operation of Law

Content	
1.	Death: a. In contracts involving personal skill or ability, death ends the contract. b. In other contracts, the rights and liabilities of the deceased pass on to their legal representatives.
2.	Insolvency: a. If the promisor becomes insolvent, the contract is discharged. b. The promisor is freed from all liabilities that arose before being declared insolvent.



3.	Unauthorized Material Alteration: If one party makes a material alteration to the contract without the consent of the other party, the contract is discharged .
4.	Merger: When a person's inferior rights under a contract are replaced or combined with superior rights under a new contract, the earlier contract ends . This is called merger.

9. Discharge by impossibility of performance

Content	
1.	a. When performance of a contract becomes impossible , the contract is discharged . b. An agreement impossible to perform is void , as the law does not require anyone to do impossible things.

10. Discharge by Breach

Content	
1.	a. Breach means failure of a party to perform their obligations under the contract. b. A breach of contract brings an end to the obligations created by it.

11. Termination of Contract

Content	
1.	a. The proper way to terminate an agreement is by issuing a notice to the plaintiff, asking them to complete the transaction within a specified time . b. If they fail to do so, the contract will be treated as cancelled .

2.8 ASSIGNMENT OF CONTRACTUAL RIGHTS AND OBLIGATIONS

1. Assignment

Content	
1.	a. Assignment means the transfer of contractual rights or liabilities by a party to the contract to another person, even if that person is a stranger to the original contract. b. Assignments help make transactions simpler and faster . c. Assignment is also commonly used under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. d. When a contract is assignable and it is assigned to the plaintiff , the plaintiff can sue based on that contract. e. In such cases, the argument that there is no privity of contract with the plaintiff is not valid .
2.	a. Obligation of Parties to Contract - It allows parties to dispense with performance by way of assignment. - It lays down the obligation of parties to a contract.



- It states that the parties must either **perform** or **offer to perform** their respective promises, unless such performance is dispensed with or excused under this Act or any other law.
- If the **promisor dies**, their **legal representatives** are **bound** by the promise, unless the contract shows a contrary intention.

b. Effect of Refusal to Accept offer of performance

If a **promisor offers** to perform the contract, and the **promisee refuses** to accept it, then the **promisor is not responsible** for non-performance and does **not lose** his **rights** under the contract.

3. **Conditions for a Valid Offer of Performance:**

a. Every such offer must satisfy the following conditions:

- It must be **unconditional**.
- It must be made at a proper **time** and **place**, and in such a way that the promisee has a **reasonable opportunity** to confirm that the promisor is ready and able to perform the entire obligation as promised.
- If the offer involves **delivering something**, the **promisee** must have a **reasonable opportunity to see** that the item offered is the correct one as promised in the contract.

b. An offer made to one of several **joint promisees** has the **same legal effect** as an offer made to all of them.



2.9 REPRESENTATIONS AND WARRANTIES

1. Representations

Content	
1.	Representations are statements of true facts made at the time of entering into a contract. These induce the parties to enter into the contract. Although the Indian Contract Act, 1872 does not define "representation", it explains misrepresentation u/s 18.
2.	Misrepresentation means and includes: - A positive assertion of something not true, made without proper knowledge, even if the person believes it to be true. - A breach of duty that, without intention to deceive, gives an advantage to one party by misleading another, causing prejudice. Innocently causing a party to make a mistake about the substance of the subject of the agreement.
3.	Voidability of Agreements Without Free Consent: - When consent to a contract is caused by coercion, fraud, or misrepresentation, the contract is voidable at the option of the party whose consent was so caused. - That party may choose to: Rescind the contract, or Insist on performance of the contract and be placed in the position as if the representation were true. - Exception: If consent was caused by misrepresentation or fraudulent silence, the contract is not voidable if the affected party had the means to discover the truth with ordinary diligence. - Note: If a fraud or misrepresentation did not cause the consent, then the contract is not voidable.

2. Warranties

Content	
1.	- Warranties are promises of indemnity. - Though warranty is not defined under the Indian Contract Act, 1872, if a warranty is breached, it generally gives rise to a right of indemnification.
2.	Contract of Indemnity (sec 124): A contract of indemnity is a contract where one party promises to save the other from loss caused: - by the conduct of the promisor, or - by the conduct of any other person.



3. **Rights of Indemnity-Holder When Sued:**
 The promisee (indemnity-holder), if acting within the scope of his authority, is entitled to recover the following from the promisor:
- All **damages** he is forced to pay in a suit related to the matter covered by the indemnity.
 - All **costs** he is forced to pay in such suit,
 - If he acted **prudently**, did not disobey the promisor's instructions, or
 - If he had the promisor's permission to bring or defend the suit.
 - All **amounts** paid under a **compromise** of the suit,
 - If the compromise was not against the promisor's instructions, and it was a reasonable action in the absence of a contract, or
 - If the promisor had authorized the compromise.

2.10 IMPOSSIBILITY AND FORCE MAJEURE

Content	
1.	Enforcement of Contracts Contingent on an Event Happening: - Contingent contracts to do or not to do something based on the happening of a future uncertain event cannot be enforced unless and until that event actually happens. - If the event becomes impossible, the contract becomes void.
2.	Agreement Contingent on Impossible Events: Agreements that depend on the happening of an impossible event are void , even if the parties knew or did not know the event was impossible when the contract was made.
3.	Agreements to Do Impossible Acts: - An agreement to do something that is impossible from the beginning is void. - If a contract becomes impossible or unlawful after it is made, due to an event that the promisor could not prevent, the contract becomes void when the act becomes impossible or unlawful.
4.	Compensation for Loss from Known Impossibility or Unlawfulness: If a person promises to do something they knew (or should have known with reasonable care) to be impossible or unlawful , and the promisee did not know of this, then the promisor must compensate the promisee for any loss caused by non-performance.



2.11 TERMINATION BY NOVATION

Content	
1.	Effect of Novation, Rescission, and Alteration of Contract: - If the parties to a contract agree to: - Substitute a new contract (novation), or - Rescind the original contract, or - Alter the terms of the contract, then the original contract need not be performed. - To apply sec 62, there must be: - A pre-existing contract, and - A meeting of minds between the parties to end or change the contract. - A contract of novation requires a party to extinguish or discharge their obligation or debt. Unless this is done, there is no novation.
2.	Many special contracts can be terminated, and the Act also specifies authorities who have the power to terminate them. Contracts can also be ended by: - Rescission - cancelling or terminating a contract by one party. - Mutual consent - both parties agreeing to end the contract.
3.	Consequences of Rescission of Voidable Contracts: - When a person rescinds a voidable contract, the other party is not required to perform any of the promises under that contract. - If the person rescinding the contract has received any benefit, he must restore that benefit, as far as possible, to the person who gave it.
4.	Communication or Revocation of Rescission: Rescission of a voidable contract can be communicated or revoked in the same way and under the same rules as a proposal (offer) is communicated or revoked.
5.	Rightful Rescission and Compensation: If a person rightfully rescinds a contract, he is entitled to compensation for any loss or damage, he suffered due to the non-fulfilment of the contract.

2.12 TENDER PROCEDURE OF GOVERNMENT CONTRACT

Content	
1.	Nature of Tender: - A tender is generally considered as an invitation to offer. - Interested parties submit bids, which are treated as offers. - Once a bid is accepted, it becomes a contract, binding on both parties. - Tenders are commonly used for carrying out specific work or supply of goods within a fixed timeframe.
2.	Tender Document (Request for Tender - RFT): - A tender document (also called Request for Tender - RFT) includes: - Specifications of the work or goods,



	▪ Time limit for completion or supply, ▪ Contract conditions. b. Tenders may be floated by Companies, Organizations, or The Government or its agencies. c. Interested parties submit proposals, which are then evaluated and shortlisted by the authority that floated the tender.
3.	General Financial Rules (GFR), 2017: a. Issued by the Department of Expenditure, Ministry of Finance, Government of India, the GFR 2017 is a collection of rules and executive instructions that govern public finance. b. All Government Departments and Bodies must follow these rules, unless stated otherwise. c. Chapter 6 of GFR 2017 deals with procurement of goods and services. d. The Delegation of Financial Powers Rules (DFPR) also support these provisions. e. There is no central law specifically for government tenders; however, states have their own rules, generally based on GFR 2017.
4.	Rule 144 - Principles of Public Buying: a. Every authority with financial powers to procure goods must ensure efficiency, economy, and transparency in public procurement. b. They must treat suppliers fairly and equally, and promote competition. c. The procedure must follow these yardsticks: ▪ Procurement description should be Objective, functional, generic, and measurable. It should not specify any trademark or brand. ▪ Specifications (quality, type, quantity) must clearly match the actual needs, avoid unnecessary features that may cause extra costs. ▪ Where possible, specifications should follow National standards (technical/building codes). If not available, use international standards, for India-funded projects abroad, use host country standards, unless reasons are recorded for using others. ▪ Avoid over-purchasing to minimize inventory costs. ▪ Follow a fair, transparent, and reasonable procedure for inviting offers. ▪ Ensure the selected offer meets all requirements. ▪ Ensure the price is reasonable and matches the required quality. ▪ At each stage, record the reasons for procurement decisions. ▪ Publish a complete procurement schedule from tender issue to contract award. ▪ All Ministries/Departments must prepare an Annual Procurement Plan and publish it on their website.
5.	Rule 145 - Competent Authority for Purchase: Any authority with power to incur expenditure can sanction the purchase of goods for public use, as per the Delegation of Financial Powers Rules, and by following the GFR procedures.



2.13 SPECIAL CONTRACTS

1. Indemnity

Content	
1.	Contract of Indemnity (sec 124) Indemnity is a contract in which one party promises to save the other from loss caused by: - the conduct of the promisor himself, or - the conduct of any other person.
2.	A contract of indemnity involves two parties: - The indemnifier - the person who promises to indemnify from loss. - The indemnity holder - the person whose loss is to be made good. To indemnify means not just to reimburse money, but also to protect from any loss for which indemnity was promised.
3.	A contract of indemnity may be express , or implied .
4.	All insurance contracts (except life and personal accident insurance) are contracts of indemnity.

2. Rights of Indemnity Holder

Content	
1.	Rights of Indemnity Holder If the indemnity holder acts within the scope of his authority, he is entitled to recover the following from the indemnifier: - Damages for Suit - Cost of Suit - Sum paid for compromising suit
2.	Damages for Suit: All damages which he is compelled to pay in a suit related to the matter covered by the contract of indemnity.
3.	Cost of Suit: All costs he is compelled to pay in such a suit, provided: - He did not violate any orders of the indemnifier, and - He acted prudently, as he would have done if there was no indemnity, or - He acted with the authorization of the indemnifier.
4.	Sum paid for Compromising Suit All sums paid by the indemnity holder in compromise of such a suit, if: - He acted under the authority of the indemnifier, - He did not violate any orders of the indemnifier, and - He acted like a prudent person would in his own case.
5.	Sue for Specific Performance If the indemnity holder has incurred an absolute liability, he is entitled to ask the indemnifier to indemnify him (i.e., compensate him).



3. Guarantee

Content	
1.	Contract of Guarantee A contract of guarantee is a contract to perform the promise or discharge the liability of a third person if he defaults.
2.	Parties to the Contract of Guarantee: - Surety: The person who gives the guarantee. - Principal Debtor: The person whose liability or default is being guaranteed. - Creditor: The person to whom the guarantee is given.
3.	Essentials of a valid guarantee: - It is a tripartite agreement involving the principal debtor, creditor, and surety. - It requires the concurrence of all 3 parties. - Essentials of a valid contract apply: - The principal debtor need not be competent to contract. Even if the principal debtor is incompetent, the guarantee is valid. - But if the surety is incompetent, the guarantee is void. - The surety need not be benefited. Consideration received by the principal debtor is sufficient consideration for the surety. - There must be an existing liability or a promise enforceable by law. - The guarantee must not be obtained by misrepresentation or concealment of material facts. - A guarantee may be given either orally or in writing. Consideration for Guarantee: - Anything done or any promise made for the benefit of the principal debtor is a valid consideration for the surety. - This includes past consideration. - It is not necessary that the surety should receive the consideration. - Consideration between the principal debtor and creditor is valid consideration for the surety's guarantee.

4. Indemnity vs. Guarantee

Contract of Indemnity	Contract of Guarantee
In this contract there are 2 parties the indemnifier and the indemnified	In this contract 3 parties are involved principal debtor, surety and creditor
The primary liability is on the indemnifier	The principal liability is on the principal debtors. Secondary liability is on the surety.
The indemnifier is not acting at the request of the debtor.	The surety gives contract at the request of the principal debtor.



The possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.
The indemnifier cannot sue the third party in his own, unless there is an assignment.	The surety is entitled to proceed against the principal debtor when he is obliged to perform the guarantee
The contract is between the indemnifier and indemnified.	The contract is between the - principal debtor - creditor; - surety - creditor; - principal debtor - surety.

5. Liability of Surety

Content	
1.	The liability of the surety arises only when the principal debtor fails to pay the debt to the creditor. Section 128 states that the liability of the surety is co-extensive with that of the principal debtor, unless the contract provides otherwise.
2.	The surety's liability continues even if the principal debtor is not sued or left out from being sued, because surety's liability is independent under the contract of guarantee.
3.	If the principal debt is illegal or unenforceable, neither the principal debtor nor the surety will be liable.
4.	If the principal debtor is discharged from liability, the surety is also discharged.

6. Types of Guarantees

Content	
1.	Continuing Guarantee a. A guarantee which extends to a series of transactions is called continuing guarantee. b. In continuing guarantee, the liability of surety extends till the- - Performance or discharge of all the transactions entered into or - Revocation of guarantee.
2.	A specific guarantee is a contract of guarantee that: a. A guarantee given for single transaction or debt is called specific guarantee b. In specific guarantee, the liability of surety ends automatically once that transaction is completed or discharged.

7. Revocation of Continuing Guarantee

Content	
1.	Revocation by Surety The surety can revoke the continuing guarantee at any time for future transactions by giving notice to the creditor.



2. **Revocation on the Death of Surety**
Unless there is a contract to the contrary, the **death** of the surety **results** in the **revocation** of the continuing guarantee for future transactions

8. Discharge of Surety

Content	
1.	The liability of the surety is discharged under the following circumstances: a. By giving notice to the creditor. b. By the death of the surety. c. By any variance in the terms of the contract. d. By the release or discharge of the principal debtor. e. When the creditor makes a composition with, gives time to, or agrees not to sue the principal debtor. f. By any act or omission of the creditor which impairs the surety's eventual remedy.
2.	However, the liability of the surety is not discharged in the following cases: a. When the creditor makes a contract to give time to the principal debtor with a third person, and not with the principal debtor. b. Mere forbearance by the creditor to sue the principal debtor or enforce any remedy against him does not discharge the surety, unless otherwise agreed in the guarantee.

9. Rights of Surety

Content	
1.	Right against Principal Debtor a. Right of Subrogation: ▪ When the surety pays the guaranteed debt or performs the guaranteed duty, he gets all the rights the creditor had against the principal debtor. ▪ This is called the right of subrogation. The surety steps into the shoes of the creditor. b. Right to be Indemnified ▪ Every contract of guarantee includes an implied promise by the principal debtor to indemnify the surety. ▪ The surety can recover from the principal debtor any amount he has rightfully paid under the guarantee, but not any amount paid wrongfully.
2.	Right against Creditor a. Surety's Right to Benefit of Creditor's Securities: ▪ The surety is entitled to the benefit of every security the creditor had against the principal debtor at the time of entering into the contract of suretyship, even if the surety was unaware of such security. ▪ If the creditor loses or parts with such security without the surety's consent, the surety is discharged to the extent of the value of that security.



b. Right to Claim Set-off:

If the creditor sues the surety for payment, the surety has the right to claim **set-off** or **counterclaim**, if any, which the principal debtor had against the creditor.

10. Invalid Guarantee

Content	
1.	Guarantee Obtained by Misrepresentation If a guarantee is obtained by misrepresentation made by the creditor, or made with his knowledge and assent , about a material part of the transaction, it is invalid .
2.	Guarantee Obtained by Concealment If a guarantee is obtained by the creditor keeping silence about material circumstances , the guarantee is invalid .
3.	Failure of Co-surety to Join a Surety Contract If a contract of guarantee states that the creditor shall not act on it until another person joins as a co-surety, then the guarantee is not valid if that person does not join .

11. Rights of Surety in relation to Co-Surety

Content	
1.	Co-sureties Liable to Contribute Equally - Unless there is a contract to the contrary, co-sureties must contribute equally. - When two or more persons are co-sureties for the same debt or duty whether jointly or severally, under the same or different contracts, and whether they know about each other or not they are liable, as between themselves, to pay an equal share of the total unpaid debt.
2.	Liability of Co-sureties Bound in Different Sums If co-sureties are bound for different amounts , they must still contribute equally , but only up to the limits of their respective obligations .

12. Bailment

Content	
1.	Bailment means the delivery of goods by one person to another for a specific purpose , under a contract that when the purpose is completed , the goods will be returned or disposed of as per the instructions of the person who delivered them.
2.	Parties to the Bailment Bailor - The person who delivers the goods. Bailee - The person to whom the goods are delivered. If a person is already in possession of someone else's goods and agrees to hold them as a bailee , he becomes the bailee, and the owner becomes the bailor , even if there was no formal delivery .
3.	Essential Characteristics of Bailment There must be a contract (express or implied) for delivery of goods.



	b. Delivery must be of specific goods by one person to another. c. Delivery must be for a specific purpose. d. It must be agreed that the goods will be returned or disposed of as per the bailor's directions once the purpose is fulfilled.
4.	Types of Bailment a. Voluntary Bailment - Based on an express contract between the parties. b. Involuntary Bailment - Happens without a contract, <i>E.g. Finders of goods</i> Note: If there is no obligation to return the same goods, whether in original or altered form, it is not a contract of bailment.

13. Delivery

Content	
1.	Delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or any persons authorized to hold them on his behalf. Different modes of delivery: a. Physical delivery b. Symbolic delivery c. Constructive delivery

14. Duties of Bailor

Content	
1.	Bailor's Duty to Disclose Faults in Goods Bailed a. The bailor must inform the bailee about any faults in the goods that he knows of, which may interfere with the use of the goods or cause extraordinary risks. b. If the bailor does not inform and the bailee suffers a loss or damage because of such faults, the bailor is liable for that loss. c. If the goods are bailed for hire, the bailor is responsible for damage from such faults, whether or not he was aware of them.
2.	Bailor shall pay necessary expenses a. In gratuitous bailment, the bailor must pay all necessary expenses incurred by the bailee. b. In non-gratuitous bailment, the bailor needs to repay only the extraordinary expenses.
3.	Reimbursement of expenses If the bailee incurs any expenses while returning the goods, the bailor must reimburse them.
4.	Indemnify the loss for Premature termination a. In gratuitous bailment, the bailor may prematurely terminate the bailment. b. If the bailee suffers a loss due to this and the loss is more than the benefit, the bailor must indemnify the bailee.



5.	Receive back the Goods a. The bailor must receive back the goods when the bailee returns them. b. If the bailor refuses to take back the goods without a valid reason, he must pay the bailee for the ordinary expenses of keeping the goods safe.
6.	Bailor shall Indemnify the loss caused to Bailee due to defective title of goods bailed If the bailee suffers a loss because the bailor's defective title to the goods, the bailor must indemnify the bailee.

15. Rights of Bailor

Content	
1.	Right to claim compensation in case of unauthorized use of goods.
2.	Right to terminate the contract in case of unauthorized use of goods bailed.
3.	Right to claim damages arising out of mixing the goods of bailor with his own goods a. Goods are mixed at bailor's consent: bailor and bailee has proportionate interest in such mixture. b. Goods are mixed without bailors' consent but goods are separable: bailor has right to claim goods, bailee shall pay expenses for separation, bailee shall pay damages if any to the bailor. c. Goods are mixed without bailors' consent and goods are not separable: bailor has right to claim compensation from bailee for loss of goods.
4.	Right to demand return of goods.
5.	Right to demand accretion of goods: In absence of contract to contrary, bailor has right to claim the profit which may have accrued from goods bailed.

16. Duties of Bailee

Content	
1.	Bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed
2.	No unauthorized use of goods
3.	No right to mix the goods bailed
4.	Return of goods bailed after time expired or the purpose is accomplished. If several joint owners of goods bail them, then in the absence of any agreement to the contrary, the bailee may return the goods to any one of the joint owners or follow the directions of any one of them, even without the consent of the others
5.	Return accretions to the goods
6.	Not to set up an adverse title



17. Rights of Bailee

Content	
1.	Bailee Lien When the bailee, according to the purpose of the bailment, provides any service that involves labour or skill on the goods bailed, he has the right to retain those goods until he is paid for the service unless there is a contract to the contrary.
2.	Suit against Wrongdoers a. If a third party wrongfully takes away or harms the goods bailed, the bailee has the same right to sue as the owner would have if there was no bailment. b. Both the bailor and the bailee can file a suit against the third party for such loss or damage.
3.	Apportionment of Relief Whatever is received as relief or compensation in such a suit must be shared between the bailor and bailee based on their respective interests in the goods.

18. Rights of Finder of Lost Goods

Content	
1.	Right of Lien a. The finder of goods cannot sue the owner for any trouble or expenses he voluntarily incurred to preserve the goods or to find the owner. b. However, he has the right to retain the goods until he is paid for those expenses. c. If a reward was offered by the owner for returning the lost goods, the finder can sue for the reward and also keep the goods until he receives it.
2.	Right to sue for Reward: If the owner has publicly announced a reward for the return of lost goods, the finder is entitled to claim that reward.
3.	Right of Resale If the lost goods are commonly sold items, and the owner cannot be found with reasonable effort, or refuses to pay the finder's lawful charges, then the finder can sell the goods in the following cases: a. when the item is in danger of perishing or losing most of its value; or b. when the lawful charges of the finder are equal to two-thirds of the item's value.

19. Pledge

Content	
1.	Pledge Bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'
2.	Parties: a. Pawnor: The bailor in this case is called as pawnor. b. Pawnee: the bailee in this case is called as pawnee.



20. Rights of Pawnor & Pawnee

Content	
1.	Rights of Pawnor: - Redeem pledged goods - Right to receive increase or profits from the goods - Right to receive notice of sale
2.	Rights of Pawnee - The pawnee may retain pledged goods for the debt, interest, and necessary expenses for their preservation. - The pawnee has the right to recover extraordinary expenses from the pawnor that he has spent for the preservation of the goods pledged. - If Pawnor defaults on payment or performance at the agreed time: - The pawnee can file a suit against the pawnor for the debt or promise and keep the goods as collateral security, or - The pawnee may sell the goods pledged, but must give the pawnor reasonable notice before the sale. - If the sale amount is less than the amount due, the pawnor must pay the balance. - If the sale amount is more than the amount due, the pawnee must return the surplus to the pawnor. - In case of pledge by a person in possession under a voidable contract, the pawnee gets a good title to the goods if - He has acted in good faith, and - He had no notice of any defect in the pawnor's title.

21. Pledge in special cases

Content	
1.	Pledge by Mercantile Agent - A mercantile agent in possession with the owner's consent can make a valid pledge in the ordinary course of business, as if expressly authorized, if the pawnee acts in good faith without notice of lack of authority. - Mercantile Agent: An agent is one who, in the ordinary course of business, is authorized to sell, buy, consign, or raise money on goods.
2.	Pledge where Pawnor has Limited Interest When a person pledges goods in which he has only a limited interest, the pledge is valid only to the extent of that interest.

22. Agency

Content	
1.	Agent An agent is a person employed to do any act for another or to represent another in dealing with third persons.



	Principal The person for whom such act is done or who is so represented is called the principal.
2.	Essential Features of Agency Consideration is not required to create an agency. - The authority of an agent can be expressed or implied. - Capacity to employ an agent: A person can appoint an agent if: - He is of the age of majority as per the law applicable to him, - He is of sound mind, - Capacity to act as an agent: Any person can become an agent as between the principal and third party. Even a person who: - has not attained majority, or - is of unsound mind, can act as an agent between principal and third party, but such persons are not responsible to the principal.

23. Modes of Creation of Agency

Content	
1.	Agency by Express Agreement - Agency may be express or implied. - Authority is called express when it is given by spoken or written words.
2.	Agency by Implied Agreement - Authority is implied when it is inferred from the circumstances of the case. - Spoken or written words and the ordinary course of dealing may be treated as such circumstances.
3.	Agent's Authority in an Emergency In case of an emergency, the agent has the authority to do everything necessary to protect the principal from loss, as a person of ordinary prudence would do for himself in similar circumstances.

24. Sub Agent

Content	
1.	An agent cannot lawfully appoint another person to do acts which he has expressly or impliedly agreed to do personally, unless: ✓ It is the ordinary custom of trade to appoint a sub-agent, or ✓ The nature of the agency requires appointment of a sub-agent.
2.	Sub-Agent A sub-agent is a person employed by and working under the control of the original agent in the business of the agency.
3.	If a sub-agent is properly appointed: ✓ The principal is represented by the sub-agent in relation to third persons, and ✓ The principal is bound by and responsible for the sub-agent's acts, as if he was originally appointed by the principal.



4.	Liability in case of proper appointment The agent is responsible to the principal for the acts of the sub-agent. The sub-agent is responsible to the agent, but not to the principal, except in cases of fraud or wilful wrong.
5.	If an agent appoints a sub-agent without authority: ✓ The agent himself becomes like a principal to that person, ✓ The agent is responsible for his acts to both the principal and third persons, ✓ The principal is not responsible for the acts of such a person, and that person is not responsible to the principal.
6.	Substituted Agent a. Where an agent has express or implied authority to name another person to act for the principal, and does so: ▪ That person is not a sub-agent, ▪ But an agent of the principal for the part of business entrusted to him. b. When an agent is authorized to appoint another person to act for the principal, the agent must use the same level of care and discretion as a man of ordinary prudence would use in his own matters. c. If the agent does so, he is not responsible to the principal for any acts or negligence of the person he appoints.

25. Agency by Ratification

Content	
1.	Ratification means confirming the acts already done, without authority .
2.	Right of person as to acts done without authority a. When someone does an act on behalf of another person without their authority, that person may choose to either ratify or disown the act. b. If he ratifies it, the act will have the same effect as if it had been done with authority.
3.	Mode of Ratification: Ratification can be: ✓ Expressed, or ✓ Implied from the conduct of the person on whose behalf the act was done.
4.	Knowledge of Facts is Essential A valid ratification cannot be made if the person ratifying does not have full knowledge of the material facts.
5.	Whole Transaction Must Be Ratified If a person ratifies an unauthorized act, he is deemed to have ratified the entire transaction of which that act was a part.
6.	Ratification Cannot Harm a Third Person If an unauthorized act, if ratified, would cause damage to a third person, or terminate any right or interest of a third person, such ratification is not valid and cannot take effect.



26. Revocation of Agency

Content	
1.	Termination of Agency: An agency is terminated in the following cases: - When the principal revokes the agent's authority. - When the agent renounces the agency business. - When the business of the agency is completed. - When either the principal or the agent dies or becomes of unsound mind. - When the principal is adjudicated insolvent under any law in force for insolvent debtors.
2.	Agency Coupled with Interest When the agent has an interest in the property that is the subject matter of the agency, the agency cannot be terminated to the prejudice of such interest, unless there is an express contract allowing termination.
3.	When Revocation shall be made The principal can revoke the authority given to the agent at any time before the authority has been exercised in a way that binds the principal.
4.	Compensation for Revocation If there is an express or implied contract to continue the agency for a certain period, then revocation by the principal or renunciation by the agent, without sufficient cause, requires compensation to be paid to the other party.
5.	Notice of Revocation The principal or agent must give reasonable notice before revoking or renouncing the agency. If not, they must make good the damage caused to the other party.
6.	Express or Implied Revocation by the principal or renunciation by the agent can be either express, or implied from their conduct.
7.	Effective Time of Termination Termination of an agent's authority takes effect: For the agent - only after it becomes known to him. For third persons - only after it becomes known to them.
8.	Agent's Duty on Termination of Agency If the agency ends because the principal dies or becomes of unsound mind, the agent must take all reasonable steps to protect and preserve the interests entrusted to him on behalf of the principal's representatives.
9.	Termination of Sub-Agent's Authority When the authority of the agent ends, the authority of all sub-agents appointed by him also ends.



27. Duties of an Agent

Content	
1.	Duty to act according to directions or customs of trade a. The agent must - Follow the instructions of the principal, or - In the absence of instructions, follow the customs of the trade at the place where he conducts the business. b. If he does otherwise: - He must compensate the principal for any loss, and Account to the principal for any profit gained.
2.	Requirements as to skill and diligence a. The agent must: - Work with the skill generally expected in that type of business, unless the principal already knows the agent lacks skill. - Act with reasonable diligence and use whatever skill he has. b. The agent must compensate the principal for: - Any direct loss due to his neglect, lack of skill, or misconduct, - But not for indirect or remote losses caused by such actions.
3.	Duty to render accounts The agent must give proper accounts to the principal whenever demanded.
4.	Duty to communicate with principal In difficult situations, the agent must: - Use reasonable diligence to communicate with the principal, and - Try to get instructions from him.
5.	Not to deal on his own account a. If an agent, without consent, secretly deals on his own account in the agency's business, the principal may repudiate the transaction if key facts were dishonestly concealed or the deal harmed the principal. b. If the agent deals for his own benefit without the principal's knowledge, the principal has the right to claim any benefit the agent got from such transaction.
6.	Agent's duty to pay sums received for principal The agent must pay to the principal all sums received on his behalf, after deducting lawful charges.
7.	Protect interests of the principal If the agency ends due to death or unsoundness of mind of the principal, the agent must take reasonable steps to protect the interests entrusted to him.

28. Rights of an Agent

Content	
1.	Right of Retention An agent may retain from the amounts received on behalf of the principal:



	a. Any money due to him for advances made, b. Expenses properly incurred in conducting the business, and c. His remuneration as an agent.
2.	Right to remuneration Unless there is a contract to the contrary, a. The agent is not entitled to payment until the act is fully completed. b. However, the agent may detain money received from the sale of goods, even if the entire stock is not yet sold, or the sale is not completely finished.
3.	Right of lien Unless there is a contract to the contrary, the agent has the right to: ▪ Retain the goods, papers, or property (movable or immovable) of the principal, ▪ Until he is paid for his commission, disbursements, and services related to them.
4.	Right of indemnification for lawful acts The principal must indemnify the agent for all lawful acts done under the authority given to him.
5.	Right of Indemnification against acts done in good faith If the agent acts in good faith while doing something he was employed to do, and it harms a third person's rights, the principal must indemnify the agent for the consequences of that act.
6.	Right of compensation The principal must compensate the agent for any injury caused to him due to the principal's neglect or want of skill.

29. Other Miscellaneous Provisions

Content	
1.	Misconduct of agent If an agent is guilty of misconduct in the business of the agency, he is not entitled to remuneration for the part of the business in which he has misconducted himself.
2.	Non-liability of principal to agent If a person is employed to do a criminal act, the principal is not liable to the agent even if there was an express or implied promise to indemnify him for the consequences of that act.
3.	Agency with third persons Contracts made through an agent, and acts done by an agent, can be enforced and will have the same legal consequences as if the principal himself had made the contract or done the act.
4.	Notice to agent Any notice given to agent, in the course of the business for the principal, will be treated as if given to or obtained by the principal, when dealing with third parties.
5.	Enforcement of contract by agent on behalf of principal a. Unless there is a contract to the contrary, an agent:



	▪ Cannot personally enforce contracts made on behalf of the principal, and ▪ is not personally bound by them. b. However, a contract is presumed to bind the agent personally in the following cases: ▪ When the contract is for sale or purchase for a merchant residing abroad, ▪ When the agent does not disclose the principal's name, ▪ When the principal, though disclosed, cannot be sued.
6.	Right of parties to a contract made by agent a. If an agent makes a contract with someone who does not know or suspect that he is an agent: ▪ The principal may demand performance of the contract, ▪ But the other party has the same rights against the principal as he would have had against the agent if the agent were the principal. b. If the principal is disclosed before the contract is completed, the other party may refuse to fulfil the contract if he can prove: ▪ That he would not have entered into the contract had he known the true identity of the principal, or ▪ Had he known that the agent was not the actual principal. c. If a person makes a contract with another: ▪ Not knowing, and having no reason to suspect, that the other is an agent, ▪ Then, if the principal later requires performance, he can do so only subject to the rights and obligations that already exist between the agent and the third party.
7.	Liability of a pretended agent If a person falsely represents himself as an authorized agent of another, and causes a third party to deal with him believing that, but the alleged principal does not ratify the act then the pretended agent is liable to compensate for any loss or damage caused.
8.	Agent cannot enforce contract made in agent's character If someone enters into a contract as an agent, but in reality, he was acting on his own behalf, he cannot demand performance of the contract.
9.	Acts done without authority but with principal's inducement When an agent does something without authority, but the principal's words or conduct make a third person believe the act was authorized, then the principal is bound by that act or obligation.
10.	Effect of misrepresentation or fraud by agent If an agent commits fraud or misrepresentation during the course of business for the principal: a. It has the same effect as if the principal himself committed it. b. But if the act is outside the agent's authority, it does not bind the principal.



3. SALE OF GOODS ACT, 1930

3.1 ESSENTIAL CONDITIONS OF CONTRACT OF SALE

1. Essential elements of Contract of Sale

Content	
1.	A contract is called sale when the property in goods is transferred from seller to buyer.
2.	a. There must be at least two parties i.e., Seller and Buyer b. There must be an agreement which may be express or implied. c. The subject matter must be goods. d. The above goods must be transferred for a price. e. The agreement must be for transfer of property. f. The contract must fulfil the essential elements u/s sec 10 of Indian Contract Act

2. Definitions

Content	
1.	Seller: Seller means a person who sells or agrees to sell goods.
2.	Buyer: Buyer means a person who buys or agrees to buy goods.
3.	Goods: a. Goods means every kind of movable property except actionable claims and money b. It includes stock, shares, growing crops, grass and things attached to or forming part of the land if agreed to be severed before sale or under the contract of sale
4.	Price: Price means the monetary consideration for the sale of goods. a. If the consideration is only goods, it is called a barter, not a sale. b. Consideration can be partly in money and partly in goods.
5.	Transfer of property (ownership): Property means the general property in goods, not just special property . a. General property means ownership of the goods. b. Special property means possession of the goods. c. There must be a transfer or an agreement to transfer ownership. d. Ownership may transfer immediately (in a sale) or later (in an agreement to sell).

1. Contract of Sale and Agreement to sell

Content	
1.	A contract of sale is an agreement where the seller transfers or agrees to transfer the property in goods to the buyer for a price . Such a contract can also take place between two co-owners.
2.	A contract of sale can be either absolute or conditional .
3.	If the ownership of goods transfers immediately , the contract is called a sale . If the transfer is to happen in future or conditional, it is called an agreement to sell .
4.	An agreement to sell becomes a sale when the time passes or the condition is fulfilled.



2. Difference between Contract of Sale and Agreement to Sell

Basis	Contract of sale	Agreement to sell
Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
Type of contract	It is an executed contract.	It is an executory contract.
Type of goods	Sales takes place only for existing and specific goods .	Future and contingent goods .
Risk of loss	If the goods are destroyed , the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed , the loss falls on the seller despite the goods are in the possession of the buyer.
Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer.	The seller can sue for damages only in case of breach by the buyer.
General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller.	It gives a right to the buyer against the seller to sue for damages .
Insolvency of the buyer	If the seller has no lien over the goods, he must return them to the Official Receiver or Assignee. He is then entitled to a dividend , if declared, but only at a reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of the seller	The buyer , becoming the owner, is entitled to recover the same from the Official receiver or assignee.	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

3. Types of Goods

Existing Goods	
1.	Existing Goods: These are goods that are either owned or possessed by the seller at the time of the contract of sale. Existing goods can be: Specific Goods: Goods identified and agreed upon at the time of contract of sale. Ascertained Goods: Goods that are identified and set aside from a larger lot of unascertained goods for a specific contract. Unascertained Goods: Goods that are not identified or agreed upon at the time of the contract of sale.
2.	Future Goods: Goods to be manufactured or produced or acquired by the seller after the contract of sale is made.
3.	Contingent Goods: Goods whose acquisition by the seller depends upon a contingency which may or may not happen.



4. Formalities of a Contract of Sale

Content	
1.	There is no any particular form to create Contract of Sale.
2.	The contract of sale may be in form of; - In writing, - By words of mouth, - Partly in writing and partly by words of mouth, - May be implied by the conduct of parties.
3.	However, if any particular form of contract is prescribed in any other Law, then contract must be entered in that particular form .
4.	The contract may be done in any of the following Modes: - Immediate delivery and immediate payment of price - Immediate delivery and payment in future - Immediate payment of price and delivery in future - Delivery at future and payment also at future - Delivery in instalment and payment also in instalment

5. Destruction of Goods

Content	
1.	Contract of Sale: If goods are already destroyed at the time of the contract, the contract becomes void . This is due to impossibility of performance and bilateral mistake.
2.	Agreement to Sell If perishable goods are destroyed after the agreement to sell but before sale, the contract becomes void .
3.	Note: - If goods are destroyed due to one party's fault, the other can claim damages. - For unascertained goods, the contract is not void even if entire stock is destroyed.

6. Ascertainment of Price

Content	
1.	Price means the money consideration for a sale of goods. The three modes of ascertaining the price are: - By parties - By manner provided in the contract - As per customs and usages of trade
2.	Note: - If the parties cannot apply the method given in the contract (e.g., by valuation), then a reasonable price shall be paid (if none of the above apply). - If a third party fails to fix the price, the contract becomes void.



3.2. TRANSFER OF OWNERSHIP

1. Rules for Ascertaining passing of Property

Content	
1.	Goods must be Ascertained: In a sale of unascertained goods, the property in the goods does not pass to the buyer until the goods are ascertained.
2.	Intention of the parties for such transfer: a. In a sale of specific/ascertained goods, property passes when parties intend it to. b. This intention is judged by contract terms, conduct, and circumstances of the case.
3.	Rules for transfer of property (when intention is not clear): a. Specific goods in a deliverable state: - Property in the goods passes to the buyer when the contract is made. Payment or delivery (or both) is to be made later. - Goods are said to be in a Deliverable state when the buyer is bound to take delivery under the contract. b. Specific goods to be put into a deliverable state: If the seller must do something to the specific goods to make them deliverable, then the property does not pass until such thing is done and the buyer is informed. c. Specific goods in a deliverable state, Price to be ascertained: If the seller has to weigh, measure, test, or do something else to ascertain the price, then the property does not pass until that act is done and the buyer is informed.
4.	Unascertained Goods Property passes when goods of agreed description are unconditionally appropriated to the contract by either party with other's assent (express/implied). Note: If the seller delivers the goods to a carrier for transmission without reserving the right of disposal, it is deemed as unconditional appropriation of goods.
5.	Goods on approval or 'on sale or return' a. Goods may be sent to customers with an option to approve or return them within a specified time. This is called "approval" or "sale or return". b. Property remains with the seller until approval. c. The property passes to the buyer when: - He approves/accepts the goods, - He does any act adopting the transaction, or - He retains the goods beyond the fixed/reasonable time without rejection

2. Reservation of Right of Disposal

Content	
1.	In a sale of specific or appropriated goods, the seller may reserve the right of disposal until certain conditions are met.



- a. Even if **goods are delivered** to the buyer, a carrier, or bailee, **property does not pass** until those conditions are fulfilled.
- b. If goods are shipped with a **bill of lading** or **railway receipt** made deliverable to the seller's order, it is **presumed** that the seller has **reserved** the right of disposal.
- c. If the seller sends a **bill of exchange** along with the **transport document** for payment/acceptance:
 - If the buyer **dishonours** the bill, he must **return** the documents.
 - If he **wrongfully retains** them, property does **not pass**.

3. Risk passes with Property

Content	
1.	Risk prima facie passes with Property: a. Unless otherwise agreed, the goods remain at the seller's risk until the property passes to the buyer. b. Once property transfers, the risk passes to the buyer, even if delivery is pending. c. Parties may include different terms in the contract regarding the time of passing of risk, regardless of what is stated in the Act.
2.	Exceptions a. The parties may agree that even though property does not pass, the risk will pass at a particular point of time fixed in the agreement. b. If delivery is delayed due to the fault of either party (buyer or seller), then that party bears the risk. c. If there is a custom in the trade that risk does not pass with property, then risk will pass according to that custom. d. Parties may separate Risk and property by agreement.

4. Nemo Dat Quod Non Habet

Content	
1.	If goods are sold without ownership or authority, the buyer does not get a better title than the seller.
2.	Buyer gets good title only if seller is owner or authorized .
3.	If seller's title is defective, buyer's title is also defective, even if buyer acted in good faith and paid full price .
4.	This rule protects the true owner of the goods.
5.	However, to support trade and commerce , the law provides certain safeguards to protect buyers who buy goods in good faith and for value.

5. Transfer of title by Non-Owners

Exceptions to the Rule Nemo dat quod non habet	
1.	Sale by a mercantile agent Sale by mercantile agent is valid, and the buyer gets a good title, if:



	✓ Agent has possession of goods or documents of title with the owner's consent. ✓ The agent sells the goods in the ordinary course of business. ✓ Buyer acts in good faith. ✓ The buyer has no notice that the seller has no authority to sell.
2.	Transfer of title by Estoppel If owner's conduct leads buyer to believe seller has authority, the owner is estopped from denying it later.
3.	Sale by a joint owner Sale made by joint owner is valid, and the buyer gets good title, if: a. Seller is a joint owner and has sole possession with co-owner's permission. b. The buyer acts in good faith. c. The buyer has no notice that the seller has no authority to sell.
4.	Sale by person in possession under voidable contract: If seller holds goods under a voidable but not rescinded contract, buyer gets good title if: a. The buyer acts in good faith. b. The buyer has no notice that the seller has no authority to sell.
5.	Sale by seller in possession after sale: If seller resells after first sale while still in possession, resale is valid if: a. The buyer acts in good faith. b. The buyer has no notice that the seller has no authority to sell.
6.	Sale by buyer in possession after sale If a buyer obtains possession of the goods with the seller's consent, and then sells the goods to another person: a. The second buyer gets good title, if he acts in good faith and has no notice of the prior agreement. b. This exception does not apply if buyer was not in possession at the time of the resale.
7.	Sale by Unpaid Seller: An unpaid seller exercising lien or stoppage in transit can resell. New buyer gets good title even if resale is not justified.
8.	Exceptions under other Acts: Certain other laws allow non-owners to pass better title than they possess. Examples: a. Finder of goods. b. Pawnee can sell pawned goods if conditions are met. c. Court officers, Company liquidators, Receivers of insolvent estates, Custom officers for unpaid dues. d. Holder in Due Course of a negotiable instrument



3.3. Conditions and Warranties

1. Condition and Warranty

Content	
1.	A stipulation in a contract of sale related to the goods may be either a condition or a warranty .
2.	Condition - A condition is a stipulation essential to the main purpose of the contract. - If it is breached, the buyer has the right to treat the contract as repudiated. - It is of fundamental importance, and its breach allows the buyer to reject the goods.
3.	Warranty - A warranty is a stipulation collateral to the main purpose of the contract. - If it is breached, the buyer can claim damages, but cannot reject the goods or treat the contract as repudiated.
4.	- Whether a stipulation is a condition or a warranty depends on how the contract is constructed in each case. - A stipulation may still be a condition even if it is referred to as a warranty in the contract.

2. Condition Vs. Warranty

S. No.	Condition	Warranty
1.	A condition is a stipulation which is essential to the main purpose of the contract.	A Warranty is a stipulation which is collateral to the main purpose of the contract.
2.	The aggrieved party can repudiate the contract of sale in case there is a breach of a condition.	The aggrieved party can claim damages only in case of breach of a warranty.
3.	A breach of condition may be treated as a breach of warranty when the aggrieved party is satisfied with claiming damages only.	A breach of a warranty , cannot be treated as a breach of a condition .

3. When condition to be treated as warranty

Content	
1.	If a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition or choose to treat its breach as a breach of warranty , not as a reason to repudiate the contract.
2.	If the contract is not severable and the buyer has accepted the goods (or part of them), then a breach of condition can only be treated as a breach of warranty unless the contract expressly or impliedly allows rejection .
3.	This does not affect cases where a condition or warranty is excused by law due to impossibility or other valid reasons.



4. Remedies Available to the Buyer for Breach of Conditions

Content	
1.	The affected party may reject the goods and claim a refund of the price.
2.	The affected party may treat the breach of condition as a breach of warranty and claim damages or compensation. If the affected party treats the breach of condition as a breach of warranty, he cannot repudiate the contract, but can claim damages only.
3.	No remedy is available if the fulfilment of the condition is excused by law due to impossibility or otherwise

5. Consequences of Breach of Warranty

Content	
1.	- Breach of warranty gives the right to claim damages, not rejection or repudiation. - The buyer may sue for damages. - No remedy is available if the fulfilment of the warranty becomes impossible by law.

6. Implied Conditions

Content	
1.	Condition as to Title Unless the contract shows a different intention, there is an implied condition that: - In the case of a sale, the seller has a right to sell the goods. - In the case of an agreement to sell, the seller will have the right to sell the goods at the time property passes.
2.	Sale by Description - When goods are sold by description, there is an implied condition that the goods shall match the description. - If the sale is by sample and description, goods must match sample and description. - Goods are sold by description when the contract contains a description, and the buyer relies on that description.
3.	Condition as to Quality or Fitness - The buyer must check the quality of the goods and ensure they suit his purpose. - If later the goods do not meet the buyer's purpose, the seller is not liable. - This follows the doctrine of Caveat Emptor, meaning 'let the buyer beware'.
4.	Sale by Sample - A contract is a sale by sample when there is a term in the contract stating so. - In such a case, there is an implied condition: - Bulk shall correspond with the sample in quality. - Buyer shall have a reasonable opportunity to compare the bulk with the sample. - Goods must be free from latent (hidden) defects making them un-merchantable. - For eatables/provisions: Implied condition that goods are merchantable and wholesome.



7. Implied Warranties

Content	
1.	Warranty of Quiet Possession: If the buyer is disturbed in enjoying the quiet possession of the goods due to the seller's defective title , the buyer can claim damages from the seller.
2.	Warranty of Freedom from Encumbrances: Goods must be free from third-party claims or charges unless disclosed; otherwise, the buyer may claim damages.
3.	Warranty as to Quality or Fitness by Usage of Trade: An implied warranty as to quality or fitness may arise from the usage of trade .
4.	Warranty to Disclose Dangerous Nature of Goods: If the seller knows that the goods are inherently dangerous , and the buyer is unaware , the seller must warn the buyer . If seller fails to do so , he will be liable for damages .

8. Doctrine of Caveat Emptor

Content	
1.	a. The term Caveat Emptor is a Latin phrase meaning let the buyer beware . The buyer must ensure the goods suit his purpose and are of acceptable quality. b. If the buyer chooses goods for a particular purpose , he must ensure their suitability . c. Unless otherwise stated by law, there is no implied warranty or condition as to the quality or fitness of goods in a contract of sale. d. The Seller isn't liable if goods do not meet the buyer's purpose . If the buyer makes a wrong choice , he cannot blame the seller.
2.	Exceptions: - Buyer relying on seller's skill or judgment: ✓ If the buyer discloses the purpose and relies on the seller (who deals in such goods), there's an implied condition of fitness. ✓ No such condition if the buyer purchases under patent/trade name. - Sale by description from a dealer: ✓ If the goods are bought by description from a seller (who deals in such goods), there is an implied condition that the goods shall be of merchantable quality. ✓ No such condition applies for defects detectable on reasonable examination. ✓ To apply this implied condition: ▪ The seller must be a dealer in such goods; ▪ The buyer must not have had the opportunity to examine the goods, or the goods must have latent defects not visible on reasonable inspection. - Usage of trade: Implied conditions/warranties may arise from trade practices or nature of goods. - Express terms vs implied terms: An express warranty or condition does not cancel an implied warranty or condition under the Act unless they are inconsistent with each other.



3.4. PERFORMANCE OF THE CONTRACT OF SALE

1. Duties of Seller and Buyer

Content	
1.	It is the duty of the seller to deliver the goods, and the duty of the buyer to accept and pay for them, as per the terms of the contract.
2.	The performance of the contract involves the following: ▪ Payment and delivery are concurrent conditions ▪ Delivery ▪ Buyer's right of examining the goods ▪ Acceptance of goods ▪ Buyer's liability

2. Payment and Delivery

Content	
1.	a. Delivery of goods and payment of price are concurrent conditions , unless agreed otherwise. b. Seller must be ready and willing to deliver goods to the buyer against payment. c. Buyer must be ready and willing to pay the price against delivery of goods.

3. Delivery of Goods

Content	
1.	Mode of Delivery: Delivery of goods may be made: - by doing anything which the parties agree upon; or - by placing goods in possession of the buyer or their authorized person.
2.	Application for Delivery Unless otherwise agreed, the seller is not bound to deliver the goods until the buyer applies for delivery.
3.	Part Delivery - If part delivery is in the course of whole delivery, it passes property in the whole. - If made to separate it from the rest, it doesn't count as delivery of the whole.

Rules as to Delivery

1.	a. Existing Goods: Delivery at the place where they are at the time of sale . b. Agreement to sell: Delivery where goods are located at the time of the agreement . c. Future goods: Delivery at the place where they are manufactured or produced .
2.	If the seller is bound to send the goods, and no time is fixed, he must send them within a reasonable time .
3.	If the goods are in the possession of a third person at the time of sale, there is no delivery unless the third person acknowledges to the buyer that he holds the goods on the buyer's behalf.



4.	This does not affect the issue or transfer of any document of title to the goods.
5.	Demand or tender of delivery is ineffective unless made at a reasonable hour .
6.	Unless otherwise agreed, the seller bears the expenses of putting the goods into a deliverable state .

Delivery of Wrong Quantity

1.	Short Delivery: If the seller delivers less than the contracted quantity , the buyer may reject them. If the buyer accepts the goods, he must pay at the contract rate .
2.	Excess Delivery: If the seller delivers more than the contracted quantity , the buyer may: ✓ Accept only the quantity contracted and reject the rest, or ✓ Reject the whole. If the buyer accepts all the goods, he must pay at the contract rate .
3.	Mixed Goods: If the seller delivers goods mixed with goods of a different description , the buyer may: ✓ Accept the goods that match the contract and reject the rest, or ✓ Reject the whole.
4.	Provisions are subject to any usage of trade , special agreement , or course of dealing.

Instalment Deliveries

1.	The buyer is not bound to accept delivery of goods by instalments , unless otherwise agreed between the parties.
2.	In a contract for delivery by instalments , each to be separately paid for: ▪ If the seller fails to deliver or makes defective delivery of any instalments, or ▪ If the buyer refuses or neglects to take delivery or pay for any instalments, Then, depending on the terms of the contract and circumstances, it must be determined whether: ▪ It is a repudiation of the whole contract, or ▪ A severable breach giving a right to compensation only.

Delivery to Carrier or Wharfinger

1.	If the seller is authorized to send goods through a carrier or to a wharfinger for safe custody , then such delivery is deemed delivery to the buyer .
2.	a. The seller must make a reasonable contract with the carrier/wharfinger on behalf of the buyer, based on the nature of the goods and circumstances . b. If the seller fails to do so, and the goods are lost or damaged , the buyer may: ▪ Refuse to treat it as delivery, or ▪ Hold the seller liable for damages.



3. If goods are sent involving **sea transit**, and it is usual to **insure**, the seller must notify the buyer to enable him to insure the goods.
If the **seller fails to give notice**, the goods are considered to be at the **seller's risk** during sea transit.

Delivery of Goods at a Distant Place

1. If the **seller agrees** to deliver goods at his **own risk** to a **place other than** where they were **sold**, the **buyer** shall still **bear the risk** of deterioration during the normal course of transit, unless otherwise agreed.

4. Buyer's right of examining the goods

Content

1. The **buyer** has the **right to examine** the goods if he has **not previously examined** them before acceptance.
2. The **purpose** of this examination is to check whether the goods are in **conformity** with the contract.
3. The seller is bound to give the buyer an **opportunity to examine the goods** for this purpose.

5. Acceptance

Content

1. The buyer is **deemed to have accepted** the goods when:
 - a. He **intimates** to the seller that he has accepted them; or
 - b. The goods are delivered, and the buyer does any act **inconsistent** with the **ownership** of the seller; or
 - c. He **retains** the goods for a **reasonable time** without informing the seller that he rejects them.
2. **Return of Rejected Goods**
If goods are **delivered** and the **buyer refuses** to accept them, he is **not bound** to return them to the seller. It is enough if he **informs the seller** that he **refuses** to accept them
3. **Liability of the Buyer**
 - a. If the **seller** is **ready** to deliver the goods and **requests** the **buyer to take delivery**, but the buyer does not do so within a reasonable time, he is liable to the seller for:
 - Any **loss** caused by his **neglect** or **refusal** to take delivery; and
 - A **reasonable charge** for the **care** and **custody** of the goods.
 - b. This section does not affect the seller's rights if the **buyer's neglect or refusal** to take delivery amounts to **repudiation** of the contract.



3.5. RIGHTS OF UNPAID SELLER

1. Duties of Seller and Buyer

Content	
1.	Unpaid Seller A seller is deemed to be an unpaid seller when: - The whole price is not paid or tendered; or - A negotiable instrument received as conditional payment is dishonoured or the condition remains unfulfilled
2.	Definition of Seller The term 'seller' includes any person who is in the position of a seller, such as: - An agent of the seller to whom the bill of lading is endorsed, or - A consignor or agent who has paid, or is directly responsible for the price.
3.	Rights of an Unpaid Seller against the Goods An unpaid seller has the following rights against the goods: ✓ A lien or right of retention ✓ The right of stoppage in transit ✓ The right of resale ✓ The right to withhold delivery

2. Right of Lien

Content	
1.	- An unpaid seller, who is in possession of the goods, may exercise his lien that is, retain the goods and refuse delivery to the buyer until payment or tender of the price, in the following cases: ▪ The goods are sold without any credit terms; or ▪ The goods are sold on credit, but the credit period has expired; or ▪ The buyer becomes insolvent. - The lien depends on physical possession. It is a possessory lien, meaning it can only be exercised while the seller has possession of the goods. - It can be exercised only for non-payment of the price, and not for any other charges.
2.	Loss of Lien The seller's lien is lost in the following cases: - When the seller delivers the goods to a carrier or bailee for transmission to the buyer, without reserving the right of disposal; - When the buyer or his agent lawfully obtains possession of the goods; - When the seller waives his lien.



3. Right to stoppage in transit

Content	
1.	a. The right of stoppage in transit allows an unpaid seller to stop the goods while they are in transit, resume possession, and retain them until payment or tender of the price. b. This right is available when: ▪ The buyer becomes insolvent, and ▪ The goods are in transit. c. A buyer is considered insolvent if he: ▪ Stops paying debts in the ordinary course of business, or ▪ Cannot pay debts as they become due.
2.	Goods in Transit Goods are considered in transit from the time they are delivered to a carrier or bailee (wharfinger or warehouse keeper) for transmission to the buyer, and until the buyer takes delivery.
3.	End of Transit a. Transit ends in the following situations: ▪ The buyer obtains delivery before the goods reach their destination; ▪ After arrival, carrier acknowledges to the buyer that he holds the goods on the buyer's behalf, even if the buyer gives further instructions; ▪ The carrier wrongfully refuses to deliver the goods to the buyer. b. If the buyer rejects the goods and the carrier or bailee still holds them, transit is deemed to continue, even if the seller refuses to take them back.
4.	How to Exercise the Right a. The unpaid seller can stop goods in transit by: ▪ Taking actual possession, or ▪ Giving notice of his claim to the carrier or person in control of the goods. b. Once notice is given, the carrier must redeliver the goods to the seller, and the seller must bear the cost of redelivery.
5.	Effect of Sale or Transfer by Buyer a. The seller's right of lien or stoppage in transit is not affected by any sale made by the buyer, unless the seller agreed to it. b. However, if the bill of lading or other document of title is transferred by the buyer to a bona fide purchaser for value, it is valid against the seller's right.

4. Right of Re-sale

Content	
1.	An unpaid seller may re-sell the goods in the following situations: a. When the goods are perishable; b. When the right of resale is expressly reserved in the contract;



	c. While exercising lien or stoppage in transit, if the seller gives notice of intention to resell and the buyer fails to pay or tender the price within a reasonable time.
2.	a. On resale: ▪ If there is a loss, the seller can recover the loss from the buyer; ▪ If there is a profit, the seller can retain the profit. b. However, if the seller does not give notice of resale, he loses the right to recover the loss and must pay any profit to the buyer.

5. Right to withhold Delivery

Content	
1.	If property in the goods has passed to the buyer, the unpaid seller's rights are as described earlier (i.e., lien, stoppage in transit, resale).
2.	If the property has not passed, the unpaid seller has the right to withhold delivery, and this right is similar to and co-extensive with the rights of lien and stoppage in transit.

6. Rights of an unpaid seller against the buyer

Content	
1.	Suit for Price: If the property in goods has passed to the buyer, and the buyer wrongfully refuses or neglects to pay, the seller can sue for the price.
2.	Suit for Damages for Non-acceptance: If the buyer wrongfully refuses or neglects to accept and pay for the goods, the seller can sue for damages.
3.	Suit for Repudiation: If the buyer repudiates the contract before the delivery date, the seller may either: - Wait until the delivery date, or - Treat the contract as cancelled and sue for damages.
4.	Suit for Interest: - If there is a specific agreement for interest on the price, the seller can claim interest from the due date. - If there is no specific agreement, interest is payable from the date notified by the seller to the buyer.

7. Buyer's Remedies against Seller for Breach of Contract

Content	
1.	Suit for Damages for Non-Delivery: If the seller wrongfully refuses or neglects to deliver the goods, the buyer may sue for damages. This is in addition to the right to recover the price already paid.
2.	Suit for Price: If the buyer has paid the price and the goods are not delivered, he can recover the amount paid.



3.	Suit for Specific Performance: a. If the goods are specific or ascertained, the buyer may sue for specific performance and compel delivery of the same goods. b. The court may allow specific performance where: ▪ The goods are of special value (e.g., rare painting, unique jewellery), and ▪ Damages are not an adequate remedy.
4.	Suit for Breach of Warranty: If there is a breach of warranty, or a condition is treated as a warranty, the buyer cannot reject the goods, but he may: ▪ Set up the breach to extinguish or reduce the price payable, or ▪ Sue the seller for damages.
5.	Repudiation Before Due Date: If either party repudiates the contract before the delivery date, the other party may treat the contract as: ▪ subsisting and wait till the due date, or ▪ rescinded and sue for damages.
6.	Suit for Interest: a. The buyer may recover interest or special damages as per law. b. If the price was paid and the seller breached the contract, the buyer may recover the money paid. c. The court may award interest at a suitable rate from the date of payment, unless agreed otherwise.



3.6. AUCTION SALES

1. Auction Sale

Content	
1.	In the case of a sale by auction: - When goods are put up in lots, each lot is treated as a separate contract of sale. - The sale is complete when the auctioneer announces it by the fall of the hammer or in any other customary manner. Until then, any bidder can withdraw their bid. - A right to bid may be expressly reserved by or on behalf of the seller. If so reserved, the seller or one person on his behalf may bid at the auction. - If the sale is not notified as being subject to a right to bid, it is unlawful for: - The seller to bid himself, or - To employ any person to bid on his behalf, or - For the auctioneer to knowingly accept such bids. Any such sale may be treated as fraudulent by the buyer. - The sale may be subject to a reserved or minimum price. - If the seller uses fake bidding to raise the price, the sale is voidable at the option of the buyer.
2.	This provision does not deal with passing of property, but only with the completion of the contract of sale, which happens at the fall of the hammer or equivalent customary announcement. At this point, a contract of sale is formed, and the parties become promisor and promisee in an executory contract.

2. Tax Effect

Content	
1.	If any tax is imposed, increased, decreased, or remitted on goods after a contract of sale or purchase has been made, and: - The contract does not mention who will bear the tax, and - The goods were either not taxable or were tax-paid at the time of the contract, then: - In case of imposition or increase of tax: If the tax or increased tax (or part of it) becomes payable, the seller may add the tax amount to the contract price, and: - Seller is entitled to be paid, and - Seller can sue for and recover that additional amount. - In case of decrease or remission of tax: If the tax is reduced or remitted, the buyer may deduct the equivalent amount from the contract price, and: - Buyer is not liable to pay that portion, and - Buyer cannot be sued in respect of that deduction.



4. NEGOTIABLE INSTRUMENTS ACT 1881

4.1 DEFINITION AND FEATURES OF NEGOTIABLE INSTRUMENT

1. Definition and Features

Content	
1.	Definition a. Negotiable Instrument means a promissory note, bill of exchange, or cheque that is payable either to order or to bearer. b. Note: - Negotiability is different from transferability. - In the case of negotiable instruments, the holder can get a better title simply through delivery or endorsement and delivery.
2.	Essential Features of a Negotiable Instrument: a. It must be in writing. b. It should be signed by the maker or drawer. c. There must be a promise or order to pay. d. The promise or order must be unconditional. e. It must call for payment in money and money only. f. It should call for payment of a certain sum. g. The property in the instrument may be passed in two ways: - by mere delivery; and - by indorsement and delivery. h. The consideration is also presumed to have been passed

2. Promissory Note

Promissory Note	
1.	Definition: A 'promissory note' is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.
2.	Note: Provisions relating to currency notes are regulated by other pieces of legislation, including the RBI Act, 1934 and the Banking Regulation Act, 1949.
3.	Essential Characteristics of a Promissory Note a. An oral promise to pay is not sufficient. b. There must be an express promise to pay. Mere acknowledgment of debt is insufficient. c. The promise to pay should be definite and unconditional. d. The sum should be a sum of money and should be certain e. The payment should be the order of a person who is certain, or to the bear of the instrument. f. A promissory note must be signed by the maker.



3. Bills of Exchange

Content	
1.	Bill of Exchange A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.
2.	Special Points: - A sum is considered 'certain' even if it includes future interest, is payable at a specified rate of exchange, or follows the usual course of exchange. It is also valid if the instrument states that, on default of any instalment, the remaining balance becomes due. - A person can be considered a 'certain person' even if they are misnamed or only described, as long as it is clear who the direction or payment is meant for. Bills of exchange include: - A banker's draft - A demand draft, even if drawn on another branch of the same bank - An order by a District Board Engineer to the Government Treasury for payment to a specific person

4. Cheque [Sec 6]

Content	
1.	Cheque A cheque is a bill of exchange that is drawn on a specified banker and not expressed to be payable otherwise than on demand. It includes: ✓ The electronic image of a truncated cheque ✓ A cheque in electronic form Note: ✓ Payable on demand means- It should be payable whenever the holder chooses to present it to the drawee ✓ The term "banker" includes anyone acting as a banker or a post office savings bank
2.	Cheque in Electronic Form means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature, as the case may be;
3.	Truncated Cheque means a cheque which is truncated during a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing Note: A clearing house refers to the clearing house managed by the RBI or any clearing house recognized by it.

5. Promissory Note Vs. Bill of Exchange

Promissory Note	Bill of Exchange



It is defined in Sec. 4 of NI Act, 1881.	It is defined in Sec. 5 of the NI Act, 1881.
There are two parties: ✓ Maker ✓ Payee	There are three parties ✓ Drawer ✓ Acceptor ✓ Payee
It contains a Promise to pay .	It contains an order to pay .
No conditions shall be made in a promissory note.	A bill may be accepted conditionally
The liability of a maker of the promissory note is primary and absolute .	The liability of the drawee of a bill of exchange is secondary and conditional .

6. Promissory Note Vs. Cheque

Promissory Note	Bill of Exchange
It is defined in Sec. 4 of NI Act, 1881.	It is defined in Sec. 6 of the NI Act, 1881.
There are two parties: ✓ Maker ✓ Payee	There are three parties ✓ Drawer ✓ Acceptor ✓ Payee
Promissory note contains a promise to pay the sum with interest or without interest at a later date.	A cheque is payable immediately on demand without any days of grace.
Promissory note is not crossed .	Cheque can be crossed .
No protection is available to the payee of note.	Statutory protection is given to the drawee banker. (Sec. 128)
A promissory note cannot be self-drawn .	A cheque can be self-drawn or bearer cheque.
No criminal liability shall be imposed on the maker.	Criminal Liability may be imposed on drawee for the dishonour of cheques in certain circumstances.
Stamp is necessary.	Stamp is not necessary.
Limitation: 3 years	Limitation: ~~6 months~~ (3 months)

7. Bill of Exchange Vs. Cheque

Bill of Exchange	Cheque
It is defined in Sec. 5 of NI Act, 1881	It is defined in Sec. 6 of the NI Act, 1881.
There are three parties: ✓ Drawer. ✓ Drawee. ✓ Payee	There are three parties: ✓ Drawer. ✓ Drawee. ✓ Payee.
Bills of exchange are not crossed .	Cheques may be crossed .
Generally 3 days of grace are given for the payment in case of a bill of exchange.	Immediate payment is required in case of cheque. No grace days are allowed.



However, this convenience is not allowed in case of bill of exchange payable on demand.	
Anybody including banker may be a drawee in case of bill of exchange.	The drawee is always a banker
It must be accepted before the acceptor can be made liable upon it.	It requires immediate payment. It does not require acceptance of the maker. Thus, the question of acceptance does not arise in case of cheque.
Where a Bill of Exchange is not paid and not honoured, a notice of dishonour should be sent to the drawer to charge him.	Where a cheque is dishonoured, Notice of Dishonour is not strictly necessary. The banker can return the cheque with the memo "Refer to Drawer" which is a sufficient notice.
Statutory protection is not available	Sec. 85 of the N.I Act, 1881 affords protection to bankers.
Civil Liability in case of dishonour of bill of exchange	Criminal liability in case of dishonour of a cheque/bouncing of a cheque and is liable to be prosecuted under Sec. 138 of the N.I. Act, 1881

8. Parties to the Instrument

Content	
1.	A transaction involving a negotiable instrument requires at least 2 parties: ✓ The drawer is the person who makes a bill of exchange or a cheque. ✓ The drawee is the person who is directed to make the payment.
2.	Drawee in case of need If a bill or any endorsement mentions another person, apart from the drawee, who can be approached in case of need, that person is called the drawee in case of need.
3.	Acceptor When the drawee agrees to the bill by signing it (or one of its parts if there are multiple), and then delivers it or notifies the holder or someone on the holder's behalf, he becomes the acceptor.
4.	Acceptor for honour If a bill of exchange has been noted or protested for non-acceptance or for better security, and someone accepts it supra protest (after protest) for the honour of the drawer or an endorser, that person is known as an acceptor for honour.
5.	Payee The payee is the person named in the instrument to whom, or to whose order, the money is directed to be paid.
6.	Holder a. A holder of a promissory note, bill of exchange, or cheque is the person entitled, in his own name, to possess the instrument and to receive or recover the amount due on it from the parties involved.



	b. If the instrument is lost or destroyed, the holder is the person who was entitled to it at the time of such loss or destruction. c. If a person sues to recover the amount based on a succession certificate and not as a holder in possession, he is still the rightful person to recover the debt.
7.	Holder in Due Course a. Holder in due course as a person who has, for consideration, become the possessor of a negotiable instrument (bearer instrument), or the payee/endorsee (order instrument), before the amount became payable and without any reason to suspect a defect in the title of the person from whom he got it. b. 3 conditions for being a holder in due course: ▪ The person must be an endorsee for consideration, ▪ He must have become the endorsee before the amount became payable, ▪ He must have had no reason to believe there was any defect in the previous holder's title. Note: Regarding the 2nd condition, a promissory note becomes payable either on demand or at maturity

9. Holder vs. Holder in Due Course

Holder	Holder in due course
Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	Holder in due course possesses the instrument for consideration before maturity and in good faith.
Title of the holder is subject to title of the transferor.	Holder in due course gets a better title than transferor.
Holder may receive the instrument without consideration.	Holder in due course always receives the instrument for consideration
Holder does not get certain privileges available to the holder in due course.	Holder in due course always gets privileges not available to holder

10. Payment in Due Course

Content	
1.	Payment in due course means payment made as per the instrument's apparent tenor, in good faith, without negligence, to a person in possession, with no reason to doubt their entitlement.
2.	Simply, the cheque must be in the proper format as issued by the drawee, and the payment must be made honestly and carefully to the rightful holder of the instrument.

11. Instruments Types

Content	
1.	Inland Instrument: A promissory note, bill of exchange, or cheque is considered an inland instrument if



	a. It is drawn or made in India and b. It is either payable in India or drawn on a person residing in India.
2.	Foreign Instrument: A promissory note, bill of exchange, or cheque is a foreign instrument if it is not drawn, made, or payable in India.
3.	Ambiguous Instrument: If an instrument can be interpreted as either a promissory note or a bill of exchange, the holder can choose to treat it as either one. Once chosen, it will be treated accordingly.
4.	Instruments Payable on Demand: A promissory note or bill of exchange that does not mention any time for payment, and every cheque, is treated as payable on demand.
5.	Inchoate Stamped Instrument: a. If one person signs and delivers a stamped paper, which is either wholly blank or partially blank, he thereby gives prima facie authority to the holder to complete it as a negotiable instrument for any amount within the value of the stamp. b. The person signing such instrument is liable on the instrument, in the capacity he signed it, to any holder in due course for the amount mentioned. c. However, any person other than a holder in due course can recover only up to the amount actually intended by the person who signed it.

12. Maturity

Content	
1.	Maturity of a Promissory Note or Bill of Exchange a. Maturity of a promissory note or bill of exchange is the date on which it becomes due for payment. b. If the instrument is not payable on demand, at sight, or on presentment, then its maturity is calculated as 3 days after the stated due date.
2.	Calculation of Maturity Date a. Calculation of maturity of a bill or note that is payable a certain number of months after: ▪ the date of the instrument, ▪ the date of sight (presentation for acceptance or sight), ▪ the date of noting or protesting for non-acceptance, or ▪ the happening of a specific event. b. The maturity date will fall on the same day of the month as the starting event. c. If the corresponding day does not exist in the due month (e.g., 30th February), the maturity will be on the last day of that month.



4.2 CROSSING, ENDORSEMENT AND MATERIAL ALTERATION

1. Crossing

Content	
1.	General Crossing When a cheque has 2 parallel lines drawn across its face, either: - with the words and company (or any abbreviation), or - with or without the words not negotiable, it is considered to be crossed generally.
2.	Special Crossing If a cheque has the name of a banker written across its face, with or without the words not negotiable, it is considered to be crossed specially that means it must be presented only through that specified banker.
3.	Holder of a cheque is allowed to cross it if it is not already crossed. It also provides the following rights: - If a cheque is crossed generally, the holder can change it to a special crossing. - If it is already crossed (generally or specially), the holder can add the words not negotiable. - If a cheque is crossed specially, the banker to whom it is crossed can further cross it specially to another banker, who acts as his agent for collection.

2. Payment of Cheque

Content	
1.	Payment of Crossed Cheques - Permitted Cases: - Payment of a cheque crossed generally - Payment of a cheque crossed specially - Payment of a cheque crossed specially more than once - Payment in due course of a crossed cheque - Payment out of due course of a crossed cheque
2.	If a cheque is crossed generally , the paying banker must only pay it to another banker (not directly to the payee or bearer).
3.	If a cheque is crossed specially to more than one banker , the drawee bank must refuse payment , unless the second banker is the agent of the first banker for collection.
4.	Payment in Due Course If a banker pays a crossed cheque in due course, both: - the paying banker, and - the drawer (if the cheque has reached the payee), are protected and have the same rights as if the cheque had been paid directly to the true owner.
5.	Payment out of Due Course If a banker pays:



	- a generally crossed cheque to someone other than a banker, or - a specially crossed cheque to someone other than the specific banker (or his banker-agent for collection), then that banker is liable to the true owner for any loss caused due to such improper payment.
6.	Cheque Bearing the Words Not Negotiable a. If a cheque (whether crossed generally or specially) bears the words not negotiable, the person who takes it does not get a better title than the person from whom he received it. b. In other words, if the person transferring the cheque has a defective title, the transferee also gets a defective title, even if taken in good faith.
7.	Non-Liability of Banker a. A banker who receives payment in good faith and without negligence for a customer of a crossed cheque (whether generally or specially crossed to himself), will not be held liable to the true owner if the title turns out to be defective, just because he received the payment. b. Even if the banker credits the customer's account before actually receiving the payment, he is still considered to have received it for a customer. c. For truncated cheques (where only the electronic image is used for clearing), the banker has a duty to: ▪ Verify the prima facie genuineness of the cheque, ▪ Detect any fraud, forgery, or tampering visible on the face of the instrument, ▪ Use due diligence and ordinary care during the process.

3. Material Alteration

Content	
1.	a. An alteration can be called a material alteration if it ▪ Alters or attempts to alter the character of the instrument and ▪ Affects or is likely to affect the contract which the instrument contains or is evidence of. b. Effect of Material Alteration: An instrument which is materially altered becomes void against all persons who were parties to it at the time of alteration and did not consent to it.
2.	Material Alterations: The following alterations have been held to be material in various cases: a. Alteration of an order cheque to a bearer cheque except by or with the consent of the drawer. b. Alteration by tearing material part of the instrument. c. Alteration by erasing account paying crossing. d. Alteration by affixing stamps without the promisor's knowledge to a note. e. Alteration of the date of payment



	f. Alteration of the time of payment. g. Alteration of the place of payment h. Alteration of the sum payable i. Alteration by adding new party to the instrument j. Alteration of the rate of interest
3.	Exceptions: Some alterations do not vitiate the instrument. a. Alteration before the completion of the instrument. b. Crossing of an open cheque or conversion of general crossing into a special crossing. c. Making qualified acceptance. d. Completion of inchoate instrument. e. Making a blank endorsement into full endorsement. f. Conversion of a bearer cheque into an order cheque. g. Alteration with the consent of the party liable on the instrument. h. Alteration made for the purpose of correcting mistake. i. Making a blank endorsement into a full endorsement
4.	Payment of Instrument on which Alteration is not Apparent a. If a promissory note, bill of exchange, or cheque has been materially altered, but the alteration is not apparent, or if a cheque presented for payment does not appear to be crossed, or any crossing has been erased, then any person or banker ▪ who pays it according to the apparent tenor of the instrument at the time of payment, and otherwise in due course, ▪ shall be discharged from liability, ▪ and such payment shall not be questioned just because the instrument was altered or the cheque was crossed. b. If a cheque is an electronic image of a truncated cheque, and there is any difference between the apparent tenor of the image and the original truncated cheque, ▪ it will be treated as a material alteration, and ▪ it is the duty of the bank or clearing house to ensure the exact match of the electronic image with the original truncated cheque at the time of truncating and transmitting the image. c. Any bank or clearing house receiving a transmitted electronic image of a truncated cheque must verify with the sender that the image received is exactly the same as the one transmitted. d. If a bill of exchange that has been negotiated is, at or after maturity, held by the acceptor in his own right, then all rights of action on the bill are extinguished.



4.3 ACCEPTANCE, ASSIGNMENT AND NEGOTIATION

1. Acceptance

Content	
1.	Only certain types of bills require acceptance. Essentials of a Valid Acceptance: - It must be written on the face of the bill. - The bill must be signed by the drawee or his authorized agent. - The accepted bill must be delivered to the holder of the instrument.
2.	Meaning of Acceptance A bill is considered accepted when the drawee (the person on whom the bill is drawn), after signing the bill, either: delivers it, or gives notice of acceptance to the holder or someone on his behalf.
3.	Acceptor - Once the drawee accepts the bill, he becomes the acceptor. - Only a bill of exchange (not a cheque) requires acceptance. - However, acceptance is not mandatory to make a valid bill. - If a bill is not accepted, it does not become invalid, it is simply considered dishonoured by non-acceptance.
4.	Presentation for acceptance may be excused in the following circumstances - Where the drawee is dead or insolvent. - Where the drawee is a fictitious person or one incapable of contracting. - When the drawee can cannot be found with reasonable efforts. - When acceptance has been refused on some other grounds.
5.	Acceptance in Case of Bills in Sets - When a bill is drawn in sets, acceptance is required to be made on only one part. - However, if the drawee signs his acceptance on two or more parts, he may become liable on each part separately.
6.	When Presentation for Acceptance is necessary Presentation for acceptance is required in the following cases: - When the bill is payable at a certain time after acceptance or after sight. - When the bill expressly states that it must be presented for acceptance before it is presented for payment. - When the bill is payable at a place other than the residence or business place of the drawee. In all other cases, presentation for acceptance is not necessary to make any party to the bill liable.



2. Types of Acceptance

Content	
1.	Acceptance may be either General or Qualified General Acceptance - An acceptance is general when the drawee accepts the bill without any condition, and simply accepts it as drawn, i.e., to the order of the drawer. - If the acceptance is not absolute, the holder may treat the bill as dishonoured by non-acceptance.
2.	Qualified Acceptance - An acceptance is qualified when the drawee accepts the bill subject to a condition or qualification. - Such a qualification must be clearly expressed on the bill, and it may relate to an event, the amount, place, time, etc.
3.	Circumstances Indicating Qualified Acceptance (Section 86) An acceptance is considered qualified in the following cases: - When payment is promised only on the happening of a certain event. - When the drawee promises to pay only part of the amount. - When payment is promised only at a specific place chosen by the drawee. - When payment is promised at a different time than what is legally due under the bill. - When not all drawees (who are not partners) sign the acceptance.
4.	Effect of Qualified Acceptance - The holder may treat the bill as dishonoured by non-acceptance and, after giving notice of dishonour, may sue the drawer and prior endorsers. - If the holder accepts a qualified acceptance without getting the consent of prior parties, then all prior parties who did not consent are discharged from liability against the holder and those claiming under him.

3. Negotiation

Content	
1.	According to Section 14 of the Negotiable Instruments Act, when a negotiable instrument is transferred to any person with the intention to make that person the holder, the instrument is said to be negotiated. This means there is a transfer of ownership of the instrument.
2.	A negotiable instrument can be negotiated in two ways: - By delivery, if the instrument is payable to bearer. - By endorsement and delivery, if the instrument is payable to order.



4. Negotiation by Delivery

Content	
1.	A promissory note, bill of exchange, or cheque payable to bearer is negotiable by delivery. Exception: If such an instrument is delivered on the condition that it will not take effect unless a certain event occurs, then it is not negotiable (except in the hands of a holder for value without notice of the condition) unless that event actually happens.
2.	Importance of Delivery in Negotiation - Delivery is essential for the negotiation of an instrument, whether it is payable to bearer or order. - The delivery must be voluntary, and its purpose must be to pass the property in the instrument to the person to whom it is delivered. - Delivery may be: - Actual - Constructive - Conditional - If an instrument is delivered conditionally or for a special purpose only, the property in it does not pass to the transferee (even if endorsed), unless it is negotiated to a holder in due course. - The contract on a negotiable instrument remains incomplete and revocable until delivery. - Delivery is required not only at the time of negotiation, but also when the instrument is made or drawn. - The rights do not pass to the endorsee until delivery is made after endorsement. - If a person endorses an instrument but dies before delivery, the legal representatives cannot negotiate it by mere delivery.

5. Negotiation of Instruments Between the Parties

Negotiation of instruments between the parties	How delivery is to be made
As between parties standing in immediate relation	Delivery to be effectual must be made by the party making, accepting, or endorsing the instrument, or by a person authorized by him in that behalf.
As between such parties and any holder of the instrument other than a holder in due course	It may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.



6. Endorsement

Content	
1.	Endorsement refers to the signature of a person generally made on the back of a negotiable instrument for the purpose of transferring the rights under the instrument to another person.
2.	When the maker or holder of a negotiable instrument signs it (other than as the maker), either: - on the back or face of the instrument, or - on a slip of paper attached to it, for the purpose of negotiation , he is said to have endorsed the instrument.
3.	Parties: Endorser : The person who signs the instrument to transfer it. Endorsee : The person in whose favour the instrument is endorsed.
4.	Essentials of a Valid Endorsement : On the Instrument or an Allonge: The endorsement must be made on the instrument itself, or on a separate slip of paper attached to it (this slip is called an allonge). Signature of the Endorser: For the endorsement to be valid for negotiation, it must be signed by the endorser. Name of the Endorsee (Optional): The instrument may include the name of the endorsee along with the endorser's signature, but no specific wording is legally required to make an endorsement valid. Delivery with Intention to Transfer Ownership: The endorsement is complete only when the instrument is delivered to the endorsee, with the intent to transfer ownership. Delivery must be done by the endorser or someone authorized on his behalf.
5.	Who May Endorse a Bill? - The first endorsement of a negotiable instrument can be made only by the payee. Subsequent endorsements can be made by any person who becomes the holder of the instrument. - Endorsement cannot be made by the maker or holder of the instrument in the capacity of maker. - The following persons can endorse and negotiate a negotiable instrument: - A sole maker, drawer, payee, or endorsee, or - All joint makers, drawers, payees, or endorsees (acting together).

7. Types of Endorsement

Content	
1.	General Endorsement (Endorsement in Blank) This occurs when the endorser only signs his name without specifying the endorsee.



	b. It converts an order instrument into a bearer instrument, meaning it can be transferred by mere delivery. c. A blank endorsement can be converted into a full endorsement by adding a direction to pay a specific person.
2.	Special Endorsement (Endorsement in Full) a. This is when the endorser signs his name, and adds a direction to pay the amount to a specific person. b. This type of endorsement names the endorsee, and only that person can claim the amount or further negotiate it. c. If a negotiable instrument, after being indorsed in blank, is later indorsed in full, then the amount of it can be claimed from the endorser in full only by the person to whom it has been indorsed in full, or by someone who gets the title through that person.
3.	Restrictive Endorsement a. This limits or restricts the further negotiation of the instrument. b. It may authorize only collection of payment for a specific purpose, not further transfer. c. The endorsee gets the right to receive payment, but cannot transfer the instrument unless authorized.
4.	Partial Endorsement a. This involves endorsing only a part of the amount on the instrument. b. Partial endorsement is invalid in law. c. Exception: If part of the amount has already been paid, a note about that can be made on the instrument, and it can then be negotiated for the remaining balance.
5.	Conditional Endorsement The endorser makes his liability (or the endorsee's right to receive payment) dependent on a certain condition or event. If the event does not happen, the payment cannot be claimed. Special Forms: a. Sans Recourse The endorser refuses to accept liability for the payment of the instrument by adding the words "sans recourse" after his endorsement. Note: If this endorser later becomes the holder again, he can sue all intermediate endorsers, even though he excluded his own liability. b. Sans Frais This phrase means without expense. When added at the end of the endorsement, it indicates that no charges or costs (e.g., protest expenses) should be incurred on behalf of the bill. c. Facultative This is used when the endorser wants to waive a right that he is legally entitled to. d. Conditional The endorser makes his liability conditional upon the happening of a specific event. If the event does not happen, the endorsee cannot claim payment.



8. Special Cases

Content	
1.	Instrument obtained by unlawful means or for unlawful consideration: If a negotiable instrument: - has been lost, or - has been obtained from any maker, acceptor, or holder by offence, fraud, or - for an unlawful consideration, then no possessor or endorsee claiming through the person who found or wrongly obtained the instrument can receive the amount from the maker, acceptor, or any prior party unless the possessor or someone through whom he claims is a holder in due course.
2.	Instrument acquired after dishonour or when overdue a. A person who becomes the holder of a negotiable instrument: after it has been dishonoured by non-acceptance or non-payment, - and with notice of such dishonour, or after maturity, can only claim the rights of the transferor. b. However, if someone acquires a promissory note or bill after maturity, - in good faith, - for consideration, and - the instrument was made or accepted without consideration only to help someone raise money on it (i.e., accommodation bill), then that person can still recover the amount from any prior party.
3.	Instrument negotiable till Payment or Satisfaction a. A negotiable instrument can be negotiated until it is paid or satisfied by the maker, drawee, or acceptor, at or after maturity. b. However, it cannot be negotiated after such payment or satisfaction.

9. Presentment not Necessary

Presentment for payment is not necessary in the following cases:	
1.	If the maker, drawee, or acceptor intentionally prevents the presentment of the instrument.
2.	If the instrument is payable at his place of business and he closes the place on a business day during usual business hours .
3.	If the instrument is payable at some other specified place , and neither he nor any person authorized to pay is present there during usual business hours.
4.	If the instrument is not payable at any specified place , and he cannot be found after due search .
5.	a. As against any party sought to be charged, if he has agreed to pay even without presentment. b. As against any party, if after maturity, knowing that the instrument has not been presented, he:



- makes a **part payment**, or
- promises to pay the **full** or **part amount** due, or
- waives his right to object to the **default** in presentment.

10. Payment and Interest

Presentment for payment is not necessary in the following cases:

1. Payment must be made to the **holder** of the instrument or to his **accredited agent**.
2. If **payment** is made **after** the **due date**, interest is payable on the amount.
Interest is calculated from the **date of due** till the **date of realization**.
3. If the rate of interest is not specified in the instrument, then interest is payable at the rate of **18% p.a.**, from the due date to the date of realization.
4. Any person liable to pay, when called upon by the holder, is entitled to have the instrument shown to him before payment, and on payment, entitled to have the instrument delivered to him, or, if the instrument is lost or cannot be produced, he is entitled to be indemnified against any further claim on it.

11. Assignment

Assignment

1. Assignment takes place when the **holder** of a negotiable instrument **transfers** it to another person, giving the transferee the **right to receive payment** on the instrument.
2. All negotiable instruments are considered "**choses in action**" and can be transferred by assignment without endorsement as per Sections 130-132 of the Transfer of Property Act.
3. The assignment is made in **writing**, and does **not** require **endorsement**.
4. A key feature of assignment is that the assignee gets the same **rights as the assignor**. So, if the **assignor's title is defective**, the **assignee's title** will also be **defective**.

12. Assignment vs Negotiation

Negotiation	Assignment
Consideration is presumed until contrary is proved.	Consideration must be proved
It transferee is a holder in due course he takes the instrument free from any defects	Assignee's title is always subject to defences and equities between the original debtor and assignor.
Notice of transfer is not necessary.	Notice of assignment must be given .
Negotiation is effected by delivery in case of instruments payable to bearer and by delivery and endorsement in case of instrument payable to order.	Assignment is effected only by writing
Transferee can sue the third party in his own name.	Assignee cannot do so.
There are a number of presumptions in favour of holder in due courses.	There are no such presumptions



13. Discharge from Liability

Assignment

1.	Liability on a negotiable instrument is discharged in the following ways: - By cancellation - By release - By payment
2.	If the holder allows the drawee more than 48 hours (excluding public holidays) to decide whether he will accept the bill, then all previous parties who did not consent to this allowance are discharged from liability to the holder.
3.	Delay in Presentation of Cheque If a cheque is not presented for payment within a reasonable time, and the drawer, at the time when presentment should have been made, - had enough funds with the banker to pay the cheque, and - suffers actual damage due to the delay, then the drawer is discharged to the extent of such damage, i.e., to the extent that he was a creditor of the banker for a larger amount than he would have been if the cheque had been paid.
4.	Cheque Payable to Order - When a cheque payable to order appears to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course. - If a cheque is originally payable to bearer, the drawee is discharged by payment in due course to the bearer, regardless of any indorsement in full or blank, and even if the indorsement restricts or excludes further negotiation.



4.4 RIGHTS AND LIABILITIES OF PARTIES

1. Liability of Parties to Instrument

	Content
1.	Capacity to Enter into Negotiable Instruments a. Every person who is capable of contracting can bind himself and be bound by making, drawing, accepting, endorsing, delivering, or negotiating a promissory note, bill of exchange, or cheque. b. A minor may draw, endorse, deliver, and negotiate such instruments, but this only binds other parties, not the minor himself. c. Nothing in this section gives a corporation the power to make, endorse, or accept such instruments unless authorized under the law in force at that time.
2.	Agency a. Any person who can bind himself or be bound under a negotiable instrument can do so through a duly authorized agent acting in his name. b. A general authority to manage business and receive or discharge debts does not include authority to accept or endorse bills of exchange to bind the principal. c. An authority to draw bills of exchange does not automatically include authority to endorse them.
3.	Liability of Agent a. If an agent signs his name on a promissory note, bill of exchange, or cheque without mentioning that ▪ he is signing as an agent or ▪ he does not intend to be personally liable, then he is personally liable on the instrument. b. Exception: The agent is not personally liable if the person who got the signature induced him to sign, believing that only the principal would be held liable. c. This section is an exception to general contract law, where even if the principal's name is not disclosed on the instrument, he can still be held liable later, once it is proven that the agent acted on his behalf.
4.	Liability of the Representative A legal representative of a deceased person who signs his name to a promissory note, bill of exchange, or cheque is personally liable, unless he clearly limits his liability to the extent of the assets he has received as legal representative.
5.	Liability of the Drawer The drawer of a bill of exchange or cheque is bound to compensate the holder if the drawee or acceptor dishonours the instrument, provided that due notice of dishonour has been given to or received by the drawer.



6.	Liability of the Drawee of Cheque a. The drawee of a cheque, if he has sufficient funds of the drawer with him, must pay the cheque when properly required to do so. b. If he fails to pay, he must compensate the drawer for any loss or damage caused by such default.
7.	Liability of the Maker of Note and Acceptor of Bill a. Unless there is a contract to the contrary: ▪ The maker of a promissory note, and ▪ The acceptor before maturity of a bill of exchange are bound to pay the amount at maturity, according to the apparent tenor of the note or acceptance. b. The acceptor of a bill of exchange at or after maturity is bound to pay the amount on demand to the holder. c. If they fail to pay, they must compensate any party to the note or bill for any loss or damage caused by the default.
8.	Only Drawee Can Be Acceptor (Except in Case of Need or for Honor) a. Only the drawee (or all/some of several drawees), or a person named as drawee in case of need, or an acceptor for honour, can validly accept a bill of exchange. b. No other person can bind himself by acceptance.
9.	Acceptance by Several Drawees Not Partners If a bill of exchange is addressed to several drawees who are not partners, then each drawee can accept it for himself only, and cannot accept on behalf of the others without their authority.
10.	Liability of Indorser Unless there is a contract to the contrary, any person who indorses and delivers a negotiable instrument before maturity, and does not exclude or condition his own liability in the indorsement, is: ▪ liable to every subsequent holder if the instrument is dishonoured by the drawee, acceptor, or maker. ▪ bound to compensate the holder for any loss or damage caused by such dishonour, Note: Due notice of dishonour has been given to or received by the endorser.
11.	Liability of Prior Parties to Holder in Due Course Every prior party to a negotiable instrument is liable to a holder in due course until the instrument is fully satisfied.
12.	Maker, Drawer, and Acceptor as Principals a. In the absence of a contract to the contrary: ▪ The maker of a promissory note or cheque, ▪ The drawer of a bill of exchange (until acceptance), and ▪ The acceptor of a bill are each liable as principal debtors. b. Other parties are liable as sureties for them.



13. **Prior Party a Principal for Each Subsequent Party**
Among the parties liable as sureties, each prior party is also liable as a principal debtor in respect of each subsequent party, unless there is a contract to the contrary.
14. **Suretyship and Reservation of Rights**
 - a. If the **holder** of an accepted bill of exchange enters into a contract with the **acceptor** that would normally **discharge the other parties** u/s 134 or 135 of the Contract Act.
 - b. The holder may expressly **reserve** his right to **charge the other parties**. In such a case, the other parties are **not discharged**.

2. Discharge of Endorser's Liability

Content	
1.	Discharge of Endorser's Liability Due to Impairment of Remedy If the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, then the endorser is discharged from liability to the holder, to the same extent as if the instrument had been paid at maturity.
2.	Acceptor Bound Despite Forged Indorsement An acceptor of a bill of exchange that is already indorsed is not relieved from liability just because the indorsement is forged , if he knew or had reason to believe that the indorsement was forged when he accepted the bill.
3.	Acceptance of Bill Drawn in Fictitious Name If a bill of exchange is drawn in a fictitious name and made payable to the drawer's order , the acceptor is not discharged from liability to a holder in due course , even though the name is fictitious . Note: The claim is made under an indorsement made by the same hand as the drawer's signature , and it appears to be signed by the drawer.

3. Instrument made without Consideration

Content	
1.	Negotiable Instrument Made Without Consideration a. A negotiable instrument made, drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties involved in that transaction. b. However, if such an instrument is transferred (with or without indorsement) to a holder for consideration, then that holder and any subsequent holder deriving title from him may recover the amount due from the transferor for consideration or from any prior party. c. Note: ▪ If a party has made, drawn, accepted, or indorsed a negotiable instrument for someone's accommodation and later pays the amount, he cannot recover that amount from the person for whose accommodation the instrument was created.



	If a party induces another to make, draw, accept, indorse, or transfer an instrument for a consideration which he fails to perform, he cannot recover more than the actual value of consideration he paid or performed.
2.	Partial Absence or Failure of Money Consideration a. If a person signs a promissory note, bill of exchange, or cheque, and the money consideration is either partially absent at the start or partially fails later, the amount payable to a holder in immediate relation is proportionately reduced. b. Note: - The drawer of a bill is in immediate relation with the acceptor. - The maker of a note, bill, or cheque is in immediate relation with the payee. - The endorser is in immediate relation with the endorsee. - Other signers may, by agreement, be in immediate relation with the holder.
3.	Partial Failure of Consideration If part of the consideration (not consisting of money) can be ascertained in money without collateral enquiry, and that part fails, the amount payable to a holder in immediate relation is proportionately reduced.
4.	Holder's Right to Duplicate of Lost Bill a. If a bill of exchange is lost before it is overdue, the holder may apply to the drawer to issue a duplicate bill of the same tenor. b. The holder may be required to give security to indemnify the drawer against claims if the original bill is later found. c. If the drawer refuses to issue the duplicate bill, he can be compelled to do so.



4.5 DISHONOUR OF A NEGOTIABLE INSTRUMENT

1. Notice of Dishonour

	Content
1.	When a negotiable instrument is dishonoured , the holder must give notice of dishonour .
2.	Mode of Giving Notice - The notice of dishonour may be oral or in writing (which may be sent by post). - The notice may be in any form, but it must clearly or impliedly inform the party that the instrument has been dishonoured, and - That he will be held liable. - The notice must be given: - Within a reasonable time after dishonour, - At the place of business or residence of the party for whom it is intended.
3.	Notice by Recipient If a party receives notice of dishonour, he must, to make any prior party liable to himself, give notice of dishonour to that prior party, within a reasonable time, unless the prior party has already received such notice.
4.	Notice by Agent If the instrument is deposited with an agent for presentment: - The agent must give notice of dishonour to his principal, and - The principal is entitled to a further like period to give notice to others.
5.	Notice to a Deceased Person If a notice of dishonour is sent to a party who is dead, but the sender is unaware of the death, The notice is still valid.
6.	Notice - When Not Necessary No notice of dishonour is required in the following cases: - When the party entitled to notice has waived (dispensed with) the requirement of notice; - To charge the drawer, if he has countermanded payment (i.e., ordered the bank not to pay); - When the party charged cannot suffer any damage due to lack of notice; - When the party entitled to notice cannot be found after due search, - or the party responsible to give notice is unable to give it without any fault of his own; - To charge the drawer, when the acceptor is also the drawer; - In case of a promissory note that is not negotiable; - When the party entitled to notice, knowing the facts of dishonour, unconditionally promises to pay the amount due.



2. Noting and Protest

Content	
1.	Noting - When a negotiable instrument is dishonoured, the holder may request a notary public to note the dishonour. - This noting can be on the instrument itself, or on a paper attached to it, or partly on both. - The noting must be done within a reasonable time after dishonour. - The noting must include: - The date of dishonour, - The reason given for dishonour, or - the reason why the holder treats it as dishonoured (if no reason is given), and - the notary's charges.
2.	Protest - When an instrument is dishonoured, the holder may have the dishonour certified by a notary public. This certificate is called a protest. - If, before maturity, the acceptor becomes insolvent or his credit is publicly impeached, the holder may ask: - the notary public to demand better security from the acceptor, and - if it is refused, have the refusal noted and certified. This is called a protest for better security.
3.	Contents of Protest A valid protest must include: - The instrument itself, or a literal transcript of it and all that is written or printed on it; - The name of the person for whom and against whom the instrument is protested; - A statement that: Payment, acceptance, or better security was demanded by the notary, or - that the person could not be found; - The place and time of dishonour (if it occurred), or of refusal of better security; - The signature (subscription) of the notary public; - In case of acceptance for honour or payment for honour: - The name of the person making or receiving such acceptance/payment, - And how it was done.
4.	Notice of Protest - When a protest has been made, a notice of protest must be given instead of notice of dishonour. - It should be given in the same manner as notice of dishonour, and subject to the same conditions. - The notice of protest may also be given by the notary public who prepared the protest.



3. Presumptions

Content	
1.	Consideration Every negotiable instrument is presumed to be made or drawn for consideration, and every acceptance, indorsement, negotiation, or transfer is presumed to be for consideration.
2.	As to Date If the instrument bears a date, it is presumed to have been made or drawn on that date.
3.	As to Time of Acceptance An accepted bill of exchange is presumed to be accepted within a reasonable time after its date and before its maturity.
4.	As to Time of Transfer Any transfer of a negotiable instrument is presumed to have been made before maturity.
5.	As to Order of Indorsement The indorsements appearing on the instrument are presumed to be made in the order they appear.
6.	As to Stamp A promissory note, bill of exchange, or cheque is presumed to be duly stamped.
7.	Holder is a Holder in Due Course The holder of a negotiable instrument is presumed to be a holder in due course.
8.	Onus of Holder in Due Course - If a negotiable instrument has been obtained from its lawful owner or lawful custodian by offence, fraud, or for unlawful consideration, then the burden of proof lies on the holder to prove that he is a holder in due course. - That means he must prove they received the instrument for consideration, in good faith, and without notice of any defect in title.
9.	Presumption on Proof of Protest - In a suit upon a dishonoured negotiable instrument, if the protest is proved in court, then the Court shall presume that the instrument was dishonoured, unless it is disproved. - This helps the holder by not requiring them to prove dishonour separately if the protest is validly presented.

4. Estoppel Concept

Content	
1.	Estoppel Against Denying Original Validity In a suit by a holder in due course: - The maker of a promissory note, - The drawer of a bill of exchange or cheque, and - The acceptor of a bill of exchange for honor cannot deny the validity of the instrument as originally made or drawn.



2. **Estoppel Against Denying Payee's Capacity**
In a **suit** by a holder in due course:
 - The **maker** of a promissory note, and
 - The acceptor of a bill of exchange payable to order**cannot deny the payee's capacity** to indorse the instrument at the time it was made.
3. **Estoppel Against Endorser**
In a **suit** by a subsequent holder, **an endorser** of a negotiable instrument **cannot deny the signature**, or the **capacity to contract** of any prior party to the indorsement.

5. International Law

Content	
1.	Liability in Absence of Contract to the Contrary If there is no contract to the contrary: a. The liability of the maker or drawer of a foreign promissory note, bill of exchange, or cheque is decided by the law of the place where it is made. b. The liability of the acceptor and endorser is governed by the law of the place where the instrument is payable.
2.	Law Governing Dishonour a. If the instrument is payable in a place different from where it is made or indorsed: b. The law of the place where it is made payable decides: ▪ What constitutes dishonour, and ▪ What constitutes sufficient notice of dishonour.
3.	Validity Despite Foreign Invalidity If an instrument is made, drawn, accepted, or indorsed outside India, but in accordance with Indian law then even if the agreement is invalid in the foreign country , it does not affect any subsequent acceptance or indorsement made within India.
4.	Presumption of Similar Law The law of any foreign country relating to promissory notes, bills of exchange, and cheques is presumed to be the same as Indian law , unless and until it is proved otherwise.

6. Penalties

Content	
1.	Penalty for Dishonour of Cheque for Insufficiency of Funds, etc. a. If a cheque drawn by a person on a bank account maintained by him is returned unpaid by the bank due to: ▪ Insufficient funds in the account, or ▪ The amount exceeding the arrangement made with the bank, and if the cheque was issued for the discharge (in whole or in part) of any debt or other liability (which must be legally enforceable), then the drawer is deemed to have committed an offence. b. Such a person shall be punishable with:



	▪ Imprisonment for up to 2 years, or ▪ Fine up to twice the amount of the cheque, or ▪ Both.
2.	However, this penalty applies only if the following conditions are fulfilled: a. Presentation of Cheque: The cheque must be presented to the bank within 3 months from the date it is drawn or within its validity period, whichever is earlier. b. Notice by Payee: The payee or holder in due course must issue a written notice demanding payment, within 30 days of receiving information from the bank about cheque dishonour. c. Failure to Pay: The drawer fails to pay the cheque amount within 15 days of receiving the notice.
3.	Presumption in Favour of Holder a. Unless proved otherwise, it shall be presumed that the holder of a cheque received it for the discharge, either in whole or in part, of a debt or other liability. b. No Defence Based on Lack of Knowledge c. In a prosecution for an offence u/s 138, it is not a valid defence for the drawer to say that he had no reason to believe, at the time of issuing the cheque, that the cheque might be dishonoured on presentment for the reasons stated in the section.

7. Offences by Companies

Content	
1.	Offences by Companies a. When a company commits an offence under this Act: ▪ The company itself, and ▪ Every person who, at the time of the offence, was in charge of and responsible for the conduct of its business, shall be liable and may be prosecuted and punished. b. However, such a person will not be punished if he proves: ▪ The offence was committed without his knowledge, or ▪ He had exercised due diligence to prevent the offence. c. A person nominated as a director by virtue of holding an office or employment in: ▪ The Central or State Government, or ▪ A financial corporation owned or controlled by them, shall not be liable for prosecution under this Chapter. d. If the offence was committed: ▪ With the consent or connivance, or ▪ Due to neglect of any director, manager, secretary or other officer, such person shall also be deemed guilty and may be prosecuted and punished.



8. Cognizance of Offence

Content	
1.	Cognizance of Offence No court shall take cognizance of an offence u/s 138 unless: - A written complaint is made by the payee or holder in due course of the cheque. - The complaint is made within 1 month from the date on which the cause of action arises. - However, the court may allow the complaint even after the prescribed time if the complainant shows sufficient cause for the delay. - Only a Metropolitan Magistrate or a Judicial Magistrate of the First Class can try an offence u/s 138. No court below this rank has jurisdiction. - The offence shall be inquired into and tried only by a court in the local area where: - If the cheque was delivered for collection through an account, the branch of the bank where the payee or holder in due course maintains the account is located. - If the cheque was presented for payment otherwise than through an account, the branch of the drawee bank where the drawer maintains the account is located. - If the cheque is delivered for collection at any branch of the payee's or holder's bank, it shall be deemed delivered to the branch where such payee or holder maintains their account.
2.	Summary Trial of Offences under Chapter XVII - Who conducts the trial: Offences under this Chapter shall be tried by a Judicial Magistrate of the First Class or a Metropolitan Magistrate. - Procedure: The provisions of Sections 262 to 265 of the CrPC (Code of Criminal Procedure) shall apply. - Punishment: In a summary trial, the Magistrate can impose: Imprisonment up to 1 year, and Fine up to ₹5,000. - Conversion to regular trial: If at any point the Magistrate feels, the case may require punishment exceeding 1 year, or it's otherwise not suitable for summary trial, then the Magistrate shall: - Record reasons, - Recall witnesses (if any), and - Proceed with the case as a regular trial under CrPC. - Speedy Trial Requirement: Trial should proceed day to day unless adjournment is required for valid reasons (to be recorded in writing). - Efforts must be made to conclude the trial within 6 months from the date of filing of the complaint.
3.	Interim Compensation The court may order the drawer of the cheque to pay interim compensation:



	- Up to 20% of the cheque amount, - If the drawer pleads not guilty. b. If the drawer files an appeal against conviction: - The appellate court may direct the drawer to deposit 20% of the fine or compensation, - This is in addition to the amount already paid at the trial stage.
4.	Service of Summons a. A Magistrate issuing a summons to an accused or a witness may order that a copy of the summons be sent by speed post or an approved courier service to the place where the accused or witness ordinarily lives, works, or does business. b. If an acknowledgement appears to be signed by the accused or witness, or if there is an endorsement by an authorized person from the postal department or courier service stating that the accused or witness refused to accept the summons, the Court issuing the summons may declare that the summons has been duly served.
5.	Evidence on Affidavit a. The complainant can give evidence on affidavit. b. The affidavit may be read as evidence in any inquiry, trial or proceeding under the Code of Criminal Procedure, subject to valid objections. c. The Court may, on its own or on application by the prosecution or accused, summon and examine the person giving such affidavit regarding the facts mentioned in it.
6.	Bank's Slip as Prima Facie Evidence If a bank's slip or memo is produced in court showing an official mark that the cheque was dishonoured, The Court shall presume the dishonour unless disproved.
7.	Compounding of Offence Every offence punishable under this Act is compoundable, which means it can be settled between the parties and closed legally.



5. INDIAN PARTNERSHIP ACT, 1932

5.1 NATURE OF PARTNERSHIP

1. Partnership and Its Essential Elements

	Content
1.	Definition: - Partnership is a relationship between persons who agree to share the profits of a business carried on by all or any of them acting on behalf of all. - Those who enter into such an agreement are called partners individually. Together, they form a firm. - The name under which they run the business is called the firm name.
2.	The essential elements to form a partnership are: - There must be an agreement between the parties; - The agreement should be to share the profits of a business; - The business must be carried on by all or any one acting for all; - There must be a relationship of agency among the partners; - The agreement can be oral or written, and it may be express or implied.

2. Different types of partnership

	Content
1.	General Partnership Liability: Unlimited for all partners. Personal assets can be used to repay firm's debts. Exception: Minor partner is liable to the extent of his share in capital and profits. - In India, all traditional partnership firms are general partnerships. Every partner has the right to participate in management, unless agreed otherwise.
2.	Limited Partnership Liability: Some partners have limited liability. They are liable only to the extent of their capital contribution. - The personal assets of a limited partner are not at risk for the firm's debts. - A limited partner cannot take part in the management of the firm. - Firm is not dissolved by Retirement, insolvency, or death of a limited partner. - However, at least one partner must have unlimited liability. - This form of partnership must be registered. - In India, it is governed by the Limited Liability Partnership Act. - In England, it is allowed under the Limited Partnership Act, 1907, and in the USA under the Partnership Act, 1890.
3.	Partnership at Will - This is a partnership without any fixed duration or specific purpose. - It continues as long as the partners wish.



	c. Any partner can dissolve the firm by giving a notice to the others expressing his intention to exit the firm. d. Conditions: - Partnership Deed should not contain any clause about duration of partnership; - It should not contain any clause for the determination of the partnership.
4.	Particular Partnership a. A particular partnership is formed for a specific purpose or time period. b. It automatically dissolves when the purpose is fulfilled or the time period ends.

3. Different types of partners

	Content
1.	Active (Working) Partner a. He actively takes part in managing the business. b. He contributes capital and shares in profits. c. He has unlimited liability for the firm's debts. d. He known to outsiders as a partner.
2.	Sleeping (Inactive) Partner a. He only contributes capital; does not take part in management. b. He shares in profits or losses. c. He has unlimited liability. d. He not known to the public as a partner.
3.	Secret Partner a. He contributes capital and takes active part in management. b. He shares profits and losses. c. He has unlimited liability. d. He not known to outsiders as a partner
4.	Limited Partner a. His liability is limited to the amount of capital invested. b. He cannot take part in management. c. He common in Limited Liability Partnerships.
5.	Partner in Profits Only a. A minor cannot be a full partner, but can be admitted to benefits of partnership with consent of other partners. b. He shares profits only, not liable for losses beyond his share. c. On becoming a major, must decide whether to continue or leave the partnership.
6.	Nominal (Ostensible) Partner a. He does neither contribute capital nor participate in management. b. He does not share in profits or losses but lends his name and reputation to the firm. c. He becomes liable for the firm's debts to outsiders. d. He can be a Partner by Estoppels or a Partner by Holding Out.
7.	Partner by Estoppels



	A person who represents themselves as a partner (through words or conduct) can be held liable for the firm's debts if outsiders rely on that representation.
8.	Partner by Holding Out A person who is declared as a partner and does not deny it when aware, is liable for the firm's debts if outsiders rely on the representation .

4. Partnership is a creation of contract

Content	
1.	The relationship of partnership comes from a contract , not from status . So, members of a HUF doing family business together, or a Burmese Buddhist husband and wife running a business as such, are not considered partners in that business.
2.	In simple terms, partnership does not automatically arise from a family or legal relationship ; It must be created by an agreement between persons . A partnership is different from a company, an LLP, or a HUF.

5. Difference between a partnership and a company

Basis	Partnership	Company
Legal entity	It is not a separate legal entity.	A company is a separate legal entity .
Liability	The liability of the partners is unlimited .	The liability of the members of the company is limited .
Number of members	Minimum required is 2 . Maximum number can be 100 subject to some exceptions present Rules provide 50 .	Private company : Minimum 2 , maximum 200 . Public company : Minimum 7 , maximum no limit .
Transfer of shares	A partner cannot transfer his share without consent of other members	Transfer of shares in a public limited company is not a restricted one.
Management	The firm can be run by all or any of the partners.	The Board of Directors has responsibility to run the management
Relationship	The relationship with partners is of that of agency	No such relationship in the company.
Profit distribution	Profit is distributed according to the agreement entered between partners; if no agreement equal distribution .	No requirement of profit distribution to members. It is at the discretion of the management to declare dividend that too only out of profits.
Remedy to creditors	The creditors of a firm can proceed against the partners jointly and severally.	The creditors can proceed only against the company and not against shareholders
Audit	Audit is not compulsory for the partnership firm.	Various types of audits are compulsory for the company



Dissolution	Firm can be dissolved on the death , retirement or insolvency of partner unless otherwise agreed (Deed).	A company can be dissolved only by the winding up process as ordered by the Court.

6. Difference between a partnership and Limited Liability Partnership

Basis	Partnership	Limited Liability Partnership
Legal entity	It is not a separate legal entity	It is a separate legal entity
Liability	The liability of the partners is unlimited .	The liability of the members of the LLP is limited .
Number of members	Minimum required is 2 . Maximum number is 50 subject to some exceptions	Minimum number of members for a LLP is 2 and no limit for maximum numbers
Entering into contracts	Partnership is not a separate person and enter into contract on behalf of its partners	LLP is capable of entering into contracts and holding property in its own name
Compliance of law	Lesser compliance	More compliance under LLP Act.
Dissolution	Firm can be dissolved on the death , retirement or insolvency of partner unless otherwise agreed (Deed).	LLP can be dissolved by complying with the provisions of LLP (Winding up and Dissolution) Rules, 2012.

7. Difference between a partnership and Hindu Undivided Family

Basis	Partnership	Hindu undivided family
Relationship	Relation subsists between the partners .	It is a single person and it cannot have a partnership by itself
Management	All of the partners may involve in the management	Karta of HUF is managing the business
Share of profit	Partners can share profit as per the agreement	No such sharing of profits in HUF
Property	The properties even though in the name of partnership firm belongs to all partners	This business is a species of ancestral joint property in which every member of a family acquires
Authority	Each partner is the agent of others	It has implied authority to contract debts and pledge the properties and credit of the family for the ordinary purposes of the family business
Dissolution	Firm can be dissolved on the death , retirement or insolvency of partner unless otherwise agreed (Deed).	The death of Karta will not lead to the dissolution of the HUF business.



5.2 RIGHTS AND LIABILITIES OF PARTNERS

1. Duties of Partners

Content	
1.	Duties of Partners (Section 9) a. Partners must: ✓ Carry on the business for the greatest common advantage. ✓ Be just and faithful to each other. ✓ provide true accounts and full information to partners/ legal representative. b. Every partner must indemnify the firm for any loss caused by their fraud in business conduct.
2.	Rights & Duties a. The mutual rights and duties of partners may be defined by contract . b. Such contract may be varied by the consent of all partners .
3.	Agreements in Restraint of Trade a. A partner may agree not to engage in any business other than that of the firm while being a partner. b. On leaving the firm, a partner may agree to reasonable restrictions on similar business (time/area-based). c. Upon or in view of dissolution , partners may agree not to carry on similar business . d. On sale of goodwill , a partner may agree with the buyer not to start similar business within limits.

2. Rights and Duties of Partners in Conduct of Business

Content	
1.	Conduct of Business a. Every partner has the right to take part in the conduct of business. b. Partners are bound to attend diligently to their duties in business conduct. c. Differences regarding ordinary matters may be decided by majority vote , but all partners must agree for any change in the nature of business . d. Partners have the right to inspect, copy, and access the books of the firm . e. On a partner's death , their heirs/legal representatives can inspect the books .

3. Mutual Rights and Liabilities of Partners

Content	
1.	Right to Claim Remuneration: A partner is not entitled to remuneration for participating in business activities, unless there is an express agreement or a continuous usage of the firm that allows it.
2.	Right to Share Profits: a. Partners share profits and losses equally , unless agreed otherwise.



	b. If profit-sharing is unequal and there's no agreement on losses , losses follow the profit-sharing ratio , not capital contribution.
3.	Right to Claim Interest on Capital: Interest on the capital is payable only out of profits (if entitled).
4.	Right to Claim Interest on Advances: For advances beyond agreed capital, partner gets 6% p.a. interest.
5.	Right to Be Indemnified: The firm shall indemnify a partner for: ▪ Payments or liabilities incurred in the ordinary course of business; ▪ Emergency actions to protect the firm from loss, if done prudently.
6.	Duty to Indemnify the Firm: A partner shall indemnify the firm for any loss caused due to his wilful neglect in business conduct.

4. Personal Profits Earned by a Partner

Content	
1.	Profit from Transactions A partner must account for any profit made from: ✓ Transactions of the firm. ✓ The use of the firm's property or business connections. ✓ Profits made from a competing business. Such profits must be paid back to the firm.

5. Rights and Duties of the Partners After the Change in the Firm

Content	
1.	Rights & Duties of Partners - A change in the firm's constitution does not affect the partner's mutual rights & duties. - If a fixed-term partnership continues after expiry, it becomes a partnership-at-will, but rights and duties remain unchanged. - If a firm takes on other adventures, partner's rights & duties for those are same as in the original business.
2.	A partner is the agent of the firm for the purpose of the business of the firm .

6. Implied Authority

Content	
1.	Partner act binding the Firm: To bind the firm, a partner's act must be done in the firm's name or show intent to bind the firm. - Any act done in the usual course of the firm's business binds the firm. - This authority is called the partner's implied authority.



2. In the absence of trade usage or custom to the contrary, a partner's implied authority does not empower him to:
 - a. Submit business disputes of the firm to arbitration;
 - b. Open a bank account for the firm in his own name;
 - c. Compromise or give up any claim of the firm;
 - d. Withdraw a suit or legal proceeding filed by the firm;
 - e. Admit liability in a legal suit against the firm;
 - f. Acquire immovable property on behalf of the firm;
 - g. Transfer immovable property of the firm;
 - h. Enter into partnership on behalf of the firm.

7. Extension and Restriction of Implied Authority & Partners Authority in Emergency

Content	
1.	Extension or Restriction of Authority a. Partners may extend or restrict a partner's implied authority by contract. b. However, the firm is still bound by such acts, unless third party: ▪ knows about the restriction, or ▪ does not know or believe that the person is a partner.
2.	Authority in Emergencies In emergencies, a partner may do whatever is necessary to protect the firm from loss, as a prudent person would do in his own case. Such acts bind the firm.

8. Liability for the Acts of Partners

Content	
1.	Liability of a Partner Each partner is jointly & severally liable for all acts of the firm done while he is a partner.
2.	Liability of the Firm The firm is liable if a partner, while acting ▪ in the ordinary course of the firm's business or ▪ with the authority of the other partners, causes loss, injury, or any penalty to a third party due to a wrongful act or omission.
3.	Liability of the Firm for Misapplication by Partners a. The firm is liable for losses if a partner misuses money or property received from a third party: ▪ If the partner received and misapplied it while acting within his apparent authority. ▪ If the firm received it during business and a partner misapplies it while in firm's custody. b. In both cases, the firm must make good the loss.



9. Deemed Partners or Partners by Holding out

Content	
1.	Holding Out / Deemed Partners A person will be held liable as a partner if: ▪ He represents himself as a partner (by words or conduct), or ▪ He knowingly allows others to represent him as a partner, ▪ And someone gives credit to the firm based on that representation even if the person did not know the representation reached the creditor.
2.	If two or more people carry on business together for profit , they may be treated as partners , even if they deny it and can be held liable to third parties.
3.	Use of Deceased Partner's Name Continuing the business with the deceased partner's name (as part of firm name) does not make his estate or legal representatives liable for any acts done after his death.

10. Rights of Transferee of a Partners Interest

Content	
1.	A partner may transfer his interest in the firm during its existence either absolutely, or by mortgage, or by creating a charge on such interest.
2.	However, the transferee (person receiving the interest) is not entitled to : ▪ Interfere in the conduct of the business; ▪ Demand accounts of the firm; ▪ Inspect the books of the firm.
3.	The transferee is only entitled to receive the share of profits of the transferring partner, and must accept the accounts of profit as agreed upon by the partners.
4.	Rights of a Transferee (on Dissolution or Exit of Partner) - If the firm is dissolved, or the transferring partner retires or exits, the transferee (person to whom the partner's share was transferred) is entitled to receive the share of the firm's assets that the transferring partner is entitled to. - The transferee has the right to demand an account of the firm's assets and liabilities from the date of dissolution.

11. Provisions Related to Minor as a Partner

Content	
1.	Minors as Partners - A minor cannot become a partner in a firm. - However, he can be admitted to the benefits of partnership with consent of all the partners through an agreement executed by his guardian.
2.	Rights & Liabilities of Minor - A minor is entitled to the agreed share of the property and profits of the firm. - He has the right to access, inspect, and copy the accounts of the firm. - The minor's share is liable for the acts of the firm, but he is not personally liable.



	d. If he severs connection with the firm, he cannot sue for an account or payment, but his share shall be determined by valuation. e. The firm can be dissolved by: ▪ All the partners jointly, or ▪ Any partner entitled to dissolve the firm, through notice, f. On dissolution by Court, minor's share is settled with others.
3.	Election on Majority a. On attaining majority or becoming aware of admission (whichever later), he must give public notice within 6 months. b. If he does not give notice, he is deemed to have become a partner after 6 months.
4.	If the Minor Elects to Become a Partner a. His rights and liabilities as a minor continue up to the date, he becomes a partner. b. He becomes personally liable for all acts of the firm done since his admission. c. His share in property and profits remains the same as what he had as a minor.
5.	If the Minor Elects Not to Become a Partner a. His rights and liabilities remain those of a minor up to the date of public notice. b. His share is not liable for any acts of the firm done after the notice. c. He is entitled to sue the partners for his share of the property. Note: The rule of "holding out" does not apply in cases of minors.
6.	Burden of Proof If a person claims that a minor had no knowledge of his admission until a date after 6 months of attaining majority, the burden of proof lies on the person making that claim.

12. Rights of Outgoing Partner

	Content
1.	Rights of Outgoing Partners a. An outgoing partner may start and advertise a competing business. b. However, subject to any contract to the contrary, he cannot: ▪ Use the firm name; ▪ Represent himself as running the business of the firm; ▪ Solicit former customers.
2.	Rights of Outgoing Partners a. If remaining partners continue business using firm property without settling accounts, Outgoing partner (or legal heir) is entitled to: ✓ Share of profits attributable to his share, or ✓ Interest @ 6% p.a. on his share in firm property. b. Option to Purchase: If continuing partners are given the option to purchase the outgoing/deceased partner's share and properly exercise it, then: ✓ No claim to further profits arises. ✓ If the option is not properly exercised, they must account for profits.



5.3 FORMATION, RECONSTITUTION & DISSOLUTION OF FIRMS

1. Existence of Partnership

Content	
1.	a. To decide: - Whether a group of persons is a firm or not; or - Whether a person is a partner or not; b. The real intention of the parties and all relevant facts must be considered
2.	If persons jointly own property and share profits or gross returns from it, this alone does not make them partners .
3.	A person receiving: - A share of the profits of a business; or - A payment dependent on profits; or varies with profits; does not automatically become a partner in the business.
4.	Receiving such share or payment in the following situations does not make one a partner: - Loan repayment (Lender to the business); - Remuneration (Servant or Agent); - Annuity received by a widow or child of a deceased partner as annuity; - Consideration for sale of goodwill or share in firm (by former owner/part-owner)

2. Property of the firm

Content	
1.	Property of the Firm - Property of the firm includes all property, rights, and interests in property brought into the firm, acquired by purchase, or for the purposes of the firm's business. - It also includes the goodwill of the business. - Property acquired with firm's money is presumed to belong to the firm unless shown otherwise.
2.	Partnership property must be held and used exclusively for the business purposes , subject to the contract between the partners.

3. Formation of a Partnership

Content	
1.	To form a partnership, the following ingredients are necessary: - There must be an agreement between the parties; - The agreement must be to share the profits of the business, and the business must be carried on by all or any of them acting for all; - There must be an agency relationship between the persons involved. All these ingredients must be present for a partnership to come into existence. Note: Actual starting of business or registration is not a condition precedent.



2. **Procedure to Form a Partnership**
 - a. Minimum 2 partners, maximum 10 for banking, and 20 for other businesses.
 - b. Choose the firm **name** as per the Act.
 - c. Decide the **business** and objectives.
 - d. Determine the **capital** contributed by each partner.
 - e. Draft a Partnership **agreement deed**.
 - f. The agreement must be in **writing** and signed by all partners.
 - g. The **agreement** is binding on all partners.
 - h. **Registration** is optional but recommended for **legal protection**.
 - i. Open a **bank account** in the firm's name.
 - j. Obtain a **PAN** from the **Income Tax Authority**.
 - k. Get mandatory **licenses** and register with tax authorities (like GST, Excise, etc).
 - l. **Registration certificate** is **conclusive evidence** of the firm's formation.

4. Reconstitution of Firm

Content	
1.	Reconstitution of a Partnership a. A partnership is an agreement between persons to share the profits of a business carried on by all or any of them acting for all. b. Any change in this relationship among partners leads to reconstitution of the firm.
2.	Reasons for Reconstitution a. Change in profit-sharing ratio of existing partners. b. Admission of a new partner. c. Retirement of a partner. d. Death of a partner. e. Amalgamation of two partnership firms.

5. Change in Profit Sharing Ratio

Content	
1.	When partners revise their profit-sharing ratio , it usually implies one partner is acquiring a portion of another's share: a. One partner's share increase (gaining partner), b. Another's share decreases (sacrificing partner).
2.	Goodwill Compensation a. The gaining partner must compensate the sacrificing partner for the acquired share b. This is done by paying the proportionate amount of goodwill.
3.	Treatment of Reserves and Accumulated Profits/Losses a. Reserves & accumulated profits/losses should be distributed in the old ratio. b. If not distributed by mutual consent, they may remain unchanged, but the gaining partner must still compensate the sacrificing partner.



4. **Revaluation of Assets and Liabilities**
 - a. Assets and liabilities must be **revalued** to **reflect actual values**.
 - b. Any **gain/loss** on **revaluation** belongs to the period before the change and is shared in the **old ratio**.

6. Admission of Partner

When a new partner is admitted into the firm, it leads to a reconstitution of the firm.

1. **New Profit-Sharing and Sacrificing Ratio**
 - a. A new profit-sharing ratio must be decided.
 - b. Existing partners must agree on the **sacrificing ratio**.
2. **Goodwill Adjustment**
 - a. **New partner** must **compensate existing partners** for goodwill they are sacrificing.
 - b. Goodwill may be paid in **cash** or **adjusted** through **capital accounts**.
3. **Revaluation of Assets and Liabilities**
 - a. Firm's assets and liabilities should be **revalued** to reflect **current market values**.
 - b. Any profit or loss from revaluation is shared in the **old ratio**.
4. **Undistributed Profits and Accumulated Losses**
Distribute reserves, profits, or losses among existing partners in the **old ratio** before admission.
5. **Adjustment of Capital Accounts**
After all changes, the **capital accounts** of all partners, including the new one, must be adjusted as per **agreed ratios or equal capital basis**, if decided.

7. Retirement of Partner

Content

1. **Retirement** of a partner also results in **reconstitution** of the firm. The **old partnership agreement ends** and a new agreement is formed between the continuing partners.
2. **Modes of Retirement:**
 - a. By Mutual Consent: **All partners agree** to the retirement of a particular partner.
 - b. As per Partnership Deed: If the deed contains a clause on retirement, a partner may retire by giving a **notice** in accordance with that clause.
 - c. In Case of Partnership at Will: A partner may retire by giving a **written notice** to all other partners.
3. **Settlement of Retiring Partner's Account:**
 - a. The amount due may be paid:
 - Immediately in **lump sum**, or
 - In **installments**, with or without interest, or
 - Partly in cash and partly in installments.
 - b. In **absence of agreement**, the outgoing partner has **two options**:
 - Receive **interest @ 6% p.a.** on the balance till settlement, or
 - Claim a **share of profits** earned using his capital (based on capital ratio).



4. **Liability of Retiring Partner**
 - a. Even after retirement, a partner is **liable** to third parties for **acts done** by the firm **before** giving **public notice** of his retirement.
 - b. If a **third-party** deals with the firm **without knowledge** of the retired partner, then the **retired partner** is **not liable**.
 - c. The public **notice** may be given either by the **retired partner**, or **any partner** of the reconstituted firm.

8. Death of Partner

	Content
1.	The death of a partner results in the reconstitution of the firm , as it alters the relationship among the remaining partners due to the vacancy created.
2.	Accounting Treatment - Deceased Partner vs. Retiring Partner a. key difference: ✓ Retirement: Amount due is paid directly to the partner. ✓ Death: Amount due is credited to Executor's Account (i.e., legal heir/nominee). b. Major Difference: Timing of Retirement vs. Death ✓ Retirement usually occurs at year end, so all accounts are up to date. ✓ Death may occur at any time, creating a gap between the last Balance Sheet date, and the date of death ✓ During this intervening period, the deceased partner is entitled to ▪ Share of profit or loss ▪ Interest on capital ▪ Interest on drawings (if any) ▪ Remuneration (if applicable, like salary or commission) c. Estimating Profit for the Gap Period Since books aren't usually closed mid-year, profit is estimated using: ✓ Last year's profit ✓ Average of past years' profits ✓ Proportion of current sales till death
3.	Liability of Estate of Deceased Partner If the agreement states the firm continues after a partner's death , ✓ The deceased partner's estate is not liable for any acts or liabilities after death. ✓ The deceased partner's heirs are not responsible for future liabilities of the firm.
4.	Expulsion of a Partner A partner cannot be expelled by a majority of partners unless: a. The partnership agreement allows it; b. The expulsion is done in good faith and in the best interest of the firm; c. The partner being expelled is given a fair opportunity to explain. Expulsion without fulfilling these conditions is invalid .



5.	Insolvency of a Partner a. When a partner is adjudicated an insolvent , he ceases to be a partner from the date of adjudication order. b. If the firm continues , the insolvent's estate is not liable for future acts of the firm, and the firm is not liable for the insolvent's acts after adjudication.
6.	Revocation of Continuing Guarantee A continuing guarantee is revoked for future transactions from the date of any change in the firm's constitution, unless agreed otherwise.
7.	Amalgamation of Two Partnership Firms When two or more firms merge to form a new firm, it is called the amalgamation of firms. a. Assets & Liabilities are revalued. b. Reserves are transferred to old partners' capital accounts in the old ratio. c. Goodwill is valued and recorded as per agreement. d. Unabsorbed assets/liabilities not taken over by the new firm are transferred to old partners' capital accounts and closed.

9. Registration of Firm

Content	
1.	Registrars of Firms The State Government appoints Registrars of Firms and defines their jurisdiction.
2.	Application for Registration a. To register a firm, submit a statement with the following details: ✓ Name of the firm ✓ Principal place of business ✓ Names of other business places where the firm operates ✓ Date of joining of each partner ✓ Full names and permanent addresses of the partners ✓ Duration of the firm (if any) b. This statement must be signed by all partners or by their authorized agents. c. The prescribed registration fee must be paid. d. Each person who signs the statement must also verify it in the prescribed manner.
3.	Firm Name Restrictions A firm name shall not include the following words unless the SG gives written consent : ✓ Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal or ✓ Any words that imply Government approval, sanction, or patronage
4.	Registration Procedure a. Deliver the documents to the Registrar of the concerned area. b. Once the Registrar is satisfied that all requirements have been met: ✓ He shall record an entry of the statement in the Register of Firms ✓ He shall also file the statement officially



10. Alterations

Content	
1.	Alteration of Firm Name or Place a. Any change in firm name or principal place of business, a statement specifying the alteration must be sent to the Registrar with the prescribed fee. b. The statement must be signed and verified. c. Once the Registrar is satisfied, he shall update the Register of Firms.
2.	On opening or closing a branch office (not the principal place), any partner/agent can notify the Registrar , who shall note and file the notice.
3.	If a partner changes his name , or permanent address , any partner or agent may notify the Registrar , who shall note and file the notice.
4.	On dissolution or change in constitution, any partner (incoming, outgoing, or continuing) can notify the Registrar , who shall record and file the notice
5.	Withdrawal of Minor a. When a minor attains majority, he must elect to become or not become a partner. b. His decision must be notified to the Registrar, who shall record and file it.
6.	Rectification of Mistakes a. Registrar can rectify any mistake in the Register to match official documents. b. If all signatories agree, mistakes in the documents or entries can be rectified.
7.	If a Court issues a direction regarding a firm, the Registrar must make the required amendment in the Register .
8.	The Register and related documents are open for inspection on payment of fees .
9.	On request and fee payment, the Registrar will provide a certified copy of any entry.
10.	Entries made in the Register are conclusive proof of facts against the signatory or person represented.

11. Effect of Non-registration

Content	
1.	Effect of Non-Registration An unregistered firm faces legal limitations: a. No Suit by Partner Against Firm or Co-partners: A partner cannot sue the firm or other partners to enforce a contractual right unless: ▪ The firm is registered, and ▪ The partner is listed in the Register of Firms. b. No Suit by Firm Against Third Parties A firm cannot sue any third party to enforce a contract unless: ▪ The firm is registered, and ▪ All suing partners are recorded in the Register of Firms. c. No Set-Off or Legal Proceedings The firm also cannot claim a set-off or enforce rights in other legal proceedings arising from a contract.



2.	However, these restrictions do not apply to: Suits for dissolution, settlement of accounts, or recovery of property of a dissolved firm. - Powers of official assignees, receivers, or courts under Presidency-Towns Insolvency Act, 1909 or Provincial Insolvency Act, 1920
3.	Penalty Any person who signs false or incomplete document is liable for imprisonment up to 3 months, or fine , or both .

12. Mode of Giving Public Notice

Content	
1.	Specific Cases (require notice to Registrar + publication): Retirement or expulsion of a partner Dissolution of the firm Minor attaining majority and choosing to become or not become a partner Notice must be given through: - Registrar of Firms - Official Gazette, and - One vernacular newspaper in the firm's business district
2.	In All Other Cases (only publication required): - Official Gazette, and - One vernacular newspaper in the relevant district

13. Dissolution of a Firm

Content	
1.	Dissolution of the partnership occurs when all partners agree to end the partnership .
2.	Modes of Dissolution of a Firm Dissolution without the order of the court (Voluntary Dissolution) Dissolution by Agreement: A firm may be dissolved: - with the consent of all partners, or - in accordance with a contract between the partners.
3.	Compulsory Dissolution A firm is compulsorily dissolved: - on adjudication of all partners or all but one as insolvent, or - by an event making the business unlawful for the firm or its partners. Note: If the firm has multiple ventures, only the illegal one stops ; the rest can continue.
4.	Dissolution on the Happening of Certain Contingencies Subject to contract between the partners, a firm is dissolved: - If constituted for a fixed term, on expiry of that term; - If formed for specific adventures or undertakings, on completion thereof; - On the death of a partner;



	On adjudication of a partner as insolvent.
5.	Dissolution by Notice (Partnership at Will) - Any partner can dissolve the firm by giving written notice to all other partners. - The firm is dissolved from the date mentioned in the notice, or if no date is mentioned, from the date of communication of the notice.

14. Dissolution of a Firm by Court

The Court may dissolve a firm on a partner's suit based on any of the following grounds:

1.	Unsound Mind: A partner has become mentally unfit (on application by another partner).
2.	Permanent Incapacity: A partner is permanently unable to perform his duties.
3.	Prejudicial Conduct: A partner's conduct harms the business .
4.	Breach of Agreements: Repeated or wilful breach of partnership terms, making it impractical to continue with the partner.
5.	Transfer of Interest: A partner has transferred/charged/sold his entire interest.
6.	Business can continue only at a loss: The firm cannot operate without incurring losses .
7.	Just and Equitable Ground: Any other reason the court considers fair and reasonable .

15. Consequences of the Dissolution of a Firm

Content	
1.	Liability of Partners After Dissolution - Partners remain liable for acts done before dissolution until public notice is given. - The following partners are not liable for acts done after they cease to be partners: ✓ Deceased partners ✓ Insolvent partners ✓ Retired partners
2.	Right of Partners After Dissolution Each partner/legal representative can: - Ensure firm's property is used to settle debts - Claim surplus as per their rights
3.	Continuing Authority of Partners - Authority continues only for: ✓ Winding up firm affairs ✓ Completing unfinished transactions - Insolvent partners cannot bind the firm - Others may be liable if they represent an insolvent as a partner.
4.	Mode of Settlement After dissolution, the settlement of accounts is done in the following manner, subject to any agreement among the partners: - Payment of Losses (including capital deficiency) is made: - From profits - From capital



	By the partners individually, in their profit-sharing ratio b. Application of Assets: ▪ Pay debts to third parties ▪ Repay partner advances (not capital) ▪ Return capital contributions to partners ▪ Distribute residue among partners.
5.	Payment of Firm Debts a. Firm's property pays firm debts: surplus goes to partners' shares. b. Partner's personal property pays personal debts: surplus may be used for firm debts.
6.	Return of Premium A partner who paid a premium to join for a fixed term is entitled to a reasonable return if dissolved before term ends, except when: ▪ Dissolution is due to his misconduct, or ▪ The agreement excludes return
7.	Rescinding of Contract If a partnership contract is rescinded for fraud/misrepresentation, the injured party is entitled to the following rights: a. Lien or Right of Retention: A right to retain the surplus assets of the firm (after paying firm's debts) for: ▪ Any amount paid to purchase a share in the firm, and ▪ Any capital contributed by him. b. The right to be treated as a creditor of the firm for any amount he paid towards firm's debts. c. The right to be indemnified by the partner(s) who committed the fraud or misrepresentation, for all debts of the firm.
8.	Restrain to Use Firm Name a. In the absence of any contract to the contrary, any partner can restrain others from using the firm name, or firm's property for personal benefit, until the firm's affairs are completely wound up. b. Exception: If a partner has purchased goodwill, he has the right to use firm name.
9.	Agreements in Restraint of Trade Partners may agree not to carry on a similar business after the firm is dissolved, but the restrictions must be reasonable.
10.	Personal Profits After Dissolution a. If any profits earned using firm's name/property after dissolution (due to the death of a partner) and before winding up, then such profits belong to the firm. b. Exception: If a partner has purchased goodwill, he has the right to use firm name.



6. LIMITED LIABILITY PARTNERSHIP

6.1 CONCEPT, FORMATION, MEMBERSHIP AND FUNCTIONING

1. Introduction

Content	
1.	a. The Government introduced the 'LLP Bill, 2006' in the Rajya Sabha on 15.12.2006. b. The Ministry of Law and Justice notified the LLP Act, 2008 on 09-01-2009. c. The Parliament passed the LLP Bill on 12-12-2008, and the President of India gave assent on 07-01-2009.
2.	a. This Act provides for the formation and regulation of LLPs, along with related matters. b. The LLP Act, 2008 consists of 14 chapters, 81 sections and 4 schedules: ▪ First Schedule: Rights and duties of partners and LLPs. ▪ Second Schedule: Conversion of a firm into an LLP. ▪ Third Schedule: Conversion of a private company into an LLP. ▪ Fourth Schedule: Conversion of an unlisted public company into an LLP. c. The Indian Partnership Act, 1932 does not apply to LLPs.

2. Concept of LLP

Content	
1.	It is an alternative corporate business form that gives the benefit of limited liability like a company and the flexibility of a partnership
2.	It can continue even if there is a change in partners .
3.	It can enter into contracts and own property in its own name.
4.	It is a separate legal entity . It is fully liable for its assets, but the partners' liability is limited to their agreed contribution in the LLP.
5.	No partner is responsible for the unauthorized actions of other partners . Each partner is protected from joint liability for another partner's wrongful acts or decisions.
6.	The mutual rights and duties of partners in an LLP are decided by an agreement between the partners or between the partners and the LLP.

3. Partner of LLP

Partners	
1.	Any individual or body corporate can become a partner in an LLP.
2.	Disqualification An individual cannot become a partner if: a. He is of unsound mind (as declared by competent Court and still in force); b. He is an undischarged insolvent; or c. He has a pending application to be adjudicated as an insolvent.
3.	Eligible Entities as Partners



- a. Individuals (Resident Indians, NRIs, Overseas Citizens of India, and foreign nationals).
- b. Limited Liability Partnerships.
- c. Companies, including foreign companies.
- d. Foreign LLPs.
- e. LLPs incorporated outside India.
- f. Companies incorporated outside India.

Note:

- ✓ Co-operative society and corporation sole cannot become partner.
- ✓ If an LLP receives capital from foreign investors, it must comply with FDI regulations.

4. Minimum number of Partners

Content	
1.	Every LLP shall have at least 2 partners.
2.	If an LLP continues business for more than 6 months with only one partner, that sole partner shall be personally liable for all obligations incurred by LLP after 6 months.

5. Designated Partner (DP)

Appointment & Requirements of Designated Partners	
1.	a. Every LLP must have at least 2 DP, who must be individuals, with at least 1 resident in India. b. A resident is a person who has stayed in India for at least 120 days during the FY. c. If All Partners are Bodies Corporate At least 2 individuals (partners or nominees of body corporates) must act as DP. d. In case of contravention, ▪ LLP: ₹10,000 + ₹100 per day subject to maximum ₹1,00,000 ▪ Every partner: ₹10,000 + ₹100 per day subject to maximum ₹50,000
2.	Identification of DP a. If the incorporation document ▪ Specifies who are to be DP, such persons shall be DP on incorporation; or ▪ States that each of the partners from time to time of LLP is to be DP, every partner shall be a DP. b. A partner may become or cease to be a DP as per the LLP agreement.
3.	Liabilities of Designated Partners Unless otherwise provided in this Act, DP shall be a. Responsible for LLP compliance, including filing documents, returns, statements, and reports. b. Liable for penalties imposed on the LLP for non-compliance with provisions.
4.	Change in DP a. LLP shall appoint a new DP within 30 days of vacancy.



	b. If No DP is Appointed or only 1 DP, every partner shall be deemed a DP. c. Punishment for contravention, ▪ LLP: ₹10,000 + 100 per day, up to a maximum of ₹1,00,000. ▪ Every Partner: ₹10,000 + ₹100 per day, up to a maximum of ₹50,000.
5.	Filing with ROC a. An individual shall give prior consent before being appointed as a DP. b. LLP shall file particulars of DP with ROC within 30 days of appointment. c. A DP shall meet prescribed conditions to be eligible. d. Every DP must obtain a DPIN from the CG. e. In case of contravention, ▪ LLP: ₹5000 + 100 per day, up to a maximum of ₹50,000. ▪ Every DP: ₹5000 + ₹100 per day, up to a maximum of ₹25,000.

6. Procedure for Formation of LLP

Appointment & Requirements of Designated Partners

1.	The incorporation of an LLP involves the following steps: a. Reservation of name. b. Submission of incorporation documents with Registrar. c. Registration of LLP.
2.	Reservation of Name a. Any person may apply with a fee of ₹200 to the Registrar having jurisdiction over the proposed LLP's registered office, specifying the proposed name. ▪ The name must not violate the Emblems and Names (Prevention of Improper Use) Act, 1950. ▪ Names restricted under Rule 18(2) shall not be allowed. a. An LLP name shall not be: ▪ Undesirable, in the opinion of the Central Government (CG), or ▪ Identical/similar to any existing LLP, company, or registered trademark under the Trade Marks Act, 1999. b. Upon receipt of application and fee, the Registrar may reserve the name if it meets the prescribed norms. c. Registrar shall inform the applicant of name reservation or rejection within 7 days. d. A reserved name is valid for 3 months from the date of such intimation.

Submission of Documents

1.	The incorporation document is the most important document for LLP registration.
2.	Conditions for Incorporation a. At least 2 persons must subscribe to the incorporation document for a lawful business with profit motive. b. The document must be filed electronically with the Registrar of the State where the LLP's registered office will be located.



	c. Filing includes a statement in prescribed form made by: ▪ An Advocate/CS/CA/CMA in practice involved in forming the LLP. ▪ A subscriber to the incorporation document, confirming compliance with LLP Act requirements.
3.	Contents of Incorporation Document must include: - LLP name. - Proposed business. - Registered office address. - Details of initial partners. - Details of designated partners. - Prescribed format. - Any other prescribed information.
4.	Stamp Duty (based on contribution): - up to Rs. 1 lakh - Fee: Rs. 500 - Above Rs. 1 lakh and up to Rs. 5 lakhs - Fee: Rs. 2,000 - Above Rs. 5 lakhs and up to Rs. 10 lakhs - Fee: Rs. 4,000 - Above Rs. 10 lakhs - Fee: Rs. 5,000
5.	Penalty for False Declaration If a person knowingly makes a false statement, he face: ✓ Imprisonment up to 2 years. & ✓ Fine between ₹10,000 and ₹5,00,000.
6.	Incorporation by Registration - Once all requirements are met, the Registrar shall: ▪ Register the incorporation document. ▪ Issue a certificate of incorporation within 14 days. - The Registrar may accept the filed statement as sufficient evidence of compliance. - The certificate is signed by the Registrar, Authenticated with an official seal. - The certificate is Conclusive proof of LLP incorporation.
7.	Registered Office of LLP & Changes - Every LLP shall have a registered office for receiving communications and notices. - A document may be served by post under a certificate of posting, Registered post, any other prescribed method at the registered office. - LLP can change its registered office by filing a notice with the Registrar as per prescribed rules. The change takes effect only after filing. - If an LLP fails to comply, LLP and partners faces ₹500 per day penalty (maximum ₹50,000).
8.	Effect of Registration After registration, an LLP has the following rights in its own name: - LLP can file lawsuits and be sued. - LLP can acquire, own, hold, develop, and dispose of property (movable, immovable, tangible, or intangible).



- c. LLP may have a **common seal**, but it is **not mandatory**.
- d. LLP can perform **lawful acts** like any other body corporate.

7. Change of Registered Office

Content	
1.	Change of Registered Office a. LLP may change its registered office by filing a notice with the Registrar as per the LLP agreement. b. In absence of such agreement, consent of all partners is required. c. If shifting from one State to another, consent of secured creditors (if any) is also required.
2.	The notice for change shall be filed in Form No. 15: ✓ within 30 days of completing the required process, ✓ along with the prescribed fee, ✓ whether the change is within the same state or from one State to another.
3.	If the change is from one State to another, the LLP must also: ✓ publish a general notice at least 21 days before filing Form 15, ✓ in a daily newspaper (one in English and one in the principal local language of the district where the current registered office is located).
4.	If the registered office is shifted: ✓ within the same State, but to another ROC jurisdiction, or ✓ from one State to another, the LLP shall file Form 15 with the existing Registrar and send a copy to the Registrar of the new jurisdiction .

8. Change of Name

Content	
1.	LLP may change its name as per the procedure stated in the LLP agreement . If agreement is silent , consent of all partners is required.
2.	File Form No. 5 (notice of change of name) with the Registrar within 30 days of fulfilling required conditions, along with the prescribed fee.
3.	If the Registrar is satisfied that the new name is the one reserved by him, he will issue a fresh certificate of incorporation in the new name.
4.	The name change is effective from the date of new certificate .

9. Rectification of Name

Content	
1.	If an LLP is inadvertently registered with a name: ✓ Identical or too similar to another LLP or company. ✓ Too similar to a registered trademark.



	Then, on application from the affected LLP, company, or trademark owner, the CG may direct the LLP to change its name within 3 months.
2.	A registered trademark owner can apply for rectification within 3 years from the LLP's incorporation or name change.
3.	Once the LLP changes its name, it shall: ✓ Notify the Registrar within 15 days. ✓ Registrar updates the incorporation certificate. ✓ The LLP shall update its LLP Agreement within 30 days.
4.	If the LLP fails to comply, the CG will assign a new name, and the Registrar will issue a fresh incorporation certificate.
5.	LLPs can voluntarily change their name later even after a CG directed change.
6.	Punishment for Default: Fine LLP: Minimum Rs. 10,000, Maximum Rs. 5 lakhs. DP: Minimum Rs. 10,000, Maximum Rs. 1 lakh.

10. Relationship of partners with LLP

Content	
1.	a. An LLP is governed by the LLP agreement made between the partners. b. Subscribers to the incorporation document become partners on incorporation of LLP. c. Others can become a partner as per the terms of the LLP agreement. d. The LLP agreement is a key document in LLP operations.
2.	Pre-Incorporation Agreement a. A written agreement made before incorporation binds the LLP only if ratified by all partners after incorporation. b. Such ratification must be filed in Form 3 with ROC within 30 days, with the fee.
3.	Filing of LLP Agreement a. Every LLP must file its LLP agreement with ROC in Form 3 within 30 days of incorporation, with the prescribed fee. b. Any change in the LLP agreement must also be filed in Form 3 within 30 days of such change.
4.	In the Absence of LLP Agreement If there is no agreement on any matter, then: ▪ Mutual rights and duties of partners, and ▪ Rights and duties between the LLP and partners shall be governed by the First Schedule of the LLP Act.
5.	Provisions of the First Schedule: a. All partners share equally in the capital, profits, and losses of the LLP. b. LLP shall indemnify partners for payments made or liabilities incurred: ✓ In the ordinary course of business, or ✓ For actions necessary to preserve the business or property of the LLP. c. Every partner must indemnify the LLP for loss caused by his fraud.



- d. Every partner has the right to participate in management.
- e. No partner is entitled to remuneration for managing the LLP.
- f. No one can be admitted as a partner without the consent of all existing partners.
- g. Any matter is decided by a majority of partners, but change in nature of business needs consent of all partners.
- h. Decisions shall be recorded in minutes within 30 days and kept at the registered office.
- i. Each partner shall provide true accounts and full information to the other partners or their legal heirs.
- j. If a partner runs a competing business without LLP's consent, he shall pay all profits earned from it to the LLP.
- k. Any unauthorized benefit gained from LLP-related dealings shall be accounted to LLP.
- l. A majority of partners cannot expel a partner unless express agreement allows it.
- m. Unresolved disputes shall be referred to arbitration under the Arbitration and Conciliation Act, 1996.

11. Registration of changes in Partners

Content	
1.	a. Every partner must inform the LLP about any change in his name or address within 15 days of such change, by filing Form No. 6. b. If the partner fails to do so, he is punishable with a fine Minimum Rs. 2,000, Maximum Rs. 25,000.
2.	a. When a person becomes or ceases to be a partner, the LLP shall file a notice with ROC in Form No. 4. b. Any change in the name or address of a partner, the LLP shall file the notice within 30 days of such change, along with the prescribed fee. c. The Form 4 must be: ✓ Signed by a DP, and ✓ Authenticated as may be prescribed. d. If it relates to an incoming partner, the form must also contain: ✓ A statement of consent from the incoming partner, ✓ Signed and authenticated in the prescribed manner. e. Form 4 must be accompanied by a certificate from a CA/CMA/CS in practice, certifying that the particulars have been verified from the books and records of the LLP and are true and correct.
3.	If the LLP fails to file the notice in Form 4, then the a. LLP: Fine minimum Rs. 2,000, Maximum Rs. 25,000. b. DP: Fine minimum Rs. 2,000, Maximum Rs. 25,000.



4.
 - a. A **ceased partner** may himself file the **notice** with the **Registrar** if he believes the LLP might not file it.
 - b. In such a case, the **Registrar** will **seek confirmation** from the **LLP**, unless the LLP has already filed the notice.
 - c. If **no confirmation** is received from the LLP **within 15 days**, the **Registrar** shall **register** the **notice** filed by the ceased partner.

12. Extent and Limitation of Liability of Partners in LLP

Content	
1.	Partner as Agent Every partner is an agent of the LLP for its business activities, but not an agent of other partners .
2.	Extent of Liability of LLP a. If a partner acts without authority, the LLP is not bound if: ✓ The partner has no authority to act for the LLP. ✓ The third party knew the partner had no authority or was unaware they were a partner. b. LLP is liable if a partner's wrongful act or omission occurs during business operations or with LLP's authority. c. LLP's obligations (contractual or otherwise) are solely the responsibility of the LLP. d. The liabilities of the LLP shall be met out of the property of the LLP.
3.	Extent of Liability of Partner a. A partner is not personally liable for LLP's obligations just because he is a partner. b. A partner is personally liable for their own wrongful act but not for acts of other partners.
4.	Holding Out a. If a person falsely represents themselves as a partner, they are liable if: ✓ The representation is spoken, written, or by conduct. ✓ A third party relies on it and extends credit to the LLP. b. If the LLP receives credit due to false representation, it is liable for the amount received. c. If an LLP continues using a deceased partner's name, their legal representative is not liable for LLP acts after death.
5.	Unlimited Liability in Case of Fraud a. If an LLP or any partner acts to defraud creditors or for fraudulent purposes, liability becomes unlimited. b. LLP is liable for a fraudulent act of a partner, unless it proves the act was without LLP's knowledge or authority. c. If an LLP knowingly carries out fraudulent business, those involved face: ✓ Imprisonment up to 2 years and ✓ Fine between ₹50,000 to ₹5,00,000.



- d. LLP, partners, DP, or employees involved in fraud shall compensate for losses suffered by any affected person. However, the LLP is not liable if the fraud was without its knowledge.

13. Whistle Blowing

Content	
1.	Penalty Reduction or Waiver The Court or Tribunal may reduce or waive any penalty for a partner or employee of an LLP if: - They have provided useful information during an investigation of the LLP. - Their information (whether during an investigation or otherwise) leads to the conviction of the LLP, its partner, or employee under this Act or any other Act.
2.	Protection No partner or employee of an LLP shall face discharge, demotion, suspension, threats, harassment, or any other form of discrimination in their employment terms for providing or facilitating information.

14. Partners Contribution

Content	
1.	Form of Contribution - A partner's contribution may include tangible, movable, immovable, or intangible property or any other benefit to the LLP. - This includes money, promissory notes, agreements to contribute cash or property, and contracts for services (performed or to be performed). - The monetary value of each partner's contribution shall be accounted for and disclosed in the LLP's accounts as per prescribed rules. - The same shall be valued by a CA/CMA in practice or by approved valuer from the panel maintained by the CG.
2.	Obligation to Contribute - A partner's obligation to contribute money, property, or benefits or to perform services for the LLP shall be as per the LLP agreement. - A creditor of the LLP may enforce the original obligation against the partner if he extends credit or relies on a partner's obligation in the LLP agreement.

15. Maintenance of Books and Audit of Books of Accounts

Content	
1.	Books of Account & Statement of Account and Solvency (Form 8) - Every LLP must maintain proper books of account and file a Statement of Account and Solvency annually with the Registrar. - Books shall include: - Details of all receipts and payments with reasons for such transactions,



	- Record of assets and liabilities, - Statements of cost of goods (purchased, inventories, WIP, finished, sold), - Any other details as agreed by partners. c. Books of accounts shall be preserved for 8 years
2.	Statement of Account and Solvency a. LLP shall file a Statement of Account and Solvency in Form No. 8 with ROC within 30 days from the end of 6 months of the financial year, with the prescribed fee. b. The Statement shall be signed by DP on behalf of the LLP. c. Every DP is deemed to have approved it unless he proves that he took all reasonable steps to prevent approval.
3.	Audit of Accounts a. The accounts of every LLP shall be audited. b. However, an LLP is not required to get its accounts audited if: - Its turnover = < Rs. 40 lakhs, - Its contribution = < Rs. 25 lakhs. c. If the accounts are not audited, Form 8 shall include: - Partners declaration of compliance regarding books of accounts, and - A certificate in Form No. 8.

16. Auditor of LLP

Content	
1.	Appointment of Auditor a. C.A. in practice is qualified to be appointed as an auditor of an LLP. b. Auditor(s) shall be appointed for each financial year to audit the LLP's accounts.
2.	Appointment by DP: a. The designated partners may appoint an auditor: ✓ Any time before the end of the first financial year for that year, ✓ At least 30 days before the end of each subsequent financial year, ✓ To fill a casual vacancy, including cases where turnover or contribution exceeds prescribed limits, ✓ To fill a vacancy due to removal of an auditor. b. If DPs fail to appoint, the partners may appoint the auditor in such a case.
3.	Term of Auditor: An appointed auditor holds office until a new auditor is appointed, or he is re-appointed.
4.	a. If no new auditor is appointed, the existing auditor is deemed re-appointed unless: - The LLP agreement requires actual reappointment, or - A majority of partners decide not to reappoint and send a notice to the LLP. b. Notice may be in physical or electronic form and duly authenticated by the sender. c. The same rules apply for the removal or resignation of auditors.



5.	Resignation Notice by Auditor: - Notice of resignation shall be accompanied by a statement of circumstances related to ceasing office. - The auditor's term ends on: - The date the notice is deposited, or - A later date specified in the notice.
6.	Remuneration of Auditor: The remuneration may be fixed by the DPs or as per the LLP agreement .

17. Annual Return

Content	
1.	Every LLP must file an Annual Return with the Registrar each year in Form No. 11, duly authenticated , along with the prescribed fee.
2.	Certification Requirements: - If the turnover $\leq$ Rs. 5 crores, or its contribution $\leq$ Rs. 50 lakhs, the Annual Return shall be certified by a DP (other than the signatory) confirming its correctness. - In all other cases, the Annual Return must be certified by a CS in practice confirming that he has verified the books and records of the LLP and found them to be true and correct.
3.	Filings and Penalty: CG may prescribe the contents and filing manner of Annual Return through rules. - If any LLP fails to file the Annual Return, it is punishable with a fine minimum Rs. 10,000, maximum Rs. 1 lakh.
4.	Inspection of Documents Incorporation document, partner details & changes, Statement of Account and Solvency, and Annual Return of an LLP are open for inspection by any person on payment of the prescribed fee .

18. Penalty for False Statement

Content	
1.	If any person makes a false statement or omits a material fact in any return, statement, or document under this Act, knowing it to be false or material: - Imprisonment for up to 2 years. & - Fine between ₹1,00,000 to ₹5,00,000.

19. Power of Registrar to Obtain Information

Content	
1.	The Registrar may require any person (including a partner, DP, or employee of an LLP, past or present) to answer questions , make declarations , or provide information in writing within a reasonable period.



2.	If the person: - Fails to provide the required information within the given time or the Registrar is not satisfied with the reply, - The Registrar may summon them to appear before him, an inspector, or any public officer designated by the Registrar.
3.	Anyone who fails to comply with the Registrar's summons without a lawful excuse shall face a fine of ₹2,000 to ₹25,000 .

20. Compounding of Offences

Content	
1.	CG may compound any offence under this Act that is punishable with a fine only. - The amount collected shall be: ✓ Not less than the minimum fine for the offence. ✓ Not more than the maximum fine for the offence.

21. Preservation of Records

Content	
1.	Records to be preserved permanently: Incorporation document - Notice of situation of registered office - Information regarding LLP agreement or any change made in it - Notice of other address of any LLP where documents are to be served
2.	Records to be preserved for 21 years: All papers, registers, refund orders, and correspondence related to LLP liquidation accounts
3.	Records to be preserved for 5 years: - Copies of Government orders related to LLP Registered documents of LLPs that are fully wound up and dissolved, and related correspondence - Papers relating to legal proceedings, preserved from the date of disposal of the case and appeal, if any - Copies of statistical returns submitted to Government - All correspondence, including those related to: ▪ Scrutiny of accounts ▪ Prosecutions ▪ Reports to CG and Tribunal ▪ Complaints Statement of compliance with the Act by a CA/CS/CMA or Advocate in whole-time practice and by any person who subscribed to the incorporation document - Notice of a person ceasing to be a partner and any change in name or address of a partner



	h. Registered documents of LLPs struck off u/s 75, and related correspondence or restoration orders i. Annual Return of an LLP j. Consent of candidate to act as designated partner, to be filed with the Registrar k. Consent to act as a partner l. Statement by all partners of a firm with particulars, along with application for conversion into LLP m. Statement by all shareholders of a private/unlisted company, with particulars, along with application for conversion into LLP n. Certified copy of order(s) of the Tribunal u/s 60/61/62 o. Copy of dissolution order of LLP by the Tribunal p. Statement of Account and Solvency Note: In case of prosecution matters, the 5-year period is counted from the date of disposal of the case or appeal, if any.
4.	Records to be preserved for 3 years: a. All books, records, and papers not specified above b. Routine correspondence related to: ▪ Payment of fees ▪ Additional filing fees ▪ Return of documents
5.	Destruction of Old Records: a. Records may be destroyed after the expiry of their preservation period, with prior approval of the Registrar. b. The Registrar shall maintain a Register of destroyed documents in two parts, where: ▪ Brief particulars of destroyed records will be entered ▪ Date and mode of destruction will be certified

22. Conversion of LLP

Conversion of Firm into LLP

1.	Conditions for Conversion: A firm may convert into an LLP only if: a. Partners of the LLP after conversion are the same as the partners of the firm before conversion. b. No other person can become a partner in the LLP at the time of conversion. c. The partners shall comply with the provisions of the II Schedule.
2.	Application for Conversion: A firm must apply to the ROC by filing a statement by all partners in Form No. 17, with the prescribed fee, containing: a. Name and registration number (if applicable) of the firm; b. Date of registration under the Indian Partnership Act, 1932, or any other law;



	c. Incorporation Document and statement for LLP.
3.	Certificate of Registration: a. ROC registers and issues a Certificate specifying date of LLP registration. b. ROC may seek document verification as deems fit.
4.	Post-Registration Compliance: Within 15 days, LLP must inform the concerned Registrar of Firms , about: a. The conversion , and b. The particulars of the LLP.
5.	Rejection and Appeal: a. ROC may refuse registration if not satisfied. b. In such a case, an appeal can be made before the Tribunal .

Conversion from Private Limited Company into LLP

1.	Conditions for Conversion: A private company can apply for conversion into an LLP only if: a. There is no security interest in the company's assets at the time of application; b. All shareholders must become partners of the LLP, and no other person can be included.
2.	Effect of Conversion: Upon conversion, the company, shareholders, LLP, and partners are bound by the provisions of the III Schedule .
3.	Application Procedure: The company must apply to the Registrar by filing the following documents a. A statement by all shareholders in Form No. 18 with the prescribed fees, including: ▪ The name and registration number of the company, ▪ The date of incorporation of the company; and b. The Incorporation document and statement for the LLP.
4.	Certificate of Registration: a. On receipt of the documents, ROC will register them and may require the documents to be verified in a manner he considers fit. b. ROC registers and issues a Certificate specifying date of LLP registration.
5.	Post-Conversion Compliance: Within 15 days , LLP must inform the ROC about: ▪ The conversion , and ▪ The particulars of the LLP , by filing the prescribed Form with fees.
6.	Rejection and Appeal: a. ROC may refuse registration if not satisfied. b. An appeal can be made against such refusal before the Tribunal .



Conversion from Unlisted Public Company into LLP

1.	Eligibility for Conversion: An unlisted public company can apply for conversion into an LLP only if: - There is no security interest in the company's assets at the time of application; - All the shareholders must become partners in the LLP, and no other person can be included.
2.	Application Procedure: The company must file the following with the Registrar: - A statement by all shareholders, along with the prescribed fee, including: - The name and registration number of the company, - The date of incorporation of the company; - The Incorporation Document and statement for the LLP.
3.	Registration and Certificate: - On receipt of the documents, ROC shall register them and may require the documents to be verified as he considers fit. - ROC registers and issues a Certificate specifying date of LLP registration.
4.	Post-Registration Compliance: Within 15 days , LLP must inform the ROC about: - The conversion, and - The particulars of the LLP, by filing the prescribed Form with fees.
5.	Rejection and Appeal: - ROC may refuse registration if not satisfied. - An appeal can be made against such refusal before the Tribunal.

Effect of Registration

1.	Upon conversion and registration: - An LLP is formed with the name specified in the Certificate of Registration. - All assets, liabilities, rights, obligations, and undertaking of the firm/company automatically vest in the LLP, no further act required. - The original firm/private company/unlisted public company is deemed dissolved and removed from the respective Registrar's records.
2.	Registration in relation to property If any property is registered with an authority (like land records, RTO, etc.), the LLP must: Inform the authority about the conversion and - Submit LLP particulars as per prescribed format.
3.	Pending Proceedings Ongoing civil/criminal/regulatory proceedings continue by or against the LLP.
4.	Continuance of conviction, ruling, order or judgment Any existing conviction, ruling, order, or judgment remains enforceable by or against the LLP.



5.	Existing agreements & Contracts All agreements and contracts to which the firm/company was a party: - Continue as if the LLP were the party, - References to the old entity shall be read as referring to the LLP.
6.	Continuance of employment a. Every employment contract that existed before the conversion shall continue. b. LLP is deemed employer from the date of registration.
7.	Existing appointment, authority or power All appointments, authorities, approvals, permits, and licenses in favour of the company shall be deemed to be in favour of the LLP, subject to the relevant laws.
8.	Notice of conversion in correspondence The LLP must ensure that, for 12 months starting within 14 days from registration date, all its official correspondence must state: a. A statement that the LLP was converted from a company; b. The name and registration number of the original entity.
9.	Penalty for non-compliance If an LLP fails to comply, it shall be punishable with fine: a. Minimum ₹10,000, Maximum ₹1,00,000; and b. An additional fine of not less than ₹50 and up to ₹500 for each day the default continues after the first day.

23. Foreign LLP

Content	
1.	A foreign LLP means a Limited Liability Partnership incorporated outside India, which establishes a place of business in India.
2.	Filing requirements A foreign LLP must file Form No. 27 with ROC within 30 days of establishing a place of business in India. It must include: a. A copy of the certificate of incorporation/ constitution documents; b. The address of its registered/principal office abroad; c. The address in India treated as its principal place of business; d. List of partners/DPs, and details of at least 2 residents authorized persons.
3.	Certification of documents a. LLP in Commonwealth Countries: Documents must be certified as true copies by a Government official, a Notary Public or an LLP officer, under oath. b. LLP in Hague Apostille Convention countries (outside Commonwealth): - Documents must be certified by a Government official and apostilled under the Hague Convention, 1961; - The partner list, Indian authorized representatives' details must be notarized and apostilled.



	c. LLP in countries outside Commonwealth and not party to Hague Convention: Documents must be certified by a Government official ; or a Notary (Public) of that country; or an officer of the LLP.
4.	Authentication Signature/seal of a Government official or notary must be authenticated by: ▪ A Diplomatic or Consular Officer; or ▪ If unavailable, any official mentioned in Commissioners of Oaths Act, 1889.
5.	Alteration a. If any alteration is made in the constitution document or registered office address or partner/DPs , then the foreign LLP must file Form No. 28 with ROC within 60 days of the end of financial year . b. If alteration occurs in certificate of incorporation or Indian authorized representative's details or principal place of business in India, it must file Form No. 29 with ROC within 30 days from the date of such alteration .
6.	Translated document If the above documents are not in English , a certified translation must be attached. a. Translation done outside India, it must be authenticated. b. Translation done within India, it must be authenticated by: ▪ Advocate/CA/CS/CMA in practice; or ▪ Person giving affidavit deemed competent by ROC.
7.	Filing with Registrar Every foreign LLP must file Form 8 (Statement of Account and Solvency) within 30 days from the end of 6 months of the FY , signed by authorized representatives.
8.	Name to be made known A foreign LLP must state its name and the country of incorporation in legible English characters on all invoices, official correspondence, and publications.
9.	Registration ROC issues a certificate for establishment of place of business in India (Form No. 30).
10.	Service of document If names/addresses of Indian authorised persons are not provided or ineffective , service can be made at any Indian place of business of the LLP.
11.	Cessation a. Foreign LLP must file notice in Form 29 with ROC within 30 days of its intention to close Indian operations. b. From the date of notice the LLP's obligation to file documents ceases. Note: ▪ It has no other place of business in India, and ▪ It has filed all due documents up to the date of notice.



24. Compromise or Arrangement

Content	
1.	a. A compromise or arrangement may be proposed: - Between an LLP and its creditors; or - Between an LLP and its partners. b. The following persons can apply to Tribunal for such compromise or arrangement: - The LLP itself; - Any creditor of the LLP; - Any partner of the LLP; - If the LLP is under winding up, then the liquidator. c. The application must: - Be supported by an affidavit; and - Include a copy of the proposed compromise or arrangement as an annexure.
2.	Service of Documents If the LLP is not the applicant, then: - Serve summons and affidavit on the LLP or liquidator (if under winding up); - Service must be done at least 14 days before hearing date; - Summons must be in Form 21.
3.	Directions by the Tribunal At the hearing (or any adjourned hearing), the Tribunal may give directions regarding: - Identification of creditors and/or partners to hold meetings - Time and place of meeting - Appointment of chairman; - Fixing the quorum and voting procedure (including voting by proxy); - Determination of value of creditors and/or partners; Notice to be given for the meeting, and advertisement, if required; - The time within which the Chairman must report the meeting result to the Tribunal; - Any other matter the Tribunal considers necessary.

25. Meeting of Creditors

Content	
1.	Notice and related formalities Notice of Meeting must be given by the Chairman or the LLP, or any person as directed by the Tribunal. - The notice must be sent by post under certificate of posting to the last known address of the recipients at least 21 clear days before the meeting. - The notice must include: - A copy of the proposed compromise or arrangement; - A statement of material interest of the designated partners (if any); and - A Form of Proxy in Form No. 26. - If directed by the Tribunal, the notice must be advertised in specified newspapers.



	e. Eligible creditor/partner can request a free copy of the proposed compromise or arrangement from the LLP within 48 hours of making a requisition. f. Chairman must file an affidavit at least 7 days before the meeting, confirming compliance. g. In case of default, Tribunal will pass appropriate orders. h. Duly signed proxy must be submitted to the LLP's registered office at least 48 hours before the meeting. i. A body corporate may authorize a representative with a certified copy submitted 48 hours in advance.
2.	Reporting and petition for confirmation a. The Chairman must report the result of the meeting to the Tribunal either: ▪ Within the time fixed by the Tribunal; or ▪ If not specified, within 7 days from the date of the meeting. b. The report must clearly state: ▪ The number of creditors/partners present and who voted; ▪ Their individual values; ▪ Voting details. c. If the proposed compromise or arrangement is approved by 3/4th in value of creditors/partners, the LLP or liquidator must file a petition for confirmation within 7 days of filing the Chairman's report. d. In case of reconstruction or amalgamation, the petitioner must seek appropriate orders/directions from the Tribunal. e. If the LLP fails to file the petition to confirm the compromise/arrangement, any creditor/partner may file the petition with the Tribunal's permission. In that case, costs borne by LLP. f. If no petition is filed, or the compromise/arrangement is not approved, the Chairman's report shall be placed before the Tribunal for appropriate orders. g. Tribunal may sanction if all material facts (financials, investigations) are disclosed.
3.	Effect and filing of tribunal's order a. The order of the Tribunal is binding on: ▪ All creditors or partners; ▪ The LLP; and ▪ In case of winding up, on the liquidator and contributories. b. LLP must file order with ROC in Form 22 within 30 days, with the prescribed fee. c. The order takes effect only after it is filed with the Registrar. d. The Tribunal may stay the legal proceedings against the LLP, until disposal of the application.
4.	If the LLP fails to file the Tribunal's order with the Registrar, the LLP and every designated partner shall be punishable with a fine up to ₹1,00,000.
5.	Power of the Tribunal a. Tribunal may supervise implementation of the sanctioned scheme.



- b. Tribunal may **issue directions** or **modifications** at the time of sanction or later.
- c. If **implementation fails**, Tribunal may **order winding up** of the LLP.

26. Tribunal Powers in Sanctioning Scheme or Arrangement

Content	
1.	Reconstruction or Amalgamation An application may be made to the Tribunal for revival/rehabilitation in case of: a. Default in debt repayment: ▪ Creditors holding ≥50% of total debt issue demand notice. ▪ LLP fails to repay, secure, or compound within 30 days. b. Winding-up petition pending before the Tribunal. c. Liquidator's report filed as per Tribunal directions.
2.	Who can apply? ▪ The LLP, ▪ Any creditor or partner of the LLP, ▪ The Liquidator (in case the LLP is being wound up).
3.	Application before Tribunal a. The application must include: ✓ Statement of Account and Solvency for the last financial year. ✓ Details of the proposed scheme, restructuring/rescheduling plan, and supporting documents (bank letter or affidavit) ✓ Detailed revival scheme, proposal for appointment of LLP Administrator. b. The application must be made within 90 days from the expiry of the demand notice, or the Tribunal's directions. c. The Tribunal may hear the parties within 60 days of receiving the application. d. The Tribunal may admit or dismiss the application. e. If admitted, the Tribunal may: ▪ Direct holding of creditors' meetings to approve the scheme. ▪ Specify meetings procedure, including appointment of a chairman. ▪ Issue other necessary directions.
4.	LLP Administrator a. The LLP Administrator shall be appointed from a CG maintained panel (winding up and dissolution of LLPs). b. The terms and conditions of appointment, fee of the LLP Administrator, shall be as ordered by the Tribunal. c. The Tribunal may remove the LLP Administrator for reasonable cause, with reasons recorded in writing, and appoint another LLP Administrator. d. In case of removal, death, or incapacity of the LLP Administrator, the Tribunal may appoint another LLP Administrator.
5.	Report of LLP Administrator a. Administrator must submit a preliminary report within 60 days of Tribunal's order.



	b. If creditors holding $3/4^{\text{th}}$ in value resolve that revival is not possible, the Tribunal may, within 60 days of receiving the report: ▪ Initiate winding up; or ▪ Continue winding up with or without change in liquidator; or ▪ Sanction the scheme of revival with or without modifications, and continue the current Administrator or Appoint a new one. c. If the arrangement is approved by creditors holding $3/4^{\text{th}}$ in value, the Tribunal may sanction and finalize Administrator appointment.
6.	Order of Tribunal – post sanction The sanctioning order may provide for: - Powers and duties of the LLP Administrator. - Timelines for implementation of actions under the scheme. - Directions to the LLP or its officers, creditors, LLP Administrator, or others. - Any other orders for effective implementation. - The LLP Administrator shall complete implementation and submit a final report within a time set by the Tribunal (not exceeding 180 days). - Within 30 days of the order, the Administrator shall file a certified copy with ROC in Form 22 with prescribed fee.
7.	Reconstruction/Amalgamation - Tribunal's sanction order may include: ▪ Transfer of undertaking, assets/liabilities to transferee LLP. ▪ Continuation of legal proceedings by/against transferee. ▪ Dissolution of transferor LLP without winding up. ▪ Treatment of dissenting parties. ▪ Ancillary provisions for effective implementation. - If there's a default in filing, the LLP and DP shall be liable to a fine up to ₹50,000.
8.	Enforcement of duty to file returns If LLP fails to file Returns, Accounts, or Notices, Registrar may seek Tribunal's direction to ensure compliance within a specified time.
9.	Assignment and Transfer of partnership rights - A partner may transfer profit/loss sharing or distribution rights as per the LLP Agreement. - Such transfer: ▪ Does not cause disassociation/dissolution. ▪ Does not give transferee any management rights.

27. Investigation

Content	
1.	Investigation on order of tribunal/court CG shall appoint Inspectors if:



	▪ The Tribunal (on its own or on an application from at least 1/5th of total partners) orders an investigation; or ▪ Any Court declares that the LLP affairs should be investigated.
2.	Investigation by CG CG may appoint Inspectors: - On application by at least 1/5th of total partners, with supporting evidence and prescribed security; - If the LLP itself applies for investigation; - If there are circumstances suggesting: ▪ Fraudulent conduct of business; ▪ Business conducted with intent to defraud creditors/partners; ▪ Unlawful or oppressive conduct; ▪ LLP formed for fraudulent or unlawful purposes; ▪ Affairs not conducted in accordance with the Act; - A report from ROC or regulatory agency recommends investigation.

Inspectors and their powers

1.	Who can be appointed as Inspector: - Only an individual can be appointed as an Inspector. - Firms, companies, or associations cannot be appointed as Inspectors.
2.	Scope of Investigation: - The Inspector can investigate the affairs of related entities (other LLPs, partners, or DP) if it's relevant to the main investigation. - Prior approval of CG is required before investigating such related entities. - Opportunity of being heard must be given to the party before approval is granted.
3.	Powers of the Inspector: - He can ask for information, books, and documents from any relevant person/entity. - He can examine any person on oath (including partners, DP, or related parties). - He can summon people for personal appearance.
4.	Seizure of Documents (with Court's permission): - If there's a risk of tampering, concealment, or destruction, the Inspector may apply to a Judicial Magistrate. - The Magistrate may allow the Inspector to enter the premises, search and seize necessary documents, with or without police assistance.
5.	Inspector's report - Inspectors shall submit interim and final reports to CG. - CG forward copies to the LLP or any person at their request.



Prosecution and winding up

1.	Prosecution by CG a. If, after investigation, CG finds that any person connected with the LLP (or any related entity) has committed an offence, CG may prosecute them. b. All partners, DP, employees, and agents of the LLP or related entities must cooperate fully with the government in the prosecution process.
2.	Winding Up Based on Inspector's Report If the Inspector's report shows that: ▪ The LLP is being run to defraud creditors, partners, or others; ▪ The business is being carried out for an unlawful or fraudulent purpose; ▪ The conduct is oppressive or unfair to some partners; ▪ The LLP is not following the LLP Act provisions; then CG may initiate action for winding up the LLP.
3.	Recovery of Damages by CG CG may file legal action to: a. Recover damages for fraud, misfeasance, misconduct in LLP formation/management. b. Recover property misused or wrongfully retained.
4.	Investigation expenses a. Investigation costs are initially borne by CG. b. The LLP or concerned entity must reimburse these costs. c. These costs are a first charge on recovered assets and can be recovered as arrears of land revenue.
5.	A copy of the Inspector's report is admissible as evidence in legal proceedings.

Striking off name of defunct LLP

1.	Suo Motu Action by Registrar a. ROC may strike off LLP on his own if he believes the LLP is not carrying on business. b. Procedure: ▪ Notice is sent to the LLP and all partners. ▪ LLP must respond within 1 month with explanations and supporting documents. ▪ If LLP is regulated by a special law, attach regulatory authority's approval. ▪ The notice is also published on the MCA website for 1 month (public notice). c. If No Response or Unsatisfactory Reply: ▪ ROC issues striking off order ▪ Publish it in the Official Gazette. ▪ LLP is dissolved from the publication date d. Before Striking Off: ROC must ▪ Ensure all assets are realized, all liabilities are paid, and ▪ Obtain undertakings from partners/DP to confirm this (if necessary). e. Even after dissolution, DP remain liable for acts done before dissolution as if the LLP still existed.



2. Voluntary Strike Off by LLP (Form 24)
 - a. LLP can apply for strike off if it has not carried on any business for 1 year or more.
 - b. Conditions:
 - Consent of all partners is required.
 - No prior notice is needed to be sent to the LLP or its partners.
 - Other procedures (asset/liability clearance, Gazette notification) still apply.

6.2 DISSOLUTION

1. Winding Up of LLP

	Content
1.	Modes of winding up LLP can be wound up: a. Voluntarily, or b. By the Tribunal
2.	Voluntary winding up a. The LLP can be wound up voluntarily if $3/4^{\text{th}}$ of total partners approves resolution. b. If the LLP has creditors, their approval is also required. c. A copy of the resolution shall be filed with ROC within 30 days using Form No. 1.
3.	A voluntary winding up of an LLP is commences from the date of resolution.
4.	Declaration of solvency a. The majority of DPs (min 2) shall make a declaration in Form No. 2, verified by an affidavit, stating: ▪ The LLP has no debt, or ▪ It will repay all debts within 1 year from the commencement of winding up. b. Declaration shall be delivered to ROC in Form 3 within 15 days before resolution. c. Attachments: ▪ Statement of assets and liabilities (Form No. 4) attested by at least 2 DPs. ▪ Valuation report of assets (if any), prepared by a valuer.
5.	Meeting of creditors a. A meeting of creditors shall be called to seek their approval. b. Send Notice by registered post, speed post, or any other prescribed mode. c. If $2/3^{\text{rd}}$ in value of creditors approve: ▪ LLP must apply to the Tribunal within 14 days for winding up. ▪ Decision must be filed with ROC in Form 5 within 15 days.
6.	Publication The LLP must publish a notice of the winding-up resolution in a local newspaper within 14 days of receiving creditors' consent. The paper should circulate in the district of the LLP's registered or principal office.



LLP Liquidator

1.	Appointment a. LLP shall appoint an LLP Liquidator (a CA/CS/CMA/Advocate from CG panel) within 30 days of passing the resolution. b. Appointment is valid only if approved by 2/3rd in value of creditors. c. If creditors reject, they may appoint another LLP Liquidator and fix remuneration. d. If no appointment is made, the Tribunal may appoint one. e. The LLP Liquidator must file Form No. 6 declaring any conflict of interest, and update it if circumstances change.
2.	Removal of LLP liquidator a. The Tribunal may remove and replace the LLP Liquidator for cause or on ROC's application. b. Partners/creditors may also remove the LLP Liquidator, after giving notice and opportunity of being heard.
3.	Duties of LLP liquidator a. On appointment of LLP Liquidator, all powers of DPs and other partners cease except for giving notice of the appointment to ROC. b. The LLP Liquidator has the following duties: - Settle the list of creditors or partners. (prima facie evidence). - Obtain approval of partners or creditors for matters when required. - Maintain prescribed registers and proper books of accounts. - Pay the debts of the LLP and adjust rights among the partners. - Exercise due care and diligence in performing duties.
4.	Audit of LLP liquidator's account The accounts of the LLP Liquidator must be audited.
5.	Supervision of winding up a. Partners/creditors may form committees to supervise the process. b. Liquidator must submit quarterly progress report (Form No. 8). c. In case of third-party fraud, LLP Liquidator should consult partners/DPs and forward report with their views to the Tribunal. d. Tribunal may convert voluntary winding up to winding up by Tribunal, if necessary.

Dissolution of LLP

1.	a. Final Report & Accounts Once affairs are fully wound up, the LLP Liquidator shall: ✓ Prepare a final report detailing the winding-up process and asset disposal. ✓ Prepare final accounts (Form No. 9), showing all assets disposed and debts paid. ✓ Seek approval of partners/creditors in a meeting. b. Approval & Dissolution Resolution ✓ If 2/3rd of total partners or 2/3rd in value of creditors approve, a resolution for dissolution must be passed within 30 days.



	✓ Within 15 days of passing the resolution, the LLP Liquidator must: ▪ Send final report & accounts to Registrar (Form No. 10), ▪ File an application with the Tribunal for dissolution. c. Tribunal Order & Registrar Notification ✓ If satisfied, the Tribunal may pass a dissolution order within 60 days of receiving application. ✓ LLP Liquidator must file the order with ROC within 30 days (Form No. 11). ✓ ROC will publish a notice in the Official Gazette, declaring the LLP dissolved. d. Delay in Completion If winding up is not completed within 1 year, the LLP Liquidator must apply to the Tribunal, explain the delay, and seek directions.
2.	Distribution of Property a. Assets are applied to liabilities <i>Pari passu</i> (equally). b. Surplus, if any, is distributed among partners as per LLP Agreement or as per rights/interests.
3.	Winding Up Costs a. All legitimate costs, including Liquidator's fee, are paid from LLP assets. b. This is subject to secured creditors and workmen's rights, and has priority over other claims.

2. Winding Up of LLP by Tribunal

Content	
1.	Petition for winding up a. An application to the Tribunal for winding up of an LLP can be made by: ▪ The LLP itself or any of its partner; ▪ Any secured creditor (including contingent/prospective creditor); ▪ ROC; Any person authorized by the CG; CG (in cases u/s 64(d)). b. A petition filed by the LLP or any of its partner(s) must be supported by: ▪ A statement of affairs of the LLP as on the date of the petition, and ▪ A resolution passed by 3/4th of total partners. c. ROC cannot file a petition on the ground of inability to pay debts unless: ▪ It is shown from the Statement of Accounts and Solvency, or an Inspector's report, that the LLP is unable to pay its debts, and ▪ CG has granted prior approval. ▪ CG will grant sanction only after giving the LLP a reasonable opportunity to make its representations.
2.	Inability to pay debts An LLP is considered unable to pay its debts if: a. A creditor (owed more than Rs. 1 lakh) serves a demand notice at the registered office, and the LLP fails to: ▪ pay within 21 days, or



	- provide adequate security, or restructure/compound the debt to the creditor's satisfaction. b. A Court/Tribunal decree in favour of a creditor remains wholly or partly unsatisfied. c. The Tribunal is satisfied, based on evidence, that the LLP cannot pay its debts (including contingent or future liabilities).
3.	Powers of the Tribunal Upon receiving a petition for winding up, the Tribunal may: Dismiss the petition (with or without costs); - Pass an interim order as it thinks fit; - Direct revival or rehabilitation of the LLP; - Appoint a provisional liquidator till a winding up order is made; - Order the winding up of the LLP (with or without costs); - Pass any other orders it deems fit.
4.	Directions for filing statement of affairs - If someone other than the LLP files a winding-up petition, and the Tribunal finds a prima facie case, it may direct the LLP to: ✓ File objections, and ✓ Submit a statement of affairs within the time specified. - The Tribunal may ask the petitioner to deposit security for costs before giving such directions. - If the LLP fails to submit the statement of affairs, it forfeits the right to oppose the petition.
5.	Appointment of liquidators - The Tribunal may appoint: - An Official Liquidator, or - A liquidator from the panel maintained by the CG. - If no order is passed, the Official Liquidator shall act as the liquidator. Liquidator appointed from the panel shall provide security before taking charge.
6.	Winding up order to be communicated - When the Tribunal makes a winding up order, LLP shall inform the Liquidator and the Registrar within 15 days in Form No. 12. - On receipt: ✓ ROC updates LLP records and publish it in the Official Gazette. ✓ The Liquidator must send notices within 15 days to: - The LLP's registered office, - Its partners, DPs, officers, employees (CEO, CFO, Auditors), and - Any secured creditors. ✓ Purpose: To take custody of property, actionable claims, books, etc. - The winding up order is treated as a notice of discharge to officers, employees, and workmen of the LLP unless business continues. - Winding up order operates in favour of all creditors and all partners.



7.	Jurisdiction of tribunal The Tribunal has exclusive jurisdiction over: - Any suit or proceeding involving the LLP; - Any claim by or against the LLP (including its Indian Branches); - Any application made u/s 60 to 62 of the Act; - Any revival or rehabilitation scheme submitted under the Act or other laws; - All legal or factual issues (including priority of claims) during winding up, whether raised before, during, or after the winding up order
8.	Report by Liquidator When a winding up order is passed by the Tribunal, the Liquidator shall submit a report to the Tribunal within 60 days containing the following: - Nature and details of assets, cash balances, and any marketable securities; Contribution received and still outstanding from partners; - Existing and contingent liabilities of the LLP; Debts owed to the LLP; Guarantees given by the LLP; - List of partners and any dues or outstanding contributions; - Details of intangible assets; - Details of any contracts, joint ventures, or collaborations; - Details of other LLPs or companies where the LLP has a stake; - Details of legal cases by or against the LLP; - Details of properties, records, and documents in the custody of the Liquidator; - Any revival or rehabilitation scheme, if applicable; - Any other information as directed by the Tribunal or deemed necessary by the Liquidator. - The Liquidator may also include in the report: - Whether the LLP's business is viable, or - What steps are necessary to maximize asset value.
9.	Directions of Tribunal on the report - Tribunal shall fix a time limit within which: - Completion of winding up. Dissolution of LLP. - If continuing the process is not viable, the Tribunal may shorten the time limit. - Liquidator can seek extension of time, (≤ 30 days).
10.	Sale of LLP - The Tribunal may order: - Sale of the LLP as a going concern, or - Sale of its assets or part thereof. - The Tribunal may appoint a Sale Committee (consisting of creditors, partners, officers, or employees) to assist the Liquidator.



11.	Revival or rehabilitation of LLP Tribunal may direct revival u/s 60 to 62 of the LLP Act.
12.	Fraud If the Liquidator's report indicates fraud, the Tribunal shall: - order an investigation (without stopping the winding up process). - pass appropriate orders and directions Based on the investigation report.
13.	Custody of LLP'S properties - Liquidator must immediately: - Take into custody or control of LLP's assets. Protect and preserve such properties. - Any person holding LLP assets (partners, bankers, Trustee, agents, etc.) must transfer them to the Liquidator as per Tribunal's order.
14.	Application of assets The assets of the LLP shall be applied in the following order: Payment of costs, including expenses, charges, Liquidator remuneration. Discharging the liabilities of the LLP Pari passu.
15.	Committee of inspection - Tribunal may order for formation of Committee of Inspection to assist Liquidator. - The committee can have up to 12 members. - The committee shall meet as scheduled or as needed. - Liquidator shall report the meeting results to the Tribunal for further instructions.
16.	Periodical reports - The Liquidator shall submit a quarterly report (Form No. 13). - The Tribunal may revise or issue fresh directions based on reports.
17.	Assistance to liquidator With Tribunal's approval, Liquidator may appoint professionals to assist him, such as: - CA/CS/CMA in practice, - Legal practitioners entitled to appear before the Tribunal, - Other experts, valuers, or agencies as required.
18.	Appeal against decision of liquidator - Any aggrieved person may apply to the Tribunal. - The Tribunal may confirm, reverse, or modify decision, and pass appropriate orders.
19.	Books of accounts - The Liquidator must maintain proper books of accounts and minutes of meetings. - The accounts shall be audited. - Once audited: - The statement of accounts or a summary must be printed, and - A printed copy must be sent by post to every creditor and partner.
20.	Control of CG over Liquidator CG shall monitor the conduct of Official Liquidators handling LLPs being wound up by the Tribunal.



- b. If a **Liquidator fails** in his duties or violates the Act or Rules or if a **complaint** is made by any creditor or partner, **CG** shall **inquire** into the matter and take necessary action.
- c. It may also order an **investigation** into the books and vouchers of the Liquidator.

3. Winding Up of LLP

Content	
1.	Powers of Liquidator a. The LLP Liquidator, can exercise the following powers: ✓ winding up by Tribunal - With Tribunal's approval ✓ voluntary winding up - With approval of 3/4th of total partners b. Powers: ✓ Pay any class of creditors in full ✓ Make any compromise or arrangement with creditors ✓ Compromise any money due from partners, including: ▪ Unpaid capital contribution ▪ Unrealized or unrecovered amounts
2.	Proof of Debts All types of debts or claims present or future, contingent or conditional, even those that result in damages can be admitted as proof against the LLP .
3.	Evidence The books and papers of the LLP, LLP Liquidator, or Liquidator are prima facie evidence of what is recorded, as between partners.
4.	Inspection of Books and Papers a. After a winding up order, any creditor or partner can inspect the LLP's books and papers, subject to prescribed conditions. b. Government authorities (CG/SG) are not bound by these conditions.
5.	Disposal of Records a. Disposal Method ▪ Winding up by the Tribunal: As per Tribunal directions. ▪ Voluntary winding up: As approved by 3/4th of total partners, and prior approval of secured creditors. b. After 5 Years from Dissolution, no responsibility lies on: ▪ The LLP, ▪ The LLP Liquidator, or ▪ The Liquidator regarding the books and papers of the LLP or the liquidator. c. CG may notify to preserve books and papers for a period up to 5 years from the date of dissolution.
6.	Remittance of Money a. The Liquidator shall deposit all receipts into the Public Account of India in the RBI or any scheduled bank.



	b. Tribunal may allow use of a different bank if it benefits creditors/partners. c. The Liquidator cannot deposit the money into any private account. d. The Liquidator can retain up to ₹50,000 for more than 10 days, but only with Tribunal's approval. e. Application with valid reasons must be filed for such retention. f. If the Liquidator fails to comply, they are liable to pay interest and penalty.
7.	Filing Returns a. The Liquidator shall file reports, statements of accounts, or documents or notices within the prescribed time. b. CG may also specify other documents or reports to be filed within a given time.
8.	Dissolution Void a. Tribunal may declare the dissolution void within 2 years of the dissolution date on application by the Liquidator or any other person. b. Once declared void: ▪ LLP is deemed not dissolved, and ▪ Proceedings may continue. c. A copy of the order must be filed with the Registrar in Form No. 11 within 30 days.
9.	Limitation Period In computing the period of limitation for filing a suit or application in the name and on behalf of an LLP which is being wound up by the Tribunal, the period from winding up commencement to 1 year post winding-up order shall be excluded.
10.	Filing with Registrar and Filing Fee a. All required documents shall be filed in electronically with the prescribed fee. b. CG may waive the filing fee for winding up by the Tribunal. c. If the LLP has no funds, and the Liquidator certifies this, no fee is payable.

4. General Proceedings of Winding Up

Content	
1.	Proceedings and General Procedures a. Proceedings shall be instituted before the Tribunal Bench having jurisdiction as notified by CG. b. All petitions, applications, affidavits, etc. shall be: ▪ written, typed, or printed neatly and legibly, ▪ on foolscap-size paper, ▪ in duplicate, and separate sheets shall be stitched together. c. Contents shall be divided into separately numbered paragraphs. d. General hearings, advertisements, and notices shall be in Form No. 16. e. Prescribed fees must be paid on all applications. f. Proceedings must be conducted in English or Hindi. g. Documents not in English or Hindi shall be translated into either of those languages.



	h. These rules do not limit the inherent powers of the Tribunal to: - Make orders necessary for justice, or - Prevent misuse of the Tribunal's process. i. Tribunal may waive rule requirements, recording reasons and imposing conditions. j. Counting days: Exclude the first day, include the last day. Note: If the last day is a holiday, exclude it and any Tribunal closed days thereafter.
2.	Registers to Be Maintained by Tribunal (Physical/Digital/Both): - LLP Petitioner's Register - LLP Applications' Register Liquidation Register - LLP Document Register Appearance Register
3.	Filing and Verification - Each petition/application must have a distinct serial number. - Every petition must be verified by an affidavit in Form No. 18, filed along with it. - Every application/petition must be accompanied by required annexures/documents. - After petition filing, an application with summons in Form No. 19 must be made to the Member for directions on: - Advertisement, - Notice service, - Further proceedings.
4.	Advertisement and Notice - Petitions requiring advertisement must be published at least 7 days before the hearing in: - One English newspaper, and - One regional language daily newspaper (in the relevant State/UT). - Advertisement shall be in Form No. 20 and include all necessary information. - Every petition shall be served on the respondent. - Notice of petition to any person shall be in Form No. 21 and served at least 7 days before the hearing.
5.	Service and Appearance Petitioner must serve notices, summons, other process, and Publish advertisements, as per rules or Tribunal order. Affidavit of service on LLP/Liquidator must be in Form No. 22/23, as applicable. - Any person intending to appear (to support or oppose) must serve a notice of appearance to the petitioner or advocate at the address in the advertisement. - The petitioner/advocate/authorized representative must prepare a list of such persons in Form No. 25 and file it with the Tribunal before the hearing.
6.	Hearing and Orders - At hearing, the Member may: Dispose of the petition, or



	▪ Give directions for counter and reply affidavits. b. All adjournments/postings must follow the time schedule under the Act/Rules. c. No fresh notice is required for an adjourned hearing. d. The order date is the actual date the order is made, even if drawn or issued later. e. Costs for adjournments to be borne by the party seeking it, except in cases of serious illness or valid reasons. f. If costs are awarded, the order must direct the party liable to pay the same.
7.	Inspection and Copies of Proceedings a. Parties or their authorized representatives can inspect records of proceedings by making a written application and paying the prescribed fee. b. Non-parties can inspect only with: ▪ Consent of the party who filed/presented the document, or ▪ Order of the Tribunal (on payment of fee). c. A non-party can obtain copies of final orders upon payment of the prescribed fee

5. Petition for Winding Up

Content	
1.	Filing the Petition a. Petition shall be in Form No. 26 / 27 / 28 (as applicable, with necessary variations). b. Petition shall be filed in duplicate. c. If filed by LLP itself, attach Statement of Affairs as on the petition date. d. Registrar shall note the date of presentation on the petition.
2.	Admission & Preliminary Steps a. Petition placed before the Member in chambers for admission and hearing date. b. Member may direct notice to LLP before advertisement (if needed). c. If filed by a contingent/prospective creditor, it shall be accompanied by an application for leave of Tribunal.
3.	Access to Petition Every partner/creditor is entitled to a copy within 24 hours on paying specified charges.
4.	Advertisement a. To be in Form No. 29. b. shall be advertised within prescribed time and manner.
5.	Withdrawal/Substitution a. Petition cannot be withdrawn after presentation without Tribunal's leave. b. Tribunal may substitute another creditor or partner for the original petitioner.
6.	Affidavit Process a. Affidavit in opposition shall be: ▪ Filed at least 5 days before hearing. ▪ Copy shall be served on petitioner. ▪ Statement of Affairs also to be filed. b. Affidavit in reply must be:



	- Filed at least 2 days before hearing. - Served on the opposing party.
7.	Provisional Liquidator - After admission of petition, Tribunal may appoint a Provisional Liquidator (if fit). - Order must mention powers, restrictions/limitations, in Form No. 30. - All expenses properly incurred by Liquidator are paid from LLP assets.
8.	Communication of Appointment Registrar sends duplicate order in Form No. 31/32 to Liquidator with petition copy.
9.	Winding-up Order - The final order shall be in Form No. 33 (with necessary variations). - Tribunal may give directions to Liquidator on duties and timelines. - Tribunal gives directions on advertisement/service of order. Petitioner must advertise the winding-up order in Form No. 34 within 14 days.
10.	Stay & Leave Applications Application for stay of proceedings shall be made with notice to all parties. - If granted, file certified copy in form no.10 with ROC within 15 days. - For permission to start/continue any suit, application must be made with notice to Liquidator and all concerned. - To transfer pending suits (except in HC/SC) to Tribunal, application shall be made with notice to Liquidator and other parties.
11.	Statement of Affairs Process - Liquidator issues notice to submit SoA in Form No. 35 (after winding-up order). SoA to be in Form No. 37, in duplicate, and one copy verified by affidavit. Affidavit of Concurrence must be in Form No. 38. - Liquidator: - Verifies and submits one copy to Tribunal. - Retains the other.
12.	Examination & Reports - Partners and officers shall appear before Liquidator and provide information. - Initial Report to be in Form No. 40. - A further report is required if fraud is found. - Based on the report, Tribunal may: - Pass orders, and Direct examination of DPs, partners, officers, and employees (past or present).

6. Settlement of List of Creditors

Content	
1.	Notification to Creditors - Liquidator must issue notice (≥ 14 days before the hearing date) to creditors to: Prove their debts or claims, Establish priority (for preferential payments), or



	▪ be excluded from distribution if not proved. b. Notice must be advertised within 30 days sale confirmation in Form No. 41. c. If creditors ≤ 100, individual notices may be issued within 30 days. d. Notice shall also be given to all persons mentioned in the Statement of Affairs in Form No. 42/43, giving them at least 14 days.
2.	Proof of Debt a. Every creditor shall prove his debt, unless Tribunal (Member) allows otherwise. b. Affidavit proving the debt shall: ▪ Include a statement of accounts, and ▪ Mention vouchers, bills, contracts, or other documents. ▪ Specify whether the creditor is secured/preferential in Form No. 44. c. Workmen's claims to be submitted in Form No. 45 with schedule of names and dues. d. Future debts also need to be proved.
3.	Examination of Proofs a. Liquidator shall examine each proof. b. If more evidence is needed, issue Form No. 46 asking for further documents. c. Liquidator can summon any person to assist the investigation. d. Cost of proving the debt is borne by the creditor, unless Tribunal decides otherwise.
4.	Admission or Rejection of Proof a. The notice of admission of proof shall be in form no. 48 b. The notice of rejection of proof shall be in form no. 47 c. Aggrieved creditors may appeal to the Tribunal. d. Liquidator is not personally liable for appeal costs arising from rejection of a proof.
5.	Filing with Tribunal Within 2 months from the last date of proof submission, Liquidator shall file a certificate in Form No. 49, listing creditors names, claim amounts, etc.
6.	Surplus Distribution If surplus exists after full payment to creditors: a. Admitted creditors receive interest from winding-up order date to final payment, b. Interest rate shall not exceed RBI's Prime Lending Rate.
7.	Return to Partners (if Surplus After Creditors) a. Liquidator prepares a Provisional List of Partners with: ▪ Names, ▪ Addresses, ▪ Contribution amounts in Form No. 50. b. Within 1 month of filing, send notice in Form No. 51 to each listed partner. c. On hearing date, objections (if any) are heard. d. Liquidator then prepares the final list for settlement. e. Within 7 days of settlement, file the Final Certificate with Tribunal in Form No. 52. f. Send notice to final list partners in Form No. 53, showing contribution amount.



8. **Rectification of Final List**
- If needed, Liquidator may apply to Tribunal for rectification of the final list.
 - Tribunal may rectify or vary the list as it deems fit.
 - Any order for variation must be in Form No. 54.

7. Meeting of Creditors

Content	
1.	Calling the Meeting - Liquidator shall give at least 14 days' notice for meetings. - Notice shall be advertised in newspapers. - Use appropriate form: Form No. 55, 55A, 55B, 55C, or 55D. - Meeting place should be convenient for most creditors. - Different timings/places may be fixed for: - Creditors' meetings and - Partners' meetings.
2.	Non-attendance and Proof of Notice - If an officer fails to attend, liquidator may report to the Tribunal in Form No. 56. - Liquidator shall file an affidavit of proof of notice in Form No. 57. - Cost of meeting (if called by creditor/partner) shall be borne by the applicant.
3.	Chairmanship - If meeting is called by the liquidator, he or his nominee is the Chairman. - In voluntary winding up, Chairman is appointed by resolution of the meeting.
4.	Passing of Resolution - Creditors' meeting: Resolution passed by majority in value (present/ proxy). - Partners' meeting: Resolution passed by majority of partners (present/ proxy). - Certified copy of every resolution must be filed with Tribunal by the liquidator.
5.	Adjournment & Quorum - Chairman, with consent, may adjourn the meeting. - Quorum: - Minimum 2 creditors entitled to vote, or - Minimum 2 partners (for partners' meeting). - If no quorum, meeting is adjourned: - To the same day next week, or - Any other day (minimum 7 days and maximum 14 days) as decided by Chairman.
6.	Voting & Minutes - Chairman can admit/reject proofs for voting subject to appeal before Tribunal. - Chairman shall report result to Tribunal within 7 days in Form No. 59. - Chairman shall record minutes of meeting proceedings - The minutes shall be signed by chairman or Chairman of next meeting. - A list of attendees (creditors or partners) must be maintained in Form No. 60.



8. Collection and Distribution of Assets in a Winding Up by Tribunal

Content	
1.	Duties of Liquidator a. Liquidator acts as an officer of the Tribunal and handles: ▪ Collection of assets of the LLP ▪ Payment of liabilities b. Liquidator has same powers as a Receiver of property (appointed by Tribunal). c. If anyone refuses to hand over money, books, documents, or property, the liquidator can apply to the Tribunal and Notice shall be in Form No. 62
2.	Realization of Contribution Liquidator must recover any unpaid or unrealized contributions from partners.
3.	Compromise/Abandonment of Claims a. Liquidator cannot compromise or abandon claims without Tribunal's approval . b. Notice shall be given to such person as per Tribunal's directions .
4.	Application for Compromise/Arrangement a. Liquidator's application for sanction of compromise/arrangement shall include: ▪ Copy of proposed terms ▪ Affidavit explaining how it benefits the LLP b. Tribunal may ask for notice to be served to: ▪ Committee of Inspection, ▪ Any other concerned party
5.	Sale of Property a. Liquidator shall obtain prior Tribunal sanction before selling LLP property. b. Sale requires confirmation by Tribunal within 60 days of report submission.
6.	Mode of Sale a. Sale to be conducted by: ▪ Liquidator, or ▪ Approved agent/auctioneer b. Sale method: ▪ Public auction, or ▪ Sealed tenders, or ▪ Any method directed by the Member
7.	Handling Sale Proceeds a. Gross proceeds to be paid to the liquidator (unless Tribunal directs otherwise). b. Auctioneer/agent charges to be paid afterwards , as per: ▪ Tribunal-fixed scales, or ▪ Approval by Tribunal



9. Distributable Sum and Return of Assets

Content	
1.	Sanction Required a. The liquidator cannot declare: - Any distributable sum to creditors, or - Return of assets to partners without sanction from the Tribunal. b. Payments to creditors require: - Filing of list of creditors, and - Tribunal's approval as distributable sum. c. Payments to partners require: - Filing of final settlement list of partners, and - Tribunal's sanction.
2.	Notice of Declaration a. The liquidator shall give at least 1 months' notice before payment date. b. Advertisement should be published in Form No. 82. c. Notice to each creditor should be in Form No. 83.
3.	Authority to Receive on Behalf a. A creditor may authorize someone else to receive the payment. b. Authorization must be in Form No. 84.
4.	Mode of Payment a. Payment may be made by: Registered post, cheque, demand draft, or - Any other method approved by the Tribunal. b. Payment should be made within 45 days from the date of filing list of creditors.
5.	Return to Partners a. Any order for return to partners must include a list in tabular form with: Names, Amounts, and Interest payable. b. This list is in Form No. 85. c. Notice of return to be sent to each partner via ordinary post in Form No. 86. d. Payment can be sent by registered post or approved method, at partner's risk.
6.	Payment to Legal Heirs (Small Amounts) a. For amounts ≤ ₹500, liquidator may seek Tribunal's permission to pay claimant directly (without succession certificate). b. The liquidator must obtain a personal indemnity from the payee.



10. Termination of Winding Up

Content	
1.	Filing Final Account & Dissolution Application a. When the affairs of the LLP are fully wound up, the liquidator must: - File a final account with the Tribunal in Form No. 89. - Apply for an order of dissolution. b. The application will not be heard until the accounts are audited.
2.	Tribunal's Order for Dissolution On hearing the application (after considering the liquidator and any notified party), the Tribunal may order dissolution of the LLP.
3.	Deposit of Remaining Funds a. Once the order of dissolution is made: The liquidator must immediately deposit: - Any unclaimed or unpaid distributable sum due to creditors, - Any undistributed or unpaid assets due to partners, and - Any other balance in his possession as directed by the Tribunal, into the LLP's Liquidation Account in the Public Account of India. b. The order of dissolution must be: - sent to the liquidator within 30 days using Form No. 11. - recorded by the liquidator as a minute of dissolution in his books. - filed with ROC, along with a Compliance Statement signed by the liquidator.
4.	Conclusion of Winding Up Winding up of an LLP is deemed to be concluded: a. In case of Tribunal order: On the date Liquidator reports dissolution to ROC. b. In case of voluntary winding up: On dissolution date, unless any fund or asset remains unclaimed/undistributed. c. In such a case, winding up is not concluded until such funds or assets are paid into the LLP Liquidation Account.
5.	Appeal to NCLAT Any aggrieved person may prefer an appeal against Tribunal order or decision: a. To the National Company Law Appellate Tribunal (NCLAT). b. Within a period of 45 days from the date of delivery of the order. c. In the manner as provided by the Appellate Tribunal.



7. FACTORIES ACT, 1948

1. Objective of the Factories Act, 1948

Content	
1.	The Factories Act was enacted mainly to protect workers in factories from industrial and occupational hazards . It also aims to regulate their working conditions and promote their welfare.
2.	Objectives: The main objectives of the Factories Act, 1948 are: - To ensure proper safety measures for workers in factories. - To promote the health and welfare of factory workers. - To lay down rules for the employment of women and young persons (including children and adolescents). - To provide for annual leave with wages, among other matters.
3.	Scope and Extent: - This act applies to whole of India, including Jammu & Kashmir w.e.f. 01.04.1949. - This act covers government-owned factories, unless exempted. - This act applies to establishments that fall under the definition of 'factory' under Section 2(m).

2. Definitions

Content	
1.	Competent Person A person or an institution recognized by the Chief Inspector to carry out tests, examinations, and inspections required in a factory under this Act, based on the: - Qualifications and experience of the person and the facilities available to him; or - Qualifications and experience of the persons working in the institution and the facilities available there for conducting such tests, examinations, and inspections. Note: More than one person or institution can be recognized as a competent person for a factory
2.	Hazardous Process Any process or activity in industries specified in the First Schedule , where: - It may impair workers' health, or - It may pollute the environment Note: State Government can amend the Schedule via notification
3.	Manufacturing Process means any process involving: Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance for its use, sale, transport, delivery, or disposal; Pumping oil, water, sewage, or any other substance;



	c. Generating, transforming, or transmitting power; d. Composing types for printing, printing by letterpress, lithography, photogravure, or any similar process, or book binding; e. Constructing, reconstructing, repairing, refitting, finishing, or breaking up ships or vessels; f. Preserving or storing any article in cold storage.
4.	Worker a. A person employed either directly or through an agency (including a contractor) with or without the principal employer's knowledge, and whether for remuneration or not, in: ▪ Any manufacturing process, ▪ Cleaning any part of the machinery or premises used for such a process, or ▪ Any other work related to or connected with the manufacturing process or its subject. b. Exclude: Any members of the armed forces of the Union.
5.	Factory a. Any premises (including its surrounding area) where: ✓ 10 or more workers are working, or have worked on any day in the past 12 months, and where a manufacturing process is being carried on with the aid of power, or is ordinarily carried on (or) ✓ 20 or more workers are working, or have worked on any day in the past 12 months, and where a manufacturing process is being carried on without the aid of power, or is ordinarily carried on. b. Exclusions: The following are not included in the definition of a factory: ✓ Mines governed by the Mines Act, 1952 ✓ Mobile units of the armed forces of the Union ✓ Railway running sheds ✓ Hotels, restaurants, or eating places c. Note: ✓ While calculating the number of workers, all workers across different groups or shifts in a day must be counted. ✓ Merely having an Electronic Data Processing Unit or a Computer Unit in a premises does not make it a factory, unless a manufacturing process is actually being carried out there. d. Power of the State Government: ✓ SG has the authority to frame rules regarding the approval, licensing, and registration of factories. ✓ A factory cannot operate without proper license or approval. ✓ SG also holds the power to de-license or deregister a factory.
6.	Occupier a. The person who has ultimate control over the affairs of the factory. b. Depending on the nature of ownership, the occupier is identified as follows:



- ✓ Firm or Association of Individuals: Any one partner or member shall be considered the occupier.
- ✓ Company: Any one of the directors shall be deemed the occupier.
- ✓ Government-Owned Factory (CG/SG/ local authority):
The person appointed to manage the factory by the CG/SG/local authority is considered the occupier.
- ✓ Ship under repair or maintenance (available for hire):
 - The owner of the dock is the occupier for dock-related matters.
 - The ship owner, his agent, master, officer-in-charge, or contractor carrying out repairs is the occupier for ship-related activities.

c. Note:

- ✓ In the case of a company, only a director can be notified as the occupier. The company cannot appoint any other employee as the occupier under the Factories Act.
- ✓ The key factor is who holds the 'ultimate control' of the factory. CG, through the Indian Oil Corporation, retained ultimate control. The Corporation merely acted as the government's agency to run the petroleum industry.
- ✓ The main test to determine whether a person is an occupier is the presence of ultimate control over the factory's affairs. This control must be absolute and final, not merely administrative or delegated.

3. Occupier

Content

1. Notice by Occupier
 - a. The occupier shall send a written notice to the Chief Inspector at least 15 days before starting to occupy or use any premises as a factory. The notice shall include:
 - Name and Situation of the factory,
 - Name and Address of the occupier,
 - Nature of the manufacturing process,
 - Details of workers, etc.
 - b. When a new manager is appointed, the occupier shall send a written notice to the Inspector, and also send a copy of it to the Chief Inspector within 7 days from the date the new manager takes charge.
2. Every occupier shall ensure, as far as is reasonably practicable, the health, safety, and welfare of all workers while they are at work in the factory.

4. Inspector

Content

1. SG may appoint qualified persons as Inspectors for enforcing the provisions of the Factories Act. It may also define their jurisdiction (local limits).
2. Powers of Inspector:
 - a. Enter any place which is used, or which he has reason to believe is used, as a factory;



- b. **Examine** the premises, plant, machinery, article, or substance;
- c. **Inquire** into any **accident** or **dangerous occurrence**, whether or not it caused bodily injury or disability, and record statements of any person he considers necessary;
- d. Require production of any **document** related to the factory;
- e. **Seize or take copies** of any register, record, or other documents or part of them as needed;
- f. **Take possession** of any article or substance or its part and detain it as long as necessary for examination;
- g. Exercise any **other powers** as may be **prescribed**.

5. Certified Surgeons

Content

1. **Appointment of Certifying Surgeons**
SG may appoint **qualified medical practitioners** as Certifying Surgeons for specific local areas, or for particular factories or types of factories, as deemed necessary under the Factories Act.
2. **Duties of Certifying Surgeons:**
 - a. Examining and certifying **young persons**;
 - b. Examining persons working in factories involved in **dangerous occupations or processes**, as may be prescribed;
 - c. Providing **medical supervision**, as may be prescribed, for any factory or group of factories where:
 - ✓ **Illnesses** have occurred which are reasonably believed to be due to the **manufacturing** process or working conditions;
 - ✓ There is a **risk of injury** to workers' health, due to **changes** in the manufacturing process, substances used, or introduction of new processes or substances;
 - ✓ **Young persons** are employed in **work** that may **harm** their **health**.

6. Welfare measures

Content

1. The following matters relate to the workers in a factory:
 - a. **Health** of the workers in the working environment;
 - b. **Safety** of the workers, including in hazardous processes;
 - c. **Welfare** of the workers;
 - d. Working hours of adults;
 - e. Employment of **young persons**;
 - f. Annual **leave with wages**.



7. Health measures

Content	
1.	Cleanliness Every factory shall be kept clean and free from effluvia (bad smells or harmful gases) arising from any drain, privy, or other nuisance. Specific cleanliness requirements include: Removal of accumulated dirt and refuse from floors, benches of workrooms, staircases, and passages, and ensuring their effective disposal. Cleaning the floor of every workroom once every week by washing with disinfectant or by another effective method. - Providing effective drainage to remove water as far as possible. - To keep interior walls and roofs clean, the following shall be done: ✓ Whitewash or colour wash at least once in every 14 months; ✓ If the surface is painted or varnished, it should be repaired or revarnished every 5 years. If it's washable, it should be washed once every 6 months; ✓ Where surfaces are painted, varnished, or have a smooth impervious surface, they must be cleaned once every 14 months by a prescribed method; ✓ All wooden or metallic doors, windows, and framework shall be painted or varnished at least once in every 5 years. Note: The dates on which these processes are carried out shall be recorded in the prescribed register.
2.	Disposal of Wastes Every factory shall make effective arrangements for the treatment of wastes and effluents resulting from the manufacturing process, so that they are made innocuous, and for their proper disposal.
3.	Ventilation & Temperature Every factory must ensure: Adequate ventilation in all workrooms through circulation of fresh air. - Maintenance of a comfortable temperature to protect workers' health. - If any work involves excessively high temperatures, proper measures must be taken, like: ✓ Separating the process from the workroom, ✓ Insulating hot parts, or ✓ Using other effective methods to protect workers.
4.	Dust & Fume If the manufacturing process creates dust, fumes or impurities that are: ▪ Injurious or offensive to workers, or ▪ Released in substantial quantities Then: ▪ Effective measures must be taken to prevent inhalation and accumulation of such dust/fume.



	▪ Exhaust appliances must be placed as close as possible to the point of origin, and those points should be enclosed as far as possible.
5.	Artificial Humidification If air humidity is artificially increased, the State Government may make rules regarding: - Standards of humidification; - Methods of increasing humidity; - Testing and recording humidity correctly; - Ensuring adequate ventilation and cooling of air in workrooms.
6.	Overcrowding - No workroom shall be overcrowded to the point where it harms workers' health. - Each worker shall have at least 14.2 cubic meters of space in the workroom.
7.	Lighting Every factory shall provide: - Sufficient and suitable lighting (natural or artificial or both) in all working and passing areas. - Glazed windows and skylights shall be clean inside and outside. - Measures to prevent glare and avoid shadows that can strain eyes or cause accidents.
8.	Drinking Water - Provide wholesome drinking water at convenient points for all workers. - If the factory has more than 250 workers, cool drinking water must be provided during hot weather. - Drinking water points must be at least 6 meters away from latrines, urinals, spittoons, open drains, etc.
9.	Latrines & Urinals - Every factory shall: ▪ Provide sufficient and accessible latrine and urinal facilities. ▪ Ensure separate enclosed accommodation for male and female workers. ▪ Keep them well-lit, ventilated, and in sanitary condition at all times. ▪ Employ sweepers to maintain cleanliness. - Where more than 250 workers are employed: ▪ Latrines and urinals must be of prescribed types. ▪ Floors and internal walls must have glazed tiles for a smooth, impervious surface. ▪ They must be cleaned at least once in every 7 days with disinfectants or detergents (or both).
10.	Spittoons - A sufficient number of spittoons must be placed at convenient locations. - They must be maintained in a clean and hygienic condition.



8. Safety measures

Content	
1.	Every factory must take safety measures related to the following areas: - Fencing of machinery; - Working on or near machinery in motion; - Employment of young persons on dangerous machines; - Striking gear and devices for cutting off power; - Self-acting machines; - Casing of new machinery; - Prohibition of employment of women and children near cotton openers; - Safety of lifting machines, chains, ropes, and lifting tackles; - Revolving machinery; - Safe condition of floors, stairs, and means of access; - Covering of pits, sumps, and floor openings; - Handling of excessive weights; - Protection of eyes from hazardous processes; - Precautions against dangerous fumes, gases, etc.; - Safe use of portable electric light; - Handling explosive or inflammable dust, gas, etc.; - Precautions in case of fire; - Ensuring safety of buildings and machinery; - Proper maintenance of buildings; - Appointment of safety officers where required.

9. Hazardous Process

Content	
1.	The State Government may appoint a Site Appraisal Committee to advise on applications for setting up or expanding a factory involving a hazardous process.
2.	The Site Appraisal Committee shall examine the application and give its recommendation to the State Government within 90 days from receiving the application.
3.	The Committee can ask for any information from the applicant, if needed.
4.	Once the State Government approves the application, no further approval is required from the Central Board or State Pollution Control Board.

10. Responsibilities of Occupier

Content	
1.	The occupier shall follow the following procedure, especially for hazardous processes: - Lay down a detailed policy on the health and safety of the workers. - Disclose all information about dangers, including health hazards, and the measures to overcome such hazards due to exposure to or handling of materials or substances during manufacturing, transportation, storage, or other processes to the workers.



	c. Prepare an onsite emergency plan and detailed disaster control measures, and inform both the workers and the general public living nearby about the safety steps to take in case of an accident. d. Lay down and publicize measures for the handling, usage, transportation, and storage of hazardous substances inside the factory, and their disposal outside the factory to both the workers and the public living nearby, as per prescribed manner.
2.	The occupier has additional responsibilities: a. Maintain health records of employees. b. Appoint qualified and experienced persons to handle hazardous substances. c. Ensure such persons are competent to supervise the handling of hazardous substances within the factory.

11. Powers of Central Government

Content	
1.	CG has the power to inquire into the health and safety standards followed in a factory.
2.	CG can provide emergency standards for health and safety in a factory, when needed.
3.	Fixing the maximum permissible threshold limits for exposure to chemical and toxic substances in the manufacturing process in any factory.
4.	The occupier shall set up a Safety Committee with equal representation of workers and management to: a. Promote cooperation between workers and management on health and safety, and b. Periodically review the safety measures taken.
5.	If workers have a reasonable fear of imminent danger to their life or health due to an accident- a. They can report it to the occupier, agent, manager, or any person in charge of the factory/process. b. Immediate action shall be taken and a report to the Inspector having jurisdiction.

12. Welfare Measures

Content	
1.	The Factories Act requires the following welfare facilities to be provided to workers: a. Washing facilities b. Facilities for storing and drying clothing c. Facilities for sitting d. First aid appliances e. Canteens f. Shelters, rest rooms, and lunch rooms g. Crèches h. Appointment of welfare officers
2.	Washing Facilities a. Adequate and suitable washing facilities must be provided and maintained.



	b. Separate, screened facilities must be provided for male and female workers. c. Facilities must be conveniently accessible and kept clean.
3.	Storing and Drying Clothing SG may require factories to provide suitable places for: a. Keeping clothes not worn during work, and b. Drying wet clothing.
4.	Facilities for Sitting Suitable sitting arrangements must be provided for workers who work in a standing position, so they can rest when possible, during their work.
5.	First Aid Appliances a. First aid boxes/cupboards with prescribed contents must be: ▪ Provided and maintained, ▪ Easily accessible during all working hours. b. There must be at least 1 first aid box per 150 workers. c. Each box must be in charge of a certified first aid person, available during working hours. d. If there are more than 500 workers, an ambulance with required equipment and nursing staff must be provided.
6.	Canteens a. If a factory has more than 250 workers, canteens are mandatory. b. The occupier must provide and maintain the canteen(s). c. The employer bears the cost of certain items as prescribed. Note: Canteens can be in-house or outsourced.
7.	Shelters, Rest Rooms, and Lunch Rooms a. If more than 150 workers are employed: ▪ Shelters or rest rooms and ▪ A suitable lunch room with drinking water must be provided. b. Rooms must be well-lighted, ventilated, cool, and clean.
8.	Crèches a. If more than 30 women workers are employed in a factory, a suitable room must be provided and maintained for the use of children under the age of 6 years of such women. b. The room must be adequately ventilated, kept in clean and sanitary condition, and be under the charge of women trained in the care of children and infants.
9.	Welfare Officers If a factory employs 500 or more workers, the occupier must appoint welfare officers as per prescribed rules. Note: Just handling labour issues as a Personnel Officer does not make someone a Welfare Officer unless they are formally appointed as such.



13. Working hours of Adults

Content	
1.	Working Hours: - Adult worker shall not work in a factory for more than 9 hours in any day. - Work periods must be fixed so that no period exceeds 5 hours, and a worker must get a minimum half-hour rest before continuing beyond 5 hours. - Total work time, including rest intervals, must not spread over more than 10.5 hours in a day. - Adult worker shall not work more than 48 hours in any week. Note: Increase of 15 minutes in working hours does not violate provision.
2.	Weekly Holidays Adult worker cannot work on the first day of the week unless: - He has or will get a full day holiday on any of the 3 days before or after that day. - The factory manager: ▪ Informs the Inspector before the said/substituted day. ▪ Displays a notice in the factory.
3.	Compensatory Holidays If a worker misses a weekly holiday, he must be given compensatory holidays: ▪ Within the same month, or ▪ Within 2 months following that month.
4.	Shift Duty - If a worker's shift goes past midnight: ▪ a "holiday for a whole day" i.e., 24 hours from end of shift. ▪ The next day starts after the shift ends. Hours after midnight count as the previous day's work. - No system of shifts where more than one relay of workers does the same kind of work at the same time.
5.	Overtime - If a worker works: ▪ More than 9 hours in a day, or ▪ More than 48 hours in a week entitled to double wages for overtime. - Ordinary rate of wages = Basic wages + allowances (including food grain concessions), excluding bonus & overtime. - For piece-rate workers: Time rate = Daily average earnings for similar work in the previous month. This becomes the ordinary rate for overtime calculation.
6.	Double Employment Adult worker cannot work in two factories on the same day, unless otherwise prescribed.



7. **Register of Adult Workers**

A register must be maintained with:

- a. Name of the worker
- b. Nature of work
- c. Group (if any)
- d. Shift relay assigned (if applicable)
- e. Other prescribed details

8. **Restrictions on Employment of Women**

- a. A woman can work **maximum of 9 hours a day**.
- b. A woman can work only between **6 a.m. and 7 p.m.**
- c. **SG** may permit the employment of women between **10 p.m. and 5 a.m.**, if it deems fit.
- d. **Change of shifts** for women can only happen after a **weekly or other holiday**.

14. Employment and Prohibition of employment of young persons

Content

1. **Prohibition of Employment of Young Children**

Child who has **not completed 14 years** of age shall **not** be required or allowed to **work** in any factory.

2. **Adolescent Worker**

A child who has completed 14 years or an adolescent can be allowed to work in a factory only if:

- a. A **certificate of fitness** has been granted and is kept by the factory manager, and
- b. The child/adolescent carries a **token** referring to that certificate while at work.

3. **Certificate of Fitness**

- a. A **certifying surgeon** shall examine a young person to check if they are fit for factory work, on **application** by:
 - The **young person**/their parent/guardian (with a document from the factory manager saying they'll be employed if certified), or
 - The **factory manager** directly.
- b. After examination, the surgeon may **grant or renew a certificate**:
 - For child work, if the young person is 14+, meets physical standards, and is fit for such work.
 - For adult work, if the young person is 15+ and fit for a full day's factory work.
- c. Additional points:
 - The certificate is **valid for 12 months** from the date of issue.
 - The surgeon may **revoke the certificate** if the holder is no longer fit.
 - If the surgeon **refuses** to issue the certificate, they must give **reasons**.
 - If the certificate is **conditional**, the young person must **work** only under those **conditions**.
 - The **occupier** of the factory must **pay the fee** for the certificate and **cannot** be **recovered** from the **young person** or their family.



4.	Working Hours for Children a. Child shall not be made to work in any factory for more than 4.5 hours a day and not during night. b. Work for children must be in 2 shifts, not exceeding 5 hours each. c. Each child can be employed in only one relay, and changes need prior permission. d. Female children can work only between 8 a.m. and 7 p.m.
5.	Register of Child Workers Every factory manager employing children shall maintain a register showing: a. Name of each child worker b. Nature of work c. Group (if any) d. Shift relay (if applicable) e. Number of his certificate of fitness (under Section 69)

15. Annual Leave with Wages

Content	
1.	a. If a worker has worked for 240 days or more in a calendar year, he shall be allowed leave with wages as follows: - Adult: 1 day for every 20 days of work. - Child: 1 day for every 15 days of work. b. For calculating 240 days, the following days will also be treated as days worked: - Lay-off days (as per agreement, contract, or standing orders) - Maternity leave (up to 12 weeks) for female workers - Leave earned in the previous year Note: - These days count towards the 240 days but do not earn additional leave. - Leave is exclusive of holidays. Holidays occurring during or at the beginning/end of leave are not counted as leave days. - Fraction of leave: Half a day or more = treated as 1 full day Less than half a day = ignored
2.	Carry Forward of Leave a. If a worker doesn't use the entire leave in a year, the unused leave is carried forward to the next year. b. Maximum carry forward: - Adults: Up to 30 days. - Children: Up to 40 days. c. If a worker applied for leave but it was refused, the refused leave can be carried forward without any limit.
3.	Availing Leave



	a. A worker must apply in writing to the Manager at least 15 days in advance (for regular employment). b. If the worker is in a public utility service, the application must be made at least 30 days in advance. c. Leave cannot be refused unless the refusal is in line with the current scheme in operation.
4.	Wages During Leave a. A worker is entitled to wages during leave at the rate of the daily average of total full-time earnings in the month immediately before leave. - Includes: DA and cash value of concessional items (like food grains). - Excludes: Overtime and bonus. b. If the worker did not work in the month just before the leave, wages will be calculated using the last month in which he actually worked.
5.	Advance Payment for Leave If a worker is allowed leave for 4 or more days (adult) or 5 or more days (child), he shall be paid the wages in advance before the leave begins.
6.	Encashment of Leave a. If a worker is discharged, dismissed, quits, superannuates, or dies in service then he or his heir/nominee is entitled to wages for the leave earned up to the date of such event. b. Time Limits for Payment: - In case of discharge, dismissal, or quitting: Payment within the 2nd working day. - In case of superannuation or death: Payment within 2 months from the date of such event.

16. Penalties

1.	Penalties for Contravention a. Occupier and Manager punishable with: Imprisonment up to 2 years or Fine up to ₹1 lakh or Both. b. If contravention continues after conviction, additional fine up to ₹1,000/day for continued contravention. c. If contravention causes an accident: Death: Minimum fine ₹25,000. Serious Bodily Injury: Minimum fine ₹5,000.
2.	Liability of Owners If separate buildings in a premises are let out to different occupiers the owner is a. responsible for common facilities roads, drainage, water, sanitation, lighting, etc. b. liable as if he were occupier or manager for any contravention under the Act.
3.	Enhanced Penalty for Repeated Offences



	a. If a person has been convicted earlier and again commits the same offence, then on subsequent conviction, he shall be punishable with: ▪ Imprisonment: up to 3 years ▪ Fine: not less than ₹10,000, up to ₹2,00,000, or ▪ Both b. Court may impose a fine less than ₹10,000 for adequate and special reasons recorded in writing. c. No cognizance shall be taken of a conviction if it was made more than 2 years before the commission of the subsequent offence.
4.	Penalty for Obstructing Inspector A person shall be punished with imprisonment up to 6 months, or fine up to ₹10,000, or both if he: a. Willfully obstructs an Inspector; b. Fails to produce registers/documents on demand; c. Conceals or prevents a worker from appearing before the Inspector; d. Blocks examination of a worker by an Inspector.
5.	Hazardous Process Violations a. If any person fails to comply with provisions of Sections 41B, 41C or 41H or rules made under them: ▪ Imprisonment up to 7 years & ▪ Fine up to ₹2,00,000 b. If offence continues, additional fine ₹5,000 per day c. If contravention continues beyond 1 year after conviction, Imprisonment up to 10 years
6.	Offences by Workers If a worker violates any duty or liability imposed by the Act or rules fine up to ₹500
7.	False Certificate of Fitness a. Whoever: ▪ Knowingly uses/attempts to use another person's certificate of fitness, or ▪ Allows someone else to use his own certificate b. Punishable with: ▪ Imprisonment up to 2 months, or ▪ Fine up to ₹1,000, or ▪ Both
8.	Double Employment of child If a child works in two factories on the same day, the parent, guardian, or custodian, or any person benefiting from the child's wages, shall be a. punishable with fine up to ₹1,000, b. Unless the court finds that the act was without their consent or knowledge.



8. PAYMENT OF GRATUITY ACT, 1972

1. Objective

Content	
1.	The term 'gratuity' is derived from the Latin word gratuitous .
2.	Gratuity is a payment made by the employer to the employee at the time of termination of service by superannuation, resignation, or termination.
3.	It is a retiral social security benefit , payable as a lump sum in recognition of past services. It serves as relief to a retired employee or to the family in case of death during service.
4.	The Payment of Gratuity Rules, 1972 came into force on 16th September 1972 .
5.	Object: To provide a scheme for payment of gratuity to employees in factories, mines, oilfields, plantations, ports, railways, shops or other establishments employing 10 or more persons (with power) or 20 or more (without power), and matters connected or incidental thereto.

2. Definitions

Content	
1.	Appropriate Government: - Central Government - Establishments belonging to CG or under the control of CG - Establishments having branches in more than one State, - Major port, Mine, Oilfield, or Railway company. - State Government - in all other cases.
2.	Employee: - Any person (other than apprentice) employed for wages, in any kind of work (manual or otherwise), in or in connection with the work of an establishment under the Act. Excludes: Persons holding posts under CG/SG governed by other gratuity rules. Includes teachers in educational institutions.
3.	Employer: - For govt. establishments: Appointed authority or head of the ministry or department. - For local authority: Appointed authority or CEO of the local authority. - In other cases: Person/authority having ultimate control over the affairs of the establishment (manager/MD, etc.).
4.	Family [Sec 2(h)]: - For male: Self, wife, children, his dependent parents, dependent parents of his wife, widow and children of predeceased son. - For female: Self, husband, children, her dependent parents, dependent parents of her husband, widow and children of predeceased son. Includes: Adopted child (as per personal law). Excludes: Child adopted by others (if permitted by their personal law).



	e. Notice by Employee: - Notice must be sent in Form D and in triplicate by the employee to the employer. - The employer shall: Record receipt on one copy and return it to the employee, Forward the second copy to the Controlling Authority. f. Withdrawal of Notice: Employee may withdraw the notice by submitting Form E, also in triplicate, to the employer, who shall follow the same procedure as mentioned above.
5.	Retirement: Termination of service otherwise than on superannuation.
6.	Superannuation Attaining the age specified in contract/service conditions at which the employee vacates employment.
7.	Wages: - Includes all emoluments earned while on duty or leave, paid/payable in cash, including dearness allowance, - Excludes bonus, commission, HRA, overtime, and other allowances.
8.	Disablement Any incapacity that prevents the employee from doing the work he was capable of before the accident or disease.

Continuous Service	
1.	An employee is said to be in 'continuous service' for a period if not interrupted, or interrupted only due to: - Sickness, accident, leave, absence without leave, lay-off, strike, lockout, or - Cessation not due to employee's fault.
2.	Deemed Continuous Service: If not in continuous service as per (1), an employee is deemed in continuous service if: a. For 1 Year Period: - Employee employed below mine or working for less than 6 days a week - 190 days - Other Cases - 240 days within 12 calendar months before the relevant date. b. For 6 Months Period: - Employee employed below mine or working for less than 6 days a week - 95 days - Other Cases - 120 days within 6 calendar months before the relevant date.
3.	Inclusions for Actual Working Days: a. Days laid off under an agreement, b. Days on paid leave earned in previous year, c. Days of temporary disablement from work accident,



	d. In case of female employee, Maternity leave (up to 26 weeks).
4.	Seasonal Establishments: Deemed in continuous service if the employee has worked for at least 75% of days the establishment was in operation during the relevant period.

3. Gratuity Eligibility

Content	
1.	Gratuity shall be payable to an employee on termination of employment after completing at least 5 years of continuous service , in case of: - Superannuation, - Retirement, - Resignation, or - Death or disablement due to accident or disease.
2.	Note: 5 years' continuous service is not required in cases of death or disablement. - In case of death, gratuity shall be paid to the nominee, or if no nomination is made, to the legal heirs.

4. Gratuity Computation

Content	
1.	Gratuity is payable at the rate of 15 days' wages for every completed year of service or part exceeding 6 months , based on last drawn wages . Note: Gratuity = Last drawn wage × 15/26 × Completed years of service
2.	For piece-rated employees , daily wages = average of total wages for the last 3 months , excluding overtime.
3.	For seasonal employees , gratuity = 7 days' wages per season .
4.	The maximum gratuity payable is ₹20 lakhs , as notified by the CG (Notification No. S.O. 1420(E), dated 29-03-2018).
5.	For computing gratuity of an employee re-employed on reduced wages after disablement : - Pre-disablement period: wages actually received during that time - Post-disablement period: reduced wages shall be considered.
6.	Employee retains right to better gratuity terms under any award, agreement or contract.

5. Forfeiture of Gratuity

Content	
1.	- Partial Forfeiture: Gratuity may be forfeited to the extent of damage/loss if employment is terminated for any wilful act, omission or negligence causing damage to employer's property. - Full/Partial Forfeiture: Allowed if terminated for: Riotous/disorderly conduct or act of violence, or - Offence involving moral turpitude, committed during employment.



2. Special Points:
 - a. Gratuity is a **statutory right**, can't be withheld unless law permits.
 - b. Gratuity is a **social welfare measure** cannot be arbitrarily withheld.
 - c. Gratuity can't be withheld as **penalty without lawful authority** and opportunity to be heard.
 - d. Forfeiture must follow **due process**, including **show cause notice** and opportunity of hearing; employer must prove extent of loss before controlling authority.

6. Nomination

Content	
1.	Eligibility: Every employee completing 1 year of service must file a nomination in Form 'F'.
2.	Family Requirement: a. If the employee has a family, nomination must be in favour of one or more family members else it's void. b. If the employee has no family, nomination can be to anyone, but becomes invalid once a family is acquired. A fresh nomination in Form 'G' must then be submitted within 90 days of acquiring family.
3.	Multiple Nominees: Employee may distribute gratuity among more than one nominee .
4.	Modification: Nomination can be modified anytime via Form 'H', in duplicate . If a nominee predeceases , a fresh nomination is mandatory.
5.	Submission Process: Nomination shall be submitted in duplicate , by hand (with receipt) or registered post . a. Existing employees (1+ year of service): within 90 days of rule commencement. b. New employees (on completing 1 year): within 30 days.
6.	Delay: Nomination after the deadline may still be accepted with valid reason .
7.	Employer's Duty: a. Employer must verify service particulars and return one copy (attested) to the employee within 30 days of receipt of nomination. b. Employer must retain one copy safely.
8.	Witness Requirement: Nomination (Form F/G/H) must be signed or thumb-impressed in presence of 2 witnesses , who must also sign.
9.	Effectiveness: Nomination takes effect from the date employer receives it.

7. Determination of Gratuity

Content	
1.	Employer's Duty: On gratuity becoming payable, the employer must determine the amount whether or not the employee applies.
2.	Notice (Form 'L'): Employer shall notify the payee and Controlling Authority of the determined amount.
3.	Payment Timeline: Gratuity must be paid within 30 days of becoming payable.
4.	Interest on Delay: If delayed, interest @ 10% p.a. is payable.



5.	No Interest: If delay is due to employee's fault and Controlling Authority permits, no interest is payable.
6.	Rejection of Claim: If gratuity is not admissible , issue Form 'M' stating reasons . Copy shall be sent to Controlling Authority .

8. Dispute Resolution by Controlling Authority

Content	
1.	Controlling Authority may decide disputes relating to: - Amount of gratuity payable Admissibility of the claim Entitlement to receive gratuity
2.	Employer must deposit the disputed gratuity amount with the Controlling Authority .
3.	Authority shall: - Conduct inquiry - Give both parties a reasonable opportunity of being heard Determine the rightful amount
4.	If extra amount is found payable, employer shall be directed to pay the balance.
5.	Deposited gratuity will be paid : - To the employee, if he is the applicant; or - To nominee/heir, if no dispute exists regarding entitlement.

9. Application for Gratuity

Content	
1.	Employee or authorised person shall apply in Form I within 30 days from when gratuity becomes payable. If superannuation date is known , application can be made 30 days in advance .
2.	Nominee applies in Form J within 30 days from the date gratuity is payable. Even a plain paper application is valid.
3.	Legal heir applies in Form K within 1 year from the date gratuity is payable.
4.	If gratuity became payable before rules commenced , limitation starts from rule commencement date .
5.	Belated applications may be accepted if sufficient cause for delay is shown. Delay doesn't invalidate the claim. Disputes are referred to the Controlling Authority.
6.	Application shall be presented to employer by personal service or by registered post acknowledgement due.

10. Notice by Employer for Payment of Gratuity

Content	
1.	a. Within 15 days of receiving an application:



	- If claim is admissible, issue Form L to the applicant (employee/nominee/legal heir) stating the amount and fixing a payment date not later than 30 days. - If claim is not admissible, issue Form M with reasons for rejection.
	b. Copy of either form must be sent to the Controlling Authority
2.	If payment is to be made in the employer's office and the applicant can't attend , a new date may be fixed upon written request.
3.	If the claimant is a nominee or legal heir , the employer may seek proof of identity . The 15-day notice period starts from submission of such proof.
4.	Form L or M must be served by personal service after taking receipt or registered post with acknowledgement due .

11. Mode of Payment of Gratuity

Content	
1.	As per Rule 9, gratuity shall be paid in cash , or if desired by the payee, by Demand Draft or bank Cheque to the eligible employee, nominee, or legal heir.
2.	If the amount is less than ₹1,000 , and the payee desires, payment may be made by postal money order , after deducting the applicable commission.
3.	The employer shall inform the controlling authority about the payment details.
4.	If the nominee or heir is a minor , the controlling authority shall invest the amount in a term deposit with SBI , its subsidiaries, or a Nationalized Bank.

12. Application to Controlling Authority

Content	
1.	If the employer: refuses to accept nomination, does not entertain the application for gratuity, rejects eligibility, - mentions less gratuity than eligible in the notice, or fails to issue notice - then the eligible person may file an application in Form N within 90 days from the cause of action to the Controlling Authority for necessary directions.
2.	The application must include additional copies for the opposite party
3.	If filed after 90 days , the Controlling Authority may accept it if sufficient cause for delay is shown.
4.	The application can be submitted in person or sent via registered post with acknowledgment due .

13. Directions by Controlling Authority

Content	
1.	On receiving an application, the Controlling Authority issues a notice in Form 'O' to both employer and applicant , requiring their presence along with documents/witnesses .



2.	A representative must present a letter of authority and request permission to appear; approval or refusal will be recorded.
3.	Acts of the representative are binding on the party.
4.	After hearing, examining documents/witnesses, the authority will record findings and share a copy with both parties.
5.	If employer doesn't appear without cause, matter may be heard ex parte .
6.	If applicant fails to appear without cause, the application may be dismissed , but may be reheard within 30 days upon showing good cause (14 days' notice to opposite party required).
7.	Sittings will be held at the place/time fixed by the authority and parties will be informed.
8.	Authority may allow a clerk to administer oaths for affidavits.
9.	Summons in Form 'P' may be issued to call for evidence/documents.
10.	Any notice, summons, or order may be served personally , by registered post , or per CPC, 1908.
11.	In case of multiple parties (e.g., union members), service on the union secretary/principal officer/authorized person is sufficient.
12.	If gratuity is found payable , the Controlling Authority shall issue a notice in Form 'R' to the employer , directing payment to the applicant within 30 days, with a copy endorsed to the employee, nominee, or legal heir .

14. Powers of Controlling Authority

Content	
1.	For inquiry purposes, the Controlling Authority shall have powers similar to those of a court under the Code of Civil Procedure , 1908, in respect of: a. Enforcing attendance and examining persons on oath, b. Requiring discovery and production of documents, c. Receiving evidence on affidavits, d. Issuing commission for examination of witnesses.

15. Recovery of Gratuity

Content	
1.	If an employer fails to pay gratuity, the employee/nominee/legal heir can apply to the Controlling Authority .
2.	The Controlling Authority, after giving the employer an opportunity of being heard , may issue a certificate to the Collector to recover the gratuity with 9% compound interest as arrears of land revenue .
3.	The recovered amount is then paid to the entitled person.



16. Appeal

Content	
1.	An aggrieved person may file an appeal to the appropriate Government or its specified authority within 60 days of receiving the order.
2.	If prevented by sufficient cause , the appeal period may be extended by another 60 days .
3.	The appropriate government or appellate authority, after hearing both parties, may confirm, modify, or reverse the order of the Controlling Authority.

17. Offences and Penalties

Act/Omission	Penalty
Knowingly making false statement or representation to avoid payment	Imprisonment up to 6 months or fine up to ₹1,000, or both
Violation of provisions or rules by employer	Imprisonment 3 months to 1 year and/or fine ₹10,000 to ₹20,000
Non-payment of gratuity	Minimum 3 months imprisonment (unless court records justification for lesser term)

18. Exemption of the Employer from Liability

Content	
1.	If an employer is charged under this Act, he may, with 3 days' prior written notice , bring before the court the actual offender at the time of hearing.
2.	If the offence is proved , and the employer also proves: ▪ Due diligence was used to enforce the Act, and ▪ The offence was committed without his knowledge, consent or connivance, then the actual offender shall be convicted and employer discharged.
3.	The employer may give evidence on oath and be cross-examined by the prosecutor and the person he accuses.
4.	If the actual offender cannot be brought before the court within 3 months , the court shall proceed against the employer.

19. Cognizance of Offences

Content	
1.	Court can take cognizance of an offence only on a complaint made by or authorized by the appropriate Government.
2.	If gratuity is unpaid or unrecovered within 6 months of the due date, the appropriate Government shall authorize the controlling authority to file a complaint.
3.	The controlling authority shall file the complaint to the Magistrate within 15 days of such authorization.
4.	Only a Presidency Magistrate or a Magistrate of the first class can try offences under this Act.



20. Protection of Gratuity

Content	
1.	Gratuity payable under this Act cannot be attached in execution of any civil, revenue, or criminal court order or decree.
2.	Notwithstanding any court judgment, for the period from 03-04-1997 to the date of assent of the Payment of Gratuity (Amendment) Act, 2009, gratuity shall be payable (as per GOI Notification SO 1080 dated 03-04-1997), which shall be deemed valid as if the Amendment Act 2009 was in force throughout.
3.	No person shall face any penalty or punishment for non-payment of gratuity during this period if the amount became due only under the said notification.

21. Miscellaneous Provisions

Content	
1.	Display of Abstract As per Rule, the employer must display an abstract of the Act and rules in Form 'U', in English and the local language understood by majority of employees , at a conspicuous place near the main entrance of the establishment.
2.	Exemption The appropriate Government may exempt any establishment from the Act if its employees are already receiving gratuity or pensionary benefits not less favourable than those under the Act.
3.	Notice Requirements Form A: Notice of applicability to the establishment within 30 days. Form B: Notice of any change (name, address, employer, business nature) within 30 days. Form C: Notice of intended closure at least 60 days prior.
4.	Display of Notice Employers must display a notice in bold letters at or near the main entrance , specifying the name and designation of the officer authorized to receive notices under the Act or Rules.



9. EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

1. Introduction

Content	
1.	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare law to provide Provident Fund, Pension Fund, and Deposit-Linked Insurance Fund for employees in factories and establishments.
2.	The Act ensures social security and financial support to workers and their families in times of need.
3.	Three schemes under the Act are: - Employees' Provident Fund Scheme, 1952 - Employees' Pension Scheme, 1995 - Employees' Deposit-Linked Insurance Scheme, 1976
4.	These schemes offer benefits like old-age protection , family security after death , and advances during sickness or for house construction.
5.	Applicable to employees earning up to Rs. 15,000 p.m. (including basic wages, dearness allowance, retaining allowance, and cash value of food concession).
6.	The Act extends to whole of India .

2. Applicability

Content	
1.	Subject to Section 16 exceptions, the Act applies to: - Every factory engaged in any industry listed in Schedule I, employing 20 or more persons. - Any other establishment with 20 or more employees or such class as notified by the Central Government in the Official Gazette. CG may apply this Act to establishments with less than 20 employees, by notification, after giving at least 2 months' notice. - If the employer and the majority of employees agree to coverage, the Central Provident Fund Commissioner may notify its applicability from the date of agreement or a later agreed date. - Once the Act becomes applicable to any establishment, it continues to apply even if the employee count falls below 20 at any time.
2.	Special Points - PF coverage valid when principal confirmed 20 employees. - Act applies even to home workers employed via contractors. - Once covered, an establishment cannot claim exemption just because employee strength drops below 20.



3. Non-Applicability of Act

Content	
1.	Co-operative societies registered under law, employing less than 50 persons and working without power.
2.	Government-controlled establishments (Central or State) whose employees get provident fund or pension under government schemes/rules.
3.	Establishments set up under a Central, Provincial, or State Act where employees are covered under a statutory provident fund or pension scheme.

4. Definitions

Content	
1.	Appropriate Government a. Central Government is the appropriate authority for establishments: ▪ Belonging to or controlled by the Central Government ▪ Connected with Railway company, Major port, Mine or oil field, Controlled industry ▪ Establishments with branches in more than one State b. For all other establishments, the State Government is the appropriate authority.
2.	Authorized Officer: a. Central Provident Fund Commissioner b. Additional CPFC c. Deputy PF Commissioner d. Regional PF Commissioner e. Any officer notified by the CG in the Official Gazette
3.	Basic Wages a. All cash emoluments earned by an employee while on duty, leave, or holiday, as per the employment contract. b. Excludes: ▪ Cash value of any benefit/concession ▪ Dearness allowance, HRA, overtime, bonus, commission, or similar allowances ▪ Any presents made by the employer
4.	Contribution: The amount payable under the Provident Fund or Insurance Scheme for an employee or member.
5.	Fund refers to the Provident Fund established under the scheme.
6.	Employer a. In a factory: Owner, occupier, their agent/legal representative, or named manager. b. In other establishments: Person or authority with ultimate control. If managed by someone else (e.g., MD or agent), that person is the employer.
7.	Employee a. Any person earning wages in any work (manual or otherwise) in or connected to an establishment.



	b. Includes: - Persons hired through a contractor Apprentices (except those under the Apprentices Act, 1961 or Standing Orders) Note: A partner of a firm (as a beneficiary) is not considered an employee under this Act.
8.	Factory Any premises (with or without power) where a manufacturing process is carried on or is ordinarily carried on.

5. Employees Provident Fund Scheme

Content	
1.	a. The Employees' Provident Fund Scheme, 1952 was framed by the CG and came into force from 02-09-1952 . b. The Fund vests in and is administered by the Central Board . c. The Scheme may cover matters listed in Schedule II. d. Provisions of the scheme can be made effective prospectively or retrospectively, as specified.
2.	Applicability a. Applies to: All factories and establishments covered by the Act. b. Not applicable to: Tea factories in Assam .

6. Contributions to Employees Provident Fund

Content	
1.	Contribution a. Employer shall contribute 10% of basic wages, dearness allowance, and retaining allowance, for each employee (whether directly employed or through a contractor). b. Employee contributes an equal amount (10%) . Note: Employees can contribute more voluntarily , but the employer is not obligated to match the excess. c. The Government has raised the contribution rate to 12% for certain notified establishments, effective 22-09-1997. d. Contribution is rounded off to the nearest rupee (₹0.50 and above is rounded up; less than ₹0.50 is ignored). e. Dearness allowance includes cash value of food concession, and retaining allowance is paid to retain services during non-working periods. f. Payment of contribution is mandatory , no exceptions allowed under the Act.
2.	Wage Limit a. Contribution is payable on wages up to ₹15,000 p.m. (basic + DA + retaining allowance) from 01.09.2014. b. To contribute on higher wages , a joint request of employer and employee is needed, and the employer must pay admin charges on the higher amount. c. For international workers , the ₹15,000 wage ceiling does not apply .



3.	Withdrawal from Fund (permitted purposes) - Purchase/construction of house or flat (including land). Loan repayment in special cases. - Withdrawal within 1 year before retirement - Withdrawal up to 75% of PF balance after 1 month of unemployment, with approval from PF Commissioner or authorized officer. Note: Such withdrawals are not required to be repaid
4.	Advances from the Fund Advances are allowed for: Illness in specified cases. Marriage or post-matric education of children. Natural calamities like floods, earthquakes, riots. (non-refundable) Power cuts affecting members. (non-refundable) - Physically handicapped members. (non-refundable)

7. Employee's Pension Scheme

Content	
1.	CG introduced this scheme to provide: Superannuation pension Retirement or permanent total disablement pension Widow/widower pension Children/orphan pension The scheme can be made effective prospectively or retrospectively as specified.
2.	Contribution - No contribution from employee - Employer contributes 8.33% of basic wages + DA + retaining allowance to Pension Fund Contribution stops when employee crosses 58 years
3.	Pension Fund A Pension Fund has been set up for this scheme. It shall be vested in and administered by the Central Board. The Pension Scheme may include any or all of the matters listed in Schedule II, as explained below: - The employees or class of employees to whom the Pension Scheme will apply; - The portion of the employer's contribution to the Provident Fund that will go to the Pension Fund, and how it will be credited; - The minimum qualifying service required to be eligible for pension and how benefits for past service will be granted; - Rules for the periods of service during which no contribution is received; - The manner in which the employees' interests will be protected in case of default in payment by the employer; - The manner in which the accounts of the Pension Fund will be maintained and how its investments will be made, as per the pattern determined by the Central Government;



- g. The **form** in which an employee must give **details** about **himself** and **his family**, whenever needed;
- h. The **forms**, **registers**, and **records** to be maintained for **proper administration** of the Pension Scheme;
- i. The scale of **pension and other pensionary benefits** and the conditions under which these benefits will be granted;
- j. The manner in which the **exempted establishments** must pay their contribution to the Pension Scheme and submit returns;
- k. The **mode of disbursement** of pension and the arrangements with disbursing agencies for this purpose;
- l. The manner in which the **administrative expenses** of the Pension Scheme will be met from the income of the Pension Fund;
- m. Any **other matter** necessary for the proper implementation of the Pension Scheme.

8. Employee's Deposit Linked Insurance Scheme

Content	
1.	Employees' Deposit Linked Insurance Scheme a. CG introduced the Employees' Deposit Linked Insurance Scheme, 1976, effective from 01.09.1976. b. The Scheme applies to all factories and establishments covered under the Act, except tea factories in the State of Assam. c. The wage ceiling under this Scheme has been raised from Rs. 6,500 to Rs. 15,000. d. The insurance benefit under the Scheme ranges between Rs. 2.5 lakhs and Rs. 6 lakhs
2.	Contribution a. A Deposit Linked Insurance Fund has been set up for this purpose. b. The employer shall contribute an amount not exceeding 1% of the total of basic wages, dearness allowance, and retaining allowance for each employee. c. The employer shall also pay an additional amount, not exceeding 1/4th of the above contribution, as determined by CG from time to time, to meet administrative expenses, excluding the cost of benefits under the Scheme. d. If an employee's monthly pay exceeds Rs. 15,000, the contribution is limited to the amount payable on a pay of Rs. 15,000, including dearness allowance, retaining allowance, and cash value of food concession.

9. Central Board & State Board

Content	
1.	Central Board a. The Central Government establishes the Central Board. b. The Board consists of a Chairman and a Vice-Chairman, appointed by CG. c. The Central Provident Fund Commissioner is an ex officio member. d. Other members of the Board are also appointed by CG.



2.	Executive Committee a. CG appoints an Executive Committee to assist the Central Board in performing its functions. b. The members of this Committee are appointed by CG.
3.	State Board a. CG, in consultation with SG, may constitute a State Board for that State. b. This Board of Trustees will exercise the powers and perform the duties assigned to it by the Central Government, from time to time.

10. Determination of Moneys due from Employers

Content	
1.	If a dispute arises regarding the applicability of this Act to an establishment, the Authority may conduct an inquiry , decide the dispute, and determine the amount due from the employer under this Act, the Scheme, the Pension Scheme, or the Insurance Scheme.
2.	The employer must be given a reasonable opportunity to present their case before any order is passed.
3.	For conducting the inquiry, the Authority has powers similar to a civil court under the CPC for: - Enforcing attendance and examining on oath; - Requiring discovery and production of documents; - Receiving evidence on affidavit; - Issuing commissions for witness examination.
4.	If any required party fails to attend the inquiry, the Authority may proceed ex-parte and decide the case based on available documents.
5.	The employer may apply within 3 months to set aside an ex-parte order by showing sufficient cause for absence. If satisfied, the Authority may set aside the order and fix a new date for inquiry.

11. Review of Order

Content	
1.	Any person aggrieved by an order may apply for a review to the same Officer, if: New and important evidence was discovered, not known earlier despite due diligence; Evidence could not be produced at the time of the original order; - There was a mistake; - There is an error apparent on the face of the record; - Any other sufficient reason.
2.	The Officer may also review the order suo motu if satisfied that any of the above grounds exist.
3.	If the Officer finds no sufficient ground , he shall reject the application . If convinced, he shall grant the review.



12. Escaped Amount determination

Content	
1.	Officer may re-open a case within 5 years from the date of order under Section 7A or 7B, if he has reason to believe that due to: - Omission or failure by the employer to provide any document or report, or - Non-disclosure of material facts, any amount due has escaped notice.
2.	The Officer may re-determine the amount due as per the provisions of the Act.

13. EPF Appellate Tribunal

Content	
1.	EPF Appellate Tribunal is appointed to hear appeals against orders passed by the Central Government or any authority.
2.	After giving reasonable opportunity to the parties, the Tribunal may: - Confirm, modify, or annul the order, or - Remand the case to the authority with suitable directions.
3.	The Tribunal may rectify any mistake apparent from the record within 5 years from the date of its order.
4.	Employer appeal shall not be entertained unless 75% of the amount due is deposited. The Tribunal may waive or reduce this amount, with reasons recorded in writing.

14. Miscellaneous Topics

Content	
1.	Protection against Attachment The amount standing to the credit of any Fund member shall not be: - Assigned, - Charged, - Attached by any court decree for any debt or liability, or - Claimed by an Official Assignee or Receiver.
2.	Employer not to reduce Wages Employer shall not reduce the wages, directly or indirectly, of any employee covered under the Scheme or Insurance Scheme merely because of liability to pay contributions or charges under the same.
3.	Transfer of Accounts If an employee covered under this Act leaves and joins an establishment not covered by the Act, the accumulated amount in his account may be transferred to the provident fund of the new establishment: - If the employee desires, and - If the rules of the new fund allow such transfer.



15. Penalties

Content	
1.	Anyone who knowingly makes a false statement or representation to avoid payment under this Act shall be punishable with: - Imprisonment up to 1 year, or - Fine up to ₹5,000, or - Both.
2.	Employer defaulting in payment of contribution, inspection, administrative charges: a. For default in employees' contribution: - Imprisonment not less than 1 year, and - Fine of ₹10,000. b. For other defaults: - Imprisonment not less than 6 months, and - Fine of ₹5,000.
3.	Employer defaulting in payment of inspection charges: - Imprisonment 6 months to 1 year, and - Fine up to ₹5,000.
4.	Any person violating provisions of the Scheme, Pension Scheme, or Insurance Scheme may be punished with: - Imprisonment up to 1 year, or - Fine up to ₹4,000, or - Both.
5.	For violation of any other provision or conditions of exemption (if no other penalty is specified): - Imprisonment from 1 month to 6 months, and - Fine up to ₹5,000.

16. Offences by Companies

Content	
1.	If an offence under the Act, Scheme, Pension Scheme, or Insurance Scheme is committed by a company, then every person in charge of and responsible for the conduct of the business at the time of the offence, along with the company, shall be deemed guilty and liable for punishment.
2.	However, such person shall not be punished if they prove: - The offence was committed without their knowledge, or - They exercised all due diligence to prevent its commission.
3.	If the offence is committed with the consent, connivance, or due to neglect of any director, manager, secretary, or officer, such person shall also be deemed guilty and punishable.



10. EMPLOYEES STATE INSURANCE ACT, 1948

1. Introduction

Content	
1.	The ESI Act, 1948 is the first major social security law in India for employees.
2.	It aims to provide social protection in cases of sickness, maternity, employment injury, and occupational hazards .
3.	Medical facilities under the Act are available not only to insured employees , but also to their dependents and even to retired persons.
4.	Object of the Act: To ensure certain benefits to employees during sickness, maternity, and employment injury, and to provide for related matters.

2. Applicability

Content	
1.	- The Act extends to the whole of India. - Initially applies to all factories, including government-run factories, except seasonal factories. - The appropriate Government may extend its provisions to other establishments (industrial, commercial, agricultural, etc.) by giving 1 months' notice via Official Gazette and consulting the Corporation (and Central Govt. if applicable). - Once applicable, the Act continues even if: - The number of employees falls below the specified limit, or - The factory stops using power in its manufacturing process. - The current wage ceiling for coverage is ₹21,000/month (excluding overtime). - If wages exceed ₹21,000 after the start of a contribution period, the employee remains covered till the end of that period.
2.	Special Points - ESI applicable to sweet shops using LPG. - ESI not applicable if required employee count not met. - Once applicable, the Act continues to apply permanently.

3. Definitions

Content	
1.	Appropriate Government Central Government - For establishments under the control of CG - Railway administration, Major port, - Mine, or Oilfield. State Government – In all other cases.
2.	Confinement



	a. Labour resulting in the birth of a living child, or b. Labour after 26 weeks of pregnancy resulting in the issue of a child, whether alive or dead.
3.	Dependant of a deceased insured person includes: a. Widow, legitimate/adopted son below 25 years, unmarried legitimate/adopted daughter b. Widowed mother c. Infirm legitimate/adopted son or daughter (25 years or above), if wholly dependent on the deceased d. If wholly or partly dependent: ▪ Parent (other than widowed mother) ▪ Minor illegitimate son, unmarried illegitimate daughter, or daughter (legitimate / adopted / illegitimate) if married and minor or widowed and minor e. Minor brother, unmarried sister, or widowed sister if minor f. Widowed daughter-in-law g. Minor child of a pre-deceased son h. Minor child of a pre-deceased daughter, if no parent is alive i. Paternal grand-parent, if no parent of the insured is alive
4.	Employment Injury Employment Injury means any personal injury to an employee caused by an accident or an occupational disease, arising out of and in the course of insurable employment, whether it occurs within or outside India.
5.	Family includes all or any of the following relatives of an insured person: a. Spouse b. Minor legitimate or adopted child, dependent on the insured c. Wholly dependent child, who is: ▪ Receiving education (up to age 21), or ▪ An unmarried daughter d. Infirm child (physically or mentally), wholly dependent on the insured, for as long as the infirmity continues e. Dependent parents, with income not exceeding the limit prescribed by CG f. If unmarried and parents are not alive - a minor brother or sister, wholly dependent on the insured
6.	Factory [Section 2(12)] a. A factory means any premises (including precincts) where: ▪ 10 or more persons are/were employed on any day in the past 12 months, and ▪ A manufacturing process is being or is ordinarily carried on. b. Excludes: ▪ Mines under the Mines Act, 1952 ▪ Railway running sheds
7.	Immediate Employer a. An immediate employer is a person who:



	▪ Undertakes execution of any work (wholly or partly) on the premises of a factory/establishment or ▪ Works under the supervision of the principal employer or his agent, and ▪ The work is part of the regular, preliminary, or incidental work of the factory / establishment. b. Includes: ▪ A person lending or hiring employee services to the principal employer ▪ A contractor c. Note: Even if a person employs workers, he is the immediate employer, not the principal employer, if he supplies services to a factory or establishment.
8.	Insured Person An insured person is one who: - Is or was an employee, - In respect of whom contributions are or were payable under the Act, and - Is entitled to benefits under the Act as a result.
9.	Permanent Partial Disablement - A permanent injury that reduces earning capacity in every type of employment the employee was capable of at the time of the accident. - Any injury listed in Part II of the Second Schedule is deemed to cause permanent partial disablement.
10.	Permanent Total Disablement - A permanent injury that incapacitates the employee from all work he could perform at the time of the accident. - Deemed to result from: ▪ Any injury in Part I of the Second Schedule, or ▪ Combination of injuries in Part II where total loss of earning capacity = 100% or more.
11.	Principal Employer - In a factory - The owner or occupier, includes: ▪ Managing agent, ▪ Legal representative of deceased owner/occupier, ▪ Person named as manager under the Factories Act, 1948. - In a government-controlled establishment - The appointed authority, or if none, the Head of Department. - In other establishments - The person responsible for supervision and control.
12.	Seasonal Factory [Section 2(19A)] A factory engaged exclusively in any of the following: - Cotton ginning, cotton/jute pressing, groundnut decortication, - Manufacture of coffee, indigo, lac, rubber, sugar (including gur), or tea, - Any incidental or connected process,



	d. Factory which is engaged for not more than 7 months in a year in: ▪ Blending, packing, or repacking of tea or coffee, or ▪ Any process notified by the Central Government.
13.	Temporary Disablement A condition caused by an employment injury which: ▪ Requires medical treatment, and ▪ Makes the employee temporarily incapable of doing the work he was doing before or at the time of the injury.

4. Employee

Content	
1.	An employee means any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies, and includes: c. Directly employed by the principal employer for any work related to the factory/establishment (even if done elsewhere). d. Employed through an immediate employer, either ▪ on the premises of the factory or establishment, or ▪ under the supervision of the principal employer or his agent, on work that is ordinary, preliminary, or incidental to the factory's/establishment's business. e. Whose services are Lent or hired to the principal employer by another employer. f. Any person employed for wages in activities connected to: ▪ Administration, ▪ Purchase of raw materials, or ▪ Distribution or sale of the products. g. Any person engaged as apprentice (except those under the Apprentices Act, 1961), even if training period is extended.
2.	Exclusions: a. Members of the armed forces b. Persons earning above the wage limit (as notified), except for the current contribution period.
3.	Special Points: a. An apprentice as a mere trainee is not an employee. b. A partner is not an employee. c. Covered Categories (as per Case Law): ▪ Canteen workers ▪ Showroom/sales office workers ▪ Offsite workers ▪ Part-time daily rated workers ▪ Casual workers



5. Wages

Content	
1.	Wages include all cash remuneration paid or payable to an employee, under express or implied terms of employment, and also includes : a. Pay during authorized leave , b. Lockout, legal strike, or lay-off , and c. Any additional remuneration (paid at intervals $\leq$ 2 months)
2.	Wages exclude: a. Employer's contribution to pension/provident fund b. Travelling allowance or concession c. Amount paid to cover special job-related expenses d. Gratuity payable on discharge
3.	Special Points a. Bonus or ex-gratia is not wages b. LIC premium subsidy is treated as wages c. House rent allowance , heat/gas/dust allowance, incentive allowance is treated as wages d. Incentive bonus is treated as wages e. Overtime allowance is treated as wages

6. ESI Fund

Content	
1.	a. The ESI Fund is created and administered by the Corporation . b. The Fund consists of: ▪ All contributions paid under the Act ▪ All other moneys received on behalf of the Corporation ▪ Grants, donations, gifts from the CG/SG, local authorities, or any individual/body
2.	Utilization of the Fund The Fund shall be used for the following authorized purposes: a. Payment of benefits and provision of medical treatment to insured persons and their families. b. Fees and allowances to members of Corporation, Standing Committee, Medical Benefit Council, and related bodies c. Salaries, allowances, pensions, and provident fund contributions for Corporation staff d. Setting up and running of hospitals, dispensaries, and services for insured persons and their families e. Contributions to State Government, local bodies, or private entities for medical services, as per agreement f. Cost of auditing accounts and valuation of assets and liabilities of the Corporation g. Cost of setting up and running Employees' Insurance Courts



- h. Payments under **contracts** entered for implementing the Act by the Corporation, Standing Committee, or authorized officers
- i. Payments under **court orders**, decrees, or settlements against the Corporation or its officers for acts done in official duty
- j. Cost of **civil or criminal proceedings** arising from actions under the Act
- k. Expenditure (within prescribed limits) on **health, welfare, rehabilitation**, and re-employment of disabled or injured insured persons
- l. Any **other purpose** authorized by the Corporation with prior CG approval

7. Contribution to ESI Fund

Content

1.
 - a. Contributions are of **two types**:
 - Employer's contribution
 - Employee's contribution (deducted from wages and remitted to the Fund)
 - b. Current contribution rates:
 - Employer: 3.25% of wages
 - Employee: 0.75% of wages
 - c. Contributions must be deposited within the due date. Contributions **cannot** be deposited online **after 42 days** from the end of the contribution period.
 - d. If an employee's daily wage is **₹176 or less**, **employee's** contribution is **paid** by the **Government**. Employer must still pay his share.
 - e. **Employer** must file **monthly contributions** online through the ESIC portal after registering employees.
 - f. Employer must **submit employee-wise** number of days worked and wages paid to determine contribution payable.
 - g. Total contribution (employer + employee) must be **deposited** through:
 - Any **SBI branch** (cash/cheque/DD) or
 - SBI Internet Banking, using challan generated from ESIC portal.
2. **Principal Employer to Pay Contribution First**
 - a. The **principal employer** is responsible for paying both the **employer's contribution** and the **employee's contribution** for all employees whether directly employed by him or through an immediate employer.
 - b. Any **amount deducted** from the employee's wages by the principal employer is considered to be entrusted to him for the **purpose** of paying the **contribution**
 - c. **Remittance expenses** are to be borne by the **principal employer**.
3. **Recovery from Immediate Employer**
 - a. If the **principal employer** has paid contributions for an employee who was employed through an immediate employer, he has the **right to recover** the amount from the immediate employer. This can be done either by:
 - **Deducting** it from any amount payable under a contract, or
 - Treating it as a **debt** owed by the immediate employer.



	b. The immediate employer must also maintain a register of all employees employed by or through him and must submit it to the principal employer before the settlement of any payment.
4.	Method of Payment of Contribution a. The Corporation may make regulations for collection and payment of contributions, including: b. Time and manner of payment c. Payment via adhesive or other stamps affixed to cards/books, and related conditions d. Date of acceptance of contribution evidence by Corporation e. Entry of contributions and benefits in insured persons' books/cards f. Rules for issue, custody, inspection , replacement of such books/cards

8. Recovery of contribution from Employer

Content	
1.	Any contribution payable under this Act can be recovered as an arrear of land revenue .
2.	An authorized officer may issue a certificate to the Recovery Officer , who can recover the amount through one or more of the following methods: a. Attachment and sale of the movable or immovable property of the factory, establishment, principal employer, or immediate employer. b. Arrest and detention of the employer in prison. c. Appointing a receiver to manage the property of the factory, establishment, or employer.
3.	Recovery action shall commence with the property of the factory or establishment . If this is not enough to recover the full amount, the Recovery Officer may proceed against the employer's property .

9. Benefits available under this Act

Content	
1.	The following benefits are available to insured persons: a. Periodical payments in case of sickness . b. Periodical payments to an insured woman during confinement, miscarriage , or related sickness. c. Disablement benefit for injuries due to employment injury. d. Dependants' benefit for family if the insured person dies due to an employment injury. e. Medical treatment and attendance for insured persons. f. Funeral expenses to the eldest surviving family member (or the person incurring the cost if no family). ▪ Limit as prescribed by the CG. ▪ Claim must be made within 3 months of death (or extended period allowed by the Corporation).
2.	Bar on Other Compensation No compensation or damages under the Workmen's Compensation Act, 1923 or any other law is allowed for employment injury if covered under the ESI Act.



3.	Medical Benefit a. An insured person or their family member, needing medical treatment, is entitled to medical benefits. b. Medical benefits may be provided as: ▪ Out-patient treatment at a hospital, dispensary, clinic, or other institution ▪ Home visits by medical staff ▪ In-patient treatment in a hospital or other institution c. A person is entitled to medical benefits during any period: ▪ When contributions are payable, or ▪ When eligible for sickness benefit, maternity benefit, or ▪ Receiving disablement benefit, provided it does not disentitle them under the regulations
4.	Corporation Hospitals The Corporation, with State Government approval, may set up and maintain hospitals, dispensaries, and other medical services for insured persons and their families.
5.	Non-Assignable Benefits Right to receive any benefit or payment under the Act is not transferable/assignable.
6.	No Double Benefits No insured person can receive the following for the same period: - Sickness benefit + Maternity benefit - Sickness benefit + Temporary disablement benefit - Maternity benefit + Temporary disablement benefit The employee may choose which one to receive.
7.	Repayment of Improper Benefit - If someone wrongfully receives a benefit, they (or their legal representative in case of death) must repay it to the Corporation. Recoverable as arrear of land revenue or through a Recovery Officer.
8.	No Wage Reduction Due to Contribution Employer cannot reduce wages or discontinue existing benefits just because they are liable to pay contributions under the Act.
9.	No Dismissal During Benefit Period An employee cannot be dismissed, discharged, or punished during periods when they are: ▪ Receiving sickness, maternity, or disablement benefit, or ▪ Under medical treatment, or ▪ Absent due to illness certified to arise from pregnancy or confinement.

10. ESI Corporation

Content

1.	- ESI corporation formed w.e.f. 01.10.1948. - The Employees' State Insurance Scheme is managed by the Corporation. - The Corporation is a body corporate, having:



	▪ Perpetual succession ▪ A common seal ▪ Power to sue and be sued in its name
2.	Constitution of the Corporation The Corporation consists of: - A Chairman and a Vice Chairman - Members representing Employers, Employees, State Governments, Union Territories, Medical profession 3 Members of Parliament - Director General (ex-officio)
3.	Term of Office Members hold office for the period specified in the Act or Rules.
4.	Re-nomination / Re-election - Members are eligible for re-nomination or re-election as per provisions. - All orders and decisions of the Corporation must be authenticated by the signature of the Director General.
5.	Regional Bodies - The Corporation may appoint Regional Boards, Local Committees, and Regional and Local Medical Benefit Councils for specific areas and in the prescribed manner. - Corporation may also delegate powers and functions to these bodies as provided under the regulations. - Another important body under the Corporation is the Standing Committee, which manages the day-to-day affairs of the Corporation.

11. Standing Committee

Content	
1.	The Standing Committee is formed from among the members of the Corporation and consists of: - A Chairman 3 members of the Corporation 3 members representing State Governments 8 elected members from the Corporation: ▪ 3 from employers' representatives ▪ 3 from employees' representatives ▪ 1 from the medical profession ▪ 1 elected by Parliament - Director General, as ex-officio member
2.	Term of Office - The term is 2 years from the date of election notification. - A member ceases to hold office if they cease to be a member of the Corporation.



3.	Powers of the Standing Committee a. The Standing Committee, under the overall superintendence and control of the Corporation, manages the affairs of the Corporation, and may exercise its powers and functions. b. It must submit specific cases and matters to the Corporation for consideration and decision, as specified in the regulations. c. It may also submit any other case or matter to the Corporation at its discretion.
4.	Meetings The Standing Committee, Corporation, and Medical Benefit Council shall meet at times and places, and follow procedures, as prescribed by regulations.
5.	Supersession of the Corporation / Standing Committee a. If CG finds that the Corporation or the Standing Committee is making persistent default or misusing powers, it may supersede it by notification in the Official Gazette. b. Before doing so, a reasonable opportunity to respond must be given. c. On supersession, all members are deemed to vacate office, and a new Committee is to be formed immediately.

12. Medical Benefit Council

Content	
1.	The Medical Benefit Council is constituted as follows: a. Director General of ESI - ex-officio Chairman b. Director General, Health Services - ex-officio Co-Chairman c. Medical Commissioner of the Corporation - ex-officio member d. 1 member from each State (excluding Union Territories) e. 3 members representing employers f. 3 members representing employees g. 3 members from the medical profession, including one woman
2.	Term of Office Members under the last 3 categories (employers, employees, and medical profession) hold office for 4 years from the date of their appointment notification.
3.	Duties of the Medical Benefit Council a. To advise the Corporation and the Standing Committee on: ▪ Medical benefit administration ▪ Certification for benefit claims ▪ Other related matters b. To investigate complaints against medical practitioners related to treatment and attendance, as per prescribed rules. c. To perform other duties related to medical treatment and attendance, as provided in the regulations.



13. Disqualification/Resignation/Cessation of Member

Content	
1.	Disqualification A person is disqualified from being a member of the Corporation, Standing Committee, or Medical Benefit Council if: - He is declared of unsound mind by a competent court - He is an undischarged insolvent - He has a direct or indirect interest (other than as a medical practitioner or shareholder) in any ongoing contract or work for the Corporation - He is convicted of an offence involving moral turpitude (before or after the Act)
2.	Resignation - A member of the Corporation, Standing Committee, or Medical Benefit Council may resign by giving written notice to the Central Government. - The seat becomes vacant once the resignation is accepted by the Government.
3.	Cessation - A member ceases to hold office if they are absent for 3 consecutive meetings. - Membership can be restored as per rules framed by the Government.

14. Registration of Employees

Content	
1.	Every employee must get registered under the Act.
2.	Registration means recording details of entry into insurable employment for identifying the employee under the Act.
3.	The purpose of registration is to ensure access to benefits linked to the contributions paid by the employer.
4.	At the time of joining, the employee must give personal and family details , along with a family photo, to the employer for online registration.
5.	This is a one-time exercise in the lifetime of an employee.
6.	The insurance number generated at the time of first registration remains valid throughout the employee's life , regardless of change of job or location.

15. Adjudication of Disputes & Claims

Content	
1.	Adjudication of Disputes and Claims The State Government shall set up an ESI Court for specified local areas. ESI Court can decide disputes such as: - Whether a person is an employee under the Act or liable to pay employee's contribution. - The rate of wages or average daily wages of an employee. - The rate of contribution payable by a principal employer. - Who is or was the principal employer of an employee.



	e. Any person's right to benefits, including amount and duration. f. Review of dependents' benefit payments by the Corporation. g. Disputes between: - Principal employer and Corporation, - Principal employer and immediate employer, - Any person and the Corporation, - Employee and principal or immediate employer.
2.	Claims to be decided by ESI Court: a. Claim for recovery of contributions from principal employer. b. Claim by principal employer to recover contributions from immediate employer. c. Claims against principal employer. d. Recovery of benefits wrongly received by any person. e. Any claim for benefits under the Act. Note: Appeal can be made to the High Court within 60 days if there is a substantial question of law.
3.	Jurisdiction of Civil Court a. Civil Courts have no jurisdiction over matters that ESI Court, Medical Board, or Medical Appeal Tribunal are empowered to decide. b. A civil court cannot determine whether the Act applies to an establishment.

16. Penalties

Content	
1.	False Statement by Insured Person Making a false statement to claim ineligible benefits: a. Punishable with imprisonment up to 6 months, or fine up to ₹2000, or both. b. On conviction, cash benefits may be suspended for a period notified by CG.
2.	Non-Compliance by Employer Covers various violations under the Act: a. Failure to pay contributions, submit returns, maintain records, etc. b. Punishment varies from imprisonment up to 1 year, or fine up to ₹4000, or both.
3.	Punishment for Contribution Default a. If employer deducts employee's contribution but doesn't deposit, imprisonment not less than 1 year & fine ₹10,000. b. In other cases, imprisonment not less than 6 months & fine ₹5,000.
4.	Enhanced Punishment for Repeat Offences a. If an employer is convicted once and then commits the same offence again under the ESI Act, he shall be punished with imprisonment up to 2 years and fine of ₹5,000. b. If the repeated offence is failure to pay contributions, the punishment is imprisonment up to 5 years, minimum 2 years, and fine of ₹25,000.
5.	Damages for Delayed Payment a. Corporation can recover damages (penalty) from employer for late or non-payment.



	b. Opportunity to be heard must be given. c. The damages imposed shall not exceed the amount of contribution paid or payable under the Act. d. Waiver/Reduction allowed in cases like: ▪ Sick Units under BIFR, ▪ Transfer to worker's co-op, ▪ Merger/amalgamation with a healthy company.
6.	Court Order for Recovery a. On conviction for non-payment of contribution, Court may order payment within a specified time. b. If the employer still doesn't pay the contribution or submit returns within the time given by the court (or any extension), it will be treated as a further offence. The employer will be punishable with imprisonment (as per point 3 above) and may also have to pay a fine of up to ₹1,000 for each day of default.
7.	Sanction for Prosecution a. No prosecution without prior sanction of the Insurance Commissioner or authorized officer. b. Only Metropolitan Magistrate/Judicial Magistrate First Class can try such offences. c. Court cannot take action on any offence under this Act unless a written complaint has been filed.
8.	Disputes & Claims before ESI Court For disputes by employer or employee, 50% security deposit is required (can be waived by court).
9.	Cheque Bounce If cheque towards ESI dues bounces due to insufficient funds, punishable with imprisonment up to 1 year, or fine up to twice the amount, or both.
10.	Criminal Breach of Trust If employer deducts employee's contribution but doesn't pay, it amounts to criminal breach of trust, punishable with imprisonment up to 3 years, or fine, or both.



11. THE CODE ON WAGES, 2019

1. Introduction

Content	
1.	The Code on Wages, 2019 was enacted in 2020 . It includes provisions related to payment of wages, Overtime, Bonus, Minimum wages & other related aspects of existing labour laws.
2.	This Code has subsumed 4 Central labour laws: - The Payment of Wages Act, 1936 - The Minimum Wages Act, 1948 - The Payment of Bonus Act, 1965 - The Equal Remuneration Act, 1976
3.	It regulates wages for both workmen and managerial/supervisory employees, bringing uniformity in definitions across laws and reducing documentation burden.
4.	Powers under the Code CG: can regulate wages in specific sectors like railways, mines, oil fields , etc. SG: handles wage-related decisions for all other types of employment within the state .

2. Scope and Applicability of Code on Wages, 2019

Content	
1.	- The Code extends to the whole of India. - It universalizes: - The right to minimum wages, and Timely payment of wages for all employees, regardless of wage ceiling or employment sector. - Under the old law: - The Payment of Wages Act, 1936 applied only to employees earning up to ₹24,000/month. - The Minimum Wages Act, 1948 applied only to specific employments listed in its Schedule. - The Code removes these limitations, ensuring universal application of minimum wage and payment provisions. - The Code prohibits gender discrimination by the same employer in matters of wages, and employment conditions - The Code has no specific section on application but applies to all establishments, employers, and employees, unless specifically exempted under its provisions.
2.	Extension of the Code The Code applies to: All establishments engaged in any trade, industry, or manufacturing process - All types of employees: - Skilled, semi-skilled, unskilled



- Supervisory, managerial – regardless of wage ceiling or sector
- All types of employers who engage workers in their trade, industry, or manufacturing activity

3. Wages

Content

1. Wages means **all remuneration**, whether as salary, allowances, or otherwise, expressed in **money** terms or capable of being **expressed in money**, which would be payable to an employee if the terms of employment (express or implied) are fulfilled.
2. **Wages includes:**
 - a. Basic pay
 - b. Dearness allowance
 - c. Retaining allowance, if any
3. **Wages excludes:**
 - a. **Bonus** under any law (not forming part of employment terms)
 - b. **Value of facilities** like house accommodation, supply of light, water, medical attendance, etc., excluded by government order
 - c. **Employer's contribution** to **pension** or **provident fund** and interest thereon
 - d. **Conveyance allowance** or travel concession
 - e. **Reimbursement** for special expenses due to nature of work
 - f. House rent allowance
 - g. Remuneration under **court award**, settlement, or tribunal order
 - h. **Overtime** allowance
 - i. **Commission**
 - j. **Gratuity** payable at termination
 - k. **Retrenchment** compensation, **retirement** benefits, or ex gratia payments on termination
4. **Special Provisions:**
 - a. If the total of excluded items (from clauses a to i) **exceeds 50%** (or a percentage notified by the CG) of total remuneration, the **excess** shall be added to **wages**.
 - b. For the purpose of **equal wages** to all genders and **payment of wages**, the following **excluded components** shall still be **included** for wage calculation:
 - Conveyance allowance or travel concession
 - House Rent Allowance
 - Remuneration under awards or settlements
 - Overtime allowance
 - c. **Remuneration in Kind:**
If an employee receives part of their wages as **remuneration in kind**, its value (up to 15% of total wages) will be considered as part of **wages**.



4. Employee

Content	
1.	Employee: a. An employee is any person (except an apprentice under Apprentices Act, 1961) who is employed for wages in an establishment to do - skilled, semi-skilled, or unskilled work - whether manual, operational, - supervisory, managerial, administrative, technical, or clerical. b. This applies whether the employment terms are written or implied. c. It also includes anyone the appropriate Government declares as an employee, d. Excludes: Members of the Armed Forces of the Union.
2.	Workman: a. A workman is any person (except an apprentice under Apprentices Act, 1961) who is employed in any industry to perform - manual, unskilled, skilled, - technical, operational, - clerical, or supervisory work for hire or reward whether the terms of employment are written or implied. b. It includes: Working journalists' Sales promotion employees c. It excludes any person - Covered under the Air Force Act, 1950, Army Act, 1950, or Navy Act, 1957 - Working in police service or as a prison officer/employee - Mainly employed in a managerial or administrative capacity - Employed in a supervisory capacity with wages above ₹15,000 p.m.

5. Prohibition of Discrimination on the grounds of Gender

Content	
1.	No Discrimination in Wages Based on Gender: In any establishment or its unit, there shall be no gender-based discrimination among employees by the same employer regarding wages for the same work or work of similar nature.
2.	Employer Restrictions: Employer shall not - Reduce the wages of any employee; Discriminate based on sex while recruiting employees for the same work or work of similar nature, or in the conditions of employment, except when the employment of women is prohibited or restricted by any law currently in force.



6. Components of Minimum Wages

Content	
1.	Minimum wages fixed or revised by the appropriate Government may include: - A basic rate of wages and a cost-of-living allowance, which is an allowance adjusted from time to time as per directions of the appropriate Government, based on changes in the cost-of-living index number. or - A basic rate of wages, with or without the cost-of-living allowance, plus the cash value of concessions for essential commodities supplied at concession rates, if authorised. or - An all-inclusive rate that includes: - Basic rate of wages, - Cost-of-living allowance, and - Cash value of any such concessions.
2.	The cost-of-living allowance and cash value of concessions for essential commodities at concession rates shall be calculated by an authority appointed by the appropriate Government through a notification, and done at such intervals and in such a manner as directed by the Government from time to time.

7. Procedure for Fixing and Revising minimum Wages

The Code provides two methods for fixing or revising minimum wage	
1.	Committee Method - The appropriate Government may appoint as many committees as needed to hold enquiries, and recommend fixation or revision of minimum wages. - Composition of Committee: - Representatives of Employers - Representatives of Employees (equal in number to employer representatives) - Independent persons (not more than one-third of the total members) - After Recommendation: - The appropriate Government shall, by notification, fix or revise the minimum rates of wages. - Unless mentioned otherwise, the notification comes into force after 3 months from the date of its issue.
2.	Notification Method - The appropriate Government shall publish its proposal to inform the affected persons. - The proposal must specify a date not less than 2 months from the notification date, by which it will be considered. - After Receiving Representations: - The appropriate Government, after considering all representations received by the specified date, shall by notification, fix or revise the minimum rates of wages. - Unless otherwise stated, this notification also comes into force after 3 months from the date of its issue.



	d. Note: If the appropriate Government proposes to revise wages using this Notification Method , it shall consult the Advisory Board u/s 42 of the Code.
3.	Timeline For Review / Revision The appropriate Government shall review or revise minimum wages at least once every 5 years .

8. Fixation of Minimum Wages

Content	
1.	The appropriate Government shall fix minimum rates of wages for: a. Time work, or b. Piece work
2.	If employees are on a piece work basis, the Government must also fix a minimum wage rate to ensure they get at least the time work minimum wages.
3.	For time work, wages may be fixed for any one or more of the following wage periods: a. By the hour b. By the day c. By the month
4.	For fixing minimum wages, the appropriate Government: a. Shall consider: ▪ The skill level of the workers (unskilled, semi-skilled, skilled, highly-skilled) ▪ The geographical area , or both b. May also consider, for certain worker categories, the arduousness of the work (e.g., extreme temperature, humidity, hazardous occupations, underground work) c. The norms for such fixation shall be as prescribed by the Government.
5.	The minimum wage rates will vary depending on: a. The skill required b. The hardship (arduousness) of the work c. The geographical location

9. Fixation of Floor Wage

Content	
1.	CG shall fix the floor wage by considering the minimum living standards of a worker, in the manner that may be prescribed: Note: Different floor wage may be fixed for different geographical areas .
2.	The minimum rates of wages fixed by the appropriate Government shall not be less than the floor wage . If the minimum rates of wages already fixed by the appropriate Government are more than the floor wage, then the appropriate Government shall not reduce such minimum rates of wages.



3. CG may, before fixing the floor wage, take the advice of the Central Advisory Board and consult State Governments in the manner prescribed.

10. Wages of Employee working less than Normal Working Day

Content	
1.	Wages for Less Than Normal Working Day a. If an employee, whose minimum rate of wages is fixed per day under this Code, works for less than the normal working hours on any given day, he shall still be entitled to wages as if he had worked a full normal working day. b. Exceptions: He will not be entitled to full day's wages if: ▪ He was unwilling to work (i.e., it was his own choice not to work), and not because the employer failed to provide work. ▪ In other cases, and circumstances as may be prescribed
2.	Wages for Two or More Classes of Work If an employee performs two or more classes of work, each with a different minimum rate of wages, the employer must pay at least the minimum rate applicable to each class for the respective time spent on each.
3.	Minimum Time Rate Wages for Piece Work If a person is on piece work, but the minimum time rate (and not piece rate) is fixed under the Code, the employer must pay at least the minimum time rate wages.

11. Work Hours

Content	
1.	Where minimum rates of wages have been fixed under this Code, the appropriate Government may: a. Fix the number of hours that will form a normal working day, including one or more specified intervals. b. Provide for a day of rest in every 7-day period, to be allowed to all employees or a specified class of employees, and also provide for remuneration for such day of rest. c. Provide for payment for work done on a day of rest, at a rate not less than the overtime rate.
2.	The above provisions will apply to the following classes of employees only to the extent and subject to the conditions that may be prescribed: a. Employees engaged in any emergency that could not have been foreseen or prevented. b. Employees doing preparatory or complementary work that must be done outside normal working limits. c. Employees whose employment is essentially intermittent. d. Employees doing work that must, for technical reasons, be completed before duty ends. e. Employees engaged in work that depends on irregular action of natural forces.



12. Wages for Overtime

Content

1. If an employee, whose minimum rate of wages is fixed under this Code
 - whether by the hour, by the day, or for any longer wage-period as may be prescribed,
 - works **beyond** the **normal working hours** on any day,
 - the employer must pay **overtime wages** for every extra hour or part of an hour worked,
 - at a **rate** not less than **twice the normal rate** of wages.

13. Payment of Wages

Content

1. **Mode of payment of wages**
 - a. Wages shall be paid in **current coin, currency notes, cheque**, credited to **bank account**, or through **electronic mode**.
 - b. The appropriate Government may, by notification, require that in certain industrial or other establishments, wages must only be paid by **cheque or bank transfer**.
2. **Fixation of wage period**
 - a. The employer must fix the wage period as **daily, weekly, fortnightly, or monthly**, but it cannot exceed one month.
 - b. Different wage periods may be fixed for different establishments.
3. **Time Limit for payment of wages**
 - a. Wages must be paid within the following timelines:

Wage Period	Payment Time
Daily	At end of the shift
Weekly	Last working day of the week (before weekly holiday)
Fortnightly	Before end of 2nd day of the next month
Monthly	Before end of 7th day of the next month
 - b. In case of **removal**, dismissal, retrenchment, resignation, or closure of establishment wages must be paid within **2 working days** of the event.
 - c. The **appropriate Government** may set a different time limit for wage payments considering specific situations.
 - d. If any other law has a different timeline, that will not be affected by this section.

14. Deductions from Wages

Content

1.
 - a. Deductions are not allowed **except** as **authorised** by this Code.
 - b. Any **payment** made by the **employee** to the **employer** or agent is treated as a deduction.
 - c. Loss of wages due to:
 - Withholding of increment/promotion
 - Reduction in post or scale
 - Suspension,



	is not considered a deduction if procedures meet Government-notified standards.
2.	Deductions allowed under the Code include: ✓ Fines ✓ Absence from duty ✓ Damage or loss caused by employee's neglect ✓ House-accommodation supplied ✓ Amenities/services authorised by Government ✓ Recovery of: ▪ Advances (e.g., travel allowance) ▪ Overpaid wages ▪ Loans from welfare funds ✓ Loans for house-building or other approved purposes ✓ Income-tax/statutory levies/court orders ✓ Social security contributions (e.g., provident fund, pension, insurance) ✓ Co-operative society payments (as per Government conditions) ✓ Trade Union fees (with written authorisation) ✓ Railway-specific losses due to employee's fault ✓ Donations to PM National Relief Fund (with written authorisation) Note: Total deductions from wages shall not exceed 50% of wages in any wage period.
3.	If deductions exceed 50% , the excess can be recovered as prescribed.
4.	If an employer deducts wages but fails to deposit them to the respective fund/account, the employee is not responsible for such failure.

15. Fines

Content

1.	Fines can only be imposed for specific acts or omissions of the employee, which are approved in advance by the appropriate Government or prescribed authority.
2.	These acts or omissions must be listed in a notice and displayed at the workplace as prescribed.
3.	An employee must be given an opportunity to explain or defend before any fine is imposed, and the fine must follow the prescribed procedure.
4.	In one wage period, the maximum fine cannot be more than 3% of the wages payable for that period.
5.	Fines cannot be imposed on any employee below 15 years of age .
6.	A fine: ▪ Cannot be recovered in instalments. ▪ Cannot be recovered after 90 days from the date it was imposed.
7.	A fine is considered to be imposed on the same day the act or omission occurred .
8.	All fines and their collections must be: ▪ Entered in a register (in the prescribed format). ▪ Used only for purposes beneficial to employees, as approved by the prescribed authority.



16. Deductions from Absence of Duty

Content	
1.	Deductions from wages can be made only if the employee is absent from the place(s) where he is required to work, either for the whole or part of the required working time .
2.	The amount of deduction must be proportional to the time of absence . That means: - If an employee is absent for a certain period, the deduction should be in the same proportion to the total wages for that wage-period as the absence is to the total working period. - If 10 or more employees act together and absent themselves without proper notice (as required under their contract) and without reasonable cause, the employer may deduct up to 8 days' wages from each such employee, as allowed under their contract.
3.	An employee will be treated as absent even if he is physically present at the workplace but refuses to work Example: During a stay-in strike or for unreasonable reasons.

17. Eligibility for Bonus

Content	
1.	Eligibility for Bonus Every employee drawing wages not exceeding the amount notified by the appropriate Government and who has worked for at least 30 days in an accounting year is eligible for bonus.
2.	Rate of Bonus The minimum bonus payable is 8.33% of the wages or Rs. 100 , whichever is higher , whether or not the employer has allocable surplus in the previous year. If the employee's wages exceed the limit notified by the appropriate Government, the bonus shall be calculated as if his wages were equal to the notified limit or minimum wage , whichever is higher .
3.	Maximum Bonus If the allocable surplus exceeds the minimum bonus , the employer must pay bonus in proportion to the employee's wages, up to a maximum of 20% of such wages .
4.	Set On and Set Off While calculating allocable surplus, any set on or set off amount u/s 36 must be considered.
5.	Production or Productivity Bonus Any demand for bonus beyond the minimum bonus , based on production or productivity, must be settled through agreement or settlement , but the total bonus cannot exceed 20% of wages .
6.	Cooling Off Period First 5 Years



	For the first 5 accounting years after the employer starts selling goods or services, bonus is payable only in the year the employer makes profit, and will be calculated as per this Code. b. 6th and 7th Years Bonus Rules - For the 6th accounting year, set on or set off will consider the 5th and 6th years' surplus/deficiency. - For the 7th year, it will consider the 5th, 6th, and 7th years' surplus/deficiency. This shall be done in the manner prescribed by the CG. c. From 8th Year Onwards From the 8th year onwards, set on or set off shall apply in the same manner as it applies to any other establishment.
7.	Special Points a. Profit Criteria for Bonus Profit is considered only if: - Depreciation for the year is provided as per the Income-tax Act or other applicable tax laws. - All past losses and arrears of depreciation have been fully set off. b. Trial Production Not Considered: - Sales during trial running of factory or prospecting stage of mines/oil-fields are not considered. - If any issue arises, the appropriate Government will decide after giving a chance to both parties. c. Application to New Branches Above provisions (point 6) also apply to new departments, undertakings, or branches of existing establishments.
8.	Proportionate Reduction of Bonus If an employee has not worked for all working days in an accounting year, and the minimum bonus exceeds 8.33% of his actual working days' wages, the bonus shall be reduced proportionately.
9.	Note: a. If an establishment has multiple departments, undertakings, or branches, whether at the same or different places, they shall be treated as one establishment for bonus computation. b. However, if a separate balance sheet and profit & loss account is maintained for any of them in an accounting year, it shall be treated as a separate establishment for that year unless it was already treated as part of the main establishment before that year

18. No. of Working Days

While calculating proportionate bonus, an employee shall be deemed to have worked in an establishment in the accounting year even on the following days:

- When the employee was laid off:



	a. under an agreement, or b. as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or the Industrial Disputes Act, 1947, or any other law applicable to the establishment.
2.	When the employee was on leave with salary or wages .
3.	When the employee was absent due to temporary disablement caused by an accident arising out of and in the course of employment.
4.	When the employee was on maternity leave with salary or wages during the accounting year.

19. Disqualification for Bonus

Content	
1.	Notwithstanding anything in this Code, an employee shall not be entitled to bonus under this Code if he is dismissed from service for any of the following reasons: a. Fraud b. Riotous or violent behaviour while on the premises of the establishment c. Theft, misappropriation, or sabotage of any property of the establishment d. Conviction for sexual harassment

20. Calculation of Bonus

Content	
1.	Bonus from Allocable Surplus a. Bonus shall be paid out of the allocable surplus, which is: ▪ 60% of the available surplus for a banking company, and ▪ 67% for other establishments. b. Audited accounts of companies shall not normally be questioned. c. In case of a dispute on bonus quantum, the notified authority may direct the employer to produce the balance sheet, but it shall not disclose its contents without the employer's consent.
2.	Gross Profits Calculation a. For a banking company: As prescribed by the CG. b. For other establishments: As prescribed by the CG.
3.	Available Surplus a. It is the gross profits minus deductions. b. It also includes the difference between: ▪ Direct tax on gross profits of the previous year, and ▪ Direct tax on gross profits after deducting bonus paid or payable under the Code for that year.
4.	Deductions from Gross Profits a. Depreciation as per the Income-tax Act, or relevant agricultural income-tax law. b. Direct tax payable on income, profits, and gains during that year. c. Other prescribed sums by the CG.



21. Calculation of Direct Tax

Content	
1.	For the purposes of this Code, direct tax payable by the employer for any accounting year shall be calculated at rates applicable to the employer's income for that year, subject to the following:
2.	Exclusions in calculation: - Losses carried forward from any previous year under tax laws; - Arrears of depreciation admissible under Income-tax Act.
3.	If the employer is a religious or charitable institution, and any part of its income is exempt under the Income-tax Act, it shall be treated as a company in which the public are substantially interested for that exempt income.
4.	If the employer is an individual or Hindu Undivided Family, tax shall be computed as if the income from the establishment is the only income.
5.	No account shall be taken of rebate on export income allowed under tax laws.
6.	No account shall be taken of any rebate, credit, relief, or deduction (except development rebate, investment allowance, or development allowance) allowed under tax laws or Finance Acts for industrial development.

22. Set On and Set Off

Content	
1.	Set On: If the allocable surplus in any accounting year exceeds the maximum bonus payable, the excess (up to 20% of total wages/salary) shall be carried forward for set on for up to 4 succeeding years, as per rules prescribed by the CG.
2.	Set Off: If in any year there is no allocable surplus or it is less than the minimum bonus payable, and there is no or insufficient set on, the shortfall shall be carried forward for set off for up to 4 succeeding years, as per prescribed rules.
3.	Other Cases: The principle of set on and set off, as provided in the rules, shall apply to all other cases for bonus payments under this Code.
4.	Chronological Adjustment: When calculating bonus, set on or set off amounts from the earliest accounting year carried forward shall be adjusted first.

23. Deductions from Bonus

Content	
1.	Adjustment of Customary or Interim Bonus - In any accounting year: - If an employer has paid puja bonus or any customary bonus, or



	If an employer has paid part of the statutory bonus in advance, then the employer may deduct such amount from the bonus payable under this Code for that year. b. The employee shall receive only the balance.
2.	Deduction for Misconduct a. If an employee is found guilty of misconduct in any accounting year and it causes financial loss to the employer, the employer may deduct the loss amount from the bonus payable for that year. b. The employee shall receive the remaining balance, if any.

24. Time Limit for Payment of Bonus

Content	
1.	All bonus payable under this Code shall be credited to the employee's bank account by the employer within 8 months from the close of the accounting year. Note: The appropriate Government may, on application and for sufficient reasons, extend this period, but the total extension cannot exceed 2 years.
2.	In Case of Dispute: If a bonus dispute is pending before any authority, the bonus must be paid within 1 month from the date the award becomes enforceable or the settlement takes effect. Note: If the dispute is only about payment at a higher rate, the employer must still pay 8.33% of wages within 8 months from the close of the accounting year, as per this Code.

25. Applicability of Payment of Bonus

Content	
1.	Application to Public Sector Establishments a. If a public sector establishment (in any accounting year) earns 20% or more of its gross income from sales or services rendered in competition with the private sector, then this Chapter shall apply to it as it applies to a similar private sector establishment. b. Except as provided above, the provisions of this Chapter do not apply to public sector employees.
2.	Non-Applicability of Bonus Provisions This Chapter does not apply to employees of: - Life Insurance Corporation of India - Seamen (as per Merchant Shipping Act, 1958) - Dock workers registered under the Dock Workers Act, 1948 - Establishments under Central/State Government or local authorities - Institutions not for profit, including: - Indian Red Cross Society (and similar bodies) - Universities and educational institutions - Hospitals, chambers of commerce, social welfare institutions - Reserve Bank of India



	g. Public sector financial institutions (excluding banking companies) notified by the Central Government, considering: ▪ Capital structure, objectives, and nature of activities ▪ Financial aid or concessions received from the Government h. Inland water transport establishments operating on international routes i. Any other establishment exempted by notification by the appropriate Government, based on alternate profit-sharing benefits for employees
3.	Subject to these exemptions, this Chapter applies to any establishment with 20 or more employees employed at any time during an accounting year.

26. Central Advisory Board & State Advisory Board

Central Advisory Board	
1.	CG shall constitute a Central Advisory Board consisting of: a. Members representing employers; b. Members representing employees (equal in number to employer representatives); c. Independent persons (not exceeding one-third of total members); d. 5 representatives of State Governments.
2.	One-third of the total members shall be women. An independent person shall be appointed as the Chairperson.
3.	The Board shall advise the Central Government on: a. Fixation/revision of minimum wages; b. Employment opportunities for women; c. Extent to which women may be employed in notified employments; d. Other matters under the Code. CG may issue directions to State Governments based on this advice.

State Advisory Board	
1.	SG shall constitute a State Advisory Board to advise on: a. Fixation/revision of minimum wages; b. Employment opportunities for women; c. Extent to which women may be employed in notified employments; d. Other matters referred by the State Government.
2.	The Board may form committees/sub-committees to address these issues.
3.	The Board and its committees shall consist of: a. Employer representatives; b. Equal number of employee representatives; c. Independent persons (not more than one-third of total).
4.	a. One-third of members must be women. b. An independent person shall be: ▪ Appointed by SG as Chairperson of the Board; ▪ Appointed by the Board as Chairperson of the committee/sub-committee.



5.	While advising on women's employment , the Board shall consider: Number of women employed, Nature and hours of work, Suitability for employment, - Need for part-time or other opportunities.
6.	- The State Government may issue directions after considering: - Board's advice, - Representations from establishments, employees, or others. - Both Central and State Advisory Boards shall regulate their own procedure. Terms of office of Boards and committees shall be as prescribed.

27. Payment of Dues, Claims and Audit

Content	
1.	Responsibility of Payment of Dues - Every employer shall pay all amounts due under this Code to each employee. - If the employer fails, then the company, firm, association, or proprietor of the establishment will be responsible. Note: Firm has the meaning assigned under the Indian Partnership Act, 1932.
2.	Undisbursed Dues in Case of Death If dues cannot be paid due to the death or unknown whereabouts of an employee: - They shall be paid to the nominated person under the rules, or - If no nomination exists, they shall be deposited with the prescribed authority. - Once paid to the nominee or deposited, the employer is discharged of liability.
3.	Claims and Procedure - The appropriate Government may appoint one or more Gazetted Officers to determine claims under this Code. - The authority may award compensation up to 10 times the claim based on circumstances. Aim to resolve claims within 3 months. - If the employer fails to pay, the authority will issue a recovery certificate to the Collector/District Magistrate, who shall recover it as arrears of land revenue. Applications may be filed by: - The employee concerned; - A registered Trade Union of which the employee is a member; - The Inspector-cum-Facilitator. - A single application may be filed for multiple employees of an establishment. - Time limit: 3 years from the date the claim arises. The authority may condone delay on sufficient cause. - The authority and appellate authority have civil court powers under CPC, 1908 and are deemed civil courts under CrPC, 1973.
4.	Reference of Disputes Disputes regarding:



- Fixation or eligibility of bonus, or
 - Application of bonus provisions to a public sector establishment,
- shall be treated as industrial disputes under the Industrial Disputes Act, 1947.

Presumption as to Accuracy of Financial Statements

1. **Presumption of Accuracy**
 - a. If, in proceedings before the authority, the appellate authority, a Tribunal, or an arbitrator, relating to disputes or an appeal, if the Balance Sheet and Profit and Loss Account of an employer (corporation or company, excluding banking companies) are duly audited by the CAG or by auditors, and are produced, then such authority/ Tribunal/ arbitrator may presume their accuracy, and it shall not be necessary for the employer to prove their correctness by affidavit or other evidence.
 - b. If the authority/Tribunal/arbitrator is satisfied that the financial statements are not accurate, it may take steps to verify their accuracy.
2. **Clarification on Financial Items**
If an application is made by:
 - a Trade Union (party to the dispute or appeal), or
 - in absence of a union, the employees,
 seeking clarification on any item in the balance sheet or profit and loss account, the authority/Tribunal/arbitrator may direct the corporation/company to provide clarification to the Trade Union or employees, within a specified time, and the corporation/company shall comply with the direction.

Content

1. **Audit of Accounts - Employers Not Being Corporations/Companies**
 - a. If audited accounts are produced in disputes or appeals regarding bonus involving non-company employers, then the presumption as to the accuracy of duly audited balance sheet and profit and loss account shall apply mutatis mutandis.
 - b. If accounts are not audited, and the authority deems an audit necessary, it may direct the employer to get them audited within a specified time.
 - c. If the employer fails to comply, the authority may get the accounts audited itself (without prejudice to Section 54).
 - d. If the accounts are audited as per authority directions, the presumption as to the accuracy of duly audited balance sheet and profit and loss account shall again apply.
 - e. Audit expenses, including auditor fees, shall be paid by the employer. In default, such amounts shall be recovered by the authority as arrears of land revenue.
2. **Appeal Procedures**
 - a. Aggrieved persons may file an appeal against orders passed, before an appellate authority, within 90 days (extension allowed on showing sufficient cause).



	b. Appellate authority must be an officer of higher rank than the authority, appointed by the appropriate Government. c. The appellate authority shall hear and dispose of the appeal and endeavour to do so within 3 months. d. Dues ordered by the appellate authority shall be recovered through a recovery certificate.
3.	Records, Returns, and Notices a. Every employer shall maintain registers with: - Employee details, Muster roll, - Wages, and Other prescribed particulars. b. Every employer shall display a notice at a prominent place in the establishment containing: Abstract of the Code, Category-wise wage rates, - Wage period, Date/time of wage payment, and - Name/address of the Inspector-cum-Facilitator. c. Every employer shall issue wage slips to employees in prescribed form and manner. d. Exemption: (a) to (c) do not apply to employers of not more than 5 persons for agriculture or domestic purposes. - However, on demand, such employers must produce reasonable proof of wage payment. e. Note: Domestic purpose refers exclusively to home or family affairs of the employer and excludes commercial/industrial/business activities.

28. Inspector cum Facilitator

Appointment and Powers

1.	The appropriate Government may, by notification, appoint Inspector-cum-Facilitators for enforcement of this Code across: - The State, or - Specific geographical limits or establishments, as assigned.
2.	The Government may notify an inspection scheme, including web-based inspection and electronic information collection.
3.	Jurisdiction for randomized inspection may also be conferred via notification.
4.	All Inspector-cum-Facilitators are deemed public servants.
5.	Powers of Inspector-cum-Facilitator: Advise employers and workers on Code compliance, Inspect establishments as per assigned jurisdiction and government guidelines.
6.	Additional powers include: Examine persons found on premises, - Require information about names/addresses,



	▪ Search, seize, or copy records (wages, registers, notices) relevant to any offence under the Code, ▪ Report abuses or defects not covered under existing laws, ▪ Exercise other prescribed powers.
7.	Persons required to produce documents or furnish information shall be legally bound under IPC.
8.	Search and seizure procedures shall follow the CrPC, 1973.
9.	Penalties for Offences by Employer - The Code prescribes penalties for offences by an employer, such as: ▪ Paying less than due wages, or ▪ Contravention of any provision of the Code. - Penalties depend on the nature of the offence, with the maximum penalty being: ▪ Imprisonment up to 3 months, and ▪ Fine up to ₹1,00,000.

29. Cognizance of Offence

Content	
1.	Court shall not take cognizance of an offence under this Code except on a complaint made by: - the appropriate Government or its authorised officer, - an employee, - a registered Trade Union under the Trade Unions Act, 1926, or - an Inspector-cum-Facilitator.
2.	Only a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try offences under this Code, notwithstanding anything in the CrPC, 1973.

30. Power to impose Penalty

Content	
1.	The appropriate Government may appoint an officer not below the rank of Under Secretary to the Government of India (or equivalent rank in the State Government) to conduct an enquiry in the prescribed manner.
2.	The enquiry officer shall have powers to: ▪ Summon and enforce attendance of persons, ▪ Call for evidence or documents deemed relevant. Upon satisfaction of offence, the officer may impose penalty as per the said provisions.

31. Penalties for Offences

Content	
1.	Penalties on Employers: - Paying less than due wages: Fine up to ₹50,000. Repeat offence (paying less than due wages) within 5 years: ▪ Imprisonment up to 3 months, or



	▪ fine up to ₹1,00,000, or ▪ both. c. Contravention of any other provision of the Code: Fine up to ₹20,000. d. Repeat offence (contravention of any other provision) within 5 years ▪ Imprisonment up to 1 month, or ▪ fine up to ₹40,000, or ▪ both.
2.	Non-maintenance/improper maintenance of records : Fine up to ₹10,000.
3.	Before initiating prosecution, the Inspector-cum-Facilitator shall issue a written direction for compliance within a specified period.
	a. If complied: No prosecution. b. If repeat violation within 5 years: No second chance; prosecution shall be initiated.

32. Offences by Companies

Content	
1.	a. If an offence is committed by a company, both the company and every person in charge/responsible shall be deemed guilty, unless he proves: ▪ No knowledge of the offence, or ▪ Exercised due diligence to prevent it. b. If the offence is due to consent, connivance, or neglect of any director, manager, secretary, or officer, such person shall also be deemed guilty and liable.
2.	a. Company includes body corporate, firm, LLP, other associations of individuals. b. Director in a firm = Partner.

33. Composition of Offences

Content	
1.	Offences not punishable with imprisonment only (or with both imprisonment and fine) may be compounded :
	▪ By a Gazetted Officer authorised by the appropriate Government, ▪ For 50% of the maximum fine.
2.	No compounding for repeat offences within 5 years of:
	▪ Earlier compound of similar offence, or ▪ Conviction of similar offence.
3.	The officer acts under the direction and control of the appropriate Government.
4.	Application for compounding to be made as prescribed.
5.	If compounded before prosecution , no prosecution shall be initiated.
6.	If compounded after prosecution , officer shall notify the court, and the accused shall be discharged .
7.	Failure to comply with compounding order, Additional penalty of 20% of maximum fine + original fine .
8.	No offence shall be compounded, except under & in accordance with this Section.



34. Miscellaneous

Content	
1.	Bar of Suits Court shall not entertain suits for recovery of Minimum wages, Unauthorized deductions, Wage discrimination, or Bonus, if the claim: - Is subject to proceedings, - Is already subject to a direction under the Code, - Has been adjudicated, or - Could have been recovered under the Code.
2.	No suit, prosecution, or legal proceeding shall lie against the appropriate Government or its officers for anything done in good faith under this Code
3.	Burden of Proof In claims relating to non-payment or less payment of wages/bonus, or Unauthorized deductions, the burden of proof lies on the employer to establish that payment was made.
4.	Any contract or agreement by which an employee waives rights to wages or bonus under this Code is null and void to the extent it reduces the employer's statutory liability.
5.	Overriding Effect The Code shall override any inconsistent Law, Award, Agreement, or Contract of service, in force at the time.
6.	Delegation of Powers The appropriate Government may, by notification, delegate its powers under this Code to: - An officer/authority subordinate to the CG or a SG (if CG is the appropriate Government); - An officer/authority subordinate to the SG (if SG is the appropriate Government).
7.	Exemption from Liability An employer charged with an offence may bring the actual offender before the court. If proven that: - Due diligence was exercised, and - The act was without his knowledge, consent, or connivance, the employer shall be discharged, and the actual offender punished.
8.	No amount deposited by an employer with the appropriate Government or amount due from Government shall be liable to attachment by court decree except for dues owed to employees engaged under the contract with the Government.



12.1. PRELIMINARY

1. Scope and Applicability

Content	
1.	Objective The Companies Act, 2013 consolidates and amends laws related to companies to align with changes in the economic environment and promote economic growth .
2.	Presidential Assent The Companies Act 2013, received President Assent on 29-08-2013 and published in the Official Gazette on 30-08-2013 .
3.	Structure ✓ Rule-based legislation. ✓ 470 sections divided into 29 chapters. ✓ 7 Schedules. ✓ Each chapter accompanied by at least one set of Rules.

2. Definition And Characteristics of Company

Content	
a.	Company A Company means a company incorporated under the Companies Act, 2013 or any previous law.
b.	a. Separate Legal Entity: A company is an artificial and separate legal person, distinct from its shareholders, with its own independent existence. b. Limited Liability: Members' liability is limited to the extent of unpaid value of their shares. Members are not personally liable for the company's debts. c. Perpetual Succession: The company continues to exist until legally wound up, regardless of changes in membership. d. Separate Property: A company can own, acquire, and transfer property in its own name. e. Common Seal: The common seal is used by the company for affixing it in the documents such as contract etc., since it is an artificial person and cannot sign. on its own in the documents. <i>Earlier mandatory, now optional (post-2015 amendment). Documents can be signed by 2 directors or one director and a company secretary instead.</i> f. Transferability of Shares: Shares are freely transferable in public companies; restrictions apply in private companies. g. Capacity to Sue and Be Sued: As a legal person, a company can sue and be sued in its own name.



3. Lifting of Corporate Veil

Content	
1.	a. A company's separate legal personality is a legal privilege, meant for lawful business use only. b. If used fraudulently or dishonestly, courts may pierce the corporate veil. c. The court may then hold the individuals behind the company personally liable.
2.	Circumstances Where Corporate Veil May Be Lifted a. Protection of Revenue If the company is used to evade taxes, the court may ignore its separate legal entity. b. Determination of Enemy Character During wartime, the veil may be lifted to check if those controlling the company are enemies. c. Prevention of Fraud If the company is a vehicle for fraud or improper conduct, the court will look behind the entity. d. Protection of Public Policy The veil may be lifted to prevent acts that go against public interest or policy. e. Company a Sham or Cloak If the company is a facade used for illegal or dishonest purposes, the court will treat it as non-existent. f. Company Acting as Agent If the company merely acts as an agent for its shareholders, those shareholders can be held personally liable. g. Avoidance of Welfare Legislation If a company is formed to avoid labour laws or statutory employee benefits, the veil will be lifted. h. To Punish Contempt of Court Being artificial, a company cannot itself disobey court orders. The individuals responsible will be identified and held accountable.

4. Classes of Companies based on Members

Based On Members	
1.	One Person Company OPC means a company that has only one person as its member.
2.	Private Company A private company means a company: a. Which has a minimum PUSC as may be prescribed. b. By its AOA ✓ Restricts the right to transfer its shares. ✓ Limits members to 200 (except OPC - only 1 member). Note:



	▪ Joint holders of shares are treated as a single member. ▪ Employees and ex-employees who became members during their employment and continued as members after leaving the company shall not be counted in the total number of members. ✓ Prohibits any invitation to the public to subscribe for its securities.
3.	Public Company a. A public company is one that: ✓ Is not a private company & ✓ Has a minimum PUSC as may be prescribed. b. A private company that is a subsidiary of a public company is deemed to be a public company.

5. Small Company

Content	
1.	A company, other than a public company, that meets the following criteria: ✓ Paid-up share capital $\leq$ ₹ 50 Lakhs or as prescribed, $\leq$ ₹ 10 Crores. ✓ Turnover (as per P&L account of the immediately preceding FY) $\leq$ ₹ 2 Crores or as prescribed, $\leq$ ₹ 100 Crores.
2.	Revised Limits: Paid-up capital $\leq$ ₹ 2 Crores & Turnover $\leq$ ₹ 20 Crores
3.	Exclusions: a. Holding company or Subsidiary of another company b. Section-8 companies c. Company or body corporate governed by a special Act d. Public companies

6. Associate, Holding and Subsidiary Companies

On the Basis of Control	
1.	Holding Company a. A company in relation to one or more other companies, means a company of which such companies are subsidiary companies. b. In this clause, Company includes body corporate
2.	Subsidiary Company a. A company is a subsidiary of a holding company if the holding company: ✓ Controls the composition of the Board of Directors. or ✓ Exercises/controls >50% of voting power, either: ▪ At its own or ▪ Together with one or more subsidiaries. b. Deemed Subsidiary: A company controlled indirectly through another subsidiary is also considered a subsidiary. c. Note:



	✓ Holding companies cannot have layers of subsidiaries beyond a prescribed limit. ✓ Controls the composition of BOD: If a company can appoint/remove majority/all directors of another company at its discretion, it controls the BOD.
3.	Associate Company A company where another company has significant influence, but it is not a subsidiary includes Joint Ventures a. Significant Influence: ▪ At least 20% control of total voting power. ▪ Control/participation in business decisions under an agreement. b. Joint Venture: A joint arrangement where parties with joint control have rights to the net assets of the arrangement. c. Voting Power: Total number of votes that can be cast in a poll if all eligible members are present and vote.

7. Foreign Company

Content	
1.	Foreign company A Body Corporate, including a company incorporated outside India, which has: a. A place of business in India (through itself or agent, or by physical/electronic mode). b. Conducts any business activity in India in any manner.
2.	Place of Business in India a. Having a share transfer or registration office in India constitutes a place of business. b. If company representatives regularly visit and operate from a hotel for business purposes, the hotel becomes its place of business. c. However, mere ownership of property in India does not qualify as a place of business.
3.	Annual Return Foreign companies are also required to file annual returns with the ROC.
4.	Deemed Indian Company If 50% or more shareholding (equity or preference) is held by Indian citizens/companies (alone or jointly), the foreign company must comply with Chapter XXII as if it were an Indian company.

8. Companies based on Liability

Content	
1.	Company Limited by Shares: a. Liability of members is limited to the unpaid value of their shares. b. A company's liability is unlimited, only member liability is limited, enforceable during the company's lifetime or winding-up. c. Must have share capital, as liability is tied to face value of shares. d. Members are not liable to pay the unpaid amount unless:



	▪ A valid call is made as per the law and Articles, or ▪ The company is under winding-up.
2.	Company Limited by Guarantee: - Members give a guarantee to contribute a fixed amount only at the time of winding-up. - This contribution may be used to: ▪ Pay debts and liabilities of the company (while member or within 1 year of ceasing to be member) ▪ Cover winding-up costs and expenses ▪ Settle contributories' rights among themselves (Sec. 4(1)(d)(ii)) - These companies may or may not have share capital. - If the company has share capital, members may also have to pay unpaid share amounts in addition to the guaranteed amount.
3.	Unlimited Company: No limit on members' liability. - Liability is similar to partners, but creditors must proceed against the company first. - Creditors can recover dues only through winding-up proceedings. - In winding-up, the Official Liquidator can require members to pay off all company debts without limit. - May or may not have share capital and is not restricted from: ▪ Buying its own shares, or ▪ Lending for purchase of its shares.

9. Other Companies

Content	
1.	Statutory Company - Formed under a special Act of Parliament for specific purposes. Examples: LIC Act, RBI Act, Insurance Act. - Memorandum of Association is not required. - Governed by its special Act, but Companies Act, 2013 applies where not inconsistent with the special Act.
2.	Registered Company - Formed under the Companies Act, 2013 or earlier company laws. - Registered Company can be: ▪ Limited or unlimited liability companies ▪ Private or public companies Registration is mandatory with the Registrar of Companies. - Companies not formed under the Companies Act are called unregistered entities.
3.	Public Financial Institutions (PFIs) Public Financial Institution refers to: LIC of India - Established under LIC Act, 1956



	b. IDFC Ltd. – As per Companies Act, 1956 c. Specified Company under UTI Act, 2002 d. Other institutions notified by CG under the old sec 4A (Companies Act, 1956) e. Any other institution notified by CG (in consultation with RBI), provided: ▪ It is established under a Central/State Act, or ▪ 51% or more of its PUSC is held/controlled by the CG/SG(s)
4.	Producer Companies a. Producer companies were introduced to allow cooperatives to function as corporate entities under the Ministry of Corporate Affairs. b. A Producer Company is a company of farmers/agriculturists aimed at improving their income, support systems, and living standards. c. Producer Company can be formed by ▪ 10 or more individuals, or ▪ 2 or more institutions, or ▪ A combination of both, having any of the following business objectives related to primary produce Procurement, Production, Harvesting, Grading, Pooling, Handling, Marketing, Selling, Export, Import (for members' benefit) d. Objective: ▪ To form co-operative businesses as companies ▪ To convert existing cooperatives into companies e. As per Section 581B of Companies Act, 1956, the allowed objects include: ▪ All activities related to primary produce of members. ▪ These can be done directly or through other institutions. f. Primary Produce includes: ▪ Agriculture and allied sectors: farming, animal husbandry, floriculture, horticulture, viticulture, pisciculture, bee-raising, forestry, plantations, etc. ▪ Handloom, handicrafts, and other cottage industry products.
5.	Government Company a. A company in which ≥51% of PUSC is held by CG or SG(s) or Partly by the CG and partly by SG(s). b. Includes a subsidiary company of a government company. Note: Employees of a Government company are not the employees of CG/SG.



12.2. INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

1. Minimum Number of Members

Content	
1.	Public Company: ≥ 7 persons can form a public company. Private Company: ≥ 2 persons can form a private company. One Person Company: 1 person can form a OPC.
2.	The company can be: - limited by shares, - limited by guarantee, - unlimited company.

2. Procedure for Incorporation Of A Company

Content	
1.	Filing of Documents and Information with ROC A company registration application shall be filed with the ROC of the jurisdiction where the registered office is proposed to be situated along with the following documents. - The MOA and AOA shall be duly signed by all subscribers to the MOA. Declaration by: ✓ A person involved in the formation of the company (e.g., advocate, CA, CMA, or CS in practice) and ✓ A person named in the AOA (e.g., director, manager, or secretary) confirming compliance with applicable provisions. Declaration that: ✓ All subscribers have paid the value of shares agreed upon. ✓ Verification of registered office has been filed. This shall be done before the commencement of business. Declaration by each subscriber and first directors stating: ✓ They are not convicted of any offense related to the promotion or management of any company and ✓ They are not found guilty of fraud, misfeasance, or breach of duty in the last 5 years. ✓ All documents filed with the ROC contain correct & complete and true information to the best of his knowledge & belief - The address for correspondence till its registered office is established. - Details to be provided by each subscriber include: ✓ Name, photograph, parent's name, nationality, date/place of birth, educational qualification, occupation. ✓ Permanent Account Number (PAN), email, phone number.



	✓ Proof of identity and residential proof. ✓ If the subscriber is already a director or promoter of a company, they shall provide details such as the company name, CIN, and their role as a director or promoter. ✓ If a body corporate subscribes to the MOA, the following details must be submitted to the ROC: ▪ Name and CIN or Registration Number (if any). ▪ Global Location Number, if applicable. ▪ Registered office address or principal place of business. ▪ For companies: A certified board resolution authorizing the subscription. ▪ For LLPs or partnerships: A certified resolution agreed upon by all partners authorizing the subscription. ▪ For foreign entities: A copy of the certificate of incorporation and registered office address. g. Details of first directors include: ✓ Name, DIN (Director Identification Number), nationality, residential address. ✓ Proof of identity and their interests in other firms. ✓ Consent to act as director shall be filed in Form DIR-12.
2.	Issue of Certificate of Incorporation a. The ROC registers all documents and issues a Certificate of Incorporation confirming the company's incorporation under the Act. b. The certificate may include the PAN of the company if issued by the Income-tax Department.
3.	Allotment of Corporate Identity Number (CIN) From the date of incorporation, the ROC allots a CIN . It acts as a distinct identity for the company and is included in the certificate.
4.	Maintenance of Documents The company shall maintain and preserve copies of all documents and information originally filed at its registered office until its liquidation under the Companies Act.

3. Signing Of MOA And AOA

Content	
1.	Subscribers shall add their name, address, description, and occupation in the presence of at least one witness who will attest the signature and add their own name, description, and occupation.
2.	Illiterate Subscriber a. The subscriber shall affix a thumb impression or mark , described by the person writing for them. b. The writer will add the subscriber's name and number of shares taken and authenticate it with their own signature.
3.	Typewritten/Printed details of subscribers and witnesses are acceptable, provided they are accompanied by a signature or thumb impression .



4.	Body Corporate as Subscriber: MOA & AOA shall be signed by a director, officer, or employee authorized by a board resolution. LLP as Subscriber: MOA and AOA shall be signed by an authorized partner. Note: In cases of body corporate or LLP, the authorized person cannot act as a subscriber to the MOA & AOA simultaneously.
5.	Foreign National as Subscriber a. Non-Resident ✓ If residing outside India, their signature, address, and identity proof must be notarized by a Notary Public with a certificate. ✓ If the country is not part of the Hague Apostille Convention, 1961, the certificate shall be authenticated by a Diplomatic or Consular Officer. b. Resident ✓ If residing in India with the intention to incorporate a company, they shall hold a valid Business Visa ✓ Business Visa not applicable to Persons of Indian Origin or Overseas Citizens of India.

4. Furnishing False Information or Suppression of Material Fact

	Content
1.	False or Incorrect Information at Incorporation If any person provides false or incorrect information or suppresses material facts knowingly during the incorporation process in documents filed with the ROC, they shall be liable for fraud u/s 447.
2.	Post-Incorporation: False Information or Suppression a. If, after incorporation, it is proved that the company was incorporated by: ✓ Furnishing false or incorrect information or representation, or ✓ Suppressing material facts or information. b. Liability: Promoters, first directors, and individuals making declarations shall be liable for fraud u/s 447.
3.	Tribunal Orders (Application Made to Tribunal) a. Grounds for Action: If the company is found to have been incorporated fraudulently, the Tribunal may pass orders such as: ✓ Modify the MOA & AOA in public or company interest. ✓ Declare the liability of members as unlimited. ✓ Remove the company's name from the Register of Companies. ✓ Order for winding up of the company. ✓ Issue any other orders deemed necessary. b. The company shall be given a reasonable opportunity to present its case. c. The Tribunal shall review the company's transactions, including obligations and liabilities, before making an order.



5. Incorporation of One Person Company (OPC)

Content	
1.	Eligibility for OPC Only a natural person who is an Indian citizen, whether resident in India or otherwise, can: ✓ Incorporate an OPC. ✓ Be a nominee for the sole member. Note: Resident in India means staying for at least 120 days in the preceding FY.
2.	One OPC ✓ A natural person cannot be a member or nominee of more than one OPC at any time. ✓ If a person becomes a member of another OPC by virtue of his being a nominee, he shall resolve this within 180 days.
3.	Minors cannot become members, nominees, or hold shares with beneficial interest in an OPC.
4.	OPC cannot be incorporated or converted into a sec 8 company but may convert to a private or public company anytime under certain conditions.
5.	OPC cannot engage in Non-Banking Financial Investment activities, including investing in securities of any body corporate.
6.	a. Concept of Nominee ✓ The nominee named in the MOA will replace the member in case of death or incapacity. ✓ Prior consent shall be obtained in writing and filed with the ROC. b. Withdraw of consent by Nominee ✓ If a nominee withdraws consent, he shall notify the sole member and OPC in writing. ✓ The sole member shall nominate a new nominee within 15 days and inform the company in writing, along with the new nominee's written consent. c. Change of Nominee ✓ The member can replace the nominee at any time by giving notice to the company. ✓ A new nominee shall give prior consent and the company shall notify the ROC.
7.	Notice to ROC The company shall file notice of any change in nominee within 30 days of: - Nominee becoming a member. - Withdrawal of consent by nominee. - Replacing nominee. submit Form INC-4 with applicable fee.
8.	Benefits of OPC Cash flow statement is not required. Annual returns can be signed by a director. One Board meeting is required per half year.



	d. OPCs can file FS within 180 days from the financial year's end. e. Change in Nominee shall not be deemed to be an alteration of MOA
9.	Penalty If an OPC or its officer violates any provision of the rules: - They are liable to a fine up to ₹5,000, and - In case the offence continues, an additional fine of ₹500 per day will apply after the first day of the offence.

6. Conversion of OPC to Private or Public Company

Content	
1.	a. If the paid-up share capital exceeds ₹50 lakhs and average annual turnover exceeds ₹2 crores, the OPC must convert. b. Conversion must be done within 6 months into: - a public company (minimum 7 members), or - a private company (minimum 2 members). c. The OPC shall alter its MOA and AOA by passing a resolution u/s 122(3). d. Within 60 days of crossing the threshold, it shall file Form INC-5 with the ROC, informing that it has ceased to be an OPC.
2.	If OPC or its officer contravenes the rules (point 10), they are liable to: a. Fine up to ₹10,000, and b. Additional fine of ₹1,000 per day for continued default after the first day.

7. Conversion of Private Company into OPC

Content	
1.	A private company (not a Sec 8 company) with: - Paid-up share capital ≤ ₹50 lakhs, and - Average annual turnover ≤ ₹2 crores, may convert into an OPC by passing a special resolution in a general meeting.
2.	Before passing the resolution, the company shall obtain written no objection certificate from members and creditors.
3.	File the resolution with ROC in Form MGT-14 within 30 days.
4.	Apply for conversion in Form INC-6 with fees, attaching: a. Affidavit by directors confirming members' and creditors' consent, and eligibility limits (capital/turnover). b. List of members and creditors. c. Latest audited Balance Sheet and P&L Account. d. No objection certificate from secured creditors.
5.	On compliance, ROC will issue conversion certificate.



8. Companies with Charitable Objectives

Content	
1.	Objective of Sec. 8 Company - Promote charitable objectives like commerce, art, science, sports, education, research, social welfare, religion, charity, and protection of the environment. - Intends to apply its profits (if any) or other income in promoting its objects. Prohibit dividend payment to members.
2.	Privileges: - Enjoys the same privileges and obligations as a limited company upon registration. - Call general meetings with 14 days' notice. - Exempted from minimum number of directors and independent director's requirements. - No need to constitute Nomination/Remuneration Committees. Partnership Firm can become member of Sec 8 Co. - Member's liability is limited.
3.	Alteration of MOA/AOA: Requires prior permission from the CG(RD) for alteration of MOA and CG(ROC) for alteration of AOA.

9. License from CG

Content	
1.	A person or group wishing to form a company without Limited or Private Limited in its name shall apply in Form INC-12 with fees. The MOA should be in Form INC-13.
2.	The application must include: - Draft MOA & AOA of the proposed company. - Form INC-14: Declaration by a practicing CA/CS/CMA/Advocate confirming compliance with Section 8. - Projected income & expenditure for 3 years, with sources and object-wise details. - Form INC-15: Declaration by each applicant.
3.	If satisfied that the company's objects align with Sec 8, CG may grant a licence to register it as a limited company without the words "Limited" or "Private Limited." The Registrar will then register it u/s 8.
4.	License for Existing Companies - An existing limited company with Section 8 objectives and restrictions, may apply for conversion by filing Form INC-12 with fees. - The application must include: MOA and AOA - Form INC-14: Declaration by a practicing CA/CS/CMA/Advocate confirming Section 8 compliance - Financial statements, Board's Reports, and Audit Reports of the last 2 financial years



	- Statement of assets and liabilities (as on the date of application or within 30 days prior) - Projected income & expenditure for 3 years, with source-wise and object-wise details - Certified copies of resolutions approving Section 8 registration - Form INC-15: Declaration by each applicant c. Within 1 week of application, the company must publish a notice (Form INC-26): - In a vernacular and English newspaper circulating in the district of the registered office - On the notified websites of the Central Government - A copy of the notice shall be sent to the Registrar. d. The Registrar may ask for approvals from relevant authorities or departments, if needed. e. After reviewing objections (if any) received within 30 days of publication and consulting authorities (if required), the Registrar will decide on grant of licence.
5.	Licence: Licence is issued in Form INC-16 or INC-17, with conditions as deemed necessary by the ROC.
6.	Registrar's Power: ROC may direct insertion of licence conditions in the MOA, AOA, or both.

10. Conversion of Sec 8 Co. into other companies

Content	
1.	A company registered u/s 8 can convert into any other kind of company only after complying with prescribed conditions.
2.	Conditions for Conversion: a. Pass special resolution in general meeting approving the conversion. b. Explanatory statement must include: - Date of incorporation, - Principal objects (as per MOA), - Reasons for conversion, - Proposed changes (if any) in main objects, - Details of privileges/exemptions enjoyed (e.g., tax, property), - Donations received with conditions, - Impact and benefits to members due to conversion. c. File Form MGT-14 with ROC (certified copy of resolution + explanatory statement). d. File Form INC-18 with Regional Director along with fee, certified resolution, explanatory statement, and proof of notice served to authorities. e. File copy of application and annexures with Registrar.
3.	Other Requirements: a. Publish Notice (Form INC-19) within 1 week of filing with RD:



- Once in **vernacular newspaper** (local language),
 - Once in **English newspaper** (same district),
 - On **company website**, and as directed by Central Govt.
 - Send **copy** to **RD**.
- b. Send copies (notice + application + attachments) by Registered Post Acknowledgement Due/hand delivery to:
- Chief Commissioner of Income Tax,
 - Charity Commissioner,
 - Chief Secretary of State,
 - Other relevant departments.
- These authorities may make **representation** to RD within **60 days**.
- c. Attach **proof of service** of notices to application.
- d. **Board's declaration** that income/property not transferred as dividend or bonus to members.
- e. **No Objection Certificate** required if special status/benefit/grant was received from any authority.
- f. Company must have filed **financial statements**, **Annual Returns**, and all other returns till the date of application.
If more than 3 months passed from previous FY end, attach CA-certified financials not older than 30 days.
- g. Attach **certificate from CA/CS/CMA in practice** confirming compliance with conversion rules.
- h. RD may seek approval from authorities or Registrar's report.
4. **Order for Conversion:**
- a. RD may approve conversion with conditions, including:
- Give up all **privileges/exemptions**,
 - Pay difference between **market value** and **concessional cost** of property (if applicable),
 - Apply **accumulated profits/unutilized income** to settle statutory dues, creditors, employees, etc.,
 - Remaining balance to be transferred to **Investor Education and Protection Fund (IEPF)** within 30 days.
- b. RD must give **opportunity of being heard** before rejecting or imposing conditions.
5. **Filing with Registrar:**
- a. Call **general meeting** and pass special resolution to amend **MOA & AOA** post conversion.
- b. File with **ROC**:
- Certified copy of **RD's approval** (Form INC-20) within 30 days,
 - Alter MOA and AOA,
 - Director's declaration of full compliance with RD's conditions.
- c. ROC shall register and issue **fresh certificate of incorporation**.



11. Revocation of License to Sec.8 Company

Content	
1.	Revocation of License a. CG or its delegate (RD) can revoke the license if: ✓ Company violates conditions of the license. ✓ Affairs are conducted fraudulently. ✓ Objects are violated or are prejudicial to public interest. b. Upon revocation, the ROC shall add 'Limited' or 'Private Limited' to the company's name in the register.
2.	Opportunity of Being Heard Before revocation, the company shall be given written notice and an opportunity to be heard .
3.	Windup or Amalgamation a. After revocation, if it serves the public interest , the CG may direct the company to: ✓ Be wound up under the Companies Act, or ✓ Amalgamate with another Sec 8 company with similar objectives. b. CG provides Guidelines for windup or amalgamation. ✓ CG has the authority to approve and structure the amalgamation, determining the new entity's constitution, assets, powers, rights, and obligations. ✓ Post-windup, any leftover assets after clearing debts shall be transferred to ▪ the Insolvency and Bankruptcy Fund (Sec. 224 of IBC, 2016). ▪ Sec 8 Company with Similar objects.
4.	Penalty/Punishment a. Default in complying with Sec. 8 requirements: ✓ Company: Fine between ₹ 10 lakhs and ₹ 1 crore. ✓ Directors/Officers in default: Fine between ₹ 25,000 and ₹ 25 lakhs. b. Fraudulent conduct of affairs: Every officer in default is liable for action u/s 447.

12. Effect of Registration

From the date of incorporation (as mentioned in the Certificate of Incorporation):	
1.	Body Corporate The subscribers to the MOA and all persons who later become members form a body corporate under the name specified in the MOA .
2.	Exercise Functions The company can perform all functions of an incorporated company with perpetual succession , including: - Acquire, hold, and dispose of property (movable, immovable, tangible, intangible). - Enter into contracts, and sue or be sued in its incorporated name.



13. MOA & its Significance

Content	
1.	Definition - Memorandum refers to the MOA as originally framed or as altered under previous company law or this Act. - It is the base document for forming a company and, along with the AOA, constitutes the Constitution of the Company. - The MOA and AOA shall comply with the Companies Act, 2013 and other applicable laws.
2.	Purpose of MOA Specifies the objects for which the company is formed, defining the scope of operations. Informs shareholders, creditors, and others about the company's powers and activities. - MOA is a public document u/s 399, and anyone entering into a contract with the company is presumed to have knowledge of its contents (Doctrine of Constructive Notice). - MOA helps shareholders understand how their money will be used and the risks involved. - A company cannot act beyond the powers stated in the MOA; such actions are void and considered ultra vires the company.
3.	Clauses of MOA - Name Clause. - Situation Clause - Objects Clause - Liability Clause - Capital Clause (Applicable to companies with share capital). - Association Clause (in OPC, specifically drafted). - Nomination Clause (Applicable in OPC, detailing nominee information).

14. Name Clause In MOA

Content	
1.	Name Clause - The company's name shall end with "Limited" for public companies or "Private Limited" for private companies - However, the above provision is not applicable to Sec 8 Co. - In the case of Government companies, the name of the company ends with the word Limited, even if it is a private company.
2.	Restrictions on Names - The name shall not be ✓ identical or similar to an existing company and



	✓ undesirable in the opinion of the CG.
	b. Undesirable Names: Names that suggest association with the CG/SG or local authorities require prior CG approval.
3.	Reservation of Name The application for reservation of name must be made in Form INC-1, along with the prescribed fee

15. Situation Clause in MOA

Situation Clause	
1.	MOA shall specify the state where the company's registered office will be located.
2.	Importance of Registered Office a. Determines Jurisdiction: Used to establish the domicile of the company for compliance (e.g., ROC, RD), judicial matters (NCLT, High Court), taxation, and other purposes. b. The registered office is where statutory books are kept. For public companies, general meetings shall be held at the R.O. or within the same city. c. R.O. serves as the address for receiving notices and communications.
3.	Compliance Requirements A company shall: ✓ Establish a registered office within 30 days of incorporation. ✓ Maintain it at all times to receive and acknowledge communications and notices.

16. Object Clause in MOA

Object Clause	
1.	Object Clause The MOA shall state the objects for which the company is proposed to be incorporated and any matter necessary in furtherance thereof.
2.	Doctrine of Ultra Vires a. Any act not stated in the memorandum is considered ultra vires (beyond the powers) and is void. b. No party, including an outsider, can sue for enforcement or specific performance of such an act or agreement.
3.	Principle of Ratification a. Cannot Ratify: Ultra vires acts are generally incapable of ratification. b. Can Ratify: ✓ If the act is intra vires the company but beyond the authority of the directors, the company may ratify it in proper form. ✓ If the act is ultra vires the directors' powers, shareholders may ratify it. ✓ If the act is ultra vires the AOA, the company can alter the AOA.



4.	Protection to Stakeholders The doctrine protects shareholders and creditors by ensuring that the company acts only within its defined objects.
5.	Key Case: Ashbury Railway Co. v. Riche a. The company's memorandum permitted it to engage in "making and selling or lending/hiring railway plants" and acting as general contractors for related businesses. b. The company entered into a contract with M/s Riche to finance railway construction in Belgium, claiming it fell under general contractors . c. The House of Lords held the contract was ultra vires , null, and void as it went beyond the objects defined in the memorandum. d. Even if all shareholders consented , the contract could not be ratified because it violated the object clause .
6.	The purpose of the doctrine has been weakened, as the object clause can now be easily altered by passing a special resolution by shareholders.

17. Liability, Capital, Subscription Clauses in MOA

Content	
1.	Liability Clause Specifies the liability of members (limited or unlimited). a. Company Limited by Shares: Liability is limited to the unpaid amount on shares held by members. b. Company Limited by Guarantee: Liability extends to: ✓ Deficit : Amount needed to settle debts and liabilities at winding-up (contracted before the member ceases membership). ✓ Winding-up Costs . ✓ Adjustment of Rights among contributories. a. List 'A' : Members at the time of winding-up are primarily liable. b. List 'B' : Persons who were members within 12 months before winding-up are liable if List 'A' does not cover the company's liabilities.
2.	Share Capital Clause a. Discloses share capital (authorized) and its division into shares of fixed amounts. b. Specifies the number of shares each subscriber agrees to take, indicated opposite their name.
3.	Subscription Clause a. MOA and AOA must be signed by all subscribers . Specifies the number of shares each subscriber agrees to take. b. For OPC , includes nominee details in the MOA along with the member's name.
4.	Forms & Schedule MOA shall follow the respective forms specified in Tables A, B, C, D, and E of Schedule I , as applicable to the company.



The MOA and AOA shall be in respective forms as provided in Schedule I to the Companies Act, 2013:

TABLE	CONTAINS
A	MOA of a company limited by shares
B	MOA of a company limited by guarantee and not having a share capital
C	MOA of a company limited by guarantee and having a share capital
D	MOA of an unlimited company and not having share capital
E	MOA of an unlimited company and having share capital

NOTE: Any provision in the MOA or AOA, in the case of a company limited by guarantee and not having a share capital, giving any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

18. Articles of Association

	Content
1.	a. AOA refers to the AOA as originally framed or as altered under previous company law or this Act. b. The articles shall contain regulations for the management of the company. The company can also include additional matters, e.g., Entrenchment Provisions.
2.	Entrenchment of AOA Entrenchment makes altering AOA more difficult by imposing stringent conditions than a SR to alter. It protects certain provisions from easy amendments. a. Manner of Inclusion Entrenchment provisions may be included: ✓ On formation of the company. ✓ By amendment agreed to by: ▪ All members in the case of a private company. ▪ A SR in the case of a public company. b. Notice to ROC The company shall notify the ROC about entrenchment provisions: ✓ In SPICe+ (INC-32) during company formation. ✓ In Form MGT-14 within 30 days after entrenchment for existing companies.
3.	Forms of Articles The AOA shall follow the respective forms as specified in Tables F, G, H, I, and J in Schedule I, depending on the type of company.
4.	Model Articles A company may adopt all or any of the regulations contained in the model articles that apply to it.
5.	AOA and Corresponding Tables The tables provide model articles for different types of companies: F - Articles of a company limited by shares. G - Articles of a company limited by guarantee and having a share capital.



- H - Articles of a company limited by guarantee and not having share capital.
 I - Articles of an unlimited company and having a share capital.
 J - Articles of an unlimited company and not having share capital.

19. MOA & AOA cannot Override the Act

Overriding Effect of the Act

1. Provisions of this Act have an overriding effect on:
 - a. MOA of the company
 - b. AOA of the company
 - c. Any agreement made by the company
 - d. Any resolution passed by the company (whether before or after the commencement of the Act).
2. Conflict with the Act
 - a. If any provision in the MOA, AOA, agreement, or resolution conflicts with the provisions of this Act, the conflicting part shall be void.
 - b. The Act overrides unless another section of the Act expressly states otherwise.

20. Effect of MOA & AOA

Content

1. Effect of MOA and AOA
 MOA and AOA, once registered, bind:
 - a. The company is liable to the members.
 - b. Members are liable to the company.
 - c. But members are not liable to each other.
2. Any money payable by a member to the company under the MOA or AOA is a debt owed by the member to the company.

21. Alteration of Name Clause In MOA

Content

1. Alter: Alteration includes making additions, omissions, and substitutions.
2. Procedure for Alteration of Memorandum
 - a. SR: A company may alter the MOA with the approval of members via a SR.
 - b. Name Change of the Company
 - ✓ A name change requires approval from the CG (delegated to ROC).
 - ✓ change of Constitution (not a name change) does not need CG approval.
 - c. Prohibition of Name Change
 - ✓ Defaulters (i.e., companies not filing annual returns/FS / not repaying/paying matured deposits/ debentures/ interest thereon) cannot change their name.
 - ✓ Name change allowed after filing necessary documents or paying debts.
 - d. Entry in ROC



	When a company changes its name, the ROC updates the register with the new name and issues a fresh certificate of incorporation . The name change is complete only after receiving the certificate.
3.	Rectification of Name by CG a. CG (now RD) can direct a company to change its name if: ✓ The name is identical or too similar to an existing company name. ✓ Application by registered trademark owner that company's name resembles to registered trademark. Note: A registered trademark owner shall file application within 3 years of a company's incorporation, registration, or name change. b. The company shall change its name within 3 months by passing an ordinary resolution. c. Notice to ROC ✓ After a name change, the company shall notify the ROC within 15 days and submit the order from the CG. ✓ The ROC updates the certificate of incorporation and MOA. d. Failure to Comply ✓ If a company fails to comply with the direction, the CG may allot a new name. ✓ The ROC will update the register and issue a new certificate with the new name. e. Punishment for Contravention: If a company fails to comply with any direction relating to rectification of name: ✓ The company shall be liable to a fine of ₹1,000 per day during the period of default. ✓ Every officer in default shall be punishable with a fine of not less than ₹5,000, which may extend up to ₹1,00,000. Note Companies can still change their name in accordance with Sec 13 even after rectification u/s 16.

22. Registered Office of The Company

	Content
1.	A company shall maintain a R.O. after incorporation. This is a physical location where legal documents, notices, and communications from the ROC or in case of a lawsuit can be served. It cannot be a P.O. Box .
2.	Time Limit The company shall have a R.O. within 30 days of incorporation to receive and acknowledge legal communications.
3.	Documents to be attached a. Proof of ownership: ▪ Registered title deed in the name of the company; or ▪ Notarized lease/rent agreement in the company's name with rent receipt (not older than 1 month).



	b. Letter of authorization from the owner/occupant, along with proof of ownership/occupancy. c. Utility bill (any one): - Electricity, gas, telephone, etc., showing the address of the premises - Bill must be in owner's name and not older than 2 months.
4.	a. Name Board: The company shall affix its name and address on the outside of its office in legible letters and in both English and the local language. b. Common Seal: The company shall have its name engraved on its seal (if any). c. Official Documents: The company's name, R.O. address, CIN, and contact details (telephone, fax, email, website) shall be printed on all business letters, billheads, letter papers, notices, and official publications. d. Instruments: The company's name shall be printed on hundi, promissory notes, bills of exchange, etc. e. Name Change: If the company changed its name in the last 2 years, it shall display its former name(s) along with the current name. f. OPC: The words "One Person Company" should be mentioned in brackets under the name of the company wherever it appears.

23. Change of Situation of Registered Office

Content	
1.	A company shall notify the Registrar of any change in its registered office within 15 days of the change, using Form INC-22 along with the prescribed fee and documents.
2.	Types of Registered Office Shifts: a. Within the same city/town/village (same ROC jurisdiction) b. Within the same State but different ROC jurisdictions c. From one State to another

24. Shifting Within Same State but Different ROC Jurisdictions

Content	
1.	a. To shift the registered office within the same State but under different ROCs, the company must apply to the Regional Director in Form INC-23 along with the prescribed fee. b. Documents to be submitted: ✓ Board Resolution for shifting of Registered Office ✓ Special Resolution passed by members for approving the shifting of Registered Office ✓ Declaration by KMP or two directors that: - No default in dues to workmen - Creditors have either consented or provision is made c. Declaration that no change in court jurisdiction for pending prosecutions



	d. Acknowledged copy of intimation to the Chief Secretary stating that employees' interests are not adversely affected.
2.	Approval & Certification Timeline: - RD to give confirmation within 30 days of receiving the application - Company must file RD's confirmation with the ROC within 60 days - ROC to issue certificate within 30 days of such filing - The change takes effect from the date of ROC's certificate, which serves as conclusive evidence of compliance Note: Shifting is not allowed if any inquiry, inspection, or prosecution is pending under the Act.

25. Shifting of Registered Office from One State/UT to another

Content	
1.	Application & Forms: - File Form INC-23 with the CG along with the fee. - Accompany with: - Copy of MOA (with proposed alteration) Minutes of GM where resolution was passed Board Resolution / Power of Attorney / Vakalatnama
2.	List of Creditors & Declarations: - List of Creditors & Debenture Holders: ✓ Drawn not more than 1 month before the date of application. ✓ Must contain: - Name & address of every creditor and debenture holder. - Nature and amount due (debts, claims, liabilities). - Declaration: ✓ Signed by: - Company Secretary (if any), and - At least 2 Directors (one being MD, if applicable) ✓ Declaration must state: Full enquiry has been made; the list is complete and accurate, including proper estimates of contingent or unascertained claims. No employee will be retrenched due to the shifting. - Also, application has been filed with the Chief Secretary of the concerned State/UT. - Inspection of Creditor List: ✓ Authenticated copy of the creditor list must be kept at the registered office. ✓ Any person can inspect and extract during business hours. ✓ Inspection fee: max ₹10 per page.



3. **Intimations & Notices:**
 - a. Send copy of **application** with annexures to **Registrar** and **Chief Secretary** of the current State/UT
 - b. Not more than **30 days** before filing INC-23, the company must:
 - ✓ **Advertise** in Form INC-26:
 - One **vernacular** (regional) and one **English newspaper** with wide circulation
 - Copy of the **advertisement** to be served to **CG**
 - ✓ Serve **individual notice** (via registered post with AD) to:
 - All creditors, debenture holders
 - Registrar, SEBI (if listed), or concerned regulatory body
4. **Responses & Hearing:**
 - a. Attachments with Application (Form INC-23):
Authenticated copies of:
 - ✓ Advertisement & notices issued under sub-rule (5),
 - ✓ Any objections received,
 - ✓ Tabulated responses and company's counter-responses (in electronic or physical form).
 - b. If No Objection Received:
 - ✓ Application may be processed of **without hearing**.
 - ✓ Order (approval/rejection) to be passed within 15 days of receipt.
 - c. If Objection Received:
 - ✓ Consensus reached:
 - Central Government holds hearing(s).
 - Company files **affidavit** recording consensus.
 - Order passed within **60 days of application**.
 - ✓ No consensus:
 - Company files affidavit outlining resolution plan with timeline.
 - **Objector** retains **right to legal remedy**.
 - Central Government passes order within 60 days of application.
 - d. Order of Central Government:
 - ✓ May include **terms, conditions, and cost directions**.
 - ✓ **No shifting** allowed if:
 - Inquiry, inspection, investigation initiated, or
 - Prosecution pending under the Act.
 - e. Post-Investigation:
 - ✓ **Shifting** of registered office is **not allowed** if any **inquiry, inspection, investigation, or prosecution** is **pending** under the Act.
 - ✓ It can be allowed only after such **proceedings** are **completed** and no prosecution is pending or required.



5.	Post-Approval Compliance: File certified copy of Central Govt order in Form INC-28 with ROC of new State within 30 days from date of receipt of order
6.	Penalty: Penalty for non-compliance: ₹1,000 per day of default - Max: ₹1,00,000 (for company and each officer in default)

26. Alteration of Object Clause

Content	
1.	Prohibition on Company that Raised Funds A company that raised money from the public through a prospectus and still has unutilized funds can change its objects only after passing a SR passed via postal ballot .
2.	The notice for altering a company's objects shall include: Financial Details: Total funds received, utilized, and unutilized from the prospectus. Change Details: Proposed alteration, justification, and amount allocated for new objectives. Impact Assessment: Estimated financial effects on earnings and cash flow. Additional Information: Any other relevant details for informed decision-making and location for obtaining the resolution notice.
3.	Publish in Newspapers The details of the resolution shall be published in 2 newspapers: - One in English and one in the vernacular language where the company's R.O. is located. - It shall also be placed on the company's website (if any), explaining the justification for the change.
4.	Dissenting shareholders shall be given an opportunity to exit , as per regulations set by the SEBI .
5.	ROC to Certify Alteration - The ROC shall register any alteration of the company's objects and certify it within 30 days from the date of filing the SR. - The alteration will not be effective until it is registered with the ROC
6.	Alteration Noted in Every Copy - Every copy of the MOA or AOA shall reflect any alterations made. - If any copy is issued without noting the alteration, the company and its officers will be liable for a penalty of ₹1,000 per copy issued.

27. Alteration of AOA

Content	
1.	Matters not Covered in MOA If the MOA is silent on any matter, it can be dealt with by altering the AOA .



2.	Procedure for Alteration of Articles a. A company can alter its AOA by passing a SR, subject to the provisions of the Companies Act and its MOA. b. Alteration for Conversion of Company Type Alteration of AOA includes conversion of: a. Private company to public company, or b. Public company to private company. c. CG Approval for Conversion ✓ Alteration converting a public company to a private company requires CG approval within 60 days from passing the SR. ✓ Approval is filed using e-Form No. RD-1 with the RD along with fee and shall be accompanied by the following documents. ▪ Draft MOA & AOA with proposed changes. ▪ Copy of GM Minutes, SR details, votes, and dissenters' names. ▪ Copy of BR/POA authorizing the application, dated within 30 days. ▪ Declaration by KMP, Confirming compliance with relevant laws and rules.
3.	ROC Filing a. The alteration and a copy of the CG's approval shall be filed with the ROC along with a printed copy of the altered AOA within 15 days. b. Any alteration of the articles, once registered, is valid as if it was originally included in the articles.
4.	Noting Alteration in Every Copy Every copy of the articles shall reflect any alterations made. If not, the company and its officers are liable for a penalty of ₹1,000 for every copy issued without noting the alteration. [Sec 15]

28. Distribution of MOA AND AOA to Members

Content	
1.	Request for Documents Upon request by a member, the company must send copies of the following documents within 7 days of the request, on payment of fees: a. MOA, AOA b. Any agreement or resolution referred to in Sec 117 (Resolutions and agreements to be filed), if not already included in the MOA and AOA.
2.	Default in Compliance If the company fails to comply, both the company and any officer in default shall be liable for a penalty of: a. ₹1,000 for each day the default continues, or b. ₹1,00,000, whichever is lesser.



29. Commencement of Business

Content	
1.	Declaration of Paid-Up Value A director shall file a declaration within 180 days of incorporation, stating that all subscribers to the MOA have paid the agreed value of the shares they subscribed to.
2.	Penalty for Default ✓ Company: ₹50,000 penalty for non-compliance. ✓ Officers: ₹1,000 per day of default, up to a maximum of ₹1,00,000 .
3.	Failure to Submit Declaration If no declaration is filed within 180 days , and the ROC believes the company is not operating , they may initiate action to remove the company from the register under Chapter XVIII .
4.	The declaration shall be verified by a CS/CA/CMA in practice.

30. SC is prohibited to hold shares in its HC.

Content	
1.	No Company to Hold Shares in Its Holding Company A company cannot hold shares in its holding company either directly or through nominees . Any allotment or transfer of such shares to a subsidiary is void .
2.	Exceptions - A subsidiary company can hold shares in the holding company if it is the legal representative of a deceased member. It can also participate in voting. - A subsidiary can hold shares as a trustee for others and still participate in voting. - If a company holds shares in the holding company before becoming a subsidiary, it can retain those shares but has no voting rights after becoming a subsidiary.

31. Serving of Documents

Content	
1.	Serving Document to Company A document can be served on a company or its officer at the registered office by: - Registered post, Speed post, Courier service, Leaving at registered office - Electronic mode (if prescribed)
2.	Serving Document to Registrar or Member Documents can be served on the ROC or any member by: - Post, Registered post, Speed post, Courier, Delivery at office/address - Electronic mode (if prescribed)
3.	Specific Request by Member A member can request documents through a specific mode and pay the determined fees as decided in the AGM .
4.	Electronic transmission refers to any communication that: Is retained, retrieved, and reviewed



	b. Can be converted into a tangible form c. Includes Fax, email, electronic message boards, Other verified electronic methods
5.	Effect of Service of Documents a. Notice of meeting by post: Service is effective 48 hours after posting . b. Other documents are deemed served when delivered in the ordinary course of post.

32. Authentication of Documents, Proceedings & Contracts

Content	
1.	Authentication of Documents A document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by: ✓ KMP ✓ Officer or employee authorized by the Board .
2.	Definition of KMP KMP includes: a. CEO, MD, or Manager, Company Secretary b. Whole-time Director, CFO c. Officers one level below directors in full time employment & designated by BOD. d. Any other officer prescribed.

33. Authorisation of person to execute negotiable instruments & other documents.

Content	
1.	Bill of Exchange, Hundi, or Promissory Note A bill of exchange , hundi , or promissory note is deemed to be made, accepted, drawn, or endorsed on behalf of a company if done: a. In the name of the company . b. On behalf or on account of the company by a person with express or implied authority .
2.	Common Seal A company can authorize any person to execute deeds on its behalf by writing under its common seal (if it has one). This authorization can apply generally or to specific matters and is valid in India or outside India .
3.	No Common Seal If a company does not have a common seal , authorization shall be made by: a. 2 directors , or b. 1 director and the Company Secretary (if appointed).
4.	Binding Effect on the Company A deed signed by an authorized attorney under his seal, on behalf of the company, will bind the company .



12.3. PROSPECTUS AND ALLOTMENT OF SECURITIES

1. Issue of Securities by Public and Private Companies

Content	
1.	Issue of Securities by Public Company A public company may issue securities through: - Prospectus (Public offer). - Private placement - Rights issue/bonus issue as per this Act & SEBI Regulations (for listed companies).
2.	Issue of Securities by Private Company A private company may issue securities through: - Rights issue or bonus issue under this Act. - Private placement by following relevant provisions.
3.	Definition of Public Offer A public offer includes: - Initial Public Offer (IPO) - Further Public Offer (FPO) - Offer for Sale (OFS) to the public by an existing shareholder through a prospectus.

2. Prospectus

Prospectus	
1.	Definition A prospectus is any document described or issued as a prospectus and includes: - Red Herring Prospectus - Shelf Prospectus - Any notice, circular, advertisement, or any other document that invites offers from the public to subscribe or purchase securities of a body corporate. (Deemed Prospectus)

3. Matters to be Stated in Prospectus

Content	
1.	Matters to be Stated in Prospectus - Prospectus shall be dated and signed. - Prospectus shall state information and reports on financial information as specified by SEBI in consultation with the CG. - Until SEBI specifies the information and reports on financial information, existing SEBI regulations under SEBI Act, 1992 will apply. - Prospectus shall include declaration about compliance with the provisions of: ✓ Companies Act, 2013



	✓ Securities Contracts (Regulation) Act, 1956 ✓ SEBI Act, 1992 ✓ Rules and regulations under these statutes.
2.	The date indicated in the prospectus is considered as its publication date .
3.	Filing with ROC Before Publication Signed copy of prospectus shall be filed with the ROC before issuance. - It shall be signed by all directors or proposed directors or their authorized representatives.
4.	A prospectus is valid for 90 days from the date of filing with the ROC.
5.	Disclosures Prospectus shall state: - A copy has been filed with the ROC. - Mention documents attached or referenced in the prospectus.
6.	Punishment for Contravention - Company fine: ₹50,000 to ₹3,00,000. - Individual fine (knowingly issuing contravention): ₹50,000 to ₹3,00,000.

4. Issue of Securities in Dematerialised Format

Content	
1.	- Every company making a public offer and - Any other prescribed class of companies shall issue their securities only in dematerialised form . Note: The company shall comply with the Depositories Act, 1996 and its regulations.
2.	Promoters of a public company making a public offer of convertible securities must hold them only in dematerialized (de-mat) form.
3.	Any physical holding of convertible securities by promoters must be converted into de-mat form before the IPO, and remain in de-mat form thereafter.

5. Advertisement of Prospectus

Content	
1.	Where an advertisement of any prospectus of a company is published, it shall specify the contents of the MOA regarding the following: - Objects, Liability of members and the amount of share capital of the company, - Names of the signatories to the MOA, - Number of shares subscribed for by the signatories, and Capital structure of the company.

6. Shelf Prospectus

Content	
1.	Need for Shelf Prospectus A company must issue a prospectus each time it accesses the capital market.



	b. For companies making multiple offers in a year, the process can be repetitive. c. A shelf prospectus remains valid for a specified time period, eliminating the need for fresh prospectus every time.
2.	A shelf prospectus allows a company to issue securities for subscription over a certain period without issuing a new prospectus each time.
3.	Filing with ROC a. Shelf prospectus shall be filed with the ROC at the time of the first offer of securities. b. The validity period cannot exceed one year from the date of the first offer. c. For subsequent offers during the validity period, no new prospectus is required.
4.	Filing of Information Memorandum a. A company filing a shelf prospectus shall file an information memorandum with the ROC before subsequent offers. b. Information memorandum includes: ▪ Material facts about new charges. ▪ Changes in financial position of the company. c. If any applicant wishes to withdraw after the changes are made known, the company shall refund all subscription amounts within 15 days.
5.	When an information memorandum is filed, it, along with the shelf prospectus , will be considered a prospectus for each new offer of securities.
6.	Information Memorandum shall be filed with the ROC along with fee before any subsequent offer of securities under the shelf prospectus within 1 month prior to issue of a second or subsequent offer.

7. Red Herring Prospectus

Content	
1.	Need for Red Herring Prospectus a. Red herring prospectus helps companies raise funds by timing the issue and book building based on favourable market conditions. b. It leaves the price and quantity of securities open for decision after the issue closes.
2.	a. A red herring prospectus is a prospectus that does not include full details about the price or quantity of the securities to be offered. b. A company can issue a red herring prospectus before issuing the final prospectus. c. A RHP shall be filed with the ROC at least 3 days before the opening of subscription list and offer.
3.	Same Obligations a. A RHP has the same obligations as a prospectus. b. Any differences between the RHP and the final prospectus shall be highlighted as variations.



4. **Filing Final Prospectus with ROC & SEBI**
After the offer closes, the final prospectus shall be filed with the ROC and SEBI, containing:
 - a. Total capital raised (debt or share capital).
 - b. Closing price of securities.
 - c. Any missing details from the red herring prospectus.

8. Abridged Prospectus

Content	
1.	Definition Abridged prospectus is a summary of the prospectus containing key salient features as specified by the SEBI through regulations.
2.	An abridged prospectus reduces the cost of publishing full prospectuses which must accompany application forms for shares or debentures in a public offer.
3.	Accompanying the Application Form a. Every application form for shares or debentures shall be accompanied by the abridged prospectus. b. The requirement does not apply in these cases: ✓ Underwriting agreements for shares or debentures. ✓ Shares or debentures not offered to the public. ✓ Offer made only to existing members of the company.
4.	Any person can request a full prospectus before the subscription list closes.
5.	Penalty: A company failing to comply will be penalized with ₹ 50,000 for each default.

9. Offer for Sale

Content	
1.	Approval of Board of Directors Members of a company, in consultation with the board, may offer their shares to the public as per legal provisions
2.	Deemed Prospectus a. Any document by which shares are offered for sale to the public is considered a prospectus issued by the company. b. Laws and rules regarding mis-statements and omissions in the prospectus apply.
3.	Authorisation of Company Members (individuals or bodies corporate) selling shares shall authorize the company to act on their behalf for the transaction and reimburse related expenses.
4.	Exceptions Certain provisions do not apply, such as: a. Minimum subscription requirements. b. Minimum application value. c. Provisions for statements by the BOD regarding utilization of funds.



5. Disclosures

Disclose the **person or entity** bearing the cost of the sale and provide reasons for this.

10. Variation of Terms of Contract, Objects in Prospectus

Content	
1.	SR at General Meeting - The company cannot vary the terms or objects of the prospectus without a special resolution at a general meeting. - The SR is passed via postal ballot.
2.	Contents of Notice for SR Original purpose or object of the issue. Total money raised. Money utilized for the original objects. Progress on originally proposed objects (e.g., 50%, 60%). Unutilized amount from the raised money. - Details of the proposed variation in the terms of contracts or objects. Justification for the variation. - Proposed timeframe to achieve the varied objectives. - Clause-wise details of original objects. Risk factors of new objects. - Any other relevant information for members to make an informed decision
3.	Advertisement & Website - The notice for the SR shall be published in 2 newspapers (one in English and one in vernacular language). - The notice shall also be posted on the company's website.
4.	The company cannot use the funds raised through the prospectus for buying, trading, or dealing in equity shares of any other listed company .
5.	Exit Offer to Dissenting Shareholders Dissenting shareholders must be offered an exit option by promoters or controlling shareholders. - Exit offer to be made at an exit price and in a manner specified by SEBI.

11. Mis-Statements in Prospectus

A. Meaning of Misstatement	
1.	Misstatement refers to stating something false or inaccurate, either by commission or omission . Misstatement in a prospectus is a serious offense, attracting both criminal and civil liability .
B. Criminal Liability for Misstatements in Prospectus	
2.	Untrue Statement A statement in a prospectus is considered untrue if: The statement is misleading in form or context.



	b. Any inclusion or omission is likely to mislead .
3.	If a prospectus includes misleading or untrue statement , every person authorizes the issue of such prospectus is liable u/s 447 .
4.	Exception to Liability If a person proves: - The statement or omission was immaterial, or - They had reasonable grounds to believe the statement was true, they will not be liable u/s 447.
C. Civil Liability for Misstatements in Prospectus	
1.	Compensating the Loss If a person suffers loss from acting on a misleading statement or omission in the prospectus, the company and every person involved in the prospectus (director, proposed director, promoter, expert, person authorised issue of prospectus.) will be liable to compensate for the loss.
2.	Exceptions - No Liability No person shall be liable if they prove: - They withdrew consent before the prospectus issue and it was issued without their authority. - They gave public notice that the prospectus was issued without their knowledge. - They relied on an expert's authority, believing the statement to be true.
3.	If the prospectus is issued with fraudulent intent to deceive investors, those responsible will be personally liable for all losses, without any limitation of liability.
4.	Any person, group, or association affected by a misleading statement, inclusion, or omission in a prospectus can file a suit or take action under Sections 34, 35, or 36 .

12. Punishment for fraudulently inducing a person to invest money.

A. Punishment for Fraudulently Inducing Investment	
1.	Any person who knowingly or recklessly makes a false, deceptive, or misleading statement, or deliberately hides material facts to induce another person to enter into an agreement: - For acquiring, disposing of, subscribing for, underwriting securities. - To secure a profit to any of the parties from fluctuations in securities value. - For obtaining credit facilities from a bank or financial institution. shall be liable u/s 447 .
B. Section 447 - Punishment for Fraud	
1.	No Public Interest (Amount $\geq$ Rs. 10 Lakhs or 1% of Turnover) If a person is guilty of fraud involving an amount of at least Rs. 10,00,000 or 1% of company turnover (whichever is lower): Imprisonment: Minimum 6 months to 10 years. Fine: At least the amount involved in fraud, but can extend to 3 times the amount involved.
2.	Public Interest Involved



	If the fraud involves public interest , the imprisonment will be at least 3 years .
3.	Fraud Amount < Rs. 10 Lakhs or 1% of Turnover If the fraud amount is less than Rs. 10,00,000 or 1% of turnover and there is no public interest: - Imprisonment: Up to 5 years. - Fine: Up to Rs. 50 Lakhs. - Both.

13. Punishment for personation for acquisition, etc., of securities

Punishment for Personation for Acquisition, etc., of Securities Prevents the allotment of shares in fictitious names .	
1.	Any person will be liable u/s 447 if: Makes or abets the making of an application in a fictitious name to acquire or subscribe for securities. Makes or abets multiple applications in different names (or combinations of names) for acquiring securities. Induces a company to allot or register securities in a fictitious name.
2.	Every company issuing a prospectus shall prominently reproduce this provision in the prospectus and all forms for securities applications.
3.	If convicted, the court may order: Disgorgement of any gain made by the person. Seizure and disposal of securities found in the person's possession.
4.	The amount received from disgorgement or disposal of securities will be credited to the IEPF .

14. Allotment of securities

Content	
1.	Allotment Allotment refers to the appropriation out of previously un-appropriated capital of a company. - Shares come into existence only upon allotment.
2.	Minimum Subscription: ✓ A company cannot allot securities unless it receives applications equal to or more than the minimum subscription. ✓ Minimum Subscription is the minimum amount specified in the prospectus (cannot be less than 90% of the issue size as per SEBI Rules). ✓ The application amounts have been paid to and received by the company via cheque or other instruments at the time of application. Refund if Minimum Subscription Not Met: ✓ If the minimum subscription is not received within 30 days of the prospectus issue, application money shall be refunded within 15 days of issue closure.



	✓ Refund shall be credited to the bank account from which the subscription was made. c. If the company fails to refund the money within the time, directors and officers responsible are jointly and severally liable to pay the money with interest at 15% p.a.
3.	The application money for each security shall be at least 5% of the Face Value, or as specified by SEBI (currently 25% of the issue price).
4.	When a company allots securities , it shall file a return of allotment with the ROC within 30 days using form PAS 3 along with the prescribed fee.
5.	If there's a default , the company and the defaulting officer will be liable to a penalty of Rs. 1,000/day for each day the default continues or a maximum of Rs. 1,00,000 , whichever is lower.

15. Return of Allotment

Content	
1.	Filing Return of Allotment a. A company shall file a return of allotment with the ROC whenever it allots securities. b. The return shall be filed in the manner prescribed in the Companies (Prospectus and Allotment of Securities) Rules, 2014.
2.	Time Limit for Filing a. The return shall be filed in Form PAS-3 within 30 days of allotment. b. The company shall also pay the prescribed fee.
3.	Attachments to Form PAS-3 a. The following documents must accompany Form PAS-3, certified by the signatory for correctness: ✓ List of allottees: Names, address, occupation (if any), and ✓ Number of securities allotted to each allottee.
4.	Additional Attachments (Non-Cash Consideration) If shares are allotted for consideration other than cash (not including bonus shares), the following shall be attached: a. Copy of the contract (stamped) for the allotment, contract of sale if it relates to property, asset, services, or other consideration. b. If the contract isn't written, the company shall provide its complete particulars, stamped as if it was written and it will be treated as instrument under the Indian Stamp Act, 1899. c. In case of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares must be attached. d. A report from a registered valuer is required for valuation of the consideration.
5.	Attachments for Issuance u/s 62(1)(c) If shares are issued u/s 62(1)(c) by a non-listed company, the valuation report from a registered valuer shall be attached to Form PAS-3.



16. Securities to be dealt with in stock exchanges

Content	
1.	Application with Recognised Stock Exchange Before making a public offer , a company shall apply to one or more recognised stock exchanges and obtain permission for the securities to be listed and traded on them.
2.	The prospectus shall mention the name(s) of the stock exchange(s) where the securities will be listed and traded.
3.	Maintain Separate Bank Account a. All money received on applications for securities shall be kept in a separate bank account in a scheduled bank. b. The money can only be used for: ✓ Adjustment against the allotment of securities if the securities are listed on the exchange(s) mentioned in the prospectus, or ✓ Repayment of monies if the company is unable to allot securities.
4.	Any condition that attempts to make applicants waive compliance with any of the provisions of this section will be considered void .
5.	In Case of Default If the company defaults in complying with this section, both the company and its officer(s) will be liable: a. Company: Fine ranging from ₹5 lakh to ₹50 lakh. b. Officer: Fine ranging from ₹50,000 to ₹3 lakh or imprisonment up to 1 year or both
6.	Payment of Commission a. Commission can be paid to persons in connection with the subscription to its securities, subject to conditions. b. Conditions : ✓ Authorized by the company's AOA. ✓ The commission can be paid out of issue proceeds or the company's profits, or both. ✓ Rate of Commission Shares: up to 5% of issue price, or as per the AOA whichever is lower. Debentures: up to 2.5% of issue price, or as per the AOA whichever is lower. c. The prospectus must disclose the following details: ✓ Name of underwriters, ✓ Rate and amount of commission, ✓ The number of securities to be underwritten or subscribed by the underwriter. d. No commission is to be paid to underwriters for securities not offered to the public . e. A copy of the commission contract shall be submitted to the ROC at the time of filing prospectus .

17. Private Placement

Content



1.	A private placement is an offer or invitation to subscribe or issue securities to a selected group of persons by a company, other than a public offer.
2.	Identified Persons a. Private placement is made only to identified persons who are selected by BOD. b. Right of Renouncement is not applicable in private placement.
3.	Number of Identified Persons 200 persons limit in a financial year: a. Limit applies separately to each type of security. b. Exclusions: QIBs and ESOPs are excluded. c. NBFCs and Housing Finance Companies have specific regulatory limits.
4.	If the offer exceeds 200 persons , it is considered a public offer .
5.	Resolution for Private Placement Steps include: a. Board Resolution shall be passed. b. Explanatory Statement detailing offer particulars. ✓ Date of Board Resolution ✓ Kinds of securities offered and the issue price ✓ Justification for the pricing, including any premium ✓ Name and Address of Registered Valuer ✓ Total amount intended to be raised. ✓ Terms of Issuance, timeline, purpose, promoter/director contributions and asset charged as security details c. Special Resolution approval required from shareholders. Exception: BR for Issue of Non-convertible Debentures within limit specified in sec 180(1)(c).
6.	Offer and Application Process a. Private placement offers cum application letter (PAS-4) to be issued within 30 days of recording the names. b. Payment can only be made via cheque , DD , or other banking channels (no cash). c. In case of joint holders, monies payable on subscription to securities shall be paid from the bank account of the person whose name appears first in the application. d. Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the ROC.
7.	Separate Bank Account All funds received from the application shall be kept in a separate bank account and used only for allotment or repayment if securities aren't allotted.
8.	60 Days' Time Limit for Allotment a. Securities must be allotted within 60 days from application receipt.



	b. If not allotted, the money shall be refunded within 15 days , or interest at 12% p.a. is applicable.
9.	Filing with ROC a. First Filing: Copy of BR and SR shall be filed with ROC before offering securities. b. Second Filing: A Return of Allotment shall be filed with the ROC within 15 days after allotment. c. Default in filing will incur penalties 1000/day during such default continues, up to Rs. 25 Lakh .
10.	Prohibition on Further Offer Further offers under private placement are allowed only after the previous offer's allotment is either completed, withdrawn, or abandoned .
11.	Multiple Offers to Same Persons A company can make multiple offers to the same identified persons.
12.	Prohibition a. No public advertisements or media channels can be used to inform the public about the issue. b. Private placement offer and application shall not carry any right of renunciation .
13.	Non-Compliance In case of violation - company, promoters and directors are liable for: a. Penalty: Up to the amount raised or Rs. 2 Crore , whichever is lower. b. Refund with Interest: Company shall refund all funds with interest within 30 days of penalty imposition. c. Deemed Public Offer: The offer will be treated as a public offer , subject to all applicable laws.



12. 4. SHARE CAPITAL AND DEBENTURES

1. Kinds of Share Capital

Content	
1.	a. Share means share in the share capital of a company and includes stock . b. Shares in a company are movable property and are transferable as per the company's articles.
2.	a. If a company mentions its authorised capital in any notice, advertisement, business letter, billhead, or letter paper, it must also mention the subscribed and paid-up capital in the same prominence. b. Penalty: ▪ Company: ₹10,000 ▪ Officer in default: ₹1,000 per default
3.	Kinds of Share Capital a. Equity Share Capital means share capital other than preference share capital . It includes: ✓ Ordinary shares with equal voting rights. ✓ Shares with different rights related to dividends, voting, or other aspects. b. Preference Share Capital is that part of share capital which carries or would carry a preferential right w.r.t ✓ Dividend payment at an agreed percentage. ✓ Repayment of capital at an agreed premium as per the MOA or AOA of the company at the time of liquidation.

2. Equity Shares with Differential Rights (Dvr's)

Content	
1.	The company's AOA shall authorize the issue of shares with differential rights.
2.	Ordinary Resolution a. Unlisted companies , an ordinary resolution shall be to authorize the issue of shares. b. Listed companies , ordinary resolution shall be obtained through postal ballot . c. Explanatory statement should contain details about issue size and differential rights.
3.	Shares with differential rights shall not exceed 26% of the total post issue paid up share capital including equity shares with differential rights issued at any point of time.
4.	The company having consistent track record of distributable profits for the last 3 years.
5.	The company has not defaulted in filing FS or annual returns for the last 3 years.
6.	The company has no subsisting defaults in: a. Dividend payments, b. Repayment of deposits, interest thereon c. Repayment of debentures, interest thereon. d. Redemption of preference shares



7.	The company has not defaulted in: a. Payments of Preference Shares Dividend , b. Payment of Employee statutory dues, c. Transferring IEPF dues. d. Repayment of any term loan from PFI/State level FI/ Banks, interest payable thereon. Note: A company may issue DVR shares upon expiry of 5 years from the end of FY in which such default was made good.
8.	The company has not been penalized by a Court or Tribunal in the last 3 years under the RBI Act, SEBI Act, SCRA 1956, FEMA 1999, or other sector-specific laws.
9.	Existing equity shares with voting rights cannot be converted into DVR shares, or vice versa.
10.	Holders of DVR shares shall have the same rights as other equity shareholders, like bonus or rights shares , subject to the differential rights.
11.	Register of Members shall include details of DVR shares issued, with shareholder's details.
12.	The Board of Directors shall disclose the issue of DVR shares in the Board's Report for the FY in which the issue was completed, the following details: a. Total number of shares allotted with differential rights; b. Details of such rights relating to voting and dividends; c. Percentage of differential rights shares to total post-issue equity and corresponding voting rights; d. Issue price of such shares; e. Details of promoters , directors, or KMPs to whom issued; f. Any change in control due to the issue; g. Diluted EPS as per applicable standards; h. Pre and post-issue shareholding pattern with voting rights in prescribed format.

3. Share certificate (Sec. 46)

Content	
1.	Non-Demat - Share Certificate Share Certificate issued u/s 46(1) shall be distinctively numbered , issued under: a. Common seal of the company, or b. Signed by 2 directors or c. Signed by a director and the CS (if appointed). Note: A director is deemed to have signed the share certificate if their signature is affixed by facsimile (e.g., engraving, lithography, digital signing), but not by rubber stamp. They are personally responsible for authorizing its use and securing the related equipment.
2.	Duplicate Share Certificate (SC) a. Duplicate certificate may be issued if: ✓ Original SC is Lost or destroyed , or ✓ Original SC is Defaced, mutilated, or torn (shall be surrendered to the company). b. Fees: Up to ₹50 per certificate (as decided by the Board).



	c. Disclosure: state "duplicate issued in lieu of share certificate No...." and prominently print "duplicate". d. Time Limit: ✓ Unlisted companies: Duplicate to be issued within 3 months. ✓ Listed companies: Duplicate to be issued within 45 days. e. Record Keeping: ✓ All issued and duplicate certificates must be maintained in Form SH-2, with cross-references to the Register of Members. ✓ Register shall be kept at Registered Office or at other place where Register of members is kept. ✓ All entries in the register shall be authenticated by the CS or any other person authorized by the Board for sealing and signing the share certificate.
3.	Demat Shares - Depository Proof No physical share certificate required. Depository records are prima facie evidence of ownership.
4.	Issue of Renewed Share Certificate a. A new share certificate (for sub-division, consolidation, or replacement of defaced or mutilated or worn out or used-up certificates) can be issued only when the original is surrendered to the company. b. Company may charge a fee up to ₹50 per certificate for splitting, consolidation, or replacement. c. The new certificate must state: "Issued in lieu of Share Certificate No. — Sub-divided / Replaced / On Consolidation". d. No fee is required if the issue is under a Scheme of Arrangement sanctioned by the High Court or Central Government. e. Company may replace all old certificates with new ones (in case of sub-division, consolidation, merger, demerger, or reconstitution) without requiring surrender. f. All such changes must be recorded in the Register maintained for the purpose.
5.	Manner of Issuing Certificates/Duplicate Certificates a. Share certificates are issued for physical shares only (not demat). b. Prerequisites for issue: ✓ Surrender of letter of allotment or fractional coupons. ✓ Share certificate must be in Form SH-1 or as close as possible, specifying: ▪ Name(s) of the shareholder(s). ▪ Number of shares. ▪ Amount paid-up on the shares. ✓ Recording of Details: All issued certificates should be recorded in the Register of Members, including the date of issue.
6.	Maintenance of Share Certificate Records Form SH-1 and other related records: a. Blank share certificates shall be machine-numbered and printed under Board resolution.



	b. Forms kept in custody of CS or authorized person. c. Records should be maintained for at least 30 years, and permanently in disputed cases. d. Surrendered certificates shall be defaced (stamped "cancelled") and can be destroyed after 3 years subject to BR and in the presence of duly authorised person.
7.	Punishment for Fraudulent Duplicate Certificates If a duplicate certificate is issued with intent to defraud: a. Company: Fine of minimum 5 * face value of shares, Maximum 10 * face value of shares or ₹10 crores whichever is higher. b. Officers in default: Liable u/s 447.

4. Voting Rights of Share Holders

Content	
1.	Voting Rights of Equity Shareholders a. Every equity shareholder has the right to vote on all resolutions placed before company. b. Poll: Voting rights on a poll are proportional to the shareholder's share in the PUESC.
2.	Voting Rights of Preference Shareholders a. Voting rights apply only to resolutions ✓ that directly affect preference share rights, ✓ for winding up, or ✓ for repayment/reduction of equity or preference share capital. b. Poll: Voting rights on a poll are proportional to the shareholder's share in the paid-up PSC. c. Proportion of Voting Rights: ✓ The ratio of voting rights between ESH and PSH is proportional to their paid-up capital. ✓ If preference dividends remain unpaid for 2 years or more, those shareholders can vote on all resolutions like equity shareholders. ✓ Shareholders vote proportionately to the PUSC of their share class in AGMs/EGMs.

5. Variation of Rights of Shareholders

Content	
1.	Variation in Rights of Shareholders a. Rights of a class of shares can be varied if Consent is obtained from at least 3/4th of holders of issued shares of that class (in writing) or SR in a separate meeting. b. Variation is allowed: ✓ If Provisions for variation are included in the MOA or AOA, or ✓ In the absence of such provision, it is not prohibited by the issue terms of shares. c. Impact on Other Classes: If variation affects rights of another class, consent of 3/4th of that other class is also required.
2.	No Consent for Variation - Application to Tribunal



	a. If holders of 10% or more of the issued shares of a class did not consent, they can apply to the NCLT to cancel the variation. b. Application to NCLT shall be made within 21 days from the date consent was given or the resolution passed. c. Tribunal's decision is binding on all shareholders. d. The company shall file a copy of the Tribunal's order with the ROC within 30 days.
3.	Special Points a. Issuing new preference shares pari-passu with existing shares does not require the consent of preference shareholders. b. Cancellation of shares or capital reduction does not amount to variation of class rights.
4.	Default in Compliance: If there is a default in complying with the provisions of this section: a. The Company shall be liable to a fine minimum ₹25,000, maximum ₹5,00,000. b. Every officer in default shall be punishable with: ▪ Imprisonment up to 6 months, or ▪ Fine not less than ₹25,000, which may extend to ₹5,00,000, or ▪ Both.

6. Issue of Shares at Premium

Content	
1.	Issue at Premium a. When a security is issued at a price higher than its face value, it is called an issue at premium. b. The difference between the issue price and face value is the premium.
2.	Securities Premium Account a. Premium received is transferred to the Securities Premium Account. b. Premium can be received in cash or kind. c. For reduction of capital, securities premium is treated at par with paid-up capital.
3.	Application of Securities Premium Account The account can be used for: a. Issuing fully paid bonus shares. b. Writing off preliminary expenses of the company. c. Writing off expenses, commission, or discount on issuing shares or debentures. d. Premium payable on redeemable preference shares or debentures. e. Buyback of shares or securities u/s 68.
4.	Application by Prescribed Class of Companies Prescribed companies complying with accounting standards (Section 133) may apply the Securities Premium Account for: a. Paying up unissued equity shares to be issued as fully paid bonus shares. b. Writing off expenses, commission, or discount on equity share issues. c. Buyback of shares or securities u/s 68.



7. Issue shares at Discount

Content	
1.	General Rule a. A company shall not issue shares at a discount, except for sweat equity shares u/s 54. b. Any shares issued at a discount (other than exceptions) shall be void.
2.	Exceptions A company may issue shares at a discount to creditors when: a. Its debt is converted into shares under a statutory resolution plan or debt restructuring scheme. b. The scheme complies with RBI guidelines, directions, or regulations.
3.	Penalty for Non-Compliance If a company contravenes the provisions of this section: a. The company shall be punishable with a fine minimum ₹1 lakh, maximum ₹5 lakhs. b. Every officer in default shall be punishable with: ▪ Imprisonment up to 6 months, or ▪ Fine not less than ₹1 lakh, which may extend to ₹5 lakhs, or ▪ Both.

8. Sweat Equity Shares

Content	
1.	Sweat Equity Shares Equity shares issued by a company to its directors or employees: a. At a discount, or b. For non-cash consideration
2.	Conditions for Issuing Sweat Equity Shares A company may issue sweat equity shares if the following conditions are met: a. Issue is authorised by SR; allotment shall happen within 12 months of SR. b. Details Specified: Resolution shall specify: ✓ Number of shares, ✓ Market price, ✓ Consideration (if any), and ✓ Class of directors/employees eligible. c. Listed Companies: Comply with SEBI regulations. d. Rights of Sweat Equity Holders: Pari Passu with other equity shareholders.
3.	Contents of Explanatory Statement a. Date of Board Meeting approving the proposal b. Justification/Reason for the issue c. Class of shares under which sweat equity is issued d. Total number of shares to be issued e. Class of directors/employees eligible



	f. Terms & conditions and basis of valuation g. Duration of association of the person with the company h. Names of directors / employees receiving shares and their relationship with promoter / KMP i. Share price j. Consideration (including non-cash, if any) k. Applicable accounting standards l. Diluted EPS as per applicable standards
4.	Important Conditions a. 15% Limit per Year: Sweat equity issuance limited to 15% of PUESC or ₹5 crores, whichever is higher. b. 25% Lifetime Limit: Sweat equity issuance must not exceed 25% of PUESC. c. Startup Relaxation: 50% PUSC for startups for up to 5 years post-incorporation. d. Lock-In Period: Sweat equity shares are non-transferable for 3 years from the allotment date. e. Valuation: ✓ Shares: Valued by a registered valuer. ✓ IPR/Know-How/Value Addition: Valued by a registered valuer with a justification report for the Board. f. Board Report: The Directors' Report shall include issue details. g. Registers: Form SH.3 to record sweat equity shares, kept at the registered office or a location authorized by the Board.
5.	Treatment of Non-Cash Consideration a. Depreciable/Amortizable Assets: Recorded in the balance sheet as per accounting standards. b. Other Cases: Expensed per accounting standards.
6.	Definition of Employee a. Permanent employees (working in India or abroad). b. Directors (whole-time or not). c. Employees/directors of subsidiaries or holding companies (India or abroad).
7.	Value Addition Actual or anticipated economic benefits derived or to be derived from know-how, intellectual property rights, or professional expertise provided by the recipient.

9. Issue and Redemption of Preference Shares

Content	
1.	Conditions for Issue of Preference Shares a. A Company limited by shares shall issue preference Shares only if authorised by its AOA. b. The issue shall be authorised by SR in GM. c. The Company shall not have subsisting default in the



	▪ Redemption of Preference Share ▪ Payment of dividend due on Preference Shares. d. A company cannot issue irredeemable preference shares. e. Max 20 Years: Preference shares shall be redeemed within 20 years from the date of issue. Exception: Companies engaged in Infrastructure project may issue Preference shares for period up to 30 years for Infrastructure projects, with a 10% redemption every year starting from the 21st year at the option of Preference Share Holder.
2.	a. Contents of Special Resolution The resolution passed for issuing preference shares must specify: ✓ Dividend / Capital Priority ▪ Priority in payment of dividend or repayment of capital compared to equity shares ▪ Right to participate in surplus fund ✓ Participation in Surplus Assets on Winding Up ✓ Whether dividend is cumulative or non-cumulative ✓ Terms related to conversion into equity shares ✓ Voting Rights ✓ Redemption Terms b. Explanatory Statement to Notice of General Meeting Explanatory statement annexed to the notice must disclose the following material facts: ✓ Size and Number: Total issue size, Number of preference shares, Nominal value per share ✓ Nature of Shares: Cumulative / Non-cumulative, Participating / Non-participating, Convertible / Non-convertible ✓ Objectives of the Issue, Manner of Issue ✓ Issue Price, Basis of Pricing ✓ Terms of Issue: Rate and terms of dividend, etc. ✓ Redemption Terms: Tenure, Whether redeemable at premium, Terms of conversion ✓ Modes of Redemption ✓ Current Shareholding Pattern ✓ Expected Dilution: On conversion of preference shares into equity c. Register and SEBI Compliance ✓ Register of Members: Particulars of preference share issue must be recorded. ✓ SEBI Compliance (if listed): If company intends to list its preference shares on a recognized stock exchange, the issue must comply with SEBI regulations.
3.	Redemption Conditions a. Sources: Redemption can only be from: ✓ Profits eligible for dividend distribution, or ✓ Proceeds from Fresh Issue made for redemption. b. Fully Paid Shares: Preference Shares shall be fully paid to be redeemed.



	c. Transfer to CRR Account: ✓ If redeemed from profits, transfer the nominal amount of redeemed shares to Capital Redemption Reserve. ✓ If redeemed from fresh issue, no CRR transfer required; only premium from fresh issue can be used for redemption.
4.	Sources for Premium on Redemption a. For certain companies complying with prescribed accounting standards, premium on redemption shall be provided before redemption from company profits. b. Preference Shares Issued Before Act: Premium for shares issued before the Act can be provided from profits or securities premium account. c. Other Companies: Premium can be provided from profits or securities premium account.
5.	Unable to Redeem Preference Shares If a company is unable to redeem preference shares or pay dividends, it may: a. With the consent of 3/4th in value of preference shareholders & b. Approval from NCLT on a petition made by it in this behalf , issue further redeemable preference shares equal to the dues (including unpaid dividends). Note: a. NCLT while giving approval, may order for the redemption of preference shares held by PSH who have not consented to issue of further redeemable PS. b. The issue or redemption of further redeemable preference shares does not amount to increase or reduce the capital of the company.

10. Transfer And Transmission of Securities

Content	
1.	Transfer of Securities Applies to: a. Transfer of securities of the company, or b. Transfer of interest of a member in a company with no share capital.
2.	Proper Instrument of Transfer Transfer shall be done using a proper instrument of transfer (SH-4): a. Duly stamped, dated, and executed by both transferor and transferee (except for depository transactions). b. Shall include name, address, and occupation of the transferee. c. Shall be delivered to the company within 60 days of execution, along with the share certificate, or letter of allotment (if no Share certificate).
3.	If Instrument is Lost If the instrument is lost or not delivered within 60 days, the company may register the transfer on terms of indemnity as decided by the Board.
4.	Notice to Transferee in case of Partly Paid Shares If an application for registration of transfer is made by the transferor alone, the company shall not register transfer unless:



	a. Company has given notice (SH-5) to transferee b. Transferee gives no objection within 2 weeks of receiving the notice.										
5.	Transmission a. A company can register the transmission of rights without being bound by the conditions u/s 56(1) for registration of transfer. b. Transmission is allowed upon receiving intimation from the entitled person, without requiring an instrument of transfer.										
6.	Cases of Transmission Transmission occurs in the following cases: a. Death: Shares are transmitted to the legal representative of the deceased. b. Insolvency: Shares are transmitted to the Official Receiver. c. Lunacy: Shares are transmitted to the administrator appointed by the Court.										
7.	<table> <tr> <th>Situation</th><th>Period for Delivering Certificate</th></tr> <tr> <td>1. Subscribers to the MOA</td><td>Within 2 months of incorporation.</td></tr> <tr> <td>2. Allotment of Shares</td><td>Within 2 months of allotment.</td></tr> <tr> <td>3. Transfer or Transmission of Securities</td><td>Within 1 month of receipt of the instrument of transfer or intimation of transmission.</td></tr> <tr> <td>4. Allotment of Debentures</td><td>Within 6 months of allotment.</td></tr> </table>	Situation	Period for Delivering Certificate	1. Subscribers to the MOA	Within 2 months of incorporation.	2. Allotment of Shares	Within 2 months of allotment.	3. Transfer or Transmission of Securities	Within 1 month of receipt of the instrument of transfer or intimation of transmission .	4. Allotment of Debentures	Within 6 months of allotment.
Situation	Period for Delivering Certificate										
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3. Transfer or Transmission of Securities	Within 1 month of receipt of the instrument of transfer or intimation of transmission .										
4. Allotment of Debentures	Within 6 months of allotment.										
8.	A legal representative can transfer a deceased person's securities or interest without being the holder of those securities, as long as the transfer is properly executed.										
9.	Default in Compliance a. Penalty: Company shall be punishable with fine minimum 25,000 and maximum 5,00,000. Officer in default shall be punishable with fine minimum 10,000 and maximum 1,00,000. b. Liability of Depository: If a depository or depository participant transfers shares fraudulently, they are liable u/s 447, and the penalties under the Depositories Act, 1996.										

11. Punishment for Personation of Shareholder

Content	
1.	Intentional Personation If a person intentionally personates as the owner of: a. Any security or interest in a company, or b. Any share warrant or coupon issued under the Act.
2.	Offenses The person: a. Obtains or attempts to obtain any such security, interest, share warrant, or coupon; b. Receives or attempts to receive any money due to the rightful owner.
3.	Punishment a. Imprisonment: Minimum 1 year, but can extend to 3 years. and b. Fine: Minimum Rs. 1,00,000, but can extend to Rs. 5,00,000.



12. Refusal of Registration and Appeal Against Refusal

Content	
1.	Refusal to Register Transfer of Shares a. If a private company refuses to register the transfer or transmission of any securities or interest, it shall send notice to the transferor and transferee within 30 days of delivery of transfer instrument or transmission intimation. b. Appeal to Tribunal Transferee can appeal to Tribunal: ✓ Within 30 days of receiving refusal notice, or ✓ If no notice is sent, within 60 days of delivery of the transfer instrument/ intimation.
2.	Refusal by Public Company a. Public company securities are freely transferable, subject to contract/arrangement. b. If a public company refuses to register the transfer of securities within 30 days of delivery of transfer instrument/transmission intimation, the transferee may appeal to NCLT: ✓ within 60 days of refusal, or ✓ If no refusal notice, within 90 days of delivery of transfer instrument/ intimation.
3.	Dealing by NCLT The NCLT, after hearing parties, may: a. Order the transfer/transmission to be registered within 10 days. b. Direct rectification and pay damages to the aggrieved party. c. Non-compliance with Tribunal's order results in: ✓ Imprisonment: 1 to 3 years and ✓ Fine: Rs. 1,00,000 to Rs. 5,00,000.

13. Rectification of Register of Member

Content	
1.	Remedy to Members - Application to NCLT a. Aggrieved Person or Member may apply to NCLT for rectification of the ROM if: ✓ A person's name is wrongly entered in the ROM. ✓ Member's details are later omitted from the ROM. ✓ There is default or delay in recording the name in the ROM. b. Foreign members can appeal to competent courts outside India for rectification.
2.	Order of the Tribunal - Final NCLT, after hearing both parties, may: a. Dismiss the appeal, or b. Direct registration of transfer/transmission within 10 days, or c. Direct rectification of the ROM or records of depository and order the company to pay damages to the aggrieved party, if applicable.



3.	Voting Rights - Transferee A person acquiring securities is entitled to voting rights unless suspended by the Tribunal's order .
4.	Contravention of Other Laws If a transfer violates any law (e.g., SCRA 1956, SEBI Act 1992, or Companies Act 2013), NCLT may, on application, direct the company or depository to rectify the contravention and update relevant records/registers.

14. Alteration Of Share Capital

Content	
1.	Conditions for alteration: Limited company with Share Capital may alter capital clause if a. Authorised by AOA . b. Approved by OR in GM
2.	a. Increase the authorised share capital by any amount deemed necessary, as per the company's discretion. b. Consolidate and divide share capital into shares of larger amount . Note: If consolidation and division results in changes in voting powers , it shall be approved by the Tribunal . c. Convert fully paid-up shares into stock and reconvert stock into fully paid-up shares of any denomination. d. Sub-divide shares (split) into smaller amount Note: The paid and unpaid amounts on a reduced share shall maintain the same proportion as the original share. e. Cancel shares that have not been taken or agreed upon by any person, thereby diminishing the share capital . Note: This is not considered a reduction in share capital.
3.	Inform to ROC Notice must be given to the ROC within 30 days of alteration, along with the altered MOA .

15. Further issue of share capital and preferential allotment

Further Issue of Shares	
1.	When a company with share capital plans to increase its subscribed capital by issuing more shares, these shares shall be offered: a. To Existing Equity Shareholders : In proportion to their paid-up capital on the shares they hold as of the offer date. b. To Employees Under an Employee Stock Option Scheme (ESOP) subject to a special resolution passed by the company. c. To Any Other Persons : If authorized by a special resolution , shares can be issued even to those not covered under the above two categories. Notes: ▪ Shares can be offered for cash or non-cash consideration .



	If offered for non-cash consideration, the price must be determined by a valuation report from a registered valuer.
2.	Letter of Offer shall: - Specify the number of shares being offered. - Offer period shall be at least 15 days but not more than 30 days. - State that non acceptance within the specified time, it will be deemed declined. - Confirm right of renunciation is permitted unless restricted by the AOA. Notes: ✓ If the offer is declined or not responded to, BOD may dispose of those shares in a manner that is not disadvantageous to the shareholders or the company. ✓ Share allocation should be as fair as possible in the circumstances.
3.	Length of Notice: - Notice must be sent to all existing shareholders at least 3 days before the issue opens. - It can be dispatched via registered post, speed post, electronic mode, courier, or any other method that provides proof of delivery.
4.	Board Approval Only For rights issues to existing shareholders, only a Board Resolution is needed. General Meeting approval is not required.

16. Employee Stock Option

Content	
1.	A company (other than a listed company) can issue Employees' Stock Options (ESOP) only if: - A special resolution is passed by shareholders. Explanatory statement must disclose: - Total number of stock options; - Classes of employees eligible; Appraisal process; Vesting requirements & period; Maximum period for vesting; - Exercise price/formula; Lock-in period (if any); - Max options per employee and in total; Valuation method; Conditions for lapse of vested options; - Exercise period in case of termination/resignation; - Statement of compliance with applicable accounting standards.
2.	Definitions - Employee includes: - Permanent employee (India or abroad) - Director (including whole-time; excluding independent directors) - Employee of subsidiary (India/abroad) or holding company Excludes: - Promoters or persons from promoter group



	▪ Directors (holding >10% equity directly/indirectly, alone or with relatives/body corporate) b. Exercise Price Companies have freedom to determine the exercise price in line with applicable accounting policies.
3.	Special Resolution a. Separate special resolution required for: ✓ Grant to employees of subsidiary or holding company. ✓ Grant to identified employees in one year $\geq$ 1% of issued capital. b. Company may vary terms of unexercised options by passing special resolution, provided it is not prejudicial to option holders. c. Notice for variation must disclose full details of variation, rationale, beneficiary employees
4.	Period Gap ✓ Minimum 1-year gap between grant and vesting of option. ✓ In case of merger/amalgamation, past holding period in previous company shall be adjusted against the minimum vesting period.
5.	Lock-in Period Company has freedom to specify lock-in period for shares issued upon exercise.
6.	Other Aspects a. No rights (dividend/voting/shareholder benefits) until option is exercised. b. Amount paid at grant: ✓ May be forfeited if not exercised in time, or ✓ Refunded if options don't vest due to unmet conditions. c. Options not transferable, nor can be pledged/hypothecated/mortgaged/alienated. d. Only the grantee employee can exercise the option. e. On death, all granted options vest in legal heirs/nominee. f. On permanent incapacity, all options vest on that date. g. On resignation/termination: ✓ Unvested options lapse. ✓ Vested options may be exercised within specified time, as per scheme terms.
7.	Disclosures Board shall disclose in the Directors' Report: a. Options granted, Options vested, Options exercised, Options lapsed b. Shares arising from exercise, Exercise price, Money realized c. Variation in terms, d. Total options in force e. Employee-wise details for: ✓ KMPs ✓ Employees receiving $\geq$ 5% of total grant in a year ✓ Employees granted options $\geq$ 1% of issued capital in a year



8.	Register a. Company shall maintain Register of ESOP in Form SH-6. b. Register shall be kept at registered office or any other place as decided by Board. c. Entries in the register shall be authenticated by CS or authorized person.
9.	If company's equity shares are listed , ESOP must comply with SEBI regulations .

17. Issue of Bonus Shares

Content	
1.	Bonus shares are issued to existing shareholders as fully paid shares , free of cost.
2.	Source of Funds Bonus shares can only be issued from: ✓ Free reserves ✓ Securities premium account ✓ Capital redemption reserve account
3.	Prohibited Source Revaluation reserves cannot be used for issuing bonus shares.
4.	Procedural Conditions a. The issue of bonus shares must be authorized by the AOA. b. Approval by BOD is required. Once recommended, it cannot be withdrawn. c. Shareholder must approve in the General Meeting by Ordinary Resolution. d. The company must not have defaulted on: ✓ Interest or principal payments on fixed deposits or debentures/bonds. ✓ Statutory dues such as employee provident fund, gratuity, or bonus. e. Partly paid-up shares must be made fully paid-up before issuing bonus shares. f. Bonus shares cannot be issued in lieu of dividends.
5.	Capitalisation of Profits Company may capitalise its profits or reserves to issue fully paid-up bonus shares or pay unpaid amounts on shares held by members.

18. Filings with Roc

Content	
1.	Whenever there is an alteration in share capital , the company shall notify the ROC .
2.	Filing of Prescribed Notice The company must file Form SH-7 with the ROC along with the altered MOA within 30 days of capital alteration in the following cases: a. Alteration of share capital. b. Government Order resulting in an increase in authorized capital. c. Redemption of any redeemable preference shares.
3.	Penalty for Default a. Company: ₹1,000 per day of default, up to a maximum of ₹5,00,000. b. Officer in Default: ₹1,000 per day of default, up to a maximum of ₹5,00,000.



19. Reduction of Capital

Content	
1.	A company limited by shares or limited by guarantee with share capital may reduce its share capital through a special resolution in the following ways: d. Extinguishing or reducing liability on unpaid share capital. e. Cancelling paid-up capital, either: ✓ If it is lost or unrepresented by available assets, or ✓ If it is excess capital, the company may pay it off and amend its memorandum accordingly.
2.	NCLT Approval After passing the special resolution, an application must be made to the Tribunal. Exceptions: Buy-back of shares and redemption of preference shares are considered capital reduction but do not require NCLT approval.
3.	Alteration of Memorandum The company must also update its memorandum to reflect the reduced share capital. Note: Diminution means reducing unsubscribed authorized capital, which is different from capital reduction.
4.	Prohibition on Capital Reduction A company cannot reduce capital if it has defaults in deposits or interest.
5.	Tribunal Notice & Consideration of Representations a. Tribunal will notify the following parties about the application: ✓ CG (RD), ROC, SEBI (for listed companies) ✓ Company's creditors b. If any of these parties raise objections within 3 months, Tribunal will consider them. c. If no objections are received within 3 months, it is assumed that there are no objections to the capital reduction.
6.	Order of Tribunal on Capital Reduction a. The Tribunal may approve reduction of share capital if it is satisfied that all creditors' claims are discharged, or settled, or secured, or their consent is obtained. b. The approval will be subject to conditions as deemed fit by the Tribunal. c. Auditor's Certificate on Accounting Treatment ✓ The Tribunal will sanction capital reduction only if the company's accounting treatment complies with Accounting Standards. ✓ A certificate from the company's auditor confirming compliance must be filed with the Tribunal. d. Publication of Tribunal Order ✓ The company must publish the Tribunal's order in a manner directed by the Tribunal (e.g., newspapers, company website). ✓ This allows for representations and objections from affected parties (such as creditors), which will be forwarded to NCLT.



7.	Filing with ROC a. The company must submit a certified copy of the Tribunal's order and an approved minute to the Registrar of Companies (ROC) within 30 days. b. The minute must specify: ✓ Total share capital after reduction. ✓ Number of shares and their division. ✓ Value of each share. ✓ Paid-up amount per share (if applicable). c. ROC will register the reduction and issue a certificate confirming the change.
8.	No Liability on Members a. Past and present members shall not be liable for any additional payments on their shares. b. They are only liable for the difference (if any) between: ✓ The amount paid on the share, or ✓ The reduced amount deemed to be paid as per the Tribunal's order.
9.	Creditor's Right to Object - Failure to Object If a creditor who had the right to object to the capital reduction did not object due to ignorance or was omitted from the creditors' list, and the company defaults under Sec 6 of the IBC, 2016, then: a. If the Company Still Exists: ▪ Every person who was a member of the company at the time of registration of the Tribunal's order shall be liable to contribute towards that debt or claim. ▪ The contribution shall not exceed the amount they would have been liable to if the company had been wound up immediately before the order date. b. If the Company is Wound Up: ▪ A creditor (who was unaware of the reduction) can apply to the Tribunal to be included in the list of contributories. ▪ The Tribunal may settle the list of contributories, issue calls, and enforce payments from them as in a normal winding-up process.
10.	Liability of Officers An officer of the company shall be held liable u/s 447 if they: a. Knowingly conceal the name of a creditor entitled to object. b. Misrepresent the nature or amount of a creditor's debt or claim. c. Are aware of and abet such concealment or misrepresentation.
11.	Overriding Provision Sec 68 (Buyback of Securities) has overriding effect over Reduction of Capital (Sec 66).

20. Buyback of Shares

Content	
1.	Sources of Funds for Buy-Back A company can buy-back its shares using: a. Free Reserves



	b. Securities Premium Account c. Proceeds of the issue of any shares or other specified securities Specified Securities: Includes employee stock options and other securities notified by the government. Note: Cannot use proceeds from the earlier issue of the same kind of shares.
2.	Conditions for Buy-Back The following conditions must be met: - AOA: must authorise buy-back. - Special Resolution: A special resolution shall be passed in a general meeting, unless buy-back is $\leq 10\%$ of (PUESC+FR+SP), then Board Resolution is sufficient. - Max 25% of PUSC + Reserves: Buy-back cannot exceed 25% of the aggregate of (PUSC+FR+SP). - Buy-back of equity shares in any financial year shall not exceed 25% of its PUESC in that financial year - Debt to Equity Ratio: Post-buy-back, the ratio of debt to (PESC+FR+SP) shall not exceed 2:1. - Fully Paid Shares: Only fully paid-up shares are eligible. - SEBI Regulations: Listed company must comply with SEBI regulations. - Lock-in Period: No fresh buy-back within 1 year from the closure of the previous buy-back.
3.	Procedure Before Buy-Back The notice of the meeting proposing SR must include an explanatory statement stating - - A full and complete disclosure of all the material facts; - The necessity for the buy-back; - The class of shares or securities intended to be purchased under the buy back; - The amount to be invested under the buy-back; and - The time limit for completion of buy-back.
4.	Buy-Back from whom - Existing Shareholders/Security Holders - Open Market - Employee Stock Option/Sweat Equity Holders
5.	Declaration of Solvency - A declaration of solvency shall be filed with the Registrar and SEBI (for listed companies). - Declaration of solvency must be in Form SH-9, verified by affidavit, stating the Board has fully inquired into the company's affairs and believes it can meet all liabilities and remain solvent for 12 months from the declaration date. - Signed by Directors: At least 2 directors, including the MD.
6.	Extinguishment of Securities After buy-back, the company must extinguish and destroy the bought-back securities within 7 days.



7.	Cooling Period on Further Issue After a buy-back, the company cannot issue the same kind of shares for 6 months. Exceptions: Bonus Shares Discharge of Obligations: e.g., conversion of warrants, stock options, sweat equity,
8.	Register of Buy-Back - A register must be maintained with: - Shares/securities bought. - Consideration paid. - Cancellation and destruction dates. - Registers are maintained at the registered office, authenticated by the CS.
9.	Filing of Buy-Back Return with ROC and SEBI - After completion, file a return with ROC and SEBI (Listed Company) within 30 days. - A certificate must be submitted confirming compliance with the provisions.
10.	Penalty for Default If the company defaults: - Company: Fine of ₹ 1,00,000 to 3,00,000. - Officers in Default: Fine of ₹ 1,00,000 to 3,00,000.
11.	Transfer of Certain Sums to CRR Account If buy-back is from free reserves or securities premium account, a sum equal to the nominal value of shares must be transferred to Capital Redemption Reserve
12.	Prohibition for Buy-Back in Certain Circumstances No company shall directly or indirectly purchase its own shares or specified securities: - Through any subsidiary company, including its own subsidiaries; - Through any investment company or group of investment companies; - If the company has defaulted in: - Repayment of deposits or interest on deposits; - Redemption of debentures; - Redemption of preference shares; - Payment of dividends to any shareholder; - Repayment of term loan or interest thereon to any financial institution or Banks. Exception: Buy-back allowed if the default is rectified and 3 years have passed since it was cleared. Note: If the company fails to comply with Sec 92, 123, 127, or 129, buy-back is prohibited.

21. Buyback of Shares [Companies (share capital & Debentures) Rules, 2014

Content	
1.	Disclosures in Explanatory Statement In case of a buy-back, the explanatory statement must include: - Date of Board Meeting approving the buy-back Objective of the buy-back



	c. Class of shares/securities to be bought back d. Number of securities proposed for buy-back e. Method of buy-back f. Buy-back price and basis of its calculation g. Maximum amount to be used and source of funds h. Time limit for completion i. Shareholding of promoters, directors, and KMPs j. Confirmation of no default in: ▪ Repayment of deposits, Interest payments ▪ Redemption of debentures or preference shares ▪ Dividend payments ▪ Loan repayments to banks/FIs k. Board's Solvency Declaration (based on full enquiry): ▪ No ground to believe the company will be unable to pay its debts. ▪ Company will remain solvent for 1 year from the date of the general meeting. ▪ Liabilities (including prospective and contingent) have been fully considered as if under winding up. l. Auditor's Report to the Board must confirm: ▪ Due inquiry into the company's affairs has been made. ▪ The permissible capital payment has been properly calculated. ▪ Audited financials used for calculation are not older than 6 months. If older, use unaudited financials (max 6 months old) reviewed by auditors. ▪ Board's opinion on solvency is formed on reasonable grounds, and the company shall not be rendered insolvent within 1 year.
2.	Letter of Offer a. ROC Filing (Form SH-8): ▪ Before buy-back, the company shall file a Letter of Offer with ROC in Form SH-8 along with the prescribed fee. ▪ It must be signed by at least two directors (one of whom shall be the MD, if any). b. Dispatch to Shareholders: After filing with ROC, the Letter of Offer must be sent to shareholders within 20 days from the date of ROC filing. c. Offer Period: ▪ The buy-back offer shall remain open for 15 to 30 days from the date of dispatch. ▪ If all shareholders agree, the offer can remain open for less than 15 days. d. Proportionate Acceptance: If shareholders offer more shares than the company proposes to buy back, acceptance shall be made proportionately among all shareholders.
3.	Verification of Offer a. The company must verify all offers within 15 days from the closing date of the buy-back.



	b. If no rejection notice is sent within 21 days of the closing date, the shares are deemed accepted.
4.	Bank Account a. After the offer closes, the company must open a separate bank account . b. It must deposit the full amount needed to pay for all accepted shares.
5.	Payment or Return Within 7 days from 21 days after the offer closes, the company must either: a. Pay cash to shareholders whose shares were accepted, or b. Return share certificates (fully or partly) to those whose shares were not accepted or only partly accepted.
6.	Company's Obligations The company must ensure: a. Letter of offer is accurate , factual, and free from misleading information. Directors must accept responsibility for its contents. b. No new shares (including bonus shares) are issued from the date of special resolution to the closure of buy-back, except for conversion of existing instruments. c. The company confirms in the offer that the separate bank account is opened and funded for the buy-back. d. The buy-back offer cannot be withdrawn once announced. e. Borrowed funds cannot be used for the buy-back. f. The proceeds of a prior issue of the same type of shares or securities cannot be used for the buy-back.

22. Debentures

Content	
1.	Debenture Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.
2.	Convertible Debentures a. A company may issue debentures with an option to convert them into shares, wholly or partly at the time of redemption. b. Issue of convertible debentures requires a SR passed at a general meeting.
3.	Company is prohibited from issuing Debentures with voting rights .
4.	Secured Debentures a. Redemption period cannot exceed 10 years from the issue date. b. Exception: The tenor can be extended up to 30 years for the following: ✓ Companies setting up infrastructure projects. ✓ Infrastructure Finance Companies. ✓ Infrastructure Debt Fund NBFCs. ✓ Companies permitted by regulatory authorities such as: ▪ Ministry or Department of the CG



	- Reserve Bank of India (RBI), National Housing Bank (NHB) - Any other statutory authority c. A charge is created on the company's assets for secured debentures.
5.	Debenture Trustee Appointment A company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures.
6.	Limits on Borrowings from Debentures a. If borrowings from debentures exceed the company's (PUSC+FR+SP), SR is required. b. If borrowings do not exceed the above limits, a Board resolution is sufficient. Note: Temporary loans from banks are not considered borrowings.
7.	a. A company must pay interest and redeem debentures according to the terms. b. If the company's assets are insufficient to discharge debenture liabilities, the trustee can file a petition to the Tribunal to impose restrictions on further liabilities. c. If the company fails to redeem debentures at maturity or pay interest on due dates, the Tribunal can order immediate redemption and payment. d. A contract to take and pay for debentures can be enforced through a decree for specific performance.
8.	The Central Government may prescribe procedures for: a. Securing the issue of debentures. b. Form of debenture trust deed. c. Inspection and obtaining copies of the trust deed. d. Quantum of debenture redemption reserve.
9.	Default in Complying with Tribunal's Order If a company fails to comply with the order of the Tribunal, every officer in default shall be punishable with imprisonment up to 3 years, or fine of ₹2 lakhs to ₹5 lakhs, or both.

23. Debenture Trustee

Content	
1.	Debenture Trustee a. If a company issues debentures to public or to its members exceeding 500, it must appoint one or more debenture trustees and issue a prospectus for public offer. b. Written consent from the proposed debenture trustee must be obtained before appointment. c. Debenture trust deed shall be executed in Form SH-12 to protect the interest of the debenture holders, within 3 months of closure of the issue or offer.
2.	Disqualifications of Debenture Trustees The following persons cannot be appointed as debenture trustees: a. A beneficiary holding shares in the company. b. A promoter, director, KMP, officer, or employee of the company or its holding, subsidiary, or associate company. c. A relative of any promoter, director, or KMP of the company.



	d. A beneficiary entitled to receive payments. (Except debenture trustee remuneration). e. Anyone indebted to the company or its subsidiary, holding, or associate company or a subsidiary of such holding company. f. A guarantor for the debt secured by the debentures. g. Anyone having a pecuniary relationship with the company, amounting to: ▪ 2% or more of the company's gross turnover or total income, or ▪ ₹50 lakh or more (or any higher amount as prescribed), ▪ During the 2 immediately preceding FY's or the current FY.
3.	Filling Casual Vacancy a. The Board may fill any casual vacancy in trustee office. b. If caused by resignation, it requires approval of majority debenture holders. Note: A trustee can be removed with 3/4th approval of debenture holders.
4.	a. Debenture trustees must protect the interests of debenture holders and can convene meetings to address grievances or breaches on receiving a request from Debenture holders holding at least 1/10th of the value. b. Any terms exempting trustee liability for breach of trust are void unless approved by 3/4th of debenture holders.

24. Duties of Debenture Trustee

The Debenture Trustee shall	
1.	Ensure the letter of offer aligns with the terms of issue and trust deed .
2.	Confirm that trust deed covenants are not harmful to debenture holders' interests.
3.	Obtain periodic performance reports from the company.
4.	Inform debenture holders promptly of any default in interest/redemption , and action taken.
5.	Appoint a nominee director on the company's Board in case of: ▪ Two consecutive interest defaults, ▪ Default in creation of security, or ▪ Default in redemption.
6.	Take steps to prevent or remedy breach of issue terms or trust deed covenants.
7.	Immediately inform debenture holders of any such breach .
8.	Ensure implementation of conditions related to security creation and DRR .
9.	Ensure the company's and guarantor's assets are: ▪ Adequate to cover interest and principal, ▪ Free from encumbrances (unless agreed by debenture holders).
10.	Act when security becomes enforceable .
11.	Call for reports on fund utilization from the issue proceeds.
12.	Convene debenture holder meetings when required.
13.	Ensure debentures are converted or redeemed as per issue terms.
14.	Take necessary actions to protect debenture holders' interests and resolve their grievances.



25. Debenture Redemption Reserve

Content	
1.	Debenture Redemption Reserve a. A company issuing debentures must create a DRR. b. DRR is to be made from profits available for dividend. c. DRR amount can be used only for redemption of debentures .
2.	Conditions for Creating DRR: a. DRR must be created from profits available for dividend . b. DRR is mandatory for companies issuing debentures. c. By 30th April every year , the company shall invest or deposit at least 15% of the amount of debentures maturing by 31st March next year in any of the following: - Deposits with scheduled banks, free from lien/charge. - Unencumbered Central or State Govt. securities. - Unencumbered securities listed u/s 20(a)-(d), (ee) of the Indian Trusts Act, 1882. - Unencumbered bonds notified under Section 20(f) of the Indian Trusts Act, 1882. Note: These investments must only be used for redemption, and the amount shall not fall below 15% of debentures maturing during the year. d. For partly convertible debentures , DRR is required only for the non-convertible portion . e. The DRR amount cannot be used for any purpose other than redemption .

26. Conversion of Debentures by Order of CG

Content	
1.	CG Directed Conversion a. The government can order the conversion of Debentures issued to the government, or Loans granted by the government, either fully or partially into the company's shares, b. If the government finds it necessary in the public interest , on reasonable terms set by the government, even if the original debenture or loan terms do not allow conversion .
2.	Remedy Against Forced Conversion a. If the company disagrees with the conversion terms, it can appeal to the Tribunal within 60 days of receiving the order. b. Tribunal will hear both parties (company and government) and pass an appropriate order. c. While determining conversion terms, the government considers: - The company's financial position. - The original debenture or loan terms. - The interest rate on debentures or loans. - Any other relevant factors
3.	Effect on Authorised Share Capital a. If government orders conversion, the company's authorised share capital automatically increases by the value of the converted shares . b. The MOA is altered accordingly.



12.5. ACCEPTANCE OF DEPOSITS

1. Deposit

Content	
1.	The term 'deposit' refers to any money received by a company as a deposit, loan, or in any other form , except for amounts excluded by rules set in consultation with the Reserve Bank of India.
2.	Following aren't considered as Deposits - Amount received from the CG, SG, or from any source guaranteed by them. - Amount received from any local authority or statutory authority. - Amount received from foreign Governments, international or foreign banks, multilateral financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate, foreign citizens, or persons resident outside India, subject to FEMA, 1999 and applicable rules. - Amount received as a loan or facility from any bank. - Amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government. - Amount received by a company from another company. - Amount received towards offer of securities; If securities are not allotted and the amount is not refunded within 60 days, it will be treated as deposit. - Amount received from a director of the company. - Amount received by issue of bond or debenture. - Non-interest-bearing security deposit received from an employee. - Non-interest-bearing amount received and held in trust. - Amount received in the course of business of the company. - Advance received under an agreement or arrangement. - Amount received as security deposit. - Advance under long-term projects for supply of capital goods. - Amount brought in by promoters of the company. - Amount accepted by a Nidhi company.

2. Depositor

Content	
1.	A depositor refers to: - Any member of a company who has made a deposit as per sec 73(2) of the Act. - Any person who has made a deposit with a public company u/s 76 of the Act.



3. Prohibitive Provision for Acceptance of Public Deposits

Content	
1.	Prohibitive Provision No company can accept or renew deposits from the public unless it follows the procedure provided under Chapter V of the Companies Act, 2013.
2.	Exempted Companies The prohibition on accepting or renewing deposits from the public does not apply to the following types of companies: Banking companies NBFC as defined in the Reserve Bank of India Act, 1934 HFC registered with the National Housing Bank under the National Housing Bank Act, 1987 Any other company specified by the CG after consulting with the RBI.

4. Provisions Relating to Acceptance of Deposits From Members

Content	
1.	Passing of a Resolution A company shall pass an ordinary resolution in a general meeting to accept deposits from its members.
2.	Issuance of Circular Containing Statement A company must issue a circular to its members, including: Financial position of the company. Credit rating obtained. - Total number of depositors and amount due on previous deposits. - Other prescribed details in the required format.
3.	Filing of Circular with ROC The company must file a copy of the circular with the ROC within 30 days before issuance.
4.	Deposit Repayment Reserve Account (DRRA) - Company must deposit at least 20% of maturing deposits for the following financial year in a separate bank account by 30th April each year. - Funds in the Deposit Repayment Reserve Account shall only be used for deposit repayment.
5.	Certification of No Default - The company must certify that it has not defaulted in: ✓ Repayment of deposits (accepted before or after the commencement of the Act). ✓ Payment of interest on such deposits. - If a default had occurred, the company must confirm that: ✓ The default has been rectified. ✓ 5 years have passed since the rectification.



6.	Provision of Security - Secured deposits require a charge on assets. - Unsecured deposits must be clearly stated in the circular.
7.	Repayment of Deposit - Every deposit must be repaid with interest according to the terms and conditions. - If the company fails to repay a deposit, the depositor can approach NCLT for an order to recover the amount.

5. Acceptance of deposits from public

Content	
1.	Eligible Company A public company with: - Net Worth $\geq$ Rs. 100 crores, or - Turnover $\geq$ Rs. 500 crores.
2.	Special Resolution - Company must obtain prior consent through a special resolution passed in a general meeting. - However, an 'eligible company', which is accepting deposits within the limits specified u/s 180 (1) (c), may accept deposits by means of an ordinary resolution. (i.e., Proposed Deposits + Existing Debts $\leq$ PUC + Reserves & Surplus)
3.	Filing Requirement The special resolution must be filed with the Registrar of Companies.
4.	Obtaining Credit Rating - Obtain rating (including net worth, liquidity, and ability to pay deposits on due date) from a recognized credit rating agency. - Inform the public of the rating when inviting deposits. - Renew rating annually and file with RoC in Form DPT-3. - Rating shall be obtained for every year during the tenure of deposits.
5.	Charge Creation on Assets - Every company accepting secured deposits from the public must create a charge on its assets within 30 days of such acceptance. - The amount of charge must be at least equal to the amount of deposits accepted, and it must be created in favour of the deposit holders as per the prescribed rules.

6. Repayment of Deposits accepted before Commencement Act

Content	
1.	Filing Statement of Deposits and Repayment For deposits accepted before 1-4-2014 and unpaid as of that date or becoming due thereafter. - File a statement of deposits with the RoC within 3 months. - Repay deposits within 3 years from 1-4-2014 or earlier, based on the original terms.



	Notes a. If deposits and interest are repaid on due dates without default, point (b) is deemed complied with. b. Renewal of such deposits must follow Chapter V provisions and related rules.
2.	Tribunal's Power to Extend Repayment Time A company may apply to the Tribunal for an extension of repayment time based on: a. Financial condition of the company. b. Amount of deposit and interest payable. c. Any other relevant factors.
3.	Punishment for Non-Repayment If a company fails to repay within the specified or extended time then a. Company shall be liable to fine minimum ₹ 1 crore and maximum ₹ 10 crore. b. Officer-in-default: ✓ Imprisonment: Up to 7 years. ✓ Fine: ₹ 25 lakh to ₹ 2 crore, ✓ both.

7. Punishment for Contravention of Provisions of Sec 73 To 76

Content	
1.	Punishment for the Company If a company contravenes Sec 73, Sec 76, or associated rules by: a. Accepting or inviting deposits in violation of prescribed conditions, or b. Failing to repay deposits or interest within the specified time: Punishment: ▪ Minimum ₹ 1 crore or 2 * deposit amount (whichever is lower), ▪ Maximum ₹ 10 crore.
2.	Punishment for Officer-in-Default Any officer-in-default shall face: a. Imprisonment: Up to 7 years. & b. Fine: Minimum ₹ 25 lakh, up to ₹ 2 crore.
3.	Damages for Fraud If an officer-in-default knowingly or wilful contravenes the provisions with the intent to deceive the company, its shareholders, depositors, creditors, or tax authorities then punishment u/s 447.

8. Global Depository Receipt

Content	
1.	Global Depository Receipt (GDR) a. As per sec 41, a company may issue GDRs in any foreign currency. b. A special resolution must be passed at the General Meeting.



2.	Scheme The term 'Scheme' refers to the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, or any amendments thereof.
3.	Eligibility A company may issue GDRs if it is eligible under the Scheme and FEMA rules/regulations.
4.	Conditions for Issue Board resolution authorizing the issue is required. Special resolution of shareholders in a general meeting must be passed. A special resolution passed u/s 62 for issue of shares underlying the depository receipts, shall be deemed to be a special resolution for this purpose. - GDRs must be issued by an overseas depository bank appointed by the company. - Underlying shares must be kept with a domestic custodian bank. - The company must comply with the Scheme, and RBI regulations before and after the issue. - The company must appoint any one of the following professionals to oversee compliance: - Merchant Banker, or - Practising Chartered Accountant, or - Practising Cost Accountant, or - Practising Company Secretary - A compliance report from the above professional must be presented at a Board Meeting or a Committee meeting (having at least one independent director, if required), held immediately after closure of GDR issue formalities.
5.	Issue of Depository Receipts - GDRs can be issued through public offering, private placement, or any other method followed abroad, and may be listed or traded on overseas platforms. - GDRs can be issued: - Against new shares, or - As a sponsored issue against existing shares held by shareholders, subject to conditions by Central Government or RBI. - Underlying shares are to be allotted in the name of the overseas depository bank, which will issue GDRs abroad.
6.	Voting Rights - A GDR holder becomes a member and gets voting rights only after conversion of GDRs into underlying shares, following the Scheme and the Act. - Till conversion, the overseas depository has the right to vote on behalf of the GDR holders. This is governed by an agreement between the overseas depository, GDR holders, and the company.
7.	Proceeds of the Issue - GDR proceeds may be: - Remitted to a bank account in India, or



	- Deposited in an Indian bank abroad or a foreign bank (which is a Scheduled Bank under RBI Act, 1934 and has operations in India). - Such a foreign bank must furnish required information to Indian authorities. b. In case of sponsored issues, sale proceeds are credited to the respective shareholders' bank accounts.
8.	Pre-existing GDRs Companies that issued GDRs before 01.04.2014 must comply with these rules within 6 months from that date.
9.	Non-Applicability of Certain Provisions The following provisions of the Companies Act, 2013 do not apply to GDR issues: - Provisions related to public issue of shares or debentures. - Provisions applicable to a prospectus or offer document.



12.6. REGISTRATION OF CHARGES

1. Charge and Types of Charges

Content	
1.	Definition As per Sec 2(16), a charge is: - An interest or lien created on the property or assets of a company or its undertakings (or both) as security. - Includes a mortgage.

2. Duty of company to register Charges.

Content	
1.	Duty of the Company: ✓ It is the duty of every company creating a charge to register particulars of charge created on its property, assets, or undertakings (tangible or non-tangible), whether located in or outside India. ✓ Even a charge created by deposit of title deeds shall be registered. Registration by Charge Holder If a company fails to register the charge within 30 days, the person in whose favour the charge is created (i.e., charge-holder) can register the charge. Registration by Purchaser If a company purchases a property with an existing charge, the purchasing company shall register the charge in its name with the RoC.
2.	The particulars of charge in form no. CHG-1 (other than debentures) form no. CHG-9 (debentures), along with a copy of the instrument (if any) creating the charge, duly signed by the company and the charge holder, shall be filed with the ROC within 30 days of creation of Charge, along with the prescribed fee.
3.	Registration Time Limit (Before 02-11-2018) - Not Registered Within 30 Days: Registrar may allow registration within 300 days from charge creation. - Not Registered Within 300 Days: Registration allowed within 6 months from 02-11-2018 with prescribed additional fees.
4.	Registration Time Limit (On or After 02-11-2018) - Not Registered Within 30 Days: ROC may allow registration within 60 days (additional 30 days) with additional fees. - Not Registered Within 60 Days: ROC may allow further 60 days upon payment of ad valorem fees.
5.	Procedure for Extension The Registrar may allow registration of charge within 300 days from its creation, on the company's application and payment of additional fees.



	If not registered within 300 days, the company must seek extension of time. b. Any subsequent registration of a charge shall not affect rights already acquired by others in the property before such charge was registered.
6.	a. Certificate of Registration: Upon registration of a charge, the company and the charge holder (if applicable) will receive a Certificate of Registration in Form CHG-2. b. Conclusive Evidence: The certificate issued by the ROC serves as conclusive evidence that all legal requirements under Chapter VI of the Act and related rules for charge registration have been fulfilled.
7.	Subsequent Registration a. Any charge registered within the extended period will not affect any rights acquired over the property before the charge was actually registered. b. Failure to register may prevent the creditor from gaining legal priority or advantage.
8.	Consequences of Non-Registration a. Unregistered charges are not considered by the liquidator or creditors. b. Non-registration of charge shall not negate the contract or repayment obligation. c. Charge-holder loses priority to other creditors with earlier registration.

3. Registration of Charge by a Charge Holder

Content	
1.	Charge Registration by Charge-Holder If a company fails to register a charge created on its property within the prescribed period of 30 days, the charge-holder may apply to the ROC for registration along with the instrument of charge in the prescribed time, form, and manner.
2.	Registrar's Notice to Company a. Upon receiving the application from the charge-holder, the ROC will issue a notice to the company. b. If no objection is raised, the ROC will allow registration within 14 days after issuing the notice, subject to payment of the prescribed fees.
3.	Company Objection The ROC will not permit registration by the charge-holder if the company: a. Registers the charge itself. b. Provides sufficient cause why charge should not be registered.
4.	Recovery of Fees If registration is made based on the charge-holder's application, the charge-holder is entitled to recover from the company the fees or additional fees paid to the ROC for the registration of the charge.

4. Modification of Charge

Content	
1.	Any modification in charge to be registered by the company in accordance with Sec 77.



2.	Modification includes: - Any Variation in the terms and conditions of the agreement, including rate of interest. - Variation in the extent or operation of any charge.
3.	Certificate of Modification Once modification is registered u/s 79, the ROC issues a certificate of modification in Form CHG-3 .
4.	Certificate - Conclusive Evidence The certificate issued by the ROC is conclusive evidence that the requirements of Chapter VI of the Act and rules have been met.

5. Deemed Notice of Charge

Content	
1.	When a charge on a company's property, assets , or undertakings is registered u/s 77 , any person acquiring those assets or shares is deemed to have notice of the charge from the date of registration . (Doctrine of Constructive Notice)
2.	The person acquiring the property or asset is deemed to have notice of the charge from the registration date .

6. Reporting of Satisfaction of Charge

Content	
1.	Time Line A company shall give intimation of payment or satisfaction of a registered charge to the ROC in CHG-4 within 30 days from the date of payment or satisfaction.
2.	Extended Period of Intimation The Registrar may allow such intimation within 300 days on the application of the company or charge holder, with additional fees .
3.	Notice to Charge Holder by ROC - Upon receiving the intimation, the ROC shall send a notice to the charge holder, asking them to show cause within 14 days why payment or satisfaction in full should not be recorded. - If no cause is shown by the charge-holder, the ROC will enter a memorandum of satisfaction in the register of charges and inform the company. No notice is required if the CHG-4 is signed by the charge holder. - If the charge-holder shows cause, the ROC shall record the note in the register of charges and inform the company.
4.	Effect of Section 82 Sec 82 does not affect the powers of the ROC u/s 83 , regardless of whether the intimation is received by the ROC .
5.	Issue of certificate of satisfaction: In case the ROC enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5 .



7. Registers of charges maintained by ROC

Content	
1.	Register of Charges by Registrar a. ROC shall maintain a register of charges for every company in the prescribed form and manner. b. The MCA portal (www.mca.gov.in/MCA21) is deemed to be the official register of charges for this purpose. c. The ROC shall be open for inspection by any person upon payment of the prescribed fee.

8. Registers of charges maintained by Company

Content	
1.	Register of Charges by Company a. Every company shall maintain a Register of Charges in Form CHG-7 at its registered office. b. The register shall include all charges and floating charges affecting any company property, assets, or undertakings, along with the prescribed particulars. c. A copy of the instrument creating the charge must also be kept at the registered office along with the Register of Charges.
2.	Inspection of Register & Instrument The register of charges and the instrument of charges shall be open for inspection during business hours to: a. Members or creditors (free of charge). b. Other persons (on payment of prescribed fees). Subject to reasonable restrictions imposed by the company's AOA.
3.	Preservation of Register The register of charges shall be preserved permanently.
4.	Instruments Preserved for 8 years from the date of charge satisfaction.

9. Powers of ROC to Make Entries of Satisfaction

Content	
1.	The Registrar is empowered to make entries about satisfaction or release of charges even without intimation from the company.
2.	Applicable Situations a. Property subject to a charge is sold to a third party. b. Neither the company nor the charge-holder intimates' satisfaction of the earlier charge.
3.	Registrar's Actions Based on evidence, the ROC can enter a memorandum of satisfaction in the register of charges, indicating that:



	a. Debt has been satisfied wholly or partially. b. Part of the property/undertaking has been released from the charge. c. Property has ceased to form part of the company's assets.
4.	Non applicability of Sec 82 a. Sec 82(4) clarifies that Sec 82 does not restrict Registrar's powers u/s 83. b. The ROC can act even without receiving intimation from the company.
5.	Information to Affected Parties The Registrar must inform affected parties within 30 days of making an entry in the register of charges.
6.	Issue of Certificate Upon entering a full memorandum of satisfaction, the ROC shall issue a Certificate of Registration of Satisfaction of Charge in Form CHG-5.

10. Intimation of Appointment of Receiver or Manager u/s 84

Content	
1.	Notice to Company and ROC: a. If a person obtains a court order for the appointment of a receiver or a manager for property subject to a charge, or b. If a person appoints such a receiver or manager under a power granted in any instrument, c. They shall give notice to the company and the ROC within 30 days of the order or appointment. The notice shall include a copy of the order or instrument.
2.	ROC Duty On payment of prescribed fees, the ROC shall register the particulars of the receiver, person, or instrument in the register of charges.
3.	Cessation of Appointment a. Upon cessation of the appointment, the person appointed shall give notice to the company and ROC using Form CHG-6. b. The Registrar shall register the cessation notice.

11. Punishment of contravention of this chapter

Content	
1.	Punishment for Contravention (Sec. 86(1)) If a company defaults in complying with any provisions of this Chapter: a. Company: Penalty of ₹1 lakh to ₹10 lakhs. b. Every officer in default shall be punishable with: ▪ Imprisonment up to 6 months, or ▪ Fine between ₹25,000 to ₹1 lakh, or ▪ Both.
2.	Punishment for Fraud (Sec. 86(2)) a. If any person wilfully furnishes:



- ✓ False or incorrect information, or
 - ✓ Knowingly suppresses material information required to be registered u/s 77:
- b. He shall be liable for action u/s 447.

12. Rectification by CG in register of charges

Content	
1.	Authority CG (Now RD) can order rectification of the Register of Charges.
2.	Cases of Default a. No intimation given to the ROC regarding payment or satisfaction of charge within the specified time. b. Omission or misstatement in filings related to: ✓ Any charge or its modification. ✓ Memorandum of satisfaction or entries u/s 82 (Report satisfaction of charge) or u/s 83 (Registrar's power to enter satisfaction and release).
3.	Conditions for Rectification The CG shall be satisfied that the default was: a. Accidental, due to inadvertence, or caused by other sufficient reasons. b. Did not prejudice creditors or shareholders.
4.	Application Form Form CHG-8 shall be filed by the company or an interested person.
5.	Terms and Conditions The CG can impose terms and conditions it considers appropriate when ordering rectification.
6.	Rule 12 of the Companies (Registration of Charges) Rules, 2014 The CG may, based on an application in Form CHG-8: a. Rectify omission or misstatement in any prior filing with the ROC. b. Extend time for satisfaction of charge (if the filing was not made within 300 days of payment/satisfaction).



12.7. MANAGEMENT AND ADMINISTRATION

1. Register of Members

Content	
1.	Register of Members Every Company shall maintain a - Register of members for each class of equity and preference shares - Register of debenture-holders, and - Register of other security holders. - Foreign register of members and debenture holders
2.	Time Period for Entries - Entries shall be made within 7 days after approval by the Board or its committee for allotment, transfer of shares, debentures, or securities. - In case of buyback, capital reduction, sub-division, consolidation, issue of sweat equity shares, transmission of shares, etc., the company must update the register of members within 7 days of approval by the Board or Committee.
3.	Place of Maintenance The registers shall be maintained at the company's registered office unless a SR is passed in a general meeting. This resolution may authorize keeping the register at: - Any other location within the same city, town, or village as the registered office, or - Any place in India where more than 1/10th of the total registered members reside.
4.	Other Information in the Register - If any judicial, revenue, SEBI, or other competent authority issues an order attaching shares, debentures, or other securities and directs the remittance of dividends or interest, a reference to such an order shall be recorded in the relevant register. - In companies with listed securities, any pledge, charge, lien, or hypothecation created by promoters on their securities, including details of the pledgee/pawnee and any revocation, shall be recorded in the register within 15 days of the event. - If the promoters of a listed company have pledged, hypothecated, or created a charge or lien on any securities of the company in connection with a joint venture, the details shall be entered in the register within 15 days of the event.
5.	Particulars in Register - In case of company limited by shares, Register of members shall be maintained in form MGT-1 - In case of company not having share capital, Register shall contain particulars: ✓ member's name, address, email, PAN or CIN, Nationality, ✓ Guardian's details for minors, ✓ Date of becoming a member, ✓ Date of cessation ✓ Amount of guarantee,



	✓ Any other interest, and ✓ Instructions by the members (Ex: Sending of Notices)
6.	Register of Debenture Holders A separate register for debenture holders or security holders shall be maintained in Form MGT-2 .
7.	Updating of Register of Members Changes in a member's status due to death, insolvency, name change, etc., shall be updated in the respective registers. - If any rectification is made based on an order of a competent authority under the Act, a reference to such order must be recorded in the respective register.
8.	Index Every register shall have an index of names, unless the number of members is less than 50 .
9.	Depository The register and index maintained by a depository under the Depositories Act, 1996 are treated as the corresponding register for purposes of this Act.
10.	Penalty for Non-Compliance - The company and every officer who is in default shall be punishable with a fine of not less than ₹50,000, which may extend up to ₹3,00,000. - If the failure continues, there shall be an additional fine of up to ₹1,000 for each day after the first day during which the failure continues.
11.	Nature of Offence The offence under this section is compoundable u/s 441 of the Act.
12.	Authentication of Entries Entries in registers shall be authenticated by the CS or a person authorized by the Board , mentioning the date of the board resolution .

2. Foreign Register

Foreign Register of Members, Debenture Holders, or Security Holders	
1.	- A company with share capital or issued debentures or securities may, if authorized by its AOA, maintain a Foreign Register in a country outside India. - This register records details of members, debenture holders, security holders, or beneficial owners residing in that country.
2.	ROC Filing: ✓ The company shall file Form No. MGT-3 (along with fees) with the RoC within 30 days of opening the Foreign Register, stating its location. ✓ If the register's situation changes or is discontinued, the company shall file Form No. MGT-3 within 30 days of such change. - The Foreign Register is considered a part of the company's Principal Register of members, debenture holders, or security holders. - The Foreign Register shall be maintained in the same format as the Principal Register.



	d. Inspection & Closure: ✓ The Foreign Register shall be open for inspection and may be closed in the same way as the Principal Register. ✓ Before closing, an advertisement shall be published in at least 2 newspapers circulated in the location where the register is kept. e. If the Foreign Register is maintained outside India, the decision of competent authority of that country is binding on any rectifications. f. Entries in the Foreign Register can only be made after approval by the BOD or its authorized committee. g. Transmission & Duplication: ✓ The company shall transmit a copy of every entry in the Foreign Register to its registered office in India within 15 days of making the entry. ✓ A duplicate register, regularly updated, shall be kept at the registered office in India as part of the Principal Register. ✓ Transactions related to securities in a Foreign Register cannot be registered in any other register during the continuance of such foreign register.
3.	Discontinuation of Foreign Register: The company may discontinue the Foreign Register at any time. When discontinued, all entries must be transferred to: Another Foreign Register maintained by the company outside India, or - The Principal Register in India.

3. Declaration of beneficial interest.

Content	
1.	a. Declaration by Registered Holder of Shares A person whose name is entered in the register as the registered owner shall file a declaration in Form MGT-4 within 30 days. b. Declaration by Person Holding Beneficial Interest in Shares A Person holding beneficial interest shall file Form MGT-5 within 30 days after acquiring the interest. A declaration shall be filed within 30 days if there is a change in beneficial interest in the shares. c. Filing of Return by the Company with the Registrar The company shall file a return in Form MGT-6 within 30 days from date of receipt of declaration.
2.	If the declaration is not filed, the beneficial owner cannot enforce any rights with respect to those shares.
3.	The company's obligation to pay dividends is not affected by the provisions of this section.
4.	Meaning of Beneficial Interest Beneficial interest refers to person's right or entitlement, either directly or indirectly, through any contract, arrangement, or otherwise, to: Exercise rights attached to the share, either alone or with others.



	b. Receive dividends or participate in any distribution related to the share.
5.	Penalty for Default a. Failure to file declarations leads to a penalty of Rs.50,000 (Rs. 1,000/day for continuing failure). b. If the company fails to file the return, the company and officers in default may face a fine shall be imposed which shall not be less than ₹500 but may extend to ₹1,000 . c. If the failure is a continuing one , there shall be a further fine which may extend to ₹1,000 for every day after the first day during which the failure continues.

4. Declaration in respect of Significant beneficial interest in any share.

Content	
1.	a. Every individual who holds beneficial interests of 25% or more (or such other percentage as may be prescribed) in the shares of a company, known as a significant beneficial owner, must make a declaration to the company. b. This declaration must state the nature of his interest and other required particulars, in the manner and within the period prescribed. c. However, the CG may specify certain class or classes of persons who are not required to make this declaration.
2.	Every company must maintain a register of the interests declared by individuals, along with any changes in those interests. This register must include: - the name of the individual, - his date of birth, address, details of ownership in the company, and - such other details as may be prescribed.

5. Closure of Registers

Content	
1.	Time limits for closure a. A company must give at least 7 days' notice (or a shorter period as specified by SEBI) before closing the register. b. The register can be closed for a maximum of 30 days at a time. c. The total period for closure should not exceed 45 days in a year.
2.	Penalty for non-compliance a. If the company fails to give the prescribed notice, or exceeds the time limits, company & its officers are liable to a penalty of ₹5,000 per day , with a maximum fine of ₹1,00,000 . b. The offence is compoundable u/s 441 .
3.	Notice requirements a. A company must provide at least 7 days' prior notice when closing the register. b. If the company is listed , it must publish the notice in: ✓ A vernacular newspaper. ✓ An English newspaper circulating in the district.



	c. The notice must be published on the company's website .
4.	Exemption Private companies are exempt from publishing public notices in newspapers. However, they must issue a 7-day notice to their members before closing the registers.

6. Annual Return

Content	
1.	Annual Return Filing a. Every company (except OPC & Small Company) must file annual return in Form MGT-7 . b. OPC and Small Company must file annual return in Form MGT-7A .
2.	Contents of annual return The annual return must include details on: - Registered office, principal business activities, and information about holding, subsidiary, and associate companies. - Shares, debentures, and shareholding pattern. Members and debenture-holders with changes. Promoters, directors, and KMP with changes. - Meetings (members, board, committees), attendance. Remuneration of directors and KMP. Penalty or punishment imposed on the company and its officers. Compliance certifications and disclosures. - Details on shares held by Foreign Institutional Investors (FII). - Any other prescribed matters.
3.	Signing of Annual Return a. The annual return must be signed by a director and CS (or by a CS in practice if no CS). b. For OPC and small companies , the return should be signed by CS (or director if no CS).
4.	Certification a. Annual return must be certified by a CS in practice for: ✓ Listed companies, ✓ Companies with PUSC of ₹10 crore or more, ✓ Companies with turnover of ₹50 crore or more. b. The certificate must confirm that the return is accurate and compliant with the Act, in Form MGT-8 .
5.	Website Disclosure a. Companies must place a copy of the annual return on their website (if applicable). b. The web-link to the return must be disclosed in the Board's report .
6.	RoC Filing Deadline a. The annual return must be filed with the ROC within 60 days from the AGM . b. If no AGM is held, the return must be filed within 60 days from the due date for holding the AGM, with reasons for not holding the AGM.
7.	Penalty



a. **Penalty on Company and Officers**

If a company fails to file its annual return, the company shall be punishable with a fine minimum ₹50,000, maximum ₹5 lakhs.

Every officer in default shall be punishable with imprisonment up to 6 months, or fine minimum ₹50,000, maximum ₹5 lakhs, or both.

b. **Penalty for CS**

If a CS in practice certifies the annual return not in conformity with the requirements, he shall be punishable with fine minimum ₹50,000, maximum ₹5 lakhs.

7. Place of keeping and Inspection of registers, returns, etc.

Content

1. **Place of Maintenance of Registers**

- a. **Registers** and **Annual returns** shall be kept at the **registered office** of the company.
- b. Registers or copies can also be kept at another location in **India** if approved by a **SR** and if more than 1/10th of the members reside there.

2. **Inspection**

- a. Registers and indices must be **open for inspection** during business hours by:
 - ✓ Members, debenture holders, security holders (free of charge)
 - ✓ Other persons (on payment of a fee not exceeding ₹50 per inspection).
- b. Inspection shall be available for **at least 2 hours** on every **working day**.

3. **Extracts and Copies**

- a. Members, debenture holders, or security holders can take **extracts** from registers without fee or **copies** on payment of **₹10 per page**.
- b. **Copies or extracts** must be provided **within 7 days** after payment.
- c. Certain details such as **address, email ID, Unique ID, and PAN** will **not** be available for inspection or copies.

4. **Preservation of registers and returns**

- a. Register of **members** shall be preserved **permanently** and kept in the custody of **CS** or authorized person.
- b. Register of **debenture holders/other securities** shall be preserved for **8 years** from the redemption date.
- c. Copies of **documents filed with ROC** shall be preserved for **8 years**.
- d. **Foreign register** must be preserved **permanently** unless discontinued and transferred.

5. **Penalty for refusing inspection or copies**

- a. If a company refuses inspection or making extracts, it and its **officers** are liable for a penalty of **₹1,000 per day**, up to a **maximum of ₹1,00,000**.
- b. **CG** can direct immediate inspection or allow extracts to be taken.

6. **Registers to be Evidence**

Registers, indices, and copies of **annual returns** will serve as **prima facie evidence** of the matters recorded under the Act.



8. Notice of a Meeting

Content	
1.	Notice of a Meeting a. 21 clear days' notice is required, excluding the date of notice and the meeting date. b. Notice must be given via writing, electronic mode, or prescribed mode to ✓ All members, legal representatives of deceased members, ✓ Assignees of insolvent members, ✓ Auditors, and directors.
2.	Accidental Omission a. Omission or non-receipt of notice does not invalidate the meeting. b. The company must prove the omission was accidental.
3.	Meetings Held at Shorter Notice GM can be called after giving shorter notice with the consent of members (in writing or electronic mode): a. AGM: at least 95% of members entitled to vote. b. Other than AGM: ▪ For companies with share capital: Majority of members holding >= 95% of PUSC that gives right to vote at the meeting. ▪ For companies without share capital: members having >= 95% of total voting power.
4.	Contents of Notice The notice shall include the day, date, time, place, and the business agenda.
5.	Authority to Call GM a. Board approval is required to call a GM (AGM/EGM). b. Individual directors cannot call a GM unless ratified by the Board.
6.	Mode of Sending Notice a. Notices can be sent via email (text, attachment, or link). b. Subject line shall include company name, meeting type, date, and place. c. Notices shall also be placed on the company's website and any government-notified website. d. Emails shall be sent via secure programs, maintaining transmission records. e. Email failure beyond the company's control absolves liability. f. The e-mail shall be sent to the person entitled to receive it, as per the company's records provided by the depository. g. The company must also give members an opportunity at least once in a FY to register or update their email address. This request can only be made by members who have not registered their email or need to update it, not by those whose email is already recorded.
7.	If a GM notice is sent by post, it will be considered served 48 hours after the letter is posted.



9. Explanatory Statement

Content	
1.	Explanatory Statement Required for special business in a general meeting. Must include: Nature of concern/interest (financial or otherwise) of: Directors and Manager, KMP Relatives of the above. - Other information to help members understand the meaning, scope, and implications of the business.
2.	Ordinary Business and Special Business - Ordinary Business: Only at AGMs and includes: - Approval of Financial Statements and reports of BOD & Auditors. Dividend Declaration. - Appointment of Directors in the place those retiring. - Appointment & fixation of remuneration of Auditors. - Special Business: Any other business at AGMs; all business at EGMs. - Explanatory Statement not required for Ordinary Business.
3.	Additional Disclosure for Special Business - If it affects another company, disclose extent of shareholding (2% or more of PUSC) of promoters, directors, managers, or KMPs. - Mention time and place for inspecting documents related to the item of business.
4.	Effect of Non-Disclosure - Promoter, director, manager, KMP, or their relatives must hold in trust any benefit gained from non-disclosure or insufficient disclosure in the explanatory statement. - They shall also be liable to compensate the company for the benefit received, in addition to any other legal action under this Act or any other law.
5.	Penalty for Contravention If provisions are violated defaulting promoter, director, manager, or KMP liable for a penalty of ₹50,000 or 5 times the benefit received whichever is higher .

10. Quorum of a Meeting

Content	
1.	Quorum means the minimum number of members required for a valid meeting. Private Company: 2 members personally present Public Company: ✓ Up to 1000 members: 5 members personally present ✓ 1001-5000 members: 15 members personally present ✓ More than 5000 members: 30 members personally present - Members personally present refers to members entitled to vote on the meeting agenda. - AOA may indicate higher quorum



2.	Adjourned Meeting Due to Want of Quorum a. If quorum not present within 30 minutes of the scheduled time: ✓ Meeting adjourned to the same day, time, and place in the next week (or as determined by the Board). ✓ Meetings if called by Requisitionists stands cancelled. b. If a meeting is adjourned or there is a change in the day, time, or place of the meeting, ✓ The company must provide at least 3 days' notice to the members. ✓ This can be done either individually or by publishing an advertisement in newspapers one in English and one in the vernacular language circulating in the area where the company's registered office is located. c. If quorum still not present at the adjourned meeting, members present shall form the quorum.
3.	Representation of President & Governors a. The President of India or the Governor of a State, if they are a member of a company, can appoint a representative to attend meetings on their behalf. b. Such appointed person will have the same rights and powers as the President or Governor, including voting rights through proxy and postal ballot.
4.	Representation of Corporations a. If a body corporate is a member or creditor (including a debenture holder) of a company, it may authorize a representative to attend meetings on its behalf. b. Such representative will have the same rights and powers as the body corporate, including the right to vote by proxy and postal ballot.

11. Chairman in the Meetings

Content	
1.	Election of Chairman by Members a. Election by Show of Hands: Members personally present shall elect a Chairman by show of hands, unless the articles state otherwise. b. Poll Demand: If a poll is demanded, the Chairman elected by show of hands remains in position until another person is elected via poll.
2.	Right to Casting Vote a. The Chairman has a casting vote in Board and General Meetings if the company's AOA specifically allow it. b. A casting vote means that if there is equality of vote on any matter being decided, the Chairman can cast a second vote to break the deadlock. c. If the AOA do not provide for a casting vote, an OR on which there is equality of votes is deemed to be dropped.



12. Proxy

Content	
1.	Right to Appoint Proxy Members entitled to attend and vote at a meeting can appoint another person as a proxy to act on their behalf.
2.	Proxy Rights Proxy shall not have right to speak at the meeting and can only vote on a poll .
3.	Companies Exempted - Appointment of proxies does not apply to companies without share capital unless the AOA states otherwise. CG can prescribe companies whose members cannot appoint proxies.
4.	Members of Sec 8 companies can only appoint a proxy who is also a member of the company.
5.	Proxy Limitations - A proxy can represent up to 50 members and hold a maximum of 10% of voting share capital. - Members holding more than 10% of total share capital carrying voting rights can appoint one proxy, but that person cannot act as a proxy for others.
6.	Proxy Instrument - The instrument appointing a proxy shall be used Form No. MGT. 11. - Proxy instrument shall be signed by the appointer or their authorized attorney. - For corporate members, the instrument should be under the seal or signed by an officer or attorney. - AOA cannot impose additional requirements for executing proxies.
7.	Disclosure in Notice of meeting - Every notice calling a meeting of a ✓ company with share capital or ✓ where proxy voting is allowed shall clearly state that a member who has the right to attend and vote can appoint one or more proxies to do so on their behalf. - Notice shall also mention that a proxy need not be a member of the company. - Contravention: ₹5,000 penalty for non-compliance with proxy disclosures in notices.
8.	Validity of Proxy Proxies submitted 48 hours before the meeting are valid, even if AOA require a longer notice period .
9.	Inspection of Proxies - Every member with voting rights at a company meeting or on any resolution can inspect the lodged proxies during business hours, starting 24 hours before the commencement of meeting and until meeting ends. - However, they must give at least 3 days' written notice of their intention to inspect.



10. Penalties for Default

If a company issues proxy appointment invitations at its expense, specifying one or more persons as proxies for a meeting, any officer responsible for issuing, authorizing, or permitting such invitations shall be liable to a penalty of ₹1,00,000.

Exception: No penalty if proxy forms or lists are provided on member request and made available to all eligible members.

13. Restrictions on Voting Rights

Content	
1.	a. The Articles of Association may restrict a member from exercising voting rights if: ✓ Any amount is due from the member on calls or other sums payable to company, or ✓ The company has exercised its right of lien over the shares. b. A company cannot prohibit voting rights on any grounds other than those mentioned above.
2.	In a poll at a meeting, a member with more than one vote does not have to Use all votes or cast all votes the same way.
3.	Modes of Voting Shareholders can cast their votes through: a. Voting by show of hands b. Voting by electronic means c. Voting by demand of poll d. Voting by Postal Ballot

14. Voting Under Show of Hands

Content	
1.	Voting is usually done by show of hands unless Voting is demanded by poll or electronic means.
2.	The Chairman's declaration in the minutes book is conclusive evidence that the resolution is passed.

15. E-Voting means

Content	
1.	E-voting allows members of certain companies to vote electronically on resolutions at general meetings.
2.	Applicability of E-voting: The Central Government may prescribe the class or classes of companies and the manner in which a member may exercise his right to vote by electronic means.
3.	Electronic Voting System E-voting system involves a secure, system-based process to: a. Display electronic ballots, b. Record votes and count the number of votes for and against, c. Store the voting results in a centralised server with cyber security.



16. Procedure for conducting e-voting.

Content	
1.	A member may exercise the right to vote via electronic means on resolutions, and the company must pass the resolutions as per this rule.
2.	Companies offering e-voting must follow the procedure outlined below. a. Notice of Meeting The notice must be sent to all members, directors, and auditors by one of these methods: ✓ Registered post, speed post, or courier service ✓ Electronic means (e-mail) b. The notice must also be placed on the company's website and the agency's website immediately after sending to members. c. Notice Content: ✓ The notice must include: ▪ The facility for voting by electronic means. ▪ The availability of voting by ballot/polling at the meeting. ▪ Members who voted by remote e-voting cannot vote again at the meeting. ✓ The notice must specify: ▪ Process for voting electronically, and time schedule. ▪ Login ID, password details, and secure voting process. d. E-Voting Time The remote e-voting facility will remain open for at least 3 days, closing at 5:00 PM on the day before the meeting. e. Option for Remote E-Voting Members holding shares on the cut-off date can opt for remote e-voting. ✓ Votes cannot be changed after being cast. ✓ Members can attend the meeting but cannot vote again if they voted remotely. f. E-Voting Blocked After the e-voting period ends, the voting facility will be blocked.
3.	Publication of Notice: a. The company must publish a public notice as an advertisement immediately after sending meeting notices but at least 21 days before the general meeting. This notice should appear: ✓ At least once in a vernacular newspaper (in the district's principal language) with wide circulation where the registered office is located. ✓ At least once in an English newspaper with nationwide circulation. b. The advertisement must include: ✓ A statement that the business can be transacted through electronic voting. ✓ Start date and time of remote e-voting. ✓ End date and time of remote e-voting.



	✓ The cut-off date for eligibility (not earlier than 7 days before the general meeting to determine voting eligibility). ✓ Instructions for shareholders who acquired shares after notice dispatch to obtain login credentials. ✓ A statement that: ▪ Remote e-voting won't be allowed after the deadline. ▪ The company will provide a voting option at the meeting. ▪ A member can attend the meeting after remote e-voting but cannot vote again. ▪ Only those listed as members/beneficial owners on the cut-off date can use remote e-voting and vote at the meeting. ✓ Company's website address and the agency's website displaying the meeting notice. ✓ Contact details (name, designation, address, email, phone) of the person handling e-voting grievances. Note: ublic notice must also be available on the company's and the agency's websites.
4.	Scrutinizer a. The Board of Directors shall appoint one or more scrutinizers to oversee the voting and remote e-voting process fairly and transparently. The scrutinizer can be: ✓ A CA, CMA, or CS in practice or An Advocate. ✓ Any other reputable person who is not an employee of the company and is considered capable by the Board. b. The scrutinizer may seek assistance from a non-employee expert familiar with the electronic voting system.
5.	The Chairman allows voting at the meeting for members who haven't voted remotely , with the help of the scrutinizer.
6.	Counting of Votes a. The scrutinizer shall, immediately after the voting concludes at the general meeting: ✓ First, count the votes cast at the meeting. ✓ Then, unblock the remote e-voting results in the presence of at least 2 independent witnesses (not employees of the company). ✓ Within 3 days, prepare a consolidated scrutinizer's report detailing the total votes in favour or against and submit it to the Chairman or an authorized person, who shall countersign it. b. The Chairman or the authorized person shall declare the voting results immediately. c. The way members voted (for or against) shall remain confidential and will not be accessible to the Chairman, Scrutinizer, or any other person until the votes are officially cast at the meeting.
7.	The scrutinizer can access details about members who voted remotely to ensure they don't vote again .
8.	Register a. The scrutinizer maintains a register of votes, including member details and voting information.



	b. The scrutinizer safeguards the register and all related voting documents until the Chairman signs the minutes.
9.	The results are posted on the company's and agency's websites , and forwarded to the stock exchange (applicable to listed Company).
10.	The resolution is deemed passed when the required votes are received at the general meeting .
11.	A resolution for e-voting cannot be withdrawn once proposed .

17. Poll

Content	
1.	Demand for Poll a. Before or at the time of declaring the result of voting by a show of hands, the Chairman may conduct a poll: ✓ On his own, or ✓ Upon demand by specified persons. b. Who Can Demand a Poll? ✓ For Companies with Share Capital: Members present in person or by proxy (if allowed). ▪ shall hold at least 1/10th of the total voting power, or ▪ shall hold shares with a paid-up value of ₹5,00,000 (or a higher amount, if prescribed). ✓ For Other Companies (without share capital): Any member(s) present in person or by proxy (if allowed) shall hold at least 1/10th of the total voting power.
2.	Withdrawal of Demand for Poll The demand for poll can be withdrawn at any time by those who made the demand .
3.	Time Limit for Conducting Poll The poll must be conducted within: a. Immediately for adjournment of the meeting, appointment of Chairman. b. Not later than 48 hours from the demand for any other question, as directed by the Chairman.
4.	Appointment of Scrutinizer The Chairman appoints a scrutinizer to oversee the polling process and report the votes.
5.	Duties of Scrutinizer The scrutinizer's duties include: a. Ensuring proper conduct of the poll process. b. Maintaining accurate records of the poll. c. Submitting a report to the Chairman with details of votes for and against the resolution. d. Ensuring compliance with Sec 109 and Rule 21.



18. Procedure for Conducting Voting Under Poll.

Content	
1.	Powers of Chairperson Chairman regulates how the poll will be conducted and appoints the necessary scrutinizers.
2.	a. Chairman's Responsibilities Chairman ensures: ✓ Scrutinizers are provided with Register of Members, Attendance Register, Proxies, and relevant documents. ✓ Scrutinizers are given all documents as per sections 105, 112, and 113. ✓ Polling papers are arranged and distributed to members and proxies. For joint holders, the first named holder gets the paper. ✓ Scrutinizers record polling papers received by initialing them. ✓ Scrutinizers seal and lock the empty polling box in the presence of members and proxies. ✓ Scrutinizers open the polling box in the presence of 2 witnesses after voting. ✓ If there's ambiguity about the validity of a proxy, scrutinizers decide in consultation with the Chairman. ✓ If a proxy and the member both vote, the proxy's vote will be disregarded. ✓ Scrutinizers count votes and prepare a report to the Chairman. ✓ For electronic voting, the company supports scrutinizers in voting and counting. ✓ The scrutinizers' report includes total votes cast, valid votes, and votes in favour/against, including invalid votes. ✓ Scrutinizers submit the report to the Chairman, who countersigns it. ✓ Chairman declares result of poll either personally or through an authorized person. b. Scrutinizers submit a report in Form MGT.13 within 7 days from the date of the poll. c. The result of the poll is deemed to be the decision of the meeting on the resolution.
3.	Exemption: Applicability of Sections 101 to 107 and 109 to Private Companies a. These sections apply unless specified otherwise or in the AOA of the company. b. Private companies that have filed FS and annual return are exempt from some provisions.

19. Postal ballot

Content	
1.	Postal Ballot means voting by post or through electronic mode.
2.	A company: a. Must transact specific business items declared by the CG via postal ballot only. b. May transact other business items (except ordinary business or items requiring director/auditor hearing) via postal ballot. Note: Items mandated for postal ballot may also be transacted at a general meeting if electronic voting is available.



3.	A resolution approved by requisite majority via postal ballot is deemed as passed at a general meeting.
4.	a. Items mandated for postal ballot may be transacted at a general meeting if electronic voting is provided. b. OPC and companies with up to 200 members are exempt from postal ballot requirements.
5.	Items mandated for postal ballot a. Alteration of objects clause of memorandum. b. Alteration of articles of association. c. Change in registered office location beyond local limits. d. Change in objects of raised funds (unutilized public funds). e. Issue of shares with differential voting/dividend rights. f. Variation in rights of shares/debentures. g. Buy-back of shares. h. Election of a director by small shareholders. i. Sale of whole/substantial undertaking. j. Providing loans, guarantees, or securities exceeding prescribed limits.

Postal Ballot Voting and Counting

1.	Voting Rights A member's voting rights are proportional to their share in the paid-up capital.
2.	Types of Ballots a. Assent ballots b. Dissent ballots c. Partial votes (e.g., partially assenting, partially dissenting, or not using all shares for voting). d. Invalid ballots (e.g., signature issues, overwriting).
3.	Resolution Approval Resolution is deemed passed if assents exceed dissents .

20. Procedure for conducting voting under postal ballot.

Content

1.	Notice to Shareholders Company sends a notice to all shareholders along with a draft resolution and reason for the postal ballot. Shareholders must send their assent or dissent in writing within 30 days from dispatch.
2.	Mode of Sending Notice The notice can be sent via: a. Registered Post or Speed Post b. Electronic means (e.g., registered e-mail) c. Courier service
3.	Advertisement



	An advertisement must be published in: Vernacular newspaper (in the language of the district where the company's registered office is located) English newspaper (with wide circulation in the district) The advertisement must include: Statement about voting by postal ballot (including electronic voting) - Date of dispatch and commencement of voting End date for voting - Any postal ballot received beyond the due date is invalid - Members who have not received postal ballot forms may request and obtain a duplicate from the company. Contact details for grievances
4.	Notice on Company Website The postal ballot notice shall be uploaded on the company's website immediately after dispatch. It will remain there until the last date for receipt of votes.
5.	Scrutinizer Board shall appoint Scrutinizer (not in employment of the company) to oversee the postal ballot process. - The scrutinizer shall be willing to be appointed and available for determining the majority. - The scrutinizer keeps all postal ballots safe and cannot deface, destroy, or disclose the shareholder's identity after receiving the vote. - The scrutinizer submits the report within 7 days of receiving the last postal ballot. - The scrutinizer maintains a register (manual/electronic) to record: ✓ Shareholder's details (name, address, folio number, shares held, voting rights) ✓ Invalid ballots (e.g., defaced, mismatched signatures) - The scrutinizer keeps all postal ballots and related papers safe until the Chairman approves and signs the minutes. Then, the scrutinizer returns the materials to the company for safe preservation. - Any postal ballot received after 30 days from the notice date is considered as not received.
6.	Results are declared by posting them on the company's website , along with the scrutinizer's report.
7.	The provisions of Rule 20 for electronic voting apply mutatis mutandis to postal ballot voting.

21. Special Resolution v/s Ordinary Resolution

Content	
1.	Resolution - A resolution is the formal decision of an organization taken at a meeting. - A motion, once approved by a required majority vote, becomes a resolution, binding on the organization.
2.	Resolution Types



- a. Ordinary Resolution:
 - ✓ Passed by **simple majority**.
 - ✓ Votes cast **in favour** (via show of hands, electronically, or by poll) **exceed** votes cast against.
- b. Special Resolution:
 - ✓ The notice for the general meeting or any other communication to members must clearly state the **intention** to propose the resolution as a **special resolution**.
 - ✓ Proper notice given under the Act.
 - ✓ Votes cast in favour are **at least 3 times** the votes cast against.

22. Resolutions Requiring Special Notice

Content

1. If special notice is required under any **provision of the Act** or the **articles of a company**, a notice of intention to move such resolution shall be given to the company by members
 - a. holding not less than **1% of total voting power** or
 - b. holding shares on which an aggregate sum not exceeding **₹5 lakh**, as may be prescribed, has been paid up.
2. The company shall give its members notice of the resolution in such manner as may be prescribed.

23. Resolutions passed at adjourned meeting

Content

1.
 - a. If a resolution is passed at an **adjourned meeting** of the company, the holders of any **class of shares**, or the **Board of Directors**,
 - b. it is considered passed on the **actual date** of the adjourned meeting, not on any **earlier date**.

24. Resolutions & Agreements to be filed

Content

1. **Resolutions and Agreements to be Filed**
 - a. **Special Resolutions**
 - b. Resolutions **agreed to by all members** but which would only be effective if passed as **special resolutions**.
 - c. **Board resolutions** or **agreements** relating to the appointment, reappointment, or renewal of a **MD** or variation in terms of appointment.
 - d. Resolutions or agreements approved by a specific **class of members**, which would not be effective without such approval unless passed by a **specified majority** or in a particular manner. Additionally, all resolutions or agreements that bind the class of members, even if **not agreed** to by every member.
 - e. Resolutions for a **voluntary winding-up** of the company u/s **59 of the IBC, 2016**.
 - f. Resolutions passed u/s **179(3)**.



	g. Any other resolutions/agreements prescribed to be placed in the public domain.
2.	Time Limit a. A copy of every resolution or agreement mentioned below, along with the explanatory statement (if any) attached to the meeting notice, must be filed with the Registrar in Form MGT-14 within 30 days of its passing or making, along with the prescribed fees. b. If the resolution alters the articles, or if it's an agreement affecting them, a copy must be included or attached to every copy of the articles issued after the resolution is passed or the agreement is made.

25. Minutes of the Meetings

Content	
1.	a. Time Limit ✓ Every Company shall prepare, sign and keep Minutes of: ▪ General meetings of shareholders or creditors (including requisitionists meetings). ▪ Resolutions passed by postal ballot. ▪ Board meetings and committee meetings. ✓ within 30 days of the meeting or resolution in books with consecutively numbered pages. b. Contents of Minutes ✓ Minutes should contain a fair and correct summary of the proceedings of the meeting. ✓ Include all appointments made at the meetings. ✓ For Board meetings or committee meetings, include: ▪ Names of directors present. ▪ Names of directors dissenting or not concurring with any resolution. ✓ Exclusions from minutes: The following matters shall not be included in the meeting minutes if the Chairman considers them: ▪ Defamatory content. ▪ Irrelevant or immaterial content. ▪ Detrimental to company interests. Note: The Chairman has absolute discretion in deciding what to include or exclude from the minutes on the grounds specified above. c. Legal Presumptions ✓ Minutes are evidence of the proceedings. ✓ Valid meeting and resolutions are presumed unless proven otherwise. ✓ Appointments of directors, auditors, key managerial personnel, etc., are deemed valid. d. No document claiming to report the proceedings of a general meeting shall be circulated or advertised at the company's expense unless it includes the matters required by this section to be recorded in the meeting minutes.



	e. Secretarial Standards for general and Board meetings must be followed, as specified by the ICSI and approved by the CG. f. Penalty for Non-Compliance: ✓ Company: ₹25,000. ✓ Officer(s) in default: ₹5,000. ✓ Tampering with minutes: Imprisonment (up to 2 years) and fine between ₹25,000 and ₹1,00,000.
2.	Rule 25 - Procedure for Maintenance of Minutes a. Maintain a distinct minute book for: ✓ General meetings. ✓ Meetings of creditors. ✓ Board meetings. ✓ Committee meetings. b. Minutes to be entered within 30 days of the meeting. c. For postal ballot resolutions, enter a brief report including: ✓ Resolution proposed. ✓ Voting result. ✓ Scrutinizer's report. d. Each page should be signed/initialled and the last page dated and signed by: ✓ Board/Committee meeting minutes: Signed by the Chairman of the meeting or next meeting. ✓ General meeting minutes: Signed by the Chairman of the meeting or a director authorized by the Board. ✓ Postal ballot resolutions: Signed by Chairman of the Board or authorized director. e. Minute books of general meetings should be kept at the registered office and preserved permanently and kept in the custody of the Company Secretary or any director or duly authorized by the Board. f. Minute books of Board/committee meetings should be kept at the registered office or another location decided by the Board and kept in the custody of the Company Secretary or any director or duly authorized by the Board.

26. Inspection of Minutes of The Meetings

Content	
1.	a. The minutes of the proceedings of any general meeting shall: ✓ Be kept at the company's registered office. ✓ Be open for inspection by any member during business hours, free of charge, subject to reasonable restrictions in the AOA or set by the general meeting. Note: A minimum of 2 hours per business day must be allowed for inspection. b. Any member can request a copy of the minutes within 7 working days by paying a prescribed fee.
2.	Penalty for refusal of inspection:



	a. Company: ₹25,000 for refusal or delay. b. Officer in default: ₹5,000 for each refusal or failure to provide the minutes.
3.	If the company refuses or defaults in providing the inspection, the Tribunal can order immediate inspection of the minute-books or require the copy to be sent to the requesting person.
4.	Any member can request a copy of minutes of any general meeting within 7 working days on payment of prescribed fee.

27. First AGM & Subsequent AGM

Content	
1.	Every company (except OPC) shall hold an Annual General Meeting every year.
2.	Types of General Meetings The Act defines two types of general meetings a company must hold: a. Annual General Meeting (AGM) - Must be held annually. b. Extraordinary General Meeting (EGM) - Can be held as needed.
3.	First AGM a. First AGM must be held within 9 months from the closing of the first FY. b. No need to hold an AGM in the year of incorporation.
4.	Subsequent AGM a. Subsequent AGMs must be held within 6 months from the closing of the financial year. b. The gap between two AGMs must not exceed 15 months.
5.	Extension of AGM Period a. If a company cannot hold an AGM within the prescribed time, the Registrar may extend the time for special reasons. b. Extension can be for a period of up to 3 months. c. No extension can be granted for the first AGM.
6.	Time and Place for Holding AGM a. AGM shall be called between 9 a.m. and 6 p.m. on any day that is not a National Holiday. b. AGM shall be held either: ✓ At the registered office of the company, or ✓ At another place within the city, town, or village where the registered office is situated.
7.	Exemptions a. Unlisted Company: AGM can be held at any place in India if all members give prior written or electronic consent. b. The CG may exempt any company from these provisions subject to conditions.

28. Powers of Tribunal to Call AGM

Content	
1.	Power of Tribunal to Call AGM a. If a company fails to hold an AGM:



	✓ Notwithstanding the Act or the company's AOA, ✓ The Tribunal may, on the application of any member, call or direct the holding of an AGM and give necessary directions. b. Such directions may include a direction that one member (present in person or by proxy) shall be deemed to constitute a meeting.
2.	An AGM held under the Tribunal's direction shall be deemed to be an AGM of the company, subject to any directions of the Tribunal.

29. Punishment for default in holding a meeting

Content	
1.	a. If a company defaults in holding an AGM or in complying with any directions issued by the Tribunal: b. Penalty: The company and every officer in default shall be liable to a fine up to ₹ 1,00,000 and ₹ 5,000 per day for each day the default continues.

30. EGM

Content	
1.	Board of Directors a. The Board may call an EGM whenever it deems fit. b. An EGM shall be held at a place within India (except for a wholly owned subsidiary of a company incorporated outside India).
2.	On the Requisition of Members (BOD) a. Who can make a valid requisition: ✓ Company with Share Capital: Members holding $\geq 1/10$th of the PUSC with voting rights. ✓ Company without Share Capital: Members holding $\geq 1/10$th of total voting power. b. The requisition must state the matters for consideration, be signed by requisitionists, and sent to the registered office. c. Board shall call the meeting within 21 days from receipt of the valid requisition and hold it within 45 days.
3.	Requisitionists a. If the Board does not call the meeting within 21 days from receipt of a valid requisition, the requisitionists may call the meeting within 3 months. b. The requisitionists must call and hold the meeting in the same manner as the Board would. c. All reasonable expenses incurred by requisitionists in calling the meeting will be reimbursed by company and deducted from remuneration payable to directors in default.



31. EGM by Requisitionists

Content	
1.	- Members can requisition an EGM by providing the requisition in writing or electronically at least 21 days before the proposed date of the meeting. - The notice shall specify the place, date, day, hour, and business of the meeting. - The meeting shall be convened at the registered office or in the same city/town where the registered office is located and cannot be on a national holiday. - If a special resolution is proposed, the notice must comply with Sec 114(2) (disclosure of special resolution). - Notice shall be signed by all requisitionists or one authorized requisitionist. - No explanatory statement is required but reasons for the resolutions may be provided. - The notice of the meeting shall be sent to members listed in the Register of Members within 3 days of the requisitionists submitting a valid requisition for calling an EGM. - List of Members: - If the meeting is not convened, the requisitionists have the right to receive a list of members with their registered addresses and number of shares held. - Company must provide an updated member list (as of the 21st day from receipt of a valid requisition), including changes, before the 45th day from requisition receipt. - The notice can be sent via speed post, registered post, or electronic mode. Non-receipt or accidental omission of notice does not invalidate the meeting.

32. Report of AGM

Content	
1.	Every listed public company shall prepare a report on each AGM , confirming the meeting was convened, held, and conducted as per the Act and Rules .
2.	A copy of the report shall be filed with ROC in Form No. MGT. 15 within 30 days of conclusion of AGM , along with the prescribed fee.
3.	The report is to be prepared in addition to the minutes and must include the following: Signed by the Chairman of the meeting (or 2 directors if Chairman is unavailable), including the MD (if applicable) and CS. - Details to include: - Day, date, hour, and venue of the AGM - Confirmation of Chairman's appointment - Number of members attending, Confirmation of Quorum - Compliance with Act, Rules, and Secretarial Standards regarding calling, convening, and conducting the meeting Business transacted and the results Any adjournments or postponements - Other relevant points



12.8. DIRECTORS

1. Role of Director

Content	
1.	Definition Director means a director appointed to the Board of a company.
2.	Role of Director - Under the Companies Act, the company and its Board of Directors are the primary agents responsible for its operations. - The Act specifies when the company acts directly and when the Board acts on its behalf. - Directors act as trustees of the company's assets and properties. - Directors have multiple roles trustees, agents, and officers depending on the situation. - The Board, acting collectively, manages the company's affairs, except for matters reserved for the company itself. While directors are agents of the company, even the general meeting cannot compel them to take specific decisions - If shareholders disagree with directors' decisions, they may remove or change them as per the Act. - Directors are also officers and may be considered employees for certain legal purposes. - A company's AOA may call directors by other titles (e.g., governors, members of the governing council), but legally they remain directors. - In Section 8 companies, executive committee or governing body members are treated as directors, regardless of their title.
3.	Officer includes any director or person whose directions the Board of directors usually follow. Section 149 mandates that only an individual can be a director, not a body corporate, firm, or association.

2. Duties and Responsibilities of Director

Content	
1.	The duties and liabilities of directors ensure responsible, efficient, and risk-averse management, encouraging sound decision-making in the company's best interest.
2.	As per Section 166, the following duties are imposed on directors: - Director shall act in according to the AOA of the company. - Director shall act in good faith to: - Promote the objects of the company, - Benefit the company as a whole, - Serve the best interests of all stakeholders. - Director shall exercise duties with care, skill, diligence, and independent judgment. - Avoid conflicts of interest: Director shall not be in any situation with actual or potential conflict with the company's interests.



- e. No undue gain: A director must not seek or gain any **undue advantage** for self, relatives, partners, or associates. If found guilty, the undue gain must be repaid to the company.
- f. Non-transferability of office: A director **cannot assign his office**, and any such assignment is void.

3. Director Identification Number

Content	
1.	No person can be appointed as a director unless they have been allotted a Director Identification Number or any other number prescribed.
2.	The Central Government may prescribe any identification number to be treated as a DIN for the purposes of the Act.
3.	Any individual intending to become a director must apply to the Central Government for a DIN, in the prescribed form, manner, and with the prescribed fee.
4.	The Government may also notify any alternative identification number as a DIN.

4. Qualifications & Disqualifications

Content	
1.	Qualifications of Directors a. The Companies Act, 2013 does not prescribe any academic or professional qualifications for becoming a director. b. There is also no mandatory share qualification , unless specified in the AOA of the company.
2.	Disqualifications of Directors A person is not eligible for appointment as a director if: a. He is declared of unsound mind by a competent court. b. He is an undischarged insolvent. c. He has applied to be adjudicated as insolvent and the application is pending. d. He has been convicted of an offence and sentenced to imprisonment $\geq$ 6 months, and 5 years have not passed since the sentence ended. Note: If imprisonment is 7 years or more, the person is permanently disqualified. e. He has been disqualified by a court or tribunal, and the order is still in force. f. He has not paid calls on shares held by him, and 6 months have passed from the due date. g. He has been convicted u/s 188 (related party transactions) in the past 5 years. h. He has not complied with sec 152(3) (relating to DIN and other eligibility). i. He has not complied with sec 165(1) (limit on number of directorships).
3.	Additional Disqualification a. A person cannot be re-appointed or appointed in any other company for 5 years if he is or was a director in a company that has: ▪ Not filed financial statements or annual returns for a continuous period of 3 financial years; or



- Failed to repay deposits, interest thereon, redeem debentures, or pay dividends for 1 year or more.
- b. Exception: If a person is newly appointed to such a defaulting company, he has a grace period of 6 months before disqualification applies.
- c. Note: Private companies may specify additional disqualifications in their AOA.

5. Number of Directors

Content	
1.	Minimum and Maximum Number of Directors a. Every company must have a Board of Directors consisting of individuals as directors. b. Minimum number of directors: 3 - Public Company 2 - Private Company 1 - One Person Company (OPC) c. Maximum: A company can have up to 15 directors. d. Company may appoint more than 15 directors after passing a special resolution. e. Certain classes of companies must appoint at least one-woman director (as may be prescribed).
2.	Modes of Appointment of Directors Directors may be appointed: a. As first directors at the time of incorporation. b. By shareholders in a general meeting. c. By the Board of Directors. d. As a resident director (at least 1 director must stay in India ≥ 182 days in a FY). e. As independent directors, where applicable. f. The Board can also appoint: ▪ Additional Directors ▪ Alternate Directors ▪ Nominee Directors ▪ Directors to fill casual vacancies

6. Retirement of Directors

Content	
1.	If AOA provide for retirement of all directors at each Annual General Meeting, then all directors are liable to retire at the AGM.
2.	Unless otherwise provided in the AOA, at least $\frac{2}{3}$ rd of the total number of directors (excluding independent directors) must be liable to retire by rotation. These are called retiring directors.
3.	Out of these retiring directors, $\frac{1}{3}$ rd must retire at every AGM. If the number is not a multiple of 3, the number nearest to one-third shall retire.
4.	The director(s) who have served the longest since their last appointment shall retire first.



5.	If two or more directors were appointed on the same day, retirement is determined by: ▪ mutual agreement; ▪ If no agreement, draw of lots will decide who retires.
6.	Unless stated otherwise in the AOA: ▪ 2/3rd rotational directors must be appointed by the company in a general meeting. ▪ Remaining directors (non-rotational/permanent) shall be appointed as per the Articles.
7.	At the AGM, the company may fill the vacancy caused by retirement by: ▪ Reappointing the same retiring director, or ▪ Appointing another person in his place.

7. Resignation of Directors

Content	
1.	A director may resign by giving a written notice to the company.
2.	Upon receipt: - The Board shall take note of the resignation. - The company shall inform the ROC in the prescribed form and timeline. - The resignation shall be mentioned in the Board's report at the next general meeting.
3.	The resigning director may also send a copy of the resignation with reasons to the ROC within 30 days, in the prescribed manner.
4.	The resignation takes effect from the later of: - The date the notice is received by the company, or - The date specified in the notice.
5.	The director remains liable for any offences committed during his tenure, even after resignation.
6.	Special Points: - A director can resign unilaterally by giving written notice to the Chairman or Secretary. ROC intimation is not mandatory for the resignation to be valid. - Once a resignation letter is submitted, the date of communication to the Board is the effective date of resignation.

8. Removal of Directors

Content	
1.	Directors can be removed by: - Shareholders, or - The Tribunal (in cases of oppression/mismanagement).
2.	Removal by Shareholders - Shareholders have the inherent right to remove a director they appointed. - No misconduct required. Removal can be done even without proof of: ▪ Mismanagement ▪ Breach of trust ▪ Misfeasance or misconduct



	c. Shareholders may remove a director by passing an ordinary resolution , just as they appoint one.
3.	Procedure for Removal by Shareholders a. A company may remove a director (except one appointed by the Tribunal u/s 242) by ordinary resolution , after giving a reasonable opportunity of being heard . b. A special notice is required for the resolution to remove a director. c. The vacancy so created can be filled in the same meeting, through appointment of a new director (with a special notice of appointment). d. The newly appointed director will hold office until a formal appointment is made . e. Once removed, the director's office automatically vacates u/s 167. f. The removed director may still be entitled to damages or compensation , if contractually agreed, for termination before term. Note: Notice for removal must state the grounds
4.	Removal by Tribunal a. In cases of oppression or mismanagement , the Tribunal may: ▪ Terminate or set aside any agreement with a director ▪ Order removal of the director b. A removed director: ▪ Cannot claim compensation for loss of office ▪ Cannot be re-appointed as director, managing director, or manager for 5 years, without Tribunal's permission

9. Directors Remuneration

Content	
1.	Remuneration includes: a. Any money or its equivalent given for services rendered. b. perquisites as defined under the Income Tax Act, 1961.
2.	Determination of Director's Remuneration a. Remuneration of directors (including managing or whole-time directors) must be fixed: ▪ By the Articles of Association, or ▪ By a resolution in the general meeting (special resolution if required by the articles) b. Remuneration includes payment for services in any other capacity (except certain professional services). c. Directors cannot fix their own remuneration.
3.	Overall Managerial Remuneration Limits For Public Companies or Subsidiaries of Public Companies: a. Total remuneration to all directors and manager must not exceed 11% of the net profits. b. Break-up within 11% limit: ▪ Managing/Whole-time Director: up to 5% of net profits (10% if more than one such director) ▪ Non-executive directors also included in the 11% limit



	c. Exceeding the 11% limit: Allowed only with prior approval of members via ordinary resolution d. If the company has no/inadequate profits: It can pay minimum remuneration with prior approval of Central Government, as per Schedule V e. Payment may be: ▪ On a monthly basis, or ▪ As a percentage of net profits, or ▪ A combination of both
4.	Inclusion in Total Remuneration Any payment to a director for other services (apart from directorial functions) must also be included within the 11% of net profits.
5.	Exception - Professional Services (Not included in 11% limit) If the following two conditions are met: a. Services are of a professional nature, and b. The Nomination & Remuneration Committee (or Board, if NRC not required) opines that the director holds requisite qualifications for the profession, then, remuneration for such professional services is not included in the 11% limit.

10. Powers of Directors

Content	
1.	General Powers of the Board The Board of Directors may exercise all powers the company is authorised to use, subject to: a. Provisions of the Companies Act b. The company's MOA/AOA c. Any valid regulations made by the company in a general meeting
2.	Restrictions on Board Powers The Board cannot act on matters that the Act, MOA, AOA, or any valid regulation require to be done by the company in general meeting.
3.	Validity of Past Acts Any regulation passed in a general meeting cannot invalidate actions already taken by the Board before such regulation was made, if those actions were valid at that time.
4.	Powers to Be Exercised Only by Board Resolutions (At Board Meetings) The following powers must be exercised only at duly convened Board meetings: a. Make calls on shareholders (for unpaid money on shares) b. Authorize buy-back of securities. c. Issue securities, including debentures (in India or abroad) d. Borrow monies e. Invest company funds f. Grant loans, guarantees, or securities



	g. Approve financial statements and Board's Report h. Diversify business activities i. Approve amalgamation, merger, or reconstruction j. Acquire or take over another company, or acquire substantial control/stake k. Any other matters prescribed under the Act
5.	Delegation of Powers a. The Board may delegate powers (only clauses d to f) to: ▪ A committee of directors ▪ The Managing Director ▪ The Manager ▪ Any Principal Officer of the company or a branch b. Such delegation must be made by resolution and subject to conditions specified by the Board.



OPERATIONAL AND FINANCIAL CONTROL

1. Operational and Financial Control

Content	
1.	A financial controller oversees the entire financial function of an organization. An operational controller handles financial responsibilities for a specific part or unit of the company. These duties vary based on the company's operations.
2.	Though both roles involve budgeting , forecasting , and financial reporting , they are distinct .
3.	A financial controller manages the organization's day-to-day accounting operations , including payroll, accounts payable, and accounts receivable. They also handle the organizational budget and prepare regulatory and monthly financial reports to assess financial efficacy.
4.	An operational controller , on the other hand, focuses on reporting and budgeting for a specific unit within the larger company.

INTERNAL FINANCIAL CONTROL FOR FINANCIAL REPORTING

1. Approval of Financial Statements

Content	
1.	Approval by the Board FS, including CFS , shall be approved by the BOD and signed on behalf of the Board by: ✓ Chairperson (if authorised by the Board) or 2 Directors (one must be the MD , if any), and ✓ CEO , CFO , and CS (if appointed). before it is submitted to auditor for his report there on.
2.	For an OPC , the FS is signed by one director for submission to the auditor for his report there on.
3.	The auditor's report must be attached to every financial statement.
4.	Circulation and Publication A signed copy of every financial statement, including consolidated financial statements, must be issued , circulated , or published along with: a. Notes annexed to or forming part of the financial statement. b. Auditor's report. c. Board's report.

2. Board report

Contents of Board Report	
1.	Web address of the company (if any).



2.	Number of Board meetings held during the year.
3.	The Directors' Responsibility Statement .
4.	Details of frauds reported by the auditors u/s 143(12), excluding those reportable to CG.
5.	A statement on declaration by independent directors u/s 149(6).
6.	For companies covered u/s 178(1), the company's policy on: Appointment and remuneration of directors - Criteria for qualifications, positive attributes, and independence as per sec 178(3)
7.	Board's comments on every qualification, reservation, adverse remark , or disclaimer made: - By the auditor in the Auditor's Report - By the CS in practice in the Secretarial Audit Report
8.	Particulars of loans, guarantees or investments as per sec 186.
9.	Particulars of related party transactions u/s 188(1), in the prescribed form.
10.	A summary of the state of the company's affairs .
11.	Any amount proposed to be transferred to reserves .
12.	Any dividend recommended.
13.	Material changes and commitments , if any, that affect the financial position of the company between the financial year-end and the date of the report.
14.	Details on: - Conservation of energy Technology absorption Foreign exchange earnings and outgo
15.	A statement on Risk Management Policy , including identification of risks that may threaten the company's existence.
16.	Details of Corporate Social Responsibility policy and initiatives taken during the year.
17.	For listed companies and certain public companies (as prescribed), a statement on the manner of formal annual evaluation of the Board, its committees, individual directors

3. Rights of Auditor

Content	
1.	Access to Books of Accounts Every auditor has the right to access the books of account and vouchers at all times, whether kept at the registered office or any other place .
2.	Right to Information: Auditors can seek any information or explanation from the officers of the company necessary for their duties.
3.	Mandatory Inquiries: Auditors must inquire into the following: - Whether loans and advances on security are properly secured and not prejudicial to the company or its members. - Whether book entry transactions are prejudicial.



	c. Whether shares, debentures, or securities (other than in investment or banking companies) have been sold below purchase price. d. Whether loans and advances are incorrectly shown as deposits. e. Whether personal expenses are wrongly charged to the revenue account. f. Where shares are shown as allotted for cash, whether cash was actually received, and if not, whether the entries are correct and not misleading.
4.	Access to Subsidiaries' Records: The auditor of a holding company has the right to access the records of its subsidiaries and associate companies, for purposes of consolidating financial statements.

4. Duties of Auditor

Content	
1.	Report of Auditors to Members: a. The auditor shall report to the members on: ▪ The accounts examined by him; and ▪ The financial statements to be laid before the general meeting. b. The auditor's report must state whether the accounts and financial statements give a true and fair view of: ▪ The state of affairs at the end of the financial year; ▪ The profit or loss of the year; and ▪ The cash flow statement for the year. c. The report must be based on: ▪ The provisions of the Companies Act ▪ Applicable Accounting Standards and Auditing Standards d. If the auditor gives any qualification or remark, he must provide reasons in the report.
2.	Other Matters to be Included in the Auditor's Report: The auditor must also state: a. Whether all information and explanations were obtained. b. Whether proper books of account were kept and adequate branch returns received. c. Whether the branch audit report (by another auditor) was sent to him, and how he dealt with it in his report. d. Whether the financial statements agree with the books and returns. e. Whether they comply with accounting standards. f. Any adverse comments affecting the company's functioning. g. If any director is disqualified u/s 164(2). h. Any qualification or adverse remark regarding maintenance of accounts. i. Whether internal financial controls with reference to financial statements are adequate and effective. j. Any other matter as prescribed. Note: If any point is answered negatively or with qualification, the auditor must state reasons in the report.



3.	Preparation of Audit Report - An audit report is an appraisal of a company's financial position. - The auditor prepares the report based on the financial statements, ensuring the books of accounts are maintained as per applicable laws. - He must verify compliance with the Companies Act, 2013, relevant Accounting Standards, etc. - The auditor must ensure that the financial statements present a true and fair view. If not, he can give a qualified or adverse opinion. - The auditor's report is highly reliable as it reflects his professional opinion. If he believes the financials don't reflect a true and fair view, he can issue an adverse opinion. - If he lacks sufficient information to form any opinion, he will issue a disclaimer of opinion. - A disclaimer of opinion means the auditor couldn't determine the financial position due to insufficient information and must state the reasons in the report.
4.	Making Inquiries - The auditor must make inquiries wherever necessary. - Common inquiries include: - Loans and advances made against proper security. - Any personal expenses wrongly charged to Revenue Account. - Loans/advances shown as deposits. - Compliance of financial statements with relevant Accounting Standards.
5.	Lending Assistance in case of a Branch Audit - If the auditor is branch auditor (not the company's main auditor), he assists in completing the branch audit. - He prepares a branch audit report based on the accounts examined and sends it to the company auditor. - The company auditor incorporates it into the main audit report. - On request, the branch auditor may share relevant working papers to assist the company auditor in the audit.
6.	Adherence to Code of Ethics & Professional Conduct - The auditor must follow the Code of Ethics and Code of Professional Conduct. - This includes confidentiality, due care, and maintaining professional skepticism. - In simple terms, the auditor must have a questioning attitude, alert to possible errors, frauds, or irregularities in the financial statements.
7.	Assistance in Investigation - If the company is subject to an investigation, the auditor must cooperate and assist the concerned investigating officers. - This shows that the auditor's role is wide-ranging and impactful. - Audited financial statements provide a much higher level of assurance than unaudited ones.



5. Audit of Government Companies

Content	
1.	Appointment of Auditor: In case of a Government company or any company owned/controlled by the CG or SG(s) (fully or partly), the Comptroller and Auditor-General of India shall appoint the auditor and direct the manner of audit.
2.	Audit Report Submission: The appointed auditor shall submit the audit report to the CAG, which must include: Directions, if any, issued by the CAG Action taken thereon Impact on the accounts and financial statements
3.	Supplementary Audit: - Within 60 days of receiving the report, the CAG may: Comment upon or supplement the audit report, and Conduct a supplementary audit through authorized persons (who will have the same powers as the statutory auditor) - Such comments shall be placed before the AGM along with the audit report.
4.	Test Audit: - The CAG may also, if necessary, order a test audit of the company's accounts. - Sec 19A of the CAG (Duties, Powers and Conditions of Service) Act, 1971 will apply to such test audit reports.

6. Audit of Branch Offices

Content	
1.	Where a company has a branch office, its accounts shall be audited: - by the company's auditor appointed under this Act, or - by any other qualified person appointed as auditor under Section 139, or - if the branch is outside India, by the company's auditor or by a person qualified to audit under that country's laws.
2.	The branch auditor shall send a report on the branch accounts to the company's auditor , who will consider it in his main audit report as needed.

7. Auditor Responsibilities & Fraud Reporting

Content	
1.	Every Auditor shall comply with Auditing Standards .
2.	Auditing Standards are notified by the CG after consultation with the National Advisory Committee on Accounting and Auditing Standards . Until notified, ICAI's standards shall apply.



3.	CG, after consulting the Advisory Committee, may direct that the auditor's report for certain classes of companies must include additional matters . Note: Until the NFRA is constituted (u/s 132), such consultation may be done with a committee chaired by a Joint Secretary and include members from ICAI, industry chambers, NACAS, and CAG.
4.	If an auditor suspects fraud by the company's officers or employees, they must immediately report it to CG in the prescribed manner.
5.	If the fraud involves a prescribed threshold amount, auditor must report fraud to CG . ▪ If below threshold, report to the Audit Committee (or the Board if no committee). ▪ The Board's Report must disclose such reported frauds .
6.	An auditor acting in good faith while reporting fraud is protected from liability .
7.	These provisions also apply to: ▪ Cost Accountants doing cost audit (u/s 148), and ▪ Company Secretaries doing secretarial audit (u/s 204).
8.	If an auditor, cost accountant, or company secretary in practice fails to report fraud as required: ▪ For listed companies : Penalty of ₹5,00,000 ▪ For other companies : Penalty of ₹1,00,000

8. Applicability of Audit Committee

Content	
1.	The Board of Directors shall constitute an Audit Committee in case of: ▪ Every listed public company , and ▪ Such other class or classes of companies as may be prescribed .
2.	The Audit Committee must have at least 3 directors , with a majority being independent directors . Note: Majority of members, including the Chairperson, must be capable of reading and understanding financial statements .
3.	Any existing Audit Committee (before the Act's commencement) must be reconstituted within 1 year to comply with the above provisions.
4.	Disclosure in Board's Report The Board Report (u/s 134(3)) must disclose: a. Composition of the Audit Committee, and b. Reasons if any recommendation is not accepted by the Board.

9. Role of Audit Committee

Content	
1.	Duties as per Terms of Reference The Audit Committee shall act per the written terms of reference from the Board, which include: a. Recommending appointment, remuneration, and terms of the company's auditors .



	b. Reviewing auditor independence, performance, and audit process effectiveness. c. Examining financial statements and auditor's report. d. Approving or modifying related party transactions. e. Scrutinizing inter-corporate loans and investments. f. Valuing assets or undertakings, if needed. g. Evaluating internal financial controls and risk management systems. h. Monitoring end use of public issue funds and related matters.
2.	Omnibus Approval The committee may grant omnibus approval for related party transactions, subject to prescribed conditions.
3.	Unapproved Transactions If a director/officer enters into a transaction (not under Section 188) involving ≤ ₹1 crore without Audit Committee approval: a. It must be ratified within 3 months, or else it becomes voidable at the Audit Committee's option. b. If the transaction is with a related party of a director or authorized by another director, the director must indemnify the company for any loss.
4.	Exemption This provision does not apply to transactions (excluding Section 188) between a holding company and its wholly-owned subsidiary.
5.	Other Powers of Audit Committee a. Audit Committee may seek auditor comments on internal controls, audit scope, observations, and review financials before submission to the Board. b. The Audit Committee has the authority to investigate any matter referred to it by the Board or falling under its scope. For this purpose, it may: ▪ Seek professional advice from external sources, and ▪ Have full access to the company's records and information. c. Auditors and KMPs have the right to be heard (not tight to vote) in meetings where the audit report is considered.

10. Vigil Mechanism

	Content
1.	Every listed company or such class of companies as prescribed shall establish a vigil mechanism for directors and employees to report genuine concerns.
2.	The mechanism must: ▪ Provide adequate safeguards against victimisation, and ▪ Allow direct access to the Chairperson of the Audit Committee in appropriate or exceptional cases.
3.	Details of the vigil mechanism must be disclosed on the company's website (if any) and in the Board's Report.



4.	Where an Audit Committee is required, it shall oversee the vigil mechanism. In case of conflict of interest , the concerned member shall recuse , and the rest shall handle the matter.
5.	In other companies, the Board shall nominate a director to perform the role of Audit Committee for the vigil mechanism.
6.	Repeated frivolous complaints may lead to action (including reprimand) by the Audit Committee or nominated director.

RIGHTS OF SHARE HOLDERS

1. Member

Content	
1.	A member of a company means: Subscribers to the Memorandum automatically become members upon registration of the company and are entered in the Register of Members. Any person who agrees in writing to become a member and whose name is entered in the Register of Members. - Every person holding shares in de-mat form, whose names are recorded as beneficial owners in the records of a depository. Special Points: - Once shares are allotted, share certificate is signed, and name entered in register, the person becomes a shareholder, even if they haven't received the certificate. - A person not entered in the register cannot be treated as a member.
2.	Ways to Become a Member A person may become a member by: Subscribing to further/new shares Transfer of shares from an existing member Acquisition or purchase (e.g., takeover, renunciation of rights) Devolution (e.g., transmission on death, insolvency, merger/amalgamation) Conversion of convertible debentures or loans into shares
3.	Key Differences Subscribers become members immediately on incorporation (automatic entry). Others become members only after their names are entered in the register of members, even if they have agreed to take shares.

2. Rights of Member

Content	
1.	Contractual Rights (MOA & AOA) A member has rights under the contract with the company and other members, including: Name on the Register of Members - Right to vote in meetings



	c. Right to receive dividends d. Right of pre-emption e. Right to return of capital on winding-up or capital reduction
2.	Legal & Statutory Rights Members can also: a. Restrain the company from doing ultra vires acts b. Attend, speak, and move amendments in company meetings
3.	Statutory Rights under Companies Act, 2013 a. To vote at meetings b. To requisition an EGM c. To receive notice of general meeting d. To appoint a proxy and inspect proxy register e. For body corporates: appoint representative for meetings f. To circulate shareholder resolutions g. To receive share certificate within 2 months from date of allotment h. To transfer shares as per the Act & AOA i. To inspect Register of Members/Debenture-holders j. To inspect or request minutes of general meetings k. To apply to Tribunal against variation of shareholder rights l. To participate in removal of directors by passing an ordinary resolution
4.	Judicially Recognized Rights a. To elect directors and participate in management b. To enjoy profits in the way of dividends c. To apply to Tribunal for relief in case of Oppression, Mismanagement. d. To apply to Tribunal for Winding-up e. To share in surplus assets upon winding-up

KEY MANAGERIAL PERSONNEL

1. Key Managerial Personnel

	Content
1.	KMP in relation to a company includes: a. Chief Executive Officer or Managing Director or Manager b. Company Secretary c. Whole-time Director d. Chief Financial Officer e. Any other whole-time officer, not more than one level below directors, designated as KMP by the Board f. Any other officer as may be prescribed by rules



13. BUSINESS ETHICS AND EMOTIONAL INTELLIGENCE

1. Ethics - Meaning, Importance and Nature

Content	
1.	Ethics is a set of rules that define right and wrong conduct. The term 'ethics' comes from the Latin word ethos , meaning character .
2.	Ethics is a social science that deals with concepts such as right and wrong , moral and immoral, and good and bad behaviour in how people interact with one another.
3.	Ethics involves the basic concepts and fundamental principles of decent human conduct .
4.	It includes the study of universal values like human dignity, human rights, Obedience to the law of the land, health and safety , and concern for environment .
5.	Ethics are moral principles that guide an individual's behaviour . These morals are shaped by social norms , cultural practices , and religious influences .
6.	Ethics reflect beliefs about right and wrong, justice and injustice, and good and bad in human behaviour. They act as a moral compass , guiding how people should treat one another, meet their social responsibilities, and lead their lives.
7.	While ethical beliefs are personal, they also influence: - The values, practices, and policies of organizations - The decisions made by leaders on behalf of those organizations
8.	Terms like business ethics and corporate ethics refer to applying ethical values in business , applicable to individuals, groups, and organizations.
9.	- Apart from individual and corporate ethics, there are also professional ethics. - Professionals (like managers, lawyers, accountants) have ethical obligations due to their specialized roles and responsibilities to clients or the public. - Professional ethics are often governed by: ✓ Professional organizations (e.g., American Medical Association) ✓ Licensing authorities (e.g., state governments) ✓ These bodies set and enforce ethical standards.
10.	Types of Ethics Ethics can be broadly divided into 3 categories: Meta Ethics deals with the nature of moral judgments. It looks at the origins and meanings of ethical principles. Normative Ethics is concerned with the content of moral judgments and the criteria for what is right or wrong Applied Ethics looks at controversial topics like war, animal rights, capital punishment



2. Importance of Ethics in Human Life

	Content
1.	Ethics is essential for human life . It helps us decide how to act . Without it, our actions would be random and directionless .
2.	Even with an ethical standard, we might still fail to reach our goals .
3.	The more we use a rational ethical standard , the better we can organize our goals and actions to achieve our most important values.
4.	Any flaws in our ethics will reduce our ability to be successful in our endeavours.
5.	A proper foundation of ethics needs a standard of value to compare all goals and actions. That standard is our own life and the happiness that makes life worth living. This is the ultimate standard of value, and it should guide an ethical person.
6.	Ethics must apply not only in emergencies , but in our everyday decisions .
7.	Ethics must also guide our relationships with others, recognizing their value to our survival , well-being , and happiness . It must acknowledge that our lives are ends in themselves, and that sacrifice is not only unnecessary, but destructive .

3. Nature of Ethics its relevance in the Business

	Content
1.	A company's success depends on many factors that go beyond financial statements .
2.	Organizational culture , management philosophy , and business ethics significantly influence long-term performance.
3.	Business ethics are essential for long-term success , regardless of a company's size, industry, or profitability.
4.	The management team sets the tone for the company's daily operations .
5.	A strong foundation of ethical behaviour helps attract and retain talented employees and builds a positive reputation in the community.
6.	When ethics guide leadership from the top down, it strengthens relationships within management and brings greater stability .
7.	Ethical leadership encourages employees to follow the same standards .
8.	Employees make better decisions in less time with business ethics as a guiding principle; this increases productivity and overall employee morale .
9.	When employees act with honesty and integrity , the entire organization benefits .
10.	Employees in an ethically-driven organization are more likely to: ✓ Perform better ✓ stay loyal to the company
11.	The importance of business ethics extends beyond employee morale or management team strength .
12.	Ethical practices are closely linked to profitability in both the short and long term .
13.	A company's reputation among the community, other businesses, and investors is a key factor in its investment potential .



14.	If a company is seen as unethical , investors are less likely to buy stock or support it . Consistent ethical behaviour builds a positive public image , valued by both investors and shareholders .
15.	To maintain a positive image , businesses must operate on a strong ethical foundation , ensuring ✓ Fair employee treatment ✓ Respect for the environment ✓ Honest pricing and consumer practices Business ethics is a form of applied ethics .

4. Seven Principles of Public Life

Content	
1.	a. The Seven Principles of Public Life were first introduced in 1995 by Lord Nolan. b. These principles apply to anyone holding public office, whether elected or appointed, at the local or national level. c. They apply across a wide range of public sectors, including: ▪ The Civil Service ▪ Local government ▪ The police ▪ The courts and probation services ▪ Non-departmental public bodies ▪ Health, education, and social care services d. The principles extend to the private and voluntary sectors delivering public services. e. To promote high ethical standards, the British Government established the Committee on Standards in Public Life in October 1994. f. This independent body advises the Prime Minister on standards of conduct in public life. Terms of Reference of the Committee: ▪ Examine concerns about standards of conduct for public office holders, especially those involving financial and commercial activities. ▪ Recommend improvements to ensure the integrity and propriety in public life.
2.	The Seven Principles of Public Life: a. Selflessness Public office holders should act only in the public interest, not for personal gain. b. Integrity They must avoid any influence or obligation that could improperly affect their decisions. They should not seek financial or material benefits for themselves, family, or friends. Conflicts of interest must be declared and resolved. c. Objectivity Decisions should be made fairly, impartially, and based on merit and evidence, free from bias or discrimination. d. Accountability



Public office holders are **accountable** to the **public** and must accept scrutiny of their actions and decisions.

e. Openness

Decisions should be made in an **open** and **transparent** manner.

Information should only be withheld when there are **lawful** and **justifiable reasons**.

f. Honesty

Public office holders should always be **truthful**.

g. Leadership

Public office holders should lead by example, uphold these principles, and **challenge unethical behaviour** wherever it occurs.

5. The Relationship between Ethics and Law

Content

1. Laws and ethics both **guide human behaviour** to ensure a **civilized social existence**. They help define what is right and wrong.
 - a. **Laws** are **codified norms** enforced by the state and act as external obligations.
 - b. **Ethics** are **internal principles** that guide personal judgment and behaviour.
2. Laws apply **uniformly** to everyone, while **ethics vary** from **person to person** and change more often than laws. If someone **breaks the law**, the state can **punish** them this is known as retributive justice. **Ethics**, however, are usually **not enforceable** by law.
3. The **relationship** between law and ethics is **complex**:
 - Many **laws reflect the ethics** of their time and are shaped by what society sees as right or wrong.
 - On the other hand, **laws can shape ethics** by challenging regressive beliefs.
4. Therefore, **laws alone are not enough to ensure ethical behaviour**. Laws cannot cover every situation. In such cases, people must act ethically on their own.
5. There are many areas where **laws cannot be created** or enforced strictly
6. In conclusion, laws and ethics are both essential and must **work together** to build a **just and fair society**.

6. Business Ethics and its Relevance to Business

Content

1. A business code of ethics is a **set of policies** based on **laws** and **company values** that all employees are expected to follow. While different industries have specific regulatory requirements, **companies** can also **design** their **own value-based policies** that reflect their brand. **Examples** of ethics policies can help **guide** this process.
2. **Promoting Green Business Practices**
 - a. A value-based ethics policy is encouraging **environmentally responsible** business practices.
 - b. This may include **reducing paper usage**, **proper recycling**, waste disposal, and using products that lower the carbon footprint.



3.	Obedying the Law a. While it may seem obvious, following the law should be included in the code of ethics. b. Employee misconduct even outside work hours can affect the company's image.
4.	Caring and Consideration Policies a. Many consumers believe businesses are only focused on profit. b. A code of ethics should promote conducting business with care and consideration. c. This value-based policy should be clearly written and taught to employees.
5.	Confidentiality and Privacy Policies a. Data breaches and cyberattacks have made confidentiality critical. b. Employees must protect customers' personal information. c. Include a policy covering company secrets as well. d. Privacy policies are now a legal requirement when collecting personal data. e. Employees should be trained on how to protect private information.
6.	Professional Appearance Policies a. A dress code is also part of a company's code of ethics. b. This could include uniforms, business attire, or casual dress on specific days. c. Clean and neat clothing reflects professionalism.

7. Values and Attitudes of Professional Accountants

A. Roles of Professional Accountants in Business

1.	Professional accountants serve in diverse roles across all types of businesses, including the public sector, not-for-profit sector, regulatory bodies, professional bodies, and academia.
2.	Despite the variety of roles, what they all share is a strong knowledge of accounting.
3.	They are responsible for maintaining the quality of financial reporting at the source where numbers are generated, along with handling cost accounting.
4.	Like accountants in taxation or auditing, professional accountants in business also play key roles in supporting the stability and progress of society.
5.	If the public does not clearly understand the different roles and responsibilities of accounting specialists in business, it may lead to misinformed perceptions about their value.
6.	A competent professional accountant is a great asset to any company. They apply an inquiring mind to their work, based on their deep understanding of the company's financials.
7.	Using their skills and insight into the company and its environment, these accountants ask challenging questions. Their accounting training allows them to take a practical and objective approach to solving problems.
8.	This expertise is especially valuable to management, particularly in small and medium enterprises, where the professional accountant is often the only qualified member of staff.

B. Cost Management

1.	Cost management refers to the actions taken by managers to plan and control costs.



	This includes making decisions about the use of materials , production processes , product design , and budgeting expenses to support their department's operating plan.
2.	All these activities are part of the cost management process . Managers rely on accounting system data to support these cost-related decisions.
3.	However, the cost accounting system and the reports it produces are not the same as the overall cost management system. The accounting system is a component of the broader cost management system in an organization.
4.	Cost management is not just cost reduction . It has a broader focus , including strategic spending such as: ✓ Advertising to boost sales ✓ Research and Development (R&D) to support innovation and new product development
5.	In such cases, managers may intentionally increase costs in a given period compared to the previous one, expecting that these decisions will generate profits in the future. A cost management system must ensure that costs are incurred with profit expectations .

Management Accounting

1.	Problem Solving Management accounting provides information to help evaluate different alternatives and make better decisions .
2.	Scorekeeping It involves recording and tracking the outcomes of managers' actions. This helps assess if the expected results have been achieved.
3.	Attention Directing The scorekeeping function along with expected results , and comparative analysis of scores of various companies , divisions , departments , present period scores/results with previous periods helps to identify areas where managers can focus to drive improvements.

8. Value Chain and Its Elements

A. Value Chain

1.	- The value chain shows the entire business as a series of activities where value is added to products or services that an organization produces and sells. - Management accountants support decision-making at every stage of the value chain. - The management accounting system shall be designed based on the decision needs of managers. - It should also consider the new themes and challenges that manager face today.

B. Value Chain Elements

1.	Customer Focus - Managers must allocate sufficient resources to enhance customer satisfaction. - Every action should also aim to increase or maintain profitability for the organization.



2.	Key Success Factors a. These are non-financial factors that impact the organization's economic viability. b. Important Key Success Factors include cost, quality, time, and innovation. c. Management accounting systems should track performance on these factors for the organization, its divisions, and competitors.
3.	Continuous Improvement (Kaizen) a. Continuous improvement or kaizen is a popular theme. b. Innovation related to this area in costing is kaizen costing
4.	Value Chain and Supply Chain Analysis a. The value chain, as a strategic framework for analysing competitive advantage, was promoted by Michael Porter. b. Management accountants must understand this framework and provide relevant information to strategic planners for effective implementation.
Professional Ethics	
5.	Like other professionals, accountants also face ethical dilemmas. They need clear ethical guidelines. Key principles include Competence, Confidentiality, Integrity, Objectivity. These are the main themes of the guidance note for ethical conduct.

9. Mission of The Institute of Cost Accountants of India

Ethical Role of CMAs in Global Business	
1.	CMA professionals are expected to ethically drive enterprises worldwide by creating value for stakeholders. This is achieved through the integration of strategy, management, and accounting competencies within a socio-economic context.
Standards of Ethical Conduct for CMAs	
1.	Independence and Objectivity a. Always maintain independence of thought and action. b. Assess relationships before giving opinions on cost or financial reports to ensure views are objective and unbiased.
2.	Transparency and Accuracy a. Disclose all material facts to avoid creating misleading financial statements. b. Acquire sufficient information before expressing opinions. c. Report any material misstatements or deviations from Generally Accepted Accounting Principles.
3.	Confidentiality a. Do not disclose or use confidential information unless: ▪ Required during duty ▪ Required by legal proceedings, lawful authority, or an institute committee b. Disclosure is limited to what's necessary
4.	Integrity in Business Relationships a. Inform clients/employers of any business interests or connections that should reasonably be disclosed.



	b. Do not receive or request any benefit (fees, remuneration, etc.) without the client's/employer's knowledge and consent.
5.	Engagement Clarity a. Define the scope and objectives of consulting work clearly before starting. b. Provide a cost estimate before or as soon as possible after the engagement begins.
6.	Professional Conduct with Peers a. A Member should behave with courtesy and good faith towards other Members. b. A Member should not accept an engagement to review the work of another Member for the same employer unless: ▪ The other Member is aware of it, or ▪ The other Member's connection with the work has been terminated, or ▪ The Member is reviewing others' work as a normal part of responsibilities.
7.	Fair Competition a. Do not offer or accept commissions to gain an unfair advantage in securing work. b. Avoid malicious actions or behaviour that can harm the professional reputation of another member.
8.	Competence and Professional Standards a. Maintain up-to-date competence as defined by the Institute. b. Only undertake work you are competent to perform based on training and experience. c. If needed, engage or advise others to engage specialists in the client's best interest.

10. Primary Norms of Business Ethics

Kinds of Business Ethics

1.	Personal Responsibility a. Every individual, from entry-level to executive, must take responsibility for their actions. b. This includes: ▪ Completing assigned tasks and job duties. ▪ Acknowledging and correcting mistakes honestly.
2.	Corporate Responsibility a. Companies are responsible to their: ▪ Employees ▪ Customers/clients ▪ Board of directors (where applicable) b. Responsibilities may be: ▪ Legal or contractual ▪ Ethical promises
3.	Loyalty a. Both businesses and employees are expected to show loyalty. Employees should be loyal to their co-workers, managers, and the company.



	b. This may include speaking positively about the business in public and discussing personnel or corporate issues only in private. c. Customer/client loyalty is important for a company to maintain good business relations and to build a good reputation, which helps in attracting more business.
4.	Respect a. Respect is an important business ethic, both in how a business treats its clients, customers, and employees, and how employees treat one another. b. When you show respect, the person feels like a valued team member or an important customer. c. It means caring about their opinions, keeping your promises, and resolving their issues quickly.
5.	Trustworthiness a. A business builds trustworthiness with its clients, customers, and employees through honesty, transparency, and reliability. b. Employees should trust the business to follow employment terms, and clients/customers should trust the business with their money, data, contracts, and confidential information. c. Being trustworthy helps attract more business and build a positive reputation.
6.	Fairness a. A business shows fairness by applying the same standards to all employees, regardless of their position. b. The expectations for honesty, integrity, and responsibility apply equally to an entry-level employee and the CEO. c. The business treats all customers equally, offering the same goods and services on the same terms.
7.	Community & Environmental Responsibility a. Businesses should act ethically not just toward clients, customers, and employees, but also toward the community and the environment. b. Many companies try to give back to the community through volunteer work or financial support. c. They also take steps to reduce waste and promote a safe and healthy environment.

11. Internal Code of Ethics

Content	
1.	A code of ethics is a set of guiding principles that ensures a business and its employees act with honesty and integrity in daily operations and only take actions that are beneficial to society.
2.	Each company may have its own code of ethics, depending on its industry, but most focus on these 5 common principles: a. Integrity b. Objectivity



	c. Professional competence d. Confidentiality e. Professional behaviour Many firms and organizations have formally adopted a Code of Ethics.
3.	CFA Institute Code of Ethics a. Act with integrity, competence, diligence, respect, and ethically with the public, clients, prospective clients, employers, employees, colleagues, and others in the global capital markets. b. Place the integrity of the investment profession and client interests above personal interests. c. Use reasonable care and independent professional judgment when conducting: ▪ Investment analysis ▪ Making investment recommendations ▪ Taking investment actions ▪ Other professional activities d. Practice and encourage professional and ethical behaviour that brings credit to the profession. e. Promote integrity and viability of the global capital markets for the benefit of society. f. Maintain and improve professional competence and help improve the competence of other professionals.

12. Business Ethics

Content	
1.	Meaning: Business ethics refers to morality in business. It is a system of moral principles and values applied to business activities. This means businesses should operate according to ethical or moral standards.
2.	Definition: Business ethics is the art or science of maintaining a harmonious relationship with society, its groups, and institutions, while recognizing what is right or wrong in business conduct.
3.	Features of Business Ethics: a. Code of conduct b. Provides protection to social groups c. Offers a basic framework for ethical practices d. Requires willing acceptance by businesses e. Needs education and guidance f. It is not against profit-making
4.	Principles of Business Ethics: a. Avoid exploitation of consumers b. Avoid unfair trade practices c. Ensure fair treatment to employees



5. **Seven Principles in Business Ethics:**
Business ethics involves both **written** and **unwritten codes** that **guide decisions** and actions. The seven principles are:
- Be trustful
 - Keep an open mind
 - Meet obligations
 - Maintain clear documentation
 - Be involved in the community
 - Maintain accounting control
 - Be respectful

13. Scope and Areas of Business Ethics

Business Ethics

- Business Ethics and Public Expectations:**

 - Wrongdoing by businesses has drawn **public attention** and led to government involvement to promote more acceptable business conduct.
 - Every **business decision** can be seen as **right or wrong**, ethical or unethical, legal or illegal.
 - Business ethics are the **principles** and **standards** that define **acceptable conduct** in business.
 - Acceptable conduct is influenced by:
 - Customers
 - Competitors
 - Government regulators
 - Interest groups
 - The public
 - An individual's own moral principles and values
 - Many **consumers** and **social advocates** believe businesses should not only make profits but also consider the **social impact** of their actions.
- Social Responsibility:**

 - Social responsibility is a business's obligation to **maximize positive impact** and **minimize negative impact** on society.
 - Though related, business ethics and social responsibility are **not the same**
 - ✓ **Business ethics:** Relates to **individual or group decisions** judged as right or wrong by society.
 - ✓ **Social responsibility:** A broader concept that looks at the overall **impact** of the **business's actions on society**.
 - From an **ethical perspective**, Concern about a healthcare provider **overcharging**.
 - From a **social responsibility perspective**, concern is how that overcharging affects the **healthcare system's ability** to serve everyone.



3.	Areas in Business Ethics: a. Corporate Social Responsibility b. Fiduciary responsibility to stakeholders c. Industrial espionage
4.	Benefits of Ethical Behaviour and CSR: Ethical behaviour and corporate social responsibility can provide major benefits, such as: a. Attracting customers, leading to higher sales and profits b. Encouraging employees to stay, reducing labour turnover, and increasing productivity c. Attracting talented employees, lowering recruitment costs d. Attracting investors, keeping share prices high, and protecting against takeovers

14. Ethics in Business Dealings

Importance and Impact of Business Ethics

1.	When a company clearly states its morals and commits to ethical and responsible behaviour , it gives investors peace of mind, assuring them that their money aligns with their own moral values.
2.	Employees working in an organization with strong business ethics feel confident that they are not supporting unethical practices through their actions.
3.	Customers feel comfortable purchasing from a company that sources materials and labour in an ethical and responsible way.
4.	A company that follows its own ethical guidelines is at lower risk of being: ▪ Fined for bad behaviour ▪ Found in violation of laws related to business conduct
5.	Reputation is one of a company's most valuable assets, and once lost, it is very hard to rebuild.
6.	Keeping the promises made is essential to maintain that reputation. Ignoring ethical codes and social responsibility can lead to serious consequences .
7.	Unethical behaviour can: ▪ Damage the firm's reputation ▪ Make the firm less attractive to stakeholders ▪ Cause profits to decline It can also harm the natural environment.

15. Emerging Issues in Business Ethics

Content

1.	The business is suffering and troubled due to lack of proper directions and is stuck on issues like logic, reasons, etc.
2.	Issues like fairness , justice , and honesty are the main issues creating complex dilemmas for businesses
3.	A wrong or biased decision can deeply impact the goodwill of the company and its market position.



16. General Business Ethics

Content	
1.	General Areas of Ethics ✓ Human Resource management ✓ Sales & marketing ✓ Production ✓ Intellectual Property & knowledge and skills

17. Common Unethical Practices by Corporate Executives

Content	
1.	Common Unethical Practices a. Corruption - financial/non-financial b. Greed for profit/turnover c. Accommodating a group, may be employees, vendors, customers. d. Leak of knowledge e. Leak of professionalism f. External pressure g. Ego and dominance of top management ignoring right things

18. Importance of Business Ethics

Content	
1.	Public expects business to show high ethical performance and social responsibility .
2.	Encouraging ethical behaviour in firms and employees helps prevent harm to society .
3.	Promoting ethical behaviour protects business from unethical employees and competitors .
4.	High ethical performance protects individuals working in business.
5.	Improves consumer confidence .
6.	Business becomes aware of its social responsibilities .
7.	Creates a good image of the business.
8.	Builds goodwill
9.	Increases profitability .
10.	Helps survive heated competition.
11.	Ensures safety from legal perspectives .

19. Need for Business Ethics in Business Dealings

Content	
1.	To Stop Business Malpractice a. Some unscrupulous businessmen indulge in unfair trade practices like Black marketing, artificial high pricing, adulteration, cheating in weights and measures, selling harmful products, hoarding, false claims, etc. b. These are harmful to consumers. c. Business ethics help stop such malpractices.



2.	To Improve Customers' Confidence a. Ethics improve customer trust in quality, quantity, and price of products. b. Customers have more trust in businessmen who follow ethical rules.
3.	For Survival of the Business a. Business ethics are essential for long-term survival. b. Unethical businessmen may succeed short term but fail later. c. Cheated consumers don't return and spread negative publicity. d. Following ethical rules helps build reputation and stay in the market.
4.	To Safeguard Consumers' Rights a. Consumer sovereignty is important for business survival. b. Consumers have rights: to health, safety, information, choice, redress, etc. c. Business ethics must protect these rights.
5.	To Protect Employees and Shareholders a. Ethics protect the interests of employees, shareholders, suppliers, competitors, dealers, etc. b. Prevents exploitation through unfair practices.
6.	To Develop Good Relations a. Ethics help build good relations between business and society. b. Results in regular supply of quality goods, business profits, and economic growth.
7.	For Smooth Functioning a. Ethical practices lead to happy stakeholders (employees, consumers, dealers, etc.). b. Leads to cooperation, smooth functioning, growth, and more profits.
8.	Consumer Movement a. Rise in consumer awareness and organization. b. Consumers now oppose false claims and unfair practices. c. They boycott harmful, overpriced, and duplicate goods. d. Honest and fair practices are now essential to survive.
9.	Consumer Satisfaction a. Consumer is the king of the market. b. No sales or profit without consumer satisfaction. c. Ethics are key to ensuring consumer satisfaction.
10.	Importance of Labour a. Employees are crucial to business success. b. Ethics demand fair wages, good working conditions, and welfare facilities. c. Ethics builds good employer-employee relations.
11.	Healthy Competition a. Ethics must be followed in dealing with competitors. b. Encourage healthy competition, it improves efficiency and resource use. c. Avoid cut-throat competition, promote equal opportunities, avoid monopoly (which harms consumers).



20. Advantages of Business Ethics

Content	
1.	It offers a competitive advantage to the company.
2.	Goodwill of the firm increases based on how it responds to ethical issues.
3.	Productivity improves due to rigid, firm, and sincere workers and other business chain members.
4.	Increased morale and trust help the business grow its market share .
5.	Ethical performance brings positive publicity .
6.	Public accepts the company's products more easily.
7.	Leads to overall growth of the society.
8.	Makes change management easier .
9.	Helps in value integration with quality and strategy.

21. Recognition of Ethical Issues in Business

Content	
1.	Recognizing ethical issues is the first and most important step in understanding business ethics
2.	An ethical issue is a problem , situation , or opportunity where a person must choose between actions that may be right or wrong, ethical or unethical.
3.	In business, such choices often involve comparing monetary profit with appropriate conduct.
4.	The best way to judge the ethics of a decision is by viewing it from the perspective of a customer or competitor .
5.	Many business issues may look simple , but it takes years of experience to understand what is truly acceptable or ethical.
6.	Ethics are also influenced by the culture in which the business operates .

22. Improving Ethical Behaviour in Business

Content	
1.	Business Relationship - Ethical concerns arise from how business persons treat customers, suppliers, and others. - Ethical behaviour includes: - Keeping company secrets, - Meeting obligations and responsibilities, Avoiding pressure that leads others to act unethically.
2.	Improving Ethical Behaviour in Business - Understanding Ethical Choices: Knowing how people make ethical/unethical choices can help reduce unethical behaviour in business. 3 Key Influencing Factors: Ethical decisions are influenced by:



- Individual **moral standards**,
 - **Influence** of managers and co-workers,
 - Opportunity to do **misconduct**.
- c. Need for Ethics Policies: Without clear ethics policies, employees follow **peer and superior behaviour** to decide what's acceptable.
- d. Professional Codes of Ethics: These are **formal rules and standards** showing what behaviour a company expects from employees.
- e. Role of Codes and Training: Codes of ethics, policies, and ethics training:
- Define **acceptable** and **unacceptable** activities,
 - Reduce **misconduct** by setting punishments for violations.
- f. Enforcement Builds Acceptance: Enforcing rules through **rewards** and **punishments** helps employees accept ethical standards.

23. Emotional Intelligence

Emotional Intelligence

1.
 - a. Emotional Intelligence is the **ability to understand, use, and manage** your own emotions in positive ways.
 - b. It helps to **relieve stress**, communicate effectively, empathize with others, overcome challenges, and handle conflict.
 - c. Emotional intelligence helps build **stronger relationships**, succeed at school and work, and achieve career and personal goals.
 - d. It also helps you **connect** with your **feelings**, turn **intentions** into **action**, and make informed decisions about what matters most.
2. **Emotional Intelligence - Four Key Attributes**
 - a. Self-management
 - Control **impulsive feelings** and behaviours.
 - Manage **emotions** in healthy ways.
 - Take **initiative** and keep commitments.
 - Adapt to **changes**.
 - b. Self-awareness -
 - Recognize your **own emotions** and their impact on thoughts and behaviour.
 - Know your **strengths** and **weaknesses**.
 - Have **self-confidence**.
 - c. Social awareness -
 - Show **empathy** and understand others' emotions and needs.
 - Pick up **emotional cues**.
 - Be **socially comfortable** and understand group dynamics.
 - d. Relationship management -
 - Build and maintain **good relationships**.
 - **Communicate** clearly and influence others.
 - Work well in teams and **manage conflict**.



24. Importance of Emotional Intelligence

Content	
1.	a. Success and fulfilment in life are not only based on being the smartest person. b. Many academically brilliant people fail in work or relationships due to low emotional intelligence. c. IQ (Intelligence Quotient) alone is not enough to achieve success in life. d. IQ may help you get into college, but it's your EQ (Emotional Quotient) that helps you manage stress and emotions—especially during exams or tough times. e. IQ and EQ work best together when they support each other.
2.	Effects of Emotional Intelligence a. Performance at School or Work ▪ High EQ aids in dealing with social situations, leading teams, and supports career growth. ▪ Companies now consider EQ as important as technical skills and use EQ tests in hiring. b. Physical Health ▪ Poor emotional control means poor stress management, which affects health. ▪ Uncontrolled stress can cause high blood pressure, weak immunity, heart issues, infertility, and faster aging. ▪ Managing stress is the first step to improving emotional intelligence. c. Mental Health ▪ Unmanaged emotions and stress increase risk of anxiety and depression. ▪ Difficulty in handling emotions affects relationships, leading to loneliness and worsening mental health. d. Relationships ▪ Understanding and managing your emotions helps express feelings clearly. ▪ It also helps you understand others, improving communication and relationships at work and in personal life.

25. Case Study

Content	
1.	Wells Fargo was a well-known bank in the U.S., with high returns and rising stock prices. One of its main goals was to increase revenue by selling more products to existing customers. In September 2016, it was revealed that employees were under extreme pressure to meet sales targets. This included hourly tracking, pressure from supervisors to act unethically, and a pay system based heavily on bonuses and commissions. It was found that over the years, the company had fired more than 5,300 employees for questionable sales practices. Despite this, CEO John Stumpf claimed the problem was due to a few bad employees and denied that the company encouraged unethical behaviour.



However, further reports revealed deeper issues. Many employees left the company due to pressure to act unethically, and some were even fired for reporting wrongdoing. Senior leaders knew about these aggressive practices since at least 2004, with some cases going back to 2002.

An independent investigation, ordered by the Board of Directors, found serious problems in the company's culture, structure, and leadership. The report pointed to a harmful sales culture, a weak performance system, too much independence given to department leaders, and a refusal by senior leadership to question the sales model because it had worked well in the past.

Questions:

- a. What steps can leaders take to design systems that promote ethical behaviour instead of unethical behaviour?
- b. What behaviours should leaders show to encourage ethical practices in their organization?

2. Steps Leaders Can Take to Design Ethical Systems:

- a. Set Clear Ethical Standards
 - Create a **written code of ethics** and communicate it clearly to all employees.
 - Include specific examples of acceptable and unacceptable conduct.
- b. Revise Incentive Structures
 - **Avoid rewards** based only on **sales** or performance numbers.
 - **Design incentives** that include **ethical behaviour**, customer satisfaction, and long-term performance.
- c. Strengthen Whistle-blower Policies
 - Ensure safe, anonymous, and non-retaliatory reporting channels.
 - Act swiftly and fairly on all reports of misconduct.
- d. Monitor and Control Culture
 - Regularly assess the organizational culture and **identify pressure points**.
 - Use surveys, audits, and feedback mechanisms to detect unethical trends.
- e. Behaviours Leaders Should Model to Encourage Ethics:
 - Lead by Example (Tone at the Top)
 - Leaders should act ethically in all decisions to set a strong example for employees.
 - Show that integrity is valued more than short-term success.
- f. Encourage Open Communication
 - Create an environment where employees feel **safe to voice concerns**.
 - Respond with **transparency and fairness**.
- g. Recognize and Reward Ethical Behaviour
 - Publicly appreciate employees who act ethically, even in tough situations.
 - Make ethics part of **performance evaluations and promotions**.



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