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# CMA FINAL PAPER - 13

# ECONOMIC LAWS



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CONCEPT BOOK MODULE-02  
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**CMA SAI KUMAR B**

<b>INDEX</b>		
<b>S.NO</b>	<b>CHAPETRS</b>	<b>PAGE NO</b>
1	SEBI Regulations	1-16
2	The Competition Act, 2002	17-29
3	Foreign Exchange Management Act, 1999	30-49
4	Laws and Regulations related to Banking Sector	50-61
5	Laws and Regulations related to Insurance sector	62-67
6	Specific Legal Provisions related to MSME Sector	68-76
7	Laws and Regulations related to Anti-Money Laundering	77-81
8	Laws and Regulations related to Cyber Security and Data Privacy	82-91



# 1. SEBI Laws and Regulations

## A. Raising Finance from Capital Markets - Initial Public Offer (IPO)

- ❖ An **Initial Public Offer (IPO)** is the first public sale of shares by an unlisted company to investors, enabling it to get listed on a recognized stock exchange (BSE/NSE).
- ❖ This process allows companies to **raise long-term funds** from the public for expansion, working capital, debt repayment, or other corporate purposes.
- ❖ IPO is governed by **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (SEBI ICDR)**.
- ❖ The process involves **eligibility checks, appointment of intermediaries, compliance with issue conditions, pricing, and allocation**.

### 1. Eligibility of the Issuer

- A company can launch an IPO **only if** it satisfies SEBI's eligibility conditions.
- This is to ensure only financially sound and compliant companies access public funds.

#### Key Eligibility Conditions:

##### 1. No SEBI Debarment

- ❖ The issuer, its **promoters, promoter group, directors, or selling shareholders** must **not** be debarred from accessing capital markets.
- ❖ Even if **any other company** promoted by the same promoters is debarred, the IPO is **ineligible**.

**Example:** ABC Ltd. wants an IPO. Its promoter also owns XYZ Ltd., which SEBI debarred for insider trading.

**Result:** ABC Ltd. cannot launch IPO.

##### 2. Application for Listing

- ❖ Must apply to **at least one recognized stock exchange** with **nationwide trading terminals** (e.g., NSE or BSE).
- ❖ One exchange is chosen as the **designated stock exchange** for all compliance.

##### 3. Dematerialisation of Shares

- ❖ The issuer must sign an agreement with **NSDL/CDSL** so that all shares (existing and new) are in **demat form**.

**Why:** This ensures easy trading and reduces risk of fake certificates.

##### 4. Partly Paid-Up Shares

- ❖ Before filing the offer document:
  - **All partly paid-up shares must be fully paid or forfeited.**



**Example:** If the company has 1 lakh shares with 50% unpaid, IPO is **not** allowed until fully paid.

### 5. Firm Financial Arrangements

- ❖ At least **75%** of the project cost (excluding IPO funds) must have verifiable funding arrangements.

**Example:**

- Project cost: ₹100 Cr
- IPO to raise: ₹30 Cr
- Remaining ₹70 Cr → 75% (₹52.5 Cr) must be financed via loans/commitments.

### 6. Promoters' Holding in Demat

- ❖ Promoter shares **must be in demat form** before filing the draft offer document.

### 7. Limit on General Corporate Purposes

- ❖ Max **25%** of IPO proceeds can be used for **general corporate purposes**.

**Why:** To prevent misuse of funds for unspecified activities.

### 8. Wilful Defaulter Restriction

- ❖ If the company or its promoters/directors are **wilful defaulters**, IPO is not permitted.

### 9. Duration of IPO

- ❖ Must be open for **minimum 3 days** and **maximum 10 days**.

### 10. Minimum Subscription Requirement

- ❖ At least **90%** of the issue size must be subscribed.
- ❖ If not, application money **refunded within 15 days** of issue closure.

## 2. Appointment of Merchant Banker and Other Intermediaries

For investor protection and regulatory compliance, SEBI requires issuers to appoint **qualified intermediaries**:

### 2.1 Merchant Banker (Lead Manager)

❖ **Role:**

- Prepares and files **offer documents (DRHP/RHP)**
- Ensures **all SEBI disclosures and compliance**
- Manages **allotment, refunds, and underwriting**

**Note:** If multiple merchant bankers are appointed, their **rights and responsibilities must be defined in the offer document**.

### 2.2 Other Intermediaries

#### 1. **Syndicate Members** (for Book-Building IPOs)

- Collect and process **bids from investors**.

#### 2. **Bankers to the Issue** (for Fixed Price IPOs)



- Handle **application money collection** at multiple centers.

### 3. Registrar to the Issue (RTA)

- SEBI registered and **connected to both NSDL & CDSL**.
- Responsible for **allotment, refunds, and maintaining records**.

### 4. Compliance Officer

- Monitors **SEBI law compliance** and **resolves investor complaints**.

### 3. Other Conditions for Initial Public Offer

SEBI imposes additional **financial and operational criteria** for IPO eligibility:

#### 1. Net Tangible Assets (NTA)

- ❖ **₹3 crore minimum** in each of the last 3 years.
- ❖ Not more than **50% in monetary assets**; excess must be committed to business.
- ❖ 50% rule **not applicable** if IPO is **pure Offer for Sale (OFS)**.

#### 2. Profitability Track Record

- ❖ **₹15 crore average pre-tax operating profit** in 3 most profitable years of preceding 5 years.

#### 3. Net Worth Requirement

- ❖ Minimum **₹1 crore** in each of the last 3 years.

#### 4. Name Change Condition

- ❖ If company changed its name in the last 1 year, **50% of revenue** must come from the new business activity.

#### 5. Alternative Route (QIB Route)

- ❖ If above conditions are **not met**, IPO can be made via **Book Building** with:
  - **75% of net offer to QIBs**
  - **Full refund** if QIB subscription fails.

#### 6. Other Restrictions

- ❖ No **outstanding convertible securities** giving right to future shares.
- ❖ If issue size > ₹100 Cr → **Bank/PFI must monitor fund use** until 95% utilized.
- ❖ An issuer cannot make an allotment pursuant to a public issue if the number of prospective allottees are **less than one thousand**.
- ❖ An issuer may make an IPO of **convertible debt instruments** without making a prior IPO of its **equity shares** and listing, provided company has not defaulted payment of principal / interest for a period of **6 months**.
- ❖ IPO grading by **credit rating agencies** is optional.

#### 4. Pricing of Shares in Public Issues

- ❖ Issuer decides price in consultation with Lead Manager or via Book Building.

##### Face Value Rule:

- If issue price  $\geq$  ₹500/share  $\rightarrow$  Face value can be ₹1
- If  $<$  ₹500/share  $\rightarrow$  Face value must be ₹10

- ❖ For convertible debt instruments, issuer decides coupon rate and conversion price similarly.

#### 5. Differential Pricing

Differential pricing allows different categories of investors to receive different offer prices:

##### 1. Retail/Employees Discount:

- ❖ Up to 10% lower than other investors.

##### 2. Anchor Investors:

- ❖ Price cannot be lower than other QIBs.

##### 3. Employees in Alternate Book Building:

- ❖ Discount not more than 10% of floor price.

##### **Example:**

- Price Band: ₹200-₹220
- Employees may get shares at ₹180 (10% less than ₹200 floor).

#### 6. Promoters' Contribution and Lock-in

##### 1. Minimum Promoter Contribution (MPC)

- ❖ At least 20% of post-issue capital.

##### 2. Lock-in Periods

- ❖ MPC: 3 years from allotment or commercial production (later date).
- ❖ Excess promoter holding: 1 year.
- ❖ Exemption: Excess in further public offer (FPO) not locked-in.

#### 7. Book Building Process - Detailed Explanation

**Book Building** is a modern method of price discovery used in Initial Public Offers (IPOs) and Follow-on Public Offers (FPOs).

It is widely used because it ensures fair pricing of securities based on real market demand.

##### 1. Meaning of Book Building

- ❖ Book Building is a process where the issuer invites investors to submit bids for shares at different prices within a specified price band.
- ❖ The final issue price (called Cut-off Price) is determined after collecting and analysing all bids, based on the demand pattern.

**Key Features:**

- The price is not fixed initially, only a price band is announced (e.g., ₹200 - ₹220).
- Bidding window is open for 3-10 days.
- Both institutional and retail investors participate.
- Allotment is done based on the discovered price.

**2. Important Terms in Book Building****a) Price Band**

- ❖ Range of prices within which investors can bid.
- ❖ Lower end = Floor Price, Upper end = Cap Price.

**Example:** Price Band ₹200-₹220

- Floor Price = ₹200
- Cap Price = ₹220

**b) Cut-off Price**

- ❖ Final price decided after the book building process.
- ❖ Retail investors can select the "cut-off" option while applying to ensure allotment at final price.

**c) Bids**

- ❖ Offers by investors indicating quantity and price.
- ❖ Higher bids indicate strong demand.

**d) Oversubscription & Price Discovery**

- ❖ If demand is more than shares available, bids are allocated proportionately at cut-off price.

**3. Step-by-Step Book Building Process****Step 1: Appointment of Intermediaries**

- ❖ Issuer Company appoints:
  - Lead Merchant Banker (Book Running Lead Manager - BRLM)
  - Syndicate Members (to collect bids)
  - Registrar to Issue (RTA)

**Step 2: Filing of Offer Document**

- ❖ Issuer files Draft Red Herring Prospectus (DRHP) with SEBI.
- ❖ Red Herring Prospectus (RHP) is filed before opening IPO, mentioning price band and other details.

**Step 3: Announcement of Price Band**

- ❖ Issuer and BRLM decide floor and cap price.
- ❖ Example: Price band ₹200-₹220

#### Step 4: Bidding Period (3-10 days)

- ❖ Investors place bids within the price band:
  - Retail investors (up to ₹2 lakh)
  - Non-institutional investors (HNIs)
  - Qualified Institutional Buyers (QIBs)

#### Illustrative Example:

IPO Size = 10 lakh shares & Price Band ₹200-₹220

Price (₹)	No. of Shares Bid	Cumulative Demand
220	6,00,000	6,00,000
215	4,00,000	10,00,000
210	3,00,000	13,00,000
200	2,00,000	15,00,000

- ❖ **Observation:** Full subscription (10 lakh shares) achieved at ₹215 → This becomes cut-off price.

#### Step 5: Determination of Cut-off Price

- ❖ Cut-off Price = Price at which the entire issue is subscribed.
- ❖ In our example: ₹215/share

#### Step 6: Allocation of Shares

Allocation is category-wise as per SEBI rules:

##### a) Standard Book Building Route (Reg. 6(1)):

- ❖ ≥ 35% Retail Investors
- ❖ ≥ 15% Non-Institutional Investors
- ❖ ≤ 50% QIBs (5% reserved for MFs)

##### b) QIB-Heavy Route (Reg. 6(2)):

- ❖ ≤ 10% Retail
- ❖ ≤ 15% NII
- ❖ ≥ 75% QIBs (5% reserved for MFs)
- ❖ Anchor Investors:
  - Can get up to 60% of QIB portion, 1 day before IPO opens.

#### Step 7: Refund and Listing

- ❖ Unsuccessful bidders → Refund within 5 days of allotment.
- ❖ Successful bidders → Shares credited to Demat account.
- ❖ Shares get listed on stock exchange after allotment.

#### 4. Advantages of Book Building

- a) Efficient Price Discovery - Market decides the price, not the company alone.
- b) Fair Allocation - Demand-based allocation reduces manipulation.
- c) Investor Confidence - Transparent and regulated process.
- d) Higher Capital Mobilization - Encourages institutional participation.

### 5. Practical Example of Book Building

**Scenario:** ABC Ltd. IPO - 10 lakh shares & Price Band: ₹100-₹120

**Bidding Data:**

Price (₹)	Quantity Bid	Cumulative
120	2,00,000	2,00,000
118	3,00,000	5,00,000
115	4,00,000	9,00,000
110	3,00,000	12,00,000
105	2,00,000	14,00,000
100	1,00,000	15,00,000

- IPO size = 10 lakh shares
- Full subscription at ₹115/share (cut-off price)
- Shares allotted at ₹115, regardless of higher bids.

#### Diagram: Flow of Book Building Process

1. Issuer & BRLM decide Price Band →
2. File RHP with SEBI →
3. Bidding Period (3-10 days) →
4. Bids Collected by Syndicate →
5. Price Discovery (Cut-off Price) →
6. Allotment as per SEBI Proportion →
7. Refund & Listing

## B. Insider Trading

- ❖ Insider trading refers to **buying, selling, or dealing in the securities of a company** by persons who have access to **unpublished price sensitive information (UPSI)** about that company.
- ❖ SEBI regulates insider trading through the **SEBI (Prohibition of Insider Trading) Regulations, 2015**, which aim to ensure fairness, transparency, and investor confidence in the securities market.

### A. Few Important Definitions

#### 1. Compliance Officer

- ❖ A **senior officer** of the company, financially literate, responsible for:
  - Ensuring legal and regulatory compliance under the Insider Trading Regulations.
  - Maintaining records, monitoring trades, and implementing internal codes.
  - Supervising adherence to rules for **preservation of UPSI**.
- ❖ Reports to the **Board of Directors** (or the head of the organization, if no board exists)

## 2. Connected Person

- ❖ A **connected person** is someone who:
  - Is **presently or was during the past 6 months** associated with the company **directly or indirectly**.
  - Association can be through employment, frequent communication, professional / business relationship, or fiduciary capacity.
  - Such association **gives access** to UPSI.

### Examples of connected persons:

- a) Immediate relatives of a connected person.
- b) Holding, subsidiary, or associate companies.
- c) SEBI-registered intermediaries (stock brokers, merchant bankers, etc.) or their employees.
- d) Asset management companies, trustee companies, investment companies.
- e) Officials of stock exchanges, clearing corporations, or public financial institutions.
- f) Members of the board of trustees of mutual funds or directors/employees of AMC.
- g) Officials or employees of SEBI-recognized self-regulatory organizations.
- h) Bankers of the company.

## 3. Generally Available Information

- ❖ Any information **accessible to the public on a non-discriminatory basis**.
- ❖ **Example:** Quarterly results announced publicly on the stock exchange.

## 4. Immediate Relative

- ❖ Includes **spouse, parents, siblings, and children** (including of spouse), who:
  - Are financially dependent on the person, or
  - Consult the person for trading decisions.

## 5. Insider

- ❖ Any person who is:
  - A **connected person**, or
  - In possession of UPSI.

## 6. Unpublished Price Sensitive Information (UPSI)

- ❖ Information related to a company or its securities that:
  - **Is not generally available**, and
  - On becoming available, **likely affects the price of the securities materially**.
- ❖ **Examples of UPSI:**
  - a) Financial results
  - b) Declaration of dividends
  - c) Changes in capital structure
  - d) Mergers, de-mergers, acquisitions, delisting, or major business expansions
  - e) Changes in key managerial personnel (KMP)



## B. Restrictions on Communication and Trading by Insiders

### 1. Communication of UPSI Prohibited

- ❖ Insiders **cannot communicate, share, or provide access to UPSI, except:**
  - For **legitimate purposes**, or
  - As required under law, or
  - In performance of duties.
- ❖ Companies must define **legitimate purposes** in their **Code of Fair Disclosure**.

### 2. Notice to Insiders

- ❖ Companies must **notify insiders** to maintain confidentiality of UPSI.

### 3. UPSI Sharing in Transactions

- ❖ UPSI can be shared **only in limited circumstances**, such as:
  - For a transaction **requiring an open offer**, or
  - If the Board decides sharing UPSI is **in the company's best interest**.
- ❖ UPSI must be **disseminated publicly at least 2 trading days before** the transaction.

### 4. Structured Digital Database

- ❖ Every company must maintain a **secure digital database** of:
  - Nature of UPSI shared
  - Parties with whom it was shared
- ❖ Retention: **Minimum 8 years** or longer, if required for investigation.

### 5. Prohibition on Trading While in Possession of UPSI

- ❖ Insiders **cannot trade in listed securities** while holding UPSI.
- ❖ **Defences available:** For example, pre-approved trading plans or off-market transactions under specific conditions.

### 6. Onus of Proof

- ❖ **Connected persons** must prove they were **not in possession of UPSI**.
- ❖ In other cases, SEBI has the onus to prove.

## C. Trading Plans

- ❖ Insiders may **formulate a trading plan** to enable **safe trading** without violating insider trading laws.
- ❖ **Key points:**
  1. Trading plan to be **approved by the compliance officer**.
  2. Public disclosure of the plan required.
  3. Trading **cannot start within 6 months** of public disclosure.
  4. Once approved, the plan **cannot be deviated from**.
  5. Compliance officer **informs the stock exchange**.



## D. Disclosures of Trading by Insiders

### 1. General Provisions

- ❖ Insiders must **disclose their trades** as well as trades by:
  - Immediate relatives, and
  - Any person for whom they take trading decisions.
- ❖ Objective: **Prevent misuse of UPSI.**

### 2. Disclosures by Certain Persons

- ❖ **Initial Disclosure:**
  - Directors or KMP must disclose their **holding of securities** on the date of appointment.
- ❖ **Continual Disclosure:**
  - Required **within 2 trading days** if total traded value exceeds **₹10 lakhs per quarter.**
- ❖ **Other Connected Persons:**
  - Must also disclose as per the Regulations.

## E. Code of Fair Disclosure

- ❖ Every listed company must:
  - Formulate and **publish a Code of Practices** for fair disclosure of UPSI.
  - Publish it on the **official website** and **intimate the stock exchanges.**

### Principles (Schedule A):

- a) **Prompt public disclosure** of UPSI once credible and concrete.
- b) **Avoid selective disclosure** of UPSI.
- c) Appoint a **Chief Investor Relations Officer** for information dissemination.
- d) **Fair response** to queries on news reports or market rumors.
- e) Ensure **information to analysts is not UPSI.**
- f) Upload **transcripts/records of analyst meetings** on company website.

## F. Code of Conduct

- ❖ CEO/MD to **formulate a Code of Conduct** to regulate, monitor, and report trading by **designated persons and their relatives.**

### Key points (Schedule B):

- a) Compliance officer reports to **Board/Audit Committee.**
- b) Trading by designated persons governed by **internal code.**
- c) **Trading window** to reopen only **48 hours after UPSI becomes public.**
- d) **Pre-clearance required** for trades above prescribed threshold.
- e) Applicants must declare **no possession of UPSI.**
- f) **Pre-cleared trades** to be executed within **7 trading days.**
- g) Code to define **reporting formats, sanctions, and disciplinary actions.**
- h) Annual disclosure of **PAN and details of connected persons.**
- i) Companies must have a clear **process for bringing people "inside"** on sensitive transactions.



## G. Institutional Mechanism for Prevention of Insider Trading

### a) Internal Controls

- ❖ CEO must ensure an **effective internal control system** to prevent insider trading.

### b) Audit Committee Review

- ❖ Reviews compliance **at least once a year** and confirms controls are effective.

### c) Leak Inquiry Policy

- ❖ Companies must have a **policy to investigate leak or suspected leak of UPSI**, approved by the Board.

### d) Whistle-blower Policy

- ❖ Employees must be **aware of a whistle-blower mechanism** to report UPSI leaks.

### e) Cooperation of Intermediaries

- ❖ Intermediaries and fiduciaries must **cooperate in inquiries** regarding UPSI leaks.

## D. Takeover Code

SEBI Takeover Code (SAST Regulations, 2011)

SAST means "Substantial Acquisition of Shares and Takeovers"

This is commonly known as the **Takeover Code**

The **Takeover Code** is a set of rules prescribed by **SEBI** to regulate the **acquisition of substantial shares or control over listed companies**.

### ❖ Applicability:

- To all companies listed on a recognized stock exchange
- Applies to **direct and indirect acquisition** of shares, voting rights, or control in **listed companies**
- **Not applicable** to companies listed on the **Innovators Growth Platform** without a public issue.

**Takeover:** When an **acquirer** gains **control** of the **target company**.

### ❖ Objective:

- To protect **minority shareholders**.
- To ensure **transparency and fairness** in acquisitions.
- To provide **equal exit opportunity** to public shareholders in case of a change in control.

## Important Terminologies in Takeover Code:

To understand the takeover process, first know the **key terms**:

### 1. Acquirer

- ❖ Any person (individual, company, body corporate, or group) who **acquires or agrees to acquire**:
  - Shares,



- Voting rights, or
- Control over the target company, **directly or indirectly**, either **alone or with PAC**.

**Example:**

- ❖ If Company X buys 30% of Company Y's shares, X is the **acquirer**.

**2. Target Company**

- ❖ The **company whose shares are being acquired**.
- ❖ Must be a **listed company** on a recognized stock exchange.

**3. Control**

- ❖ The **right to manage the company**, either by:
  - Appointing majority of directors, or
  - Controlling policy/management decisions.
- ❖ Control can be exercised **directly or indirectly** through:
  - Shareholding,
  - Voting agreements,
  - Shareholder or management agreements.

**4. Substantial Acquisition of Shares**

- ❖ When an acquirer **buys a significant portion of shares** that triggers an open offer.
- ❖ **Trigger Point:** When post-acquisition voting rights reach or exceed 25%.

**5. Persons Acting in Concert (PAC)**

- ❖ Two or more persons **cooperating with a common objective** of acquiring shares or control.
- ❖ **Examples of PAC:**
  - Immediate relatives,
  - Promoters and promoter group,
  - Holding and subsidiary companies,
  - Mutual funds with their trustees,
  - Venture capital funds,
  - Merchant bankers with their acquirer client.

**6. Deemed PACs**

- ❖ Persons who are automatically **considered to act together**, like:
  - a) Company + its holding/subsidiary/under same management
  - b) Company + its directors
  - c) Promoters + promoter group
  - d) Mutual fund + trustees + AMC
  - e) Portfolio manager + client (acquirer)

**7. Offer Period**

- ❖ Time from **public announcement of acquisition** to completion of payment or withdrawal of offer.

**8. Tendering Period**



- ❖ 10 working days within the offer period during which shareholders can tender their shares.

### 9. Offer Price

- ❖ The price per share offered by the acquirer in the open offer.
- ❖ Can be revised up to 3 days before the offer opens.
- ❖ Promoters cannot participate in the open offer.

### 10. Identified Date

- ❖ 10 working days after closure of the offer when payment to shareholders must be made.

### 11. Frequently Traded Shares

- ❖ Shares that have a 12-month trading volume  $\geq$  10% of total listed shares.

### 12. Volume Weighted Average Price (VWAP)

- ❖ Total value of shares traded  $\div$  Total number of shares traded, used to calculate offer price.

## Kinds of Takeovers:

### 1. Friendly Takeover

- ❖ Promoters voluntarily sell their shares to the acquirer.
- ❖ Negotiated peacefully with mutual consent.
- ❖ **Example:** Flipkart acquired by Walmart with promoter approval.

### 2. Hostile Takeover

- ❖ Promoters resist the takeover.
- ❖ Acquirer bypasses promoters and makes a direct open offer to public shareholders.
- ❖ **Example:** L&T's hostile takeover of Mindtree.

### 3. Horizontal Takeover

- ❖ Acquisition of a company in the same industry, often a competitor.
- ❖ Helps in market expansion and elimination of competition.
- ❖ **Example:** Vodafone acquiring Hutch.

### 4. Vertical Takeover

- ❖ Acquisition of suppliers (backward) or customers (forward) to control the supply chain.
- ❖ **Example:** A car manufacturer acquiring a tire company.

### 5. Conglomerate Takeover

- ❖ Acquisition of a company in an unrelated industry.
- ❖ Done to diversify business risk.
- ❖ **Example:** Tata Group acquiring tea company Tetley.



## 1. Requirement of Open Offer Process & Compliance

### a) Initial Trigger (Reg. 3)

- ❖ If acquirer + PAC acquire  $\geq 25\%$  voting rights, an open offer is mandatory.
- ❖ Must offer to acquire at least 26% additional shares from public shareholders.

### b) Creeping Acquisition (Reg. 3(2))

- ❖ Acquirer holding 25% to 75% can buy up to 5% per year without open offer.
- ❖ Acquiring  $>5\%$  in a financial year triggers another open offer.

### c) Compliance

- ❖ Maintain minimum public shareholding (25%) at all times.
- ❖ Public announcement and disclosures are mandatory.

## 2. Pre-conditions to Voluntary Open Offer

- Acquirer already holds  $\geq 25\%$  voting rights.
- No acquisition in past 52 weeks triggering an open offer.
- No new share acquisition during offer period, except under the open offer.
- No further acquisition for 6 months post completion, except another voluntary/competing offer.
- Open offer may be conditional with minimum acceptance

## 3. Withdrawal of Offer (Reg. 23)

Open offer can be withdrawn only in special situations:

- Statutory approvals refused.
- Death of the acquirer (if an individual).
- Conditions of agreement not fulfilled.
- SEBI permits withdrawal in exceptional cases.

### Process:

- ❖ Merchant banker announces withdrawal within 2 working days in newspapers.
- ❖ Inform SEBI, stock exchanges, and target company simultaneously.

## 4. Open Offer Process

- Submit Draft Letter of Offer to SEBI - within 5 working days of public announcement.
- Dispatch Letter of Offer - within 7 working days of SEBI comments / 15 days expiry.
- Open the Offer - tendering starts within 12 working days; open for 10 working days.
- Complete Payment - within 10 working days after tendering period ends.

## 5. Mode of Payment & Escrow Account

### a) Mode of Payment:

- Cash
- Exchange/transfer of listed shares or debt instruments
- Convertible debt instruments allowing conversion to listed shares



### b) Escrow Account:

- Opened **2 working days before public statement.**
- Purpose: **Security for acquirer's obligations.**
- Can be:
  1. Cash deposit
  2. Bank guarantee
  3. Deposit of frequently traded shares
- Released **30 days after completing shareholder payment.**

### 6. Obligations of the Target Company

- ❖ Run **business as usual** during the offer period.
- ❖ Cannot **fix record dates** for corporate actions during the tendering period.
- ❖ Provide **shareholder list to acquirer** within **2 working days of identified date.**
- ❖ Cannot **sell or encumber assets** without **special resolution by postal ballot.**

### 7. Independent Directors' Recommendation

- ❖ Must **publish their opinion** on the offer:
  - a) **At least 2 working days before** tendering period.
  - b) In **same newspapers** as public announcement.
  - c) Send copies to **SEBI, stock exchanges, and merchant banker.**

### 8. Obligations of the Acquirer

- ❖ Ensure **firm financial arrangements** for payment.
- ❖ Cannot **sell target shares** during the offer period.
- ❖ Cannot **alienate target assets** unless disclosed in the offer.
- ❖ Acquirer and PAC are **jointly and severally responsible** for all compliances.

### 9. Exemptions from Open Offer

- ❖ Acquisitions in **ordinary course of business** by:
  - SEBI-registered underwriters
  - Stock brokers on behalf of clients
  - Merchant bankers acting as stabilizing agents
- ❖ **Safety net schemes** and disinvestment agreements
- ❖ **Court-approved mergers, demergers, and restructurings**
- ❖ **Delisting-related acquisitions or share forfeiture**

### Summary for better understanding:

- ❖ **Open offer trigger = 25% acquisition;** open offer must be **26% minimum.**
- ❖ **Friendly vs hostile takeovers** decide the negotiation nature.
- ❖ **Voluntary open offers** have **strict pre-conditions** to prevent misuse.
- ❖ SEBI ensures **minority protection** through:



- Open offer process
- Escrow accounts
- Director recommendations
- Transparent disclosures

## 2. The Competition Act, 2002

- ❖ The Monopolies & Restrictive Trade Practices Act, 1969 is the first enactment to deal with competition issues and came into effect on 1st June 1970.
- ❖ The Government appointed a committee in October 1999 to examine the existing MRTP Act for shifting the focus of the law from curbing monopolies to promoting competition and to suggest a modern competition law.
- ❖ Pursuant to the recommendations of this committee, the Competition Act, 2002, was enacted on 13th January 2003.
  - ✓ It was subsequently amended in 2007.
- ❖ Under the Act, Competition Commission of India (CCI) and the Competition Appellate Tribunal (CAT) have been established in October 2003.
- ❖ The Competition Commission of India is now fully functional with a Chairperson and six members.

### Objectives of the Act:

The objectives of the Competition Act are to:

- a. prevent anti-competitive practices,
- b. promote and sustain competition,
- c. protect the interests of the consumers,
- d. ensure freedom of trade,
- e. competition advocacy by creating awareness among various levels at Government, industry and consumers.

### Extent & Applicability:

- a. Extends to whole of India.
- b. Applies to all enterprises, including Government undertakings (except sovereign functions)

### Key Definitions under Competition Act, 2002

Term	Section / Clause	Meaning
Acquisition	Sec. 2(a)	Direct or indirect purchase or takeover of control, shares, voting rights, or assets of an enterprise.
Agreement	Sec. 2(b)	<ul style="list-style-type: none"> <li>➤ Any arrangement, understanding, or concerted action — formal or informal, whether enforceable or not.</li> <li>➤ It includes any <u>written/oral</u> agreement/ arrangement relating to production, supply, distribution, storage, acquisition or control of goods or services which causes or may cause an appreciable adverse effect on competition in India shall be void.</li> </ul>

		Agreement include any kind of arrangement whether express or implied, to be decided from facts and circumstantial evidence.
<b>Appellate Tribunal</b>	Sec. 2(r)	Refers to the <b>National Company Law Appellate Tribunal (NCLAT)</b> constituted under the Companies Act, 2013.
<b>Cartel</b>	Sec. 2(c)	Association of producers, sellers, distributors, traders or service providers who limit/control prices, production, or market.
<b>Consumer</b>	Sec. 2(f)	A person who buys goods or hires/avails services for consideration (includes both existing and potential users).
<b>Enterprise</b>	Sec. 2(h)	Any person or department engaged in production, storage, distribution, supply or control of goods/services – includes Govt. undertakings (except sovereign functions).
<b>Goods</b>	Sec. 2(i)	Includes every kind of movable property (excluding actionable claims & money) – includes products manufactured, processed or mined.
<b>Person</b>	Sec. 2(l)	Includes individuals, companies, firms, HUFs, associations, AOPs, cooperative societies, government bodies, etc.
<b>Price</b>	Sec. 2(o)	Includes any consideration, whether direct or indirect – includes discounts, commissions, or any benefit.
<b>Relevant Market</b>	Sec. 2(r)	Market determined with reference to relevant <b>product market</b> or <b>geographic market</b> or both.
<b>Relevant Product Market</b>	Sec. 2(t)	All products/services considered interchangeable or substitutable by consumers due to characteristics, price, or use.
<b>Relevant Geographic Market</b>	Sec. 2(s)	Area in which conditions of competition for supply of goods/services are distinctly homogeneous and distinguishable from neighbouring areas.
<b>Public Financial Institution</b>	Sec. 2(m)	Includes institutions like LIC, IFCI, ICICI, IDBI, etc., as notified by the Central Government.
<b>Practice having AAEC</b>	Not defined explicitly	Refers to practices that result in <b>Appreciable Adverse Effect on Competition</b> in India. The factors are listed in Sec. 19(3).
<b>Turnover</b>	Not defined specifically	Generally interpreted as gross revenue from sale of goods/services; used in combination thresholds and penalties.

## Anti-Competitive Agreements (Section 3)

### Section 3(1): General Prohibition

"No enterprise or association of enterprises or person or association of persons shall enter into any agreement which causes or is likely to cause an **Appreciable Adverse Effect on Competition (AAEC)** within India."

### Types of Anti-Competitive Agreements

Type	Sub-type	Examples / Features	Legal Treatment
<b>Horizontal Agreements</b>	Agreements between competitors (same level in supply chain)	<ul style="list-style-type: none"> <li>✓ Price fixing</li> <li>✓ Bid rigging</li> <li>✓ Limiting production or supply</li> <li>✓ Market allocation</li> </ul>	Presumed to cause AAEC → <b>Per se illegal</b> (Sec. 3(3))
<b>Vertical Agreements</b>	Agreements between enterprises at different levels (e.g., manufacturer & distributor)	<ul style="list-style-type: none"> <li>✓ Tie-in arrangements</li> <li>✓ Exclusive supply/distribution</li> <li>✓ Refusal to deal</li> <li>✓ Resale price maintenance</li> </ul>	Not presumed illegal → <b>Rule of reason</b> applies (Sec. 3(4))

### Section 3(2)

Any agreement entered into in contravention of the provisions of Section 3 shall be **void**.

### Detailed Explanation of Agreements under Section 3(3): Horizontal

Provision	Description	Example
Sec. 3(3)(a)	Fixing sale or purchase price	Competitors agree to sell sugar at ₹50/kg
Sec. 3(3)(b)	Limiting production, supply, technical development	Steel companies agree to cap output
Sec. 3(3)(c)	Market or customer allocation	Cement companies divide regions for sales
Sec. 3(3)(d)	Bid rigging or collusive bidding	Bidders pre-decide the winner of a tender

(These are presumed to have AAEC — no need to prove actual harm)

### Detailed Explanation of Agreements under Section 3(4): Vertical

Type	Meaning	Example
<b>Tie-in Arrangement</b>	Sale of one product conditional on purchase of another	Buy printer only if you buy cartridges from same company
<b>Exclusive Supply Agreement</b>	Distributor agrees not to buy from competitors	A dealer agrees to buy electronics only from Company A

<b>Exclusive Distribution Agreement</b>	Manufacturer restricts distributor to certain area/customers	Pepsi gives exclusive rights to sell only in Gujarat
<b>Refusal to Deal</b>	Restriction on whom to buy from or sell to	Retailers blacklisted from buying a particular brand
<b>Resale Price Maintenance</b>	Resellers must maintain fixed price	Company fixes minimum resale price of its product

(These are judged using "Rule of Reason" – effect on market must be assessed)

### Key Term: Appreciable Adverse Effect on Competition (AAEC)

As per **Section 19(3)**, factors to determine AAEC include:

- Creation of barriers to new entrants
- Driving existing competitors out of the market
- Foreclosure of competition
- Benefits to consumers (may offset harm)
- Improvements in production/distribution

#### Note:

- Horizontal = Competitor-level = Per se illegal = Presumed AAEC
- Vertical = Supply chain levels = Rule of Reason = AAEC to be assessed
- All anti-competitive agreements are **void**
- CCI has power to **investigate, penalize, and stop** such agreements

## Abuse of Dominant Position (Section 4)

### What is a "Dominant Position"?

As per **Section 4 Explanation (a)**:

**Dominant position** means a position of strength enjoyed by an enterprise in the relevant market in India, which enables it to:

- Operate independently of competitive forces, or
- Affect competitors or consumers or the relevant market in its favour.

**Note:** Being dominant is **not illegal**, but **abuse** of that dominance is prohibited.

### Section 4(1): General Prohibition

No enterprise or group shall abuse its dominant position.

### Section 4(2): What Constitutes Abuse of Dominance?

Clause	Form of Abuse	Explanation / Example
(a)(i)	Imposing unfair or discriminatory conditions in purchase/sale	Forcing long lock-in periods or unreasonable return terms

(a)(ii)	Imposing unfair or discriminatory <b>prices</b> (including predatory pricing)	Selling below cost to drive out competitors
(b)(i)	Limiting or restricting <b>production of goods/services</b>	Reducing supply to manipulate prices
(b)(ii)	Limiting <b>technical or scientific development</b>	Not adopting better technology to maintain monopoly
(c)	Denial of <b>market access</b>	Preventing distributors from dealing with competitors
(d)	Making contracts subject to <b>unrelated supplementary obligations</b>	Requiring buyer to also purchase unrelated goods
<b>Clause</b>	<b>Form of Abuse</b>	<b>Explanation / Example</b>
(a)(i)	Imposing unfair or discriminatory <b>conditions</b> in purchase/sale	Forcing long lock-in periods or unreasonable return terms

### Key Concepts Explained

#### 1. Predatory Pricing

- ✓ Defined in **Explanation (b)** to Sec. 4  
Selling goods/services **below cost** to reduce competition or eliminate competitors.
- ✓ **Cost = As may be determined by CCI** (typically Average Variable Cost).

#### 2. Relevant Market (Section 2(r))

Abuse is judged **within a "relevant market"**, which includes:

- ✓ **Relevant Product Market** (Section 2(t))
- ✓ **Relevant Geographic Market** (Section 2(s))
- ❖ Example: Google's dominance in mobile OS (Android) = **relevant product market**

### Comparison: Dominant Position vs. Abuse

<b>Aspect</b>	<b>Dominant Position</b>	<b>Abuse</b>
Meaning	High market power	Misuse of that power
Legality	<b>Not prohibited</b>	<b>Prohibited under Sec. 4(1)</b>
Examples	Google, Amazon, Facebook (dominant in sectors)	Forcing tie-in or predatory pricing = abuse

#### Note:

- ✓ Sec. 4 applies to both **enterprises and groups**
- ✓ **Dominance ≠ illegal, abuse = illegal**
- ✓ Abuse can be in terms of **price, conditions, access, or leveraging**
- ✓ **No presumption of illegality** — each case is assessed individually
- ✓ **CCI** has power to investigate and impose penalties

## COMBINATIONS UNDER COMPETITION ACT, 2002

### Definition of Combination [Section 5]

A combination means any of the following, if they meet asset or turnover thresholds:

Type	Description
a. Acquisition	Acquisition of control, shares, voting rights or assets of an enterprise by another.
b. Acquisition of Control by a Person over Another with Same Business	Where a person already has control over an enterprise engaged in similar goods/services and acquires another.
c. Merger / Amalgamation	Two or more enterprises merge, or one is absorbed into another.

### Thresholds for Combination (as per latest notification)

#### In India (either party or group):

Criteria	Threshold
Assets	> ₹2,000 crores
Turnover	> ₹6,000 crores

#### Worldwide with Indian leg:

Criteria	Threshold
Global Assets	> US \$1 billion (including at least ₹1,000 crores in India)
Global Turnover	> US \$3 billion (including at least ₹3,000 crores in India)

**Note:** These limits are subject to periodic revision by the government.

### Concept of "Group" under Competition Act, 2002:

Definition of **"Group"** [Explanation (b) to Section 5]

**"Group"** means two or more enterprises which, directly or indirectly, are:

- ❖ in a position to exercise 26% or more of voting rights in the other, or
- ❖ can appoint more than 50% of the board of directors, or
- ❖ can control the management or affairs of the other enterprise.

☞ This control may be direct or indirect, formal or informal, or even through contractual agreements.

### Purpose of Group Definition:

The concept of group is crucial when assessing:

1. Combination thresholds (i.e., whether the merger/acquisition needs to be notified to CCI)
2. Market concentration and control relationships among entities
3. Determination of "control" in acquisition cases

### Group Threshold Limits (as per latest notification - always check for updates)

#### In India

If the "Group" to which the target enterprise would belong after the combination has:

Criteria	Threshold
Assets in India	> ₹8,000 crores
Turnover in India	> ₹24,000 crores

#### Worldwide

If the "Group" has:

Criteria	Threshold
Assets worldwide	> US \$4 billion (including at least ₹1,000 crores in India)
Turnover worldwide	> US \$12 billion (including at least ₹3,000 crores in India)

### Key Concepts Related to "Group"

Concept	Explanation
Control	Power to manage affairs of another enterprise, directly or indirectly
Interconnected enterprises	If A controls B and B controls C, then A, B, and C are part of the same group
De facto control	Control by other means than shareholding - like management contracts or board domination
Post-combination group	Thresholds are evaluated after combination — whether the new entity belongs to a group above the limits

#### Case Example:

##### **Reliance Industries Ltd. & Network18 Deal (2014)**

- ❖ Reliance didn't directly acquire Network18 shares initially but indirectly funded a trust that held the shares.
- ❖ CCI considered it as acquisition of control — hence a "group" relationship was established.

#### Quick Facts for Exams

Point	Details
Section involved	Explanation (b) to Section 5
Minimum control threshold	26% voting rights OR 50% board control OR control over management
Group thresholds (India)	₹8,000 cr assets or ₹24,000 cr turnover
Group thresholds (Global)	\$4 bn assets or \$12 bn turnover (with India portion minimum)
Purpose	To assess combinations & control relationships

## Regulation of Combinations [Section 6]

### Section 6(1):

No person or enterprise shall enter into a combination which causes or is likely to cause an Appreciable Adverse Effect on Competition (AAEC) within the relevant market in India.

### Section 6(2):

Parties to a combination must notify the CCI within 30 days of:

- ✓ Approval of proposal relating to merger/amalgamation, or
- ✓ Execution of agreement for acquisition.

Failure to notify can attract penalties (Section 43A).

## Inquiry into Combination by the Commission [Section 20]

- ❖ Suo Motu or Information Based Inquiry
  - ✓ **Time Limit:** CCI can initiate inquiry within 1 year of the combination taking effect.
- ❖ Assessment Factors for AAEC [Sec. 20(4)]

### The CCI considers:

- ❖ Level of competition in the market
- ❖ Market share of the parties
- ❖ Barriers to entry
- ❖ Potential benefits to consumers
- ❖ Innovation, efficiencies, etc.

## Procedure for Investigation of Combination [Section 29]

### Step-by-Step Flow of Combination Review:

Stage	Details
Stage I	Prima facie opinion: If no AAEC – approve within 30 working days
Stage II	If AAEC likely, notice issued to parties under Section 29(1)
Report from Director General (DG)	May be called by CCI
Parties' Reply	Parties may file their response within 30 days
Hearing	CCI may provide opportunity to be heard
Final Order	To be passed within 210 days from notification filing

**Note:** If no order passed within 210 days → Deemed approval

## Orders of Commission on Certain Combinations [Section 31]

Nature of Order	Condition	Effect
Approval	Combination does not or is not likely to have AAEC	Parties may proceed
Conditional Approval	With modifications to eliminate adverse effects	Must comply with modifications

<b>Prohibition</b>	Combination causes or is likely to cause AAEC that cannot be remedied	Combination not permitted
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**Note: Penalty for non-disclosure or false statements:**

Up to ₹1 crore (Section 44)

### Important Case Laws

<b>Case</b>	<b>Held / Key Point</b>
Sun Pharma - Ranbaxy Merger	Approved with conditions; divestment required
PVR Ltd. - INOX Merger	Cleared after examining impact on market share
Amazon - Future Coupons	CCI revoked earlier approval due to misrepresentation

### Section Revision Table

<b>Section</b>	<b>Content</b>
Sec. 5	What is a combination
Sec. 6	Regulation & mandatory notification
Sec. 20	Inquiry by CCI
Sec. 29	Procedure for investigation
Sec. 31	Orders of Commission
Sec. 43A	Penalty for failure to notify
Sec. 44	Penalty for false statements

## All about CCI

### Competition Commission of India (CCI)

#### 1. Constitution of the Commission (Sec. 7-9)

Provision	Details
Nature	Statutory Body, Corporate in nature
Headquarters	New Delhi
Composition	1 Chairperson + 2 to 6 Whole-time Members
Appointment	By Central Government
Qualifications	Persons of ability, integrity with <b>15+ years</b> of experience in: <ul style="list-style-type: none"> <li>✓ International trade</li> <li>✓ Economics</li> <li>✓ Law</li> <li>✓ Business</li> <li>✓ Public affairs</li> <li>✓ Finance / Accountancy</li> <li>✓ Competition matters</li> </ul>
Term of Office	5 years; Eligible for reappointment; Retirement age: 65 years
Staff Support	Director General (investigations), Secretary, Experts, Professionals and other officers as needed

#### 2. Powers & Duties of the Commission (Sec. 18, 19)

##### Core Functions:

- ✓ Eliminate practices having **Appreciable Adverse Effect on Competition (AAEC)**
- ✓ Promote & sustain **competition**
- ✓ Protect **consumer interests**
- ✓ Ensure **freedom of trade** in markets in India

##### Sources of Inquiry:

- ✓ Suo motu (on its own)
- ✓ Complaint by person/consumer/trade association
- ✓ Reference from Central/State Government/statutory authority

#### 3. Factors Considered for Agreements (Sec. 19(3))

To determine whether an agreement under Section 3 causes AAEC:

- ❖ Creation of barriers to new entrants
- ❖ Driving existing competitors out
- ❖ Foreclosure of competition
- ❖ Accrual of benefits to consumers



- ❖ Improvement in production/distribution
- ❖ Promotion of technical or economic development

#### 4. Factors to Assess Dominant Position (Sec. 19(4))

- ✓ Market share, size & resources of enterprise
- ✓ Size/strength of competitors
- ✓ Vertical integration
- ✓ Consumer dependence
- ✓ Monopoly or existing dominance
- ✓ Entry barriers (regulatory, technical, financial, etc.)
- ✓ Countervailing buying power
- ✓ Market size and social obligations

#### 5. Determination of Relevant Market (Sec. 2(r), 19(5) & 19(6))

##### a. Relevant Geographic Market (Sec. 19(6))

Based on:

- ✓ Regulatory barriers
- ✓ Procurement policies
- ✓ Transport cost, distribution
- ✓ Language, consumer preferences, after-sales service needs

##### b. Relevant Product Market (Sec. 19(7))

Based on:

- ✓ Physical characteristics / end-use
- ✓ Price and consumer preferences
- ✓ In-house production exclusion
- ✓ Specialized producers

#### 6. Orders after Inquiry (Sec. 27)

If CCI finds contravention of Sec. 3 (agreements) or Sec. 4 (dominance), it may:

- ✓ Direct discontinuance or non-re-entry into such agreements
- ✓ Modify agreements
- ✓ Impose **penalties**:
  - ❖ For cartels: Up to **3x profit** or **10% of turnover**, whichever is higher
- ✓ Pass any **other directions**, including cost or compliance
- ✓ Pass orders against other members of a **Group** if responsible for the contravention

#### 7. Division of Dominant Enterprises (Sec. 28)

CCI may direct **division** of enterprise if it:

- ✓ Abuses dominant position due to size

May involve:



- ✓ Transfer of assets/liabilities
- ✓ Winding up, share restructuring
- ✓ MOA/AOA amendment

#### 8. Power to Regulate Procedure (Sec. 36)

- ❖ Guided by **natural justice**
- ❖ Powers of a **Civil Court**
- ❖ May issue **interim orders**
- ❖ May call **experts** for assistance
- ❖ Can direct persons to produce **documents**, information, or appear before CCI

#### 9. Recovery of Monetary Penalty (Sec. 39)

If monetary penalty not paid, CCI may recover it as if it were an **income tax demand**.

#### 10. Extraterritorial Jurisdiction (Sec. 32)

CCI can act **even if**:

- ✓ Agreement or combination is entered **outside India**
- ✓ **Party is outside India**
- ✓ Abuse or impact happens **outside India**

As long as it has an **effect on competition in India**

#### 11. Contravention of CCI Orders (Sec. 42)

- ✓ Fine: ₹1 lakh per day (max ₹10 crore)
- ✓ **Further non-compliance** → Imprisonment up to **3 years** or fine up to **₹25 crore**, or both

#### 12. Non-compliance with CCI / DG Directions (Sec. 43)

Failure to comply with CCI or Director General directions:

- ✓ Fine: ₹1 lakh/day (max ₹1 crore)

#### 13. False Statements / Material Omissions (Sec. 44)

By parties to combination:

- ✓ Fine: ₹50 lakh to ₹1 crore

#### 14. Furnishing False Information / Suppression (Sec. 45)

- ✓ Fine: Up to ₹1 crore
- ✓ Lesser Penalty possible (leniency) if:
  - ❖ Full, true disclosure made
  - ❖ Disclosure made before DG's report is received
  - ❖ Cooperation is continued throughout
  - ❖ No false evidence

### 15. Contravention by Companies (Sec. 48)

- ✓ Officers responsible **are liable**
- ✓ Defence: Can prove lack of knowledge or due diligence
- ✓ If committed with consent/connivance — **directors/officers** also liable

### 16. Appellate Tribunal (NCLAT) (Sec. 53A-53T)

Aspect	Details
<b>Appellate Body</b>	NCLAT (under Companies Act, 2013)
<b>Appeals from</b>	Orders under Sec. 26(2), 26(6), 27, 28, 31, 32, 33, 38, 39, 43, 43A, 44, 45, 46
<b>Appeal Time Limit</b>	60 days from receipt of CCI order
<b>Orders</b>	Confirm / Modify / Set Aside
<b>Compensation</b>	May be awarded under Sec. 53N
<b>Guided by</b>	<b>Principles of natural justice</b> , not bound by CPC

### 17. Enforcement of NCLAT Orders (Sec. 53U)

- ✓ As if it were a **civil court decree**
- ✓ May be transmitted to local civil court for execution
- ✓ Non-compliance: Fine up to ₹1 crore or imprisonment up to **3 years** or both

### 18. Appeal to Supreme Court (Sec. 53T)

- ✓ Can be filed by **CG, SG, CCI, authority, enterprise or person**
- ✓ Time limit: **60 days** from receipt of NCLAT order

### Additional Powers of Central Government

Power	Description
<b>Rule-making</b>	Can make rules for carrying out provisions
<b>Direction to CCI</b>	Can issue directions and even <b>supersede</b> CCI (max 6 months) in public interest
<b>Exemption</b>	May exempt certain enterprises or sectors temporarily

### Application of Other Laws (Sec. 62)

- This Act is in addition to and not in derogation of other laws
- So, Competition Act coexists with laws like Companies Act, SEBI Act, Consumer Protection Act, etc.



## 3. Foreign Exchange Management Act (FEMA), 1999

### Salient Features of FEMA

FEMA was enacted in 1999 and came into effect on 1st June 2000, replacing the Foreign Exchange Regulation Act (FERA), 1973.

### Key Features

#### 1. Civil Law Nature

- FEMA is a **civil law**, meaning **penalties are mostly monetary**.
- Arrest or imprisonment is **rare**, unlike FERA which was criminal in nature.

#### 2. Liberal Approach

- FEMA **manages** and facilitates foreign exchange instead of controlling it.
- Focuses on **promotion of foreign trade and payments**.

#### 3. Applies to

- Whole of India**
- All branches, offices, and agencies abroad owned/controlled by person resident in India.**
- Any contravention outside India** by a person to whom FEMA applies.

#### 4. Regulated by RBI

- Reserve Bank of India (RBI) manages day-to-day foreign exchange transactions in consultation with the **Central Government**.

#### 5. Structure of FEMA

- 7 chapters, 49 sections**
- 5 sets of Rules** (by Central Govt.)
- 23 sets of Regulations** (by RBI)
- Master Directions** by RBI every year

#### **Example:**

If an Indian company wants to invest in the USA, FEMA will govern how the foreign exchange is sent and what approvals are needed.

### Objectives of FEMA

- Facilitate **external trade** and **foreign payments**.
- Promote **orderly management** of foreign exchange markets.
- Encourage foreign investment** in India.
- Conserve and manage **foreign exchange reserves** effectively.

### Applicability

#### ❖ **Covers:**

- All transactions **inside India** related to foreign exchange.



2. All **foreign branches** or offices of Indian residents.
3. Any **contravention outside India** by Indian residents or entities.

❖ **Does Not Cover:**

Non-resident Indians (NRIs) **living outside India permanently** unless they are **residents under FEMA**.

### Overall Structure of FEMA

1. **Act (7 Chapters, 49 Sections)** - Supreme legislation
2. **Rules** - Made by Central Government (Sec 46)
3. **Regulations** - Made by RBI (Sec 47)
4. **Master Directions & Circulars** - Issued yearly by RBI
5. **FDI Policy** - Issued by DPIIT (Department for Promotion of Industry and Internal Trade)

### Benefits of FEMA

1. **Ease of foreign trade and investment**
2. **Transparent rules** - All regulations are available publicly
3. **Encourages free flow of foreign exchange**
4. **Supports economic liberalization**

**Example:**

Earlier under FERA, a company needed RBI approval for **every foreign transaction**. Now under FEMA, **current account transactions** (like imports/exports) are freely allowed unless specifically restricted.

### FEMA vs FERA - Key Highlights

<b>Basis</b>	<b>FERA (1973)</b>	<b>FEMA (1999)</b>
Nature of Law	Criminal	Civil
Objective	Control foreign exchange	Manage & facilitate forex
Burden of Proof	On the accused	On Enforcement Directorate
Punishment	Imprisonment common	Mostly monetary penalties
Approach	Strict, restrictive	Liberal & facilitative
Presumption	Guilty until proven innocent	Innocent until proven guilty

**Example:**

- ❖ Under FERA, even **minor delay in reporting** foreign currency could lead to **arrest**.
- ❖ Under FEMA, it would only attract a **monetary penalty**.

**Note:**

FEMA is a **liberal, civil law** aimed at **facilitating trade**.

**Key difference from FERA:** From "control" to "management."



## Important Definitions under FEMA

Some commonly used terms:

1. **Authorised Dealer (AD)** - Banks or financial institutions authorised by RBI to deal in foreign exchange.  
**Example:** SBI, ICICI Bank.
2. **Authorised Person** - Includes authorised dealers, money changers, offshore banking units, or anyone allowed by RBI to deal in foreign exchange.
3. **Capital Account Transaction** - Any transaction that **changes assets or liabilities** (in India or abroad).  
**Example:** Buying property abroad, FDI in India.
4. **Current Account Transaction** - Transactions **other than capital account**.  
**Example:** Import payments, foreign travel, student remittance.
5. **Currency** - Includes notes, cheques, drafts, travellers' cheques, credit cards, etc.
6. **Foreign Currency Convertible Bonds (FCCBs)** - Bonds issued by Indian companies in foreign currency, repayable in foreign currency, and convertible into shares.
7. **Foreign Direct Investment (FDI)** - Direct investment by non-residents in an Indian company.  
Example: Google investing directly in Reliance Jio.
8. **Foreign Institutional Investor (FII)** - Entity established outside India, investing in Indian securities via stock market. (Now merged into FPI)
9. **Foreign Portfolio Investor (FPI)** - Registered investor who invests in Indian stocks and bonds in small lots.
10. **Foreign Venture Capital Investor (FVCI)** - A foreign investor registered with SEBI for investing in Indian start-ups and venture funds.
11. **Person** - Includes individuals, companies, HUFs, partnerships, trusts, and any artificial juridical persons.
12. **Person Resident in India** -
  - ❖ Stayed **>182 days** in previous year
  - ❖ Excludes those **working or doing business abroad** with an intention to stay there indefinitely.**Example:**
  - An NRI working in Dubai for 3 years is **not resident in India**.
  - A software engineer in Bangalore who visited the US for 2 months is **resident in India**.

## Detailed Explanation of Key Provisions of FEMA

### Section 3 - Restriction on Dealing in Foreign Exchange

#### Meaning

Section 3 of FEMA prohibits any person from dealing in foreign exchange or foreign securities unless they are authorised by RBI.



Foreign exchange dealings can be **buying, selling, transferring, making/receiving payments, or any financial transaction** involving foreign exchange.

### What is prohibited under Section 3?

No person shall, **without RBI approval or without being an Authorised Person:**

#### 1. Deal in or transfer foreign exchange or foreign securities

- ❖ Only **Authorised Dealers (ADs)**, like certain banks, can handle these transactions.

#### 2. Make payments to any person outside India

- ❖ Cannot pay foreign citizens or companies **directly in cash** or through unauthorised channels.

#### 3. Receive payments from outside India

- ❖ Cannot accept foreign currency payments **directly** unless through an **Authorised Dealer**.

#### 4. Enter into financial transactions in India for creating/acquiring assets abroad

- ❖ **Example:** Paying an Indian agent in cash to buy property in the US is **not allowed**.

### Examples

#### 1. Correct transaction:

- ❖ Ravi wants to buy software from a US company. He pays through **HDFC Bank (Authorised Dealer)** → **Allowed**.

#### 2. Incorrect transaction:

- ❖ Ravi pays the same US company in cash or through PayPal without routing through AD → **Violation of Sec 3**.

#### 3. Financial transaction linked to foreign asset:

- ❖ An Indian citizen pays ₹50 lakhs to another Indian as part of a deal to buy a flat in Dubai → **Not allowed** unless approved by RBI.

### Key point

All foreign exchange dealings must go through **Authorised Dealers** and comply with RBI regulations.

## Section 4 - Restriction on Holding Foreign Exchange

### Meaning

A resident in India cannot hold or possess foreign exchange, foreign securities, or immovable property outside India unless it is **specifically allowed** under FEMA Rules.

### When is holding foreign exchange outside India allowed?

#### 1. Acquired before 8th July 1947

- ❖ **Example:** A family had property in London before 1947 and still holds it → **Allowed**.

#### 2. Acquired with RBI permission

- ❖ **Example:** RBI permits an Indian company to buy a warehouse in Singapore → **Allowed**.

#### 3. Acquired as Gift or Inheritance

- ❖ **Example:** An NRI father gifts his son in India a flat in New York → **Son can keep it legally**.



#### 4. Acquired from RFC (Resident Foreign Currency) Account

- ❖ **Example:** An NRI returning to India keeps his foreign earnings in an RFC account → Can use this for buying assets abroad.

#### Example of Violation

- ❖ An Indian businessman secretly buys a villa in London without RBI approval → **Violation of Sec 4.**

### Section 5 - Current Account Transactions

#### Meaning

- ❖ **Current Account Transactions** = Transactions for **day-to-day expenses** and **regular international trade**, not affecting capital assets.
- ❖ FEMA allows **current account transactions freely**, except those restricted by the **government**.

#### Examples of Current Account Transactions

1. **Imports and Exports** - Payments for goods and services.
2. **Remittances** - For family living abroad, education, or medical expenses.
3. **Travel** - Foreign travel expenses.
4. **Interest & Income** - Paying interest on foreign loans or receiving dividends.

#### Rules for Current Account Transactions

As per **Foreign Exchange Management (Current Account Transactions) Rules, 2000**, there are **three schedules**:

##### 1. **Schedule I - Fully Prohibited Transactions**

- ❖ Sending money abroad for **lottery winnings** or **hacking services**.
- ❖ **Example:** Sending \$5,000 to buy lottery tickets in the USA → **Prohibited**.

##### 2. **Schedule II - Transactions Requiring RBI Approval**

- ❖ Cultural tours abroad by State Governments or PSUs.
- ❖ **Example:** A State Govt. sends a dance troupe to France → **RBI approval needed**.

##### 3. **Schedule III - Transactions with Limits**

- ❖ Certain remittances allowed only up to **specified limits**.
- ❖ **Example:** Private foreign visits, foreign donations, or studies abroad have RBI-notified ceilings.

#### Key Point

- **General Rule:** Current account transactions are allowed unless specifically prohibited or restricted.
- **Capital account transactions are opposite:** They are prohibited unless specifically allowed.



## Section 6 - Capital Account Transactions

### Meaning

- ❖ **Capital Account Transaction** = Any transaction that **changes assets or liabilities** in India or abroad.
- ❖ Includes transactions like **FDI, property purchase abroad, loans to foreign entities, ECBs.**
- ❖ **Requires RBI permission** unless specifically allowed.

### Important Provisions

1. Residents can **buy/sell foreign exchange for capital transactions** only via Authorised Dealers.
2. RBI, in consultation with the Central Govt., **decides which transactions are allowed and their limits.**
3. **No RBI restriction** for:
  - Repaying foreign loans (loan amortisation)
  - Depreciation of foreign investment

### Examples of Capital Account Transactions

1. **Capital Outflow** (Resident sending money abroad)
  - ❖ Buying a flat in London → Needs to follow **Liberalized Remittance Scheme (LRS)** limits.
2. **Capital Inflow** (Foreign investment in India)
  - ❖ A US company invests in an Indian tech startup → **FDI**, allowed under FEMA rules.
3. **Change in Asset/Liability**
  - ❖ An NRI sells his shares in an Indian company to another foreigner → Capital account transaction.

### Case Example

- ❖ Mr. Goel (NRI) sells 5,000 shares of L&T to Mr. Rakesh in Kolkata → **Capital account transaction**, permitted under RBI rules.
- ❖ Mr. Goel imports mica from India and pays via letter of credit → **Current account transaction.**

## Possession & Retention of Foreign Exchange

### Rules for Residents

1. **Authorised Persons** - Banks & money changers can hold foreign currency as per RBI limits.
2. **Foreign Coins** - Anyone can hold **without any limit.**
3. **Foreign Currency Notes** -
  - ❖ Residents can retain up to **notified limits (currently USD 2,000)** without declaring.
4. **Returning NRIs** - Can keep any foreign exchange brought into India if **declared to Customs.**

### Example

- ❖ Priya returns from the US with \$1,500 in cash → **Can legally keep it.**
- ❖ If she brings \$50,000 and declares to customs → **Can keep it in RFC account.**



## Forms of Business for Foreign Companies in India

A foreign company can set up operations in India in two ways:

### 1. As an Indian Incorporated Entity

- ❖ **Joint Venture (JV)** - With an Indian partner.  
Example: Suzuki partnered with Maruti → **Maruti Suzuki India Ltd.**
- ❖ **Wholly Owned Subsidiary (WOS)** - 100% foreign ownership allowed in many sectors.  
Example: Amazon India.

### 2. As an Office of a Foreign Company

Under FEMA (Establishment of Branch Office) Regulations, 2000, foreign companies can open:

#### a) **Liaison Office (LO)**

- Acts as a **communication channel**, no commercial operations allowed.
- **Example:** JICA (Japan International Cooperation Agency) in India.

#### b) **Branch Office (BO)**

- Can **undertake limited trading or consultancy**.
- Cannot manufacture products in India but can **provide services**.

#### c) **Project Office (PO)**

- Set up **only for executing a specific project**.
- **Example:** A Chinese company opening an office in India for constructing a power plant.

### Key Takeaway

- ❖ Foreign companies can either incorporate a company or open a representative office.
- ❖ All such establishments must **comply with FEMA regulations and RBI permissions**.



## FDI in India - Master Directions on FDI

FDI in India is governed by:

- ❖ **FDI Policy** - Issued annually by **DPIIT** (Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry).
- ❖ **FEMA, 1999** - Prescribes rules for foreign investment, fund flow, pricing, and reporting.
- ❖ **RBI Master Directions on FDI** - Explain the procedures in detail.

### Key Stipulations on Foreign Investment in India

#### 1. Definition of FDI

❖ **FDI** is an investment by a **person resident outside India**:

- a) In **unlisted Indian company** - any shareholding.
- b) In **listed Indian company** - **10% or more** of post-issue paid-up equity capital (fully diluted basis).

#### Example:

- Google buys **15%** shares in an Indian tech start-up → **FDI**.
- If their shareholding later falls to **8%**, it **still remains FDI**.

#### 2. Foreign Portfolio Investment (FPI)

- Investment **less than 10%** in a **listed Indian company**.
- **Example:** BlackRock buys **5%** shares of Infosys → **FPI**.

#### 3. Investment Vehicles

- Entities like **REITs, InvITs, and Alternative Investment Funds (AIFs)**.
- Note: Venture Capital Funds (VCFs) registered with SEBI are **not considered** investment vehicles under FEMA.

#### 4. Conversion of Debt to Equity

- If a foreign investor converts **loan/debt** into equity shares, it **counts towards sectoral cap**.

### Prohibited Sectors and Persons for FDI

FDI is **not allowed** in:

- a) Lottery, gambling, betting, and casinos.
- b) Chit funds (except NRI/OCI non-repatriation investment).
- c) Nidhi companies.
- d) Real estate business and farm house construction.
  - ❖ **Exception:** Development of townships, roads, bridges, and SEBI-registered REITs is allowed.
    - a) Tobacco and cigar manufacturing.
    - b) Activities not open to private sector - **atomic energy & certain railway operations**.



### Special Country Restrictions:

- ❖ **Bangladesh & Pakistan citizens/entities** - Prior government approval required.
- ❖ **Pakistan** - Cannot invest in **defence, space, or atomic energy**.

### Example:

- ❖ A US company can invest in an Indian hotel chain.
- ❖ A Pakistan-based company **cannot invest** in a real estate business in India.

### Capital Instruments

Foreign investment is made via **capital instruments**:

1. **Equity Shares** - Including partly paid shares (25% upfront, balance within 12 months).
2. **Fully Convertible Debentures (FCDs)**
3. **Fully Convertible Preference Shares (FCPS)**
4. **Share Warrants** - Convertible into equity shares.

### Example:

- ❖ A foreign investor can subscribe to **convertible preference shares**, which later convert into equity.

### Entry Routes for FDI

FDI can enter India through **two routes**:

#### 1. **Automatic Route**

- ❖ **No prior approval required** from Government or RBI.
- ❖ **Example:** 100% FDI in IT services.

#### 2. **Government Route**

- ❖ **Prior government approval** required for sensitive sectors.
- ❖ **Example:** FDI in **defence or multi-brand retail**.

### Sectoral Caps

- ❖ Each sector has a **maximum limit (cap)** for foreign investment.
- ❖ Some sectors allow **100% automatic route**, others have **restricted caps**.
- ❖ Minimum capitalization includes **share premium received** on new issue.

### Example:

- ❖ Telecom sector: 100% FDI allowed, but **beyond 49% requires Government approval**.
- ❖ NBFCs: 100% FDI under automatic route if RBI-registered.

### Permitted Investments by Foreign Residents

Foreign investors can invest through various ways (as per Annexures of Master Directions):

1. **Subscription, purchase, or sale** of capital instruments of Indian companies.
2. **Stock exchange transactions** by FPIs and NRIs.
3. **Investment in LLPs (Limited Liability Partnerships)**.
4. **Foreign Venture Capital Investment (FVCI)** in Indian start-ups.



5. Investment in REITs, InvITs, and AIFs.
6. Indian Depository Receipts (IDRs) - Buying IDRs of foreign companies listed in India.

### Acquisition via Rights or Bonus Issue

- ❖ Foreign investors can **subscribe to rights issue** or **receive bonus shares**, subject to:
  - a) Compliance with sectoral caps
  - b) FEMA reporting requirements
- ❖ **Employee Stock Options (ESOPs)** and **Sweat Equity** can also be issued to:
  - a) Foreign directors or employees of the Indian company
  - b) Employees of the foreign parent or joint venture

#### Example:

- ❖ Microsoft India issues **bonus shares** to its foreign parent company → Allowed under FEMA.

### Convertible Notes for Start-ups

- ❖ A **convertible note** is a debt instrument that can **convert into equity within 5 years**.
- ❖ Minimum investment by a foreign investor = **₹25 lakh**.

#### Example:

- ❖ A Silicon Valley investor gives ₹50 lakh to an Indian AI start-up via a convertible note → Converts to equity after 3 years.

### Mergers, Demergers, and Amalgamations

- ❖ If an Indian company with foreign investment merges with another, the **new company can issue shares to foreign shareholders**, subject to:
  - Compliance with **sectoral caps**
  - **Government approval** if the sector requires it

#### Example:

- ❖ A foreign-invested fintech company merges with an Indian NBFC → RBI & FEMA norms must be followed.

### Pricing Guidelines

1. **Listed Companies** - Price as per **SEBI guidelines** (market price).

2. **Unlisted Companies** - Fair valuation using:

- ❖ **International methods** certified by CA, Cost Accountant, or SEBI-registered Merchant Banker.

#### Key Rule:

- ❖ Convertible instruments must have **pre-decided conversion formula**.
- ❖ Final price cannot be **less than fair value at issue**.



### Subscription to Memorandum of Association (MoA)

- ❖ Foreigners subscribing to shares during **company incorporation** must follow:
  - a) Entry route (Automatic or Govt.)
  - b) Sectoral caps
- ❖ Such shares are issued **at face value** initially.

### Investment in LLPs

- ❖ FDI is allowed in LLPs via:
  - **Capital contribution**
  - **Acquisition of profit shares**
- ❖ Valuation must follow **internationally accepted methods**, certified by:
  - CA, Cost Accountant, or Government-approved valuer.

### Example:

- ❖ A US investor contributes ₹1 crore to an Indian LLP in the IT sector → Allowed under automatic route.

### Calculation of Total Foreign Investment

- a) **Equity + Converted Debt** = Counted for total FDI.
- b) **FCCBs & DRs linked to debt** = Not counted for FDI.
- c) **Downstream Investments** (Indian companies investing in other Indian companies) must include foreign shareholding **as of 31st March of previous year**.

### Exit Conditions for Foreign Investors

- a) **Foreign investors can sell their stake** and repatriate proceeds.
- b) **Right of First Refusal** may be with Indian partner in joint ventures.
- c) **Unlisted companies** require **independent valuation** for fair exit price.
- d) **Reporting to RBI via Form FCTRS** is mandatory.

### Example:

A German company sells its 40% stake in an Indian JV to a Singapore company → Must follow FEMA exit and pricing rules.

### Key notes:

1. FDI in India is regulated by **FEMA + RBI Master Directions + FDI Policy**.
2. **Automatic route** is free; **Government route** needs approval.
3. **Prohibited sectors** include gambling, lottery, tobacco, and atomic energy.
4. **Convertible notes, LLP investment, ESOPs, and mergers** are allowed with conditions.
5. **Fair valuation & reporting to RBI** is crucial in every FDI transaction.



## External Commercial Borrowings, Trade Credit and Structured Obligations - Master Directions

### External Commercial Borrowings (ECBs) & Trade Credits (TCs)

The **Foreign Exchange Management Act, 1999 (FEMA)** governs how Indian entities can raise funds from abroad.

These rules are framed by the **RBI** to ensure external borrowings don't pose risks to India's economy.

#### 1. What is ECB?

**External Commercial Borrowings (ECBs)** refer to commercial loans borrowed by Indian residents from **non-resident entities**.

##### **Characteristics:**

- ❖ ECBs are **commercial in nature** (i.e., repayable with interest).
- ❖ Raised from **recognized non-resident lenders** (foreign banks, international financial institutions, etc.).
- ❖ Must follow guidelines like:
  - **Minimum average maturity period (MAMP)**
  - **Permitted & prohibited end-uses**
  - **Cost ceilings**
  - **Currency denomination**

#### 2. Who Can Borrow?

Only **eligible borrowers** are allowed under the ECB framework.

##### **Eligible Borrowers Include:**

- ❖ All entities eligible to receive **Foreign Direct Investment (FDI)**.
- ❖ For **INR** denominated ECBs: includes **NGOs, microfinance institutions, non-profit organizations**.

Special cases include:

- ❖ Borrowers under the **Corporate Insolvency Resolution Process (CIRP)** as per the IBC, 2016.

#### 3. Recognised Lenders

ECBs can only be taken from **recognized lenders** residing in countries compliant with:

- ❖ **FATF** (Financial Action Task Force)
- ❖ **IOSCO** (International Organization of Securities Commissions)

##### **Lenders Can Be:**

- ❖ Multilateral/Regional institutions (e.g., ADB, World Bank)
- ❖ Foreign banks, international investors
- ❖ **Foreign branches/subsidiaries of Indian banks, but only for FCY ECBs, and with restrictions:**



- Cannot lend for FCCBs (Foreign Currency Convertible Bonds) or FCEBs (Foreign Currency Exchangeable Bonds).
- Can act as **arrangers or underwriters** for **Rupee-denominated bonds** issued abroad.

#### 4. Currency of ECB

Two categories:

ECB Type	Currency
FCY ECB	Denominated in foreign currency (USD, EUR, etc.)
INR ECB	Denominated in Indian Rupees

#### 5. Instruments Allowed under ECB

Type	Allowed Instruments
FCY ECB	Bank loans, bonds (floating/fixed), trade credits > 3 years, FCCBs, FCEBs, financial lease
INR ECB	Same as above + <b>Rupee-denominated bonds</b> (plain vanilla) issued overseas

#### 6. End-Use Restrictions (Prohibited Uses)

Funds raised via ECB **cannot be used** for:

- a) **Real estate activities**
- b) **Investment in capital markets**
- c) **Equity investments**
- d) **Working capital**, unless allowed under special conditions
- e) **General corporate purposes**, unless eligible
- f) **Repayment of Rupee loans**, unless under specific clauses
- g) **On-lending** (giving ECB funds to others) for prohibited activities

Note: Only certain NBFCs and corporates are allowed these uses under specific ECB categories.

#### 7. Minimum Average Maturity Period (MAMP)

- ❖ Usually **3 years**, unless specified differently for certain categories.

#### 8. Limits & Leverage Norms

- ❖ ECBs allowed up to **USD 750 million** per financial year under the **automatic route**.
- ❖ If the ECB is from a **foreign equity holder**, then:
  - **Debt-to-equity ratio** cannot exceed **7:1**
  - This rule doesn't apply if ECB is ≤ USD 5 million



### 9. Parking of ECB Proceeds

#### a) ECB proceeds used for foreign currency expenses:

- ❖ Can be kept abroad
- ❖ Invested in liquid foreign assets till used

#### b) ECB proceeds for Rupee expenditure:

- ❖ Must be brought back to India immediately
- ❖ Can be parked in Term Deposits with AD Category I Banks (max. 12 months)

### 10. Procedure to Raise ECB

- ❖ If all parameters are satisfied → **Automatic Route** (no RBI approval needed)
- ❖ If not → **Approval Route** (requires RBI's nod)

### 11. Reporting Requirements

Borrowers must:

- ❖ Submit **monthly ECB returns (Form ECB-2)**
- ❖ Submit **Form FC-GPR** if ECB is converted into equity
- ❖ In case of non-compliance or unresponsive borrowers:
  - Entity is labelled "**Untraceable**"
  - Considered as **default**
  - No further ECB allowed
  - Enforcement Directorate is notified

### 12. Refinancing Existing ECB

Refinancing is **permitted** under conditions:

- ❖ New ECB must have **equal or longer maturity**
- ❖ **Lower cost** (interest rate) than the existing ECB
- ❖ Indian banks can refinance ECBs only for:
  - **AAA-rated companies**
  - **Maharatna / Navratna PSUs**

### 13. Conversion of ECB into Equity

Allowed if:

- ❖ Company's sector is under **automatic FDI route** or government approval obtained
- ❖ No breach of **foreign shareholding cap**
- ❖ **Pricing guidelines** are followed
- ❖ **Lender's consent** is obtained
- ❖ Must follow:
  - **FC-GPR filing for equity**
  - **ECB-2 Return (with remarks)**

**Note:** Exchange rate for conversion: **Agreed rate or rate on the agreement date**

#### 14. Security for ECB

Security allowed:

- ❖ **Immovable / movable assets**
- ❖ **Financial securities**
- ❖ **Corporate / personal guarantees**
- ❖ **Special Cases:**
- ❖ Companies under **restructuring** or **CIRP** can raise ECB only if **explicitly allowed** in resolution plan

#### 15. Trade Credit (TC)

TC = Credit offered by foreign suppliers or financial institutions for **importing goods into India**

Types:

- ❖ **Supplier's Credit:** Credit extended by exporter/supplier
- ❖ **Buyer's Credit:** Credit from foreign bank or institution

#### TC Parameters:

Parameter	FCY TC	INR TC
Amount (Auto Route)	USD 150M (Oil/Shipping/Aviation) or USD 50M (Others) per transaction	Similar
Maturity	- Capital Goods: Up to 3 years - Non-Capital Goods: 1 year or operating cycle	Same
Lenders	Foreign suppliers, banks, equity holders	Indian banks, foreign branches allowed in limited cases
All-in-cost	Benchmark + 300-350 bps	Benchmark + 250 bps

**Note:** Exchange rate must be agreed mutually or taken on date of conversion.

#### 16. Trade Credit in SEZ / FTWZ / DTA

- ❖ TC allowed for **SEZ developers/units, FTWZ, and DTA** entities
- ❖ Must comply with **SEZ Act** and **FEMA**
- ❖ **NSDL receipts** can be treated as import documents in SEZ trade

#### 17. Security for TC

- ❖ Can include:
  - Bank Guarantees (not exceeding TC amount)
  - Corporate/personal guarantees
  - Movable/immovable assets (excluding land in SEZ)
- ❖ Must be backed by **security clause** in agreement



- ❖ Proper **NOCs** from domestic lenders if needed

### 18. Non-Resident Guarantee for Domestic Loans

Where a **non-resident guarantees** a domestic loan:

- ❖ FEMA is **not triggered** unless the guarantee is invoked
- ❖ Once guarantee is paid, foreign exchange transaction occurs

### 19. Credit Enhancement Facility

Certain recognized international bodies (e.g., ADB, IFC) can **guarantee Indian borrowers** for:

- ❖ Capital market instruments like **Rupee bonds**
- ❖ Improves the borrower's **credit rating**

#### Key Terms to Remember

<b>Term</b>	<b>Meaning</b>
ECB	External Commercial Borrowing
FCY	Foreign Currency
INR	Indian Rupee
MAMP	Minimum Average Maturity Period
TC	Trade Credit
FC-GPR	Foreign Currency - General Permission Return
DSIM	Department of Statistics and Information Management
FDI	Foreign Direct Investment
CIRP	Corporate Insolvency Resolution Process
AD Banks	Authorized Dealer Category I Banks



## Liberalized Remittance Scheme (LRS) - Master Directions

### Detailed Explanation of Liberalised Remittance Scheme (LRS) - Master Directions

#### What is LRS?

**Liberalised Remittance Scheme (LRS)** is a facility provided by RBI that allows **resident individuals** in India (including minors) to **send money abroad** for permitted purposes.

#### Key Features:

- ❖ A **resident individual** can remit up to **USD 2,50,000 per financial year** (April to March).
- ❖ Purpose: Can be for **current account transactions, capital account transactions**, or both.
- ❖ Introduced in **2004**, originally with a limit of USD 25,000. It has gradually increased to USD 2,50,000.
- ❖ **Applicable only to individuals.**
- ❖ Not allowed for:
  - Companies
  - Partnership firms
  - Trusts
  - Hindu Undivided Families (HUF)

#### 1. Prohibited Remittances under LRS

Even though LRS allows sending money abroad, there are some **prohibited uses**.

#### Remittances are NOT allowed for:

1. **Illegal or restricted activities** (as per Schedule I & II of FEMA CAT Rules), e.g.:
  - a) Buying lottery tickets, gambling
  - b) Subscribing to **prohibited magazines**
2. **Trading in foreign exchange** or stock markets abroad (high-risk speculation)
3. **Buying FCCBs (Foreign Currency Convertible Bonds)** issued by Indian companies in **overseas secondary market**.
4. Sending money to countries or entities on the **FATF blacklist** or linked to **terrorism**.
5. **Sending margin money** for speculation in overseas commodity/derivative exchanges.

#### Example:

You **CANNOT** use LRS to:

- ❖ Bet on foreign horse races or online casinos
- ❖ Trade in cryptocurrency via a foreign exchange
- ❖ Send money to a person/entity blacklisted by RBI

#### 2. What Remittances Are Allowed?

Under LRS, a resident individual may use foreign exchange for the following:

#### Permitted Uses:



- a) **Private visits** (e.g., tourism abroad)
- b) **Gifting or donating** funds
- c) Going abroad for **employment**
- d) **Emigration**
- e) Supporting **close relatives** abroad (maintenance)
- f) **Business trips, training programs, seminars, conferences**
- g) **Medical treatment** abroad or for travel as an **attendant**
- h) **Studies abroad** (tuition, living costs)
- i) Other **current account transactions** not prohibited by law

**Note:** No RBI permission needed if the remittance is within the LRS limit and not on the prohibited list. The **Authorized Dealer (AD) bank** will verify and allow.

### 3. Family Consolidation under LRS

Family members can **combine their LRS limits**, but only under certain rules.

#### Rules for Consolidation:

- ❖ Can club funds for **permissible transactions** (like paying joint tuition or medical bills).
- ❖ **Not allowed** for:
  - Joint capital investments unless each member is a **co-owner** or **co-partner**.
  - Gifting foreign currency to another Indian resident's foreign account.

#### Other Points:

- ❖ **No limit on frequency** of remittances, but total in FY must be  $\leq$  USD 2,50,000.
- ❖ Even if you bring back investment gains, you can't reuse that limit in the same year.
- ❖ Resident (but not permanently resident) individuals may **seek special approval** for extra remittances.

#### Example:

Mr. A sends USD 1,50,000 abroad for son's education and USD 1,00,000 for his wife's medical treatment. Total = USD 2,50,000

But he **can't** send more under LRS in the same year.

### 4. Remitter's Responsibilities

#### Key Conditions:

- a) The remitter must choose a **single branch of an AD Bank** for making all LRS capital account remittances.
- b) The remitter must have had a bank account with the AD bank for **at least one year**.
- c) The AD bank must:
  - ❖ Conduct **due diligence**
  - ❖ Verify **source of funds**
  - ❖ Ensure compliance with RBI norms



### Currency:

- ❖ Remittances are allowed in **any freely convertible foreign currency** (e.g., USD, EUR, GBP)

### Additional Rules:

- ❖ Foreign banks offering deposits to Indian residents need **RBI approval**
- ❖ Same applies to **overseas mutual funds** or financial service providers seeking Indian customers

## 5. Ratings of Investments under LRS

- ❖ RBI does **not prescribe any minimum rating** or guideline for where to invest.
- ❖ The responsibility lies with the **individual investor** to choose wisely.

### Example:

If Mr. B wants to invest in a foreign start-up using LRS, he must **evaluate risk**. RBI won't protect him from losses.

## 6. Remittances by Sole Proprietors

- ❖ A **sole proprietorship** is not separate from the individual.
- ❖ If a person remits USD 2,50,000 in his personal capacity, he **can't** remit again in the name of his sole proprietorship firm.

## Remittance Facilities for Non-Individuals (Entities)

Though LRS is for individuals, some facilities exist for companies, firms, etc.

### Allowances:

- Donations** up to 1% of past 3 years' forex earnings or USD 5 million, whichever is lower, for:
  - ❖ Educational Chairs
  - ❖ Non-investment education funds
  - ❖ Technical associations
- Commissions** to agents abroad (real estate sales in India):
  - ❖ USD 25,000 or 5% of inward remittance (whichever is lower)
- Consultancy Services:**
  - ❖ USD 10 million (infra projects)
  - ❖ USD 1 million (other projects)
- Reimbursement of Pre-incorporation Expenses:**
  - ❖ 5% of FDI or USD 100,000 (whichever is lower)
- Current Account Transactions** as per Para 1, Schedule III of CAT Rules, 2015:
  - ❖ Up to USD 2,50,000 without RBI approval
  - ❖ No specified limit for residual transactions — AD banks decide

**Note:** For any amount beyond these limits, prior RBI approval is needed.

### Loan/Gift to NRI/PIO - Close Relative (under LRS)

Resident individuals may give rupee loans or gifts to close relatives (NRI/PIO), but with restrictions:

#### Loan Conditions:

- ❖ Interest-free
- ❖ Minimum maturity = 1 year
- ❖ Amount must be within LRS limit (USD 2,50,000)
- ❖ Must be used for:
  - Personal needs
  - Business in India
- ❖ Must not be used for prohibited activities (e.g., real estate, betting)
- ❖ Credited to NRO Account of the NRI/PIO
- ❖ Repayment through inward remittance

#### Gift Conditions:

- ❖ Allowed under LRS (i.e., part of the USD 2,50,000 limit)
- ❖ Must be made to a close relative as defined in Companies Act, 2013

#### Key Definitions:

- ❖ **AD Bank:** Authorized Dealer (bank authorized by RBI to deal in foreign exchange)
- ❖ **Current Account Transaction:** Deals with payments related to day-to-day business or private needs
- ❖ **Capital Account Transaction:** Transactions that change assets/liabilities (like buying shares or property)

#### Revision Table:

Topic	Rule
LRS Limit	USD 2,50,000 per FY
Who Can Use	Resident individuals (including minors)
Frequency	Unlimited (within overall cap)
Allowed Uses	Education, medical, travel, gifts, investments
Not Allowed	Gambling, trading in forex, remittance to blacklisted countries
Consolidation	Allowed for family (conditions apply)



## 4. The Banking Regulation Act, 1949

### 1. Introduction & Applicability

The **Banking Regulation Act, 1949** is a **comprehensive central legislation** that governs **banking companies** in India. It was enacted to ensure:

- ❖ Proper regulation and supervision of commercial banking.
- ❖ Financial stability and depositor protection.

#### **Applicable to:**

- ❖ All banking companies in India.
- ❖ Some provisions also apply to **cooperative banks**.

#### **Not applicable to:**

- ❖ **Primary Agricultural Credit Societies**.
- ❖ **Cooperative Land Mortgage Banks**.

#### **Example:**

A nationalized bank like SBI is regulated under this Act. However, a village-level cooperative society is not.

### 2. Power to Legislate

- ❖ Parliament derives power from **Entry 45 of the Union List** under the Constitution.

### 3. Meaning of 'Banking' [Section 5(b)]

"Banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise.

#### **Essential Features:**

- ❖ Accepting **deposits** from the public.
- ❖ Deposits used for **lending or investment**.
- ❖ Repayable **on demand or after notice**.
- ❖ Funds can be withdrawn through **instruments like cheques, drafts**.

#### **Example:**

If you deposit ₹50,000 in a savings account in ICICI Bank, the bank can use that money to give loans to others. You can withdraw it anytime using a cheque or ATM card.

### 4. Business Permitted for Banking Companies [Section 6]

Besides basic banking activities, banks can engage in other related businesses such as:

- Acting as agent** for governments or local authorities.
- Underwriting** or managing issues of shares or bonds.
- Providing guarantees** and indemnities.



- d. **Holding property** acquired in satisfaction of claims.
- e. **Trustee services** and administration of estates.
- f. **Establishing welfare institutions** for employees.
- g. **Selling, leasing, or improving bank properties.**
- h. Any other business **approved by the Central Government.**

**Example:**

A bank may manage a deceased customer's estate, or act as trustee for a charitable trust.

### 5. Board of Directors - Composition & Qualifications

- ❖ At least **51% of directors** must have expertise in:
  - Banking, law, finance, agriculture, rural economy, small-scale industries, etc.
- ❖ At least **2 directors** must have knowledge in **agriculture or small-scale industries.**
- ❖ No **common directors** in different banks.
- ❖ Tenure: Directors can hold office for **max 8 years.**

**Example:**

One director could be a retired RBI officer, another an agriculture economist to help support rural banking decisions.

### 6. Whole-time Chairman Requirement [Section 10B]

- ❖ Every bank must have a **Chairman.**
  - Can be **whole-time** (also manages operations) or
  - **Part-time** (then MD manages operations).
- ❖ Appointed with **RBI approval** for **5 years.**

### 7. RBI's Power to Appoint Chairman/MD [Section 10BB]

- ❖ If post is vacant and bank's operations are affected, **RBI can appoint** a qualified person as Chairman/MD.
- ❖ Term: **5 years.**
- ❖ Such a person is **deemed a director** if not already on the board.

### 8. Minimum Capital and Reserves [Sections 11 & 12]

**Requirements:**

- ❖ **Subscribed Capital**  $\geq$  **50%** of authorized capital.
- ❖ **Paid-up Capital**  $\geq$  **50%** of subscribed capital.
- ❖ RBI may permit relaxed ratios in specific cases.

**Voting Rights:**

- ❖ **No person** can exercise **more than 10% voting rights**, even if holding more shares.
- ❖ May be increased to **20%** gradually with RBI permission.

**Basel III Norms:**

- ❖ Banks must follow **Basel III Guidelines**.
- ❖ **Minimum Capital Adequacy Ratio (CAR):** 9% of Risk Weighted Assets.

**Example:**

If a bank has risky loans (high RWA), it must maintain more capital to absorb possible losses.

### 9. Dividend Restrictions [Section 15]

A bank **cannot pay dividends** unless:

- ❖ All preliminary expenses (formation, brokerage) are written off.
- ❖ Exceptions:
  - Depreciation in **approved securities**.
  - **Bad debts**, provided provisions made and approved by auditor.
- ❖ **RBI's permission required** for dividend payment.

### 10. Reserve Fund Transfer [Section 17]

- ❖ **Minimum 20% of annual profits** must be transferred to **Reserve Fund**.
- ❖ **Scheduled banks** must transfer **25% of net profits**.
- ❖ If reserves + share premium  $\geq$  paid-up capital, transfer not required.
- ❖ If reserves are used, **RBI must be informed within 21 days**.

### 11. Cash Reserve by Non-scheduled Banks [Section 18]

- ❖ Must maintain **3% of demand and time liabilities** in cash or with RBI/SBI.
- ❖ Scheduled banks follow **Section 42 of RBI Act**.

### 12. Restrictions on Subsidiaries [Section 19]

- ❖ Banks **cannot hold controlling interest** in other non-banking companies.
- ❖ Exceptions:
  - Subsidiaries for activities **related to banking**, with **RBI approval**.

### 13. Loans & Advances - Restrictions [Sections 20 & 21]

#### Section 20:

- ❖ **No loans to:**
  - a. Directors.
  - b. Companies/firms where director is interested.
  - c. No loan **against own bank shares**.
- ❖ **Section 21:**
- ❖ RBI can regulate:
  - a. **Purpose** of loans.
  - b. **Margin requirements** for secured loans.
  - c. **Interest rates**, commission, and guarantees.
  - d. **Credit limits** per borrower.

**Example:**

RBI may instruct banks not to give personal loans beyond ₹10 lakhs to a single borrower without security.

**14. Banking Licence Requirement [Section 22]**

- ❖ **No bank** can operate without a **license from RBI**.
- ❖ RBI ensures:
  - Bank can repay depositors.
  - Business is in **public interest**.
  - Foreign banks must not **discriminate** against Indian banks.
- ❖ RBI can **cancel license**, and appeal lies with **Central Government**.

**15. Opening Branches [Section 23]**

- ❖ **RBI's prior approval** is needed for:
  - New branches (domestic/foreign).
  - Relocation of existing branches.
- ❖ Exception: No approval needed for temporary stalls at events like trade fairs or exhibitions (max 1 month).

**16. SLR Requirement [Section 24]**

- ❖ Banks must maintain liquid assets (cash, gold, approved securities).
- ❖ % notified by RBI - cannot exceed **40%** of total demand and time liabilities.

**17. Maintain Indian Assets [Section 25]**

- ❖ Must maintain at least **75% of liabilities** in **Indian assets** as of last Friday of every quarter.

**18. Unclaimed Deposits [Section 26]**

- ❖ Banks must report accounts **inactive for 10 years** to RBI.
- ❖ Due within **30 days after calendar year ends**.

**19. Return Submission to RBI [Section 27]**

- ❖ Monthly returns of **assets and liabilities**.
- ❖ RBI can also request **special reports** on investments, advances by sector, etc.

**20. Audit of Financial Statements [Section 30]**

- ❖ Audited **Balance Sheet & Profit & Loss Account** to be submitted to RBI within **3 months** of year-end.
- ❖ **RBI's approval needed** before appointing or removing auditors.

## 21. RBI's Power to Direct Banks [Section 35A]

- ❖ RBI can issue directions to banks in:
  - Public interest.
  - Interest of depositors.
  - Banking policy.
  - Proper management.

## 22. RBI & Govt. - Additional Powers

Power	Description
IBC Actions	CG may authorize RBI to trigger insolvency proceedings under <b>Insolvency and Bankruptcy Code (IBC)</b>
Stressed Assets	RBI can issue guidelines for resolution (Section 35AB)
Appointments	RBI's prior approval needed for appointment/removal of MD, Chairman, etc. (Section 35B)
Removal	RBI can remove or appoint directors (Sections 36AA, 36AB)
Board Suspension	RBI/CG can suspend board if mismanagement is found (Section 36E)

## 23. Suspension of Business (Moratorium) [Section 37]

- ❖ A bank facing **temporary liquidity issues** can apply to High Court for a **stay (moratorium)** up to **6 months**.
- ❖ RBI's **report is mandatory** for such stay.

## 24. Winding Up of Banks [Sections 38-44]

- ❖ Grounds for RBI to apply for winding up:
  - Not meeting capital/reserve requirements.
  - Doesn't have a license.
  - Prohibited from taking deposits.
  - Fails to comply with directions.
  - Unable to pay debts.
- ❖ **Voluntary winding up** allowed only if **RBI certifies solvency**.

## 25. Amalgamation of Banks [Section 44A]

- ❖ **2/3rd value** of shareholders must approve the scheme.
- ❖ Scheme needs **RBI approval**.
- ❖ RBI may also initiate amalgamation/reconstruction **without moratorium** (as per 2020 amendment).
- ❖ Dissenting shareholders are compensated as per RBI directions.

## 26. Acquisition by Central Government

- ❖ Govt. may acquire a banking company in **public interest**, via share transfer or otherwise.



## Role of Reserve Bank of India

### Introduction

- ❖ The **Reserve Bank of India (RBI)** is the **central bank of India**, established under the **RBI Act, 1934**.
- ❖ It plays a key role in **monetary policy, banking regulation, foreign exchange management, and financial stability**.
- ❖ Over the years, RBI's role has evolved from being just a **regulator** to becoming a **facilitator** of a robust banking system.

### Key Functions & Roles of RBI:

#### 1. Inspection of Banks

- ❖ RBI is empowered under the **Banking Regulation Act, 1949** to **inspect and supervise banks**.
- ❖ Ensures that banks operate **safely**, follow **policy norms**, and protect **depositors' interests**.

#### Example:

RBI inspects a private bank to ensure it has enough liquidity and has not violated any credit guidelines.

#### 2. Regulation of Commercial Banks

- ❖ Done through the **Department of Banking Operations and Development (DBOD)**.
- ❖ Regulates:
  - Licensing
  - Branch expansion
  - Statutory reserves (CRR/SLR)
  - Management appointments
  - Amalgamations & Liquidation

#### 3. Role in Anti-Money Laundering (AML)

- ❖ RBI has set up an **AML Cell** to tackle:
  - **Money laundering**
  - **Financing of terrorism (CFT)**
  - Monitors domestic and international AML developments.

#### 4. Approval of Bank Directors (Board-level Appointments)

- ❖ **RBI approves:**
  - **Chairman/MD/CEO appointments in private banks.**
  - Recommends names for **public sector banks** to the Government.
  - Appoints **RBI Nominee Directors, non-official directors, etc.**

### 5. Licensing of Bank Branches

- ❖ Grants permission to:
  - Open new branches (including **Local Area Banks**).
  - Shift/close existing branches.
- ❖ Maintains database of branches, ATMs, extension counters, etc.

### 6. Banking Policy Formation

RBI formulates policies on:

Area	Details
Prudential norms	Capital adequacy, asset classification, provisioning
Basel Norms	Basel II & III implementation
Risk Management	ALM, Credit risk, operational risk
NPA Settlement	Guidelines on <b>compromise settlements</b>
FCRA	Monitoring foreign donations to NGOs/others

### 7. Issuance of Directives to Banks

- ❖ RBI issues guidelines on:
  - **Interest rates**, deposit operations
  - **Incentives, brokerage, and freezing of accounts**
  - Exposure to **capital markets**
  - Handling of **NRI accounts**

### 8. Data Collection & Dissemination

- Collects half-yearly data on **defaulters (₹1 crore and above)**.
- Shared with all banks and **All-India Financial Institutions (FIs)** to prevent further credit to chronic defaulters.

### 9. Monitoring Overseas Operations of Indian Banks

- ❖ Grants approval for:
  - Opening of **foreign branches, JV offices, representative offices**.
  - Entering **management agreements** with foreign entities.
- ❖ Also monitors **closure** of such foreign operations.

### 10. Authorisation to Deal in Precious Metals

- ❖ Issues and renews licenses for:
  - Import of **gold, silver, platinum**.
  - Collection of data on **gold deposits and imports**.
  - Implementation of **Gold Deposit Schemes**.

**Example:**

RBI authorizes certain banks like SBI to import gold and offer gold-linked deposit products.

**11. Offshore Banking Units (OBUs) in SEZs**

- ❖ Grants approval for OBUs in **Special Economic Zones (SEZs)**.
- ❖ Coordinates with Govt. bodies for establishing **International Financial Services Centres (IFSCs)**.

**12. Industrial & Export Credit Monitoring**

- ❖ Conducted via:
  - **Policy Desk**
  - **Export Credit Desk**
  - **Industrial Rehabilitation Desk**
- ❖ Monitors credit to export and industrial sectors.

**13. Interpretation of Laws**

- ❖ Interprets provisions of:
  - **Banking Regulation Act, 1949**
  - **RBI Act, 1934**
- ❖ Assists in **drafting rules, amendments, and clarifications**.

**14. Granting of Exemptions**

- ❖ Can grant exemptions from specific provisions of the **Banking Regulation Act** upon application by banks.

## Role in Foreign Exchange Management (FEMA)

RBI regulates India's **external financial dealings** under FEMA, 1999:

Function	Legal Reference
Regulate foreign exchange dealings	Section 6(2), Section 6(3)
Capital account transactions	Conditions set under FEMA
Restrictions on real estate abroad	Transfer of property, securities, etc.
Foreign exchange for exports	Section 8: Fixes repatriation terms
Authorised Dealers (ADs)	Sections 10, 11, 12: RBI supervises them

**Example:**

RBI gives permission to Indian companies to borrow from abroad under ECB (External Commercial Borrowing) routes.



## RBI as Banker

### A. Bankers' Bank

- ❖ Acts as **lender of last resort**.
- ❖ Provides **loans and advances** to commercial banks during emergencies.

### B. Banker to the Government

- ❖ Maintains accounts and manages funds for **Central and State Governments**.
- ❖ Issues **government bonds**, manages **public debt**.

## Payment and Settlement System Oversight

- ❖ RBI regulates:
  - **NEFT, RTGS, IMPS, UPI**, etc.
  - Ensures safe and efficient **interbank transactions**.

### Example:

If UPI crashes, RBI steps in to ensure immediate system recovery.

## Conclusion

RBI is the backbone of India's financial and banking system. It performs a **multi-dimensional role** as:

- ❖ Regulator of banks
- ❖ Guardian of foreign exchange
- ❖ Policy-maker for financial and credit systems
- ❖ Banker to Government and banks
- ❖ Supervisor of foreign and offshore banking
- ❖ Promoter of healthy financial practices

## SARFAESI Act, 2002

### 1. Introduction

- ❖ SARFAESI Act stands for **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**.
- ❖ Enacted on **21st June 2002**, it gives powers to banks and financial institutions to:
  - Take possession of **secured assets** of borrowers,
  - **Sell or lease** those assets,
  - Recover **non-performing assets (NPAs)** without court intervention.
- ❖ Encourages creation of **Asset Reconstruction Companies (ARCs)** to handle bad loans.

#### Example:

If a company defaults on a bank loan, the bank can take over its factory (secured asset) and sell it to recover the loan without going to court.

#### Main Aim:

The SARFAESI Act, 2002:

- ❖ Provides **swift and efficient recovery** of defaulted loans.
- ❖ Reduces dependence on courts for recovery.
- ❖ Strengthens the financial system by minimizing NPAs.

### 2. Key Definitions

Term	Meaning
<b>Asset Reconstruction</b>	Buying financial assets from banks/FIs for recovery.
<b>Asset Reconstruction Company (ARC)</b>	Company registered with RBI for asset reconstruction or securitisation.
<b>Borrower</b>	Anyone who took a loan, gave guarantee, or has been transferred under ARC.
<b>Default</b>	Non-payment of loan which makes account classified as NPA.
<b>Financial Asset</b>	Includes debts, receivables, secured loans, lease rights, etc.
<b>Non-Performing Asset (NPA)</b>	Loan where interest or principal remains overdue for 90 days or more.
<b>Qualified Buyer</b>	Financial institutions, mutual funds, FIIs, etc. allowed to invest in security receipts.
<b>Securitisation</b>	Converting illiquid loans into marketable securities sold to investors.

### 3. Registration of ARCs (Section 3)

- ❖ ARC must get **registration from RBI**.
- ❖ Must have **minimum ₹2 crore owned funds** (may vary as per RBI).

- ❖ Conditions for registration:
  - No losses in last 3 years.
  - Directors must be experienced and not convicted.
  - Comply with prudential norms, RBI guidelines.

RBI approval needed for major changes in management, name, or office location.

#### 4. Cancellation of Registration (Section 4)

RBI can cancel ARC registration if:

- Stops reconstruction business.
- Doesn't follow conditions of registration or RBI guidelines.
- Doesn't maintain records or submit documents.
- Fails in inspection or gets approval for major management changes.

Before cancellation, ARC is given a chance to comply with norms.

#### 5. Acquisition of Financial Assets (Section 5)

ARCs can acquire assets from banks/FIs:

- By issuing **debentures or bonds**,
- Or by **agreement**.

No **stamp duty** is required for such transfers.

#### 6. Measures for Asset Reconstruction (Section 9)

ARCs can:

- Take over/change borrower's management.
- Sell or lease borrower's business.
- Reschedule loan payments.
- Enforce security interest (take property).
- Settle dues or convert debt into equity shares.

##### Example:

ARC takes control of a defaulting company's management and sells off non-core assets to repay the bank.

#### 7. Other Functions of ARC (Section 10)

- ❖ Act as **agent** for banks to recover dues.
- ❖ Can be appointed as **manager** or **receiver** by courts.
- ❖ Need RBI approval for engaging in any other business.

#### 8. Dispute Resolution (Section 11)

Disputes among banks, ARCs, and buyers are settled through:

- ❖ **Arbitration or conciliation** under the **Arbitration and Conciliation Act, 1996**.



### 9. Enforcement of Security Interest (Section 13)

If borrower defaults and account becomes NPA:

- ❖ Secured creditor gives a **60-day notice**.
- ❖ If unpaid, the creditor can:
  - **Take possession** of assets.
  - **Take over management** of business.
  - **Appoint manager** to manage assets.
  - Ask debtors to pay directly to them.

#### Example:

If a borrower has mortgaged land and defaults, the bank can auction the land without court order.

#### Other important points:

- ❖ Borrower's objection must be answered within 15 days.
- ❖ Secured creditor can:
  - Sell, lease or assign secured asset.
  - Recover balance amount from DRT if sale proceeds fall short.
  - Proceed against **guarantor or pledged assets**.
- ❖ **Joint lenders** (60% in value) must agree to take action in consortium lending.
- ❖ No transfer of asset by borrower after notice unless approved by the lender.

### 10. Takeover of Management (Section 15)

When management is taken over:

- ❖ ARC can appoint new directors or administrators.
- ❖ Old management automatically vacates office.
- ❖ All contracts with old management are terminated.
- ❖ No winding up or receiver proceedings without creditor's consent.
- ❖ Management is restored once dues are fully recovered.

### 11. No Compensation to Directors (Section 16)

- ❖ No compensation for:
  - Loss of office to directors, MD, or managers when takeover happens.

### 12. Appeal to Debt Recovery Tribunal (DRT) (Section 17)

- ❖ Borrower can appeal to **DRT** against lender's action.
- ❖ Must be filed **within time limits**.
- ❖ DRT may examine legality of possession/sale.

### 13. Appeal to Appellate Tribunal (Section 18)

- ❖ Appeal against DRT order can be made to **Appellate Tribunal** within **30 days**.
- ❖ Borrower must **deposit 50%** of outstanding dues (can be reduced to 25%).

## 5. Insurance Act, 1938

### 1. History and Evolution of Insurance Law in India

- ❖ **Before 1912:** No specific insurance law; companies were governed under the Companies Act, 1882.
- ❖ **1912:** First insurance laws passed - Indian Life Insurance Companies Act and Provident Insurance Societies Act. But they applied only to **life insurance**.
- ❖ **1938:** A comprehensive **Insurance Act** was introduced, covering both life and general insurance. Enforced from **1st July 1939**.
- ❖ **1956:** Life insurance nationalized - LIC formed.
- ❖ **1972:** General insurance nationalized - GIC formed.
- ❖ **1999:** **IRDAI Act** passed to regulate private players.
- ❖ **2000:** Sector opened to private & foreign players based on Malhotra Committee.

### 2. Foreign Direct Investment (FDI) in Insurance

- ❖ **26% FDI** - Automatic route.
- ❖ **Up to 49%** - Requires government approval.
- ❖ **100% FDI** - Allowed in insurance intermediaries (brokers, consultants, etc.).

### 3. Basic Principles of Insurance Law

#### a. **Utmost Good Faith**

- ❖ Both parties must disclose all **material facts** truthfully.
- ❖ Example: Hiding a medical condition can lead to claim rejection.

#### b. **Misrepresentation**

- ❖ Incorrect info can void a policy if:
  - It relates to a material fact.
  - It was known to be false.
  - It was done intentionally.

#### c. **Warranties**

- ❖ Conditions that **must be strictly followed**.
- ❖ Breach = Policy becomes void, even if not related to the claim.

#### d. **Conditions**

- ❖ Two types:
  - **Precedent:** Must be fulfilled to form a valid contract.
  - **Subsequent:** Must continue to be fulfilled during the contract.

#### e. **Indemnity**

- ❖ The insured gets **compensation equal to actual loss** (not profit).

- ❖ Applies to general insurance, not life insurance.

#### f. Subrogation

- ❖ After paying the claim, the insurer gets the right to recover from third parties responsible for the loss.

#### g. Proximate Cause

- ❖ The **nearest and direct cause** of loss is considered, not remote causes.
- ❖ Example: Fire due to short circuit is the proximate cause for damage.

### 4. Consumer Protection

- ❖ Insurance services are covered under the **Consumer Protection Act**.
- ❖ If there's a **deficiency in service**, the policyholder can file a complaint.

### 5. Insurable Interest

- ❖ The policyholder must have a **financial interest** in the subject matter.
- ❖ Must exist:
  - **At inception** for life policies.
  - **At both inception and time of loss** for general insurance.
- ❖ Examples:
  - A creditor has insurable interest in the life of a debtor.
  - A person owns a car - insurable interest exists.

### 6. Key Definitions

Term	Meaning
IRDAI	Regulatory body for insurance in India.
Insurer	Indian co., statutory body, cooperative society, or foreign re-insurer.
Insurance Agent	Person receiving commission for procuring insurance business.
Life Insurance	Covers risk to human life; includes annuities and pensions.
General Insurance	Includes fire, marine, health, motor, etc.
Reinsurance	One insurer insuring part of their risk with another.

### 7. Capital Requirements (Section 6)

Type of Insurance	Minimum Capital
Life / General / Health	₹100 Cr
Reinsurance	₹200 Cr

- ❖ Must consist of **equity shares** with equal voting rights.
- ❖ **Net Owned Funds** ≥ ₹5000 Cr required for registration.

## 8. Important Provisions of the Act

### a. **Audit & Returns (Section 12 & 15)**

- ❖ Insurers must file **audited accounts** and **returns** within **6 months** of year-end.

### b. **Actuarial Valuation (Section 13)**

- ❖ Life insurers must get a **yearly valuation** of liabilities by an actuary.

### c. **Record Keeping (Section 14)**

- ❖ Maintain records of:
  - a. Policies
  - b. Claims
  - c. Assignments, etc. (Can be in electronic format)

### d. **Investment of Assets (Section 27-27C)**

- ❖ Invest in approved securities:
  - 25% in Govt. securities (life & general)
  - Rest as per IRDAI regulations.
- ❖ Cannot invest >5% in promoter group companies.

### e. **Loans Prohibited (Section 29)**

- ❖ No loans to directors/officers, except loans on policies within surrender value.

### f. **Directors' Liability (Section 30)**

- ❖ Directors are liable for losses caused due to violations in investment provisions.

### g. **Motor Insurance Obligations (Section 32D)**

- ❖ Must cover a minimum % of **third-party motor insurance**.

### h. **Investigation & Inspection (Section 33)**

- ❖ IRDAI can inspect insurer/intermediary affairs anytime.

### i. **Commission Restrictions (Section 40)**

- ❖ Only agents/intermediaries can receive commissions. MLM schemes are banned.

### j. **Insurance Agents (Section 42)**

- ❖ Agents can represent:
  - One life insurer
  - One general
  - One health
  - One of each mono-line insurer
- ❖ Cannot act through unauthorized persons or schemes.

### k. **Policy Not Questionable After 3 Years (Section 45)**

- ❖ After 3 years, life policies cannot be questioned for fraud.

### l. Surveyors and Loss Assessors (Section 64UM)

- ❖ Must be qualified and members of approved bodies.

### m. Valuation of Assets & Liabilities (Section 64V)

- ❖ Assets to be valued at **market/realisable value**.
- ❖ Solvency margin must be  $\geq 50\%$  of minimum capital.

## IRDA Act, 1999

### 1. What is IRDA?

- ❖ IRDA stands for **Insurance Regulatory and Development Authority of India**.
- ❖ Established in **1999** by the Central Government.
- ❖ Works as an **independent authority** to regulate the insurance sector in India.

### 2. Objectives of IRDA

- ❖ **Protect policyholders**.
- ❖ **Promote and regulate** the growth of the insurance industry.
- ❖ **Ensure fair treatment** to customers and maintain financial integrity.

### 3. Mission Statement of IRDA

- ❖ Secure the interests of policyholders.
- ❖ Encourage healthy and fast growth of insurance for the benefit of the common man.
- ❖ Enforce **high standards** in the industry.
- ❖ Promote **quick settlement of claims** and **prevent frauds**.
- ❖ Encourage **self-regulation** in the insurance sector.

### 4. Functions of IRDA

IRDA performs the following **key regulatory functions**:

Area	Function
Policyholder Rights	Nomination, claim settlement, surrender value
Agents & Intermediaries	Training, practical experience, code of conduct
Industry Regulation	Investment norms, issue of registration certificate
Dispute Resolution	Grievance redressal, handling complaints
Supervision	Monitoring insurance companies
Technology	Development of management information systems
Consumer Support	Help customers understand policy terms

## 5. Constitution of IRDA

Composition	Details
Chairperson	Appointed by Central Govt.
Whole-time Members	Max 5
Part-time Members	Max 4
Tenure	Chairperson: 5 years or till 65 years; Whole-time: up to 62 years
Expertise Required	At least one member should know Life, General & Actuarial Insurance
Removal	Grounds: Insolvency, insanity, criminal offence, conflict of interest

- ❖ **Meetings:** Simple majority; Chairperson has a **casting vote** in case of tie.
- ❖ Members can't hold any other **Govt. or insurance sector post** for 2 years post-tenure.

## 6. Key Definitions

Term	Meaning
<b>Appointed Day</b>	Day when IRDA is officially established.
<b>Authority</b>	IRDA itself.
<b>Fund</b>	IRDA Fund - used for official expenses.
<b>Intermediary</b>	Includes brokers, TPAs, surveyors, etc.
<b>Member</b>	Includes Chairperson, whole-time and part-time members.

## 7. Duties and Powers of IRDA

Function	Explanation
Licensing	Issue, modify, cancel registration of insurers
Policyholder Protection	Claims, insurable interest, surrender value, etc.
Code of Conduct	For surveyors, agents, intermediaries
Training	Prescribes qualification and training norms
Fee Collection	Charges registration and other fees
Investigation	Can investigate insurance companies
Investment	Regulates investment of insurance funds
Solvency Control	Ensures companies maintain solvency margins
Dispute Resolution	Between insurers and intermediaries
Tariff Control	Supervises Tariff Advisory Committee matters

## 8. Finance, Accounts & Audit

- ❖ **IRDA Fund** includes:
  - Govt. grants
  - Fees, charges, and other receipts
- ❖ Used to pay salaries and meet operational expenses.
- ❖ **Accounts** must be:



- Maintained as per Central Govt. + CAG guidelines.
- **Audited by CAG.**
- Submitted to **Parliament** via the Central Government.

#### 9. Amalgamation / Transfer of Insurance Business

- ❖ No transfer or merger allowed without **IRDA approval**.
- ❖ A proper **scheme** must be prepared and submitted to the Authority.
- ❖ Documents must also be furnished to the Central Government.

#### 10. Administrative & Miscellaneous Provisions

- ❖ IRDA is **bound by Central Govt. policy** on major matters.
- ❖ Govt. can **supersede IRDA** for up to 6 months if:
  - It disobeys govt. directions
  - It acts against public interest
- ❖ IRDA must:
  - File reports and returns to Govt.
  - Can **form Insurance Advisory Committees** (max 25 members).
  - Can **delegate powers** to its officers.
  - Can frame **its own regulations** (after consultation with advisory committee).
  - Govt. can remove any difficulties through notification (within 2 years from appointed day).

## 6. Specific Legal Provisions Related to MSME Sector

### Introduction

#### 1. What is an MSME?

An **MSME** (Micro, Small & Medium Enterprise) in India is a business engaged in manufacturing or services that qualifies under special thresholds for **investment** and **annual turnover**, as defined by law (the MSMED Act, 2006). The classification applies **equally to manufacturing and service units** under the unified "composite criteria" system.

#### 2. Revised Classification (effective 1 April 2025)

The Indian government has increased MSME classification limits to better reflect today's economy. These revised limits are:

Enterprise Type	Investment in Plant & Machinery / Equipment	Annual Turnover
Micro	≤ ₹2.5 crore	≤ ₹10 crore
Small	≤ ₹25 crore	≤ ₹100 crore
Medium	≤ ₹125 crore	≤ ₹500 crore

This change is **2.5 times higher** for investment limits and **2 times higher** for turnover compared to the previous thresholds

#### 3. Previous Classification (pre-April 2025)

For comparison, here's how the limits stood earlier:

- ❖ **Micro:** Investment ≤ ₹1 crore, Turnover ≤ ₹5 crore
- ❖ **Small:** Investment ≤ ₹10 crore, Turnover ≤ ₹50 crore
- ❖ **Medium:** Investment ≤ ₹50 crore, Turnover ≤ ₹250 crore

#### 4. How the Composite Criteria Work

- ❖ **An enterprise must meet both** investment and turnover limits to fall within a given category.
- ❖ If a business exceeds the limit in **either** category, it is reclassified into the **next higher** category.
- ❖ Downgrading happens only when **both** investment and turnover fall below the lower thresholds

#### **Example:**

A firm with ₹3 crore investment and ₹9 crore turnover remains "Micro." If turnover rises to ₹12 crore (but investment stays ≤ ₹2.5 crore), it moves to "Small."

### 5. Practical Examples

- ❖ **Micro enterprise example:** Suppose a food-processing unit invests ₹2 crore and has annual turnover ₹8 crore → **still classified as Micro.**
- ❖ **Small enterprise example:** A garment manufacturer invests ₹20 crore and has turnover ₹95 crore → qualifies as **Small.**
- ❖ **Medium enterprise example:** An IT services firm invests ₹120 crore and has ₹450 crore turnover → falls under **Medium.**

### 6. Key Highlights and Legal Note

- ❖ The revised thresholds came into effect from **1 April 2025** under Notification S.O. 1364(E), dated 21 March 2025
- ❖ Once an enterprise moves up to a higher category, it continues to enjoy benefits of its previous category for **three years**, as per transitional rules.
- ❖ If it drops below thresholds, the downgrade takes effect from **next financial year**

### 7. Why It Matters for Businesses?

- ❖ **More businesses** now qualify as MSMEs and can access government schemes like lower -cost credit, subsidies, priority-sector lending, and protection under delayed-payment laws.
- ❖ Enables **growth without losing MSME benefits**, encouraging expansion and innovation.

## Rights available to MSME, Measures for Promotion of MSME under MSMED Act, 2006

### 1. Powers of Central Government (Section 9 of MSMED Act, 2006)

- ❖ The **Central Government (CG)** can take measures to promote and develop MSMEs.
- ❖ It can announce **schemes, policies, or programs** to help MSMEs in areas like:
  - a) **Technology upgradation**
  - b) **Skill development**
  - c) **Market promotion**
  - d) **Credit (loan) facilities**
- **Example:** CG can give financial assistance, subsidies, or training programs to small businesses to improve competitiveness.

### 2. Salient Provisions of MSME Development Act, 2006

Some key provisions of the Act:

- a) **Facilitates promotion and development** of Micro, Small, and Medium Enterprises.
- b) **Provides protection** to MSMEs in case of **delayed payments** by buyers.
- c) **Establishes a legal framework** for **National Board for MSME** and **Advisory Committees.**

### Important Definitions under the Act

Term	Meaning (Simple)
<b>Advisory Committee</b>	Committee that advises the Central Government on classification of MSMEs and related policies.
<b>Appointed Day</b>	The day immediately after <b>15 days from the day of acceptance or deemed acceptance</b> of goods/services by the buyer.
<b>Day of Acceptance</b>	The day when goods/services are actually delivered and accepted by the buyer.
<b>Day of Deemed Acceptance</b>	If buyer <b>does not reject</b> goods/services within <b>15 days</b> , it is considered as accepted.
<b>Board</b>	Refers to the <b>National Board for Micro, Small and Medium Enterprises</b> .
<b>Buyer</b>	Any person, company, or organization that <b>buys goods or takes services</b> from MSMEs.
<b>Enterprise</b>	Any industrial undertaking or business engaged in production or providing services.
<b>Supplier</b>	MSME enterprise that <b>supplies goods or services</b> to buyers.

### 3. National Board for MSME

The **National Board for Micro, Small and Medium Enterprises (NBMSME)** is the top advisory body under the Act.

#### Composition / Members of the Board

- ❖ **Chairperson** - Union Minister in charge of MSME.
- ❖ **Vice-Chairperson** - Minister of State for MSME.
- ❖ **Members** -
  - a) Representatives from **Central & State Governments**
  - b) **MSME entrepreneurs & associations**
  - c) **Banks & financial institutions**
  - d) **Experts** in industry, law, finance, and rural development

(Exact size varies as per notifications, but it includes Government + Industry + Experts)

#### Functions of National Board

- ❖ **Advise** the Central Government on:
  - Policies for MSME development
  - Programs for skill development and technology support
- ❖ **Review existing policies** and suggest improvements for MSMEs.
- ❖ **Encourage coordination** among Central Government, State Governments, and MSME associations.



#### 4. Memorandum of Micro, Small and Medium Enterprise (Sec 8)

##### ❖ What is it?

A memorandum is like **informing the Government** that you have started an MSME.

##### ❖ Who can file?

- **Micro or Small Enterprise (any type) - Optional**
- **Medium Enterprise (services) - Optional**
- **Medium Enterprise (manufacturing) - Compulsory**

##### ❖ **Old Businesses (before MSMED Act)**

- Small-scale units with old registration can **file memorandum within 180 days** (optional).
- Medium industries (investment ₹1-10 crore) **must file within 180 days.**

##### Example:

- Ramesh starts a **small tailoring unit** - he **may file** a memorandum.
- Suresh starts a **medium furniture factory** - he **must file** a memorandum.

#### 5. Reference to Micro & Small Enterprises Facilitation Council (MSEFC)

##### ❖ Why?

To **resolve payment disputes** between MSME suppliers and buyers.

##### ❖ How it works:

- MSME supplier can **complain to MSEFC** if payment is delayed.
- Council first tries **conciliation** (amicable settlement).
- If not successful, Council does **arbitration** itself.

##### ❖ Jurisdiction:

- Council of MSME's **location** has authority, even if buyer is anywhere in India.

##### ❖ Time limit:

- Case must be decided **within 90 days.**

##### Example:

- A small toy factory supplies toys to a big retailer. Payment is delayed for 3 months.
- Factory can complain to **MSEFC** → Council tries to settle → if no solution, it gives an **arbitration award.**

#### 6. Advisory Committee

❖ **Purpose:** To **advise the Central Government** on MSME matters.

##### ❖ Who are the Members?

- a) **Chairperson:** Secretary of MSME Ministry (Central Govt.)
- b) **Up to 5** Central Govt. officers (experts)
- c) **Up to 3** State Govt. representatives



- d) 1 MSME Association representative
- e) **Member Secretary:** Same as National Board's Member Secretary

❖ **Functions:**

- Suggest how to classify MSMEs (micro, small, medium).
- Advise National Board for MSME on policies.
- Examine MSME-related issues and give solutions.

**Example:** If the government wants to change the investment limits for MSMEs, it will consult the Advisory Committee first.

## 7. Measures for Promotion and Competitiveness of MSMEs

The Central Government can start programs and schemes for:

- a) Promotion and development of MSMEs
- b) Training and skill development for employees and owners
- c) Technology upgradation (modern machines, new software)
- d) Marketing support & cluster development
- e) Easy loans and credit facilities
- f) Government purchase preference to MSMEs

**Example:**

- ❖ Government may start a scheme to teach digital marketing to MSMEs.
- ❖ Or, it may give low-interest loans to buy new machines.

## Dedicated Funds for MSMEs

### Meaning

- ❖ Dedicated Funds are special funds created by the Central Government only for the growth and support of MSMEs.
- ❖ The money in these funds cannot be used for any other purpose.

### Key Points about Dedicated Funds (Sec 12 of MSME Act)

#### a) Creation of Funds

- Central Government can notify creation of one or more MSME Funds.
- These funds are called Dedicated Funds for the MSME sector.

#### b) Source of Funds

- Money comes mainly from Government grants.
- Amount is decided by Central Government based on requirement.

#### c) Utilisation of Funds



- Used exclusively for MSME promotion, development, and support.
- **Typical uses:**
  1. Training and skill development of entrepreneurs
  2. Technology upgradation (modern machines, software)
  3. Cluster development & infrastructure (like common testing labs)
  4. Financial assistance/subsidies for MSME projects

#### d) Administration of Funds

- Central Government is responsible for managing and monitoring the fund.
- Must ensure timely release and proper utilisation.

#### Step-by-Step Process of Dedicated Fund Utilisation

- a) Government announces the Fund through a notification.
- b) Money credited into the Fund from Govt. grants.
- c) Schemes/programs are identified (e.g., digital MSME training, cluster support).
- d) Funds are released to MSME Ministry / State bodies / SIDBI / NSIC.
- e) MSMEs apply for benefits under the relevant scheme.
- f) Government monitors how the fund is being used.

#### Practical Example

##### ❖ Scenario:

The Government creates a "Technology Upgradation Fund for MSMEs" with ₹500 crore.

##### ❖ Use of Fund:

- 50% subsidy for MSMEs buying modern machines
- Workshops and training for workers on new technology
- Building a common testing lab for small industries in a cluster

##### ❖ Result:

- A small textile MSME buys a new machine for ₹10 lakh.
- It gets ₹5 lakh subsidy from the Dedicated Fund.
- This improves production and competitiveness.



## Delayed Payments to Micro & Small Enterprises

### Meaning

- ❖ MSMEs often supply goods or services on credit to big companies.
- ❖ If the buyer delays payment, it can hurt MSMEs because they have limited working capital.
- ❖ MSME Act protects MSMEs by putting strict rules and penalties on delayed payments.

### Key Provisions (Sec 15 to 17 of MSME Act)

1. **Payment Time Limit:** Buyer must pay within the time agreed in writing, but not more than 45 days from:
2. **Date of Acceptance** - When buyer accepts goods/services.
3. **Date of Deemed Acceptance** - If buyer does not reject goods within 15 days, it is considered accepted.
4. **Interest on Delayed Payment**
  - If payment is delayed:
    - Buyer pays compound interest with monthly rests
    - Interest rate = 3 times the RBI Bank Rate
5. **Mandatory Disclosure by Large Buyers**
  - If the buyer's accounts are audited, he must show separately in his annual accounts:
    - a) Unpaid principal to MSMEs
    - b) Interest due on delayed payment
  - **Important:** This interest cannot be deducted for income tax purposes.

### Step-by-Step Process for Delayed Payments

- a) MSME delivers goods/services to buyer.
- b) Buyer must pay within 45 days from acceptance.
- c) If buyer fails to pay:
  - Interest starts from the appointed day (16th day or as per agreement).
  - Interest is compounded monthly at 3× RBI Bank Rate.
  - MSME can file a complaint with the Micro & Small Enterprise Facilitation Council (MSEFC) if payment is not made.
  - MSEFC resolves the case through conciliation or arbitration within 90 days.

### Practical Example

- ❖ **Scenario:**  
A small auto-parts MSME supplies goods worth ₹2,00,000 to a big car company on 1st July.



- Buyer does not reject goods in 15 days → **Deemed Accepted on 16th July**
- **Payment must be made within 45 days** → By 30th August
- ❖ **Delayed Payment:**
  - Buyer pays only on **30th September** → **30 days delay**
  - MSME can claim **interest at 3× RBI Bank Rate** from **31st August to 30th September**.
- ❖ **Action:**
  - MSME can also file a complaint on **MSME Samadhan Portal** for faster recovery.

### MSME Facilitation Councils by State Governments

- ❖ **Every State** must set up **1 or more MSEFCs**.
- ❖ **Members:** 3 to 5
  - a) Director of Industries (Chairperson)
  - b) MSME association members
  - c) Bank/financial institution representatives
  - d) Experts in industry, trade, finance, or law
- ❖ **Function:**

Resolve **payment disputes** through conciliation and arbitration.

#### **Example:**

MSEFC in **Gujarat** can settle a dispute for an MSME located in Gujarat, even if the buyer is in Delhi.

### Designated Officers in Central & State Governments

- ❖ Both governments can **appoint officers** to:
  1. Implement MSME Act provisions
  2. Supervise schemes and policies
- ❖ They are given **powers and responsibilities** to help MSMEs.
- ❖ **Both CG and SG** can also **make rules** for this Act.

#### **Example:**

State Government may appoint an **MSME Development Officer** to guide entrepreneurs in their district.

### Various Schemes by Central Government

The Central Government introduces **many schemes** to help MSMEs in:

- a) **Credit & loans** (easy finance)
- b) **Technology upgradation & modernization**
- c) **Infrastructure & cluster development**
- d) **Quality testing and certification**
- e) **Entrepreneurship and skill training**
- f) **Better market access** (domestic & export)



### Popular Schemes (with short notes):

- a) **Digital MSME Scheme** - Helps MSMEs use software like ERP, accounting, and GST tools.
- b) **ECLGS** - 100% loan guarantee to banks to give emergency credit (e.g., during COVID-19).
- c) **SIDBI - Secured Business Loan** - Loans up to ₹10 crore for MSMEs (max 10 years).
- d) **PMEGP** - Credit-linked subsidy scheme to **create jobs** in rural and urban areas.
- e) **NSIC Services** - Helps in raw material purchase, marketing, credit rating, and technology.

### Other Supports:

- ❖ **MSME Samadhan Portal** - File online complaints for **delayed payments**.
- ❖ **Fund of Funds & Subordinate Debt** - For **stressed MSMEs**.
- ❖ **Procurement Preference Policy** - Govt. **buys first from MSMEs**, giving them more business.

### Example:

- A small IT start-up can register under **Digital MSME Scheme** to get cheap ERP software.
- A handicraft MSME can complain about **delayed payment** on MSME Samadhan Portal.



## 7. The Prevention of Money Laundering Act, 2002 (PMLA)

### 1. Background Story & Significance of PMLA

#### Why was PMLA introduced?

- ❖ **Money laundering** is the process of turning "dirty money" (money earned through illegal activities) into "clean money" (money that appears legitimate).
- ❖ In the 1990s, **global crimes like drug trafficking, terrorism, corruption, and fraud** were increasing. Criminals were using international banking systems to hide illegal wealth.
- ❖ To meet **international obligations** and to curb the problem of **terror funding and black money**, India enacted **The Prevention of Money Laundering Act (PMLA), 2002**.
- ❖ It came into force on **1st July 2005**, fulfilling India's commitment to the **Financial Action Task Force (FATF)** and the **UN Political Declaration to combat money laundering**.

#### Significance

- ❖ Prevents criminals from enjoying illegal money.
- ❖ Helps track and confiscate the proceeds of crime.
- ❖ Makes India compliant with global anti-money laundering (AML) standards.
- ❖ Strengthens the fight against terror financing and organized crime.

### 2. Objectives of the Act

#### The main objectives of PMLA are:

- ❖ **Prevent and control money laundering** in India.
- ❖ **Confiscate and seize** property obtained from laundered money.
- ❖ **Deal with related issues** of money laundering and ensure international cooperation.

### 3. Authorities under PMLA

- ❖ **Directorate of Enforcement (ED)**
  - Investigates and prosecutes money laundering offences.
  - Can **attach, seize, and confiscate** property involved in money laundering.
- ❖ **Financial Intelligence Unit - India (FIU-IND)**
  - Central agency to **receive, analyze, and disseminate** suspicious financial transaction information.
  - Reports directly to **Economic Intelligence Council** (headed by Finance Minister).
- ❖ **Adjudicating Authority**
  - Confirms the **attachment or confiscation** of property involved in money laundering.
- ❖ **Appellate Tribunal**
  - Hears appeals against orders of the Adjudicating Authority and Director (FIU/ED).
- ❖ **Special Courts**
  - Designated courts for **trial of money laundering offences**.

### A glance on key Authorities under PMLA

Authority	Role / Function
<b>Directorate of Enforcement (ED)</b>	Investigates and prosecutes money laundering offences. Can attach and confiscate tainted property.
<b>Financial Intelligence Unit - India (FIU-IND)</b>	Collects, analyses, and shares information on suspicious transactions. Reports to Economic Intelligence Council.
<b>Adjudicating Authority</b>	Confirms attachment/confiscation of property involved in money laundering.
<b>Appellate Tribunal</b>	Hears appeals against orders of Adjudicating Authority or Director (ED/FIU).
<b>Special Courts</b>	Trials for offences under PMLA and scheduled offences under CrPC.

#### 4. Process of Money Laundering (3 Stages)

##### 1. Placement

- ❖ Illegally earned cash is first **introduced into the financial system**.
- ❖ Example: Breaking ₹5 crore of black money into small deposits of ₹9 lakh in different banks to avoid detection.

##### 2. Layering

- ❖ Money is **moved through multiple accounts** or converted into different financial instruments to hide its origin.
- ❖ Example: Transferring money to multiple accounts, buying foreign drafts, or moving funds to foreign banks.

##### 3. Integration

- ❖ Laundered money is **brought back into the economy** as legitimate wealth.
- ❖ Example: Investing the laundered money in real estate, luxury cars, or business ventures.

#### Simple Example:

- A drug dealer earns ₹1 crore → deposits ₹9 lakhs each in 12 banks (**Placement**) → transfers funds through multiple accounts (**Layering**) → buys a shopping mall in Delhi (**Integration**).

#### Three Stages of Money Laundering

Stage	Description	Simple Practical Example
<b>Placement</b>	Introduction of illegal money into the financial system	A criminal deposits ₹9 lakh each in 12 bank accounts to avoid attention (total ₹1.08 crore).
<b>Layering</b>	Concealing the source of money by moving it through multiple accounts or transactions to confuse the audit trail	Transfers the money to various foreign accounts and buys shell companies to hide the origin.
<b>Integration</b>	Bringing the money back into the economy as legitimate income	Uses the money to buy real estate, invest in businesses, or luxury items like cars or jewellery.



## 5. Offence under Money Laundering

### Definition (Section 3)

- ❖ Anyone who **directly or indirectly** attempts to **indulge, assist, or be part of any process** related to **proceeds of crime**, such as concealment, possession, acquisition, or use, and **claims it as untainted**, is guilty of money laundering.

### Scheduled Offences

- ❖ Money laundering arises only from **scheduled (predicate) offences** mentioned in the **PMLA Schedule**, divided into:
  - **Part A** - Major offences (IPC, NDPS, Arms Act, Corruption Act, SEBI Act, Customs Act, etc.)
  - **Part B** - Offences involving **₹1 crore or more**.
  - **Part C** - **Trans-border crimes** (international money laundering cases).

## 6. Punishment for Money Laundering (Section 4)

- ❖ **Rigorous Imprisonment: Minimum 3 years to Maximum 7 years.**
- ❖ **If related to NDPS Act offences: Maximum can be 10 years.**
- ❖ **Fine: No upper limit; depends on case severity.**
- ❖ **Property involved in laundering can be attached and confiscated.**

## 7. Procedure of Investigation (Simplified)

- ❖ **ED Investigation:**
  - ED officers investigate and can **attach properties** suspected to be proceeds of crime.
- ❖ **Adjudicating Authority:**
  - Examines evidence and **confirms attachment** if property is linked to money laundering.
- ❖ **Appellate Tribunal & Special Courts:**
  - Accused can **appeal** to the Tribunal.
  - **Special Courts** conduct trials under **PMLA and related offences**.
- ❖ **International Cooperation:**
  - India can sign **bilateral agreements** for investigation and confiscation of overseas assets.

## 8. Enforcement Directorate (ED) & Financial Intelligence Unit (FIU)

- ❖ **Enforcement Directorate (ED)**
  - Investigates offences under **PMLA and FEMA**.
  - Can **attach and confiscate** properties.
- ❖ **Financial Intelligence Unit - India (FIU-IND)**
  - Collects **Cash Transaction Reports (CTR)** and **Suspicious Transaction Reports (STR)**.
  - Coordinates with **domestic and foreign agencies** for anti-money laundering efforts.



### 9. Obligations of the Reporting Entity (Section 12)

"Reporting Entity" includes banks, financial institutions, intermediaries, and specified professionals. They must:

- ❖ **Maintain records** of prescribed transactions.
- ❖ **Furnish reports** of such transactions to FIU-IND.
- ❖ **Verify client identity (KYC)**.
- ❖ **Identify beneficial owners** of accounts.
- ❖ **Keep transaction & client records for 5 years** after the business ends.

### 10. Functions of Authorities

- ❖ **Adjudicating Authority**
  - Confirms **attachment, retention, and confiscation** of property involved in money laundering.
- ❖ **Appellate Tribunal**
  - Hears **appeals** against orders of Adjudicating Authority and ED/FIU.
- ❖ **Special Courts**
  - Conduct **trial of offences** under PMLA and related scheduled offences.

### 11. Suspicious Transaction Reports (STR)

- ❖ Banks/financial institutions must **report transactions** that:
  - Involve **proceeds of crime**,
  - Are **unusually complex or unjustified**, or
  - **Lack economic rationale**.

#### Example:

- A student account suddenly receives ₹50 lakh from multiple foreign sources with no business reason - This is an STR.

## The Prevention of Money Laundering (Maintenance of Record) Rules, 2005

### 1. Records Every Reporting Entity Must Maintain

(Under the Maintenance of Records Rules, 2005, as amended March 7, 2023)

#### Threshold Transactions — Must keep full records for:

- ❖ **Cash transactions** exceeding ₹10,00,000 (₹10 lakh) or equivalent in foreign currency.
- ❖ **Series of related cash transactions**, each below ₹10 lakh but aggregating above ₹10 lakh within a month.
- ❖ **Receipts by NPOs** of donations exceeding ₹10 lakh (or equivalent).
- ❖ **Cash transactions involving forged/counterfeit currency or forgery of security/document**.
- ❖ **Any suspicious transactions**, regardless of amount or mode (cash/non-cash).
- ❖ **All cross-border wire transfers** exceeding ₹500,000 (₹5 lakh) (in or out of India).
- ❖ **Purchase or sale of immovable property** worth ₹5,00,000 (₹50 lakh) or more, registered by the entity.

**Details to Record — For each relevant transaction, the entity must store:**

- **Nature of transaction** (e.g. cash deposit, wire transfer, property sale)
- **Amount and currency** of the transaction
- **Date** when it occurred
- **Parties involved** (client, beneficial owner, counterparties)
- **Ability to reconstruct the entire transaction** flow if needed.

**Retention Period:**

- **Transaction records:** Keep for **5 years** from date of transaction or account closure, whichever is later.
- **KYC records, account files, and business correspondence:** Maintain for **5 years** after business relationship ends or account closes

<b>Aspect</b>	<b>Key Points</b>
<b>Thresholds</b>	Cash > ₹10 lakh or linked series; Immovable property > ₹50 lakh; Wire transfers > ₹5 lakh; NPO receipts > ₹10 lakh; Suspicious any amount
<b>Data to be recorded</b>	Transaction type, amount, currency, date, parties involved
<b>Retention</b>	5 years from transaction or account closure

**2. Central KYC Records Registry (CKYCR)**

- a) **A single central database** where the KYC details of all customers are stored.
- b) Maintained by the **Government of India** for banks, financial institutions, and intermediaries.

❖ **Purpose:**

- Avoid repeating KYC with different banks or institutions.
- Help in **quick verification** of customer identity and beneficial ownership.

❖ **How it works:**

- Reporting entities (banks, etc.) **upload customer KYC** to CKYCR **within 10 days**.
- Other institutions can **access the KYC** with the customer's consent.

**3. Digital KYC Process**

- ❖ **A paperless KYC method** where customer identity is verified **online** using electronic data.

❖ **Features:**

- No need to submit physical documents.
- Verification can be done using Aadhaar XML, DigiLocker, video KYC, or scanned documents.
- Faster onboarding and better compliance with PMLA.

**In simple words:**

- **CKYCR** = A **single government KYC library** for all banks & financial institutions.
- **Digital KYC** = **Online KYC** without physical paperwork.

## 8. Information Technology Act, 2000 & Related Rules

### 1. Objectives of the IT Act, 2000

The IT Act, 2000 was introduced to **provide legal recognition to electronic transactions** and to enable **safe digital communication** in India. Its main objectives are:

#### a) Legal recognition of electronic records and digital signatures

- ❖ Digital documents, emails, and e-contracts become legally valid.
- ❖ **Example:** Online contract via email is recognized in law.

#### b) Facilitate e-filing and e-governance

- ❖ Allows submission of forms and records to government agencies electronically.

#### c) Amend other Acts

- ❖ For example, changes in Indian Evidence Act and IT-related provisions in IPC to accept electronic evidence.

#### d) Set up regulatory authorities

- ❖ Licensing, monitoring, and certifying authorities for **digital signatures and cyber security**.

### 2. Dispatch and Receipt of Electronic Records Under the IT Act:

#### a) Dispatch of record occurs when:

- ❖ The electronic message **leaves the originator's control** and enters a computer system **not controlled by the sender**.

#### b) Receipt of record occurs when:

- ❖ It **enters the recipient's designated computer system**, or
- ❖ If not designated, when the recipient **actually retrieves the message**.

#### c) Place of dispatch and receipt:

- ❖ **Deemed to be the sender's and receiver's place of business**, unless otherwise agreed.

#### **Example:**

If a company in Mumbai emails a contract to a client in Delhi, dispatch is at Mumbai (when email leaves the server), and receipt is at Delhi (when client retrieves it).

### 3. Controller of Certifying Authorities (CCA)

- ❖ Appointed by the Central Government.
- ❖ **Functions:**
  - License, regulate, and supervise **certifying authorities** who issue **digital signature certificates**.
  - Ensure standards and security of e-signatures and encryption.
  - Can **intercept or block information** for national security.
  - Can **declare "protected systems"** to restrict unauthorized access.



#### 4. Offences under IT Act

Offences can apply even if committed **from outside India** if the computer/network involved is in India.

##### Common offences:

- ❖ Tampering with computer source documents
- ❖ Hacking - destruction, deletion, or alteration of data with malicious intent
- ❖ Misrepresentation to Controller or Certifying Authority
- ❖ Breach of confidentiality and privacy
- ❖ Publishing false digital signature certificates

**Example:** Hacking a bank's server to steal data or faking a digital signature certificate.

#### 5. Settlement of Disputes

##### a) Adjudicating Authorities

- ❖ Appointed by Central Government; have IT and legal knowledge.

##### b) Cyber Appellate Tribunal

- ❖ Appeals against orders of Controller or Adjudicating Authorities must be made within **45 days**.

##### c) Further Appeal

- ❖ Lies with High Court within **60 days**.

##### d) Civil Courts

- ❖ Do **not** have jurisdiction under the IT Act.

### Information Technology (Reasonable Security Practices and Sensitive Personal Data) Rules, 2011

The Rules were issued under **Section 43A and 72A** of the IT Act to **protect privacy and sensitive personal data**.

#### Key Rules

##### Rule 3 - What is Sensitive Personal Data?

**Includes:**

- ❖ Passwords
- ❖ Financial details (credit/debit card, bank account)
- ❖ Health and biometric data (DNA, fingerprints, voice patterns)
- ❖ Sexual orientation or medical history

**Not sensitive:** Any data **freely available in public domain**.

##### Rule 4 - Privacy Policy

- ❖ Every company collecting sensitive data **must have a clear Privacy Policy:**
  - Type of data collected
  - Purpose of collection
  - Security measures for protection
- ❖ Must be **published on the website**.

### Rule 5 - Collection and Use of Information

- ❖ Collect **only with consent** and for a **lawful and necessary purpose**.
- ❖ Inform users about:
  - Purpose of collection
  - Who will receive and store the data
- ❖ Allow users to **review and correct** data.
- ❖ **Do not retain data longer than necessary**.
- ❖ Must **appoint a Grievance Officer** to handle complaints.
- ❖ **Prior consent required** before sharing with third parties.

### Rule 8 - Reasonable Security Practices

- ❖ Companies must implement **security standards like ISO/IEC 27001**.
- ❖ **Annual audit** or audit on major system upgrade is mandatory.
- ❖ Purpose: Prevent **data leaks, hacking, and misuse**.

### Data Protection & Law in India

#### 1. What is Data Protection?

- ❖ Protecting personal and sensitive data from **misuse, theft, or unauthorized access**.
- ❖ Ensures privacy in collection, storage, and sharing of data.

#### 2. Data Protection Law in India

- ❖ India has **no standalone data protection law** yet.
- ❖ Data protection is governed by:
  - **IT Act, 2000 (Sections 43A & 72A)**
  - **2011 Sensitive Personal Data Rules**
    - **Negligence** in protecting sensitive data → Company must **pay damages**.
    - **Breach of contract** → Punishable with **up to 3 years imprisonment or ₹5 lakh fine**.
    - Supreme Court (2017) declared **Right to Privacy as a Fundamental Right**.

### Overview

Topic	Key Points
<b>IT Act Objective</b>	Legalize e-records & signatures, promote e-filing, create digital regulators
<b>Dispatch &amp; Receipt</b>	Dispatch = leaves sender's system; Receipt = enters recipient's system
<b>CCA</b>	Licenses & regulates digital signature authorities
<b>Offences</b>	Hacking, data tampering, fake digital signatures, privacy breaches
<b>Dispute Settlement</b>	Adjudicating Authority → Cyber Tribunal → High Court
<b>Rule 3</b>	Defines sensitive data (passwords, health, biometrics, finance)
<b>Rule 4</b>	Privacy policy must be clear & on website
<b>Rule 5</b>	Collect data lawfully, with consent, allow review & appoint Grievance Officer
<b>Rule 8</b>	Implement ISO-level security & yearly audit

## Basic Principles of Data Privacy and Business Intelligence

### 1. What is Business Intelligence (BI)?

- ❖ **Business Intelligence (BI)** is a **technology-driven process** that helps organizations **analyse data and generate actionable information** for better decision-making.
- ❖ BI involves **collecting data** from various sources (internal and external), **organizing and processing** it, and finally **presenting** it in the form of **reports, dashboards, and visualizations** for managers and executives.

#### **Key Points:**

- BI turns **raw data into useful insights**.
- Helps in **operational decisions** (day-to-day) and **strategic planning** (long-term).
- It uses **data management, analytics, and reporting tools**.

#### **Example:**

A retail company collects daily sales data from all its stores. BI tools can analyze this data to show **which products are selling best, which locations are underperforming, and forecast future demand**.

### 2. Benefits of Business Intelligence

A successful BI program can provide **multiple benefits**:

- ❖ **Faster and Better Decision-Making**
  - Managers can **see data quickly** and take **data-driven decisions** instead of guessing.
- ❖ **Improved Business Processes**
  - BI identifies **bottlenecks** in production, supply chain, or sales.
- ❖ **Increased Efficiency and Productivity**
  - Automation in reporting saves time and reduces errors.
- ❖ **Spotting Problems Early**
  - For example, if sales in a region drop suddenly, BI alerts management.
- ❖ **Understanding Market Trends**
  - Helps in **identifying customer preferences** and **emerging opportunities**.
- ❖ **Stronger Business Strategies**
  - Insights from BI guide **marketing, product launch, and expansion decisions**.
- ❖ **Boost in Revenue and Competitive Advantage**
  - BI helps businesses **react faster than competitors**.

#### **Example:**

A hotel chain uses BI to track **room occupancy and seasonal trends**, allowing it to **adjust pricing and increase profits**.

### 3. How the BI Process Works

The BI process involves **converting raw data into meaningful insights**. The steps are:



#### ❖ Data Preparation

- Collect and organize data from multiple sources (sales, finance, customer feedback).
- Clean and integrate data to ensure **accuracy and consistency**.

#### ❖ Data Analysis / Querying

- Perform **queries** (questions to the data) like:  
"Which products had the highest sales last quarter?"
- Analyse using tools like OLAP or dashboards.

### 4. Distribution of Insights

- ❖ Share **KPIs (Key Performance Indicators)**, reports, and dashboards with managers.

### 5. Decision-Making

- ❖ Use insights to **take actions**, such as launching new offers, improving efficiency, or reducing costs.

#### Example:

An e-commerce company uses BI to **analyze customer buying behavior** and launches **targeted discounts** based on real-time trends.

### 6. Why Business Intelligence is Important

- ❖ In today's **data-driven world**, decisions without proper data are **risky**.
- ❖ BI allows **companies to convert data into insights**, which leads to:
  - **Higher productivity**
  - **Better revenue**
  - **Reduced guesswork**

#### Without BI:

Decisions are based on **intuition or past experience**, which may lead to mistakes.

#### Example:

- A bank can use BI to **detect unusual transactions** (possible fraud) in real time.
- Without BI, it might take weeks to notice, causing financial loss.

### Types of Business Intelligence Tools and Applications

There are various BI tools designed for different purposes:

#### 1. Ad hoc Analysis

- ❖ On-the-spot analysis for a **specific issue**.

**Example:** Analyzing **why sales dropped in March**.

#### 2. OLAP (Online Analytical Processing)

- ❖ Allows **multi-dimensional analysis** of data.



**Example:** Comparing sales by region, product, and time.

### 3. Mobile BI

- ❖ BI reports and dashboards **accessible on smartphones and tablets.**

**Example:** A manager checking sales KPIs while traveling.

### 4. Real-time BI

- ❖ Data is **analysed immediately as it is generated.**

**Example:** Stock trading platforms that show live market trends.

### 5. Operational Intelligence (OI)

- ❖ Provides **real-time insights** to frontline workers and managers.

**Example:** Delivery apps tracking live orders.

### 6. Open Source BI (OSBI)

- ❖ BI software with **free community editions** and **paid enterprise versions.**

**Example:** Tools like Pentaho or Jasper Soft.

### 7. Embedded BI

- ❖ BI features **built directly into business applications.**

**Example:** A CRM software showing sales trends inside the app.

### 8. Collaborative BI

- ❖ Combines BI with **team collaboration tools to discuss data insights.**

**Example:** Adding comments or discussions to a dashboard.

### 9. Location Intelligence (LI)

- ❖ **Map-based BI** to analyze **geographic and geospatial data.**

**Example:** Retailers deciding **where to open new stores** based on location trends.

### 10. Business Intelligence Platforms:

Modern BI platforms typically include,

- ❖ **Data Visualization Tools**
  - Graphs, charts, and infographics to **make data easier to understand.**
- ❖ **Dashboards and Reports**
  - Consolidated view of **KPIs and metrics in real time.**
- ❖ **Data Storytelling**
  - Combine **visuals and text** to create **presentations** for stakeholders.
- ❖ **Security and Performance Monitoring**
  - Ensures **safe access** to BI data and **efficient operations.**

#### Common Industry Uses:

- **Finance:** Risk analysis and fraud detection.
- **Retail:** Inventory and sales trend analysis.
- **Manufacturing:** Production and supply chain optimization.
- **Healthcare:** Patient care improvement and disease tracking.

### 11. Business Intelligence Trends

Latest trends in BI focus on **speed, self-service, and collaboration:**

- ❖ **Agile BI Development**



- Breaking projects into **small, quick deliverables** for faster use.
- ❖ **Self-Service BI**
  - Business users can **create reports and dashboards** without IT help.
- ❖ **Integration with Big Data and AI**
  - Using **predictive analytics** and **machine learning** for **what-if scenarios**.
- ❖ **Cloud BI**
  - Accessing BI tools **from anywhere** via **cloud platforms**.
- ❖ **Real-Time and Streaming Analytics**
  - Immediate decision-making in areas like **fraud detection** or **stock trading**.

#### Final Note:

Business Intelligence is **not just about technology**; it is about **using data smartly** to make **better business decisions**. Understanding BI helps future managers **analyze trends, improve efficiency, and gain competitive advantages**.

## Cyber-crime / Cyber Fraud - Meaning, Remedies and Penalties

### 1. What is Cyber Crime?

- ❖ **Cyber-crime** refers to any **criminal activity** where **computers, computer networks, or the internet** are used as:
  - **A Tool** (used to commit the crime),
  - **A Target** (attacked directly), or
  - **A Place** (where illegal activities occur).
- ❖ It includes **traditional crimes committed using computers** (like fraud or defamation) and **new types of crimes unique to cyberspace** (like hacking, phishing, or ransomware attacks).

#### Key Features of Cyber Crimes:

- ❖ **No geographical boundaries** - A hacker in another country can attack systems in India.
- ❖ **Criminals are often anonymous** - Hard to identify without proper cyber investigation.
- ❖ **Rapid growth** - Increased due to high internet usage and online services.

#### Examples of Cyber Crime:

1. **Phishing:** Fake emails pretending to be from banks to steal passwords.
2. **Credit Card Fraud:** Unauthorized use of card details for purchases.
3. **Hacking:** Gaining illegal access to a company's server and stealing data.
4. **Cyber Terrorism:** Attacking government networks to disrupt public services.
5. **Child Exploitation:** Sharing illegal or obscene material online.



## 2. Types of Cyber Crimes

Cyber-crimes are broadly classified into three major categories:

- A. Cyber Crimes Against Persons
- B. Cyber Crimes Against Property
- C. Cyber Crimes Against Government

### A. Cyber Crimes Against Persons

These crimes **target individuals** to **harass, threaten, or harm** them online.

#### Key types (9 major examples):

##### 1) Cyber Stalking

- Repeatedly sending threatening or unwanted messages via email, social media, or messages.
- Example: A stalker tracking someone's location through social media.

##### 2) Obscenity (Pornography)

- Publishing or hosting **obscene materials online**, including **child pornography**.
- Example: Uploading indecent images or videos to websites.

##### 3) Defamation

- Damaging someone's reputation online by **posting false or offensive content**.
- Example: Hacking an email account and sending vulgar mails in the victim's name.

##### 4) Hacking

- **Unauthorized access** to another person's computer system.  
**Example:** Deleting or altering data in another person's account.

##### 5) Cracking

- Breaking into a system **without the owner's knowledge** and **tampering with confidential data**.  
**Example:** Modifying exam results in a university database.

##### 6) Spoofing

- Sending emails or messages **with a false identity** to mislead the recipient.  
**Example:** Receiving an SMS from a friend's number, but actually sent by a criminal.

##### 7) Carding

- Creating **fake ATM/Credit cards** or using **stolen card details** for monetary gains.

##### 8) Cyber Fraud / Cheating

- Stealing passwords, banking credentials, or online identities to cheat.  
**Example:** Online lottery or fake loan scams.

##### 9) Threats and Harassment

- Using computers or networks to **threaten harm** to someone or their family.  
**Example:** Sending threatening videos or emails demanding ransom.



## B. Cyber Crimes Against Property

These crimes involve **damaging or stealing digital assets, intellectual property, or online resources.**

### Common types:

#### 1. Intellectual Property Violations

- ❖ Software piracy, copyright, trademark, or patent violations.

**Example:** Distributing pirated movies or cracked software.

#### 2. Squatting (Domain Name Disputes)

- ❖ Claiming a domain name illegally or using one similar to an existing brand.

**Example:** Registering amazOn.in to mislead users.

#### 3. Vandalism

- ❖ Deliberate destruction or disruption of computer data or network services.

**Example:** Injecting malware that shuts down a company's website.

#### 4. Hacking (Hacktivism)

- ❖ Unauthorized access to networks causing loss of data or functionality.

#### 5. Viruses and Worms

- ❖ Malicious programs that **spread across computers**, altering or deleting data.

#### 6. Trespass

- ❖ Accessing someone's computer **without permission**, even if no damage is done.

**Example:** Using someone's Wi-Fi network illegally.

## C. Cyber Crimes Against Government

These are **serious crimes** targeting **government systems, national security, and public services.**

### Major types:

#### 1. Cyber Terrorism

- ❖ Attacks on **government or military networks** to threaten security or create panic.

**Example:** Distributed Denial of Service (DDoS) attacks on defense servers.

#### 2. Cyber Warfare / Political Hacking

- ❖ Hacking for **political purposes**, including **espionage and sabotage.**

**Example:** Attacking election databases or government communication systems.

#### 3. Piracy Against Government Data

- ❖ Distributing **pirated or unauthorized software** to damage or delete government records.

#### 4. Unauthorized Access to Sensitive Information

- ❖ Terrorists or hackers **stealing confidential government data** for political or ideological motives.



### Cyber Laws to protect cyber crime

- ❖ Cybercrimes are a new class of crimes which are increasing day by day due to extensive use of internet these days.
- ❖ To combat the crimes related to internet The Information Technology Act, 2000 was enacted with prime objective to create an enabling environment for commercial use of I.T.
- ❖ The IT Act specifies the acts which have been made punishable. The Indian Penal Code, 1860 has also been amended to take into its purview cyber crimes.

### The various offenses related to internet which have been made punishable under the IT Act and the IPC are enumerated below:

#### 1. Cybercrimes under the IT Act:

- ❖ Tampering with Computer source documents - Sec.65
- ❖ Hacking with Computer systems, Data alteration - Sec.66
- ❖ Publishing obscene information - Sec.67
- ❖ Un-authorized access to protected system Sec.70
- ❖ Breach of Confidentiality and Privacy - Sec.72
- ❖ Publishing false digital signature certificates - Sec.73

#### 2. Cyber Crimes under IPC and Special Laws:

- ❖ Sending threatening messages by email - Sec 503 IPC
- ❖ Sending defamatory messages by email - Sec 499 IPC
- ❖ Forgery of electronic records - Sec 463 IPC
- ❖ Bogus websites, cyber frauds - Sec 420 IPC
- ❖ Email spoofing - Sec 463 IPC
- ❖ Web-Jacking - Sec. 383 IPC
- ❖ E-Mail Abuse - Sec.500 IPC

#### 3. Cyber Crimes under the Special Acts:

- ❖ Online sale of Drugs under Narcotic Drugs and Psychotropic Substances Act
- ❖ Online sale of Arms Act



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