

## (17E00102) BUSINESS ENVIRONMENT AND LAW

The objective of the course is to provide the student with a background of various environment factors that have major repercussions on business and sharpen their mind to watch and update the changes that occur constantly in this sphere.

1. **Introduction to Business Environment:-** Meaning, Components of Business Environment.-Industrial policy of 1991, Liberalization, Privatization and Globalization
2. **Monetary, Fiscal and Trade Policy:** Monetary & Fiscal Policy –,EXIM Policy, Role of EXIM Bank. Balance of Payments: **WTO:** Role and functions of WTO in promoting world trade –TRIPS, TRIMS and GATS, - Dumping and Anti-dumping measures.
3. **Law-Definition -Need, classification and sources of Business Law, Law of Contract - 1872 (Part-I):** Nature of Contract and essential elements of a valid Contract, Offer and Acceptance. Law of Contract – 1872 (part-II): Consideration, Capacity to Contract and free consent, Legality of the object.
4. **Companies Act, 1956 (Part-I):** Kinds of Companies, Formulation of Companies, Incorporation, Company Documents. **Company Act, 1956 (Part-II):** Company Management, Directors, Company meetings, Resolutions, Auditors, Modes of Winding-up of a company.
5. **Information Technology Act, 2000:** Scope and Application of IT Act, 2000- Digital signature e-governance, penalties and adjudication, cyber regulations appellate, tribunals, duties of subscribers - Right to Information Act,2005 –GST Act 2017.

### Textbooks:

- Essentials of Business Environment, K.Aswathappa, Himalaya publishers.
- Mercantile Law - N.D.Kapoor, Sultan Chand & Sons.
- Mechantile Law- Garg, Sareen, Sharma, Chawla, Kalyani publishers.

### References:

- Indian Economy, Dutt and Sundaram, S. Chand, New Delhi.
- Business Environment – Text and Cases, Justin Paul, TMH.
- Indian Economy- Misra and Puri, Himalaya.
- Business Environment, Suresh Bedi, Excel.
- Mercantile Law, S.S. Gulshan, 3/e, Excel Books,
- Legal Aspects of Business, Ravinder Kumar, Cengage.
- *A Manual of Business Laws*, S.N.Maheshwari & Maheshwari, Himalaya.
- Business law for management, K.R.Bulchandani-Himalaya Publishing.
- Business law, R.S.N Pillai, Bhagavathi, S.Chand

## UNIT-3

### LAW

#### 4.1 NATURE OF CONTRACT

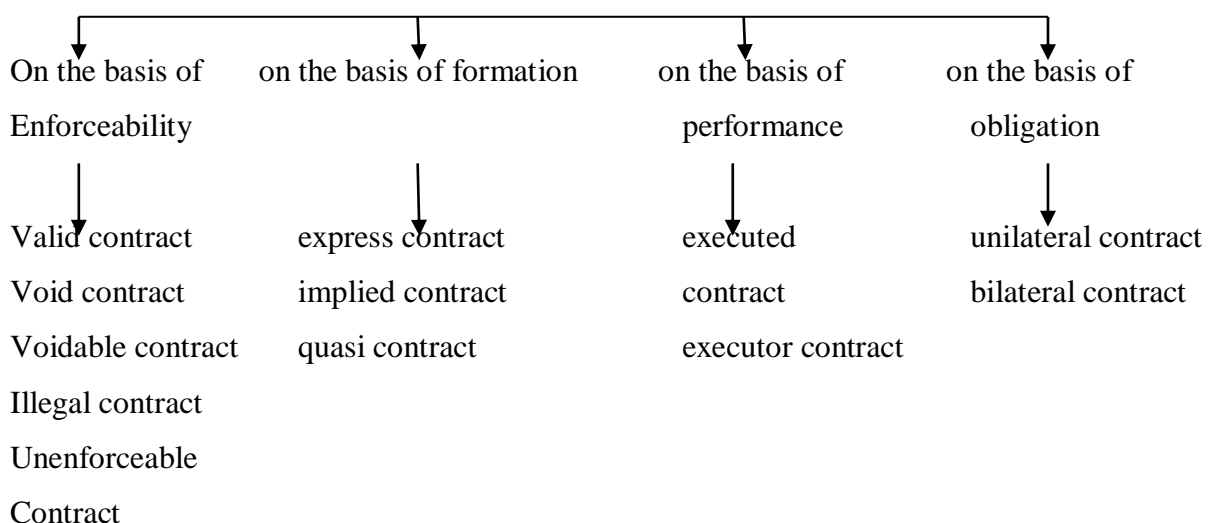
The law of contract is the basis upon the super structure of all business is built. It affects every person in one way or the other as all of us enter into some kind of contract almost every day most of the time we do so without realizing what we are doing from the viewpoint of law. All contracts are based on agreements which are either express or implied. For example, a person seldom realize t hat when he given clothes for dry cleaning or when he buys milk bread or biscuits or when he goes to the auditorium to see a movie he is entering into a contract.

In business transaction normally first promises are made followed by performance. If parities were to go back on their promises without incurring any liability it would be impossible to carry on ay trade industry or commerce.

#### 4.2 MEANING AND DEFINITION OF A CONTRACT

The word contract is derived from the Latin word Contract meaning drawing together. Section2 (h) of the Indian Contract Act, 1872 defines a contract as an agreement enforceable by law. A contract is an exchange of promises. It is formed by two or more persons. It is initiated by one party of offering something to the other party. If the other party accepts the offer in full then it becomes an agreement. When such an agreement fulfils the conditions of section 10 of the Indian contract act, it becomes the contract.

#### 4.3 ACCORDING TO POLLOCK, EVERY AGREEMENT AND PROMISE ENFORCEABLE BY LAW IS A CONTRACT.KINDS OF CONTRACT



1. ON THE BASIS OF ENFORCEABILITY: on the basis of enforceability various contracts are as follows,

(i) **Valid contract**: an agreement is a valid contract if it fulfills all the essential requirements of a contract given under section 10. A valid contract is enforceable by law. Lack of any element prescribed under section 10 would change legal status of a contract and it may be permitted to be enforced.

**For example,**

- a. X offers to marry Y. Y accepts X's offer. This is valid contract.
- b. A homeowner (who is over the age of 18 and of sound mind) signed a contract with the appliance store to buy a refrigerator. The homeowner pays for the refrigerator and the appliance store present the refrigerator for the home owner to take home.

(ii) **Void contract**: it is a contract without any legal effect and cannot be enforced in a court of law. Section 2(j) says that a void contract is a contract which ceases to be enforceable by law. Where both parties to an agreement are under a mistake of fact, (section 20), when the consideration or object of an agreement is unlawful, (section 23), an agreement made without consideration, (section 25), etc., are instances of void contract.

**For example:** A and B contract to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void and A contract to take indigo for B to a foreign port. A's government afterwards declares war against the country in which the port is situated declares war against the country in which the port is situated. The contract becomes void when war is declared.

(iii) **Void agreement**: section 2(g) says that an agreement not enforceable by law is void. Agreement becomes void if it lacks any one of the essential of valid contract. Void agreement is void when it is made. One of these factors is unlawfulness of object and consideration of the contract i.e., illegality of the contract which makes it void. In void agreement if the party has suffered any loss he cannot claim any compensation.

**For example:** Ram lends 1, 00,000 to shyam a minor for the mortgage of his house. The mortgage agreement is void ab initio due to minority of shyam.

(iv) **Voidable contract**: section 2(i) says that voidable contract is an agreement which is enforceable by law of the option of one or more parties but not at the option of the other or others is a voidable contract. Agreement becomes voidable if the consent of one party had not been free (except mistake). Voidable contract become void only when it is declared to be so

by an aggrieved party. If aggrieved party in voidable contract caused by fraud suffered any loss he has the right to claim compensation from other party. For example, a contract brought about as a result of coercion, undue influence fraud or misrepresentation would be voidable at the option of the person whose consent was caused by any one of these factors.

(v) **Illegal contract:** it is a contract which is forbidden by law. Illegal contract if permitted would defeat the provisions of any law or is fraudulent. It may involve or imply or imply injury to a person or property of another or court regards it as immoral or opposed to public policy. The court will not only enforce such a contract but also other connected contracts. All illegal agreements void but all void agreements or contracts are not necessarily illegal. Every agreement of which the object and consideration is unlawful is not only void as between immediate parties but also taints the collateral transaction with illegality. In Bombay the wagering agreements have been declared unlawful by statute.

**For example**

- a. Contract to commit crime, contract that is immoral or opposed to public policy are illegal in nature.
- b. A, B and C enters into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is illegal.

(vi) **Unenforceable contract:** where a contract is good in substance but because of some technical defect it cannot be enforced by law it is called as unenforceable contract. These contracts are neither void nor voidable. Such contracts are in substance. But due to non fulfillment of prescribed formalities these cannot be claimed in the court. As soon as the technical reason is looked into and rectified such contracts may be allowed to be enforced.

**For example:** an insurance policy without proper stamp duty cannot be produced as evidence of a contract in the court. Unenforceable contracts are fully valid contracts but the parties cannot enforce them through the court.

**4.4 DIFFERENCE BETWEEN VOID AGREEMENT AND ILLEGAL AGREEMENT**

<b>VOID AGREEMENT</b>	<b>ILLEGAL AGREEMENT</b>
All illegal agreements are void agreements.	All void agreements are not necessarily illegal.
Collateral agreements or connected transactions of all illegal agreement also become illegal and unenforceable.	Collateral agreements or connected transactions of a void agreement remain valid and enforceable.
Parties to an illegal agreement are liable to	Void agreement does not make the parties to

punishment for entering into an illegal contract.	it liable for punishment under law.
In illegal agreement any money advanced or benefit obtained cannot be claimed back.	In a contract which becomes void subsequently the money advanced or benefit obtained has to be resorted to the other party.

#### **4.5 DIFFERENCE BETWEEN VOID AGREEMENT AND VOID CONTRACT**

<b>VOID AGREEMENT</b>	<b>VOID CONTRACT</b>
If anything has been or given under a void agreement there will be no compensation.	In a void contract, if something has been done or given under it compensation would be available.
A person acquiring goods under a void agreement would get no right over them and would not be entitled to make any further transaction in relation to them.	A person acquiring goods under a contract which becomes void later would have acquired rights over them and would be entitled to sell or people them before it became void.

2. ON THE BASIS OF FORMATION: On the basis of formation various contract are as follows,

- (i) **Express CONTRACT:** generally the contracts are made in this from. These contracts results from express agreements. Express agreement is formed by making offer and giving acceptance in the words spoken or in writing. According to section 9 of Indian contract in so far as the proposal and acceptance of any promise is made in words the promise is said to be express. An express promise leads to the formation of express contract.

**For example**

- a. X say to Y will you buy my car for 1, 00,000?" Y says to X I am ready to buy your car for 1, 00,000. It is an express contract made orally.
- b. X writes a letter to Y, I offer to sell my car for 1, 00,000 to you. Y send a letter to X, I am ready to buy your car for 1, 00, 000. It is an express contract made in writing.
- (ii) **Implied contract:** where the offer and acceptance are made not by use of words but by conduct only and are therefore implied from the circumstances the agreement is

an implied agreement. Either the entire agreement may be implied or only a few terms of the agreement may be implied. For example, if a person enters a bus there is implied promise that he will pay the bus fair.

- (iii) **Quasi-contract:** the term quasi contract would literally mean semi-contract. A quasi contract is created by law. Thus quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it. A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another.

3. ON THE BASIS OF PERFORMANCE: on the basis of performance various contract are as follows,

- (i) **Executed contract:** an executed contract is one in which both the parties have performed their respective obligation. The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record then the contract is an executed contract.

**For example**

A makes an agreement for buying one hundred cotton bales from B @ Rs.5, 000/- per bale. B delivers these cotton bales to A and in return of it a makes payment to B. this contract becomes executed one.

- (ii) **Executor contract:** an executor contract is one where one or both the parties to the contract have still to perform their obligations in future. Thus a contract which is partially performed or holly unperformed is termed as executor contract. Here the consideration is reciprocal promise or obligation such consideration is to be performed in future only and therefore these contracts are described as executor contracts.

4. ON THE BASIS OF OBLIGATION: on the basis of obligation various contract are as follows,

- (i) **Unilateral contract:** a unilateral contract is a one sided contract in which only one party has to perform his promise or obligation to do or forbear.

For example: a makes payment of bus fare for his journey from Jaipur to Kota. He has performed his promise. It is now for the transport company to perform the promise.

- (ii) **Bilateral contract:** where the obligation or promise in a contract is outstanding on the part of both the parties it is known as bilateral contract.

## **5. ESSENTIAL ELEMENTS OF A VALID CONTRACT**

A valid contract is enforceable by law. Lack of any element prescribed under section 10 would change legal status of a contract and it may not be permitted to be enforced. Following essential elements must do exist in order to make a valid contract?

**1. Agreement (offer and acceptance):** to constitute a contract there must be an agreement and for an agreement there must be a lawful offer and a lawful implies that the offer and acceptance must satisfy the requirements of the contract act, in relation thereto.

**2. Intention to create legal relations:** there must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Agreements of a social or domestic nature do not contemplate legal relations and as such they do not give rise to a contract.

For example: an agreement to dine at a friend's house is not an agreement intended to create legal relations and therefore is not contract. A agreement between husband and wife also lack the intention to create legal relationship and thus do not result in contracts.

**3. Lawful consideration:** The third essential element of a valid contract is the presence of consideration. Consideration has been defined as the price paid by one party for the promise of the other. A agreement is legally enforceable only when each of the parties to it gives something and gets something. The something given or obtained is the price for the promise and is called consideration.

For example: A agrees to sell his books to B for Rs.100/- B's promise to pay Rs.100 is the consideration for A's promise to sell his books and A's promise to sell the books is the consideration for B's promise to pay Rs.100/-

**4. Capacity of parties:** the parties to an agreement must be competent to contract otherwise it cannot be enforced by a court of law. Section 11 of the Indian Contract act specifies that every person is competent to contract provided.

- (i) Is of the age of majority according to the law to which he is subject.
- (ii) Who is of sound mind and
- (iii) Is not disqualified from contracting by any law to which he is subject.

In other words the following persons are not competent to contract.

- (i) A minor
- (ii) A person of unsound mind (such person can enter into a contract during his lucid intervals) and
- (iii) A person disqualified from contracting by any law to which he is subject.

**5. Free and genuine consent (section 14):** free consent of all the parties to an agreement is another essential element of a valid contract. Consent means that the parties must have agreed upon the same thing in the same sense (section 13). There is absence of free consent if the agreement is induced by,

- (i) Coercion (section 15)
- (ii) Undue influence (section 16)
- (iii) Fraud (section 17)
- (iv) Misrepresentation (section 18) or
- (v) Mistake (section 20, 21 and 22)

For example: a threatened to shoot B if he (B) does not lend him Rs.2, 000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

**6. Lawful object:** for the formulation of a valid contract it is also necessary that the parties to an agreement must agree for a lawful object.

The object for which the agreement has been entered into must not be fraudulent or illegal or immoral or opposed to public policy or must not imply injury to the person or property of another (section 23)

If the object is unlawful for one or the other of the reasons mentioned above the agreement is void. For example, when a landlord knowingly lets a house to a prostitute to carry on prostitution, he cannot recover the rent through a court of law.

**7. Writing and registration:** according to the Indian contract act, a contract may be oral or in writing. But in certain special cases in lays down that the agreement to be valid must be in writing or/and registered.

for example: it requires that an agreement to pay to time-barred debt must be in writing and an agreement to make a gift for natural love and affection must be in writing and registered (section 25). Similarly certain other acts also require writing or/and registration to make the agreement enforceable by law which must be observed.

Thus

- (i) A arbitration agreement must be in writing as per the arbitration and conciliation act, 1996
- (ii) An agreement for a sale of immovable property must be in writing and registered under the transfer of property act, 1882 before they can be legally enforced.

**8. Certainty:** section 29 of the contract act provides that agreements the meaning of which is not certain or capable of being made certain are void. In order to give rise to a valid contract the terms of the agreement must not be vague or uncertain. It must be possible to ascertain the meaning of the agreement for otherwise it cannot be enforced.

**9. Possibility of performance or doctrine of frustration:** section 56 laws down that an agreement to do an act impossible in itself is void. If the act is impossible in itself physically or legally the agreement cannot be enforced at law. The doctrine of frustration applies when after a contract has been entered into some supervening event occurs that makes performance of the contract radically different from what the parties had contemplated when they entered into the contract.

## **6. OFFER AND ACCEPTANCE**

### **6.1 OFFER**

Offer is proposal by one to another to enter into a legally binding agreement with him. A proposal is an expression of will or intention. The word proposal is synonymous with the English word offer.

For example: R tells S, I am willing to sell my machine for Rs.9, 000. Are you ready to buy?  
This is a clear offer from R to S.

### **6.2 HOW AN OFER IS MADE?**

An offer to an agreement can be made by,

1. **EXPRESS OFFER – ANY ACT:** an offer can be made by an act in the following ways.
  - (i) **By words (whether written or oral):** the written offer can be made by letters telegrams telex messages advertisements etc. the oral offer can be made either by person or over telephone.
  - (ii) **By conduct:** the offer may be by positive acts or signs so that the personating or making signs mean to say or convey. However silence of party can in no case amount to offer by conduct.

For example

(i) A proposes by letter to sell a house to B at a certain price. This is an offer by a act by Written words (i.e., letter). This is also an express offer.

(ii) A proposes over telephone to sell a house to B at a certain price. This is an offer by act (by oral words). This is an express offer.

2. **Implied offer-by omission:** an offer can also be made by a party by omission (to do something) –omission of the party proposing by which he intends to communicate such proposal or which has the effect of communicating it to the other.

This includes such conduct or forbearance on one’s part that the other person takes it as his willingness or asset. An offer implied from the conduct of the parties or from the circumstance of the case is known as implied offer.

For example

(i) A owns a motor boat for taking people from Mumbai to Goa. The boat is in the waters at the Gateway of India. This is an offer by conduct to take passengers from Mumbai to Goal. He need not speak or call the passengers.

(ii) An offers not a file a suit against B if the latter pays A the amount of Rs.200 outstanding. This is an offer by abstinence or omission to do something.

### **6.3 ESSENTIAL ELEMENTS OF VALID OFFER**

Essential elements of valid offer are as follows,

(i) **Offer must be capable of creating a legal relationship:** If the offer does not intend to give rise to legal consequences it is not a valid offer in the eye of law. For example, an offer to a friend to dine at the offeror’s place or an offer to one’s wife to show her a movie is not a valid offer and as such cannot give rise to a binding agreement even though it is accepted and there is consideration because in social agreements or domestic arrangements the presumption is that the parties do not intend legal consequences to follow the breach of agreement.

(ii) **Offer must be certain definite and not vague:** If the terms of an offer are vague or indefinite its acceptance cannot create any contractual relationship. But if the agreement contains machinery for ascertaining a vague term the agreement is not void on the ground of its being vague.

For example: An offer to sell B 100 quintals of oil, there is nothing whatever to show what kind of oil was intended. The offer is not capable of being accepted for want of certainty. But if in the above example A is dealer in coconut oil only it shall constitute a valid offer since the nature of A's trade affords an indication as to which oil is being offered.

(iii) **Offer must be expressed or implied:** an offer may be made either by words or by conduct. An offer which is expressed by words spoken from the conduct of person or the circumstances of the case is called an implied offer. For example, M says to N that he is willing to sell his motorcycle to him for Rs.20, 000. This is an expressed offer.

(iv) **Offer must be distinguished from an invitation to offer:** an offer must be distinguished from an invitation to offer. In case of an invitation to offer the person making an invitation to others to make an offer to him. It is prelude to an offer inviting negotiations or preliminary discussions.

For example: A advertises to sell his house. B, C and D offer purchase the house at a certain price. A refuses to accept all the offers. A can do so the advertisement issued by A is not an offer but an invitation to an offer. It is B, C and D who actually offer and it is for A to accept the same or not.

(v) **An offer may be specific or general:** an offer is said to be specific when it is made to a definite person or persons. Such an offer can be accepted only by the person or persons to whom it is making. A general offer on the other hand is one which is made to the world at large or public in general and may be accepted by any person who fulfils the requisite conditions. Advertisements are the example of general contract.

For example: M makes an offer to N to sell his bicycle for Rs.200, there is a specific offer and N alone can accept it.

(vi) **Offer must be communicated:** an offer to be complete must be communicated to the person to whom it is made. Unless an offer is communicated there can be no acceptance by it. An acceptance of an offer in ignorance of the offer is no acceptance and does not create any right on the acceptor.

For example: a without knowing that a reward has been offered for the arrest of particular criminal catches the criminal and gives the information to the superintendent of police A, cannot recover the reward as he cannot be said to have accepted the offer when he was not at all aware of it.

- (vii) **Offer must be made with a view to obtaining the consent of the offeree:** an offer is effective only when it is communicated to the offeree. Until the offer is made known to the offeree, there can be no acceptance and no contract. Doing anything in ignorance of the offer can never be treated as its acceptance for, there was never a consensus of wills. This applies to both specific and general offers.
- (viii) **Offer may be conditional:** an offeror may attach any terms and conditions to the offer he makes. He may even prescribe the mode of acceptance. The offeree will have to accept all the terms of the offer. There is no contract unless all the terms of the offer are complied with and accepted in the mode prescribed.

#### **6.4 CLASSIFICATION OF OFFER**

Offer can be classified into

- (i) **General offer:** it is an offer made to the public in general and hence anyone can accept and do the desired act. Section 8 of the Indian contract act points out that performance of the conditions of a proposal is an acceptance of the proposal. Where a general offer is of continuing nature it will be open for acceptance to any number of persons until it is restricted.
- (ii) **Special offer:** when offer is made to a definite person it is known as specific offer and such offers can be accepted only by that specified person.
- (iii) **Cross offer:** when two parties exchange identical offer in ignorance at the time of each other's offers the called cross offers. There is no bidding contract is such a case as one's offer cannot be construed as acceptance by the other.
- (iv) **Counter offer:** when the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer he is said to have made a counter offer. Counter offer amounts to rejection of the original offer.
- (v) **Standing open or continuing offer:** an offer which is allowed to remain open for acceptance over a period of time is known as a standing open or continuing offer. Tender for supply of goods is a kind of standing offer.

#### **6.5 ACCEPTANCE (SECTION 2(b))**

The asset given to a proposal may be understood as acceptance. A proposal when accepted becomes a promise. Acceptance means giving consent to the offer. It is an expression by the offeree of his willingness to be bound by the terms of the offer.

In other words offer and acceptance combine together to form a contract. An application for share a company is in the nature of offer while the allotment of the shares by the company is an acceptance resulting in a contract. An acceptance once completed cannot be revoked. For example, an offer to sell his car to B for 1.00.000. B agrees to buy the car for 1.00.000. B's act is an acceptance of A's offer.

## **6.6 ESSENTIAL OF VALID ACCEPTANCE**

Essential of valid acceptance are as follows,

- (i) **Absolute and unqualified or unconditional:** according to section 7(1) of the Indian contract act, 1872, in order to convert a proposal into a promise the acceptance must be absolute and unqualified.

It means that an offer must be accepted as it is without a reservation variation or condition. A qualified and conditional acceptance amounts to marking of a counter offer which puts an end to the original offer and it cannot be revived by subsequent acceptance.

- (ii) **With in proper time:** acceptance must be given within proper time. Proper time would be the time specified by the offeror's. If no time has been specified by the offeror then the acceptance must be given within reasonable time. In case of any conflict the length of reasonable time would be determined by court depending upon the circumstance of the case. Acceptance must be given before the offer lapses or is revoked or is withdrawn.

- (iii) **Must be communicated:** the acceptance must be signified (i.e. indicated or declared). In order words the acceptance is complete only when it has been communicated to the offerer. A mere mental determination to accept is no acceptance in the eyes of law unless there is some external manifestation of that determination by words or conduct.

- (iv) **Must be according to the prescribed mode:** where the offeror prescribes a particular mode of acceptance then the acceptor should follow that mode. In case no mode of acceptance is prescribed by the proposer then the acceptance must be according to some usual and reasonable mode. If the proposer prescribed a manner in which it is to be accepted, and the acceptance is not made in such a manner the proposer may within a reasonable time after the acceptance is communicated to him insist that his proposal shall be accepted in the prescribed manner and not otherwise, but if he fails to do so he accepts the acceptance.

- (v) **Accept must be given only by the person to whom the offer is made:**An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract, it cannot be accepted by another person without the consent of the offeror. The rule of law is clear that if you propose to make a contract with A, then B cannot substitute himself for A without your consent.
- (vi) **Acceptance must succeed the offer:** acceptance must be given after receiving the offer. It should not precede the offer. If the acceptance precedes an offer it is not a valid acceptance and does not result in a contract.
- (vii) **Offer once rejected cannot be accepted:** offer once rejected cannot be accepted again unless a fresh offer is made.

## **LAW OF CONTRACT, 1872 (PART-II)**

### **7. CONSIDERATION (SECTION 2 (d))**

The term consideration is one of the vital elements to uphold a contract. Subject to some exceptions an agreement made without consideration is a null and void contract. Consideration is a legal term used in the sense of *quid pro quo*, which means something in return.

When a party to an agreement promises to do something he must get something in return. This something is called consideration. Consideration is the price agreed to be paid by the promisee for the obligation of the promisee.

Section 10 of the Indian contract act distinctly states that a lawful consideration is necessary for the recognition of an agreement as a valid contract. Section 23, 24 and 25 further lay stress on the nature of the lawful consideration and thus play an important role in regulating the contractual relation for their legal validity and enforcement through a court of law.

#### **7.1 ESSENTIAL OF A VALID CONSIDERATION**

Essential of a valid consideration are as follows,

- (i) **Consideration must move at the desire of the promissory:** in order to constitute legal consideration the act or abstinence forming the consideration for the promise must be done at the desire or request of the promissory. Thus acts done or services rendered voluntarily or at the desire of third party, will not amount to valid consideration so as to support a contract. The logic for this may be found in the worry

and expense to which every one might be subjected if he were obliged to pay for services which he does not need or require. For example, a sees B's house on fire and helps in extinguishing it. He cannot demand payment for his services because B never asked him to come for help.

(ii) **Consideration may move from the promisee or any other person:** The second essential of valid consideration as contained in the definition of consideration in section 2(d) is that consideration need not move from the promisee alone but may proceed from a third person. Thus as long as there is a consideration for a promise it is immaterial who has furnished it. It may move from the promisee or from any other person. This means that even a stranger the consideration can sue on a contract, provided he is a party to the contract. This is sometimes called as doctrine of constructive consideration.

(iii) **It may be past present or future:** the words used in section 2(d) are: "... Has done or abstained from doing (past), or does or abstains from doing (present), or promises to do or to abstain from doing (future) something ...". This means consideration may be past, present or future.

1. **Past consideration:** when consideration by a party for a present promise was given in the past, i.e., before the date of the promise it is said to be past consideration.
2. **Present or executed consideration:** when consideration is given simultaneously with promise, i.e., at the time of the promise. It is said to be present consideration. For example, in a cash sale consideration is present or executed.
3. **Future or executory consideration:** when consideration from one party to the other is to pass subsequently to the making of the contract. It is future or executory consideration.

(iv) **It need not be adequate:** consideration as already explained means something in return. This something in return need not necessarily be equal in value to something given. The law simply provides that a contract should be supported by consideration. So long as consideration exists the courts are not concerned as to its adequacy provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement not for the court when it is sought to be enforced.

- (v) **It must be something which the promisor is not already bound to do:** A promise to do what one is already bound to do, either by general law or under an existing contract is not a good consideration for a new promise since it adds nothing to the pre-existing legal or contractual obligation. Likewise, a promise to perform a public duty by a public servant is not a consideration.
- (vi) **It may be an act, abstinence or forbearance or a return promise:** This has already been explained. Thus it may be noted that the following are good considerations for a contract.
1. Forbearance to sue: if a person who could sue another for the enforcement of a right agrees not to pursue his claim, this constitutes a good consideration for a promise by the other person. This results in a benefit to the person not sued and a detriment to the person who could sue. For example, A borrows from B Rs.100 at 20 per cent p.a. and fails to pay the rate of interest. B, as a result, does not file the suit. This forbearance on the part of B to file a suit is a sufficient consideration and B can enforce the promise by A to pay the higher rate of interest.
  2. Compromise of a disputed claim: compromise is a kind of forbearance. As such the same principle, as discussed above, applies to the bona fide compromise of a disputed claim even though ultimately it might appear that the claim was wholly unfounded. But originally the claim should be reasonable and the person claiming should honestly believe that it is a valid claim. He should also act bona fide. If it turns out that the claim was frivolous and the claimant was not acting bona fide, the other party can claim compensation.
  3. Composition with creditors: a debtor who is financially embarrassed may call a meeting of his creditors and request them to accept a lesser amount in satisfaction of their debt. If the creditors agree to it the agreement is binding both upon the debtor and the creditors as this amounts to a compromise of the claims of the creditors.
- (vii) **It must be real and not illusory:** although consideration need not be adequate, it must be real, competent and of some value in the eyes of the law. There is no real consideration in the following cases,
1. Physical impossibility
  2. Legal impossibility
  3. Uncertain consideration and
  4. Illusory consideration.

## **8. CAPACITY TO CONTRACT**

Section 10 of the Indian contract act, 1872 provides that all agreements are contracts if they are made by the parties competent to contract. Therefore capacity to contract means and includes the legal capacity of the parties to enter into a contract. In other word it is the capacity of parties to enter into a legally binding contract.

### **8.1 COMPETENCY TO ENTER TO CONTRACTS (SECTION (11))**

The parties to a contract must be legally able to enter into a contract. Usually minors and mentally incompetent individuals lack contractual capacity. Depending on the situation a contract entered into by someone who lacks contractual capacity may or may not be enforceable.

Section 11 of the Indian contract act, 1872 provides that every person is competent to contract who is of the majority according to the law to which he is subject and who is of sound mind and is not to otherwise disqualified from contracting by any la to which he is subject.

Thus the section declares that a person is incompetent to contract under the following circumstances.

1. **Minority:** if he is a minor, according to the law to which he is subject.
2. **Mental incompetence:** if he is of unsound mind.
3. **Status:** if he is disqualified from contracting by any law to which he is subject.

### **8.2 MINOR**

A person who is not a major person (above 18) is an infant or a minor. According to section 3 of the Indian majority act, 1875 a person, domiciled in India who is under 18 years of age, is a minor. Accordingly every person who has completed the age of 18 years becomes a major. But minors of whose person or property or both a guardian is appointed by a court and minors of whose property superintendence has been assumed by a court of wards attain majority at the age of 21 years.

### **8.3 DETERMINATION OF MINORITY**

Section 11 expressly provides that the age of majority of a person is to be determined according to the law to which he is subject. The courts of laws used to decide the age of majority (competency to contract) by the law of domicile and not by the law of the place where the contract is entered into. But the later trend of law for determining the age of majority is,

1. In the case of contracts relating to ordinary mercantile transactions, the age of majority is to be determined by the law of the place where the contract is made, and
2. In the case of contracts relating to land the age of majority is to be determined by the law of the place where the land is situated. Thus where a person aged 18 years domiciled in India endorsed certain negotiable instrument in Ceylon by the laws of which is minor he was held not be liable as an endorse.

#### **8.4 UNSOUNDNESS OF MIND MAY ARISE FROM**

1. **Idiocy:** it is god given and permanent with no intervals of saneness. The mental powers of an idiot are completely absent because of lack of development of the brain.
2. **Lunacy or insanity:** it is a disease of the brain. A lunatic loses the use of his reason due to some mental strain or disease. Of course he may have lucid intervals of sanity.
3. **Drunkeness:** it produces temporary incapacity till the drunkard is under the effect t of intoxicating provided it is so excessive as to suspend the reason for a time and create importance of mind.
4. **Hypnotism:** it also produces temporary incapacity till the person is under the impact of artificially induced sleep.
5. **Mental decay:** on account of old age etc.

#### **8.5 FREE CONSENT (SECTION 14)**

Consent is said to be so caused when it would not have been given but for the existence of such coercion influence misrepresentation, fraud or mistake. Section 14 says that consent is said to be free if it is not obtained by,

- a. Coercion defined in section 15, or
- b. Undue influence as defined in section 16, or
- c. Fraud as defined as defined in section 18, or
- d. Misrepresentation as defined in section 18, or
- e. Mistake subject to the provisions of section 20, 21 and 22

According to section 13 two or more persons are said to have consented when agree upon the same thing in the same sense (*consensus ad idem*). The Latin term consensus ad idem means agreement as to the same things. Consequently when parties to a contract make some fundamental error as to the nature of the transaction or as to the person dealt with or as to the subject matter of the agreement it cannot be said that they have agreed upon the same thing in

the same sense. And if they do not agree in the same sense there cannot be consent. A contract cannot arise in the absence of consent. For example, A, a painter agrees to paint the house of B and B agrees to pay the sum of Rs.2.000 upon the satisfactory completion of the work. In this case there is a meeting of the minds of A and B on the subject of what is to be done and at what price.

## **8.6 EFFECT OF ABSENCE OF CONSENT**

When there is no consent at all the agreement is void *ab initio*, i.e., it is not enforceable at the option of either party. For example, X has one Maruti car and one fiat car. He wants to sell fiat car. Y does not know that X has two cars, Y offers to buy X's Maruti car for Rs.50.000. X accepts the offer thinking it to be an offer for his fiat car. Here there is no identity of mind in respect of the subject matter. Hence there is no consent at all the agreement is void *ab initio*.

## **9.1 LEGALITY OF OBJECT**

Object means purpose of design. The term consideration is defined in section 2(d) of the Indian contract act. For example, A agrees to sell goods to B, and B, who is insolvent assigns the benefit of the contract for Rs.100 with a view defrauding his creditors, the consideration for the assignment; viz., the sum of Rs.100 is lawful but the object viz., defrauding the creditors is unlawful as it is intended to defeat the provisions of the insolvency law. In practice it is difficult to distinguish between object and consideration especially when consideration consists in a promise to do or not to do something.

## **9.2 WHEN CONSIDERATION OR OBJECT IS UNLAWFUL (SECTION 23)**

Object and the consideration of an agreement must be lawful otherwise the agreement is void. According to section 23 of the Indian contract act, 1872 the consideration or the object of an agreement is unlawful in the following cases,

1. **If it is forbidden by law:** if the object or the consideration of an agreement is the doing of an act which is forbidden (i.e., prohibited) by law the agreement is void. An act is said to be forbidden by law when it is punishable either by the criminal law of the country or by special legislation. For example A promises B to drop a prosecution which he has instituted against B for robbery and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

2. **If it defeats the provisions of any law:** if the object or the consideration of an agreement is of such nature that if permitted it would defeat the provisions of any law the agreement is void. For example, A's estate is sold for arrears of revenue under the provisions of an act of the legislative by which a defaulter is prohibited from purchasing the estate, B upon an understanding with A becomes the purchaser and agrees to convey the estate to A upon receiving from his the price which B has paid. The agreement is void as it tenders the transaction in effect a purchase by the defaulter and would so defeat the object of the law.

3. **If it is fraudulent:** if the object of an agreement is to defraud others the agreement is void.

For example: A, B and C enter into an agreement of the division among them of gains acquired or be acquired by them by fraud. The agreement is void as its object is unlawful.

4. **If it involves or implies injury to a person or property of another:** if the object of an agreement is to injure a person or the property of another the agreement is void.

For example: X borrowed Rs.100 from Y and executed a bond under which he promised to work for Y without pay for 2 years and agreed to pay interest at 10% per month and the principal amount at once. It was held that the agreement was void because it involved injury to X.

5. **If the court regards it as immoral or opposed to public policy:** if the object or consideration is immoral or is opposed to the public policy the agreement is void.

For example: a promise to pay for the past co habitation has been held to be legal. But where co-habitation even not adulterous is also not enforceable. An agreement to pay maintenance for a n illegitimate child is not illegal. A loan made for the purpose of teaching to dancing

### UNIT-3-IMPORTANT QUESTIONS

- 1) Elucidate Nature of Contract and essential elements of a valid Contract,
- 2) What is Offer and Acceptance and explain it?
- 3) Explain about Law of Contract – 1872 (part-II)?
- 4) Short note: a. Capacity to Contract and free consent ?  
b. Legality of the object.?

## (17E00102) BUSINESS ENVIRONMENT AND LAW

The objective of the course is to provide the student with a background of various environment factors that have major repercussions on business and sharpen their mind to watch and update the changes that occur constantly in this sphere.

1. **Introduction to Business Environment:-** Meaning, Components of Business Environment.-Industrial policy of 1991, Liberalization, Privatization and Globalization
2. **Monetary, Fiscal and Trade Policy:** Monetary & Fiscal Policy –, EXIM Policy, Role of EXIM Bank. Balance of Payments: **WTO:** Role and functions of WTO in promoting world trade –TRIPS, TRIMS and GATS, - Dumping and Anti-dumping measures.
3. **Law-Definition -Need, classification and sources of Business Law, Law of Contract - 1872 (Part-I):** Nature of Contract and essential elements of a valid Contract, Offer and Acceptance. Law of Contract – 1872 (part-II): Consideration, Capacity to Contract and free consent, Legality of the object.
4. **Companies Act, 1956 (Part-I):** Kinds of Companies, Formulation of Companies, Incorporation, Company Documents. **Company Act, 1956 (Part-II):** Company Management, Directors, Company meetings, Resolutions, Auditors, Modes of Winding-up of a company.
5. **Information Technology Act, 2000:** Scope and Application of IT Act, 2000- Digital signature e-governance, penalties and adjudication, cyber regulations appellate, tribunals, duties of subscribers- Right to Information Act, 2005 –GST Act 2017.

### Textbooks:

- Essentials of Business Environment, K. Aswathappa, Himalaya publishers.
- Mercantile Law -N.D. Kapoor, Sultan Chand & Sons.
- Merchantile Law-Garg, Sareen, Sharma, Chawla, Kalyani publishers.

### References:

- Indian Economy, Dutt and Sundaram, S. Chand, New Delhi.
- Business Environment – Text and Cases, Justin Paul, TMH.
- Indian Economy- Misra and Puri, Himalaya.
- Business Environment, Suresh Bedi, Excel.
- Mercantile Law, S.S. Gulshan, 3/e, Excel Books,
- Legal Aspects of Business, Ravinder Kumar, Cengage.
- *A Manual of Business Laws*, S.N. Maheshwari & Maheshwari, Himalaya.
- Business law for management, K.R. Bulchandani-Himalaya Publishing.
- Business law, R.S.N Pillai, Bhagavathi, S. Chand

## UNIT-4

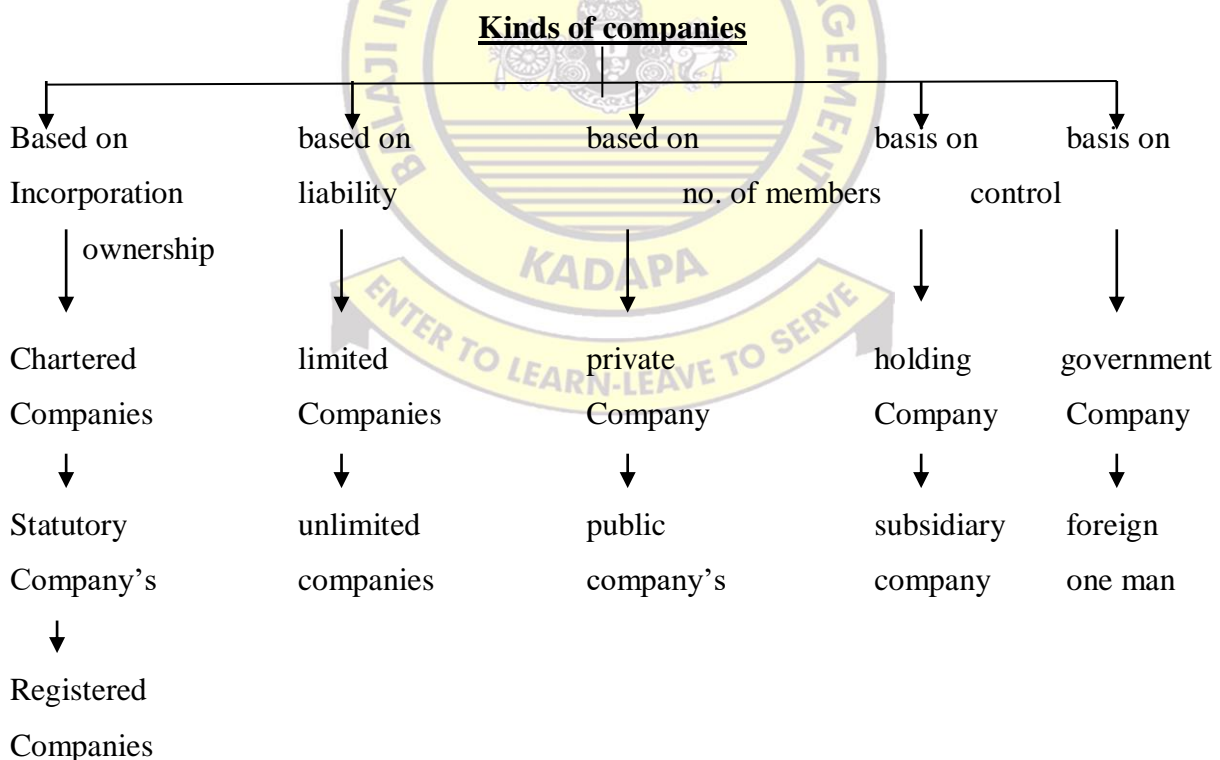
### COMPANIES ACT, 1956 (PART-1)

#### 1. KINDS OF COMPANIES

**Company act, 1956:** The act now in force in India is the Indian companies act of 1956 which came into force on 1<sup>st</sup> 1956 April, 1956. It extends to the whole of India and contains 658 sections and 13 schedules.

The companies act, 1956, is based on the recommendation of the Bhabha committee which submitted its report in 1952, recommending wholesale amendments in the Indian companies act, 1913. The act aimed at discouraging the concentration of economic wealth in a few hands and securing its more equitable distribution.

Companies can be categorized on the following basis,



1. CLASSIFICATION OF COMPANIES BASED ON INCORPORATION: based on incorporation the companies can be divided into following,

- (i) **Chartered companies:** these companies are those which are incorporated by a royal charter. The companies like east India Company were formed by the royal charter.

The scope of activities of such companies is laid down in the charter of incorporation. This type of companies does not exist in India.

- (ii) **Statutory companies:** these companies are incorporated by a special act passed by the parliament i.e., central or state legislature. For example, Reserve Bank of India State Bank of India industrial finance corporation Life insurance corporation unit trust of India and state trading corporation are some statutory companies. Such companies do not have any memorandum or articles of association. These are mostly concerned with public utilities e.g., railways tramways gas and electricity companies and enterprises of national importance.
- (iii) **Registered companies:** These companies are formed and registered under the companies act, of 1956, or were registered under any of the earlier company's acts.

2. CLASSIFICATION OF COMPANIES BASED ON LIABILITY: based on liability the companies can be divided into following,

- (i) **LIMITED LIABILITY COMPANIES:** the companies limited by liability are classified into following,
  - a. **Companies limited by shares:** a limited company is one in which the liability of the members is limited by its memorandum of association to the amount if any unpaid on the shares held by them. The shareholders cannot be called upon to pay more than the amount remaining unpaid on his shares. His personal assets cannot be called upon for the payment of the liabilities of the company.
  - b. **Companies limited by guarantee:** in a company limited by guarantee the liability of the members is limited by the memorandum to such an amount as the members may respectively undertake to contribute to the assets of the company in the event of it being wound up.
  - c. **Companies limited by shares as well as guarantee:** this is a hybrid form of company which combines elements of the guarantee and share of the company. Every member as such a company is subject to a twofold liability i.e., the guarantee which may become effective from the winding up of the company and the liability to pay up the nominal amount of his share which may become effective during the lifetime of the company or at the time of winding up.
- (ii) **UNLIMITED COMPANIES:** the liability of the shareholders of these types of companies is unlimited in the sense that the members of the companies are liable to the full extent to meet the obligations of the company. However it is to be noted that the company being a separate entity is only liable not the members to its creditors. In

the event of winding up the liquidator may call upon the members to contribute to the assets of the company without limitations of their liability for this payment of debts of the company.

3. CLASSIFICATION OF COMPANIES BASED ON NUMBER OF MEMBERS: based on the number of member companies can be divided into following,

- (i) **Private company**: a private limited company as defined by section 3(1) (iii) of the companies act is a company which is having a minimum paid up capital of Rs.1 lac or such higher paid up capital as prescribed by its article and which:
  - a. Restricts the right to transfer its shares, if any.
  - b. Limits the members to 50.
  - c. Prohibits any invitation of the public to subscribe for new shares or debentures of the company.
  - d. Prohibits any invitation or acceptance of deposits from person other than its members directors or relatives.

But as per companies act, 2013 maximum limit of members of private company increases to 200.

- (ii) **Public company**: The main characteristics of a public company as defined by section 3(1) (iv) of the companies act are,
  - a. One which is not a private company.
  - b. In which the number of shareholders is not restricted.
  - c. This can invite the public to subscribe its shares and where the shares are freely transferable.
  - d. Has a minimum paid up capital of Rs. 5lac or such higher paid up capital as may be prescribed.

However it is to be noted that the basic characteristics of a private company in terms of section 3(1) (iii) do not get altered just because it is a subsidiary of a public company in view of the fiction that it is a public company in terms of section 3(1) (iv) (c) of the act. (Hillcrest Realty sdn. Bhd. *Versus* Hotel Queen Road (P) Ltd. / 2006 71 SCL 41)

4. CLASSIFICATION OF COMPANIES BASED ON CONTROL: based on control companies can be classified as follows,

- (i) **Holding company**: a holding company is a company which holds more than 50% of issued share capital or more than 50% of the voting power or has power to appoint or control the composition of directors of other company.

The other company is known as subsidiary company. Section 4(4) of the companies act provides provisions regarding holding and subsidiary companies.

- (ii) **Subsidiary company:** a company is deemed to be a subsidiary of another in the following cases,
- If the holding company controls the composition of the board of directors.
  - That the other company exercises or controls more than half of the total voting power and holds more than half the nominal value of its equity share capital.
  - If it is a subsidiary of a third company which itself is a subsidiary of the controlling company.

5. CLASSIFICATION OF COMPANIES BASED ON OWNERSHIP: based on the ownership companies can be classified as under,

- Government Company:** these are companies in which the central and or the state government hold not less than 51% of the share capital.
- Foreign company:** section 519 of the companies act defines a foreign company as one which is incorporated outside India after the commencement of companies act and has established a place of business within India.
- One man company:** this is a company in which one man holds practically the whole of the share capital of the company, and in order to meet the statutory requirement of the minimum number of members some dummy members who are mostly his relations of friends hold one or two shares each.

## 1.2 OBJECTIVES OF THE ACT

Following are the main objectives of the Indian companies act, 1956.

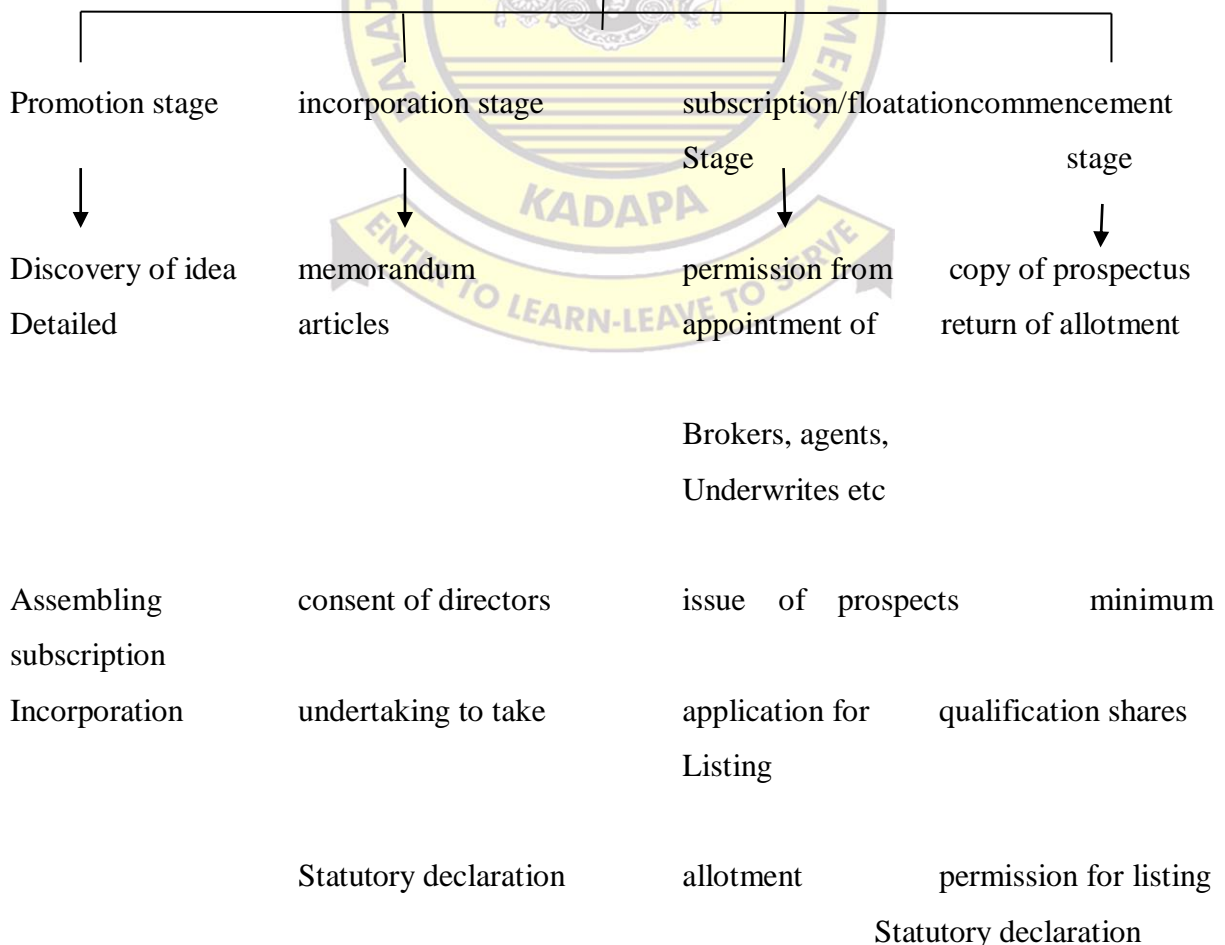
- To ensure minimum standard of business integrity and conduct in the promotion and management of companies.
- To elicit full and fair disclosure of all reasonable information relating to the affairs of the company.
- To promote effective participation and control by shareholders.
- To ensure proper performance of duties by the company management.
- To investigate and intervene into the affairs of companies which are managed in a manner prejudicial to the interests of the shareholders.
- To protect the interests of a large number of shareholders as there exists separation of ownership from management in a company.

- To safeguard the interests of creditors
- To help the development of companies in India on healthy lines because corporate sector constitutes a very important segment of the economy.
- To help the attainment of the ultimate ends of social and economic policy of the government.
- To equip the government with adequate powers to intervene in the affairs of a company in public interest and as per procedure protected from unscrupulous management.

## 2. FORMATION OF A COMPANY

Company is a legal entity. It has to follow legal procedures for its formation. The law does not interfere in the establishment of sole proprietorship and partnership. These forms of business organization may and not be registered. The company is formed brought up and even wound up after following legal formatives. In the formation of a company the various stages involved are as follows,

### STAGES OF FORMATION OF COMPANIES



## **I.PROMOTION STAGE**

It is the first and foremost stage of company formation. According to Gerestenberg, promotion of the company is the discovering of business opportunities and the subsequent organization of funds property and management ability into business concern for the purpose of making profit there from.

Company is an artificial person so it requires someone to conceive an idea of the company and decide about its form size, type, and structure. Those who make a decision about these aspects are known as promoters.

A promoter is an individual a firm a company an institution or even a government department who conceives the idea of exploiting a business opportunity examining the idea whether it is worth working, arranges men money, material and machines and forming a profitable enterprise. the promoter identifies business opportunities makes detailed investigation assemble factors of production analyses its prospectus make financial arrangement combines them into profitable business venture and initiates steps of form a company.

## **I.ILEGAL POSITION OF PROMOTER**

The promoter is neither an agent nor a trustee of the company before its formation. He is not an agent because there is no principal and he is not a trustee as there is no *cestuique* Trust in existence. He stands in a fiduciary relation (relation of trust and confidence) towards the company. This relation of all material facts relating to the formation of the company. He should be act honestly and should not make any secret profit at the expense of the company he promotes.

Consequently the promoter of a company is accountable to it for all the money secretly obtained by him from it as if the relationship of principal and agent or of trustee had really existed between him and the company when the money was so obtained. Moreover his dealings with the proposed company should be open and fair.

The positions and powers of the promoter become clear from the following observations.

The promoters stand undoubtedly in a fiduciary position. They have in their hand the creation and molding of the company. They have the powers of defining how and when and in what shape and under what supervision company shall start into existence and begin to act as trading corporation.

## **II. INCORPORATION STAGE**

Incorporation is the second stage of the company's formation. It is the registration of the company as a body corporate under the companies act, 1956. An incorporated association received recognition as a legal entity separate from its members. Once incorporated an association has all the powers of an individual and is legally able to do things in its own name such as won land sign a lease sue or be sued and to continue regardless of charges in membership. Incorporation is the registration of the company as a body corporate under the companies act, 1956.

### **II.1 COMPANY DOCUMENTS**

In order to get incorporation of the company promoters have to deposit along with the application a copy of memorandum of association and copy of articles of association and prospectus. These documents are called the primary document of incorporation.

Following are the primary documents of the company,

- (i) Memorandum of association
- (ii) Articles of association and
- (iii) Prospectus

#### **(i) MEMORANDUM OF ASSOCIATION (MOA)**

Memorandum of association defines the scope of the company activities. It is the document that sets out the constitution of the company. The main purpose of the memorandum of association of a company is two folded. First the intending shareholders before making investment in the company should know the field in or the purpose for which it is going to be used and what risk he is taking in making the investment. The second purpose is that anyone dealing with the company will know without any doubt what the permitted range of the company's.

According to section 2(56) of the companies act, 2013, memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this act.

#### **(i).a CONTENTS OF MEMORANDUM OF ASSOCIATION**

Contents of memorandum of association contain the following clauses,

1. **Name clause:** the first clause of a memorandum shall state the name of the proposed company. The name of a company establishes its identity and is the symbol of its existence. A company may subjects to the following rules select any suitable name.

- (i) **Undesirable name to be avoided:** a company cannot be registered by a name which in the opinion of the central government is undesirable (section 20(1)). Broadly speaking a name is undesirable and therefore rejected if it either.
- a. Too similar to the name of another company or
  - b. Misleading
- (ii) **Injection if identical name adopted:** if a company gets registered with a name which resembles the name of an existing company the other company with whom the name resembles can apply to the court for an injunction to restrain the new company from adopting the identical name.
- (iii) **Limited or private limited as the last word or words of the name:** the memorandum shall state name of the company with limited as the last word of the name in case of a public limited company, and with private limited as the last words of the name in case of a private limited company.
- (iv) **Prohibition of use of certain names:** the emblems and name (prevention of improper use) act, 1950 prohibits except with the previous permission of the central government the use of or registration of a company or firm with any name or emblem specified in the schedule to the act.
- (v) **Use of some key words according to authorised capital:** if a company uses some key words in its name it must have a minimum authorized capital. For example, if a company uses the work corporation in its name, it must have a minimum authorized capital of Rs.5crore.
2. **DOMICILE CLAUSE/REGISTERED OFFICE CLAUSE:** every company shall have an office registered from the day on which it begins to carry on business or from the 30<sup>th</sup> day after the date of its incorporation whichever is earlier. All communications and notices are to be addressed to that registered office. Notice of the situation of the registered office and every change shall be given to the register within 30 days after the date of incorporation of the company or after the date of change. If default is made in complying with these requirements the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs.50 for every day during which the default continues.
3. **OBJECTS CLAUSE:** the objects clause defines as well as confines the spheres of business activities that the company would engage in. any activity which is not specifically and explicitly allowed by the object clause, cannot be carried on by the company. Such activities will be treated as ultra vires which means outside the competence of the company.

THE OBJECT THAT WOULD BE PURSUED BY THE COMPANY IS DIVIDED INTO THREE CLASSES, NAMELY:

- (i) The main objects to be pursued by the company on its incorporation.
- (ii) The objects incidental or ancillary to the attainment of the main objects.
- (iii) Other objects, which are not included in the main objects of the company.

4. **LIABILITY CLAUSE:** this clause states that the liability of members is limited by the face value of shares. The change in the liability can be brought by passing a special resolution to that effect. Directors may have an unlimited liability while members may have limited liability. For a company limited by guarantee this clause will mention the amount which every member undertakes to contribute to the assets of the company e.g., not exceeding 500, in the event of winding up. For unlimited company this clause is not needed.
5. **CAPITAL CLAUSE:** this clause states the amount of share capital with which the company is registered and the mode of its division into shares of fixed value i.e., the number of shares into which the capital is divided and the amount of each share. If there are both equity and preference shares then the division of the capital is to be shown under two heads.
6. **ASSOCIATION CLAUSE:** at the end of the memorandum of every company there is an association or subscription clause or a declaration of association which reads something like this.

We the several persons whose names and addresses and occupations are subscribed are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names. Then follows the names addresses descriptions occupations of the subscribers and the number of shares each subscriber has taken and his signature attested by a witness.

#### **(ii) ARTICLES OF ASSOCIATION**

The articles of association of a company and its bylaws are regulations which govern the management of its internal affairs and the conduct of its business. It defines the duties rights powers and authority of the management and the board of directors in their respective capacities and of the company and the mode and form in which the business of the company is to be carried out.

The signatories to the memorandum must sign it in the presence of witness. Generally companies have their own articles but they may adopt the model articles given in table, A of companies act.

The public company will be deemed to have adopted table 'A' in schedule I of the companies act, if it does not file its own article of association. This document should be properly stamped duly signed by the signatories of the memorandum and also attested (signed by a witness)

#### COMPANIES WHICH MUST HAVE THEIR OWN ARTICLES (SECTION 26)

Following companies shall have their own articles namely.

- i) Unlimited companies
- ii) Companies limited by guarantee
- iii) Private companies limited by shares.

#### (ii).1 CONTENTS OF ARTICLES OF ASSOCIATION

Section 5(1) and section 5(2) of the companies act, 2013 provide for the contents of the articles of association. The articles must contain the regulations for the management of the company along with the matters prescribed by the central government. Further the articles of association must also contain the following.

- (i) **SHARE CAPITAL:** share capital including sub division rights of various shareholders the relationship of these rights payment of commissions share certificates.
- (ii) **LIEN OF SHARES:** it means to retain possession of shares in case the member is unable to pay his debt to the company.
- (iii) **CALLS ON SHARES:** it includes the whole or part remaining unpaid on each share which has to be paid by the shareholders on the company's demand.
- (iv) **TRANSFER OF SHARES:** the articles of association include the procedure for the transfer of shares by the shareholder to the transferee.
- (v) **TRANSMISSION OF SHARES:** transmission includes devolution of title by death succession marriage insolvency etc. it is not voluntary but is in fact brought about by operation of law.
- (vi) **FORFEITURE OF SHARES:** the articles of association provide for the forfeiture of shares if the purchase requirements such as paying any allotment or call money are not met with.
- (vii) **SURRENDER OF SHARES:** surrender of shares is when the shareholders voluntary return the shares they own to the company.

- (viii) **CONVERSION OF SHARES IN STOCK:** in consonance with the articles of association the company can convert can convert the shares into stock by an ordinary resolution in a general meeting.
- (ix) **SHARE WARRANT:** a share warrant is a bearer document relating to the title of shares and cannot be issued by private companies only public limited companies can issue a share warrant.
- (x) **ALTERATION OF CAPITAL:** increase decrease or re-arrangement of capital must be done as the articles of association provide.

**DIFFERENCE BETWEEN MEMORANDUM AND ARTICLES OF ASSOCIATION**

<b><u>BASIS OF DIFFERENCE</u></b>	<b><u>MEMORANDUM OF ASSOCIATION</u></b>	<b><u>ARTICLES OF ASSOCIATION</u></b>
Status	Memorandum of association is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation	Articles of association are the rules and regulations framed to govern the internal management of the company.
Drafting or necessity	Every company must prepare and file it.	A public company limited by shares may adopt table A
Scope	Constitution of the company defines its objects and powers	Rules and regulations for day to day working of the company.
Alteration	To define the objects and powers of a company.	To lays down rules and regulations for management of internal affairs.

Alteration	Since memorandum is the constitution of the company, clauses of the memorandum cannot be easily altered. They can only be altered in	In the case of articles of association members have a right to alter the articles by a special resolution generally, there is no need to obtain the
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	<p>accordance with the mode prescribed by the act. Sometimes the company must get the approval of the central government and in some cases the sanction of company law board must be obtained to make an alteration in the memorandum.</p>	<p>permission of the court or the company law board for alteration of the articles.</p>
Provisions	<p>The memorandum is subordinate to the companies act so it cannot include any clause contrary to the provisions of the companies act.</p>	<p>Whereas the articles are subordinate to the companies act as well as the memorandum of association so articles should be consistent with the provisions of the companies act and the conditions contained in the memorandum.</p>
Relationship	<p>The memorandum generally defines the relation between the company and the outsiders.</p>	<p>While the articles regulate the relationship between the company and its members and between the member inter se.</p>
Legal effects	<p>Acts done by a company beyond the scope of the memorandum are absolutely void and ultra vires and the company is not bound by it even cannot be ratified by unanimous vote of all the shareholders.</p>	<p>But the acts of the directors beyond the articles it is simply irregular and can subsequently be ratified by shareholders provided it is within the scope of the memorandum.</p>
Dependent	<p>It is dependent upon the</p>	<p>It is dependent upon the</p>

	company law.	memorandum of association
Supremacy	It is not governed by the articles of association. It is supreme.	It is governed by the memorandum of association

### (iii) PROSPECTUS

According to section 2(36) of Indian companies act, 1956, prospectus means document described or issued as prospectus and includes any notice circular advertisement or other documents inviting offers from the public for the subscription or purchase of any shares or debentures of a body corporate. Thus a prospectus is not merely an advertisement; it may be a circular or even a notice. A document shall advertisement it may be particular or even a notice. A document shall be called a prospectus if it satisfies two things.

- It invites subscriptions to share or debentures or invites deposits
- The aforesaid invitation is made to the public.

### (iii) TYPES OF PROSPECTUS

Different types of prospectus are as follows,

- (i) **OFFER DOCUMENT:** it means prospectus in case of a public issue or offer for sale and letter of offer in case of a right issue which is filed with registrar of companies and stock exchanges. An offer document covers all the relevant information to help an investor to make his/her investment decision.
- (ii) **DRAFT OFFER DOCUMENT:** It means the offer document in draft state. Draft offer document are filed with SEBI at least 21 days prior to the filing of the offer document with ROC/SEs. The draft offer document is available on the SEBI website for public comments for a period of 21 days from the filing of the draft offer document with SEBI.
- (iii) **RED HERRING PROSPECTUS:** it is prospectus which does not have details of either price or number of shares being offered or the amount of issue. This means that in case price is not disclosed the number of shares and the upper and lower price bands are disclosed.
- (iv) **ABRIDGED PROSPECTUS:** it means the memorandum as prescribed in form 2A under sub section (3) of section 56 of the companies act, 1956. It contains all the

salient features of a prospectus. It accompanies the applications form of the public issue.

- (v) **SHELF PROSPECTUS:** section 60A of the company's act, 1956 permits any financial institution or bank to file a shelf prospectus covering one or more issue of securities or class of securities specified in the prospectus with the ROC. The advantage of a shelf prospectus is that the issuing institution need not file a fresh prospectus at every stage of an offer within the validity of the shelf prospectus. Normally the validity of the shelf prospectus is one year.

### **3. COMPANIES ACT 1956 (PART 2)**

#### **3.1 MANAGEMENT OF COMPANY**

##### **SEPARATION OF MANAGEMENT FROM OWNERSHIP**

In the world of business ownership managerial right and risk bearing function generally of together and all these three aspects are unite in one and the same person in proprietary forms of business organization such as sole trader and partnership.

However in company organization there is complete separation or divorce between the ownership on the one side and management on the other side. Following are the reasons for a clear cut separation between ownership and management.

- (i) **DISTINCTIVE LEGAL PERSONALITY:** the people who organize a corporate enterprise are not the corporation but merely owners of the enterprise. The corporation so created so created as a form of organization has an independent legal status of life and it is absolutely separable from the owners, i.e., general body of members as well as separable from the managers i.e., board of directors.
- (ii) **VERY LARGE MEMBERSHIP:** a public limited company may have thousand or lack or shareholders. All members obviously cannot actively participate in company management. Hence we generally adopt a representative form of management. Directors are the chosen or elected representatives of members and they form a board of directors to look after the management of a company.
- (iii) **WIDE DISTRIBUTION OF MEMBERSHIP:** not only the membership is very large but also it may be widely scattered or diffused over a very wide area. It is physically impossible for all the proprietors of the company to look after the routine management of the company even in the jumbo jet age.
- (iv) **UNINTERESTED MEMBERS:** investors invest their savings in the shares of a number of a company's not for securing management rights but to secure steady and

rising income on their financial investments. They are primarily interested in income or dividends and not in the day to day management of the company.

- (v) **EVER-CHANGING MEMBERSHIP:** shares of a public limited company can be quoted on a stock exchange and they are considered as transferable as well as marketable assets. Hence membership may be ever changing. How can members therefore be called upon to manage the business of the company?
- (vi) **SPECIALIZED MANAGEMENT:** company organization is very suitable for a big business because it provides ample scope for divisions of labor and specialization in management. All owners cannot be services of able and competent managers and technicians. Owners may but posses the requisite ability and skill to manage the company's business.

### **3.2 PATTERN OF COMPANY MANAGEMENT**

In practice company management has a decentralized and pyramidal character and the flow of authority and powers flow from the top to the bottom whereas the flow of responsibility goes in the reverse directions i.e., from the bottom to the top. Authority and powers flow from the top to the bottom delegation or transfer of managerial rights and functions.

- (i) **SHAREHOLDERS (as COMPANY'S PROPRIETORS):** owners i.e., shareholders enjoy fundamental and ultimate voice in the company management. They elect periodically their agents or representatives who are called the directors or members of a governing council of management.  
On certain vital or important mattes general meeting sanction is essential and members are given necessary voting rights to exercise their voice in the management.
- (ii) **DIRECTORS:** individually neither a member nor a director may have any managerial powers. But collectively members as well as directors can exercise managerial powers of the company in a body, i.e., through a meeting and through resolutions passed at such meetings. Subject to the company act memorandum of association and articles of association board of directors enjoy wide and very comprehensive powers of management.
- (iii) **COMPANY EXECUTIVES:** the emergence of professional managerial executives in business administration and industrial management has brought about a silent managerial revolution.

#### **4. MEANING AND DEFINITION OF DIRECTORS (SECTION 252)**

A company is an artificial person invisible intangible and existing only in the eyes of law. It has neither a mind nor a body of its own. Hence we have to entrust its business to human agents. Therefore control of its management and the exercise of its powers must necessarily be delegated. Directors have to act as agents of the company which delegates to them most of its powers through the memorandum and articles of association. The general body of shareholders entrust the management and the conduct of the business of the company to their representatives who form the board of directors.

The directors are responsible for contemplating and determining the general policy of management and directing the company's business in the best manner possible.

Section 2(13) defines a director as including any person occupying the position of director by whatever name called.

#### **4.1 QUALIFICATION OF DIRECTORS**

No person shall be capable of being a director of the said association who shall not be a proprietor in his own right if five shares of the capital stock of the said association.

If the articles of a company require its directors to hold a certain number of shares they are called qualification shares. A director must obtain them within two months of his appointment. The value of qualification shares cannot exceed five thousand rupees.

Only shares must be held and not share warrants and also in the directors own right. He must not take them as a present from the company's or its promoters. A director who fails to hold his qualification shares automatically vacates his office on the expiry of two months and becomes liable to punishment if he continues to act (section 272)

#### **4.2 APPOINTMENT OF DIRECTORS**

Appointment of directors happens in the following ways,

- (i) **FIRST DIRECTORS:** the article of association contains the name of first directors. Where the articles do not provide for the appointment of the first directors the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company subject to the regulations of the company's articles. The first director can hold office until the directors are duly appointed in accordance with the provisions of section 255
- (ii) **APPOINTMENT OF DIRECTORS BY COMPANY:** according to section 255, directors must be appointed by the company in general meeting. The appointment of directors by company in general meeting is governed by the following provisions.

- At the 1<sup>st</sup> annual general meeting of public company or a private company which is a subsidiary of a public company held after the general meeting at which the first directors are appointed and at every subsequent annual general meeting 1/3<sup>rd</sup> of the directors liable to retire by rotation must retire from office.
  - The directors to retire by rotation at every annual general meeting must be those who have been longest in the office since their last appointment.
  - At the annual general meeting at which a director retires by rotation the company may fill up the vacancy by appointing the retiring director or some other person.
  - If the place of the retiring director is not filled up the meeting stands adjourned till the same day in the next week. If at the adjourned meeting also the place of the retiring director is not filled up the retiring director is deemed to have been re appointed at the adjourned meeting unless.
    - a. At the meeting or at the previous meeting a resolution for the re appointment of such director is put to the meeting and lost or
    - b. The retiring director has by a notice in writing addressing to the company or its board of directors expressed in the company or its board of directors expressed his unwillingness to be so re appointed or
    - c. He is not qualified or is disqualified for appointment
    - d. A special or ordinary resolution is required for appointment or re-appointment.
  - If a new director is to be appointed a notice by he or some member intending to propose him in writing should be given to the company at least 14 days before the meeting along with a deposit of 500. The deposit shall be refunded if the person succeeds in getting elected as a director. In case he is not elected as a director the amount deposited shall be forfeited by the company.
  - Every person proposed as a candidate for the office of a director must sign and file with the company his consent in writing to act as a director if appointed.
  - Appointment of directors of a public company must be done individually by separate ordinary resolutions.
- (iii) **APPOINTMENT OF DIRECTORS BY THE BOARD OF DIRECTORS:** the board of directors may appoint directors.
- a. AS ADDITIONAL DIRECTORS (SECTION 260): such additional directors hold office only up to the date of the next annual general meeting of the company.

- b. **IN A CASUAL VACANCY (SECTION 262):** in the case of a public company or a private company which is a subsidiary of a public company the office of any director appointed by the company in general meeting may be vacated before his term of office expires in the normal course. In such a case the resulting casual vacancy may be filled by the board of directors at a meeting of the board.
- c. **AS ALTERNATE DIRECTOR (SECTION 313):**the board of directors of a company may if so authorized by its articles or by a resolution passed by the company in general meeting appoint an alternate director. He is to act for a director called the original director during his absence for a period of at least three months from the date in which meetings of the board are ordinary held.
- (iv) **APPOINTMENT OF DIRECTORS BY THIRD PARTIES:** The article under certain circumstances gives power to the debenture holders or other creditors e.g., a banking company or a financial corporation who have advanced loans to the company to appoint their nominees to the board. The number of directors so appointed must not exceed  $1/3^{\text{rd}}$  of the total number of directors and they are not liable to retire by rotation.
- (v) **APPOINTMENT OF DIRECTORS BY PROPORTIONAL REPRESENTATION:** the articles of a company may provide for the appointment of not less than  $2/3^{\text{rd}}$  of the total number of directors of a public company or of a private company which is a subsidiary of a public company according to the principle of proportional representation whether by the single transferable vote or by a system of cumulative voting or otherwise. The appointment must be made once in 3 years and internal casual vacancies must be filled in the manner as provided in the articles.
- (vi) **APPOINTMENT OF DIRECTORS BY THE CENTRAL GOVERNMENT (SECTION 408)**
- The central government may appoint such number of directors on the board of a company as the company law board may specify as being necessary to effectively safeguard the interest of the company its shareholders or the public interest. The period of appointment shall or exceed 3 years on any one occasion.

## **5. COMPANY MEETINGS**

A meeting is said to take place when two or more than two persons meet. For a meeting to take place it is essential that two or more than two persons are present because a meeting implies that one person meets another person or persons. But it does not really define the meeting of a company.

In the context of a company meeting a meeting is a get together of the company's member's shareholders directors and debentures holders with a previous notice and a time and place previously defined.

ACCORDING TO P.K. CHOSH any gathering assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting.

### **5.1 CHARACTERISTICS OF COMPANY MEETINGS**

From the above definitions the following characteristics of a meeting are highlighted.

- (i) A company's meeting – except where it is otherwise specified is a get to gather of two or more persons who are members of the company.
- (ii) The members of the company get together for discussing and taking a decision on some lawful business of the company.
- (iii) Before a meeting is held the members are given a notice about the meeting.
- (iv) A meeting is held at a specific place and time
- (v) A company's meeting is held according to the provisions of the companies act.

### **5.2 REQUISITIONS OF VALID COMPANY MEETINGS**

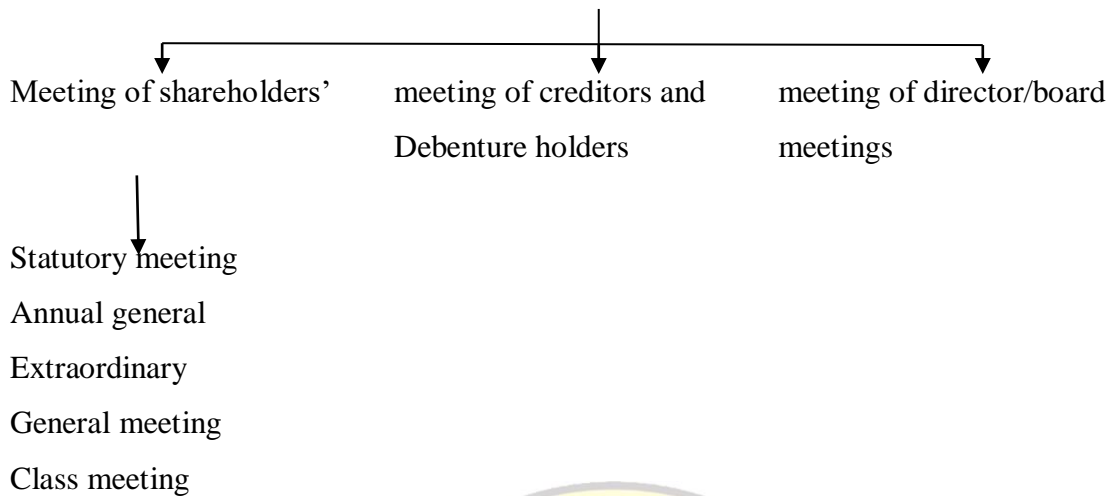
Requisitions of valid meetings are as follows,

- (i) **PROPER AUTHORITY:** the proper authority to convene a general meeting of a company is board of directors who should pass a resolution to call the meeting at a duty commenced board meeting.
- (ii) **NOTICE OF MEETING:** proper notice of the meeting should be given to the members by giving at least 21 days notice in writing to the members
- (iii) **QUORUM OF MEETING:** the quorum is generally fixed by the articles. Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat. If the quorum is not present there is no meeting and the proceedings held thereat are invalid.
- (iv) **CHAIRMAN OF MEETING:** a chairman is necessary to conduct a meeting.
- (v) **MINUTES OF MEETING:** every company must keep a record of all proceedings of every meeting.

### 5.3 KINDS OF COMPANY MEETINGS

Following are the kinds of company meetings

Kinds of company meetings



1. **MEETING OF SHAREHOLDERS:** meeting of shareholders include,

- (i) **STATUTORY MEETING (SECTION 165):** this is the first meeting of the shareholders of a public company. It must be held within a period of not less than 1 month or more than 6 months from the date at which the company is entitled to commence business. It is held only once in the lifetime of a company.
- (ii) **ANNUAL GENERAL MEETINGS:** The annual general meetings are held periodically every year to enable the members who are the owners of the company to exercise an ultimate control over the affairs and management of the company.
- (iii) **EXTRAORDINARY GENERAL MEETING (SECTION 169):** any general meeting other than an annual general meeting is called an extraordinary general meeting (article 47 of table A, schedule I). It is called for transacting some urgent or special business which cannot be postponed till the text annual general meeting.
- (iv) **CLASS MEETINGS:** the class meetings may be held for securing the consent of a particular class of shareholders for altering their rights and privileges or for conversion of one class into another. There may be a meeting of the preference shareholders for reducing their rate of dividends a meeting of the deferred shareholders for conversion of deferred shares into ordinary shares etc.

2. **MEETING OF CREDITORS AND DEBENTURE-HOLDERS:** meeting of creditors and debenture –holders include,

- (i) **MEETING OF DEBENTURE-HOLDER:** when a company issues debentures it provides in the trust deed executed for securing the issue for the holding of meeting of debenture holders and also gives power to them to vary the terms of security or to

alter their rights in certain circumstances. All matters connected with the holding conduct and proceedings of the meetings of the debenture holders are given in the debenture trust deed. The decisions arrived at such meetings with the requisite majority are valid and binding upon the minority.

- (ii) **MEETING OF CREDITORS:** sometimes a company either as running concern or in the event of winding up has to make certain arrangements with its creditors which has to be worked out in meetings of creditors. Strictly speaking meetings of creditors are not company meetings. Section 391 to 393 of the act authorizes the company to enter into arrangements with the creditors with the sanction of the court. The court on applications may order the holding of creditors meetings. If the scheme of arrangements is agreed to by majority in number holding debts to the value of three-fourths of the total value of the debts the court may sanction the scheme. A certified copy of the court's order is then filed with the registrar and it is binding on all the creditors and the company only after it is filed with the registrar.
- (iii) **MEETINGS OF DIRECTORS/BOARD MEETINGS:** the meetings of the directors are required for setting the general business policy and over all supervision of management. All major questions of policy are discussed at board meetings which are held at regular intervals company powers to be exercised by the directors as per articles of association. These powers can be exercised only in a body and hence there must be a meeting of the directors unless the articles provide for a circular resolution. If the power of delegation is granted by the articles the board may appoint from time to time small committees of the management and administration.

## **6. RESOLUTION**

Resolutions mean decisions taken at a meeting. A motion with or without amendments is put to vote at a meeting. Once the motion passed it becomes a resolution. A valid resolution can be passed properly covered meeting with the required quorum.

The method of transacting business at any meeting is to be submitted those present for their considered decision definite proposals propositions pertaining to the particular matters of business in hand.

Each proposal is discussed and debated and finally put to vote whereupon if it is carried by the requisite majority it becomes resolutions of the meeting on that particular matter. Thus a resolution may be defined as the formal expression of deciding of a meeting on proposal before it and provided it conforms with law is binding on members.

## **6.1 TYPES OF RESOLUTION**

Types of resolutions are as follows,

- (i) **ORDINARY RESOLUTION (SECTION 189 (1))**: an ordinary resolution is one which can be passed by a simple majority i.e., if the votes (including the casting vote if any of the chairman), at a general meeting cast by members entitled to vote in its favor are more than votes cast against it. Voting may be by way of a show of hands or by a poll provided 21 days notice has been given for the meeting.
- (ii) **SPECIAL RESOLUTION (SECTION 189 (2))**: a special resolution is one in regard to which is passed by a 75% majority only i.e., the number of votes cast in favor of the resolution is at least three time poll in person or by proxy. The intention to propose a resolution special resolution must be specifically mentioned in the notice of the general meeting. Special resolutions are needed to decide on important matters of the company. Examples where special resolutions are required are,
- To alter the domicile clause of the memorandum from one state to another or to alter the objects clause of the memorandum.
  - To alter/change the name of the company with the approval of the central government.
  - To alter the articles of association
  - To change the name of the company by omitting limited or private limited. The central government may allow a company with charitable objects to do so by special resolutions under section 25 of the companies act, 1956.
- (iii) **RESOLUTION REQUIRING SPECIAL NOTICE (SECTION 190)**
- There are certain matters specified in the companies act, 1956 which may be discussed at a general meeting only if a special notice is given special notice enables the members to be prepared on the matter to be discussed and gives them time to indicate their views on the resolution. In case special notice of resolution is required by the companies act, 1956 or by the articles of a company the intention to propose such a resolution must be noticed must within 7 days before the meeting give the notice of the proposed resolution to its members? Notice of the resolution is required to be given in the same way in which notice of a meeting is given or if that is not practicable the company may give notice by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the articles not less than 7 days before the meeting.

The following matters requiring special notice before they are discussed before the meeting,

- a. To appoint at an annual general meeting appointing an auditor a person other than a retiring auditor
  - b. To resolve at an annual general meeting that a retiring auditor shall not be reappointed.
  - c. To remove a director before the expiry of his period of office.
  - d. To appoint another director in place of removed director
- (iv) Where the articles of a company provide for the giving of special notice for a resolution in respect of any specified or matters. Please note that a resolution requiring special notice may be passed either as an ordinary resolution or as special resolutions.

## **6.2 ESSENTIALS OF RESOLUTION**

Essential to constitute a resolution are as follows,

- Notice to the meeting should state that the resolutions shall be passed as a special resolution. A 14 days special notice to be given to all shareholders.
- An explanatory note stating the circumstances and provisions of law as to why the resolution should be a special resolution should be appended to the notice of the meeting.
- The resolution shall be passed by a majority of not less than 75% of the members present in person. Law provides that if an ordinary resolution is passed where a special resolution is required it is deemed that no resolutions have been passed.
- Any decision to be taken by the board of directors shall be by way of a board resolution. Board resolution could also be a circular resolution. A resolution passed by a committee of the directors shall be valid as a board resolution. Section 292 states the list of items to be decided only at a meeting of the board of directors. Rest of the items can be decided by a circular resolution or a resolution passed by a committee.

## **7. AUDITOR**

In the case of every company public as well as private no person can act as an auditor unless he is a chartered accountant within the meaning of the chartered accountants act 1949. If a firm is acting as auditor of a company all the partners of the firm must be chartered accountants. A body corporate i.e., a company cannot act as auditor of another company.

The audit of a joint stock company is intended for the protection of the shareholders and the auditor is expected to examine the accounts maintained by the directors with a view to inform the shareholders of the true financial position of the company.

## **7.2 APPOINTMENT OF AN AUDITOR**

Appointment of an auditor is as follows,

- (i) **FIRST AUDITORS:** the first auditors of a company should be appointed by the board of directors within three months of the date of registration of the company by passing a resolution to the effect. Such an auditor shall hold office till the conclusion of the first annual general meeting. However the company has the power to remove any such auditor and appoint an other persons nominated by any member of the company by giving not less than 14 days notice before the date of the meeting. Such an appointment can be made at a general meeting. Where the board fails to exercise its power to appoint the first auditors, the company in general meeting may appoint the first auditors.
- (ii) **SUBSEQUENT AUDITORS:** section 224(1) reveals that every company shall at each general meeting appoint auditors to hold office from the conclusion of the meeting until the conclusion of the next annual general meeting. The company should give intimation of the appointment to the auditor within seven days of the appointment. Every auditor so appointed at the annual general meeting should within thirty days of the receipt of the intimation from the company, inform the registrar in writing about his acceptance or refusal of the appointment. The notice to the registrar should be given in form 23B. Except auditors appointed under sub section (1), those appointed under other subsections of section 224, are under no obligation to inform the registrar about their appointment. The board of directors is authorized to fill any casual vacancy excepting a vacancy arising out of resignation which is to be filled only by the company in general meeting.
- (iii) **OTHER APPOINTMENT:** section 224A inserted by the companies act, 1974 provides that in the case of a company in which twenty five per cent or more of the subscribed share capital is held whether singly or in combination by,
- A public financial institution or a government company or central government or any state government or
  - Any financial or other institution established by an provincial or state act in which a state government holds not less than 51% of the subscribed capital or

- A nationalized bank or an insurance company carrying on general insurance business.
- (iv) **APPOINTMENT BY CENTRAL GOVERNMENT:** in also no auditors are appointed or reappointed under sections 224 or 224A at the annual general meeting the central government may appoint a person to fill the vacancy. It is the duty of the company to inform the central government about the fact that no auditors has/have been appointed within seven days of the meeting. The auditors so appointed will hold office till the conclusion of the next annual general meeting. The central government has the power to fix the remuneration of auditors appointed by it.

### **7.3 QUALIFICATION ORF AN AUDITOR**

Section 226 provides for qualification of an auditor. A person who is a chartered accountant in practice is qualified to become an auditor. In other words he must be a member of the institute of chartered accountants of India and in practice.

### **7.4 DISQUALIFICATIONS OF AN AUDITOR**

By the qualifications given in the above paragraph it is clear that an auditor would be disqualified if he ceases to be the member of institute of chartered accountants of India as per the rules and regulations of chartered accounts act, 1949. The following entities/persons have been declared disqualified to be appointed as an auditor of a company,

- A body corporate
- An officer or employee of the company
- A person who is a partner or who is in the employment of an officer or employee of the company.
- A person who is indebted to the company for an amount exceeding Rs.1.000 or who has given any guarantee or provided any security in connection with the indebtedness of any third person.
- A person holding any security of the company after one year from the date of commencement of the companies. In this context a security a means an instrument that carries voting rights. However any shares held by such person and nominee or trustee for any third person and in which the holder has no beneficial interest shall be excluded in computing the percentages of shares held by him for the purpose of this clause.

- A person who by virtue of the above listed provisions is disqualified for appointment as auditor of any other body corporate which is that companies subsidiary or holding company or a subsidiary of that companies holding company or would be so disqualified if the body corporate were a company.

### **7.5 REMUNERATION OF THE AUDITORS (SECTION 224)**

Remuneration of the auditors of a company

- In the case of an auditor appointed by the board or the central government remuneration may be fixed by the board or the central government as the case as the case may be and
- Subject to clause remuneration shall be fixed by the company in meeting may determine. For the purpose of this sub-section any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression remuneration.

### **7.6 POWERS OF AN AUDITOR**

Various powers or rights of an auditor are as follows,

- (i) **RIGHT OF ACCESS TO BOOKS ACCOUNTS AND VOUCHERS:** the auditors of a company have a right of access at all times to the books accounts and vouchers of the company whether kept at the head office of the company or elsewhere.
- (ii) **RIGHT TO VISIT BRANCH OFFICES:** where the accounts of any branch office are audited by a person other than the company's auditor the company's auditor is entitled to visit the branch office if he deems it is necessary to do so for the performance of his duties as auditor.
- (iii) **RIGHT TO RECEIVE NOTICE OF GENERAL MEETINGS AND TO ATTEND THEM:** he has a right to receive notice of and other communications relating to any general meeting of the company. He has also a right to attend any general meeting and to be heard on any part of the business which concerns him as auditor.
- (iv) **RIGHT TO RECEIVE REMUNERATION:** He has the right to receive remuneration of auditing the accounts of the company (section 224(8)).

### **7.7 DUTIES OF AN AUDITOR**

Duties of an auditor are as follows,

1. **ACQUAINTANCE WITH THE ARTICLES AND THE COMPANIES ACT:** the auditor of a company is under a duty to make himself acquainted with his duties under the articles of the company and under the companies act, 1956

2. **REPORT TO MEMBERS:** the main duty of an auditor is to make a report for the members of the company on the accounts examined by him and on the balance sheet and the profit and loss accounts the company and on every document which is annexed to the balance sheet or profit and loss account. If in his opinion and to the best of his information and according to the explanations given to him the accounts do not give a true and fair view he must qualify his report.

### **7.8 RESPONSIBILITIES OF AN AUDITOR**

The auditor is to ensure that the prescribed standards of accounting are observed and that the transactions are entered under proper heads responsibilities of auditor are as follows,

- Auditors should act in a way that will serve the public interest honor the public trust and uphold their professionalism.
- Auditors need to perform all professional responsibilities with a highest degree of integrity.
- Auditors need to be professional objective fact based non partisan and non ideological in their relationship with audited organizations and users of the auditor's reports.
- Auditors are also responsible for being independent in fact and appearance when providing services.
- Auditors should be objectives and free of conflicts of interest in discharging their professional responsibilities.

### **8. WINDING-UP OF COMPANIES**

Winding up is the process of putting an end to the life of the company. In other words it is a proceeding by which a company is dissolved. In the course of such dissolution the assets of the company are disposed of the debts are paid off out of the realized assets and the surplus if any is then paid off to the members in proportion to their holdings in the company.

The process of winding up commences after the court passes the order for winding-up. The company is not dissolved immediately on the commencement of the winding up proceedings.

Winding up of a company precedes its dissolution.

Thus in between the winding up and dissolution the legal status of the company is in existence and it can be sued. On the dissolutions the existence of the company comes to an end and its name is struck off by the registrar from the register of companies.

## **8.1 MODES OF WINDING-UP**

There are three modes of winding of a company,

- ❖ Compulsory winding up by the court or
- ❖ Voluntary winding up. This may be
- ❖ Members voluntary winding up or
- ❖ Creditor's voluntary winding up.
- ❖ Winding up subject to the supervision of the court.

**NOTE:** the powers of court are transferred to the national company law tribunal by the company act, 2002. The central government is in the process of formation of this tribunal. As on date the powers are exercised by courts. Hence in this section tribunal/NCLT has been used.

### **8.5.3 COMPULSORY WINDING-UP BY COURT (SECTION 433)**

The winding-up by the court is generally referred to as the compulsory winding-up. The court may order the winding up of a company in the cases mentioned under section 433. The court will issue an order for the winding-up of a company on an application by any of the persons mentioned under section 439.

#### **8.5.3.1 GROUNDS OF WINDING-UP BY THE COURT**

Grounds for compulsory winding-up are as follows,

- (i) **SPECIAL RESOLUTION:** special resolutions for winding up by the court are passed by the members in a general meeting.
- (ii) **DEFAULT IN FILING STATUTORY REPORT OR HOLDING STATUTORY MEETING:** if a default is made in delivering the statutory report of a public company to the registrar or in holding the statutory meeting of the company the court may make a winding up order.
- (iii) **FAILURE TO COMMENCE BUSINESS WITHIN TIME:** a company is wound up on this ground if it does not commence its business within a year from its incorporation or suspends its business for a whole year unless.
  - There are reasonable prospects of the company starting business within a reasonable time and
  - There are good reasons for the delay as e.g., when the company is waiting for trade depression to pass.

- (iv) **REDUCTION OF MEMBERSHIP:** reduction of membership below the legal minimum limit, i.e., below 7 in a public company and 2 in a private company. The company may be ordered to be wound-up
- (v) **INABILITY TO PAY DEBTS (SECTION 434)**  
A company may be ordered to be wound-up if it is unable to pay its debts. A company is deemed to be unable to pay its debts.
- If a creditor for a sum exceeding 500 has served on the company at its registered office a demand for payment and the company has for 3 weeks thereafter neglected to pay or otherwise satisfy him. The debt must be presently payable and the company should not have any bonafide dispute about it.
  - If execution or other process issued on a degree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part.
  - If it is proved to the satisfaction of the court that the company is unable to pay its debts. In determining whether a company is unable to pay its debts the court must take into account the contingent and prospective liabilities of the company also (section 434).
- (vi) **DEFAULT IN FILING P/L ACCOUNT AND B/S:** if a company is found to be a defaulter in filing profit and loss account and balance sheet under the companies act, 1956 then the court may order for the compulsory winding-up of the company.
- (vii) **ACTED AGAINST SOVEREIGNTY AND INTEGRITY OF INDIA:** the court may order for the compulsory winding up of the company in case if the company has acted against sovereignty and integrity of India.
- (viii) **SICK INDUSTRIAL COMPANY:** if the court finds that the company is not in good financial condition and falls within the criteria of the sick industrial company then it may pass an order for the compulsory winding-up of the company.
- (ix) **JUST AND EQUITABLE:** if the court is of opinion that it is just and equitable that the company should be wound-up. The cases are,
- Loss of objectives
  - Deadlock in management
  - Oppression of minority
  - Fraudulent purpose and
  - Where company is a dummy

### **UNIT-4-IMPORTANT QUESTIONS**

- 1) Briefly write about Companies Act, 1956 (Part-I)?
- 2) Explain Kinds of Companies?
- 3) Elucidate Formulation of Companies, and Incorporation, Company Documents?
- 4) Briefly write about Company Act, 1956 (Part-II) ?
- 5) Short note on:
  - a) Management, Directors,
  - b) meetings,
  - c) Resolutions,
  
- 6) What is Winding-up? Write about Modes of Winding-up of a company?



## (17E00102) BUSINESS ENVIRONMENT AND LAW

The objective of the course is to provide the student with a background of various environment factors that have major repercussions on business and sharpen their mind to watch and update the changes that occur constantly in this sphere.

1. **Introduction to Business Environment:-** Meaning, Components of Business Environment.-Industrial policy of 1991, Liberalization, Privatization and Globalization
2. **Monetary, Fiscal and Trade Policy:** Monetary & Fiscal Policy –,EXIM Policy, Role of EXIM Bank. Balance of Payments: **WTO:** Role and functions of WTO in promoting world trade –TRIPS, TRIMS and GATS, - Dumping and Anti-dumping measures.
3. **Law-Definition -Need, classification and sources of Business Law, Law of Contract - 1872 (Part-I):** Nature of Contract and essential elements of a valid Contract, Offer and Acceptance. Law of Contract – 1872 (part-II): Consideration, Capacity to Contract and free consent, Legality of the object.
4. **Companies Act, 1956 (Part-I):** Kinds of Companies, Formulation of Companies, Incorporation, Company Documents. **Company Act, 1956 (Part-II):** Company Management, Directors, Company meetings, Resolutions, Auditors, Modes of Winding-up of a company.
5. **Information Technology Act, 2000:** Scope and Application of IT Act, 2000- Digital signature e-governance, penalties and adjudication, cyber regulations appellate, tribunals, duties of subscribers - Right to Information Act,2005 –GST Act 2017.

### Textbooks:

- Essentials of Business Environment, K.Aswathappa, Himalaya publishers.
- Mercantile Law - N.D.Kapoor, Sultan Chand & Sons.
- Mechantile Law- Garg, Sareen, Sharma, Chawla, Kalyani publishers.

### References:

- Indian Economy, Dutt and Sundaram, S. Chand, New Delhi.
- Business Environment – Text and Cases, Justin Paul, TMH.
- Indian Economy- Misra and Puri, Himalaya.
- Business Environment, Suresh Bedi, Excel.
- Mercantile Law, S.S. Gulshan, 3/e, Excel Books,
- Legal Aspects of Business, Ravinder Kumar, Cengage.
- *A Manual of Business Laws*, S.N.Maheshwari & Maheshwari, Himalaya.
- Business law for management, K.R.Bulchandani-Himalaya Publishing.
- Business law, R.S.N Pillai, Bhagavathi, S.Chand

# UNIT-5

## INFORMATION TECHNOLOGY ACT, 2000

### 1. INFORMATION TECHNOLOGY ACT, 2000

#### PRELIMINARY

In May 2000, both the houses of the Indian parliament passed the information technology bill. The bill received the assent of the president in August 2000 and came to be known as the information technology act, 2000. The Indian information technology act 2000 came into effect from October 17, 2000. Cyber laws are contained in the IT act, 2000.

This act aims to provide the legal infrastructure for e-commerce in India. And the cyber laws have a major impact for e-business and the new economy in India. The information technology act, 2000 also aims to provide for the legal framework so that legal sanctity is accorded to all electronic records and other activities carried out by electronic means. The act states that unless otherwise agreed an acceptance of contract may be expressed by electronic means of communication and the same shall have legal validity and enforceability. Thus the IT act 2000 the cyber law of India gives the legally framework so that information's is not denied legal effect validity or enforceability solely on the ground that it is in the form of electronic records.

BE it enacted by parliament in the fifty-first year of the republic of India as follows.

1. This act may be called the information technology act, 2000
2. It shall extend to the whole of India and save as otherwise provided in this act, it applies also to any or contravention there under committed outside India by any person.
3. It shall come into force on such date as the central government may by notification appoint and different dates may be appointed for different provisions of this act and any reference in any such provisions to the commencement of this act shall be construed as a reference to the commencement of that provision.
4. Nothing in this act shall apply to
  - (i) A negotiable instrument as defined in section 13 of the negotiable instruments act 1881, (26 of 1881)
  - (ii) A power of attorney as defined in section 1A of the powers of attorney act 1882 (7 of 1882)

- (iii) A trust as defined in section 3 of the section (2) of the Indian succession act 1925 (39 of 1925) including any testamentary disposition by whatever name called.
- (iv) Any contract for this sale or conveyance of immovable property or any interest in such property.
- (v) Any such class of documents or transactions as may be notified by the central government in the official gazette.

### **1.1 SALIENT FEATURES OF THE INFORMATION TECHNOLOGY ACT, 2000**

1. **CHAPTER – II** of the act specifically stipulates that any subscriber may **AUTHENTICATE** an electronic record by affixing his digital signature. It further states that a person can verify an electronic record by use of a public key of the subscriber.
2. **CHAPTER – III** of the act details about electronic governance and provides inter alia amongst others that where any law provides that information or any other matter shall begin writing or in the typewritten or printed form then notwithstanding anything contained in such law, such requirements shall be deemed to have been satisfied if such information or matter is rendered or made available in an electronic form and accessible so as to be usable for a subsequent reference.
3. **CHAPTER – IV** of the said act gives a scheme for regulation of certifying authorities. The act envisages a controller of supervision over the activities of the certifying authorities as also laying down standards and conditions governing the certifying authorities as also specifying the various forms and content of digital signature certificates.  
The act recognizes the need for recognizing foreign certifying authorities and it further details the various provisions for the issue of license to issue digital signature certifies.
4. **CHAPTER – VII** of the details about the scheme of things relating to digital signature certificates. The duties of subscribes are also enshrined in the said act.
5. **CHAPTER – IX** of the said act talks about penalties and adjudication for various offences. The penalties for damage to computer systems etc, has been fixed as damages by way of compensation not exceeding Rs.1.00.00.000 to affected person. The act talks of appointment of any officers not below the rank of a director to the government of India or an equivalent officer of state government as an adjudicating officer who shall adjudicate whether any person has made a contravention of any of the provisions of the said act or rules framed there under. The said adjudicating officer has been given the powers of a civil court.

6. **CHAPTER – X** of the act talks of the establishment of the cyber regulations appellate tribunal which shall be an appellate body here appeals against the orders passed by the adjudicating officers shall be preferred.
7. **CHAPTER – XI** of the act talks about various offences and the said offences shall be investigated only by a police officer not below the rank of the deputy superintendent of police. The offences include tempering with computer source documents publishing of information which is obscene in electronic form and hacking.
8. The act also provides for the constitution advice the cyber regulations advisory committee which shall advice the government as regards any rules or for any other purpose connected with the said act. The said act also proposes to amend the Indian panel code, 1860, the Indian evidence act 1872 the bankers books evidence act, 1891 the reserve bank of India act, 1934 to make them in tune with the provisions of the IT act.
9. Works put on the internet are considered published and therefore qualify for copyright protection. A work put on the internet is not considered public domain simply because it was posted on the internet and free for anyone to download and copy. People need permission from the site owner to publish any materials including photographs music and artwork from the site.
10. The best way to enforce internet copyright is through the digital millennium copyright act. The digital millennium copyright act of 1998 is designed primarily to limit the liability of internet service providers for acts of copyright infringement by customers who are using the providers systems or networks. The DMCA was enacted both to preserve copyright enforcement on the internet and to provide immunity to service providers from copyright infringement liability for passive automatic actions in which a service providers system engages through a technological process initiated by another without the knowledge of the service providers.
11. To protect the rights under the DMCA people should write a DMCA letter to the infringing person's internet service provider and the major search engines such as Google at <http://www.google.com/dmca.html>.

## **1.2 OBJECTIVES OF THE IT ACT**

1. To grant legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communicate in commonly referred to as electronic commerce in place or paper based methods of communication.

2. To give legal recognition to digital signature for authentication of any information or matter which requires authentication under any law?
3. To facilitate electronic filing of documents with government departments.
4. To facilitate electronic storage of data.
5. To facilitate and give legal sanction to electronic fund transfers between banks and financial institutions
6. To give legal recognition for keeping books of account by bankers in electronic form.

### **1.3 SCOPE AND APPLICATION OF THE IT ACT, 2000**

The act extends to whole of India and shall also apply to any violation or contravention of the provisions of the act done by any person anywhere in the world.

However the act shall not apply to,

1. A negotiable instrument (other than a cheque) as defined in section 13 of the negotiable instruments act 1881  
The provisions of the act shall apply to electronic cheques and the truncated cheque as defined in section 6 of the negotiable instruments act 1881 subject to such modifications and amendments as may be necessary for carrying out the purpose of the negotiable instruments act, 1881.
2. A power of attorney as defined in section 1A of the powers of attorney act, 1882
3. A trust as define in section 3 of the Indian trusts act, 1882.
4. A will as defined in clause (h) of section 2 of the Indian succession act, 1925 including any other testamentary disposition by whatever name called.
5. Any contract for the sale or conveyance of immovable property or any interest in such property.
6. Any such class of documents or transactions as may be notified by the central government in the official gazette (section 1)

### **1.4 DEFINITIONS**

Various important terms used in the information technology act area s follows,

1. **ACCESS (SECTION 2(1) (a)):** it means gaining entry into instructing or communicating with the logical arithmetical or memory function resources of a computer commuter system or computer network.
2. **ADDRESSEE (SECTION 2(1) (b)):** it means a person who is intended by the originator to receive the electronic record but does not include any intermediary.

3. **ASYMMETRIC CRYPTO SYSTEM (SECTION 2 (1)(f)):** it means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature.
4. **CERTIFICATION PRACTICE STATEMENT (SECTION 2(1)(h)):** it means a statement issued by a certifying authority to specify the practices that the certifying authority employs in issuing digital signature certificates.
5. **COMMUNICATION DEVICE (SECTION (1)(ha)):** It means electronic magnetic optical cell phones personal digital assistance or combination of both or any other device used to communicate send or transmit any text video audio or image.
6. **COMPUTER (SECTION 2(1)(i)):** it means any electronic magnetic optical or other high speed data processing device or system which performs logical arithmetic and memory functions by manipulations of electronic magnetic or optical impulses and includes all input output processing storage computer software or communication facilities which are connected or related to the computer in a computer system or computer network.
7. **COMPUTER NETWORK (SECTION 2(1) (j)):** computer network means the inter connection of one or more computer or computer systems or communications device through.
  - (i) The use of satellite microwave terrestrial line wire wireless or other communication media and,
  - (ii) Terminals or a complex consisting of two or more inter connected computers or communications device whether or not the inter connection is continuously maintained.
8. **COMPUTER RESOURCE (SECTION 2(1) (k)):** it means computer system computer network computer database or software.
9. **COMPUTER SYSTEM (SECTION 2 (1)(I)):** It means a device or collection of devices including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files which contain computer programs electronic instructions input data and output data that that performs logic arithmetic data storage and retrieval communication control and other functions.
10. **CYBER CAFÉ (SECTION 2(1) (na)):** cyber café means any facility from where access to the internet is offered by any person in the ordinary course of business to the members of the public.

11. **CYBER SECURITY (SECTION 2(1) (nb)):** Cyber security means protecting information equipment devices commuter computer resource, communication device and information stored therein from unauthorized access use disclosure disruption modification or destruction.
12. **DATA (SECTION 2(1) (o)):** it means a representation of information knowledge facts concepts or instructions which are being prepared or have been prepared in a formalized manner and is intended to be processed is being processed or has been processed in a computer system or computer network and may be in any form (including computer printouts, magnetic or optical storage media punched cards, punched tapes) or stored internally in the memory of the computer.
13. **ELECTRONIC FORM (SECTION 2(1) (r)):** electronic form with reference to information means any information generated sent received or stored in media magnetic optical computer memory microfilm computer generated micro fiche or similar device.
14. **ELECTRONIC GAZETTE (SECTION 2(1) (s)):** electronic gazette means official gazette published in the electronic form.
15. **ELECTRONIC SIGNATURE (SECTION 2(1) (ta)):** electronic signature means authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes digital signature.
16. **ELECTRONIC SIGNATURE CERTIFICATE (SECTION 2(1) (tb)):** electronic signature certificate means an electronic signature certificates issued under section 35 and includes digital signature certificates.
17. **FUNCTION (SECTION 2 (1) (u)):** In relation to a computer it includes logic control arithmetical process deletion storage and retrieval and communication or telecommunication from or within a computer.
18. **INFORMATION (SECTION 2(1) (v)):** it includes data text image sound voice codes commuter programs software and databases or microfilm or computer generated microfiche.
19. **INTERMEDIARY (SECTION 2(1) (w)):** intermediary with respect to any particular electronic records means any person who on behalf of another person receives stores or transmits that record or provides any service with respect to that record and includes telecom service providers network service providers internet service providers web hosting service providers search engines online payment sites online auction sites online market places and cyber cafes.

20. **KEY PAIR (SECTION 2(1) (x)):** in any asymmetric crypto system key pair means a private key and its mathematically related public key which are so related that the public key can verify a digital signature created by the private key.
21. **ORIGINATOR (SECTION 2(1) (ze)):** it means a person who sends generates stores or transmits any electronic message or causes any electronic message to be sent generated stored or transmitted to any other person but does not include an intermediary.
22. **PUBLIC KEY (SECTION 2 (1) (zc)):** it means the key of a key pair used to create a digital signature.
23. **PUBLIC KEY (SECTION 2(1)(zd)):** it means the key of a key pair used to verify a digital signature and listed in the digital signature certificate.
24. **SUBSCRIBER (SECTION 2(1)(zg)):** it means a person in whose name the digital signature certificate is issued.
25. **VERIFY (SECTION 2(1)(zh)):** verify in relation to a digital signature electronic record or public key with the grammatical variations and cognate expressions means to determine whether.
- The initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber.
  - The initial electronic record is retained intact or has been altered since such electronic record was no affixed with the digital signature.

## **2.DIGITAL AND ELECTRONIC SIGNATURE**

Digital signature means authenticating of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3

Section 3 provides that any subscriber may authenticate an electronic record by affixing his digital signature. The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

The hash function means an algorithm mapping or translation of one sequence of bits into another generally smaller set known as hash result such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible,

- To derive or reconstruct the original electronic record from the hash result produced by the algorithm
- Those two electronic records can produce the same hash result using the algorithm.

Any person by the use of a public key of the subscriber can verify the electronic record. The private key and the public key are unique to the subscriber and constitute a functioning key pair.

## **2.1 ELECTRONIC SIGNATURE (SECTION 3-A)**

An electronic signature or e-signature refers to data in electronic form which is logically associated with other data in electronic form and which is used by the signatory to sign. This type of signature provides the same legal standing as a handwritten signature as long as it adheres to the requirements of the specific regulation it was created under. Increasingly digital signatures are used in e-commerce and in regulatory filings to implement electronic signature in a cryptographically protected way. Electronic signatures may be created with increasing levels of security, with each having its own set of requirements and means of creation on various levels that prove the validity of the signature. It must possess the following features

1. The signatory can be uniquely identified and linked to the signature.
2. The signatory must have sole control of the private key that was used to create the electronic signature.
3. The signature must be capable of identifying if its accompanying data has been tampered with after the message was signed.
4. In the event that the accompanying data has been changed the signature must be invalidated.

### **2.1.1 AS PER SECTION 3-A**

1. Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), as subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which.
  - Is considered reliable and
  - May be specified in the second schedule
2. For the purpose of this section any electronic signature or electronic authenticating technique shall be considered reliable if.
  - The signature creation data or to authentication data are within; the context in which they are used linked to the signatory or as the case may be authenticator and to no other person.

- The signature creation data or the authentication data were at the time of signing under the control of the signatory or as the case may be the authenticator and of no other person.
  - Any alteration to the electronic signature made after affixing such signature is detectable.
  - Any alteration to the information made after its authentication by electronic signature is detectable and
  - It fulfils such other conditions which may be prescribed.
3. The central government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.
  4. The central government may by notification in the official gazette add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the second schedule  
It is provided that no electronic signature or authentication technique shall be specified in the second schedule unless such signature or techniques is reliable.
  5. Every notification issued under sub section (4) shall be laid before each house of parliament.

### **3. ELECTRONIC GOVERNANCE (E-GOVERNANCE)**

E-governance is the application of information and communication technologies to transform the efficiency effectiveness, transparency and accountability of informational and transactional exchanges within government between government's agencies of national state, municipal and local levels citizen and business and to empower citizens through access and use of information.

E-governance is a transition process from conventional to people oriented proactive electronic system. This is a big change in the mindset of people. Putting it in a positive way it is not a change but a transition. It may be achievable unless it slowly evolves among the people. All communities of people should be attracted towards the system. To accept this transition process the communities need to be trained and educated.

The electronic media should be user friendly and accessible by different communities including the disabled and the under privileged. This is called transition management system of e-governance.

### **3.1 OBJECTIVES OF E-GOVERNANCE**

e-governance solutions are oriented towards helping governance organizations transform into enterprise infrastructure based end to end digital governments that,

1. Build services around citizen's choice
2. Make government more accessible
3. Facilitate social inclusion
4. Provide information responsibility
5. Use government resources effectively
6. Reduce government spending
7. Deliver online services
8. Involve citizens in the governing process

### **3.2 ADVANTAGES OF E-GOVERNANCE**

1. It greatly simplifies the process of information accumulation for citizens and businesses
2. It empowers people to gather information regarding any department of government and get involved in the process of decision making.
3. It strengthens the very fabric of democracy by ensuring greater citizen participation at all levels of governance.
4. It leads to automation of services ensuring that information regarding every work of public welfare is easily available to all citizens eliminating corruption.
5. It revolutionists the way government function ensuring much more transparency in the functioning thereby eliminating corruption.
6. Since the information regarding every activity of government is easily available it would make every government department responsibility as they know that every action of theirs is closely monitored.
7. Proper implementation of e-governance practices make it possible for people to get their work done online thereby sparing themselves of unnecessary hassles of travelling to the respective offices.
8. It helps business to access information that might be important for them it a click.

### **3.3 DISADVANTAGES OF E-COMMERCE**

1. **Hyper-surveillance:** Increased contact between government and its citizens goes both ways. Once e-government begins to develop and become more sophisticated citizens will be forced to interact electronically with the government on a larger scale. This could potentially lead to a lack of privacy for civilians as their government obtains more and more information on them. In a worst case scenario with so much information being passed electronically between government and civilians a totalitarian like system could develop. When the government has easy access o countless information on it citizen's personal privacy is lost.
2. **Cost:** Although a prodigious amount of money has been spent on the development and implementation of e-governance some say it has yielded only a mediocre product. The outcomes and effects of trial internet based government are often difficult to gauge or unsatisfactory. According to GARTNER worldwide IT spending is estimated to total \$3.6 trillion in 2011 which is 5.1% increase from the year 2010 (\$3.4 trillion).

### **3.4 ELECTRONIC RECORDS**

According to section 2(1) (t) of information technology act, 2000 electronic record means data record or data generated image or sound stored received or sent in an electronic form or micro film or computer generated micro fiche.

#### **ATTRIBUTION ACKNOWLEDGMENT AND DISPATCH OF ELECTRONIC RECORDS**

**Attribution of electronic records:** an electronic record shall be attributed to the originator

- If it was sent b the originator himself
- By a person who had the authority to act on behalf of the originator in respect of that electronic record.
- By an information system programmed by or on behalf of the originator to operate automatically.

### **4. PENALTY AND ADJUDICATION**

#### **4.1 OFFENSE AND PENALTIES**

1. **Tampering with computer source documents (section 65):**Whoever knowingly or internationally conceals destroys or alters or intentionally or knowingly causes another to conceal destroy or alter any computer source code used for a computer, computer program computer system or computer network when the computer source code is

required to be kept or maintained by law for the time being in force shall be punishable with imprisonment up to three years or with fine which may extend up to two lakh rupees or with both.

**2. Hacking with computer system (section 66)**

- (i) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means commits hack.
- (ii) Whoever commits hacking shall be punished with imprisonment up to three years or with fine which may extend up to two lakh rupee or with both.

**3. Publishing of information which is obscene in electronic form (section 67):** whoever or transmits or causes to be published in the electronic form any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances to read see or hear the matter contained or embodied in it shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupee.

**4. Power of controller to give directions (section 68)**

- (i) The controller may be order direct a certifying authority or any employee of such authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this act, rules or any regulations made there under.
- (ii) Any person who internationally or knowingly fails to comply with any order under sub section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding one lakh rupees or to both.

**5. Directions of controller to a subscriber to extend facilities to decrypt information (section 69):**

- (i) If the controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India the security of the state friendly relations with foreign states or public order or for preventing incitement to the commission

of any cognizable offence for reasons to be recorded in writing by order direct any agency of the government to intercept any information transmitted through any computer resource.

- (ii) The subscriber or any person in charge of the computer resource shall when called upon by any agency which has been directed under sub section (1), extend all facilities and technical assistance to decrypt the information.
- (iii) The subscriber or any person who fails to assist the agency referred to in sub section (2) shall be punished with an imprisonment for a term which may extend to seven years.

**6. Protected system (section 70)**

- (i) The appropriate government may by notification in the official gazette declare that any computer, computer system or computer network to be a protected system.
- (ii) The appropriate government may by order in writing authorize the persons who are authorized to access protected systems notified under sub section (1)

**7. Penalty for misrepresentation (section 71):**Whoever makes any misrepresentation to or suppresses any material fact from the controller or the certifying authority for obtaining any license or digital signature certificates as the case may be shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.

**8. Penalty for breach of confidentiality and privacy (section 72):**Save as otherwise provided in this act or any other law for the time being in force any person who is pursuance of any of the powers conferred under this act rules or regulations made there under has secured access to any electronic record book register correspondence information document or other material without the consent of the person correspondence information document or other material to any other person shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.

**9. Penalty for publishing digital signature certificate false in certain particulars (section 73)**

- (i) No person shall publish a digital signature certificate or otherwise make it available to any other person with the knowledge that,
  - a. The certifying authority listed in the certificate has not issued it or
  - b. The subscriber listed in the certificate has not accepted or

- c. The certificate has been revoked or suspended unless such suspension or revocation.
- (ii) Any person, who contravenes the provisions of sub section (1), shall be punished with imprisonment for a term which may extend to two years or with fines which may extend to one lakh rupees or with both.

**10. Publication for fraudulent purpose (section 74):** Whoever knowingly creates publishes or otherwise makes available a digital signature certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.

## **4.2 ADJUDICATION**

Provisions regarding adjudication are as follows,

1. **Appointment of adjudicating officer:** whether an person has committed a contravention of the provisions of this act or of any rule regulation direction or order made there under the central government shall subject to the provisions of sub-section (3), appoint any officer not below the rank of a director to the government of India or an equivalent officer of a state government to be an adjudicating officer for holding an inquiry in the manner prescribed by the central government.
2. **Reasonable opportunity for making representation:** The adjudicating officer shall after giving the person referred to in sub section (1), a reasonable opportunity for making representation in the matter and if on such inquiry he is satisfied that the person has committed the contravention he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.
3. **Qualification of appointment as adjudicating officer:** no person shall be appointed as an adjudicating officer unless he possesses such experiences in the field of information technology and legal or judicial experience as may be prescribed by the central government.
4. **Jurisdiction of adjudicating officer:** where more than one adjudicating officers are appointed the central government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.
5. **Powers of adjudicating officer:** every adjudicating officer shall have the powers of a civil court which are conferred on the cyber appellate tribunal under sub section (2) of section 58 and

- (i) All proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian penal code.
- (ii) Shall be deemed to be a civil court for the purposes of sections 345 and 346 of the code of criminal procedure 1973.

**4.3 FACTORS TO BE TAKEN INTO ACCOUNT BY THE ADJUDICATING OFFICER**

While adjudging the quantum of compensation the adjudicating officer shall have due regard to the following factors namely

- (i) The amount of gain of unfair advantage wherever quantifiable made as a result of the default
- (ii) The amount of loss caused to any person as a result of the default and
- (iii) The repetitive nature of the default.

Offences	Punishment imprisonment term	Fine up to
Tampering with computer source document	3 Years	2lac
Hacking with computer system	3 years	2lac
Publishing which is obscene in electronic form	5 years	1lac
Failure to comply with the orders of the controller	3 years	2lac
Failure to comply with the directions of the controller to extend facilities to decrypt information.	7 years	Nil
Securing access to a protected.	10 years	No limit
Misrepresentation or suppression of fact.	2 years	1lac
Breach of confidentiality and piracy publishing false or fraudulent DSC	2 years	1lac

## **5. CYBER REGULATION APPELLATE TRIBUNAL**

### **5.1 ESTABLISHMENT OF CYBER APPELLATE TRIBUNAL (SECTION 48)**

1. The central government shall by notification establish one or more appellate tribunals to be known as the cyber regulations appellate tribunal
2. The central government shall also specify in the notification referred to in sub section (1), the matters and places in relation to which the cyber appellate tribunal may exercise jurisdiction.

### **5.2 COMPOSITION OF CYBER APPELLATE TRIBUNAL (SECTION 49)**

The cyber appellate tribunal shall consist of a chairperson and such number of other members as the central government may by notification in the official gazette appoint.

### **5.3 QUALIFICATION FOR APPOINTMENT AS PRESIDING OFFICER OF THE CYBER APPELLATE TRIBUNAL (SECTION 50)**

A person shall not be qualified for appointment as the presiding officer of a cyber appellate tribunal unless he,

1. Is or has been or is qualified to be a judge of high court or
2. Is or has been a member of the Indian legal service and is holding or has held a post in grade 1 of that service for at least three years.

### **5.4 TERM OF OFFICE (SECTION 51)**

The presiding officer of a cyber appellate tribunal shall hold office for a term of five from the date on which he enters upon his office or until he attains the age of sixty five years whichever is earlier.

### **5.5 APPEAL TO CYBER REGULATIONS APPELLATE TRIBUNAL (SECTION 57)**

1. Save as provided in sub section (2), any person aggrieved by an order made by controller or an adjudicating officer under this act, may prefer an appeal to a cyber appellate tribunal having jurisdiction in the matter.
2. No appeal shall lie to the cyber appellate tribunal from an order made by an adjudicating officer with the consent of the parties.
3. The cyber appellate tribunal shall send a copy of effort order made by it to the parties to the appeal and to the concerned controller or adjudicating officer.

4. The appeal filed before the cyber appellate tribunal under sub section (1), shall be dealt with by it as expeditiously as possible and Endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

## **5.6 PROCEDURE AND POWERS OF THE CYBER APPELLATE TRIBUNAL (SECTION 58)**

1. The cyber appellate tribunal shall not be bound by the procedure laid down by the code of civil procedure 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this act and of any rules the cyber appellate tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.
2. The cyber appellate tribunal shall have for the purposes of discharging its functions under this act the same powers as are vested in a civil court under the code of civil procedure 1908 (5 of 1908) while trying a suit in respect of the following matters namely,
  1. Summoning and enforcing the attendance of any person and examining him on oath,
  2. Requiring the discovery and production of document or other electronic records.
  3. Receiving evidence on affidavits
  4. Reviewing its decisions
  5. Any other matter which may be prescribed
3. Every proceeding before the cyber appellate tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 and for the purposes of section 196 of the Indian penal code (45 of 1860) and the cyber appellate tribunal shall be deemed to be civil court for the purpose of section 195 and chapter XXVI of the code of criminal procedure 1973 (2 of 1974).

## **6. RIGHT TO INFORMATION ACT, 2005 (RTI ACT)**

Freedom of speech and expression guaranteed by the constitution of India like the right to equality life and liberty has been liberally construed by the Supreme Court of India from incepting. The right of freedom of speech and expression embraces within its scope the freedom of propagation and interchange of ideas dissemination of information which would aid in the citizens understanding of the working of his government and its various organs in a democracy.

The importance which the framers of our constitution attached to this freedom is evident from the fact that restrictions could be placed on that right could be placed by law only on the limited grounds specified in article 19(2). The belief that access to information is human rights proclaimed in December 1948 – everyone has the right to freedom of opinion and expression this right includes freedom to hold opinions without interference and to seek receive and impart information and ideas through any media regardless of frontiers.

### **6.1 SALIENT FEATURES OF RTI ACT**

1. The act confers on all citizens the right of access to the information and correspondingly makes the dissemination of such information an obligation on all on public authorities.
2. It provides for the appointment of a public information officer in each department to provide information to the public on request.
3. It fixes a 30-day deadline for providing information deadline is 48 hours if information concerns life or liberty of a person.
4. Information will be free for people below poverty line. For others fee will be reasonable.
5. The act imposes obligation on public agencies to disclose the information to reduce requests for information.
6. Government bodies have to publish details of staff payments and budgets.
7. Certain types of information are exempted from disclosure.
8. A public information officer may reject a request for information if it involves an infringement of copyright subsisting in a person other than the state.
9. Restrictions are made for third party information. The submission of third party is to be considered while taking a decision about discloser of information.
10. It provides for the establishment of a central information commission and state information commissions to implemental the provisions of the act. They will be high powered independent bodies to act as appellate authorities and vested with the powers of a civil court.

### **6.1 OBJECTIVES OF RTI ACT**

Objectives of RTI act are as follows,

1. **To set up the practical regime:** right to information act 2005 which facilitate the citizen to avail all kind of information with reasonable restricting mentioned as a general and specific exception under section 8, 9 and 24 of the same act.
2. **For citizens:** under this act, citizen of India is eligible to file the application for any information subject to this act.

3. **To promote transparency and accountability in the working of every public authority:** this act ensure to eradicate the any type of corruption in public authority by providing mandatory obligating to the public authority to make ensure to disseminate the information sought by the Indian citizen within a certain time period with nominal fee.
4. **Constitution of a central information commission and state information commissions:** to provide the proper remedy with objectivity state and central commissions has been established separately by this act. In such commissions second appeal and complaint can be filed by citizen without any feel the status of chief commissioners and other commissioners are same as the achieve and other election commissioners respectively.
5. **Matters connected to public authority o incidental thereto:** This is the first act in India which provides the controlling power to the citizen in which public authorities are compelled to disseminate the information which is either directly or indirectly connected to them. Even if sought information is not belongs to particular public authority, in such case that public authority is compelled to transfer to the relevant public authority instead of rejection.

## **6.2 PUBLIC INFORMATION OFFICERS (PIO)**

The act provides for constitution of executive wing to enforce the right to information conferred on citizens by the act. Every public authority is required to appoint public information officers for providing information to persons requesting information under the act. A PIO shall receive and dispose of applications seeking information in accordance with and within the timeframe prescribed in section 6 and 7 of the act.

## **6.3 FUNCTIONS OF PUBLIC INFORMATION OFFICERS**

1. The role of the information officer is growing in today modern society his/her function being to share information with various kinds of publics. In general terms information officers acquire, organize and distribute information in printed form and other media.
2. Dealing with the requests from persons seeking information and where the requests cannot be made in writing to render reasonable assistance to the person making the request orally to reduce the same in writing.

3. If the information requested for is held by or is a subject matter closely connected with the functions of another authority the PIO shall transfer within five days that request to the other public authority and inform the applicant immediately.
4. Any PIO may seek the assistance of any other officer for the proper discharge of his/her duties.
5. Any PIO on receipt of the request shall as expeditiously as possible and in any case within 30 days of the receipt of the request either provide the information on payment of such fee as may be prescribed along with the application or reject of such fee as may be prescribed along with the application or reject the request for any of the reasons specified in sections 8 or 9.
6. Where the information requested concerns the life or liberty of a person the same shall be provided within 48 hours of the receipt of the request.
7. If the PIO fails to give decisions on the request within the period specified he shall be deemed to have refused the request.
8. Where a request has been rejected the PIO shall communicate to the applicant the reasons for such rejection the period within which the appeal against such rejection may be preferred and the particulars of the appellate authority.
9. PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.
10. In allowing partial access the PIO shall give a notice to the applicant informing,

## **7. GST ACT, 2017 (GOODS AND SERVICE TAX )**

Introduction of the value added tax (VAT) at the central and the state level has been considered to be a major step – an important breakthrough in the sphere of indirect tax reforms in India. If the VAT is a major improvement over the pre-existing central excise duty at the national level and the sales tax system at the state level then the goods and services tax will indeed be a further significant improvement the next logical step towards a comprehensive indirect tax reforms in the country.

Goods and services tax is a part of the proposal tax reforms that center round evolving an efficient and harmonized consumption tax system in the country. Presently there are parallel systems of indirect taxation at the central and state levels. Each of the systems needs to be reformed to eventually harmonies them.

In the union budget for the year 2006-07 finance minister proposed that India should move towards national level and services tax that should be shared between the centre and the states. He proposed to set April 1, 2010 as the date for introducing GST. World over goods and services attract the same rate of tax i.e., the foundation of a GST. The first step towards introducing GST is to progressively converge the service tax rate and the CENVAT rate.

### **7.1 OBJECTIVES OF GST**

1. Ensuring that the cascading effect of tax on tax will be eliminated.
2. Improving the competitiveness of the original goods and services thereby improving the GDP rate too.
3. Ensuring the availability of input credit across the value chain.
4. Reducing the complications in tax administration and compliance.
5. Making a unified law involving all the tax bases laws, and administration procedures across the country.
6. Decreasing the unhealthy competition among the states due to taxes and revenues.
7. Reducing the tax slab rates to avoid further clarification issues.

### **7.2 STRUCTURE AND TYPE OF TAXES UNDER GST**

India has implemented dual GST. In dual GST regime all the transactions of supply of goods and services made for a consideration would attract two levies i.e., CGST (central GST) and SGST (state GST).

1. **CENTRAL GOODS AND SERVICE TAX**: The central GST is expected to replace the existing central excise duty and service tax. CGST would also cover sale transactions. The constitutional amendment act, 2016 contains suitable provisions to enable centre government. The CENVAT credit balance available under CENVAT credit rules with the manufacture or service provider as on the date of transition into GST, could be carried forward. In respect of tax paid goods in stock as on the date of transition credit of tax paid goods in stock as on the date transaction credit not availed in the past or not eligible at that point of time available under GST could also be availed and used towards discharging CGST liability. The declaration of closing stock as on the date of transition to claim credits which were not earlier captured would also be time bound.
2. **STATE GOODS AND SERVICE TAX (SGST)**: State GST would replace state VAT entry tax, octroi luxury tax etc. SGST would be levied on services as well. To enable taxing of services by the state the constitutional amendment act, 2016 contains

suitable provisions. Further the duty and tax paid on closing stock would also be available as credit which may not have been claimed as set off in the VAT regime.

3. **INTER STATE GOODS AND SERVICE TAX (IGST):**IGST would be levied on all supplies of goods and/or services in the course of interstate trade or commerce. IGST would be applicable to import of goods or services from outside country as well which is indicated in the constitutional amendment act, 2016.

The balance of credit under VAT as well as cenvat credit can be carried forward from the earlier regime. Further the duty and tax paid on closing stock would be available as credit where duty paying documents available for higher to exempted products/services which may not have been claimed as set-off. Lower deemed credit is available for those who do not have duty paying documents.

### **7.3 CENTRAL GOODS AND SERVICE TAX ACT, 2017, (CGST ACT, 2017)**

CGST central goods and service tax. CGST is a part of goods and service tax. It is covered under central goods and service tax act, 2017. Taxes collected under central goods and service tax will be the revenue for central government. Present central taxes like central excise duty additional excise duty special excise duty central sales tax service tax etc will be subsumed under central goods and services tax.

CGST act may be called the central goods and services tax act, 2017. It extends to the whole of India except the state of Jammu and Kashmir. It shall come into force on such date as the central government may by notification in the official gazette appoint provided that different dates may be appointed for different provisions of this act shall be constructed as a reference to the coming into force of that provisions.

### **7.4 POWER TO GRANT EXEMPTION FROM TAX**

1. Where the government is satisfied is satisfied that it is necessary in the public interest to so do it may bon the recommendations of the council by notification exempt generally either absolutely or subject to such conditions as may be specified from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
2. Where the government is satisfied that it necessary in the public interest so to do it may on the recommendations of the council by special order in each case, under circumstances of an exceptional nature to be stated in such order exempt from payment of tax any goods r services or both on which tax is leviable.

3. The government may if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub section or order issued under sub section insert an explanation in such notification or order as the case may be by notification at any time within one year of issue of the notification under sub section or order under sub section, and every such explanation shall have effect as if it had always been the part of the first such notification or order as the case may be.

#### EXPLANATION

For the purposes of this section where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely the registered person supplying such goods or services or both shall not collect the tax in excess of the effective rate on such apply of goods or services or both.

### **7.5 INTEGRATED GOODS AND SERVICES TAX ACT, 2017 (IGST ACT, 2017)**

IGST means integrated goods and services tax. IGST falls under integrated goods and services tax act, 2017. Revenue collected from IGST will be divided between central government and state government as per the rates specified by the government. IGST will be charged on transfer of goods and services from one state to another state. Import of goods and services will also be deemed to be covered under interstate transactions so IGST will be levied on such transactions. For example if goods or services are transferred from Rajasthan to Maharashtra then the transaction will attract IGST.

IGST act may be called as the integrated goods and services tax act, 2017. It shall extend to the whole of India except the state of Jammu and Kashmir. It shall come into force on such date as the central government may by notification in the official gazette appoint

Provided that different dates may be appointed for different provisions of this act and any reference in any such provision to the commencement of this act shall be construed as a reference to the coming into force of that provision.

### **7.6 UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017 (UTGST ACT, 2017)**

The union territory goods and services tax (UTGST) act, 2017 has been notified by the government of India relating to provisions for levy and collection of tax on intra state supply of goods and services by the union territories under the GST regime and the related matters.

### Preliminary: Short title extent and commencement

1. This act may be called the union territory goods and services tax act 2017
2. It extends to the union territories of the Andaman and Nicobar Island Lakshadweep Dadra and Nagar Haveli Daman and Diu Chandigarh and other territory.
3. It shall come into force on such date as the central government may by notification in the official gazette appoint.

Provided that different dates may be appointed for different provisions of this act and any reference in any such provisions to the commencement of this act shall be construed as a reference to the coming into force of that provision.

### **7.7 DEFINITION**

1. **COMMISSIONER** means the commissioner of union territory tax appointed under section 3.
2. **DESIGNATED AUTHORITY** means such authority as may be notified by the commissioner.
3. **EXEMPT SUPPLY** means supply of any goods or services or both which attracts NIL rate of tax or which may be exempt from tax under section 8, or under section 6 of the integrated goods and services tax act, and includes non taxable supply.
4. **EXISTING LAW** means any law notification order rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this act by parliament or nay authority or person having the power to make such law notification order rule or regulation.
5. **GOVERNMENT** means the administrator or any authority or officer authorized to act as administrator by the central government.
6. **OUTPUT TAX** in relation to taxable person means the union territory tax chargeable under this act on taxable of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.
7. **UNION TERRITORY** means the territory of
  - a. The Andaman and Nicobar Islands
  - b. Lakshadweep
  - c. Dadra and Nagar Haveli
  - d. Daman and Diu
  - e. Chandigarh or
  - f. Other territory

EXPLANATION for the purposes of this act each of the territories specified in sub clauses (i) to (vi) shall be considered to be a separate union territory.

8. UNION TERRITORY TAX means the tax levied under this act.

### **7.8 POWER TO GRANT EXEMPTION FROM TAX**

1. where the central government is satisfied that it is necessary in the public interest so to do it may on the recommendations of the council by notification exempt generally either absolutely or subject to such conditions as may be generally therein goods or services or both of any specified description from the whole or any part of the tax leviable thereon effect from such date as may be specified in such notification.

2. where the central government is satisfied that it is necessary in the public interest so to do it may on the recommendations of the council by special order in each case under circumstances of an exceptional nature to be stated in such order exempt from payment of tax or any goods or services or both on which tax is leviable.

3. The central government may if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub section (1) or order issued under sub section (2) insert an explanation in such notification or order as the case may be by notification at any time within one year of issue of the notification under sub section (1) or order under sub section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order as the case may be

4. any notification issued by the central government under sub section (1) of section 11 or order issued under sub section (2) of the said section of the central goods and services tax act shall be deemed to be a notification or as the case may be an order issued under this act.

### **7.9 EXPLANATION**

For the purposes of this section where an exemption in respect of any goods or services or both from the whole or part or the tax livable thereon has been granted absolutely the registered person supplying such goods or services or both shall not collect the tax in excess of the effective rate on such supply of goods or services or both.

### **UNIT-5- Important question**

1. Write about Scope and Application of IT Act, 2000 in Indian context.
2. Short note on
  - a. Digital signature.
  - b. e-governance,
  - c. penalties and adjudication,
3. What is Right to Information Act, 2005. Merits and demerits in the present scenario?
4. Explain the GST tax structure?
5. Discuss the merits and demerits of GST implementation in India from your concern?