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CS EXECUTIVE

MODULE-1

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

BY:-CS NITESH KR. JAISWAL

(Company Secretary (FCS), M.Com, LL.B.)

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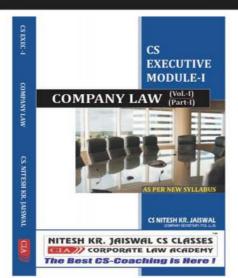
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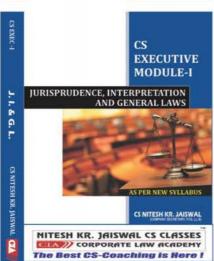
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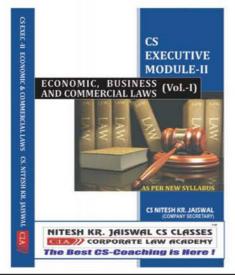
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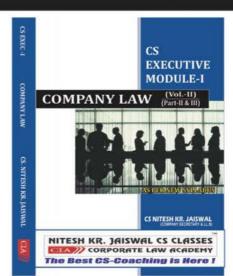
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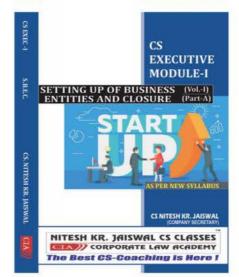
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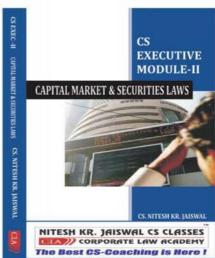












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Preface

We have great pleasure in placing the book on Setting up of Business Entities and Closure in the hands of students. This book gives a complete and overall prospect about Setting up of Business Entities and Closure from examination point of view and meets the requirements of all levels of students preparing for Company Secretaryship examination. The focus continues on equipping the students with theories, concepts and techniques that can be applied to various spheres of Company Secretary professional.

The important features of this book are as follows:

- It is user friendly and provides information in well structured manner.
- It incorporates latest changes relating to the subject, Setting up of Business Entities and Closure.
- It elaborates the concept through practical problems.
- * Tables and diagrams are used for explaining the key concepts.
- Lucid and comprehensive presentation of the complex and advanced subjects matter will help the students in easy understanding.
- ❖ The book is comprehensive and even a student who has not studied the subject earlier can easily understand the concept and system of Setting up of Business Entities and Closure.

There is no denying the fact that improvement is an unending process.

We look forward to the comments, suggestions and criticisms from the readers for improvement of this book and will be gratefully acknowledged.

However, it becomes necessary for every student to constantly update with legislative changes made as well as judicial pronouncements rendered from time to time by referring to the ICSI's monthly journal 'Chartered Secretary' and e-bulletin 'Student Company Secretary' as well as other law/professional journals and reference books.

Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws made upto six months preceding the date of examination.

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NITESH KR. JAISWAL CS CLASSES

D-125A, 2nd FLOOR, NEAR SUBWAY/METRO STN.

LAXMI NAGAR. NEW DELHI-92

Phone no: +91-9013878840, +91-8010796433

E-mail: <u>corporatelawacademy@gmail.com</u> WEBSITE:-www.niteshjaiswalclasses.com

CS. NITESH KR. JAISWAL

(Company Secretary (FCS), M.Com, LL.B.)



EXECUTIVE PROGRAMME Module 1 Paper 3 Setting up of Business Entities and Closure

SYLLABUS

Objectives

To provide working knowledge and understanding of setting up of Business entities and their closure.

Part – B: Setting up of Business (35 Marks)

- 13. Various Initial Registrations and Licenses
- 14. Maintenance of Registers and Records
- 15. Identifying laws applicable to various Industries and their initial compliances
- 16. Intellectual Property laws (Provisions applicable for setting up of business)
- Compliances under Labour Laws (Provisions applicable for setting up of business)
- 18. Compliances relating to Environmental laws (Provisions applicable for setting up of business)

SETTING UP OF BUSINESS ENTITIES AND CLOSURE(VOL-2)

{Strictly as per new syllabus (2017) prescribed by The Institute of Company Secretaries of India (ICSI)}
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This book should be read along with "SBEC Vol-1" containing additional 21 Chapter of SBEC Part - A & C

This book is updated With all amendments Till 30th June 2019

(Afterwards amendments will be included / discussed in live lectures at classroom)

ICSI Question Paper June 2019

NEW SYLLABUS	423

Roll No.

Time allowed: 3 hours Maximum marks: 100

Total number of questions: 6 Total number of printed pages: 8

NOTE: Answer ALL Questions.

PART-A

1. (a) ABC Private Ltd., a 'start-up' company, received an amount of ₹ 25 lakh in a single tranche from an investor by way of a Note, convertible into equity shares (convertible after 3 years but within 5 years from the date of issue). CFO of the Company was of the view that the said amount is not a deposit. In the light of the statutory provisions, explain whether the view of the CFO is correct?

(5 marks)

- (b) Actavis Ireland Ltd. a pharma firm incorporated in Ireland :
 - (i) has a share transfer office in Kanpur
 - (ii) Directors of the company frequently stayed in a hotel in Noida and Mumbai for looking after matters of business, the company does not have any physical office or property in India

As a practising Company Secretary, advise under the provisions of the Companies Act, 2013, whether the company will be treated as having place of business in India?

(5 marks)

1/2019/SBEC/NS P.T.O.

(c) The majority of the shareholders of Kasi Textiles Private Ltd., passed a special resolution to alter its Articles of Association and gave the directors a power to require any shareholder who is doing competing business with that of the company's business to transfer his shares. Swaroop, who is carrying on a competing business, challenged the validity of the alteration. Decide whether Swaroop will succeed in the light of the provisions of the Companies Act, 2013 and decided case law.

(5 marks)

(d) The paid up share capital of PKA India Pvt. Ltd. is ₹ 20 crore, consisting of 150 lakh fully paid up Equity Shares of ₹ 10 each, and 50 lakh fully paid up Cumulative Preference Shares of ₹ 10 each. PKA India Capital Pvt. Ltd. and PKA India Tele Services Pvt. Ltd. are holding 55 lakh and 25 lakh Equity Shares respectively in PKA India Pvt. Ltd.

PKA India Capital Pvt. Ltd. and PKA India Tele Services Pvt. Ltd. are subsidiaries of Lord Krishna Pvt. Ltd. Referring to the provisions of the Companies Act, 2013 examine whether PKA India Pvt. Ltd. is a subsidiary of Lord Krishna Pvt. Ltd.? Would your answer be different if Lord Krishna Pvt. Ltd. has five out of total seven directors on the Board of Directors of PKA India Pvt. Ltd.?

(5 marks)

Attempt all parts of either Q. No. 2 or Q. No. 2A

- 2. (a) Ragavi and her six more relatives & friends want to incorporate a Nidhi Company. They seek your advice on the following issues with respect to the formation of company:
 - (i) Whether Nidhi Company can be formed as a private company? Is there any specific law for the Nidhi Companies?

1/2019/SBEC/NS Contd.

- (ii) Whether the approval of Reserve Bank of India (RBI) is required?
- (iii) Whether Nidhi is allowed to raise funds through issue of equity shares and preference shares ?
- (iv) Whether Nidhi is allowed to carry on business other than the business of borrowing or lending in its own name?

As a practising Company Secretary, advise with reference to the provisions of the Companies Act, 2013.

(4 marks)

(b) Divyesh Digital Networks LLP wants to expand its business through investment in an overseas Joint Ventures (JV) or/and Wholly Owned Subsidiaries (WOS). The partners of the firm seek your advice about the various sources/modes of funding through which overseas investment can be made. Advise them in light of the provisions of Foreign Exchange Management Act, 1999.

(4 marks)

- (c) Moorthy wants to form a society to promote the 'Beti Bachao, Beti Padao Movement' of Government of India. He seeks your advice on the following:
 - (i) The purposes for which a society can be formed under the Societies Registration Act, 1860;
 - (ii) Whether the foreigners and other registered societies can be members of a society?

(4 marks)

(d) 'Every equity based joint venture gives birth to a new entity'. Discuss in brief the different types of entities which are permitted by Government of India to form a joint venture entity.

(4 marks)

1/2019/SBEC/NS P.T.O.

(e) Paramvir & Associates, a firm of Practising Professionals consists of three partners Ashok, Paramvir and Vir having one third share each in the firm. According to Ashok and Paramvir, the activities of Vir are not in the interest of the firm and thus want to expel Vir from the firm. Advise Ashok and Paramvir whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932.

(4 marks)

OR (Alternate question to O. No. 2)

2A. Comment on the following:

- A Company under Section 8 can be registered as a Small Company under the provisions of the Companies Act, 2013.
- (ii) Choice of business locations outside India involves consideration of many factors.
- (iii) The promoters can avail numerous benefits by incorporating a Special Purpose Vehicle.
- (iv) Requirement of Capital affects the choice of suitable form of a business organization.
- (v) The Financial Statements of Limited Liability partnership are nor mandatorily required to be audited by a Chartered Accountant.

(4 marks each)

PART-B

3. (a) Rajkumar is running a business of handicraft in Jaipur. He has explored some opportunities for handicraft products abroad and he wants to encash the huge demand outside India for such products. He seeks your advice whether he would be required to get himself registered with Directorate General of Foreign Trade (DGFT) for exporting goods, if yes what are all the documents required for such registration? And also enlighten him the features/benefits available from such Registration.

(5 marks)

1/2019/SBEC/NS Contd.

- (b) Govind, has newly started a ready to eat food products Manufacturing Company, he seeks your advice for the selection of a trade mark for his products. Brief him with example on the following Categories of Trade marks referring to the provisions of the Trade Marks Act, 1999:
 - (i) Generic marks
 - (ii) Descriptive marks
 - (iii) Arbitrary marks
 - (iv) Suggestive marks and
 - (v) Invented/Coined marks

Also suggest him which Category or Categories are Strong Marks and which are weak with respect to protection of Trade mark rights.

(5 marks)

(c) Satvik is running a dyeing factory seeks your guidance in knowing various responsibilities imposed upon his business and to be complied under the Water (Prevention and Control of Pollution) Act, 1974.

(5 marks)

- (d) Harischander wants to start a manufacturing business but he is not able to decide on the form of business (Type of Business Entity). He seeks your advice about the legal implications and requirements for the various business forms in India on the basis of the following parameters:
 - (i) Registration
 - (ii) Member's liability
 - (iii) No. of members required
 - (iv) Taxation
 - (v) Legal Status

(5 marks)

1/2019/SBEC/NS P.T.O.

Attempt all parts of either Q. No. 4 or Q. No. 4A

- 4. (a) Abishek has recently been appointed as Finance and Legal Compliance officer of a Charitable Organisation doing palliative care services to aged persons, seeks to receive foreign funds, has approached you to find out the eligibility criteria for obtaining registration. Brief him the provision of the Foreign Contribution (Regulation) Act, 2010 on eligibility criteria for registration.
 - (b) List out the grounds under which the Insurance Regulatory and Development Authority of India (IRDAI) is compulsorily required to cancel the Certificate of Registration granted for Insurer/Insurance business.
 - (c) Srivastva is the owner of a unit manufacturing Beedi in Jabalpur. 22 persons are employed in the unit. Of these 22 employees, one is a graduate for supervising the work and another apprentice learning work. The remaining 20 are employed not on the time wage system, but on the piece work system. Is the unit, a 'factory' within the meaning of the term under the Factories Act, 1948 ?
 - (d) In the light of the provision of Copyright Act, 1970, in the following cases who are the owners of the copyrights:
 - (i) Musical Sound Recordings
 - (ii) Works by Journalists
 - (e) Bermuda Sports Manufacturing Unit, a Micro and Small Enterprise, seek registration under Single Point Registration Scheme of NSIC. State the various benefits/facilities available to the registered units.

(3 marks each)

1/2019/SBEC/NS Contd.

OR (Alternate question to Q. No. 4)

- 4A. Write short notes on :
 - (i) Public Liability Insurance
 - (ii) Industrial Entrepreneurs Memorandum (IEM)
 - (iii) Enforcement of Trade mark rights
 - (iv) Labour Welfare Fund for social assistance to workers
 - (v) Arbitral Award for industrial disputes

(3 marks each)

PART-C

5. (a) Glory Technology LLP is not carrying on any business for a period of two years desirous of striking off its name from the register of Limited Liability Partnership maintained by Registrar of Companies. Whether LLP is allowed to do so? Examine.

(3 marks)

- (b) Cute Garments Ltd., has recently obtained the status of dormant company. The Board of Directors seeks your advice about the required compliances in respect of the following:
 - (i) Minimum number of Directors
 - (ii) Requirement of Return filing
 - (iii) Meeting of Board of Directors

(3 marks)

1/2019/SBEC/NS P.T.O.

- (c) Comment on the following:
 - (i) The term 'Winding up' and 'Dissolution' can be used inter-changeably to denote cessation of existence of a legal entity.
 - (ii) Situations under which a company cannot apply for Strike off.
 - (iii) Time limit and extension of period in Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016.

(3 marks each)

- (a) Elaborate on 'Waterfall Arrangement' under the Insolvency and Bankruptcy Code,
 2016.
 - (b) RoC can Strike off the name of a company on Suo Moto basis only after following certain procedures — Comment.

(5 marks each)

____ o ____

ICSI Question Paper December 2018

NEW SYLLABUS	423	
	743	

Roll No.

Time allowed: 3 hours Maximum marks: 100

Total number of questions: 6 Total number of printed pages: 8

NOTE: Answer ALL Questions.

PART-A

- (a) Amar is a young entrepreneur willing to establish an incubator set up in the space
 of IT, software development, cloud computing or hardware/software maintenance. Advise
 Amar regarding the benefits available to entrepreneurs in establishing start-ups.
 - (b) Ehsan along with his nine (9) friends desires to incorporate a Company, not for profit, for the protection of environment, as permissible under the Companies Act, 2013. Advise on the procedural aspects for the incorporation and formation of such Company.
 - (c) 43% of the paid up share capital of V4C Ltd. is held by the Central Government and 8% is held by the Life Insurance Corporation of India and Unit Trust of India (Public Institutions). Analyze the definition of 'Government Company' under the provisions of the Companies Act, 2013 and decide whether V4C Ltd. is a Government Company.
 - (d) As a practicing Company Secretary, advise your client regarding the annual compliance requirements to be followed by LLP.

(5 marks each)

2/2018/SBEC/NS P.T.O.

Attempt all parts of either Q. No. 2 or Q. No. 2A

- (a) Partnership can be formed according to the nature of the agreement amongst partners.
 Explain.
 - (b) Payment Banks is a new model of banks conceptualized by Reserve Bank of India. Elucidate.
 - (c) 'Start up India' initiative has been started by Government of India for creating conducive environment for start-ups in India. Explain the pre-conditions for determining an entity as a start up venture.
 - (d) Explain the Doctrine of 'ALTER EGO' with suitable case law.
 - (e) Global Education Network, Pakistan based Education Company wants to set up equity based joint venture in India. As a professional in India, Company seeks your advice about various restrictions under Foreign Direct Investment (FDI) of Government of India that a foreign entity may face. Advice.

(4 marks each)

OR (Alternate question to Q. No. 2)

2A. (i) Ankur has passed out MBA from a premier institution. He wants to become an entrepreneur but he is confused in choosing the form of ownership. Advise Ankur on the aspects which he should consider before deciding the form of ownership.

(4 marks)

(ii) State any six powers which are prudent to be included in the object clause of the Memorandum of Association of a Company as general and ancillary objects.

(4 marks)

2/2018/SBEC/NS Contd.

(iii) Global Infra Ltd., an Indian entity, is in the process of drafting a joint venture agreement for forming joint venture (JV) with a foreign company based out of Singapore to expand its business outside India. Advise on the key issues which parties to the agreement should consider while drafting the JV agreement.

(4 marks)

(iv) Pratham Food Trading Pvt. Ltd. has a paid up capital of `50 lakh and turnover of `1.20 crore in the last financial year 2017-18. The company has filed its annual return for the relevant financial year signed by only one director of the company. With reference to the provisions of the Companies Act. 2013, analytically comment whether the act of the company is in order?

(4 marks)

- (v) Easy Finance Ltd. is willing to enter into banking business via "Payment Bank". The Board of directors of the company seeks your advice with respect to the required criteria to be fulfilled by the company with respect to the following:
 - (i) Application for license
 - (ii) Minimum capital requirement
 - (iii) Voting rights of shareholders
 - (iv) Services that can be undertaken by the bank.

(4 marks)

PART-B

3. (a) Rakesh is interested to form a Non-Banking Financial Company (NBFC) for carrying business of providing micro finance in the rural areas in the name of 'SABKO Loan Company Ltd.'. Advise him about the various categories of NBFCs and let him know as to which category of NBFC will suit him for applying the license.

(5 marks)

2/2018/SBEC/NS P.T.O.

(b) Pankaj, Director of M/s Mustered Oil Manufacturing Company, seeks your advice for the selection of a trademark which he proposes to be used for its products. Describe various natures of trade marks and which trade marks are considered as strong in nature.

(5 marks)

(c) A group of labourers from Bharat Railways Catering were having some conflict of interest with their management. They filed a case in front of labour commissioner to decide upon their issues and concerns. During the pendency of the matter, they suddenly went on a strike against the management stopping the entire work at the Company. This strike was not supported by any prior notice to the management. Is the strike in this manner valid? Discuss the matter of issuing a notice before the strike in terms of Industrial Disputes Act, 1947.

(5 marks)

- (d) Mamta Coir Foam Ltd. was having 25 workers during previous year 2017-18 and they are in the process of reviewing the compliances under the Factories Act, 1948. Advise the company in the following matters in complying the provisions of Factories Act, 1948:
 - (i) Weekly & daily hours
 - (ii) Interval for rest
 - (iii) Extra wages for overtime
 - (iv) Annual leave with wages
 - (v) Employment of young persons.

(5 marks)

2/2018/SBEC/NS Contd.

Attempt all parts of either Q. No. 4 or Q. No. 4A

- 4. (a) Any corporate body doing business in India requires a Permanent Account Number (PAN), whether it is registered in India or not. Elucidate.
 - (b) A private limited company in the process of dissolution stops maintaining statutory registers. Company argues that since they are in the process of dissolution, there is no need to maintain statutory registers. What is the validity of the argument? Explain the consequences of non-maintenance of such registers.
 - (c) Registration under Central Goods & Services Tax Act, 2017 is made compulsory in certain cases, irrespective of the aggregate turnover. Explain.
 - (d) Ramesh has purchased a shop in local market of New Delhi and wants to set up a business of electronic goods. Is he required to get his shop registered under the Shops and Establishment Act ? If so, advise him with the procedure.
 - (e) Discuss the classes of work for which copyright protection is available under Copyright Act, 1957 duly amended from time to time.

(3 marks each)

2/2018/SBEC/NS P.T.O.

OR (Alternate question to Q. No. 4)

4A. (i) Which industries come under the purview of compulsory licensing as per New Industrial Policy, 2015 ?

(3 marks)

(ii) Prof. Ritika Verma has authored a book named 'IFRS – A Practical & Simple Approach'. She wants to get copyright of the some under the Copyright Act, 1957. Advise Ritika on the rights that are protected to her after obtaining the copyright of her book.

(3 marks)

(iii) Bhaskar Bhat has recently opened a school for providing elementary education to kids. He has hired both male and female employees in teaching and non-teaching cadre. He approached you to seek advice whether school is required to comply with the provisions of Maternity Benefit (Amendment) Act, 2017. Also state who are eligible to avail for maternity benefit under the Act?

(3 marks)

(iv) ABC Ltd. is planning to enter into the business of Insurance for which Board of Directors of the Company seeks your advice about the norms in respect of paid up equity capital for carrying out the business of an insurer. Advise them accordingly with reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999. Also state the items that are excluded in determining the amount of paid up equity capital of an insurer under the said Acts.

(3 marks)

2/2018/SBEC/NS Contd.

(v) Managing Director of Goa Tourism Ltd. wants to constitute an Internal Complaint Committee (ICC) under the Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as well as under such Rules, 2013. Advise him in the light of the provisions of the Act on the constitution of ICC to be formed.

(3 marks)

PART-C

- 5. (a) Radha Manufacturing Ltd. want to file an application for removal of name of company from the Registrar of Companies (ROC). Enumerate the various grounds for which Company is permitted to file an application for removal of name from ROC under the provisions of the Companies Act, 2013.
 - (b) Anshul Gold Farm Ltd. has obtained the status of dormant company on 15th December, 2018. Enumerate the various exemptions which the company shall be entitled to under the Companies Act, 2013.
 - (c) List out various situations in which a Company is not permitted to apply for strike off the name of the Company from Registrar of Companies.
 - (d) Registrar of Companies may file an appeal before the National Company Law Tribunal for restoration of the name of the Company. Elucidate.
 - (e) Explain the term "Significant Accounting Transaction" while determining status of a company as a dormant company under the Companies Act, 2013.

(3 marks each)

2/2018/SBEC/NS P.T.O.

- 6. (a) RKG Infrastructure Ltd. were incurring continuous losses and its financial position went bad to worse. Now, Company is undergoing a corporate insolvency resolution process. Dinesh who is one of the senior employees of the company has not been paid his salary for over 3 months amounting to `4,50,000. He files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. Analyze and state whether Dinesh is entitled to make an application to initiate corporate insolvency resolution process.
 - (b) The Registrar has suo moto struck off the name of M/s A2Z Solutions, a LLP from the register as Registrar has a reasonable cause to believe that the LLP is not carrying on any business for last two years. Being aggrieved by the order of Registrar, the LLP wants to file an appeal before National Company Law Tribunal (NCLT) for restoration of the name of the LLP in the Registrar of Partnership maintained by the Registrar. Referring to the provisions of the Limited Liability Partnership Act, 2008, advise the company on the procedure to be followed for making an application to NCLT.

		(5	marks	each)
 0 —				

CHAPTER

(1)

VARIOUS INITIAL REGISTRATIONS AND LICENSES - 1

Covering-

- Registration under Taxation Laws
 - Permanent Account Number (PAN)
 - > Tax Dection and Collection Account Number (TAN)
 - ➤ Good and Services Tax (GST)
- Registration with Regulators
 - RBI (NBFC & Banking)
 - > IRDA (Insurance)
 - > TRAI (Telecome)
 - ➤ I&B (Information, Broadcasting, The Press and Films)

EXPECTED
MARKS COVERAGE
(1 to 5)

Space for	
CHART NO.	55
Live Lecture	
Space for Additional Writing Live Lectures	

VARIOUS INITIAL REGISTRATIONS AND LICENSES - 1

- REGISTRTION UNDER TAXATION LAWS -

1. PERMANENT ACCOUNT NUMBER (PAN)

- (1) A permanent account number (PAN) is a 10-character alphanumeric number consisting of letter and digits. PAN card requirements are in Income Tax Act, 1961.
- (2) This number is unique to each cardholder and helps identify the income tax payer.
- (3) It also serves as an identity proof from a large number of purposes.

LIST OF THE PERSONS THAT ARE REQUIRED TO HOLD A PAN CARD IN INDIA

- (a) Body Corporate
- (b) Companies
- (c) Firms other than LLP
- (d) One person Company
- (e) LLP Firm
- (f) Sole proprietorship
- (g) Trusts
- (h) Corporation
- (i) Limited Liability companies
- (j) Private firms
- (k) Other Institutional Investors
- (I) Hedge funds

SIGNIFICANCE OF PAN FOR SETTING UP OF BUSINESS

- (a) It was made mandatory by the Government of India under the income Tax Act, 1961.
- **(b)** In the absence of the PAN, the Government will charge withholding tax which can be at the rate of more of more than 30% of the total invoiced payment.
- (c) It serves as a reference number of its holder for the Income Tax Department to the financial transactions carried out by it.
- (d) Even if one is not required to pay income tax it is mandatory for him to hold a PAN if he is earning money.

APPLICATION AND REGISTRATION OF PAN

In the present times, the application for allotment of PAN can be made through internet. Further, requests for changes or correction in PAN data or request for reprint of PAN card (for an existing PAN) may also be made through internet.

Online application can the be made either through the portal of NSDL (https://tin.tin.nsdl.com/pan/index.html) or the online portal of NSDL (https://www.utiitsl.com/UTIITSL SITE/pan/index.html).

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Fees for PAN application (including Good and Services Tax) for dispatch outside India is 1020/- INR. However, PAN application fees for dispatch within India is 110/-INR.

Once the application and payment is accepted the applicant is required to send the supporting documents through courier/post to NSDL/UTITSL. Only after the receipt of the documents, PAN application would be processed by NSDL/UTITSL.

Indian citizens will have to submit their Application for new PAN in revised Form 49A only .Foreign citizens will have to submit their 'Application for allotment of new PAN in newly notified Form 49 AA only.

2. TAX DEDUCTION AND COLLECTION ACCOUNT NUMBER (TAN)

TAN or Tax Deduction and Collection Account Number is again a 10 digit alphanumeric number required to be obtained who are responsible for deducting or collecting tax. Under Section 203A of the Income Tax Act, 1961, it is mandatory to quote Tax Deduction and Collection Account Number (TAN) allotted by the Income Tax Department (ITD) on all TDS returns.

PROCEDURE TO APPLY

A deduct or may either make an online application through this website <u>or</u> submit physical TAN Application to any TIN-facilitation in Center (TIN-FC) of NSDL.

Applicants should go through the instruction and guidelines provided in the application form before filling the form.

WHERE TO GET THE PHYSICAL APPLICATION FORMS

Applicants may obtain the application forms from TIN-FC s, or can freely download the same from the website.

COMMUNICATION

These applications are digitized by NSDL and forwarded to ITD .ITD will the issue TAN which will be intimated to NSDL online. On the basis of this, NSDL will issue the TAN letter to the applicant.

FEE

The processing fee for both the application (new TAN and change request) is 65/- INR (including Good and Services Tax).

3. GOOD AND SERVICES TAX (GST)

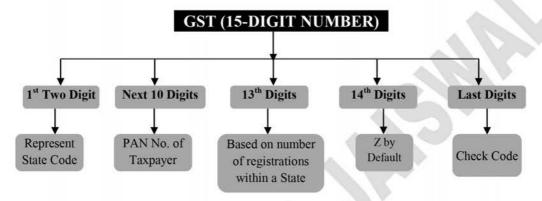
- (1) Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the Government and to avail Input Tax reedit for the taxes on his inward supplies.
- (2) Section 22 of Central Good & Services tax Act, 2017 mandates that every person who has an aggregate turnover of more than ₹20 Laces in the relevant year is liable to be registered under the Act.



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- (3) It must be noted thouth that for the state of Jammu & Kashmir and North-Eastern states, the threshold is ₹10 Lacs.
- (4) The registration under GST is Permanent Account Number (PAN) based and –specific. GST Identifification Number (GSTIN) is a 15-digit number and a certificate of registration, incorporating the GSTIN is made available to the applicant upon registration.

BIFURCATION OF 15 - DIGIT GST IDENTIFICATION NUMBER (GSTIN)



COMPULSORY REGISTION

In the following cases, registration is made compulsory, irrespective of the aggregate turnover:

- (a) For a supplier who makes inter-state supplies
- **(b)** Casual taxable person
- (c) Non-resident taxable person
- (d) E-commerce operators
- (e) Persons discharging liabilities under reverse charge mechanism

PERSONS NOT LIABLE TO REGISTER

- (a) Engaged exclusively in the supply of good /services/both which are not liable to tax
- (b) Engaged exclusively in the supply of good/services/ both which are wholly exempt from tax
- (c) Agriculturalist to the extent of supply of produce from land cultivation
- (d) Specified categories as may be notified by the Government

PROCEDURE FOR REGISTRATION

Every person who is liable to register themselves under the CGST Act,2017 must do so within **thirty days** from the date when he becomes first liable or five days prior to commencement of business in case of casual/non –resident taxable person.

If the proper officer does't take any action within three days of submission of application along with necessary details and documents, or within seven days of receiving the clarifications so solicited, the application for grant of registration is deemed to be approved.

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CANCELLATION OF REGISTRATION

The proper officer may ,either himself or on application filed by a person, or legal heirs in case of a death of a registered person ,cancel /revoke the registration of such person. This cancellation would in no way interfere with the liabilities of the said person.

- REGISTRTION WITH REGULATORS -

1. RBI (NBFC & BANKING)

A. REQUIREMENT FOR OBTAINING NBFC LICENSE

Principal business of financial activity is when a company's financial assets constitute more than 50 per cent of the total assets and income from financial assets constitute more than 50 percent of the gross income .A company which fulfills both these criteria must have NBFC license. This test for NBFC license is popularly known as the **50-50 test**.

- (1) A Company Registered in India Private Limited Company or Limited Company or Limited company.
- (2) The company must have minimum Net Owned Fund of Rs.2CRORE.

CALCULATING NET OWNED FUNDS AS PER RBI DEFINITION

ADD:

- (1) paid up equity capital,
- (2) free reserves,
- (3) balance in share premium account and
- (4) Capital reserves representing surplus arising out of sale proceeds of assets but not reserves created by revaluation of assets.

LESS:

- (1) accumulated loss
- (2) Book value of intangible assets

Further, investment in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of ten percent of the owned fund mentioned above will be deducted to arrive at the Net Owned Fund.

APPLYING FOR NBFC LICENSE

The application for NBFC license must be submitted online and offline with the necessary documents to the regional office of the Reserve Bank of India . The following are the documents are the documents that need to be submitted for NBFC License:

- (a) Information about the management
- (b) Certified copies of Certificate of Incorporation
- (c) Certified copies of up-to-date memorandum and articles of association of the company.
- (d) Copy of PAN/ CIN allotted to the company.
- (e) Directors' profile separately filled up and signed by each director.
- (f) Certificate from the respective NBFC/s where the Directors have gained NBFC experience.
- (g) CIBIL Data pertaining to Directors of the company.
- (h) Board Resolution specifically approving the submission of the application and its contents and authorizing signatory.

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- (i) Board Resolution effect that the company has not accepted any public deposit, in the past (specify period)\does not hold any public deposit as on the date and will not accept the same in future without the prior approval of Reserve Bank of India in writing.
- (j) Board resolution starting that the company is not carrying on any NBFC activity / stopped NBFC activity and will not carry on /commence the same before getting registration from RBI.
- (k) Certified copy of Board resolution for formulation of "Fair Practices Code".
- (I) Statutory Auditors certified certificate certifying that the company is /does not accept /is not holding Public Deposit.
- (m) Statutory Auditors Certificate certifying that the company is not carrying on any NBFC activity.
- (n) Statutory Auditors Certificate certifying net owned fund as on date of the application.
- (o) Details of Authorized Share Capital and latest shareholding pattern of the company.
- (p) Last three years audited balance sheet and profit and loss account along with directors and auditors report.
- (q) Self attested Bank Statement /IT returns.etc

B. REQUIREMENT FOR OBTAINING BANKING LICENSE

No company shall carry on banking business in India unless it holds a license issued in that behalf by the Reserve Bank any such license may be issued subject to such conditions as the Reserve Bank may think fit to impose.

Before granting any license under this section the Reserve Bank may require to be satisfied that the following conditions are fulfilled, namely

- (a) That the company is nor will be in a position to pay its present or future depositors in full as their claims accrue;
- **(b)** That the affairs of the company are not being ,or are not likely to be ,conducted in a manner detrimental to the interests of its present or future depositors.
- (c) That the general character of the proposed management of the company will not be prejudicial to the public interest of its present or future depositors.
- (d) That the company has adequate capital structure and earning prospects;.
- (e) That the public interest will be served by the grant of a license to the company to carry on banking business in India;
- (f) That having regard to the banking facilities available in the proposed principal area operation of the company, the potential scope for expansion of banks already in existence in the area and the other relevant factors the grant of the license would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;
- (g) Any other condition, the fulfillment of which would, in the opinion of the Reserve Bank ,be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interest of the depositors.

CANCELATION OF LICENSE

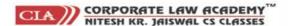
The Reserve Bank may cancel a license granted to a banking company

- (a) If the company ceases to carry on banking business in India; or
- (b) If the company at any time fails to comply with any of the conditions of registration.

APPEALS

Any banking company aggrieved by the decision of the Reserve Bank cancelling a license under this section, Within thirty days from the date on which such decision is communicated to it, appeal to the Central Government

The decision of the central Government where an appeal has been preferred to it, where no such appeal has been preferred shall be final.



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2. IRDA (INSURANCE)

Insurance sector is controlled by IRDA. IRDA issues various regulation, as deemed fit, to develop the insurance sector in the country.

FUNCTIONS AND DUTIES OF IRDA

Section 14 of the IRDA act,1999 lays down the duties, powers and functions of IRDA.

- (a) Registering and regulating insurance companies
- (b) Protecting policy holders interests
- (c) Licensing and establishing norms for insurance intermediaries
- (d) Promoting professional organizations in insurance.
- (e) Regulating and overseeing premium rates and terms of non -life insurance covers.
- (f) Specifying Financial reporting norms of insurance companies.
- (g) Regulating investment of policyholders funds by insurance companies.
- (h) Ensuring the maintenance of solvency margin by insurance companies.
- (i) Ensuring insurance coverage in rural areas and of vulnerable section of society.

VARIOUS LICENSES BY IRDA

- (1) Granting of license to companies to start insurance business.
- (2) Approval of insurance product.
- (3) Appointment of different insurance intermediary.
- (4) Investing the insurance premium.
- (5) Accounting & audit.
- (6) Miscellaneous important provision of Insurance act.

PROCEDURE OF GRANTING OF LICENSE TO COMPANIES TO START INSURANCE BUSINESS

To get the registration certificate the following procedure is to be followed:

Every application in the prescribed from (IRDA/R1) for registration shall be made with the following enclosures:

- 1. A certificate copy of memorandum and Articles of association, if he applicant is a company.
- 2. The name, address & the occupation of the directors of the company.
- 3. A statement of the class of insurance business proposed to be carried on.
- 4. A statement indicating the sources that will contribute the share capital.

On receiving the above documents IDRA will verify the contents and may ask for additional information if any.

If the authority is satisfied with the documents provided with the application inform (IRDA/R1), the authority may ask for an additional application in the prescribed form (IRDA/R2), which should be accompanied with then following documents.

- 1. Every Insurance shall deposit in cash or in cash or in approved securities or partially in cash or partially in approval securities as per details given below:-
 - (a) In case of Life Insurance business, a sum equivalent to 1% of his total gross premium written in India in any Financial year commencing after the 31st day of march 2000 not exceeding rupees ten crores (₹10 crores).

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- (b) In the case of General Insurance business a sum equivalent to 3%of his total gross premium written in India in any financial year commencing after 31/3/200 not exceeding rupees ten crores (₹10 crores).
- (c) In case of reinsurance business, a sum of rupees twenty crores (₹20 crores).
- (d) If the business is to be done in marine Insurance only & relates exclusively to country craft or its cargo or both the amount to be deposited ₹1,00,000/- (₹1 lakhs)only.
- (e) A certificate from Reserve Bank of India showing the amount deposited.
- 2. A certificate copy of the published prospects and of the standard policy forms of the insurer.
- 3. In the case of the business the certificate from the actuary that such rates are workable &sound.
- 4. If there is any foreign partner, a certificate copy of Memorandum of understanding between Indian
- 5. Any other document as desired by the Authority after scrutiny the application.

If on the receipt of an application for registration and the authority is satisfied that the financial condition & the general character of management of the applicant are sound and the interest of the general will be served if the **certificate of registration** is granted to the applicant them the certificate registration is granted.

IRDAI (REGISTRATION OF INDIAN INSURANCE COMPANIES(SEVENTH AMENDMENT) REGULATIONS 2016

The Registration Amendment Regulation have introduced a number of key changes to the existing IRDA

- (1) An applicant whose IRDAI/R1 has been rejected by the IRDAI will now be appealed to the securities Appellate Tribunal.
- (2) Every insurer being an India Insurance company and who has already been granted certificate of registration for Carrying on insurance business in India must ensure compliance with norms pertaining to "<u>India owned and controlled</u>" as Specified in 2 (7A) of the Insurance Act 1938, within such period as may be specified by the IRDAI.

REFUSAL OF REGISTRATION

- (1) If the authority refuse the registration the reason of such decision will be intimated to the applicant.
- (2) The applicant whose application has been rejected can file an appeal before the central Government within 30 days from the date on which a copy of the decision is received.

SUSPENSION OF REGISTRATION

The registration of an India insurance company or insurer may be suspended for a class or classes of insurance business, in addition to any penalty that may be imposed or any action that may be taken, for such period a may be specified by the Authority, in the following cases.

- (a) conducts its business in a manner prejudicial to the interests of the policy –holders.
- (b) fail to furnish any information as required by the authority reality to its insurance business;
- (c) Does not submit periodical returns under the act or by the Authority;
- (d) Does not co-operate in any inquiry conducted by the authority;
- (e) Indulges in manipulating the insurance business;

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CANCELLATION OF CERTIFICATE OF REGISTRATION

- (a) If the insurer fails to comply with the provision relating to deposit; or
- (b) If the insurance fails, at any time, to comply with the provisions.
- (c) If the insurer is in liquidation or is adjudged an insolvent; or
- (d) If the business or a class of the business of the insurer has been transferred to any person or has been transferred to or Amalgamated with the business of any other insurer; or
- (e) Continues to be suspended for a period of six month, or
- (f) If the Central Government so direct.

3. TRAI (TELECOM)

In India, the telecom market and business there under are regulated by the telecom Regulatory Authority of India (TRAI) which is a statutory body set up for regulating the telecom and Broadcasting sectors.

One of the main objective of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.

TRAI SCOPE AND FUNCTION

- (1) TRAI can recommend conditions for entry of new telecom service providers as well and terms and conditions of license and ensure compliance of the terms and conditions of the license.
- (2) TRAI can lay down the standard of quality of services and ensure compliance, regarding terms and conditions on which Addressable system of TV shall be provided to customer and parameters for regulating maximum time for advertisement in pay as well as other TV channel.
- (3) TRAI's scope of work also includes issues relating to telecom and cable tariff policy
- (4) TRAI also facilities developments of forums for interaction amongst services providers and interaction of the Authority with consumer organization to further the consumer interest.

OSP REGISTRATION IN INDIA

- (1) As per the new telecom policy (NTP) 1999, service providers in India involved in providing services like tale-banking, tale –medicines, tale-education, tale –trading, e –commerce, call center, network operation centre and other IT Enabled services, using telecom resources are termed as "Other Services Providers" (OSP).
- (2) These Other Services Provides or OSP,s are required to obtain and OSP Registration from the Department of Telecommunication (DOT).here we are looking at the process and procedure for obtaining OSP Registration in India.

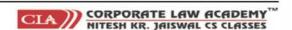
OSP REGISTRATION APPLICABILITY

Services providers in India involved in providing services like tale-banking, tale-medicines, tale education, tale trading, e-commerce, call center, network operation center and other IT Enabled Services, using telecom resources are required to obtain OSP Registration.

OSP REGISTRATION REQUIRMENNT

To obtain an OSP Registration in India, it is mandatory for the entity to be a private limited company.

The following are the documents necessary for OSP Registration in addition to the application bin the prescribed format:



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- (a) Certificate of incorporation of private limited company.
- **(b)** Memorandum of association (MOA) and articles of association (AOA)
- (c) Board of Resolution or power of attorney authorizing the authorized signatory.
- (d) Name of Business and activities proposed.
- (e) List of directors.
- (f) Present Shareholding.

The above documents must be certified with seal by a **company secretary** or director of the company or statutory auditor or public notary.

OSP REGISTRATION COMPLIANCE

Once an OSP registration is approved the license is valid for a period years.

4. I&B (INFORMATION, BROADCASTING, THE PRESS AND FILMS)

- (1) The ministry of Information and broadcasting (ministry of I&B) is a branch of the Government of India which is apex body f or For formulation and administration of the rules and regulations and laws relating to information, broadcasting, the press and films in India.
- (2) The Ministry in responsible for the administration of Prasar Bharati-the broadcasting arm of the India Government.
- (3) The Central Board of film certification is the other important functionary under this ministry being responsible for the regulation of motion pictures broadcast in India.

SCOPE/ MANDATE/FUNCTION OF I & B

- (a) News Services through all India Radio (AIR) and Doordarshan (DD) for the people.
- (b) Development of broadcasting and Television.
- (c) Import and export of films.
- (d) Development and promotion of film industry.
- (e) Organization of film festivals and cultural exchanges for the purpose.
- (f) Directorate of advertising and visual publicity DAVP
- (g) Handling of press relation to present the policies of Government of India and to get food-back on the government of policies.
- (h) International co-operation in the field of information &mass media.

REGULATORY REGIME OF I & B

- (1) The Criminal Law Amendment Act, 1961 –Penal Provisions for publishing wrong Map of India.
- (2) Penal provision for Publishing Wrong Map of India.
- (3) Press Council Act, 1978.
- (4) Registration of Newspaper (central)Rules 1956.
- (5) Press & Registration of books Act 1867.
- (6) The Parliamentary Proceedings (Protection of publication (Act, 1977).

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ADVANCE YOUR KNOWLEDGE





SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE







Q. 1. Answer to Question No. 1:-



Answers to be analysed in Classroom

Q. 2.	
Answer to Question No. 2:-	
262	

CHAPTER

(2)

VARIOUS INITIAL REGISTRATIONS AND LICENSES - 2

Covering-

- Registration under Industrial & Labour Laws
 - SSI/MSME
 - NSIC Registration
 - > MSME Registration
 - > Industrial Entrepreneurs Memorandum (IEM)
 - > IEC Code
 - ESI Registration
 - > Provident Fund Registration
 - > Environment/ Pollution Registration
- Registration Under Other Sectors
 - > Food Safety and Standards Authority of India (FSSAI)
 - Drug License
 - > Registration under shops & Establishments Act
 - FCRA Registration
- Self Test Questions
 - > From Past CS Exam
 - > From ICSI Module

EXPECTED
MARKS COVERAGE
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VARIOUS INITIAL REGISTRATIONS AND LICENSES - 2

- REGISTRTION UNDER INDUSTRIAL & LABOUR LAWS -

1. SSI/MSME

Small scale and ancillary units should seek registration with the Director of Industries of the concerned State Government.

All class of enterprises whether proprietorship ,Hindu undivided family , Association of persons, cooperative society, partnership firm, Company or Undertaking ,by whatever name called can apply for the registration and get qualified for the benefits provided under the Act.

BENEFITS OF SSI / MSME REGISTRATION

MICRO AND SMALL ENTERPRISES:

- 1. Easy finance availability from Banks, without collateral requirement
- 2. Protection against delay in payment from buyers and right of interest on delayed payment
- 3. Preference in procuring Government tenders,
- 4. Stamp duty benefits,
- 5. Concession in electricity bills
- 6. Reservation policies to manufacturing/ production sector enterprises
- 7. Time-bound resolution of disputes with Buyers through conciliation and arbitration

MEDIUM ENTERPRISES:

- 1. Easy finance availability from Bank, without Collateral requirement
- 2. Preference in procuring Government tenders
- 3. Reservation policies to manufacturing tenders
- 4. Time –bound resolution of disputes Buyers through conciliation and arbitration

REGISTION PROCESS

- Micro & Small Enterprises shall have to either online at the website of NSIC(National Small Industries Corporation Limited- www.nsicsproline. Or on the prescribed application form (in duplicate)alongwith requisite fee and documents to the Zonal /Branch/sub Branch and sub Office /Extension office of NSIC situated nearest to their location.
- 2. Duplicate copy of the Registration Form Submitted by the Micro & small Enterprise will be forwarded to the concerned Inspecting agency along with copies of required documents and requisite Proofs/Draft/Pay Order of inspection charges in favor of concerned Inspection Agency requesting for carrying out the Technical Inspection of Micro & Small Enterprise and Forward their recommendations in this regard.
- After receiving Inspection Report, NSIC will issue the G.P Registration Certificate to Micro &Small Enterprise for items/stores as recommended.

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VALIDITY PERIOD OF G.P REGISTRATION

The Registration Certificate granted to the Micro &small Enterprise under Single Point Registration Scheme (Revised), 2003 is valid for Two years and will be reviewed and renewed after every two years by verifying.

DOCUMENTS TO BE SUBMITTED BY THE MICRO & SMALL ENTERPRISES AT THE TIME OF FRESH REGISTRATION

- (1) A copy of Acknowledgement of Entrepreneurs Memorandum part -11
- (2) Details of plant & Machinery and Material clearly showing date of purchase & original purchase value (NOT DEPRECIATED)
- (3) Performance Statement as per format/perform G of the application form.
- (4) Self-attested copy of ownership documents of the premises or copy of lease deed.
- (5) Declaration / certificate from the proprietor/partner/Director whether or not they have any link with large scale unit (s).
- (6) List of raw materials and finished good in stock.
- (7) List of places where after-sales service facilities (if applicable) are available.
- (8) List of technical personnel employed in production and services.
- (9) List of technical personnel employed in production and services.
- (10) Latest Electricity Bill Copy
- (11) Account for the last 3 years duly signed by the authorized person under his seal.
- (12) Bankers Report giving details of financial status of the applicant firm as per Performa F of application form.
- (13) Copy of permanent No. (PAN)

DOCUMENTARY PROOF OF THE STATUS OF THE FIRM

Additional documents to be submitted in case of partnership Concern

- (i) General power of Attorney in favor of the Partners.
- (ii) Partnership Deed.
- (iii) Form A from Registrar of Firms showing the names of the partners.

Additional documents to be submitted in case of Pvt./Limited Companies

- (i) Certificate of Incorporation duly authenticated.
- (ii) Memorandum and Articles of Association duly Authenticated
- (iii) Names of sitting Directors, their addresses and their shareholdings.
- (iv) Board Resolution in favour of the Signatory of the application and documents.

Additional documents to be submitted in case of Cooperative Societies

- (i) Certificate of Registration of Societies.
- (ii) Society's Bye-Laws /Regulations etc.
- (iii) Names of Members, their addresses and shareholding.
- (iv) Current Certificate from Registrar of societies that the Society is still functioning and its working is satisfactory.
- (v) Details of authorized share capital and subscribed share Capital.
- (vi) Details of movable as well as immovable property owned by the Society.



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2. NSIC REGISTRATION

The Government is the single largest buyer of a variety of good. With a view to increase the share of purchases from the small-scale sector, the Government Stores Purchase programmers was launched in 1955-56. NSIC registers Micro & small Enterprises (MSEs)under Single Point Registration scheme (SPRS) for participation in Government Purchases

- NSIC Registration is required to be renewed on every two years
- The National Small Industries Corporation enlists scale units as competent to undertake supply of various items to the Government.

BENEFITS OF NSIC REGISTRATION

- (1) Issue of the Tender Sets free of cost:
- (2) Exemption from payment of Earnest Money Deposit (EMD),
- (3) Every Central ministries/Departments/PSUs shall set an annual goal of minimum 20 per cent of the total annual purchases of the products or services produced or rendered by MSEs,
- (4) In addition to the above ,358 items are also reserved for exclusive purchase from SSI Sector.

APPLICATION

Micro & Small Enterprises shall have to apply either online our website www.nsicspronline. Com or on the prescribed application form in Duplicate and to be submitted to the concerned Zonal/Branch Office of NSIC located nearest to the unit.

3. MSME REGISTRATION

ELIGIBILITY TO APPLY FOR UDYOG AADHAR/ MSME REGISTRATION

MSME registration or Udhyog Aadhaar can be obtained by any type of business entity. Proprietorship, Hindu Undivided Family, Partnership Firm, One Person Company, Limited Liability Partnership, Private Limited Company, Limited Company, Producer Company, any association of persons, co-operative societies or any other undertaking can obtain MSME registration in India.

Small businesses having MSME registration Enjoy various benefits under the Micro, Small and Medium Enterprises Development Act, 2006.

CRITERIA FOR APPLYING FOR UDYOG AADHAR/MSM REGISTRATION

In case of entities engaged in manufacturing or production of goods:

- (1) Micro enterprise: Any entity wherein the investment in plant machinery does not exceed rupees twenty five lakhs.
- (2) Small enterprise: Any entity wherein the investment plant and machinery does not exceed rupees five crores but also more than rupees twenty five lakhs.
- (3) Medium enterprise: Any entity wherein the investment in plant and machinery does not exceed rupees ten crores bur also more than rupees five crores.



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In case of entities engaged in providing or rendering of services:

- (1) Micro enterprise: Any entity wherein the investment in equipment does not exceed rupees ten lakhs.
- (2) Small enterprise: Any entity wherein the investment in equipment does not exceed rupees two crores but also more than rupees ten lakhs.
- (3) Medium enterprise: Any entity wherein the investment in equipment does not exceed rupees five crores but also more than rupees two crores.

STAGE TO APPLY FOR MSME REGISTRATION

Obtaining MSME registration or Udyog Aadhaar is **not mandatory** and is the is at the discretion of the Entrepreneur..

UDYOG AADHAR MEMORANDUM

This is a registration available for entrepreneurs who want to start and operate a Small business-micro, small and medium enterprises. The eligibility criteria for obtaining Udyog Aadhaar registration is based on the investment in plant & machinery made by a manufacturing concern or investment in equipment made by a service provider.

INDUSTRIAL LICENSE

The Industrial (Development and Regulations) Act 1951, popularly called as the IDRA, entitles the manufacturing sectors to observe certain formalities. Post-1991, liberalization of the economy led to opening up of various sectors progressively. The government issued a series of notifications from to time, progressively abolishing the applicability of the licensing regime.

COMPULSORY LICENSING

Industrial Licensing was also abolished for all except short listed six industries. As in 2015 ,only five industries were under compulsory licensing mainly on account of environmental ,safety and strategic considerations. They are:

- (1) Distillation and brewing of alcoholic drinks
- (2) Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
- (3) Electronic Aerospace and defense equipment :all types.
- (4) Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches.
- (5) Specified Hazardous chemicals

RECENT AMENDMENT TO INDUTRIAL LICENSING RULE

Large industries are now permitted to manufacture teams that were exclusively reserved for Micro, Small, and Medium Enterprises (MSME) such as – bread, wood, firework, pickles and chutneys, mustard oil, steel chairs and tables, padlocks, stainless steel and aluminum utensils, without obtaining an industrial license.

4. INDUSTRIAL ENTREPRENEURS MEMORANDUM (IEM)

MEANING OF IEM

Industrial Entrepreneurs Memorandum (IEM) is an application for acknowledgment of unit.



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ELIGIBILIY FOR GETTING IEM

The large scale industry having investment of more than Rs. 10 crore in manufacturing sector and more than Rs 5 crore in service sector are primarily outside the purview of the licensing provisions and for the items (s) not exclusively reserved for Memorandum means IEM.

CASES REQUIRING IEM/ LOI

The promoter can file IEM in following categories:

- (i) To set up a new industrial undertaking categories:
- (ii) To effect substantial expansion undertaking,
- (iii) To manufacture a new article
- (iv) To carry on business of existing SSI units after graduating into large scale industry.

PROCEDURE FOR FILLING OF IEM

The promoter has to make an application Government. Of India in prescribed format along with Demand Draft of Rs. 1000/-in the name of Secretariat for Industrial Assistance (SIA), New Delhi with six copies.

STEPS POST -FILLING IEM

After filling IEM to Govt. of India gives acknowledgment receipt to the applicant and informs the Directorate of Industries. After receipt of acknowledgment can take further initiatives step to setup the unit.

5. IEC CODE

- (1) IEC registration is required by a person for exporting or importing good .It is a 10 digit code which is issued by the Directorate General of foreign Trade (DGFT).
- (2) All businesses which are engaged in Import and export of good require registering Import Export Code. IE code has lifetime validity.
- (3) Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export promotion Council if they don't have this code.
- (4) The IE Code must be quoted by importers which clearing customs Also, banks require the importers IE Code while sending money abroad for exporters, IE Code must be quoted while sending shipments, and banks require the exporters IE Code while receiving money from abroad.

APPLICATION FOR IE REGISTRATION

IEC can be obtained from any of the Zonal and Regional offices of Director General of Foreign Trade depending on area /region where the individual /company is located. An application has to be submitted online at DGFT web site http://gov. in duly filled in along with required documents and fees.

- (1) First of all we have to prepare an application form in the prescribed format i.e. Aayaat Niryaat form 1A format and filed with the proper DGFT Regional office.
- (2) In the second step we have to prepare the necessary documents related to the applicant identity & address proof and legal entity proof with the bank details & certificate in respect of ANF2A.
- (3) In the third step once application has been completed, we file with the DGFT through DSC of the applicant and pay the appropriate fee or cost of IEC Registration. Once application has been approved then you will get the IEC Code in the soft Copy from the government department.



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DOCUMENTS REQUIRED FOR IMPORT CODE (IEC) REGISTRATI

IEC Code Registration required following things:

- (1) Personal or Company or Firm PAN Card Copy
- (2) Personal AADHAR card or VOTER ID or PASSPORT COPY.
- (3) Personal or company or firm current bank account cancel cheque copy.
- (4) Electricity Bill Copy Copy or Rent Agreement or Sale deed of the premise copy.

FEATURES OF THE IMPORT EXPORT CODE (IEC) REGISTRATION

- 1. <u>International Exposure:</u> IEC Code helps you to grow your business from local market to international market and expand your product or service across the global.
- 2. Government Benefits: Government of India always promote the export activity in India so through IEC Code Registration you can avail all the export scheme benefits from DGFT, Customs and Export scheme benefits from DGFT, Customs and Export promotion Council.
- 3. No Renewals: IEC Code issued by the DGFT for the lifetime validity so you have not required renew every year so it 's just one time cost of the registration.
- **4. No Annual Compliance:** IEC Code no annual compliance like returns filings etc. Even you have not shown anywhere the transactions.
- 5. Individual person: IEC Code can be obtain by the individual person also, they have not required to register the legal entity.

6. ESI REGISTRATION

- (i) Employee's state Insurance (ESI) is a self –financing schemes for Indian workers which covers health insurance and social security.
- (ii) ESI functions as an independent corporation and comes under Ministry of Labor and Employment in India.
- (iii) The ESI corporation thus manages the funds which regulated by the guidelines and regulations of the ESI Act. 1984.
- (iv) Employees registered under the ESI scheme are entitled to a range of benefits. Employees and their families can avail medical treatment and attendance including not only medical but surgical and obstetric treatment as well.

ESI REGISTRATION PROCEDURE

Any employer having more than 10 employees is mandatorily required to take up the ESI Registration. Within 15 days of submission of submission of Employer's registration form (form-01), the company or firm is expected to obtain an Identification number or Code Number from the Regional office. Form3 accompanies Form 1.

DOCUMENTS REQUIRED:

- (i) Documents about the establishment of the company.
- (ii) Evidence supporting date of commencement of production/business.
- (iii) List of partners, stakeholders, directors along with necessary information and proof of address.
- (iv) Copy of PAN
- (v) Identity proof like voter id /passport
- (vi) List of employees.



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7. PROVIDENT FUND REGISTRATION

- (i) To provide financial stability and security to employees when they are temporarily or no longer fit to work, the Parliament enacted the Employee's Provident Fund Scheme (EPFS) 1952.
- (ii) The central government trust manages these funds, and employee's are require to contribute a part of their salary to it every month during their employment tenure.
- (iii) An establishment with less than 20 employees can voluntarily opt for PF registration to protect employee's benefits. However. Companies with more than 20 employees compulsorily have to register under EPFS.

PF REGISTRATION PROCESS

- (i) A detailed application form called 'Performa of coverage 'and form 5A with Annexure-1 has to be filed while registering the company online.
- (ii) After that, a temporary PF registration number allotted, and an employer has to submit all concerning documents online.
- (iii) After that the PF authorities carry out an inspection of the premises and verify the documents submitted online.
- (iv) Once they are satisfied, a PF allotment letter will grant.

DOCUMENTAL DOCUMENT(S) TO BE SUBMITTED

The documents required to submit with the Performa of coverage for EPF along with list of employees are listed below. It is be noted that all required forms are available at the site of EPFO & for ESIC.

ESSENTIAL DOCUMENT(S) TO BE SUBMITTD

- (1) A copy of Memorandum and Articles of Association and certificate of incorporation issued by the Registrar of Companies, in the case of Companies.
- (2) A copy of partnership deed in the case of partnerships.
- (3) A copy of Registration certificate issued by the Registrar of co-operative societies.
- (4) A copy of Registration certificate issued by Registrar in the case of societies registered under Societies Registration Act along with a copy of the objects and Rules of the Society.
- (5) Partition deeds creating HUF.
- (6) Any agreement or other legal documents in the case of Association of persons as defined in the Income Tax Act.

8. ENVIRONMENT/ POLLUTION REGISTRATION

- (1) Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Entrepreneurs for setting an up an industrial project for 30 types of projects as listed, environment for clearance need to be obtained from the Ministry of Environment, Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes paper etc.
- (2) However, if investment is less than Rs.1000 million, such clearance is not necessary, unless it is for pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects of asbestos products, integrated paint complexes, mining projects, tourism projects of certain parameters, tarred roads in Himalayan, distilleries, dyes, foundries and electroplating industries.



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- (3) Further, any item reserved for the small scale sector with investment of less than Rs10 milling is also exempt from obtaining environmental clearance from the Central Government under the Notification. Power been delegated to State Governments for grant of environmental clearance for certain categories thermal power plants.
- (4) Setting up industries in certain locations considered ecologically fragile (e.g. Aravalli Range, coastal areas, Don valley, Dahanu, etc. 0 are guided by separate guidelines issued by the ministry of Environment of the Government of India.

- REGISTRTION UNDER OTHER SECTORS -

1. FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA (FSSAI)

- (i) All the manufacturers, traders, restaurants who are involved in food business must obtain a 14-digit registration or a license number which must be printed on food packages.
- (ii) This step is taken by government 's food licensing & registration system to ensure food products undergo certain quality checks, thereby reducing the instances of adulteration, substandard products and improve accountability of manufacturers by issuing food service license.
- (iii) FSSAI Online Registration is done through office website of FSSAI for basic and central level. For state, the FSSAI registration is also done through offline mode. The registration and licensing of food business in India is governed by the food safety and Standards (Licensing and Registration of Food businesses) Regulation 2011.

FSSAI REGISTRATION:

FSSAI registration is required for all petty food business operator.

Petty food business operators are required to obtain the registration by submitting an application for registration in **form A**.

On submission of a FSSAI registration application, the registration should be provided or application rejected in writing within 7 days of receipt of an application by authority.

2. DRUG LICENSE

To start a pharmacy business, a drug license is required. The **Central Drugs Standard Control Organization** and **State Drugs Standard Control Organization** control the issue of drug license in India Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization and the list of State Drugs Standard Control Organization can be downloaded below

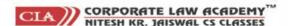
REQUIREMENT FOR OBTAINING DRUGLICENSE

AREA:

The minimum area of 10 square meter is required to start a medical shop or pharmacy or wholesale outlet. In case, the pharmacy business combines retail and wholesale, a minimum of 15 square meter is required.

STORAGE FACILITY:

The store must have refrigerator & air condition in the premises. According to the labeling specifications certain like vaccines, sera, insulin injections etc, are required to be stored in the refrigerator.



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TECHNICAL STAFF:

- (1) wholesale -the sale of drug by wholesale shall be made either in the presence of registered pharmacist or in the presence of a competent person who shall be a graduate with I year experience in dealing in drugs or a person who has passed S.S.L.C with 4years experience in dealing in drugs, specially approved by the department of drug control for the purpose.
- (2) Retail The sale of drug by retail must be made in the presence of registered pharmacist approved by the department, registered pharmacist is required throughout the working hours.

DOCUMENTS REQUIRED FOR OBTAINING DRUG LICENSE

- (1) Application form in the prescribed format
- (2) Covering Letter with the intent of the application sinned with and designation of the applicant
- (3) Challan of fee deposited for obtaining drug license
- (4) Declaration form in the format prescribed
- (5) Site plan (Blue print) for the premises
- (6) Basis of possession of the premises
- (7) Proof of ownership of the premises, if rented
- (8) Poof of constitution the business (Incorporation Certificate /MOA/AOA/Partnership Deed)
- (9) Affidavit of registered pharmacist or competent person Working Full time

3. REGISTRATION UNDER SHOPS & ESTABLISHMENTS ACT

One of the important to which most businesses in India are subject to is the Shop and Establishment Act, enacted by every state in India .

MEANING OF AN ESTABLISHMENT FOR THE PURPOSE OF THE ACT

Establishments included in this Act are commercial establishments, residential hotels, restaurants, eating houses, theaters, or other places of public amusement or entertainment. Additionally, other establishments that State Government may, by notification in the official Gazette, declare to be an establishment for the this Act would then classify as establishments.

MEANING OF A SHOP FOR THE PURPOSE OF THE ACT

- (i) Shop means any premises:
- (ii) Where good are sold, either by retail, wholesale, or
- (iii) Where services are rendered to customers.
- (iv) It includes an office a store -room, go down warehouse or work place, whether in the same premises or otherwise, used in connection with such trade/business.

A shop does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theater or other place of public amusement or entertainment;

REGISTRATION OF SHOPS & ESTABLISHMENTS

- 1. Submit an application in the prescribed firm to the Inspector of the area within 30 days of starting any work in your shop/establishment. The application is to be submitted along with the prescribed fees and should contain the following information:
 - (i) Your name as the employer and the name of a manager, if any;
 - (ii) The postal address of your establishment:



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- (iii) The name of your establishment:
- (iv) Such other particulars as may be prescribed.
- 2. Upon receiving the application for registration and fees, the Inspector Shall verify the accuracy and correctness of the application. Once suitably satisfied, he shall enter the details in the Register of Establishments and issue a registration certificate of your establishment to you. This certificate will be valid for 5 years and has to be renewed thereafter. It is important that the registration certificate has to be prominently displayed at your establishment.

4. FCRA REGISTRATION

Charitable Trusts, Societies, section 8 company that receive foreign contribution or donation from foreign sources are required to obtain registration under Section 6(1) of Foreign Contribution Regulation Act,2010. Such a registration under the Foreign Contribution Regulation Act, 2010 is called a FCRA registration.

ELIGIBILITY FOR OBTAINING FCRA REGISTRATION

Organization seeking foreign contributions for definite cultural, economic, educational or religious programmers may obtain FCRA registration or receive foreign contribution through "prior permission" route. It is preferable for an FCRA applicant to be a Trust oar Society or a Section 8 Company.

The not -for -profit entity must have also been in existence for a minimum of three years while making the FCRA application and should not have received any foreign contribution prior to that without the Government's approval.

Additionally, the entity seeking registration should have spent at least Rs.10,00,000/-over the last three years on its aims and objects, excluding administrative expenditure.

In case a newly registered entity would like to receive foreign contributions, then approval for a specific activity, specific purpose and from a specific source can be made to the Ministry of Home Affairs through the prior Permission method.

APPLYING FOR FCRA REGISTRATION

Application for FCRA registration can be made using Form FC-3 Along with the application, the following documents must be submitted:

- 1. Self –certified copy of registration certificate/Trust deed etc., of the association
- 2. Self –certified copy of relevant pages of Memorandum of Association /Article of Association showing aim and objects of the association.
- 3. Activity Report indicating details during the past three years.
- 4. Copies of relevant audited statement of accounts for the past three years

Once FCRA registration is granted it is valid for a period of five years.



ADVANCE YOUR KNOWLEDGE







Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 2:-

CHAPTER

3

INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

Covering-

- Scope of the Act
- ABC Analysis
- Scheme of the Act
- Important Definitions
- Ancillary and Small Scale Industries
- Development of The Schedules Industries
- Regulation of Scheduled Industries
- Locational Policy
- Industrial Entrepreneur Memorandum (IEM)
- Environmental Clearances
- Control Over scheduled Industries
- Investigation
- Take- over of Industrial Undertakings
- Advance Your Knowledge
- Self Test Questions
 - > From Past CS Exam
 - > From ICSI Module

EXPECTED
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THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

ACT No. 65 OF 1951

[31st October, 1951.]

An Act to provide for the development and regulation of certain industries.

BE it enacted by Parliament as follows:-

CHAPTER I

PRELIMINARY

- Short title, extent and commencement.—(I) This Act may be called the Industries (Development and Regulation) Act, 1951.
 - (2) It extends to the whole of India 1***
- (3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.
- Declaration as to expediency of control by the Union.—It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule.
 - 3. Definitions.—In this Act, unless the context otherwise requires,—
 - (a) "Advisory Council" means the Central Advisory Council established under section 5;
 - ³[(aa) "ancillary industrial undertaking" means an industrial undertaking which, in accordance with the proviso to sub-section (1) of section 11B and the requirements specified under that sub-section, is entitled to be regarded as an ancillary industrial under taking for the purposes of this Act;]
 - ⁴[⁵[(ab)] "current assets" means bank balances and cash and includes such other assets or reserves as are expected to be realised in cash or sold or consumed within a period of not more than twelve months in the ordinary course of business, such as, stock-in-trade, amounts due from sundry debtors for sale of goods and for services rendered, advance tax payments and bills receivable, but does not include sums credited to a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by a company owning an industrial undertaking;
 - ⁵[(ac)] "current liabilities" means liabilities which must be met on demand or within a period of twelve months from the date they are incurred; and includes any current liability which is suspended under section 18FB;]
 - (b) "Development Council" means a Development Council established under section 6;
 - 6[(bb) "existing industrial undertaking" means-

CHAPTER II

THE CENTRAL ADVISORY COUNCIL AND DEVELOPMENT COUNCILS

- 5. Establishment and constitution of Central Advisory Council and its functions.—(1) For the purpose of advising it on matters concerning the development and regulation of scheduled industries, the Central Government may, by notified order, establish a Council to be called the Central Advisory Council.
- (2) The Advisory Council shall consist of a Chairman and such other members, not exceeding thirty in number, all of whom shall be appointed by the Central Government from among persons who are in its opinion capable of representing the interests of—
 - (a) owners of industrial undertakings in scheduled industries;
 - (b) persons employed in industrial undertakings in scheduled industries;
 - (c) consumers of goods manufactured or produced by scheduled industries;
 - (d) such other class of persons including primary producers, as in the opinion of the Central Government, ought to be represented on the Advisory Council.

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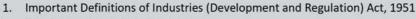


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MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF INDUSTRIAL POLICY & PROMOTION (DIPP)
SECRETARIATE OF INDUSTRIAL ASSISTANCE (SIA)
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INDUSTRIES (DEVELOPMENT AND REGULATION)ACT, 1951

ABC Analysis



- 2. Regulation of Scheduled Industries
- 3. Control Over Scheduled Industries

 \mathcal{B}

- 4. Concept of location Policy
- 5. Environmental Clearances

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- 6. Ancillary and Small Scale Industries
- 7. Take-over of Industrial Undertaking



सत्यमेव ज

Ministry of Commerce & Industry Government of India

The Industries (Development and Regulation) Act, 1951 is an important piece of legislation affecting the industrial sector of the country. The **object** of Industries (Development and Regulation) Act is to provide to the Central Government means of implementing the Industrial Policy.

The Act is implemented through Department of Industrial Policy and Promotion and Secretariat of industrial assistance, Ministry of Commerce & Industry.

SCOPE OF THE ACT

The preamble to the Act states that the I (D&R) Act is an Act 'to provide for the development and regulation of certain industries'. These industries are specified in the <u>First Schedule</u> to the Act. The scope of the Act is therefore, limited to the industries mentioned in the First Schedule known as <u>'scheduled industries</u>'.

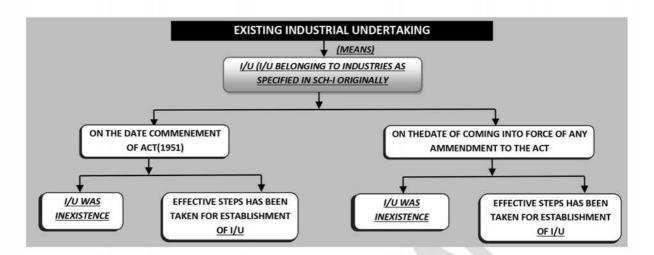
Schedule I includes industries relating to;-

- 1. Electric equipments
- 2. Telecommunications
- 3. Fertilizers
- 4. Automobiles
- 5. Fuels etc.

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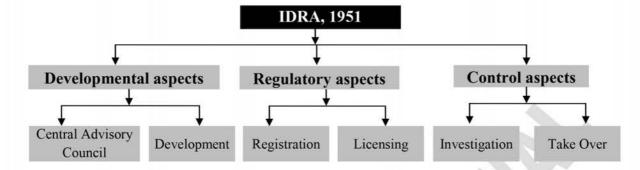
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SCHEME OF THE ACT



IMPORTANT DEFINITIONS

SCHEDULED INDUSTRY

SECTION 3(i)

Scheduled industry means and include any of the industries specified in the First Schedule of the Act.

• EXISTING INDUSTRIAL UNDERTAKING SECTION 3(bb)

Existing industrial undertaking means:-

- (a) an industrial undertaking which was in existence on the commencement of this Act and which belongs to any of the industries specified in First Schedule as originally enacted <u>or</u> for the establishment of which, effective steps had been taken before such commencement, and
- (b) an industrial undertaking pertaining to any of the industries added to the First Schedule by an amendment thereof, an industrial undertaking which is in existence on the coming into force of such amendment <u>or</u> for the establishment of which, effective steps had been taken before the coming into force of such amendment.

'Effective steps' means one or more of the following:-

- (a) 60% or more of the capital issued by a public company has been paid up;
- (b) a substantial part of the factory building has been constructed;
- (c) a firm order has been placed for a substantial part of the plant and machinery required for the undertaking.

FACTORY

Factory means any premises including the precincts thereof in any part of which a manufacturing process is being carried on or is ordinarily so carried on:

- (a) with the aid of power provided that 50 or more workers are working or were working thereon on any day of the preceding twelve months, or
- (b) without the aid of power provided that 100 or more workers are working or were working thereon on any day of the preceding twelve months.

• INDUSTRIAL UNDERTAKING

SECTION 3(d)

Industrial undertaking means and includes any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government.



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• NEW ARTICLE

SECTION 3(dd)

New article in relation to an industrial undertaking means:-

- (a) any article which falls under an item in the First Schedule other than the item under which articles ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission as the case may be, fall;
- (b) any article which bears a mark as defined in the Trade Marks Act or which is subject of a patent, if at the date of registration or issue of the licence or permission, as the case may be, the industrial undertaking was not manufacturing or producing such article bearing that mark or which is the subject of that patent.

OWNER

owner mean the person who, or the authority which, has the ultimate control over the affairs of the undertaking and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking.

It may be noted that the term 'person' employed in the definition would include both natural and artificial persons. Bodies corporate owning industrial undertakings would also be covered within the above definition.

ANCILLARY AND SMALL SCALE INDUSTRIES

Ancillary and Small Scale Industries are outside the purview of the I(D&R) Act. The reason behind this exclusion is that the ancillary and small scale industrial undertakings need supportive measures, exemptions or other favourable treatment under the Act to enable them to maintain their viability and strength so as to be effective in promoting in a harmonious manner the industrial economy of the country and easing the problem of unemployment.

SMALL SCALE INDUSTRIAL UNDERTAKING

An industrial undertaking in which the investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees **one crore**.

ANCILLARY INDUSTRIAL UNDERTAKING

An Ancillary industrial	(a)	in the manufacturing or production of parts, components, sub-assemblies, tooling or the rendering of services
undertaking means any industrial undertakingwhich is	(b)	supply or proposes to supply not more than fifty per cent of its production or services, as the case may be, to one or more other industrial undertakings and
engaged or is proposed to beengaged:-	(c)	Where its investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees one crore .

No small scale or ancillary industrial undertaking referred to above shall be subsidiary of, or owned or controlled by any other industrial undertaking.

'Controlled by any other industrial undertaking to have the meaning as under'

Where two or more industrial undertakings are set up by the same person as a proprietor, each of such industrial undertakings shall be considered to be controlled by the other industrial undertaking or undertakings,

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CALCULATION OF VALUE OF PLANT AND MACHINERY

In calculating the value of plant and machinery for the purposes of small scale/ancillary industrial undertaking, the **original price** thereof, irrespective of whether the plant and machinery are new or second hand, shall be taken into account.

However, in calculating the value of plant and machinery, the following shall be **excluded**, namely:-

- (a) the cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;
- (b) the cost of installation of plant and machinery;
- (c) the cost of research and development equipment and pollution control equipment;
- (d) the cost of generation sets and extra transformer installed by the undertaking as per the regulations of the State Electricity Board;
- (e) the bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;
- (f) the cost involved in procurement or installation of cables, wiring, electrical control panels which are necessary for safety measures;
- (g) the cost of gas producer plants;
- (h) transportation charges (excluding of sales-tax and excise) for indigenous machinery from the place of manufacturing to the site of the factory;
- (i) charges paid for technical know-how for erection of plant and machinery;
- (j) cost of fire fighting equipments.

In the case of imported machinery, the following shall be included in calculating the value, namely:-

- (a) import duty (excluding miscellaneous expenses as transportation from the port to the site of the factory, demurrage paid at the port);
- (b) the shipping charges;
- (c) customs clearance charges; and
- (d) sales tax

> DEVELOPMENT OF THE SCHEDULED INDUSTRIES

The development of the Scheduled Industries is sought to be secured primarily through the following agencies:-

1. CENTRAL ADVISORY COUNCIL SECTION 5

Central Government by notified order, had established a council which is known as the Central Advisory Council, for advising the Government on matters concerning the development and regulation of scheduled industries.

Council shall <u>consist</u> of a **chairman** and such **other members** not exceeding **thirty** in number, to be appointed by the Central Government from among persons who are, in its opinion, capable of <u>representing the interest</u> of (i) <u>owners</u> of industrial undertakings (ii) <u>persons employed</u> in industrial undertakings (iii) <u>consumers</u> (iv) and <u>such other class of persons</u> including primary producers, as in the opinion of the Central Government ought to be represented on the Advisory Council.

2. DEVELOPMENT COUNCIL SECTION 6

Central Government by notified order, had established body of persons which is known as the Development Council.



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Development Council <u>consist</u> of such <u>members</u> who, in the opinion of the Central Government, are (i) persons capable of <u>representing the interests of owners</u> (ii) persons having <u>special knowledge</u> of matters relating to the <u>technical or other aspects</u> of the scheduled industry (iii) persons capable of representing the <u>interests of persons employed</u> (iv) persons capable of representing the <u>interests of consumers</u>

The Central Government may assign to a Development Council, any of the <u>functions specified in the Second Schedule</u> to the Act in order to increase the efficiency or productivity in the scheduled Industry or group of scheduled Industries for which the Development Council is established.

The functions	(a) Recommending targets for production, and reviewing progress from time to time.
which may be	(b) Suggesting norms of efficiency with a view to eliminating waste,
assigned to	obtaining maximum production, improving quality and reducing costs.
Development	(c) Promoting the training of persons engaged
Council	(d) Promoting or undertaking scientific industrial research,
include:-	(e) Promoting improvements and standardisation of accounting and costing methods and practices.etc.

COLLECTION OF CESS

SECTION 9

Section 9 empowers the Central Government to levy and collect cess on all goods manufactured and produced in any specified scheduled industry and hand over the proceeds to the Development Council established for that industry. The Development Council, in turn, is required to utilise the proceeds, to promote scientific and industrial research, training with reference to the scheduled industry and to meet its administrative expenses.

> REGULATION OF SCHEDULED INDUSTRIES

Regulation of industries is sought to be achieved by means of registration of existing industrial undertakings; licensing of new industrial undertakings; and licensing for producing or manufacturing new articles.

REGISTRATION OF EXISTING INDUSTRIAL UNDERTAKINGS SECTION 10

Section 10 requires the owner of every existing industrial undertaking (not being the Central Government) to register the undertaking in the prescribed manner within the prescribed period. The Central Government has also been put under obligation to register its own existing industrial undertakings. On such a registration the owner of the undertaking is issued a certificate of registration containing the productive capacity of the industrial undertaking and other prescribed particulars.

Issue of Certificate of Registration

Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, after such investigation as it may consider necessary, grants the applicant a certificate of registration containing, besides other prescribed particulars, the productive capacity of the undertaking.

CIRCUMSTANCES WHEN REGISTRATION IS NOT NECESSARY

Registration of an undertaking will not be necessary if the undertaking;-

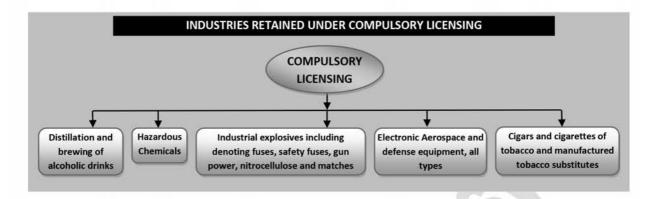
- (a) is a small scale industrial undertaking or
- (b) is otherwise exempt from the licensing/registration provisions of the Act or,
- (c) is not satisfying the definition of the term 'factory' under the Act.



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PENALTY FOR FAILURE TO REGISTER

The owner of an industrial undertaking is liable to be punished with imprisonment up to six months or fine, which may extend to 5,000 Rupees or with both.

POWER OF CENTRAL GOVERNMENT TO REVOKE REGISTRATION

The Central	(a) it was obtained by misrepresentation or
Government has	(b) the undertaking has ceased to be registrable by reason of any exemption
been empowered to	granted under this Act; or.
revoke the	(c) for any other reason the registration has become useless or ineffective.
registration if it is	
satisfied that :-	

The Central Government is however, required to give an opportunity to the owner of the undertaking to be heard, before revoking the registration.

LICENSING OF INDUSTRIAL UNDERTAKINGS/ INDUSTRIAL LICENCE SECTION 11 & 13

An Industrial licence is a written permission from the Government to an industrial undertaking to manufacture specified articles, listed in the First Schedule and includes particulars of industrial undertaking, its location, articles to be manufactured, the capacity on the basis of maximum utilisation of plant and machinery etc.

Application in **form-FC-IL** (*Form-EE for COB licence*) for licence should be submitted to Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi-110011. The application, should be submitted along with a crossed demand draft of ₹2500/- drawn in favour of the Pay & Accounts officer, payable at the State Bank of India, Nirman Bhawan, New Delhi. Approvals are normally granted within 4-6 weeks of filling the application.

WHEN LICENCE IS REQUIRED

An industrial licence is required for the following purposes:-

- (a) for establishment of New Undertaking
- (b) for Producing or Manufacturing New Articles
- (c) for Carrying on Business Without Registration
- (d) for Carrying on Business After the Revocation of Certificate of Registration
- (e) for Carrying on Business by an Industrial Undertaking to which the Act did not originally apply but becomes applicable after the commencement of the Act for any reason.
- (f) Licence for Change in Location
- **(g)** Licence for Effecting Substantial Expansion of an industrial undertaking registered or in respect of which a licence or permission has been issued.

<u>'Substantial expansion'</u> means the expansion of an existing industrial undertaking which substantially increases the productive capacity of the undertaking or which is of such nature as to amount virtually to a new industrial undertaking <u>but does not include</u> any such expansion as is normal to the undertaking having regard to its nature and the circumstances relating to such expansion.

It should also be noted that any increase in production by 25% over the licensed capacity being in the nature of expansion would not amount to substantial expansion if:-

(a) no additional plant and machinery has been installed except minor balancing equipment indigenously procured;



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- (b) no additional expenditure had been incurred or foreign exchange was involved; and -
- (c) the extra production does not give rise to any additional demand for scarce raw materials.

CARRY ON BUSINESS (COB) LICENCE

A COB licence is required when a small scale unit exceeds the prescribed small scale limit of investment in plant and machinery by way of natural growth and continues to manufacture small scale reserved items(s). Also, if exemption from Industrial licensing granted for any item is withdrawn, the industrial undertakings manufacturing such item(s) require COB licence.

POWER OF THE CENTRAL GOVERNMENT TO REVOKE/AMEND LICENCES IN CERTAIN CASES

Section 12 of the Act empowers the Central Government to revoke the licence issued under Section 11 if it is satisfied, either on a reference made to it in this behalf or otherwise that the licencee has, without reasonable cause, failed to establish or to take effective steps to establish the new industrial undertaking within the prescribed time or the extended time, as the case may be.

WHEN LICENCE IS NOT REQUIRED

SECTION 29B

The Act empowers the Central Government to grant exemptions from licencing requirements to any undertakings.

All industries except:-

- (a) industries reserved for the public sector
- (b) Industries retained under compulsory licensing
- (c) industries engaged in manufacture of items reserved for the small scale sector and if located in the restricted area according to their locations,

are exempt from the requirements of obtaining Industrial license.

LOCATIONAL POLICY

Industrial undertakings are free to select the location of a project. However, in the case of cities with population of more than one million (as per the 1991 census), the proposed location should be at least 25 KM away from the Standard Urban Area limits of that city unless, it is to be located in an area designated as an industrial area before the 25th July, 1991.

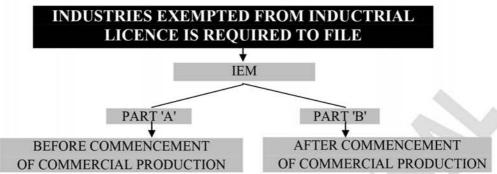
Industries related to electronics, computer software and printing (and any other industry which may be notified in future as non polluting industry) are **exempt** from such locational restriction. <u>Small scale units</u> are also free from locational restrictions.

INDUSTRIAL ENTREPRENEUR MEMORANDUM (IEM)

Industrial undertakings exempt from obtaining an industrial licence are required to file Industrial Entrepreneur Memorandum (IEM) in Part 'A' (as per prescribed format) with the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India, and obtain an acknowledgment. The IEM should be submitted along with a crossed demand draft of ₹1000/- drawn in favour of The Pay & Accounts Officer, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, payable at the State Bank of India, Nirman Bhawan Branch, New Delhi, where the number of items proposed to be manufactured in the unit is up to 10. For more than 10 items, an additional fee of ₹250 up to 10 additional items, needs to be paid through crossed demand draft.

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No further approval is required. Immediately after commencement of commercial production, Part B of the IEM has to be filled in the prescribed format. The facility for amendment of existing IEMs has also been introduced.



ENVIRONMENTAL CLEARANCES

Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project and expansion/ modernisation of existing projects. Environment Protection Act, 1986 has listed 32 projects in respect of which environmental clearance needs to be obtained from the Ministry of Environment, Government of India. This list includes industries like petro-chemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilisers, dyes, paper etc.

However if investment is less than ₹1000 million and 500 million in case of expansion/modernisation projects, such clearance is not necessary, unless it is for pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining project, distilleries, dyes, and electroplating industries.

Further, any item reserved for the small scale sector with investment of less than ₹10 million is also exempt from obtaining environmental clearance from the Central Government. Powers have been delegated to the State Governments for grant of environmental clearance for certain categories of thermal power plants.

> CONTROL OVER SCHEDULED INDUSTRIES

Control over the industries is sought to be exercised by causing <u>investigation</u> into the working of these industries and in appropriate cases <u>taking over</u> of direct management and control.

INVESTIGATION

SECTION 15, 15A & 16

Section 15 of the Act empowers the Central Government to cause an investigation to be made into scheduled industries or industrial undertakings.

Under this section the Central Government may make or cause to be made a full and complete investigation into any scheduled industry or industrial undertaking, in respect of which, if it is of the opinion that:-

- (a) there has been or is likely to be, a substantial fall in the volume of production
- (b) there has been or is likely to be a marked deterioration in the quality of any article
- (c) there has been or is likely to be a rise in the price of any article for which there is no justification
- (d) it is necessary to take any such action for the purpose of conserving any resources of national importance
- (e) the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to public interest.



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Juggilal Kamlapat
Cotton Spinning Mills
<u>v.</u>
Union of India

It was held that, the opinion, the Central Government is required to form before passing an order of investigation under this section is to be on a subjective satisfaction, which has to be based on relevant material. Before passing an order the party must be heard.

INVESTIGATION INTO THE AFFAIRS OF A COMPANY IN LIQUIDATION

Section 15A contains provisions for conducting an investigation into the affairs of a company owning an industrial undertaking.

The prerequisites for conducting such an investigation are:-

- (a) the company is either being wound up by or under the supervision of a High Court;
- (b) the business of such company is not being continued; and
- (c) the Central Government is of the opinion that it is necessary in the interests of the general public and in particular in the interests of production, supply or distribution of articles, to investigate into the possibility of running or restarting the industrial undertaking.

If the above circumstances are present in a particular case, the Central Government may make an application to the High Court praying for permission to make or cause to be made an investigation into possibility of re-starting or running the industrial undertaking. On application by the Central Government under this section the High Court **shall**, notwithstanding anything contained in the Companies Act, 1956, or in any other law for the time being in force, grant the permission prayed for.

Union of India	The Madras High court held that even though the application for winding up a
v.	company is pending before the Court, it can take the expression being wound up
Anglo-French	by or under the supervision of the High Court to include a case where a petition
Textiles Limited	under Section 433 of the Companies Act is pending.
Union of India v. Shalimar Works Limited	On the other hand, the Calcutta High Court in held that the expression being wound up by or under the supervision of the High Court would mean that the company is directed to be wound up, and hence the Court held that the proper stage for application under Section 15A is when the order for winding up has been made by the Court and not before that.

DIRECTIONS AFTER INVESTIGATION

Section 16 of the Act provides that after investigation under Section 15, if the Central Government is satisfied that action under Section 16, is desirable, it may issue such directions to the industrial undertaking or undertakings as may be appropriate in the circumstances.

TAKE-OVER OF INDUSTRIAL UNDERTAKINGS

SECTION 18A, 18AA, 18B & 18FA

Section 18A empowers the Central Government to take over an industrial undertaking whose affairs had been investigated under Section 15, Section 18AA sets out the circumstances under which the Central Government can take over an industrial undertaking without any investigation.

TAKE OVER AFTER INVESTIGATION

Section 18A empowers the Central Government to take over the management of an industrial undertaking under certain circumstances.

Where the Central Government is of opinion that:-

(a) an industrial undertaking to which directions have been issued in pursuance of Section 16 has failed to comply with such directions; or



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(b) an industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, it may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking.

EFFECT OF NOTIFIED ORDER

SECTION 18B

- (a) All persons in charge of the management, of the industrial undertaking shall be deemed to have vacated their office as such.
- **(b)** Any contract of management between the industrial undertaking and any director shall be deemed to have terminated.
- (c) The persons or body of persons authorised under Section 18A shall take over the management of industrial undertaking.
- (d) <u>Section 18E</u> of the Act provides that, <u>notwithstanding anything contained in the Companies Act</u>, or in the memorandum or articles of association of an undertaking taken over by the Central Government:-
 - (i) it shall not be lawful for the shareholders of such undertaking or any other person to nominate or appoint any person to be a director of the undertaking;
 - (ii) no resolution passed at any meeting of the shareholders of such undertaking shall be given effect unless approved by the Central Government;
 - (iii) no proceeding for the winding up of such undertaking or for the appointment of a receiver in respect thereof shall lie in any court except with the consent of the Central Government.

TAKE-OVER WITHOUT INVESTIGATION

Section 18AA empowers the Central Government to take over industrial undertakings without investigation under certain circumstances. It empowers the Central Government to authorise, by a notified order, any person or body of persons to take-over the management of whole or part of any industrial undertaking and to exercise prescribed functions of control, provided the Government is satisfied that:-

- (a) the persons in charge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured.
- (b) such industrial undertaking has been closed for a period of not less than three months and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to restart the undertaking and such restarting is necessary in the interests of the general public.

Such notified order shall have effect for a period not exceeding **five years** as may be specified in the order, but may be extended by the Central Government for a period of 2 years at a time subject to a maximum of **12 years**.

Swadeshi Cotton Mills	The Supreme Court held that in respect of such take overs without
v.	investigation, hearing at pre decisional stage must be given and the rule of
Union of India	audialterempartem could not be dispensed with.

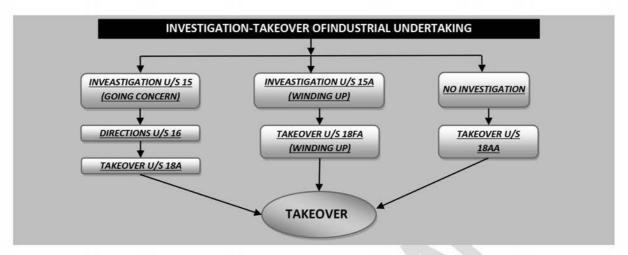
TAKE-OVER OF INDUSTRIAL UNDERTAKING OWNED BY COMPANY IN LIQUIDATION

Section 18FA provides that after the necessary investigations have been made under Section 15A if the Central Government is of the opinion that there are possibilities of running or restarting an industrial undertaking, it may make an application to the High Court praying for permission for appointment of any person or body of persons to take over the management or control of the whole or any part of the industrial undertaking.

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As soon as such an application is made by the Central Government, the High Court shall make an order empowering the Central Government to authorise any person or body of persons to take over the management of the industrial undertaking or to exercise such functions of control in relation to the whole or any part of the industrial undertaking for a period not exceeding five years. Any extension beyond this period is granted by the High Court for a period not exceeding two years at a time provided total period of extension after the expiry of the initial period of five years should not exceed twelve years.

LIQUIDATION OR RECONSTRUCTION OF COMPANIES

Section 18FC of the Act confers powers on the Central Government to call upon the authorised person to submit a report on the affairs and working of the industrial undertaking whose management or control has been taken over under Sections 18A, 18AA or 18FA.

Section 18FD provides <u>two alternatives</u> to the Central Government in respect of receipt of the report from the authorised person. <u>The Central Government can either decide to:</u>

- (a) sell the undertaking as a running concern or
- (b) it may decide to prepare a scheme for the reconstruction of the company.

The **decision to sell the undertaking** as a running concern may be taken by the Central Government <u>on</u> being satisfied that:-

- (a) in the case of the company owning the industrial undertaking, which is not being wound up by the High Court, its financial conditions and other circumstances are such that it is not in a position to meet the current liabilities out of its current assets.
- **(b)** in the case of the undertaking concerned owned by a company and is being wound up by the High Court, its assets and liabilities are such that in the interests of its creditors and contributories, the industrial undertaking should be sold as running concern.

The decision to prepare a scheme of reconstruction of the company owning the industrial undertaking may be ordered by the Central Government, if it is satisfied that:-

- (a) it is in the interest of the general public, or
- (b) it is in the interest of the shareholders, or
- (c) such a course of action is necessary to secure the proper management of the company owning the industrial undertaking.

In case the scheme of reconstruction is to be prepared in relation to an undertaking owned by a company being wound up by or under the supervision of the High Court, prior permission of the High Court is to be obtained.

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ADVANCE

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- Q. 1. WHAT ARE THE POWERS OF THE CENTRAL
 GOVERNMENT TO PROVIDE RELIEF TO AN
 INDUSTRIAL UNDERTAKING, THE
 MANAGEMENT OR CONTROL OF WHICH
 HAS BEEN TAKEN OVER BY IT WITHOUT
 INVESTIGATION UNDER THE INDUSTRIES
 (DEVELOPMENT AND REGULATION) ACT,
 1951?
- Ans. Section 18FB of the Act empowers the Central Government to take certain declarations in relation to an industrial undertaking, the management control of which has been taken over under sections 18A, 18AA or 18FA. Under this section, the Government may notify by order, that
 - (1) An industrial undertaking shall be exempted from all or some of the enactments mentioned in the Third Schedule to the act.
 - (2) All or some of the contracts, assurances, properties, agreements, settlement, awards, standing orders or other instruments in force, which are applicable to an industrial undertaking shall remain suspended or be modified as ordered by the Government.

Such changes shall be made keeping in mind the needs of the economy regarding the continued availability of the goods in question and the necessity for the continuity of the undertaking.

Q. 2. DISTINGUISH BETWEEN 'LETTER OF INTENT' AND 'INDUSTRIAL LICENCE'.

Ans. INDUSTRIAL LICENCE

An industrial licence is a written permission to an industrial undertaking to manufacture/produce specified articles mentioned under first schedule granted by the central Government.

Licence consists of the following particulars-

- (a) Location of undertaking
- (b) Articles to be manufactured
- (c) Maximum capacity
- (d) Other Details

Industrial licence is subject to a prescribed validity period while

LETTER OF INTENT

- (a) Letter of intent is issued on a provisional basis
- **(b)** Validity period of letter of intent :3 years from production
- (c) Extension in validity period : extension by years more can be given by competent authority
- (d) Extension beyond six years can be granted only exceptional grounds.

Q. 3. WHAT ARE THE OBJECTIVES OF INDUSTRIAL POLICY OF THE GOVERNMENT?

Ans. • To maintain a sustained growth in productivity;

- To enhance gainful employment;
 - To achieve optimal utilisation of human resources:
 - · To attain international competitiveness; and
 - To transform India into a major partner and player in the global arena.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



- Distinguish between the circumstances under which the Central government may take over the management of an industrial undertaking after investigation and investigation under section 18A and 18AA of the Industries (development and Regulation) Act, 1951.
- Mention the provisions of the Industries (Development and Regulation) Act, 1951 regarding licence for effecting substantial expansion of an existing Industrial undertaking.
- Discuss the law relating to ordering investigation into the affairs of an industrial under the Industries (Development and Regulation) Act, 1951.
- Distinguish between 'COB licence' and 'Industrial licence'.
- With reference to the relevant legal enactments, write short notes on the 'Scheduled industry'.
- Mention any six functions of development councils set up under the Industries (Development and Regulation) Act, 1951.

FROM ICSI MODULE



Answer the Following:

- Discuss in detail the objective and scope of the Industries (Development and Regulation) Act, 1951.
- Briefly discuss the Circumstances in which the Central Government can assume management or control of an industrial undertaking.
- 3. What do you mean by 'New Article' under the Act?
- 4. What is an industrial licence? Under what circumstances an industrial licence can be revoked?
- List out any five industries specified in First Schedule of the Act.



Q. 1. Answer to Question No. 1:-



Answers to be analysed in Classroom

Q. 2.	
Answer to Question No. 2:-	
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CHAPTER

4

THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

Covering-

- Bare Act
- Enterprises Meaning
- Micro, Small And Medium Enterprises Meaning Classification Of Enterprises
- Memorandum Of Micro, Small And Medium Enterprises
- Measures For Promotion, Development And Enhancement Of Competitiveness
- National Board For Micro, Small And Medium Enterprises
- Advisory Committee
- Micro And Small Enterprises Facilitation Council
- Advance Your Knowledge
- Self Test Questions
 - From Past CS Exam
 - > From ICSI Module

EXPECTED
MARKS COVERAGE
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From Bare Act... —

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REGD. NO. D. L.-33004/99



THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

ACT NO. 27 OF 2006

[16th June, 2006.]

An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

WHEREAS a declaration as to expediency of control of certain industries by the Union was made under section 2 of the Industries (Development and Regulation) Act, 1951;

AND WHEREAS it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto;

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- Short title and commencement.—(1) This Act may be called the Micro, Small and Medium Enterprises Development Act, 2006.
- (2) It shall come into force on such date¹ 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 provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
 - 2. Definitions.-In this Act, unless the context otherwise requires,-
 - (a) "Advisory Committee" means the committee constituted by the Central Government under sub-section (2) of section 7;
 - (b) "appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Explanation.—For the purposes of this clause,—

- (i) "the day of acceptance" means,-
 - (a) the day of the actual delivery of goods or the rendering of services; or
- (b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

CHAPTER II

NATIONAL BOARD FOR MICRO, SMALL AND MEDIUM ENTERPRISES

- 3. Establishment of Board.—(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board to be known as the National Board for Micro, Small and Medium Enterprises.
 - (2) The head office of the Board shall be at Delhi.
 - (3) The Board shall consist of the following members, namely:—
 - (a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the ex officio Chairperson of the Board;
 - (b) the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be ex officio Vice-Chairperson of the Board, and where there is no such Minister of State or Deputy



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THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006



The Act provides for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

ENTERPRISE-MEANING

Section 2(c) of the Act defines the term Enterprise as an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (IDRA) or engaged in providing or rendering of any service or services.

MICRO, SMALL AND MEDIUM ENTERPRISES - MEANINGCLASSIFICATION OF ENTERPRISES SECTION-7

Section 7 empowers the Central Government to classify any class or classes of enterprises, by whatever name called,—

- (a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the IDRA as—
 - > a micro enterprise, where the investment in plant and machinery does not exceed twenty-five lakh rupees;
 - ➤ a <u>small enterprise</u>, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed **five crore** rupees; or
 - ➤ a <u>medium enterprise</u>, where the investment in plant and machinery is more than five crore rupees but does not exceed **ten crore** rupees;
- (b) in the case of the enterprises engaged in providing or rendering of services, as—
 - > a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;
 - a <u>small enterprise</u>, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or
 - a <u>medium enterprise</u>, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

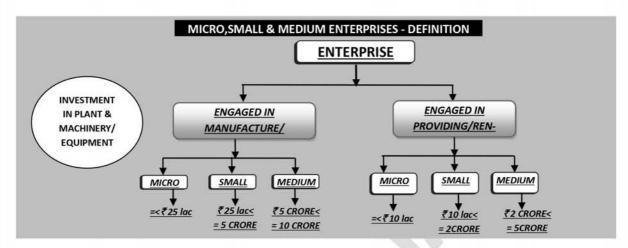
It has been clarified that the cost of pollution control, research and development, industrial safety devices and such other items as may be specified shall not be included in calculating the investment in plant and machinery.

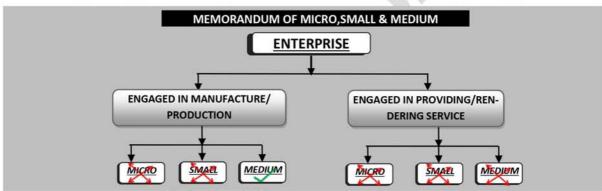


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MEMORANDUM OF MICRO, SMALL AND MEDIUM ENTERPRISES SECTION- 8

Any person who intends to establish;-

- (a) a micro or small enterprise, may, at his discretion, or
- (b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or
- (c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the IDRA, is

required to file the memorandum of micro, small or, medium enterprise with such authority as may be specified by the State Government or the Central Government.

Penalty for contravention

Any person who has not filed aforesaid memorandum has been made punishable;-

- (a) in the case of the first conviction, with fine which may extend to rupees one thousand;
- (b) and in the case of any second or subsequent conviction, with fine which shall not be less than rupees one thousand but may extend to rupees ten thousand.

DELAYED PAYMENTS TO MICRO AND SMALL ENTERPRISES

Liability of buyer to make payment

Section 15 provides that where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment there for on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day. However, in no case the period agreed upon between the supplier and the buyer in writing should **exceed forty-five days** from the day of acceptance or the day of deemed acceptance.

'Day of acceptance'

MSMED Act, 2006 defines "the day of acceptance" as to mean the day of the actual delivery of goods or the rendering of services; or where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier.



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'Day of deemed acceptance'

MSMED Act, 2006 defines "the day of deemed acceptance" to mean, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

FUND

Section 12 provides for the **constitution of one or more Funds** and to credit thereto any grants made by the **Central Government**. Section 13 obliges the Central Government to **credit** to the Fund or Funds by way of grants such sums of money as may be considered necessary.

The Fund or Funds should be utilised exclusively for the specified measures. Central Government has the responsibility for the coordination and ensuring timely utilisation and release of sums in accordance with prescribed criteria.

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ADVANCE YOUR KNOWLEDGE



- Q. 1. MEANING OF 'SUPPLIER' UNDER THE MICRO, SMALL AND MEDIUM **ENTERPRISES** DEVELOPMENT ACT, 2006.
- Ans. As per section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 'Supplier' means a micro of small enterprise, which has filled a memorandum with the authority referred to in section 8(1) and includes national small industries corporation, small industries development Corporation, any company, co-operative society, trust or a body by selling goods produced by micro or small enterprises and rendering services which are provided by such enterprise. Where any supplier, suppliers any goods or services to any buyer, the latter shall be liable to make payment on or before the date so agreed.
- STATE THE COMPOSITION OF ADVISORY COMMITTEE FOR THE MATTERS RELATING MICRO, SMALL AND **MEDIUM** ENTERPRISES. (MSME) DEVELOPMENT ACT, [Dec. 2017]
- Section 7(2) of the Micro, Small and Medium Enterprises (MSME) Development Act, 2006 empowers the Central Government to constitute an Advisory Committee consisting of the following members, namely:
 - a) The Secretary of the Ministry or Department of the Central Government having administrative control of the small and medium enterprises as the Chairperson, ex officio;
 - b) Not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises as members, ex officio;
 - c) Not more than three representatives of the State Governments, as members, ex officio; and
 - d) One representative each of the associations of micro small and medium enterprises, as member, ex officio

The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



- What do you mean by 'day of acceptance' under the Micro, small and Medium Enterprises Development Act, 2006?
- With reference to the relevant legal enactments, write short notes on the following:
 - (i) Delayed payments to micro, and macro enterprises.
 - (ii) Functions of the National Board for micro, small and medium enterprises under the Micro, Small and Medium Enterprises Development Act, 2006.

FROM ICSI MODULE



Answer the following:

- 1. Define the term Enterprise under the Act?
- 2. Briefly explain Micro, Small and Medium Enterprise.
- Explain Memorandum of micro, small and medium enterprise.
- Distinction between the day of acceptance and the day of deemed acceptance.
- 5. Briefly explain the composition of Facilitation Council.



Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 2:-

CHAPTER SOCIETIES REGISTRATION ACT, 1860 Covering-Bare Act Society Registration Act Society - Meaning Registration of Society - Registration Certificate of Registration Property of Society: Where it Vests Alteration of the Objects Member - Meaning Liability Of Members Suits By/Against Society Dissolution Of Society Consequences of Dissolution Self Test Questions > From Past CS Exam From ICSI Module **EXPECTED MARKS COVERAGE** (1 to 5)

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From Bare Act... —

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REGD. NO. D. L.-33004/99



SOCIETIES REGISTRATION ACT, 1860

[Act No. 21 of Yr. 1860]

An Act for the registration of literary, scientific and charitable societies

Whereas it is expedient the provision should be made for improving the legal condition or societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, ¹[the diffusion of political education], or for charitable purposes;

Comment: Charitable purposes which came within the language and spirit of the statute of Elizabeth (43 Eliz ch 4) could be grouped into four heads, (i) relief of poverty, (ii) education, (iii) advancement of religion and (iv) other purposes beneficial to the community not coming under any of the preceding heads. The words in Act 21/1860 are, therefore, to be understood as including religious purposes also. Hindu Public v. Rajdhani Puja Samithee AIR 1999 SUPREME COURT 964

It is enacted as follows:-

1. Societies formed by memorandum of association and registration

Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with Registrar of Joint-stock Companies ²[***] form themselves into a society under this Act.

2. Memorandum of association

The memorandum of association shall contain the following things, that is to say,-

the name of the society;

the object of the society;

the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

3. Registration and fees

Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fees as ³[the State Government] may from time to time, direct; and all fees so paid shall be accounted for to ³[the State Government].

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SOCIETIES REGISTRATION ACT, 1860



The purpose of Societies Registration Act, 1860 is to provide for the registration and administration of literary, scientific and charitable societies.

SOCIETY REGISTRATION ACT

Societies Registration Act, 1860 is a Central Act. However "unincorporated association" is a State Subject. Thus, normally there should have been only state laws on this subject. However Societies Registration Act was passed in 1890, i.e., much before bifurcation of powers between centre and states was specified. Though the act is still in force, it has been specifically repealed in many states and those states have their own acts. Thus practically, the Societies Registration Act, 1860 which is a Central Act is mainly for academic purpose.

SOCIETY - MEANING

A society registered under the Societies Registration Act is a body corporate with power to hold property and is capable of entering into the contract. However in the strict legal sense, such registered societies cannot be called as a body corporate i.e., an incorporated association of persons.

PURPOSE OF SOCIETY

According to Section 20 of the Societies Registration Act, 1860, societies can be formed for the following purposes:

- (i) Charitable societies,
- (ii) the military orphan funds or societies established at the several presidencies of India,
- (iii) societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge,
- (iv) The diffusion of political education,
- (v) the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public
- (vi) public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

REGISTRATION OF SOCIETY- REGISTRATION

Any seven or more persons associated for any literary, scientific, or charitable purpose or any other purpose as specified in section 20 of the Act may form themselves into a society under the Societies Registration Act. They can do so by subscribing their names to the Memorandum of Association and filing the same with the Registrar of Joint Stock Companies.

The Memorandum of association shall state the following:-

- (a) The name of the society;
- (b) The object of the society; and



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(c) The name addresses and occupations of the Governors, Council, Directors and other Governing bodies, to whom the management of the affairs of society is entrusted.

Along with the Memorandum, the following documents are required to be filed with the Registrar:-

- (a) A copy of the rules and regulations of society certified as correct by not less than 3 members of the governing body; and
- (b) The prescribed fee of ₹50/

CERTIFICATE OF REGISTRATION

When the Registrar is satisfied that the society has compiled with the statutory requirements as to registration, he issues an acknowledgement in the form of a certificate of registration. The certificate is conclusive evidence of due registration.

CONSEQUENCES OF REGISTRATION / NON-REGISTRATION OF A SOCIETY

The Societies Registration Act, 1860 lays down procedure for registration of societies for various bonafide purposes.

The registration gives the society a legal status and is essential for:

- (a) obtaining registration and approvals under Income Tax Act;
- (b) lawful vesting of property in the societies;
- (c) provides authenticity and recognition to the society before all authorities and the world at large; and
- (d) for opening bank accounts and transaction of business.

When the society is registered, it and its members become bound to the same extent, as if each member had signed the memorandum.

ADVANTAGES OF SOCIETY

- (a) The process of formation and registration is simple.
- (b) Record-keeping requirements are minimum and compliance with regulations is easy.
- (c) Cost of compliance is low.
- (d) Least possibility of interference by the regulator.
- (e) Exemption from tax due to charitable nature of operations.

DISADVANTAGES OF SOCIETY

- (a) Tax exemption extended to societies may apply to public trusts only to the extent the Income Tax department accepts their activities as being charitable.
- (b) Since such institutions are of charitable nature, it is an inappropriate form of a commercial venture;
- (c) The concept of equity investment or ownership is virtually absent; Hence, it is not attractive for commercial investors interested in microfinance;
- (d) Commercial investors regard the investments in such entities as risky mainly on account of their lack of professionalism and managerial practices and political leanings(in some cases) and are, therefore, reluctant to provide large scale funding to such bodies;



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SUITS BY/AGAINST SOCIETY

A society registered under the Societies Registration Act, 1860 is a legal entity. It can sue and can be sued in the name of the President, Chairman or Principal Secretary of the society.

If there is no law, then person authorized by the General Body may sue on behalf of the society.

On death or retirement from office, of a plaintive or defendant, shall not affect the civil proceedings, brought by or against the society. The proceedings will continue in the name of the successor of such person.



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Q. 1. DISCUSS THE PROCEDURE OF AMENDMENT OR ALTERATION OF THE OBJECTS OF SOCIETY UNDER SOCIETIES REGISTRATION ACT, 1860. [Dec. 2017]

Ans. The objects of a society are its constitution and the society has to act within the framework of its objects. Any act done by the society beyond the objects clause shall be ultra virus. Under section 12 of the Societies Registration Act 1860, the following steps are required for alteration, extension or abridgment of the objects of a society –

- 1. Submission of the proposal by the governing body to the members of the society;
- 2. Ten days' notice to members about holding of a special general meeting;
- 3. Convening a special meeting for consideration and passing of the proposal by 3/5th of the members;
- 4. Convening second special general meeting after a month; and
- 5. Confirmation to the proposal by 3/5th of the members present at the second special meeting.

Q. 7. WHAT STEPS SHOULD BE TAKEN TO DISSOLVE A SOCIETY CONSTITUTED UNDER THE PROVISION OF SOCIETIES REGISTRATION ACT, 1860? [June. 2017]

Ans. The following steps are to be taken to dissolve a society:-

- 1. Decision of the governing body;
- Convene a special general meeting of the members by giving a requisite notice for consideration and passing resolution by 3/5th majority of the members present thereat;
- 3. Decision as to dissolve it forthwith or at a later time agreed upon by them.
- Decision for the actions to be taken for disposal of properties and settlement of claims and liabilities as per the rules and regulations of the society; and
- 5. Delegate authority to the person(S) of the governing body to comply with the decisions accordingly.

Where any Government is a member of the society or has contributed the funds to the society or is otherwise interested therein, the society shall have to obtain prior consent of such Government for the purpose.

Where any dispute arises on dissolution of a society relating to adjustment of its affairs, it should be referred to the principle Court of the original civil jurisdiction of the District where the chief building of the society is situated. The District Civil Court has the Jurisdiction to decide the dispute of a society.



SELF TEST QUESTIONS

FROM PAST CS EXAMS



- State the procedure for dissolution of a society under the Societies Registration Act, 1860.
- Detail the legal provisions for and consequences of dissolution of society the Societies Registration Act, 1860.
- State the powers and duties of the Registrar of Societies under the Societies Registration Act, 1860.
- 4. State the provisions of the Societies Registration Act, 1860 relating to 'suits by and against society'.

FROM ICSI MODULE



Answer the following:

- 1. Discuss the status of a Society registered under the Act.
- 2. Briefly explain the procedure for formation and registration of Societies.
- 3. Who is a member of society?
- 4. What are the powers of a Society? How its' property vests?
- 5. Discuss briefly the dissolution of a Society.
- 6. Discuss the powers of a Society to alter its purposes.



Q. 1. Answer to Question No. 1:-



Answers to be analysed in Classroom

Q. 2.	
Answer to Question No. 2:-	
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CHAPTER INDIAN TRUST ACT, 1882 Covering-Trust - Meaning Person who can create a Trust Trust-Purpose or Objective Difference between Public Trust and Private Trust Exemption available to trust Tax exemptions under section 11 of income tax act, 1961 Tax exemption under section 12 of the income tax act, 1961 Tax exemptions for a private trust **EXPECTED MARKS COVERAGE** (1 to 5)

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INDIAN TRUST ACT, 1882



TRUST- MEANING

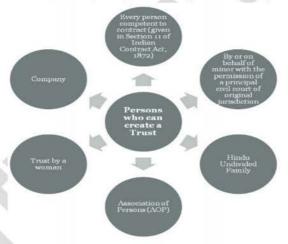
A Trust is a relationship in which a person or entity holds a valid legal title to a certain property which is known as the Trust property. The Trust is bound by a fiduciary duty to exercise that legal title for the benefit of any one or more individuals or group of individuals or organisations, who are known as the Beneficiaries. The Trust shall be governed by the terms of the Written Trust agreement.

Beneficiary

The person or persons for whose benefit, a trust has been created, is called the beneficiary or beneficiaries. While the trustees hold the legal title in trust property, the beneficiary holds the beneficial interest in that property.

PERSONS WHO CAN CREATE A TRUST

According to Section 7 of Indian Trusts Act, 1882, a trust may be created by the following persons:



TRUST- PUPRPOSE OR OBJECTIVE

Section 4 provides that a trust can be created only for a lawful purpose.

	(a) It is forbidden by law;
The purpose of	(b) It is of such nature that, if permitted, it would defect the provision of any law;
a trust is	(c) It is fraudulent;
lawful, unless:-	(d) It involves or implies injury to the person or property of another;
	(e) The court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. Where a trust has been created for two purposes, of which one is lawful and other unlawful and the two purposes are such that they can't be separated, the whole trust is void. (Chogal Bhandari v. Deputy Commercial Tax Office)



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DIFFERENCE BETWEEN PUBLIC TRUST AND PRIVATE TRUST

- (a) Identification of the beneficiaries of the Trust is a simple way to differentiate between a public and a private trust. If the beneficiaries make up a large or substantial body of public, then the trust in question is public. A public trust exists "for the purpose of its objects, the members of an uncertain and fluctuating body," and is managed by a board of trustee. If, however, the beneficiaries are a narrow and specific group such as the employees of a company, then the trust is private.
- (b) in a Public Trust, the interest is vested in an uncertain and fluctuating body. They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals. (Supreme Court in Deoki Nandan v. Murlidhar 1957 AIR 133 1956 SCR 756)
- (c) Their domains are different; public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

EXEMPTIONS AVAILABLE TO TRUSTS

Exemptions available to Trusts are primarily governed by the provisions of the Income Tax Act, 1961. The exemption has to be read keeping in mind whether the Trust is a Public Charitable Trust, Private Trust, Religious Trust, etc.

Certain key exemptions are listed below:

Exemptions under Section 10 of the Income Tax Act, 1961

Total tax exemption is available for certain types of trusts which include those which are formed for any of the activities related to sports, education, scientific research, professions, or promotion of khadi and village based industries, hospitals etc. and are notified as charitable or religious institutions.

TAX EXEMPTIONS UNDER SECTION 11 OF INCOME TAX ACT, 1961

As per Section 11, any income, profits or gains obtained by a trust from a property held by the trust established wholly for the purposes of religious or charitable nature shall not be included in the total income of the trust. Since such income shall not constitute to be a part of the trust's income, therefore, it is not taxable.

TAX EXEMPTION UNDER SECTION 12 OF THE INCOME TAX ACT, 1961

The incomes that are excluded from the computation of taxable income of trust or society are as follows:

- 1. Income which is derived from the property that is held under the authority of trust with the purposes which are wholly charitable or religious in nature.
- 2. Income which is kept aside to the extent that does not exceed 25% of the total income received in lieu of the property.
- 3. In cases of charitable trusts, specifically those formed before 1st of April, 1961, income which is acquired from the property which is held partially for religious or charitable purposes within India.
- 4. In furtherance of the above case, the income which is set apart to a certain extent and which does not exceed twenty five percent of the total income.
- 5. In cases of income that is obtained from a trust created before 1st April, 1952 for charitable purposes and spent outside India.



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TAX EXEMPTIONS FOR A PRIVATE TRUST

The taxability of the Trust depends upon the type of the trust. In the case of a non-discretionary trust, all income is taxable in the hands of the beneficiaries. But if the beneficiaries are minors, the income is to be clubbed with that of the parent with the higher income. On the other hand, in the case of a discretionary trust, in which the shares of the beneficiaries are unknown and indeterminate, it is taxed in the hands of trust at the maximum marginal rate.

NKJ-CLASSROOM PRACTICE



Q. 1.Mohan bequeaths certain property to Sohan. Requesting him to distribute it amongst such members of Ajay s family as Sohan should think most deserving. Dose it create a trust? Give reasons.

[June. 2018;3 Marks]

Ans. For creating a trust the author of the trust should indicate with reasonable certainty the following:

- Certainty in words: The words used to create a trust must be clear and certain so
 as to explain a clear intention to create a trust. Recommendatory words like "I
 hope" "I wish" m are not sufficient.
- 2. Certainty in the object of the trust: The beneficiary, for whose benefit the trust is created, must be shown clearly.
- Certainty in the subject-matter of the trust: The subject matter of the trust must be clear, i.e., the property, in respect of which a trust is created, must be shown clearly.

Purpose of the trust should be certain.

In view of the above, this does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

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Q. 1. Answer to Question No. 1:-



Answers to be analysed in Classroom

Q. 2.	
Answer to Question No. 2:-	
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CHAPTER MAINTENANCE OF **REGISTERS AND RECORDS** Covering-Statutory books / registers Optional books / registers Place of keeping the registers and returns Inspection, extract and copy of registers and returns Rectification of register of members Register of Significant beneficial owners in a company Returns Annual return Singing of annual return Advance Your knowledge Self Test Questions **EXPECTED MARKS COVERAGE**

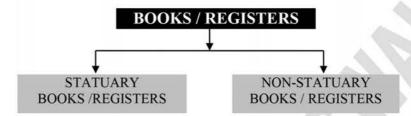
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MAINTENANCE OF REGISTERS AND RECORDS

The Companies Act, 2013 lays down that every company incorporated under this Act must maintain and keep at its registered office certain books, registers and file certain returns etc.

Every company incorporated under the Act is required to keep at its registered office, inter alia, the following books and registers –



STATUTORY BOOKS / REGISTERS

Every company incorporated under the Act is required to keep at its registered office, inter alia, the following statutory books and registers:-

- (a) Register of Securities bought back. [Section 68]
- (b) Register of deposits. [Sections 73]
- (c) Register of charges. [Section 85]
- (d) Register of members. [Section 88]
- (e) Index of members. [Section 88]
- (f) Register of debenture holders. [Section 88]
- (g) Index of debenture holders. [Section 88]
- (h) Register and index of beneficial owners. [Sections 88]
- (i) Foreign register of members, etc. [Section 88]
- (j) Register of Sweat Equity S hares. [Section 54]
- (k) Register of Postal Ballot. [Section 110]
- (I) Minutes of General Meeting and Board Meetings. [Section 118]
- (m) Books of accounts. [Section 128]
- (n) Register of Directors / Key Managerial Personnel. [Section 170]
- (o) Register of Loans, Guarantee, Security Investment [Section 186]
- (p) Register of Investment in securities not held in Company's name. [Section 187]
- (q) Register of Contracts with companies / firms in which directors are interested. [Section 189]

OPTIONAL BOOKS / REGISTERS

With a view of keeping proper records, companies invariably maintain some other books in addition to statutory books. These are called optional books. They are:-

- (a) Register of transfer of shares.
- (b) Register of documents sealed.
- (c) Register of share application and allotment.
- (d) Register of share warrants.
- (e) Director's Attendance Books.
- (f) Register of attendance of shareholders, etc. Register of proxies for general meeting.



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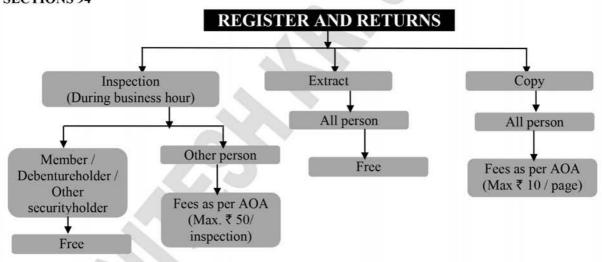
PLACE OF KEEPING THE REGISTERS AND RETURNS SECTIONS 94 PLACE OF KEEPING REGISTER AND Registered office Some other place (where atleast 10% shareholders resides) SR

Section 94 provides that the register of members, debenture – holders and any other security-holders and copies of annual returns shall be kept at the **registered office**.

However, a company may also keep the said registers and returns at any other place in India other than the registered office where more than one—tenth of total number of members reside, if:

(a) Such other place has been approved for this purpose by a **special resolution** passed by the company in general meeting; and

INSPECTION, EXTRACT AND COPY OF REGISTERS AND RETURNS SECTIONS 94



The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any **member**, **debenture** – **holder**,

Other security holder of beneficial owner, during business hours, without payment of any fees and by any other person on payment of such fees as may be specified in the AOA of a company subject to a maximum of ₹ 50/- for each inspection.

Any such member, debenture – holder, other security holder or beneficial owner or any other <u>persons</u> <u>may:-</u>

- (a) take extracts from any register, or index or return without payment of any fee; or
- (b) require a copy of any such register or entries therein or return on payment of such fees as may be specified on the AOA of the company subject to **maximum of ₹10/-** for each page. Such request has to be honoured with 7 days from the date of deposit of fees.

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RECTIFICATION OF REGISTER OF MEMBERS

SECTIONS 59

Any person may apply to the NCLT for rectification of the register; -

- (a) where the name of a person is without sufficient cause, entered in the register of members of a company;
- (b) where his name, having been entered, is removed without sufficient cause; or
- (c) where default is made or unnecessary delay takes place in entering in the register of members the fact of any person having become, or ceased to be, a member of company.

The NCLT has full powers to decide any question relating to the title of any person entered or omitted from the register of members.

If default is made in complying with the order of the NCLT, the company shall be punishable with fine which shall not be less than **one lakh rupees but which may extend to five lakh** rupees and <u>every officer</u> of the company who is in default shall be punishable with imprisonment for at erm which may extend to **one year** or with fine which shall not be less than **one lakh rupees but which may extend to three lakh rupees, or with**

REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY SECTION 90

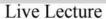
- (1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

 Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.
- (2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.
- (3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.
- (4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.
- (5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—
 - (a) to be a significant beneficial owner of the company;
 - (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- (c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.
- (6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

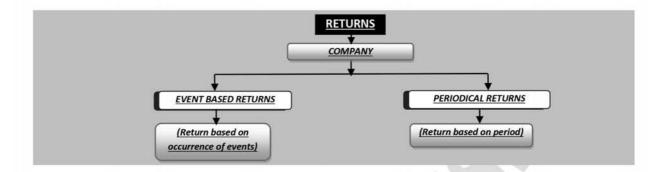


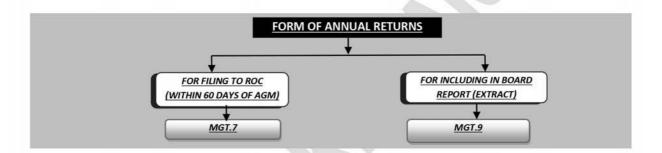
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RETURNS

Returns can be classified into two categories, namely:

A. Returns on occurrence of certain events/casual returns.

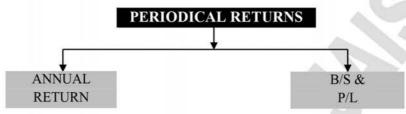
These returns are those returns which are required to be filed as and when contingency arises for eg. return on the creation of charge, return of allotment, change of directors, change in the registered office, passing of a special resolution, etc.

B. Periodical Returns.

These returns have to be filed after a specified period.

There are two important periodical returns. These are:

- (1) Annual Return
- (2) Balance Sheet and Profit and Loss Account



ANNUAL RETURN

SECTIONS 92

Every company shall, within **60 days** from the day on which each of the annual general meeting is held, prepare and file the Registrar, an annual return in **Form No MGT.7**, containing particulars regarding:

- (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies:
- **(b)** its shares, debentures and other securities and shareholding pattern;
- (c) its indebtedness; (deleted)
- (d) its members and debenture holders along with changes therein since close of the previous financial year;
- (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- (f) meeting of members or a class thereof, Board and its various committees along with attendance details;
- (g) remuneration of directors and key managerial personnel;
- (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- (i) matter relating to certification of compliances, disclosures as may be prescribed;
- (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign institutional Investors
- (k) such other matters as may be prescribed,

in case AGM is not held for a year, annual return should be filed within 60 days from the latest day on which the AGM should have been held as per law. **annual return should contain the details as on the date of closure of financial year.** An extract of the annual return in **Form No MGT.9** shall form part of the Board's report.

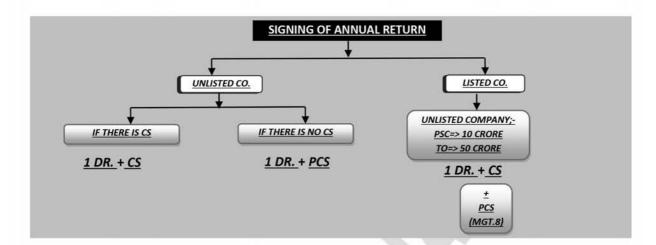
Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report".

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SINGING OF ANNUAL RETURN

Annual return is required to be signed by **one director and Company Secretary** of the company and where there is no company secretary by a <u>company secretary in whole – time practice</u>.

In relation to One Person Company (OPC) and Small Company and private company (if such private company is a start-up), the annual return shall be signed by the Company Secretary of the company. Or where there is no company secretary, by a director of the company.

In case of **listed company** and a company having paid –up share capital of ₹ 10 Crores of more 'or' turnover of ₹50 Crores or more, the annual return shall also be certified by a company secretary in practice, in Form No MGT.8, stating that the annual return disclosed the facts correctly and adequately and that the company has complied with all the provisions of this Act.

FEE FOR FILING, ETC

[Section 403]

Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

"Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submited, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies.



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List of Register and Records required to be maintained by an enterprise

		ers to be maintained under Con	
S. No.	Form	Name of the Register	Relevant Section and Rule
1.	MGT-1	Register of Members	Section 88 (1) and Rule 3(1) of the Companies (Management and Administration) Rules, 2014
2.	MGT-2		Section 88 (1) and Rule 4 of the Companies (Management and Administration) Rules, 2014
3.	MGT-3		Section 88(4) and Rule 7 of the Companies (Management and Administration) Rules, 2014
4.	Register		Section 170 & Rule 17 Of COS (Appointment & Qualification Of Director) Rules, 2014
5.	Register	Index of Members	Section 88 (2) and Rule 6 of the Companies (Management and Administration) Rules, 2014
6.	Register	Index of Debenture Holders	Section 88 (2)
7.	Register	Register and Index of Beneficial Owner	Section 88 (3)
8.	SH-2	Register of Renewed and Duplicate Share Certificate	Rule 6 of the Companies (Share Capital and Debentures) Rules, 2014
9.	SH-3	Register of Sweat Equity Shares	Section 54 and Rule 8 (14) of the Companies (Share Capital and Debentures) Rules, 2014
10.	SH-6	Register of Employee Stock Option	Section 62 and Rule 12 (10)
11.	SH-10	Register of Shares/Other Securities Bought Back	Section 68 and Rule 17 (12) of the Companies (Share Capital and Debentures) Rules, 2014
12.	Register	Register of Deposits	Section 73 and Rule 14 of the Companies (Acceptance of Deposits) Rules, 2014
13.	CHG-7	Register of Charges	Section 85 and Rule 7 of the Companies (Registration of Charges) Rules, 2014
14.	MBP-2	Made By Company	Section 186 and Rule 12 of the Companies (Meeting of Board and its Powers) Rules, 2014
15.	MBP-3	Register of Investment Not	Section 187 and Rule 14 of the Companies (Meeting of Board and its Powers) Rules, 2014
16.	MBP-4		Section 189 and Rule 16 of the Companies (Meeting of Board and its Powers) Rules, 2014

Other Important Books and Registers

- 1. Minutes Book
 - (a) Board Meeting Minutes Book
 - **(b)** General Meeting Minutes Book (i.e. AGM, EGM, Posta 1 Ballot, Creditors Meetings, Debenture holders Meetings)
- 2. Books of Accounts/Financial Statements
- 3. Register of Directors Attendance at Board/Committee Meetings.

Financial Records required to be maintained by Enterprises

Records to be maintained by businesses can be broken up into four broad heads:

1. Income Records

To be able to accurately state income is important due to several reasons. Not only is it important to be able to assess the viability and strength of the business but it is also important that financial records neither overstate nor understate the incomes earned by the business. Overstating revenues subjects the business to additional tax costs whilst understatement of income can attract penalties on account of tax evasion.

Ordinarily invoices must contain the following info rmation heads:-

- (a) Name of issuing business
- (b) Address of business
- (c) Date of issue
- (d) Serial No
- (e) CIN (company identification no) if business is being run by a company
- (f) Service tax, VAT registration numbers (if applicable)
- (g) Description of goods, services as well as prices
- (h) Details of taxes levied, if any
- (i) Total invoice Value

2. Expenses and Purchase Records

To be able to determine your business's profitability it is important that you should record and retain details of expenses and purchases made by your business. Documents that contain such details include:

- (a) Invoices received
- (b) Credit card statements
- (c) Receipts/ counterfoils
- (d) Cheque book counterfoils
- (e) Cash vouchers
- (f) Salary information
- (g) Credit Documents

Collectively, these will represent the sum total of monies expended by the business in the pursuit of its main activities. Retaining and filing this data shall lead to meaningful information on the expense patterns of the company which can then be used to make informed decisions by the business owners.

This data is also useful in a tax context as it will form the basis for the justification of profitability figures as reflected by the business in its returns of incomes during scrutiny proceedings undertaken by the income tax department.

3. Banking Records

Bank records offer great insight into the transaction undertaken by a business. To be able to correctly ascertain the financial strength of an enterprise it is necessary that the bank balances as per records be in sync with the reality. To accomplish this a business must maintain up to date records of:

- (a) Bank account statements along with reconciliations
- (b) Cheque books, with completed counterfoils
- (c) Cheque/ Cash Deposit Counterfoils

The aforementioned data sets allow one to determine the exact deposits and withdrawals from the bank as well as identify the nature and purpose of such withdrawals along with the identity of the person to whom such payments have been made.

4. Cash Records

Despite all advances in banking technology and facilities, businesses must still undertake a large number of transactions in cash. Due to the very sensitive nature of cash holdings and transactions, It is important from a business as well as reporting perspective to have a tight handle on the cash in circulation within the enterprise.

To be able to actively ascertain the exact amount of cash available, a business must maintain two principle documents:

- (a) Cash collection register, to record and reconcile all collections made by the business in cash, and;
- (b) Day books / Cash book to map the inward and outward movement of cash from the business



Q. 1. Answer to Question No. 1:-



Answers to be analysed in Classroom

Q. 2.	
Answer to Question No. 2:-	
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CHAPTER

8

IDENTIFYING LAWS APPLICABLE TO VARIOUS INDUSTRIES AND THEIR INITIAL COMPALIANCES

Covering-

- Applying for Business Licenses
- Adhering to Labour Laws
- Laws Relating to industries and industries specific
- The plantation Labour Act, 1951
- The Mines Act, 1952
- The Motor Transport Workers Act, 1961
- The Contract Labour (Regulation & Abolition) Act, 1970
- The Inter-State Migrant Workmen (Regulation of employment and conditions of service) Act, 1979
- Labour welfare funds for social assistance to workers
- The building and other construction workers (Regulation of employment & conditions of service) Act, 1996
- Sales promotion employees (Conditions of service) Act, 1976
- Apart from the above mentioned laws, there is a plethora of laws which are applicable to specific industries.
- Self Test Questions
 - From Past CS Exams
 - > From ICSI Module

EXPECTED
MARKS COVERAGE
(10 to 15)

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IDENTIFYING LAWS APPLICABLE TO VARIOUS INDUSTRIES AND THEIR INITIAL COMPALIANCES

Under the transforming move of vision New India 2022, India is venerating an emerging market, registering itself as one of the biggest and fastest growing economies in the world Indeed, when the entrance and advancement to Indian business market would be of ultimate fortune, there are various laws which need to be abided for successfully setting up and taking forward an enterprise in India.

APPLYING FOR BUSINESS LICENSES

Licenses are integral to run any business. Depending on the nature and size of business, several licenses are applicable in India. The common license that is applicable to all businesses is the **Shop and Establishment Act** which is applicable to all premises where trade, business or profession is carried out. Other business licenses vary from industry to industry. For instance an e-commerce company may require additional licenses like **GST Registration**, **Professional Tax** etc. while a restaurant may require licenses like **Food Safety License**, **Certificate of Environmental Clearance**, **Prevention of Food Adulteration Act**, **Health Trade License** etc.

ADHERING TO LABOUR LAWS

Adhering to labor laws are integral to every organization small or big. When you are established as a company and have hired people to work for your organization you are subject to several labor laws regardless of the size of the organization.

Some major labour laws applicable

- (1) The Industrial Disputes Act, 1947
- (2) The Trade Union Act, 1926
- (3) Building and Other Constructions Workers' (Regulation of employment and Conditions of Service)
 Act, 1996
- (4) The Industrial Employment (Standing Orders) Act, 1946
- (5) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- (6) The Payment of Gratuity Act, 1972
- (7) The Contract Labour (Regulation and Abolition Act, 1970
- (8) The Employees' provident Funds and Miscellaneous Provisions Act, 1952

The employees' State Insurance Act, 1948

LAWS RELATING TO INDUSTRIES AND INDUSTRIES IN SPECIFIC

(1) In India, there are several Acts and legislations enacted by the Government of India for regulation of Industries in the country. These enactments play a very important role in the country's overall progress and economic development. These legislations are amended from time to time in accordance with the changing circumstances and environment.

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- (2) The most important Act is the Companies Act, 2013 which relates to setting up and operation of companies in India. It empowers the Central Government to regulate the formation, financing, functioning and winding up of companies.
- (3) In order to provide the Central Government with the means to implement its industrial policies, several legislations have been enacted. The most important being the Industries (Development and Regulation) Act, 1951 (IDRA)
- (4) The bulk of the transactions in trade, commerce and industry are based on contracts. In India, the Indian Contract Act, 1872 is the governing legislation for contracts,

Some of the major legislations indicating the laws applicable to the Industries in specific areas below:

1. THE PLANTATION LABOUR ACT, 1951

This Act is enacted to provide for the welfare of plantation labour and regulates the conditions of work implantations. According to the Act, the term ;plantation' means "any plantation to which this Act, whether wholly or in part applies and includes offices hospitals dispensaries, schools, and any other premises used for any purpose connected with such plantation but does not include any factory on the premises to which the provisions of the Factories Act, 1948 apply".

The Act is administered by the Ministry of Labour through its Industrial Relations Division.

2. THE MINES ACT, 1952

The Mines Act, 1952 contains provisions for measures relating to the health ,safety and welfare of workers in the coal, oil mines. According to the Act, the term 'mine means "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes all borings, bore holes oil wells and accessory crude conditioning plants, shafts, machinery works railways, tramways, sliding ,workshops, power stations ,etc. or any premises connected with mining operations and near or in the mining area.

The Act is administered by the Ministry of labour and Employment through the Directorate General of mines Safety (DGMS).

3. THE MOTOR TRANSPORT WORKERS ACT, 1961

The Act was enacted to provide for the welfare of motor transport workers and to regulate the conditions of their work. It applies to every motor transport undertaking employing five or more motor transport workers.

The State Government may, after giving notification in the Official Gazette, apply all or any of the provisions of this Act to any motor transport undertaking employing less than five motor transport workers.

According to the Act, 'motor transport undertaking' means "an undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier".

Every employer of a motor transport undertaking to which this Act applies shall have the undertaking Registered under this Act. No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week. Also, no adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking for more than six hours a day including rest interval of half-an-hour; and between the hours of 10 P.M. and 6 A.M.

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4. THE CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

This Act is enacted to regulate employment of contract labour so as to place it at par with labour employed directly, with regard to the working conditions and certain other benefits. C

5. THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979was enacted to protect the rights and safeguard the interest of migrant workers. The Act intends to regulate the employment of inter-state migrant workmen and to provide their conditions of service. It applies to every establishment and the contractor, who employ five or more inter-state migrant workmen.

The responsibility for enforcement of the Act in establishments where the Central Government is the appropriate Government lies with the office of the Chief Labour Commissioner (Central) and for the establishments located under the States sphere lies with the respective State Governments.

6. LABOUR WELFARE FUNDS FOR SOCIAL ASSISTANCE TO WORKERS

To extend a measure of social assistance to workers in the unorganized sector, the concept of 'Labour Welfare Fund' was evolved and five welfare funds were set up under the Ministry of Labour and Employment.

The various legislation so enacted include:-

- (1) The Mica Mines Labour Welfare Fund Act, 1946.
- (2) The Limestone and Dolomite Mines Labor Welfare Fund Act, 1972.
- (3) The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976.
- (4) The Beedi Workers Welfare Fund Act, 1976.
- (5) The Cine Workers Welfare Fund Act, 1981.

BUILDING OTHER CONSTRUCTION WORKERS 7. THE & EMPLOYMENT (REGULATION &CONDITIONS OF OF SERVICE) ACT,1996

This law was enacted to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures. The Act is applicable to every establishment which employs ten or more workers in any building or other construction work and to the projects costing more than ₹10 lakh.

8. SALES PROMOTION EMPLOYEES (CONDITIONS OF SERVICE) ACT, 1976

The Sales Promotion Employees (Conditions of Service) Act, 1976 was enacted to regulate certain conditions of service of sales promotion employees in certain establishments.

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APART FROM THE ABOVE MENTIONED LAWS, THERE IS A PLETHORA OF LAWS WHICH ARE APPLICABLE TO SPECIFIC **INDUSTRIES**

THE SECTOR -WISE INDICATIVE LIST IS AS FOLLOWS:

S.N.	Sector	Applicable Laws		
1.	PHARMACEUTI	(1) Pharmacy Act, 1948:		
	CAL INDUSTRY	(2) Drugs and Cosmetics Act, 1940;		
		(3) Homoeopathy Central Council Act, 1973		
		(4) Drugs and Magic Remedies (Objectionable Advertisement) Act,1954		
		(5) Narcotic Drugs and Psychotropic Substances Act, 1985		
		(6) Conservation of Foreign Exchange and Prevention of Smuggling		
		Activities Act,1974		
		(7) The Medicinal & Toilet Preparations (Excise Duties) Act, 1955		
		(8) Petroleum Act, 1934		
		(9) Poisons Act,1919		
		10) Food Safety And Standards Act, 2006		
		(11) Insecticides Act, 1968		
		(12) Biological Diversity Act, 2002		
		(13) The Indian Copyright Act, 1957		
		(14) The Patents Act, 1970		
		(15) The Trade Marks Act, 1999		
2.	COMPUTER	(1) The Information Technology Act,2000		
	PROGRAMMIN	(2) The Special Economic Zone Act, 2005		
	G	(3) Policy relating to Software Technology Parks of India and its		
	CONSULTANCY	regulations		
	AND RELATED	(4) The Indian Copyright Act, 1957		
	SERVICES	(5) The Patents Act, 1970		
		(6) The Trade Marks Act, 1999		
3.	GAS INDUSTRY	(1) The Petroleum Act, 1934		
		(2) Petroleum and Minerals Pipelines (Acquisition of Right of User Inland)		
		Act, 1962		
		(3) Explosives Act, 1884		
	400	(4) The Oilfield (Regulation Development) Act, 1948 Petroleum and		
		Natural Gas Regulatory Board Act, 2006		
	CA N	(5) The Oil Industry(Development) Act, 1974		
		(6) The Mines Act, 1952		
4.	OIL &	(1) The Petroleum Act, 1934.		
`	PETROLEUM	(2) Petroleum and Minerals Pipelines (Acquisition of Right of User Inland)		
	SECTOR	Act, 1962.		
		(3) Explosives Act, 1884.		
		(4) The Oilfield (Regulation& Development) Act, 1948.		
		(5) Petroleum and Natural Gas Regulatory Board Act, 2006.		
		(6) The Oil Industry (Development) Act, 1974.		
		(7) The Mines Act, 1952.		
		(8) Mines and Minerals (Regulations and Development) Act, 1957.		

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		(9) The Territorial Waters, Continental Shelf, Exclusive Economic
		(10) Zone And Other Maritime Zones Act, 1976
		(11) Offshore Areas Minerals (Development and Regulation) Act, 2002.
5.	POWER	(1) The Electricity Act, 2003
э.	FOWER	The same the collection of the same and the
		The same of the sa
		(3) Essential Commodities Act, 1955
		(4) Explosives Act, 1884
		(5) Mines Act, 1952 (wherever applicable)
		(6) Mines and Mineral (Regulation and Development) Act, 1957 (wherever
		applicable)
6.	SUGAR	(1) Sugar Cess Act, 1982
	INDUSTRY	(2) Levy Sugar Price Equalization Fund Act, 1976
		(3) Food Safety And Standards Act, 2006
		(4) Essential Commodities Act,1955
		(5) Sugar Development Fund Act, 1982
		(6) Export (Quality Control and Inspection) Act, 1963 Agricultural and
		Processed Food Products Export Act, 1986
7.	TOBACCO	(1) Tobacco Board Act, 1975
	INDUSTRY	(2) Tobacco Cess Act, 1975
		(3) Beedi and Cigar Workers (Conditions of Employment) Act, 1966 as
		amended in 1993
		(4) Beedi Workers Welfare Cess Act, 1976
		(5) Beedi Workers Welfare Fund Act, 1976
		(6) Cigarettes and Other Tobacco Products (Prohibition of
		(7) Advertisement and Regulation of Trade and Commerce, Production,
		Supply and Distribution) Act, 2003 (COPTA).
		(8) The Cable Television Network (Regulation) Act, 1955
8.	INSURANCE	(1) Insurance Act, 1938
		(2) Insurance Regulatory and Development Authority Act, 1999
		(3) General Insurance Business (Nationalization) Act, 1972
		(4) Industrial Disputes (Banking and Insurance Companies) Act, 1949.
		(5) Marine Insurance Act, 1963
9.	COMMERCIAL	(1) Reserve Bank of India Act, 1934
٠.	BANKS (OTHER	
	THAN	of Security Interest Act, 2002
	NATIONALIZED	(3) The Bankers' Books Evidence Act, 1891
	BANK AND	(4) Recovery of Debts due to Banks & Financial Institution Act, 1993
	STATE BANK OF	(5) Credit Information Companies (Regulation) Act, 2005
		No. 1 and 1
	INDIA	
		(7) The Deposit Insurance and Credit Guarantee Corporation Act, 1961
		(8) Industrial Disputes (Banking and Insurance Companies) Act,1949
4.0	DEVER LOSS	(9) Information Technology Act, 2000
10.	BEVERAGES	(1) Food Safety and Standards Act, 2006.
	(NON-	(2) The Insecticide Act, 1968.
	ALCOHOLIC)	(3) Export (Quality Control and Inspection) Act, 1963.
		(4) Inflammable Substances Act,1952.
		(5) Agricultural and Processed Food Products Export Cess Act,1986.
		(6) Agricultural Produce (Grading and Marking) Act, 1937.

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11.	REAL ESTATE	(1) Housing Board Act, 1965
	SECTOR	(2) Transfer of Property Act, 1882
		(3) Building and Other Construction Workers' (Regulation of Employment
		and Conditions of Services) Act,1996
12. AUTOMOBILE		(1) Motor Vehicles Act, 1988
		(2) The Motor Transport Workers Act, 1961
		(3) The Explosive Act, 1884
		(4) The Petroleum Act, 1934
		(5) The Environment (Protection) Act, 1986
		(6) The Water(Prevention and Control of Pollution) Act, 1974
		(7) The Air(Prevention and Control of Pollution) Act, 1981
13.	AVIATION	(1) Aircraft Act, 1934
	SECTOR	(2) Airports Authority of India Act, 1994
		(3) Carriage by Air Act, 1972
		(4) Tokyo Convention Act, 1975
		(5) Anti-Hijacking Act, 1982
		(6) Suppression of Unlawful Acts against Safety of Civil Aviation Act,
		1982
		(7) Airports Economic Regulatory Authority of India Act,2008
14.	HUMAN	(1) Clinical Establishment (Registration and Registration and Regulation)
	HEALTH	Act,2010
	SECTOR	(2) Indian Medical Council Act, 1956
		(3) Indian Medical Council Act, 1916
		(4) Indian Nursing Council Act, 1947
		(5) The Dentists Act, 1948
		(6) Rehabilitation Council of India Act, 1992
		(7) Drugs and Cosmetic Act, 1940
		(8) The Drugs Control Act, 1950
		(9) Pharmacy Act, 1948
		(10) Narcotics and Psychotropic Substances Act, 1985
		(11) Homoeopathy Central Council Act, 1973.
		(12) Insecticide Act, 1968.
		(13) Transplantation of Human Organs Act, 1994.
	100	(14) Drugs and Magic Remedies (Objectionable) Advertisements Act, 1954.
		(15) Birth and Death and Marriage Registration Act, 1886.
		(16) Mental Health Act, 1987.
		(17) Ear Drums and Ear Bones (Authority for Use For Therapeutic Purposes)
		Act, 1982.
		(18) Eyes (Authority for Use For Therapeutic Purposes) Act, 1982
		(19) The Epidemic Disease Act, 1897.
15.	MINING OF	(1) Mines Act, 1952
	METAL ORES	(2) Mines and Minerals (Development and Regulation) Act, 1957
		(3) Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour
		Welfare Cess Act, 1976.
		(4) Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour
		Welfare Fund Act, 1976.

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16.	EDIBLE OILS	(1) National Oil Seeds and Vegetable Oils Development Board Act, 1983
		(2) Cotton Copra and Vegetable Oils Cess (Abolition) Act, 1987
		(3) Seeds Act, 1966
		(4) Protection of Plant Varieties and Farmers Right Act, 2001
		(5) Food Safety And Standards Act, 2006
17.	ROAD	(1) The Multimodal Transportation of Goods Act, 1993
	TRANSPORT	(2) Control of National Highways (Land and Traffic) Act, 2002
		(3) Carriage by Road Act, 2007
		(4) Road Transport Corporations Act, 1950
		(5) Motor Vehicles Act, 1988



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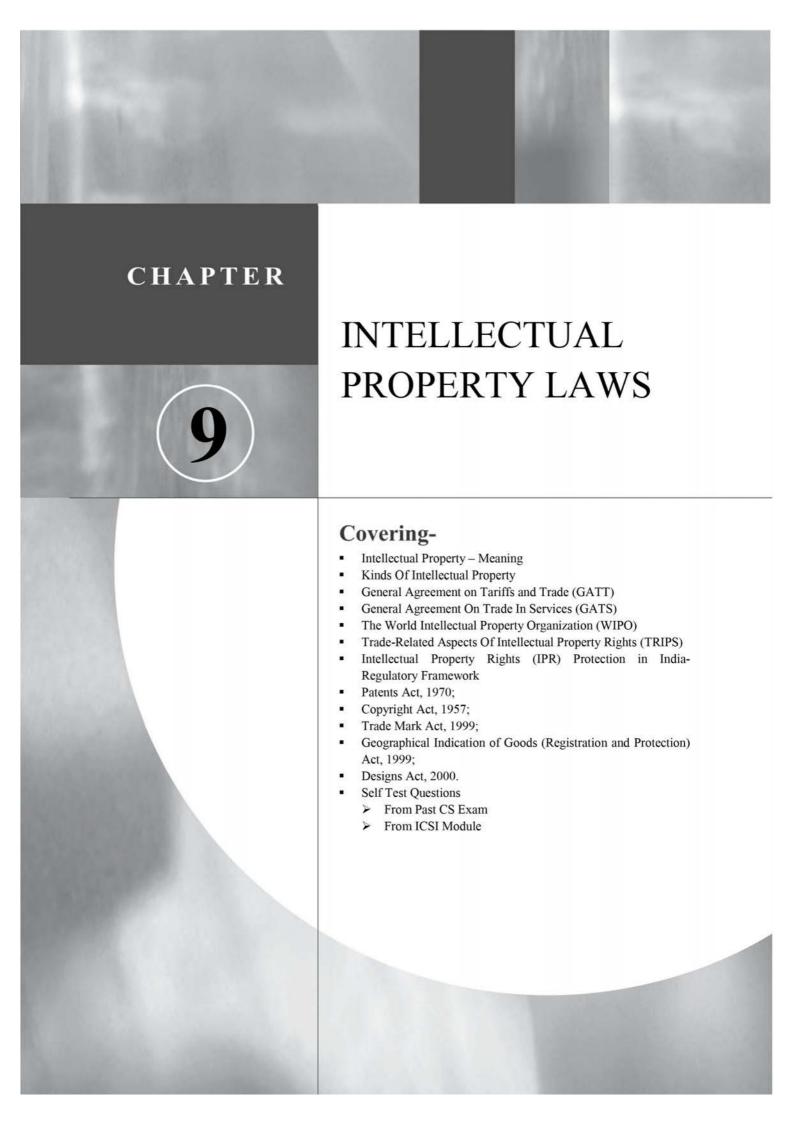


Q. 1. Answer to Question No. 1:-



Answers to be analysed in Classroom

Q. 2.	
Answer to Question No. 2:-	
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INTELLECTUAL PROPERTY LAWS



INTELLECTUAL PROPERTY-MEANING

The term *intellectual property relates to the creations of human mind and human intellect*, this property is called Intellectual property.

In other words, intellectual property relates to pieces of information which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property right does not vest in those copies but in the information reflected in those copies. Similar to property rights in movable and immovable property, intellectual property is also characterised by certain rights as well as limitations such as right to use and licence and also limited duration in the case of copy right and patents.

KINDS OF INTELLECTUAL PROPERTY

- 1. PATENT
- 2. TRADEMARK
- 3. COPYRIGHT
- 4. DESIGN

INTERNATIONAL REGULATIONS ON IPR

1. GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

General Agreement	(1) an international agreement, i.e. a document setting out the rules for
on Tariffs and Trade	conducting international trade, and
(GATT) contained:	(2) An international organization created later to support the agreement.

GATT, the international agency, no longer exists. The World Trade Organization has now replaced it.

The General Agreement on Tariffs and Trade dealt with trade in goods, and it still does. It has been amended and incorporated into the new WTO agreements. The updated GATT lives alongside the new General Agreement on Trade in Services (GATS) and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The WTO is not a simple extension of GATT.

It is much more in existence. While GATT no longer exists as an international organization, the GATT agreement lives on. The old text is now called "GATT 1947". The updated version is called "GATT 1994". As the more mature WTO developed out of GATT, one could say that the child is the father of the man.



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2. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

General Agreement on Trade in Services (GATS) is the first ever set of multilateral, legally enforceable rules covering international trade in services. It was negotiated in the **Uruguay Round of World Trade Organisation**.

Basic Principles of GATS are as follows:	(a) All services are covered by GATS
	(b) Most-favoured-nation treatment applies to all services, except the one-off temporary exemptions
	(c) National treatment applies in the areas where commitments are made
	(d) Transparency in regulations, inquiry points
	(e) Regulations have to be objective and reasonable
	(f) International payments: normally unrestricted
	(g) Individual countries' commitments: negotiated and bound
	(h) Progressive liberalization: through further negotiations.

3. THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

The World Intellectual Property Organization (WIPO) mission is to promote innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system.

The World Intellectual Property Organization (WIPO) is the United Nations agency dedicated to the use of intellectual property as a means of stimulating innovation and creativity. WIPO was established in 1970, following the entry into force of the WIPO Convention in 1967, with a mandate from its Member States to promote the protection of intellectual property throughout the world through cooperation among States and in collaboration with other international organizations.

The Organization became a specialized agency of the United Nations in 1974. WIPO headquarters is in Geneva. It dedicated to developing a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

As part of the United Nations system of specialized agencies, WIPO serves as a forum for its Member States to establish and harmonize rules and practices for the protection of intellectual property rights. WIPO also services global registration systems for trademarks, industrial designs and appellations of origin, and a global filing system for patents.

With the increasing globalization of trade and rapid changes in technological innovation, WIPO plays a key role in helping these new systems to evolve through treaty negotiation, registration, enforcement, legal and technical assistance and training in various forms.

The World Intellectual Property Organization promotes the development and use of the international Intellectual Property system through:

- (a) Services
- (b) Law
- (c) Infrastructure
- (d) Development



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4. TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

Ideas and knowledge are an increasingly important part of trade.

Most of the value of new medicines and other high technology products lies in the amount of invention, innovation, research, design and testing involved. Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not usually because of the plastic, metal or paper used to make them. Many products that used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value.

Creators can be given the right to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them. These are "intellectual property rights".

The World Trade Organization's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members.

The agreement covers five broad issues:

- 1. how basic principles of the trading system and other international intellectual property agreements should be applied
- 2. how to give adequate protection to intellectual property rights
- 3. how countries should enforce those rights adequately in their own territories
- 4. how to settle disputes on intellectual property between members of the WTO
- 5. Special transitional arrangements during the period when the new system is being introduced.

201101 30	(a) Copyright and related rights
Types of intellectual property covered by the TRIPS Agreement	(b) Trademarks, including service marks
	(c) Geographical indications
	(d) Industrial designs
	(e) Patents
	(f) Layout-designs (topographies) of integrated circuits
	(g) Undisclosed information, including trade secret.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION IN INDIA – REGULATORY FRAMEWORK

Following Acts constitute the regulatory framework for IPR protection in India:-

- **1. PATENTS ACT, 1970**
- 2. COPYRIGHT ACT, 1956
- 3. TRADE MARKS ACT, 1999
- 4. DESIGNS ACT, 2000

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PATENTS ACT, 1970

From Bare Act... -

रज़िस्ट्री सं॰ डी॰ एल॰-33004/99

REGD. NO. D. L.-33004/99

The Gazette of India

THE PATENTS ACT, 1970

ACT No. 39 OF 1970

[19th September, 1970.]

An Act to amend and consolidate the law relating to patents.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- 1. Short title, extent and commencement.—(1) This Act may be called the Patents Act, 1970.
- (2) It extends to the whole of India.
- (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 provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

- 2. Definitions and interpretation.—(1) In this Act, unless the context otherwise requires,—
 - ²[(a) "Appellate Board" means the Appellate Board referred to in section 116;
- (ab) "assignee" includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;
- ³[(aba) "Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to time;]
- (ac) "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry;]
- (b) "Controller" means the Controller General of Patents, Designs and Trade Marks referred to in section 73;
 - (c) "convention application" means an application for a patent made by virtue of section 135;

CHAPTER II

INVENTIONS NOT PATENTABLE

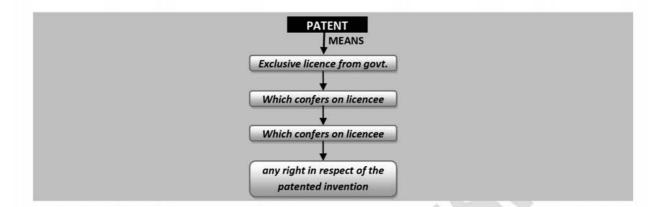
- 3. What are not inventions.—The following are not inventions within the meaning of this Act.—
 - (a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
 - ³[(b) an invention the primary or intended use or commercial exploitation of which would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;]
 - (c) the mere discovery of a scientific principle or the formulation of an abstract theory ⁴[or discovery of any living thing or non-living substance occurring in nature];
 - ⁵[(d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation.—For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;]

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PATENTS ACT, 1970



Generally speaking, Patent is a monopoly grant and it enables the inventor to control the output and within the limits set by demand, the price of the patented products. Patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale.

Protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare.

The law relating to patents is contained in the Patents Act, 1970.

Patents Act, 1970 provides that any 'inventions' may be patented.

1. Novelty 2. Lack of obviousness 3. Inventive step 4. No prior knowledge / use 5. Utility

PATENT- DEFINITION

Patent is an exclusive licence from the government which confers on the licencee, or on persons authorised by licencee, to the exclusion of all other persons, any right in respect of the patented invention.

ESSENTIAL INGREDIENTS OF A PATENT

Sufficiency of description

6.Industrial application and marketability

1. Novelty
2. Lack of obviousness
3. Inventive step
4. No prior knowledge / use
5. Utility
6. Industrial application and marketability
7. Sufficiency of description.

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PERSONS ENTITLED TO MAKE APPLICATION FOR PATENT

Section 6 of the Act provides that an	(a) by any person claiming to be the true and first inventor of the invention;
application for a patent for an invention may be	(b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;
made by any of the following persons, that is to say:-	(c) By the legal representative of any deceased person who immediately before his death was entitled to make such an application.

The application may be made by one of the persons either alone or jointly with any other person.

PATENT PROCEDURE

> FORM OF APPLICATION AND COMPLETE SPECIFICATION

Section 7 dealing with form of application requires every application for a patent to be **made for one invention only**. Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application proof of the right to make the application.

> CONTENTS OF SPECIFICATIONS

Section 10 dealing with contents of Specifications provides that every specification shall describe the invention and begin with a title sufficiently indicating the subject matter to which the invention relates.

	(a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
Every complete	(b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection;
specification <u>is</u> required to -	(c) end with a claim or claims defining the scope of the invention for which protection is claimed; and
	(d) Be accompanied by an abstract to provide technical information on the invention.

> PUBLICATION OF APPLICATIONS

The Controller on receipt of such request shall publish such application as soon as possible.

The publication of every application shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

> OPPOSITION TO THE PATENT

Where an application for a patent has been published, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the following grounds;-

- (a) that the applicant for the patent wrongfully obtained the invention
- (b) that the invention so far as claimed was publicly known or publicly used
- (c) that the invention is not patentable under this Act;
- (d) That the complete specification does not sufficiently and clearly describes the invention.

The Controller on request of such person shall hear him and dispose of the representation in the prescribed manner and specified time.



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PATENT PROCEDURE APPLICATION IS MADE TO THE CONTROLLER OF PATENT BY "INVENTOR (INCLUDES ASSIGNEE/LEGAL REPRESENTATIVE OF INVENTOR) APPLICATION FOR A PATENT TO BE MADE FOR ONE INVENTION ONLY ALONG WITH FULL SPECIFICATIONS OF INVENTION THE CONTROLLER ON RECEIPT OF SUCH APPLICATION PUBLISHES SUCH APPLICATION IN OFFICIAL JOURNAL AND INVITES OPPOSITION THE CONTROLLER AFTER HEARING OPPOSITION, IF FINDS APPLICATION IN ORDER FOR GRANT OF PATENT, GRANTS THE PATENT THE CONTROLLER PUBLISHES THE FACTS REGARDING GRANT OF PATENT IN OFFICIAL JOURNAL. THE TERM OF EVERY PATENT IS 20 YEARS FROM THE DATE OF FILING OF APPLICATION FOR THE PATENT.

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GRANT OF PATENTS

Where an application for a patent has been found to be in order for grant of the patent the patent shall be granted as expeditiously as possible to the applicant with the seal of the patent office and the date on which the patent is granted shall be entered in the register.

The Controller has been put under obligation to publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.

> GRANT OF PATENTS SUBJECT TO CONDITIONS

The grant of a patent shall be subject to the following conditions that:-

- (a) any machine, apparatus or other article in respect of which the patent is granted may be imported or made by or on behalf of the Government for the purpose merely of its own use;
- **(b)** any machine, apparatus or other article in respect of which the patent is granted may be made or used, by any person, for the purpose merely of experiment or research
- (c) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or notified by Central Government.

PATENTS OF ADDITION

Where an application is made for a patent in respect of any improvement in or modification of an invention, namely the main invention and the applicant also has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

A patent of addition is granted for a term **equal to that of the patent** for the main invention or so much thereof as has not expired and remains in force during that term. **No renewal fees** is payable in respect of a patent of addition.

TERM OF PATENT

The term of every patent shall be 20 years from the date of filing of application for the patent.

It may be noted that a patent shall cease to have effect if the renewal fee is not paid within the prescribed period or within such extended period as may be prescribed.

REMEDIES AGAINST INFRINGEMENT OF PATENT

Infringement is the violation of monopoly rights given to patentee by patent. The patentee, his agents and his licensee may file a suit for infringement in the District Court.

Remedies for infringement of patent entitle the owner of the patent to all such remedies by way of injunction, damages, and otherwise as may be conferred by law for the infringement patent.

The Court can also order that infringing goods shall be seized, forfeited, or destroyed as the Court deems fit.



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ACTS WHICH ARE NOT INFRINGEMENT

Following are the Acts which are not considered to be amounting to infringement under Act:-

- (a) Making, constructing, testing, selling, using or importing of patented invention solely for uses reasonably related to development and submission of information required under any law.
- **(b)** Importation of patented products by any person, who is authorized under the law to produce, sell, distribute the products in India.

ASSIGMENT/LICENCING OF PATENT

A patentee can assign or licence his rights in the patent in favour of any person.

Such assignment/licence must be done by executing a document which must cover all the terms/ and conditions governing the rights and obligations of assignee/licensee.

The aforesaid document must be filed with the controller of patent within 6 months from the date of execution.



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COPYRIGHT ACT, 1957

From Bare Act... -

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REGD. NO. D. L.-33004/99



THE COPYRIGHT ACT, 1957 ACT No. 14 of 1957¹

[4th June, 1957.]

An Act to amend and consolidate the law relating to copyright.

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- 1. Short title, extent and commencement.—(1) This Act may be called the Copyright Act, 1957.
- (2) It extends to the whole of India,
- (3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.
 - 2. Interpretation. In this Act, unless the context otherwise requires,-
 - (a) "adaptation" means,-
 - (i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;
 - (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;
 - (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical; 3888
 - (iv) in relation to a musical work, any arrangement or transcription of the work, 4[and]
 - ⁴[(v) in relation to any work, any use of such work involving its re-arrangement or alteration:]
 - ⁵[(aa) "Appellate Board" means the Appellate Board referred to in section 11;]
 - (b) ⁶[work of architecture] means any building or structure having an artistic character or design, or any model for such building or structure;
 - (c) "artistic work" means,-
 - (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
 - (ii) an 6 [work of architecture]; and
 - (iii) any other work of artistic craftsmanship;
 - (d) "author" means,-
 - (i) in relation to a literary or dramatic work, the author of the work;
 - (ii) in relation to a musical work, the composer;
 - (iii) in relation to an artistic work other than a photograph, the artist;
 - (iv) in relation to a photograph, the person taking the photograph;
- ⁸[3. Meaning of publication.—For the purposes of this Act, "publication" means making a work available to the public by issue of copies or by communicating the work to the public.]

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COPYRIGHT ACT, 1957



Ministry of Commerce & Industry Government of India



The copyright deals with the rights of intellectual creators in their creation. The copyright law deals with the particular forms of creativity, concerned primarily with **mass communication**. It is also concerned with virtually all forms and methods of public communication, not only printed publications but also with such matters as sound, and television broadcasting, films for public exhibition etc. and even computerised systems for the storage and retrieval of information.

COPYRIGHT - MEANING

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematographic films and sound recordings. Copyright includes right of reproduction, communication to the public, adaption and translation of the work.

In order to be copyrighted A work must show certain minimum levels of creativity and originality. Copyright protection is **not granted for an abstract idea nor can facts be copyrighted**. The copyright law, protects only the form of expression of ideas, So only author's manner of expressing or compiling the facts can be copyrighted.

COPYRIGHT - DEFINITION

Section 14 of the Act defines the term "Copyright" as an exclusive right to do or authorize the doing of the following acts n respect of a word or any substantial part there of namely –

In the case of literary, dramatic or musical work:-

- Reproducing the work in any material from which includes storing of it in any mediumby electronic means.
- b. Issuing copies of the work to the pubic which are not already in circulation
- c. Performing the work in public or communicating it to the public;
- d. Making any cinematographic film or sound recording in respect of the work;
- e. Making any translation or adaptation of the work. Further, any of the above-mentioned acts in relation to work can be done in the case translation or adaptation of the work.

In the case of a computer programme:-

- a. To do any of the acts specified in respect of a literary, dramatic or musical work; and
- b. To sell or give on commercial rental or offer for sale of for commercial rental any copy of the computer programme.

However, such commercial rental does not apply not in respect of computer programmes where the programme itself is not the essential object of the rental.

➤ In the case of an artistic work:-

- a. Reproducing the work in any material including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- b. Communicating the work to the public.



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- c. Issuing the copies of work to the public. Which are not already in existence?
- d. Including work in any cinematographic film.
- Making adaptation of the work. And to do any of the above acts in relation to an adaptation of the work.

In the case of cinematographic film and sound recording:-

- Making a copy of the film including a photograph of any image or making any other sound recording embodying it;
- Selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and
- Communicating the film/sound recording to the public.

NKJ-CLASSROOM PRACTICE



Q. 1. Discuss the classes of work for which copyright protection Is available under Copyright Act, 1957 duly amended from time to time. [Dec. 2018; 3 Marks]

NKJ-CLASSROOM PRACTICE



Q. 1. Prof. Ritika Verma has authored a book named 'IFRS – A Practical & Simple Approach'. She wants to get copyright of the some under the Copyright Act, 1957. Advise Ritika on the rights that are protected to her after obtaining the copyright of her book.
[Dec. 2018; 3 Marks]

COPYRIGHT BOARD

Section 11 of the Act provides for the establishment of the Copyright Board and empowers the Central Government to constitute the same consisting of a Chairman and two other members.

TERM OF COPYRIGHT

The term of copyright is throughout the **lifetime of the author plus next 60 calendar years** from the year in which the author dies. In case of joint authorship, author who dies last will be considered.

In case of anonymous, pseudonymous and posthumous work, the term of copyright is 60 years from the beginning of calendar year next to the year in which the work is published.

REGISTRATION OF COPYRIGHT

Registration of copyright is **optional and not mandatory**. Non-registration does not deprive the owner of his right to bring both civil as well as criminal action against an offence of infringement. However, if registered, Certificate of registration serve as prima- facie evidence in court of law with reference to dispute relating to ownership of copyright.

PROCEDURE OF REGISTRATION

Any person interested in the copyright in any work may make an application in the prescribed form in triplicate along with prescribed fees to the Registrar of Copyrights.

Separate application should be made in respect of each work.

Registrar of Copyrights after 30 days of date of receipt of application, after being satisfied and if there is any **objection**, after holding such enquiry as he deems fit, enter such particulars of work in the Register of Copyrights. A copy of the entry made in the Register of Copyrights shall be sent to the parties concerned.

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ASSIGNMENT OF COPYRIGHT

The owner of the copyright in an existing work or the prospective owner of copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to conditions and either for whole term of the copyright or any part thereof.

However, in case of assignment of copyright in any future work, the assignment has the real effect only when the work comes into existence.

MODE OF ASSIGNMENT

An assignment of copyright should be in writing signed by the owner of the copyright. The assignment of copyright should specify the assigned work, rights including duration, territorial extent of assignment and the amount of royalty.

However, in the absence of duration and territorial extent, the assignment shall be valid for a period of **five** years and within the territory of India.

In case assignee does not exercise his rights within a period of one year from the date of assignment, the assignment in respect of such rights lapsed after the expiry of said period, unless otherwise specified in the assignment.

Any dispute arising with respect to assignment of rights shall be decided by Copyright Board.

LICENSING OF COPYRIGHT

> VOLUNTARY LICENSING

Owner of copyright can grant interest in his right by license in writing to another person. Such license is normally for republication, performance in public or communication to public or translation thereof.

A licence of copyright should be in writing signed by the owner of the copyright. The licence should specify the rights including duration, territorial extent of assignment and the amount of royalty.

However, in the absence of duration and territorial extent, the licence shall be valid for a period of five years and within the territory of India.

> COMPULSORY LICENSE

During term of copyright, if the owner of copyright has refused to re-publish/ allow performance in public or to permit republication, a compliant can be made to copyright board. Then copyright board after conducting inquiry and giving opportunity of being heard to the owner finds that ground of refusal are not reasonable, may direct the registrar of copyright to grant compulsory licence to the complainant on payment of compensation to owner.

Any person can apply to Copyright Board for a license to produce and publish a translation of a literary or dramatic work after a period of 7 years from the date of publication.

TERMINATION OF LICENCE

If at any time after the granting of a licence, the owner of the copyright in the work publishes a translation of such work in the same language and which is substantially the same in content at a reasonable price, Copyright Board, after giving 3 months notice can terminate the licence.

INFRINGEMENT OF COPYRIGHT

Copyright protection gives exclusive rights to the owners of the work to reproduce the work enabling them to derive financial benefits by exercising such rights. If any person without authorization from the owner exercises these rights in respect of the work, which has copyright protection, it constitutes an infringement of the copyright.



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However, if the reproduction of the work is carried out after the expiry of the copyright term it will not amount to an infringement.

CIRCUMSTANCES/ SITUATION OF INFRINGEMENT OF COPYRIGHT

Section 51 of the Act contemplates situation in which a copyright shall be deemed to be infringed. This section provides that a copyright is infringed when any person without a license granted by the owner of the copyright or the Registrar of Copyright or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority-

- (a) Does anything for which the exclusive right is conferred upon the owner of the copyright; or
- (b) Permits for profit any place to be used for the communication of the work to public where such a communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication would be infringement of copyright; or
- (c) Makes for sale or hire or lets for hire or by way of trade display or offers for sale or hire; or
- (d) Distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (e) By way of trade, exhibits in public; or
- (f) Imports into India nay infringing copies of the work.

However, import of one copy of any work is allowed for private and domestic use of the importer. Explanation to section 51 clarifies that the reproduction of literary, dramatic, musical, or artistic work in the form of cinematograph film shall be deemed to be an infringing copy.

REMEDIES AGAINST INFRINGEMENT OF COPYRIGHT

Section 55 entitles owner of the copyright to sue the person who has infringed the copyright in District Court. The owner shall be entitled to all such remedies by way of injuction, damages, accounts and otherwise as are conferred by law for the infringement of the right.

Section 58 entitles owner of the copyright to initiate proceedings for the possession of infringed copies and other materials related thereto.

Penalty for infringement and the status of the infringing copies

The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of ₹50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of ₹ one lakh.

All infringing copies of any work in which copyright subsists and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright.

STATUTORY EXCEPTIONS TO INFRINGEMENT

The list of acts which do not constitute infringement of copyright has been provided under Section 52 of the Act. These include;-

- (i) A fair dealing with any work, not being a computer programme, for the purposes of—
 - (a) Private or personal use, including research;
 - (b) Criticism or review, whether of that work or of any other work;
 - (c) Reporting of current events and current affairs, including the reporting of a lecture delivered in public.
- (ii) The making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy in order to utilise the computer programme for the purposes for which it was supplied; or to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied.



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- (iii) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding.
- (iv) the reproduction of any work—
 - (a) by a teacher or a pupil in the course of instruction; or
 - (b) as part of the questions to be answered in an examination; or
 - (c) in answers to such questions.
- (v) the performance of a literary, dramatic or musical work by club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.
- (vi) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India;

NKJ-CLASSROOM PRACTICE



Q. 1. (b) State the legal provisions regarding infringement of copy right stated in the stated in the Copyright Act, 1957. [Dec. 2017; 5 Marks]

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TRADE MARK ACT, 1999

- From Bare Act... -

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THE TRADE MARKS ACT, 1999

ACT NO. 47 OF 1999

[30th December, 1999.]

An Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- 1. Short title, extent and commencement.—(1) This Act may be called the Trade Marks Act, 1999.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date¹ 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.

- 2. Definitions and interpretation.—(1) In this Act, unless the context otherwise requires,—
 - (a) "Appellate Board" means the Appellate Board established under section 83;
 - (b) "assignment" means an assignment in writing by act of the parties concerned;
- (c) "associated trade marks" means trade marks deemed to be, or required to be, registered as associated trade marks under this Act:
 - (d) "Bench" means a Bench of the Appellate Board;
- (e) "certification trade mark" means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registrable as such under Chapter IX in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person;
 - (f) 2["Chairperson"] means the 2[Chairperson] of the Appellate Board;
- (g) "collective mark" means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932) (9 of 1932) which is the proprietor of the mark from those of others;
- (h) "deceptively similar".—A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion;
 - (i) "false trade description" means-
 - (I) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied; or

CHAPTER II

THE REGISTER AND CONDITIONS FOR REGISTRATION

- 3. Appointment of Registrar and other officers.—(1) The Central Government may, by notification in the Official Gazette, appoint a person to be known as the Controller-General of Patents, Designs and Trade Marks, who shall be the Registrar of Trade Marks for the purposes of this Act.
- (2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act as he may from time to time authorise them to discharge.

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TRADE MARK ACT, 1999



TM R The object of trademark law is to permit an enterprise by registering its trademark to obtain an exclusive right to use, share, or assign a mark.

A trademark is any word, symbol, phrase, or logo design adopted and placed on a product offered for sale or on a container to identify its identify its source. A Trade Mark distinguishes the goods of one manufacturer or trader from similar goods of others and therefore, it seeks to protect the interest of the consumer as well as the trader. Since a trade mark indicates relationship in the course of trade, between trader and goods, it serves as a useful medium of advertisement for the goods and their quality.

TRADEMARK- DEFINITION

Trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging, and combination of colours.

TRADEMARK- REGISTRATION

A trademark belongs to the firm that first adopts and uses it.

Any person claiming to be the proprietor of trademark used or proposed to be use can apply for registration of his trademark by filing application for registration of trademark with the Office of Registry of Trademark under whose territorial jurisdiction the principal place of business of proprietor is situated.

It may be noted that a single application may be made for different classes of goods and services, but separate fees is payable for each class.

Points To Consider While Adopting A Trademark

Any startup needs to be cautious in selecting its trade name, brands, logos, packaging for products, domain names and any other mark which it proposes to use. You must do a proper due diligence before adopting a trademark. The trademarks can be broadly classified into following five categories:

- 1. Generic
- 2. Descriptive
- 3. Suggestive
- 4. Arbitrary
- 5. Invented/Coined
- 1. Generic marks means using the name of the product for the product, like "Salt" for salt.
- 2. Descriptive marks mean the mark describing the characteristic of the products, like using the mark "Fair" for the fairness creams.



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- 3. Suggestive marks mean the mark suggesting the characteristic of the products, like "Habitat" for home furnishings products.
- **4.** Arbitrary marks means mark which exist in popular vocabulary, but have no logical relationship to the goods or services for which they are used, like "Blackberry" for phones.
- 5. The invented/ coined marks means coining a new word which has no dictionary meaning, like "Adidas". The strongest marks, and thus the easiest to protect, are invented or arbitrary marks. The weaker marks are descriptive or suggestive marks which are very hard to protect. The weakest marks are generic marks which can never function as trademarks.

India follows the NICE Classification of Goods and Services for the purpose of registration of trademarks. The NICE Classification groups products into 45 classes (classes 1-34 include goods and classes 35-45 include services). The NICE Classification is recognized in majority of the countries and makes applying for trademarks internationally a streamlined process. Every startup, seeking to trademark a good or service, has to choose from the appropriate classes, out of the 45 classes.

While adopting any mark, the startup should also keep in mind and ensure that the mark is not being used by any other person in India or abroad, especially if the mark is well-known. It is important to note that India recognizes the concept of the "Well-known Trademark" and the principle of "Trans-border Reputation".

Examples of well-known trademarks are Google, Tata, Yahoo, Pepsi, Reliance, etc. Further, under the principle of "Trans-border Reputation", India has afforded protection to trademarks like Apple, Gillette, Whirlpool, Volvo, which despite having no physical presence in India, are protected on the basis of their trans-border reputation in India.

DURATION AND RENEWAL OF TRADEMARK

Registration of trademark is valid for 10 years. Act also allows renewal of registration for successive period of 10 years from the date of expiry of original registration period or the last renewal.

INFRINGEMENT OF TRADEMARK

When a registered trade mark is used by a person who is not entitled to use such a trade mark under the law, it constitutes infringement.

INSTANCES OF INFRINGEMENT OF TREADEMARK

- (a) Use of deceptively similar mark;
- (b) Use of mark likely to cause confusion because of identity/similarity;
- (c) Unauthorized use of trademark on material intended to be used for labeling or packing of goods;
- (d) Use of identical or similar registered trademark even on dissimilar goods, if the registered trademark has a reputation in India;

RELIEF IN SUITS FOR INFRINGEMENT/PASSING OFF

Section 135 deals with reliefs which may be granted by courts in suits for infringement or passing off. It is expressly provided that the court may grant:-

- (a) an injunction
- (b) either damages or an account of profit,
- (c) order for delivery of infringing lables and marks for destruction.

Damages can also be claimed, even if the trademark is not registered. This is called **passing-off action**.



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ASSIGNMENT AND TRANSMISSION OF TRADEMARK

A proprietor of trademark can assign his registered trade mark with or without goodwill of the business either in respect of all goods or services or part thereof to any person in return of consideration. An unregistered trade mark may also be assigned/ transmitted with or without the goodwill of the business concerned.

However, assignments or transmissions of trade mark is restricted where multiple exclusive rights is created in more than one person in relation to same goods or services which would be likely to deceive or cause confusion.

NKJ-CLASSROOM PRACTICE



- Q. 1. Pankaj, Director of M/s Mustered Oil Manufacturing company, seeks your advice for the selection of a trademark which he proposes to be used for its products. Describe various natures of trademarks and which trademarks are considered as strong in nature.
 [Dec. 2018; 5 Marks]
- Ans. Considering the fact that Mr. Pankaj, Director of Ms Mustered Oil Manufacturing Company needs an advice on the selection of trademark, which could be proposed for the use for its product, the board categories of trademarks are discussed as under:
 - Generic marks: Generic marks means using the name of the product like "Salt" for. Salt.
 - 2. **Descriptive marks:** Descriptive marks mean the mark describing the characteristics of the products like using the mark "Fair" for fairness creams.
 - Arbitrary marks: Arbitrary marks means which exist in popular vocabulary but no Logical relationship to the goods or services for which they are used, like 'Blackberry' for phones.
 - Suggestive marks: means the mark suggesting the characteristics of products like "Habitat" for home furnishings products.
 - Invented / Coined marks: It means coining a new word which has no dictionary meaning like "Adidas".

Further to the suggestion sought on which trademarks are considered strong in nature, the advice to Mr. Pankaj will be as below:

The strongest marks and hence the easiest to protect, are invented or arbitrary marks. The weaker marks are descriptive or suggestive marks which are very hard to protect, The weakest mark3 are generic marks which can never function as trademark.

DESIGNS ACT, 2000

An industrial design is the ornamental or aesthetic aspect of a useful article, which must appeal to the sense of sight and may consist of the shape and/or pattern and/or colour of article. An industrial design to be protectable, must be new and origin.

Designs Act, 2000 has been passed by the parliament to protect industrial designs are protected against unauthorised copying or limitation, for a period which usually lasts for five, ten or 15 years.

The salient features of the Design Act, 2000 are as under:

- (a) Enlarging the scope of definition of the terms "article", "design" and introduction of definition of "original".
- (b) Amplifying the scope of "prior publication".
- (c) Introduction of provision for delegation of powers of the Controller to other officers and stipulating statutory duties of examiners.
- (d) Provision of identification of non-registrable designs.



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- (e) Provision for substitution of applicant before registration of a design.
- (f) Substitution of Indian classification by internationally followed system of classification.
- (g) Provision for inclusion of a register to be maintained on computer as a Register of Designs.
- (h) Provision for restoration of lapsed designs.
- Provisions for appeal against orders of the Controller before the High Court instead of Central Government.
- (j) Revoking of period of secrecy of two years of a registered design.
- (k) Providing for compulsory registration of any document for transfer of right in the registered design.
- (l) Introduction of additional grounds in cancellation proceedings and provision for initiating the cancellation proceedings before the Controller in place of High Court.
- (m) Enhancement of quantum of penalty imposed for infringement of a registered design.

GEOGRAPHICAL INDICATIONS

Geographical Indications of Goods are that aspect of industrial property which refers to a country or to a place situated therein as being the country or place of origin of that product.

Typically, such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country.

Geographical Indications covered under Articles 22 to 24 of the WTO Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations. India, as a member of the World Trade Organization (WTO), enacted the **Geographical Indications of Goods (Registration & Protection) Act, 1999** in December 1999 and it has come into force with effect from 15th September 2003.

This Act seeks to provide for the registration and better protection of geographical indications relating to goods in India.

Examples of Indian Geographical Indications are;-

Darjeeling Tea, Kanchipuram Silk Saree, AlphansoMango, Nagpur Orange, Kolhapuri Chappaletc,.

The salient features of this legislation are as under:

- (a) Provision of definition of several important terms like "geographical indication", "goods", "producers", "packages", "registered proprietor", "authorized user" etc.
- **(b)** Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B and use of computers etc. for maintenance of such Register. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.
- (c) Registration of geographical indications of goods in specified classes.
- (d) Prohibition of registration of certain geographical indications.
- (e) Provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications.
- (f) Compulsory advertisement of all accepted geographical indication applications and for inviting objections.
- **(g)** Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an authorized user.
- (h) Provisions for higher level of protection for notified goods.
- (i) Prohibition of assignment etc. of a geographical indication as it is public property.



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- (j) Prohibition of registration of geographical indication as a trademark.
- (k) Appeal against Registrar's decision would be to the Intellectual Property Board established under the Trade Mark legislation.

NKJ-CLASSROOM PRACTICI



Q. 1. (d) What is meant by "Geographical Indications" under intellectual property rights?

[Dec. 2017; 5 Marks]

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ADVANCE

YOUR KNOWLEDGE



CAN A 'LAPSED PATENT' BE RESTORED? IF SO, STATE THE PROCEDURE LAID DOWN FOR DISPOSAL OF APPLICATION FOR RESTORATION OF LAPSED PATENT.

Yes lapsed patent can be restored.

Section 60 of the Patents Act, 1970 provides that where a patent has ceased to have effect by reason of failure to pay any renewal fee within the period prescribed under section 53 or within period as may be allowed under section 142(4), the patentee or his legal representative and where the patent was held by two or more persons jointly, then with the leave of the Controller one or more of them without joining the other, may within eighteen months from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

Procedure

Section 61 of the Patents Act, 1970 provides that if, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is prima facie satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall publish the application in the prescribed manner; and within the prescribed period, any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds that-

- The failure to pay the renewal fee was not unintentional; or
- (b) There has been undue delay in the making of the application

If notice of opposition is given within the prescribed period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before deciding the case. If no notice of opposition is given within the prescribed period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on thecesser of the patent. The Controller may, if he thinks fit as a condition of restoring the patent, require that an entry shall be made in the register of any document or matter which has to be entered in the register but which has not been so entered.

DOES A PATENT OBTAINED IN INDIA GIVE PROTECTION WORLDWIDE? Q. 2.

Patent protection is territorial right and therefore it is effective only within the territory of India. However, filing an application in India enables the applicant to file a corresponding application for same invention in convention countries, within or before expiry of twelve months from the filing date in India. Therefore, separate patents should be obtained in each country where the applicant requires protection of his invention in those countries. There is no patent valid worldwide.

Q. 3. IS IT POSSIBLE TO FILE INTERNATIONAL APPLICATION UNDER PATENT COOPERATION TREATY (PCT) IN INDIA?

Ans. It is possible to file an international application known as PCT application in India in the Patent Offices located at Kolkata, Chennai, Mumbai and Delhi. All these offices act as Receiving Office (RO) for International application.

HOW A PATENT SPECIFICATION IS PREPARED?

A patent specification can be prepared by the applicant himself or his registered and authorized agent. The patent specification generally comprises of the title of the invention indicating its technical field, prior art, draw backs in the prior art, the solution provided by the inventor to obviate the drawbacks of the prior art, a concise but sufficient description of the invention and its usefulness, drawings (if Any) and details of best method of its working. The complete specification must contain atleast one claim or statement of claims defining the scope of the invention for which protection is sought for.

Q. 5. WHY SHOULD COPYRIGHT BE PROTECTED?

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinema to graph films and computer software, creates an atmosphere conducive to creativity, which in duces them to create more and motivates others to create.



Q. 6. WHO IS AN AUTHOR?

Ans. In the case of a literary or dramatic work the author, i.e., the person who creates the work.

In the case of a musical work, the composer.

In the case of a cinematograph film, the producer.

In the case of a sound recording, the producer.

In the case of a photograph, the photographer.

In the case of a computer generated work, the person who causes the work to be created.

Q. 7. WHAT ARE THE MORAL RIGHTS OF AN AUTHOR?

Ans. The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. Moral rights are available to the authors even after the economic rights are assigned.

Q. 8. WHICH ARE THE COMMON COPYRIGHT INFRINGEMENTS?

Ans. The following are some of the commonly known acts involving infringement of copyright:

- (a) Making infringing copies for sale or hire or selling or letting them for hire;
- (b) Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- (c) Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright;
- (d) Public exhibition of infringing copies by way of trade; and
- (e) Importation of infringing copies into India.

Q. 9. DISCUSS PROVISIONS OF THE COPYRIGHT ACT, 1957 REGARDING 'MORAL RIGHTS OF A PERFORMER'.

Ans. The Moral Rights of a performer are the rights a performer has to protect his work or performance even after he has assigned related rights to another party. It covers these rights-

- (a) Right to be identified as the rightful performer of the works.
- (b) Right to damages in case of distortion, mutilation or alteration of his work that affects his goodwill.

Section 38B is a new provision in the Copyright (Amendment) Act, 2012 which deals with the moral rights of performers. This particular provision- section 38B(b) of the Act-states that 'the performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation'. The other right which a performer would have-under section 38B(b) of the Act- is the right to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance.

The exceptions to these rights are provided by the need for editing the material to fit the relevant use and technical reason that necessitate such alteration.

Q. 10. State the legal provisions regarding infringement of copy right stated in the Copyright Act, 1957.

[Dec. 2017]

Ans. Copyright protection given exclusive rights to the owners of the work to reproduce the work enabling them to derive financial benefits by exercising such rights. If any person without authorisation from the owner exercises these rights in respect of the work which has copyright protection it constitutes an infringement of the copyright. If the reproduction of the work is carried out after the expiry of the copyright term it will not amount to an infringement.

Section 51 of the Copyright Act, 1957 contemplates situation in which a copyright shall be deemed to be infringed. This section says that a copyright is infringed when any person without a licence granted by the owner of the copyright or the Registrar of Copyright or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority does:

- (1) Anything for which the exclusive right is conferred upon the owner of the copyright, or
- (2) Permits for profit any place to be used for the communication of the work to public where such a communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication would be an infringement of copyright.
- (3) When any person (i) makes for sale or hire or lets for hire or by way of trade display or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or (iii) by way of trade, exhibits in public, or (iv) imports into India any infringing copies of the work.

However, import of one copy of any work is allowed for private and domestic use of the importer. Explanation to Section 51 clarifies that the reproduction of literary, dramatic musical or artistic work in the form of cinematograph film shall be deemed to be an infringing copy. Certain exceptions to infringement have been stipulated by the Copyright Act.



Q.11. WHO BENEFITS FROM A TRADE MARK?.

Ans. Registered Proprietor: The Registered Proprietor of a trade mark can stop other traders from unlawfully using his trade mark, sue for damages and secure destruction of infringing goods and or labels.

Government: The Trade Marks Registry is earning revenue.

Professionals: The Trade Marks Registration system is driven by professionals like Company Secretaries who act as trademark agents for the clients in the processing of the trade marks application.

Purchaser and ultimately Consumers of trademarks goods and services.

Q.12. WRITE SHORT NOTES ON INHERENTLY DISTINCTIVE MARKS.

Ans. A trade mark acts as a sign that is capable of distinguishing the goods or services of one trading entity from another; at the very least it has to be an inherently distinctive mark.

In the case of Imperial Tobacco Co. of Indian v. The Registrar of Trade Mark, AIR 1977 Calcutta 413, the Calcutta High Court held that the essential conditions of a trade mark in relation to goods proposed to be registered are (1) if should be distinctive or (2) if not distinctive, or capable of distinguishing the goods as aforesaid, there may be some inherent qualities or distinguishing characteristics in the mark itself, which may make it so distinctive or capable of such distinguishing the goods of the applicant from other's goods.

Q.13. CAN A REGISTERED GEOGRAPHICAL INDICATION BE ASSIGNED, TRANSMITTED, ETC?

Ans. No. A geographical indication is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement However, when an authorized user dies, his right devolves on his successor in title.

Q.14. HOW A GEOGRAPHICAL INDICATION IS DIFFERENT FROM A TRADE MARK?

Ans. A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises. Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

O.15. REGISTRATION OF CERTAIN DESIGNS IS PROHIBITED UNDER THE DESIGNS ACT, 200. EXPLAIN.

Ans. Designs which are prohibited of registration under Design Act, 2000 are as follows:

- (a) Is not new or original; or
- (b) Has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filling date, or where applicable, the priority date of the application for registration; or
- (c) Is not significantly distinguishable from known designs or combination of know designs; or
- (d) Comprises or contains scandalous or obscene matter, shall not be registered.

Q.16. WHETHER A REGISTERED GEOGRAPHICAL INDICATION CAN BE ASSIGNED OR TRANSMITTED? EXPLAIN BRIEFLY.

Ans. Section 24 of the Geographical Indications of Goods (Registration & Protection) Act, 1999 prohibits assignment or transmission of geographical Indication.

A geographical indication is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement However. When an authorized user dies, his right devolves on his successor in title.



SELF TEST QUESTIONS

FROM PAST CS EXAMS



- What are the basic principles of general agreement on trade in services (GATS)?
- 2. Define 'Patentable invention'.
- 3. Distinguish between the following:
 - (i) 'Patent' and 'patent of addition'.
 - (ii) 'Surrender of a patent' and 'revocation of a patent' under the patents Act, 1970.
- 4. With reference to the relevant legal enchantments, write short notes on the following:
 - (i) Contents of complete specification
 - (ii) Term of patent
 - (iii) Restoration of lapsed patents
 - (iv) Inventive step
 - (v) Company Secretary as patent agent.
- With reference to the relevant legal enchantments, write short notes on the following:
 - (i) International copyright
 - (ii) Term of copyright
- 6. Do the following amount to infringement under the Copyright Act, 1957? Give reasons in brief:
 - Prof. Ajay recited in public an extract from a poem by Rabindranath Tagore.
 - (ii) ABC, Published a compilation of speeches of Atal Bihari Vajpayee, for4mer Prime Minister, delivered in public without permission.
 - (iii) A newspaper publishes a copy of masterpiece painting of Ganesh Pyne while carrying a story on his death.
 - (iv) A book is not available in India. A librarian makes 10 copies of the book for the use of the public library.
 - (v) A magazine reproduces an article on a political topic by Kuldip Nayar.
- 7. Distinguish between the following:
 - (i) 'Trade mark' and 'certification trade mark'.
 - (ii) 'Registered proprietor of a trade mark' and 'registered user of a trade mark'.
 - (iii) 'Infringement of trade mark' and 'passing off'.
- State the absolute grounds for refusal of registration of trade marks.
- 9. Define 'Well-known trade mark'.
- 10. With reference to the relevant legal enchantments, write short notes on "Collective trade mark"

FROM ICSI MODULE



Answer the following:

- 1. Discuss briefly on Intellectual Property Rights.
- 2. Distinguish between GATT and GATS.
- Enumerate the concept and development of intellectual property law in India.
- 4. Discuss the basic principles of GATS.
- 5. Write shot notes on
 - (i) WIPO
 - (ii) TRIPS Agreement.
- Discuss in detail the provisions of the Patents Act in relation to compulsory licences.
- Discuss in detail the provisions relating to patent in addition.
- 8. Write short note on the following:
 - (i) Inventive step.
 - (ii) Patent agent.
- 9. Discuss the grounds on which the registration of a patent can be refused?
- Elaborate the provisions relating to infringement of patent.
- 11. Briefly explain the concept of copyright.
- 12. Discuss in detail the Copyright Board.
- Discuss in detail the provisions relating to infringement of copyright.
- 14. Write short note on the following:
 - (i) Government work.
 - (ii) Term of Copyright.
- Elaborate the provisions relating to certain exception to infringement have been stipulated by the Copyright Act.
- 16. What is a trade mark?
- 17. How to apply for a trade mark in respect of particular goods or services?
- Discuss in detail the provisions relating to registered user of trademarks.
- 19. Benefit from trademark to all stakeholders. Comment.
- Discuss Penal provisions for Falsely Representing a Trademark



Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 2:-

CHAPTER

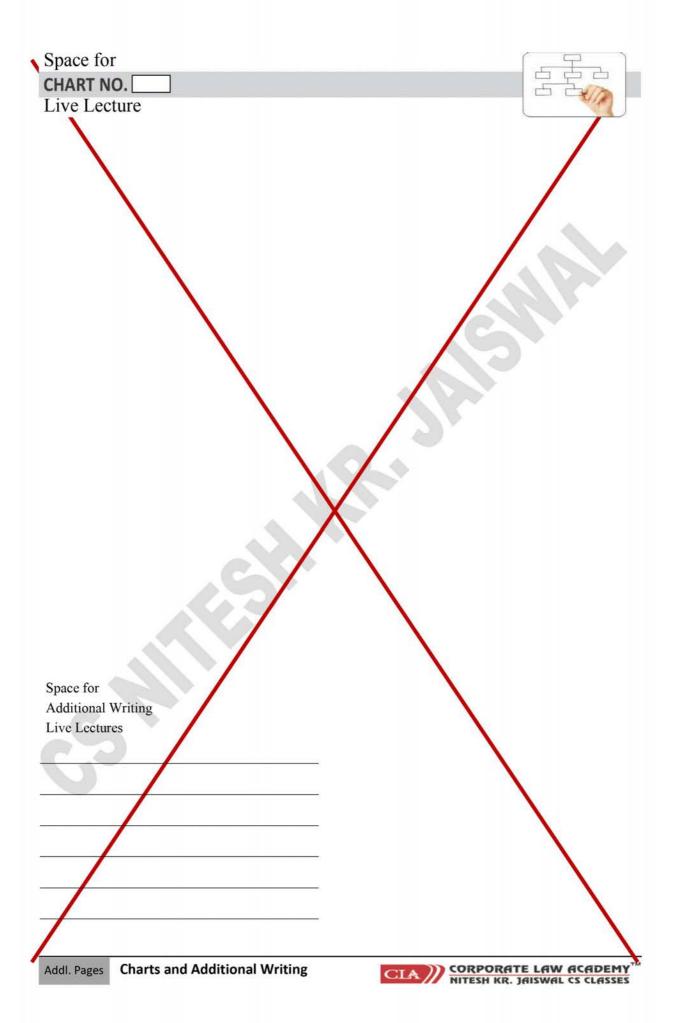
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COMPLIANCES UNDER LABOUR LAWS (PROVISIONS APPLICABLE FOR SETTING UP OF BUSINESS)

Covering-

- Bare Act
- Factories Act, 1948
- Minimum Wages Act, 1948
- Payment of Wages Act, 1936;
- Equal Remuneration Act, 1976;
- Employees' State Insurance Act,1948;
- Employees' Provident Funds and Miscellaneous Provisions Act, 1952:
- Payment of Bonus Act, 1965;
- Payment of Gratuity Act, 1972;
- Employees Compensation Act, 1923;
- Contract Labour (Regulation and Abolition) Act, 1970;
- Industrial Disputes Act, 1947;
- Trade Unions Act, 1926;
- Maternity Relief Act, 1961;
- Child and Adolescent Labour (Prohibition and Regulation) Act, 1986:
- Persons with Disabilities (Equal Opportunities; Protection of Rights and Full Participation) Act, 1995;
- Prevention of Sexual Harassment of Women at Workplace (Prevention; Prohibition and Redressal) Act, 2013.
- Apprentices Act, 1961
- Labour Laws
- The Industrial Employment Act, 1946
- Employment Exchanges Act, 1959
- Self Test Questions

EXPECTED
MARKS COVERAGE
(1 to 5)



UNIT-1 FACTORIES ACT, 1948

The law relating to factories is governed under the Factories Act, 1948.

The Act has been enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose, it seeks to impose upon the owner or the occupier certain obligations to protect the workers and to secure for them employment in conditions conductive to their health and safety.

The State Governments assume the main responsibility for administration of the Act and its various provisions by utilizing the powers vested in them.

APPLICABILITY OF ACT

The Act applies on all Factories.

FACTORY



"Factory" includes any premises including the precincts thereof:-

- (a) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or
- (b) whereon twenty or more workers are working, or were working on a day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

The following are **not covered** by the definition of factory:

Railway running sheds, (ii) mines, (iii) mobile units of armed forces, (iv) hotels, eating places or restaurants.

ESSENTIAL
ELEMENTS
OF
AFACTORY:-

- (a) There must be a premises.
- **(b)** There must be a manufacturing process which is being carried on or is so organizily carried on in any part of such a premises.
- (c) There must be ten or more workers who are/were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.

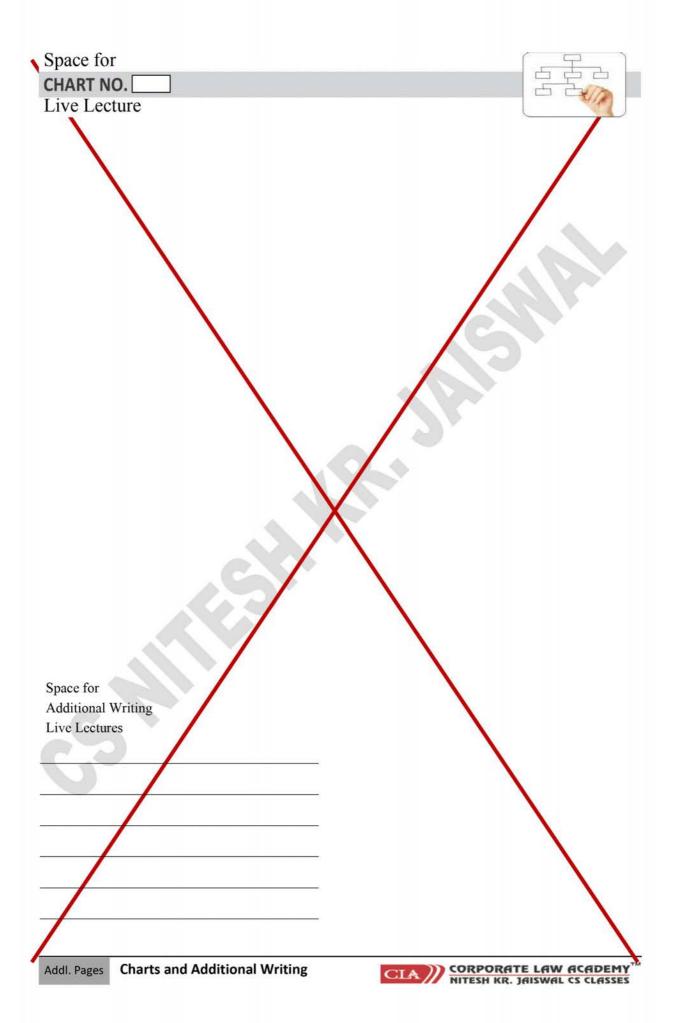
Meaning of words "premises and precincts"

The word "premises" is a generic term meaning open land or land with building or building alone. The term 'precincts' is usually understood as a space enclosed by walls.

CASE LAW



The Supreme Court in <u>Ardeshir H. Bhiwandiwala v. State of Bombay</u>, held that the salt vorks, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word 'premises' and so the workers engaged in this work are workers within the Factories Act, 1948.



YOUNG PERSON

According to Section 2(d) of the Factories Act 1948, "Young Person" means a person who is either a child or an adolescent.

ADULT

According to Section 2(a) of the Factories Act 1948, "Adult" means a person who has completed his eighteenth year of age.

WORKER

According to Section 2(1) of the Factories Act 1948, "Worker" means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process **but does not include** any member of the armed forces of the Union.

CASE LAW



Shankar Balaji Wale v. State of Maharashtra	It was held that Piece-rate workers can be worker within the definition of worker in the Act, but they must be regular workers and not workers who come and work according to their will.
Union of India v. G.M. Kokil	It was held that all persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act.
Kanpur Suraksha Karamchari Union v. Union of India	It was held that Employees working in canteens in industrial establishments run by Managing Committee are not employees of the Managing Committee but are employees of occupier.

OCCUPIER

"Occupier" means a person who has **ultimate control over the affairs** of the factory. Provided that:-

- (a) in the case of a first or other association of individuals, any one of the individual <u>partners or members</u> there of shall be deemed to be the occupier;
- (b) in the case of a company, any one of the directors, shall be deemed to be the occupier;



(c) in the case of a factory owned or controlled by the Central Government or any State Government/government Company, or any local authority, the person or persons appointed to manage the affairs of the factory shall be deemed to be the occupier.

CASE LAW



J.K. Industries	Supreme Court held that only a member of Board of Director of the Company
Ltd.	can be occupier of the factory of the Company. The ultimate control of factory
ν.	owned by company vests in Board of Directors. Company owing factory cannot
Chief Inspector of	nominate its employees or officers except Director of the company as occupier of
Factories	its factory.

GENERAL DUTIES OF THE OCCUPIER

Section 7 providers that every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

Without prejudice to the generality of the provisions of Sub-section 7(1) the matters to which such <u>duty</u> extends shall include:-

- (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- (b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
- (d) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

MEASURES TO BE TAKEN BY FACTORIES FOR HEALTH, SAFETY ANDWELFARE OF WORKERS

- (a) Cleanliness in the factory should be insured.
- **(b)** All the accumulated dirt should be removed daily.
- (c) Effective method of drainage shall be made and maintained for removing water
- (d) To ensure that interior walls and roofs, etc. are kept clean, white wash or colour wash should be carried at least once in every period of 14 months;
- (e) All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years.
- (f) The dates on which such processes are carried out shall be entered in the prescribed register.
- (g) factories should make suitable and effective provisions for securing and maintaining adequate ventilation by the circulation of fresh air; and such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health.
- (b) Overcrowding in the work-room should be avoided.



- (i) every factory must provide and maintain sufficient and suitable lighting, natural, artificial or both in every part of the factory where workers are working or passing;
- (j) every factory should make effective arrangements for sufficient supply of drinking water for all vorkers in the factory;
- (k) First aid appliances should be available every time (in case of more than 150 workers)
- (1) Canteens facilities should be provided (in case of more than 250 workers)
- (m) Shelters rest rooms and lunch rooms should be constructed (in case of more than 150 workers)
- (n) in every actory wherein 500 or more workers are ordinarily employed, the occurrer should employ such number of welfare officers as may be prescribed.
- (o) Safety officer (in case of 1000 workers or more)
- (p) Crèches rooms for use of children upto age of 6 years. (in case of more than 30 women workers)
- (q) Ambulance rooms in case of more than 500 workers)

WORKING HOURS

	(a) A worker shall be allowed to work only for 48 hours in any week.
	(b) that there shall be holiday for the whole day in every week.
	(c) When a worker is deprived of any of the weekly holiday, he is entitled to compensatory holidays of equal number of the holidays so lost. These holidays should be allowed either in the same month in which the holidays became due or within next
Working	two months immediately following that month.
Hours	(d) An adult worker, whether hale or female shall not be required or allowed to work in a factory for more than 9 hours in any day.
	(e) No adult worker shall work continuously for more than 5 hours unless a rest interval of at least half an hour is given to him.
	(f) the daily working hours should be adjusted in such a manner, that inclusive of rest interval they are not spread over more than 10-1/2 hours on any day.

EXTRA WAGES FOR OVERTIME

Where a worker works in a factory for more than 9 hours in any day or more than 48 hours in any week, he shall, in respect of **overtime work** be entitled to wages at the rate of **twice** his ordinary rate of wages.

ADDITIONAL PROVISIONS REGULATING EMPLOYMENT OF WOMEN IN A FACTORY

Certain additional restrictions have been found necessary on the working hour of female workers:-

- (a) Women workers shall not be employed except between the hours of 6 a.m. and 7 p.m. However, the State Government may by a notification in the Official Gazette, vary these limits to the extent that no woman shall be employed between the hours of 10 p.m. and 5 a.m.
- (b) There shall be no change of shifts except after a weekly holiday or any other holiday.

EMPLOYMENT OF CHILDREN

- 1. A child who has not completed his fourteenth year of age, shall not be employed in any factory.
- 2. Children completing their fourteenth year or an adolescent, shall not be required to work in any factory, unless following conditions are fulfilled:-



- (a) the manager of the factory has obtained a certificate of fitness granted to such young person under Section 69;
- (b) while at work, such child or adolescent carries a token giving reference to such certificate.
- 3. A shild shall not be employed or permitted to work for more than 4-1/2 hours in any day.
- 4. He is not permitted to work during night, i.e. between 10 p.m. and 6 a.m.
- 5. No female child shall be required or allowed to work in any factory except between 8 d.m. and 7 p.m.

ANNUAL LEAVE WITH WAGES

Where a worker has worked for a minimum period of 240 days or more in a factory during any calendar year, i.e., the year beginning from 1st January, he is entitled to leave with wages on the following basis;—

- (a) for adults One day for every 20 days of work performed by them during the previous calendar year.
- (b) <u>for children</u> One day for every fifteen days of work performed by him during the previous calendar year.
- (c) If a worker does not commence his services from 1st January, he is entitled to these leaves at the above mentioned rates provided he has worked for 2/3rd of the total number of days in the remaining part of the calendar year.
- (d) These leaves are exclusive of all holidays whether occurring during or at either end of the period of leave.

COMPUTATION OF QUALIFYING PERIOD OF 240 DAYS

For the purpose of calculating the minimum period, following periods are also included:-

- (a) any days of lay-off as agreed or as permissible under the Standing Orders.
- (b) for female workers, period of maternity leave not exceeding 12 weeks.

ACCUMULATION OR CARRY FORWARD OF LEAVES

If any worker does not avail any earned leave entitled to him during the calendar year, it can be carried forward to the **next calendar year** subject to the **maximum** of **30 days** for an adult worker and **40 days** for a child worker.

The annual leave with wages cannot be availed for more than three times during any year.

APPOINTMENT OF INSPECTING STAFF/ INSPECTORS

Section 8 empowers the State Government to appoint any person to be a Chief Inspector. To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit. Every **District Magistrate shall be an Inspector for his district.** The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the Official Gazetts.



POWERS OF INSPECTORS

An inspector may exercise any of the following powers within the local limits for which he is appointed:

- 1. Inspector can enter any place which is used or which, he has reasons believe, is used as factory.
- 2. Inspector can make examination of the premises, plant, machinery etc.
- 3. Inspector can require the production of any prescribed register or any other document relating to the factory.
- **4.** Inspector can take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination.

PENALTIES

Offence	Penalties
For contravention of the Provisions of the Act or	Imprisonment up 6 2 years or fine upto
Rules	Rs.1,00,000 or both
On Continuation of contravention	Rs.1000 per day
On contravention of Chapter IV ertaining to safety	Not less than ₹25000 in case of death.
or dangerous operations.	Not less than ₹5000 in case of serious injuries.
Subsequent contravention of some pravisions	Imprisorment upto 3 years or fine not less than
	₹10, 000 which may extend to ₹2,00,000.
Obstructing Inspectors	Imprisonment upto 6 months or fine upto
	₹10,000 or both.
Wrongful disclosing result pertaining to results of	imprisonment upto 6 months or fine upto
analysis.	₹10,000 or both.
For contravention of the provisions of Sec.41B, 4)	Imprisonment upto 7 years with fine upto
and 41H pertaining to compulsory disclosure of	₹2,00,000 and on continuation fine @ ₹5,000 per
information by occupier, specific responsibility of	day.
occupier or right of workers to work imminent	Imprisonment of 10 years when contravention
danger.	continues for one year.





ADVANCE YOUR KNOWLEDGE



	Check List - Factories Act, 1948							
S.	Type &	Description Of the Form	Relevant	Schedule Of	Submitting	Remarks		
No	Nature Of		Clause	Submission/	Authority			
	Document			Maintenance				
1	Form 1	Application for permission	To be sub	mitted to the Ch	ief Inspector O	f Factories,		
		o construct, extend or take	duly sign	ed by the Occup	oigh Of the fac	tory before		
		into use any building as a	commenci	ng the manufacty	ring process			
		factory						
2	Form 2	Application for registration	To be su	bmitted by the	Occupier/Mana	ager to the		
		and grant or renewal of	Inspector	Of Factories of the	ne area concern	ed not later		
		licence	than the da	ate on which the l	icense expires			
3	Form 3	Notice of Change of	Rule 12-	to be made by	the occupier an	d submitted		
		Manager	A	to the Chief In	spector Of Fac	ctories with		
				the signature	of the new m	anager and		
				occupier append	led	~		
4	Form 4	Licence to work a factory	Rule 5	To be grante				
				Factories after				
				the application.				
				valid up to 31st		the year for		
			X	which it is grant				
5	Form 5	Certificate of Fitness	Rule 14-	To be granted b	y the certifying	g surgeon to		
			2(a)	the young perso	ns employed in	a factory		
6	Form 6	Humidity Register	Rule 24	Temperatures re	200 m to 100 m to 100 m	grometer to		
				be entered in thi				
7	Form 7	Record of Lime Washings,	Rule 15	To be maintain	ed with the date	es on which		
		Paintings etc.		white washing,		, varnishing		
				eta are carried	out.			
8	Form 8	Report of examination of						
		pressure vessel						
9	Form 9	Register Of Compensatory	Rule	To be mainta				
		Holidays	77(4)	respect of comp		7.		
10	Form 10	Overtime Muster Roll for	Rule 78	To be maintained	And the second second second second second second			
		exempted workers		factory in wh		e exempted		
				under Sections	64 or 65			
11	Form 10-A	Overtime Slip						
12	Form 11	Notice Of Periods Of Work	Rule 79	To be exhibited	l by the Manag	ger of every		
		for Adult Workers		factory				
13	Form 12	Register Of Adult Workers	Rule 80	To be maintaine		-		
14	Form 12-A	Identity Card Of Workers	Rule 80-	To be issued	AND THE RESERVE AND ADDRESS OF THE PARTY OF			
			A	signature of	occupier/mana	er of the		
				factory				
15	Form 13	Notice of Periods of work	Rule 85	To be exhibited	l by the Manag	ger of every		
		for child workers		factory				
16	Form 14	Register Of Child Workers	Rule 86	To be mainta	ined in respec	et of child		

1	F 15	D : OC I	D 1 07	workers employed
1	Form 15	Register Of Leave with	Rule 87	To be maintained by the manager of elery
-		wages	~ .	factory
18	Form 16	Health Register	Section	To be maintained by the mapager in
			87	respect of dangerous operations
19	Form 17-A	Notice Of Accident or	Rule 96	Within 12 Factory
		dangerous occurrence		hours of Inspector:
				occurrence of SDO;
				an accident Officer-In-
				Charge of
				the nearest
				police
				station
20	Form 18	Notice Of Poisoning or	Rule 97	To be sent by the manager of the factory as
		disease		soon as any worker contacts any disease
				specified in the schedule to the Chief
				Inspector/ Inspector/Medical Inspector/
				Certifying Surgeon
21	Form 19	Abstract of the Act	Rule 99	To be displayed in every factory
22	Form 20	Annual Return	Rule	To be furnished by the Manager to the
			100(1)	Chief Inspector before 15th January of the
				year subsequent to which it relates
23	Form 21	Half Yearly Return	Rule	To be furnished by the Manager to the
			100(2)	Chief Inspector before 15th July of each
				year
24	Form 22	Muster Roll	Rule 103	To be maintained by the manager of every
				factory in respect of workers employed in
				the factory
25	Form 23	Register Of Accidents	Rule 104	To be maintained in every factory
				furnishing complete details in respect of
				every accident which may occur
26	Form 24	Special Certificate Of	To be gra	nted by the certifying surgeon in respect of
		Fitness	The second secon	nployed in operations involving use of lead
			compound	ls
27	Form 25	Certificate Of Fitness for	Rule 96	To be granted by the certifying surgeon in
	1	dangerous operations		respect of persons employed in dangerous
				operations
28	Form 26	Register Of Surgeon's fees	Rule 14	To be maintained by the certifying surgeon
		for the issue of duplicate		or examining surgeon in respect of fees
111		ertificate		paid for issue of a duplicate certificate
29	Form 27	Certifying Surgeon's visit	Rule 14	To be handed over by the certifying
		Note	(9)	surgeon or examining surgeon to the
				Manager detailing the result of each visit
				to the factory
30	Form 28	Diary Of Inspector Of		
30	Form 28	Diary Of Inspector Of Factories		
30	Form 29			
		Factories	Rule 57-	To be maintained by the manager in
31	Form 29	Factories Closure Report Of a Factory	Rule 57-	To be maintained by the manager in respect of examination reports of the gas

3	Form 31	Report of examination of water sealed gas holders	Rule 57-	to carry out the test To be submitted by the person carrying out the examination in the form of a report to
34	Form 32	Register of trained adult male workers employed to carry out mounting or shifting or belts, lubrications etc.	Rule 59-	the manager or the occupier. To be maintained in every factory carrying therein the name of every worker who may be employed in performing work specified in section 21
35	Form 33	Certificate to young persons considered fit to work at machine, plant or process of dangerous character	Rule 59- B(2)	To be maintained by the manager, containing therein the certificates issued to young persons.
36	Form 34	Form of Certificate Of Stability	Rule 3-A	To be sent by the manager or occupier of the factor to the chief Inspector in respect of the manufacturing process carried out.
37	Form 35	Record of Eye Examination	Rule 59- C(4)	To be sent by the manager/ occupier within 15 days from the date of examination.



UNIT – 2 MINIMUM WAGES ACT, 1948

In an underdeveloped country which faces the problem of unemployment on a very large scale, it is likely that lateour may offer to work even on starvation wages. So purpose of Minimum Wages Act is to prevent exploitation of labour and for that purpose it empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries.

The Minimum Wages Act empowers the Government to fix minimum wages for employees working in specified employments.

SCHEDULEN EMPLOYMENT

"Scheduled employment" means an **employment specified in the Schedule** of any process or branch of work forming part of such employment.

FIXATION OF MINIMUM RATES OF WAGES

Section 3 lays down that the 'appropriate Government' shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification. The rates to be fixed need not be aniform. Different rates can be fixed for different zones or localities.

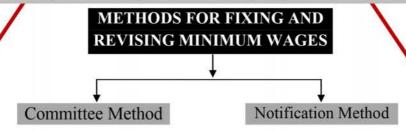
REVISION OF MINIMUM WAGES

Act provides for review and revision of minimum wages already fixed after suitable intervals not exceeding five years.

MANNER OF FIXATION/REVISION OF MINIMUM WAGES

(a) time work, known as a Minimum Time Rate;			
(b) piece work, known as a Minimum Piece Rate;			
(c) a "Gua anteed Time Rate" for those employed in piece work for the			
purpose of securing to such employees a minimum rate of wages on a time			
work basis;			
(d) A "Over Time Rate" i.e. minimum rate whether a time rate or a piece rate			
to apply in substitution for the minimum rate which would otherwise be			
applicable in respect of overtime work done by employee.			

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES



In fixing minimum rates of wages, the appropriate Government can follow either of the two methods described below.





1. 'COMMITTEE METHOD'

The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is pecified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification. Committee appointed is only an advisory body and Government is not bound to accept its recommendations.

2. 'NOTIFICATION METHOD'

When fixing minimum wages the appropriate Government shall by notification, in the Official Gazette **publish** its **proposals** for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board and thereafter fit or revise the minimum rates of wages by notification in the Official Gazette.

MINIMUM WAGE – WHETHER TO BE PAID IN CASH OR KIND

Section 11 of the Act provides that minimum wages parable under the Act shall be paid in **cash**. But where it has been the custom to pay wages wholly of partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments.

PAYMENT OF MINIMUM WAGES IS OBLIGATORY ON EMPLOYER

Payment of less than the minimum rates of wages notified by the appropriate Government is an offence.

PAYMENT OF OVERTIME

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages.

WAGES OF A WORKER WHO WORKS LESS THAN NORMAL WORKING DAY

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.



Provided that he shall not receive wages for full normal working day:—

- (a) if his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, and
- (b) Such other cases and circumstances as may be prescribed.

MAINTENANCE OF REGISTERS AND RECORDS

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form containing particulars in the place of work.

AUTHORITY AND CLAIMS

The Act provides for appointment the authorities by appropriate Government to hear and decide all claims arising out of payment less than the minimum rates of wages or any other monetary payments due under the Act. The presiding officers of the Labour court and Deputy Labour Commissioners are the authorities appointed.

OFFENCES AND PENALTIES

Offence	W.	Dunishment
For paying less than minimum rates of wages	X	Imprisonment upto 6 months or with fine upto ₹500/-
For contravention of any provisions pertaining fixing hours for normal working day etc.	to	Imprisonment upto 6 months or with fine upto \$100/-



ADVANCE YOUR KNOWLEDGE



			Check List - Factories	year and the second		
S. No			Relevant Clause		Submitting	Remarks
	Nature \ Of	n Of the		Submission/	Authority	
	Document	Form		Maintenance		
1	Form I	Rule	Register Of Fines	Ought to be up		
		21(4)		to date		
2	Form II	Rule	Register of deductions for	Ought to be up		
		21(4)	damage or loss caused to	to date		
			the employer, by the		11/10	
		1	neglect or default of the			
			employed persons			
3	Form III	Rule	Annual Return	By 1 February	7	
		21(4-A)		each year		
4	Form IV	Rule	Register Of Overtime	Ought to be up		
		25(2)		to date		
5	Form V	Rule	Muster Roll	Ought to be up	3-	
		26(5)		to date		
6	Form VI	Section	Form Of Application by a	n employee regard	ing any claim	
		20(2)	preferred by the employee	e/ inspector/official	of registered	
			trade union/legal ractitione	er may apply		
7	Form VI- A	Section	Form for a single applicat	ion in respect of a	ny number of	
		21(1)	employees employed in sch	eduled employment	•8	
8	Form VII	Section	Form of application by an	to be presented	Authority	
	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	20(2)	Inspector or person acting	within 6 months	appointed	
			with the permission of	from the date of	under the	
			authority	payment of	act.	
				minimum wages		
9	Form VIII	Section	Form in authority in	to be presented	Authority	
		20(2)	favour of a legal	within 6 months	appointed	
			practitioner/official of a	from the date of	under the	
	- 1		registered trade union	payment of	act.	
			****	minimum wayes		
10	Form IX	Section	Form Of Summons to the	When an applica	tion under sec	tion 20 is
		20(3)	opponent to appear before	entertained, the	authority shall	hear the
			the authority	applicant & the en	nployer.	
11	Form IX-A	Rule 22	Abstracts of the Minimum	To be displayed		
			Wages Act, 1948 & the	at the factory		
			Bihar Minimum wages	premises		
			Rules, 1951			
12	Form X	Rule	Register Of Wages	Ought to be up		
		26(1)		to date for every		
		57 46		wage period		
13	Form XI	Rule	Wage Slip Ought to be			1
		26(2)	issued every wage period	I .		

UNIT - 3 PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them.

APPLICABILITY OF THE ACT

It applies to the persons employed in a factory, 'industrial or other establishment' or in a railway, whether directly or indirectly, through a sub-contractor.

Employees drawing wages upto ₹ 18,000 is covered.

PAYMENT OF WAGES- TIME PERIOD

Wages must be paid:-	(a) Before the expiry of 7 th day after the last day of the wage period, if less than 1000 workmen are employed and in any other case, on or before the 10 th day;
	(b) In currency coins or note and by cheques or by crediting the wages in the employee's bank account after obtaining his written authority;
	(c) On a working day;
	(d) Before the expiry of the second day, to the person whose employment is terminated.

It may be noted that the wage period shall not exceed one month.

DEDUCTION FROM THE WAGES OF AN EMPLOYEE

	(a) Fines;
	(b) Absence from dyty;
	(c) Damage to or loss of goods expressly entrusted to the employee;
Section 7 of	(d) Housing accommodation and amenities provided by the employer;
the act allows	(e) Recovery of advances or adjustment of overpayments of wages;
deductions from the wages of an employee on	(f) Recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;
the account of	(g) Subscriptions to and for repayment of advances from any provident fund;
the following:	(In Income-tax;
=	(i) Payments to <u>co-operative societies</u> approved by the State Government or to a scheme of insurance maintained by the Indian Post Office;
	(j) Deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.

It may be noted that the total amount of deductions should not exceed <u>75% of wages</u> for the, employed person in any wage period, if whole or part of the deductions are meant for payment to co-operative societies. In other cases, it should not exceed <u>50% of wages.</u>



MAINTENANCE OF REGISTERS AND RECORDS

Section 13A provides that every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in prescribed form. Every register and record required to be maintained shall be preserved for a period of three years after the date of the last entry made therein.

OFFENCES AND PENALTIES

Offence	Punishment
On contravention of \$.5 (except sub-sec.4), \$.7,	Fine not less than Rs. 1000, which may extend to
S.8 (except Ss.8), S.9, S.10 (except Ss.2) and	Rs.5000. On subsequent conviction fine not less
Secs.11 to 13.	than Rs.5000, may extend to Rs.10, 000. On
\	contravention S.4, S.5 (4), S6, S.8 (8), S.10 (2) or
	S.25 fine not less than Rs.1,000 may extend to
	Rs.5000. On subsequent On conviction fine not less.
For failing to maintain registers or records; or	Fine which shall not be less than Rs.1000 but may
Wilfully refusing or without lawful excuse	extend to Rs.5000 - On record conviction fine not
neglecting to furnish information or return; or	less than Rs.5000, may extend to Rs.10, 000.
Wilfully furnishing or causing to be furnished any	For second or subsequent conviction, fine not less
information or return which he knows to be false or	than Rs.5000 but may extend to Rs.10,000
Refusing to answer or wilfully giving a lalse	
answer to any question necessary for obtaining any	
information required to be furnished under this	
Act.	
Wilfully obstructing an Inspector in the discharge	Five not less than Rs.1000 extendable
of his duties under this Act; or	Up to Rs.5000 – On subsequent conviction fine
Refusing or wilfully neglecting to afford an	not less than Rs.5000 - may extent to Rs.10,000
Inspector any reasonable facility for making any	
entry, inspection etc.	
Wilfully refusing to produce on the demand of an	
inspector any register or other document kept in	
pursuance of this Act; or preventing any person for	
appearance etc.	
On conviction for any offence and again guilty of	Imprisonment not less than one month extendable
Contravention of same provision. Failing or	up to six months and fine not less than Rs.2000
neglecting to pay wages to any employee	extendable up to ₹15000.
	Additional fine up to ₹100 for each day



ADVANCE YOUR KNOWLEDGE



Remarks
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UNIT – 4 EMPLOYEE'S STATE INSURANCE ACT, 1948

The law relating to employees' State Insurance is governed by the Employees' State Insurance Act 1948.

The objective of the act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to provide for certain other matters in relation there to.

APPLICABILITY OF ACT

The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories.

The Act empowers the Government to extend any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise in consultation with the Employees' State Insurance Corporation.

Where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government.

The coverage under the Act is at present restricted to employees drawing wages not exceeding ₹21,000 per month.

EXEMPTIONS

The appropriate Government may exempt any factory/establishment from the purview of this Act, as well as any person or class of persons employed in

any factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act.

REGISTRATION OF FACTORIES AND ESTABLISHMENTS UNDER THIS ACT

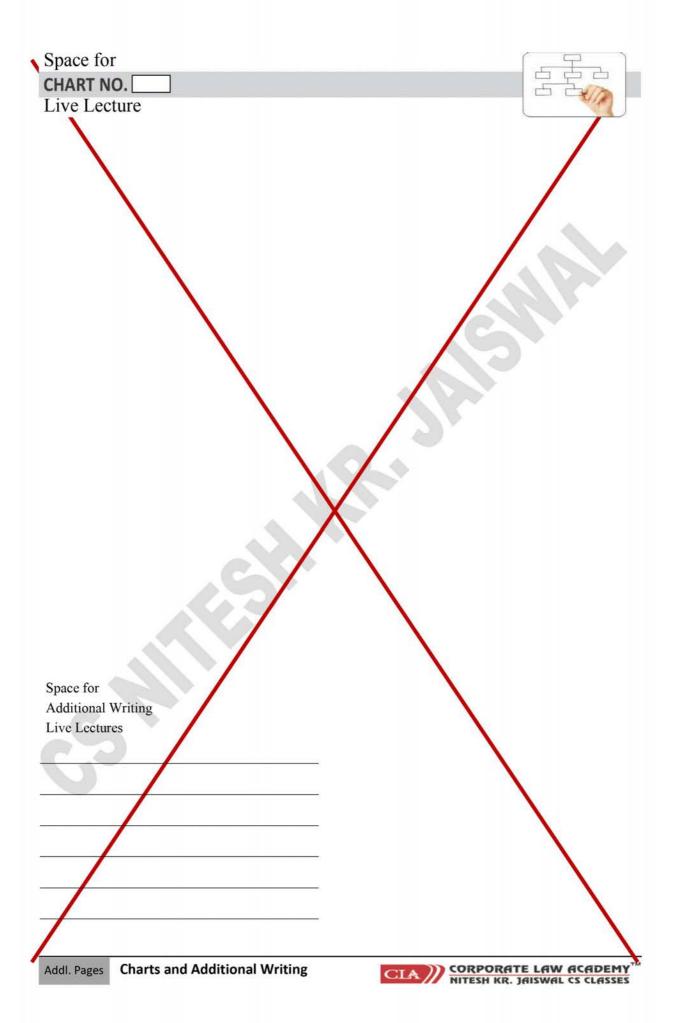
Section 2A of the Act lays down that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

EMPLOYEES' STATE INSURANCE CORPORATION

The ESI Act authorises Central Government to establish Employees State Insurance Corporation for administration of the Employees State Insurance Scheme. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

EMPLOYEES' STATE INSURANCE

The Act makes compulsory that all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are antitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.



EMPLOYEES' STATE INSURANCE FUND

The Act provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government.

CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are 4.75 percent and 1.75 percent of workers wages by employers and employees respectively.

BENEFITS TO THE INSURED

	(a) periodical payments in case of sickness certified by medical practitioner;
The insured persons,	(b) periodical payments to an insured workman sickness arising out of pregnancy,
their dependants are entitled to the	(c) periodical payment to an insured person suffering from disablement as a result of employment injury;
following benefits on	(d) periodical payment to dependants of insured person;
prescribed scale:	(e) medical treatment and attendance on insured person;
	(f) Payment of funeral expenses on the death of insured person at the prescribed rate of ₹ 10,000/

GENERAL PROVISIONS RELATING TO BENEFITS

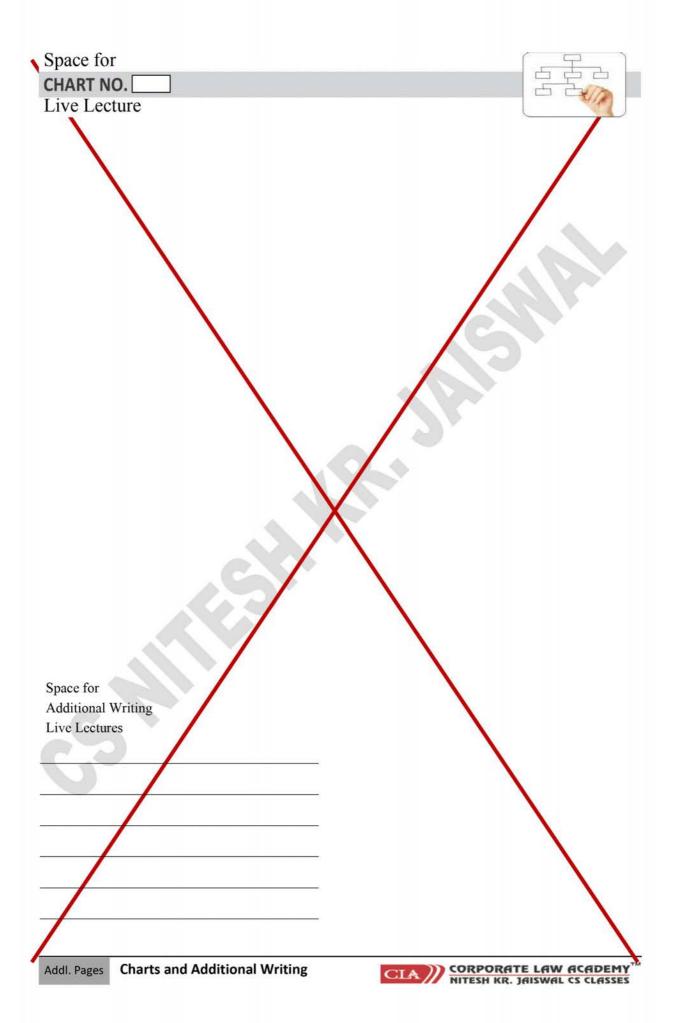
- (a) Right to receive benefits is not transferable or assignable
- **(b)** When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.
- (c) An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

EMPLOYEES' INSURANCE COURT (E. I. COURT)

Section 74 of the E.S.I/Act., 1948 provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of I.I. Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and may regulate the distribution of business between them.

Following matters can be decided by E.I Court:

1. <u>Adjudication of disputes:</u> The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employees under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to nay benefit Under the Act.



2. <u>Adjudication of claims:</u> The EI Court also has jurisdiction to decide claims for recovery of contribution from principle employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

No Civil Court has power to decide the matters falling within the purview/jurisdiction of E.I. Court.

OFFENCES AND PENALTIES

Offence	Punishment
On contravention of S.5 (except sub-sec.4), S.7,	Fine not less than Rs.1000, which may extend to
S.8 (except Ss.8, S.9, S.10 (except Ss.2) and	Rs.5000. On subsequent conviction fine not less
Secs.11 to 13.	than Rs.5000, may extend to Rs.10, 000. On
	contravention S.4, S.5 (4), S6, S.8 (8), S.10 (2) or
	S.25 fine not less than Rs.1,000 may extend to
	Rs.5000. On subsequent On conviction fine not less.
For failing to maintain registers or records; or	Fine which shall not be less than Rs.1000 but may
Wilfully refusing or without lawful excuse	extend to Rs.5000 – On record conviction fine not
neglecting to furnish information or return; or	less than Rs.5000, may extend to Rs.10, 000.
Wilfully furnishing or causing to be furnished any	For second or subsequent conviction, fine not less
information or return which he knows to be false or	than Rs.5000 but may extend to Rs.10,000
Refusing to answer or wilfully giving a false	
answer to any question necessary for obtaining any	
information required to be furnished under this	
Act.	
Wilfully obstructing an Inspector in the discharge	
of his duties under this Act; or	Up to Rs.5000 – On subsequent conviction fine
Refusing or wilfully neglecting to afford an	not less than Rs.5000 – may extent to Rs.10,000
Inspector any reasonable facility for making any	
entry, inspection etc.	
Wilfully refusing to produce on the demand of an	
inspector any register or other document kept in	
pursuance of this Act; or preventing any person for	
appearance etc.	
On conviction for any offence and again guilty of	Imprisonment oot less than one month extendable
Contravention of same provision. Failing or	up to six months and fine not less than Rs.2000
neglecting to pay wages to any employee	extendable up to ₹15000.
	Additional fine up to 100 for each day





		Che	eck List - F	actories Act, 1948		1
S. No	Type & Nature Of Document		Relevant Clause	Schedule Of Submission/ Maintenance	Submitting Authority	Remarks
1	Form A	Form Of Individual Application	Section 15(2)	Within 12 months from the date on which deductions were made or the date of which payment was due as the case may be.	Of Factories	
2	Form B	Form Of Group application	Section 15(2)	Within 12 months from the date on which deductions were made or the date on which payment was due, as the case may be.	Inspector Of Factories	
3	Form C	Form of application by an inspector or person permitted by the authority or authorised to act	Section 15(2) & Section 16	Within 12 months from the date on which deductions were made or the date on which payment was due, as the case may be.	Inspector Of Factories	
4	Form D	Certificate Of Authorisation	Section 15(2)	Within 12 months from the date on which deductions were made or the date on which payment was due, as the case may be.	Inspector Of Factories	
5	Form E	Notice for disposal of application	Section 15(3)	When an application is en 15(2), the authority shall he employer and direct the endeductions made or payment make no directions in the appendiance.	ear the applica employer for r t of delayed	nt & the refund of wages or
6	Form F	Record of order or direction	Section 15(3)	Record of order of direction authority under the act	n to be mad	e by the
7	Form G	Notice to respondent of the day fixed for the hearing of appeal under section 17 of the act	Section 17	Within 30 days of the date or or direction was made, an approach made by the employer/ employer practitioner and the judistrict court to issue the respondent of the day fixed frappeal.	beal could be bloyed or his udge of the notice to the	

UNIT-5 EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

The Employee's Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation enacted for the purpose of instituting a Provident Fund, Family Pension and Insurance for employees working in factories and other establishments.

The following three schemes have been framed under the Act by the Central Government:-

- 1. The Employees' Provident Fund Schemes, 1952
- 2. The Employees' Pension Scheme, 1995
- 3. The Employees Deposit-Linked Insurance Scheme, 1976.

APPLICATION OF THE ACT

	 (a) to every establishment which is a factory engaged in any industry specified Schedule I and in which twenty or more persons are employed; and 	l in
The Act, applies:-	b) to any other establishment employing twenty or more persons or class of su establishments which the Central Government may, by notification in Official Gazette, specify in this behalf:	

Once the Act has been made applicable, it does not cease to be applicable even if the number of employees falls below 20.

Bikaner Cold Storage Co. Ltd.	The persons employed in the normal course of business of the
ν.	establishment should be considered as the persons employed for the
Regional P.F. Commissioner,	purpose of the Act and hence casual workers should not be included for
Rajsthan	the purpose of ascertaining the strength of the workmen.

EMPLOYEE

"Employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person:-

- (a) employed by or through a contractor in or in connection with the work of the establishment;
- **(b)** Engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961 or under the standing orders of the establishment.

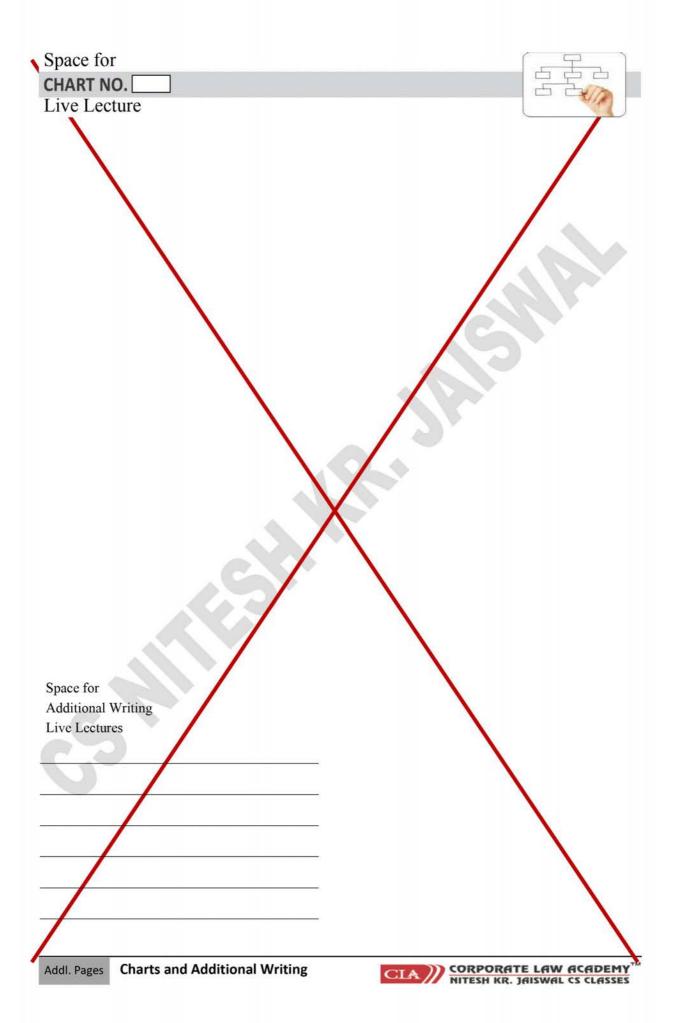
The Act is applicable to employees drawing pay **not** exceeding ₹ 15,000/- per month. The term pay includes basic wages with dearness allowance. However any employee drawing salary of more than ₹15000/- per month can become member of Provident fund if his employer agrees but subject to permission of Assistant Provident Commissioner.

An employee ceases to be the member of provident fund on attaining the age of 60 years.

SCHEMES UNDER THE ACT

In exercise of the powers conferred under the Act, the Central Government has framed the following three schemes:





1. EMPLOYEES PROVIDENT FUND SCHEME

As per the scheme the contribution which shall be paid by the employer to the Fund shall be 12%, of the wages, and the employee's contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed.

Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree.

The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exception under which a specified employer can avoid his mandatory liability (<u>State v. S.P.</u> Chandani).

Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement,

Following are the 'Excluded Employees' from Employees' Provident Fund Scheme, 1952:

- (a) An employee who has withdrawn he full amount of his accumulations in the Fund;
- (b) An employees whose pay exceeds the prescribed amount; and
- (c) An apprentice.

2. EMPLOYEES' PENSION SCHEME

A Pension Fund has been set up where employer's share of PF contribution representing 8.33% of the wage is being diverted to the said Fund. Employees are not required to make any contribution. The Central Government shall also contribute at the rate of 1.16 per cent of the pay of the members of the Employees' Pension Scheme and credit the contribution to the Employees' Pension Fund.

Family pension is also payable to the widow/widover of the member for life or until she/he marries. In addition to the widow pension, the family is also entitled to children pension which is payable up to two children at a time till they attain the age of 25 years.

The minimum pension is fixed at ₹1,000/- per month for the members of the Employees' Pension Scheme or their nominee/ widow, etc. The maximum pensionable salary shall be limited to ₹15,000 per month.

The Scheme provides for payment of monthly pension in the following contingencies:-

- (a) Superannuation on attaining the age of 58 years;
- (b) Retirement;
- (c) Permanent total disablement;
- (d) Death during service;

The formula for calculation of monthly member's pension is as under

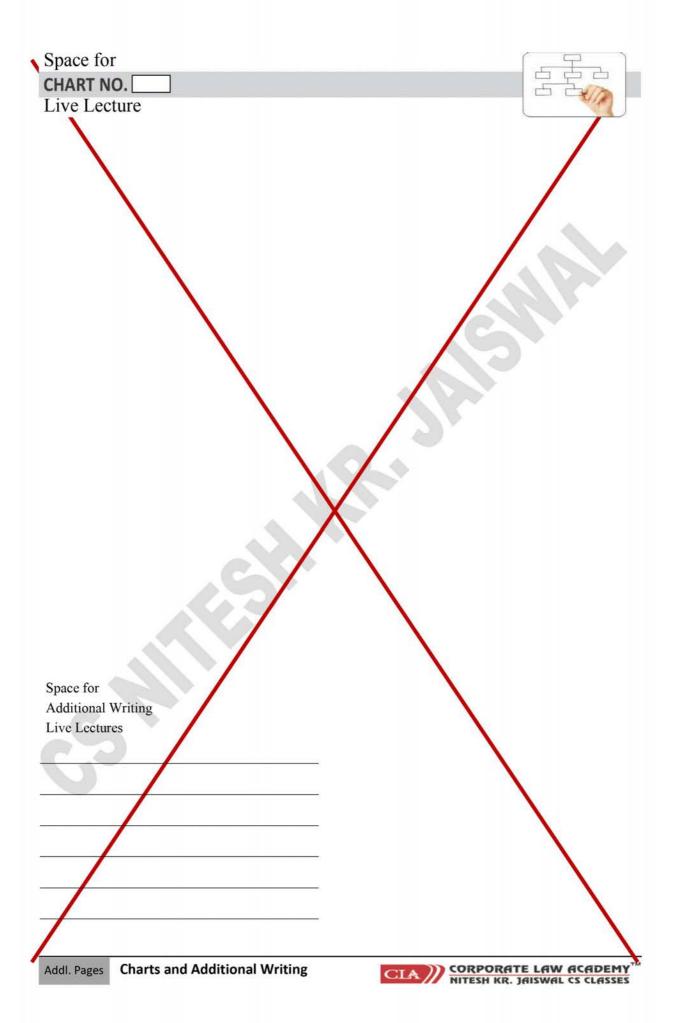
Members Pension =
$$\frac{\text{Pensionable Salary x (Pensionable Service } + 2)}{70}$$

Example

If the contributory service is 33 years and pensionable salary is ₹ 5,000 per month, the above formula operates as given below:

Members Pension =
$$\frac{₹5000 \times (33 + 2)}{70}$$
 = ₹ 2,500 p.m.





3. EMPLOYEES' DEPOSIT-LINKED INSURANCE SCHEME

The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies. The employees are not required to contribute to the Insurance Fund. The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including, cash value of any food concession. The employers are required to pay charges to the Insurance Fund, at the rate of 0.01% of the total wages.

In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations. In case the average balance exceeds ₹ 50,000, the amount payable shall be ₹ 50,000 plus 40% of the amount of such excess subject to a ceiling of ₹ 1,00,000.

OFFENCES AND PENALTIES

In case the employer has made default in transferring of the accumulated amount, he is required to pay damages as follows:

- (a) If period of default is less than 2 months 5 % of arrears per annum
- (b) If period of default is 2 -4 months 10 % of arrears per annum
- (c) If period of default is 4 -6 months- 16 % of arrears per annum
- (d) If period of default is more than 6 months- 25 % of arrears per annum.

With Effect from 01.04.2012, employers need to make remittance only after generating challan (ECR) from the Employer Portal of EPFO.





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•	JIECK LIST - E.		Provided T		32 & THE
S. No.	Type & Nature of Document	Description of the Form	Relevant Clause	Schedule of Submission/ Maintenance	Submitting Authority
1	Form 2	Declaration & Form of nomination for EPF / Pension/ IF to be filled in by the eligible employte	33(EPF);1 8(EPS);10 (EDLI)	As & when a new entrant joins the scheme	Concerned RPFC
2	Form 3A/ Form 7 (PS)	Members Annual Contribution Cards	35,42,43,4 4(EPF); 19(EPS)	By 30th April every year for the year ending 31st March	Concerned RPFC
3	Form 9/Form 3(PS)/ Form 1(IF)	Consolidated return of employees entitled to become members of the funds on the data of application of the scheme	36(EPF); 20(EPS); 10(EDLI)	within 15 days of the commencement of the scheme	Concerned RPFC
4	Form 5 / Form 4(PS)/ Form 2 (IF)	Return of employees qualifying for membership under PF, Pension & Insurance Fund for the first time during the month	36(EVF); 20(ERS); 10(EDAI)	within 15 days of the close of month	Concerned RPFC
5	Form 10 / Form 5(PS)	Return of employees leaving the service of the employe during the month	36(EPF) ; 20(EPS)	within 15 days of the close of month	Concerned RPFC
6	Form 5-A	Return of ownership in duplicate	36A(EPF); 21(EPS); 1(EDLI)	Immediately on coverage & within 15 days of making any change in the establishment	Concerned RPFC
7	Form 12-A/ Form 6 (PS)/ Form 4 (IF)	Consolidated Statement Of Dues and Remittance	38(EPF) ; 20(EPS) ; 10(EDLI)	within 20 days of the close of the month	Concerned RPFC
8	Form 6 A/ Form 8 (PS)	Consolidated Annual Contribution statement	43(EPF) ; 20(EPS)	By 30th April every year for the year ending 31st March	Concerned RPFC
9	Form 13	Form concerning transfer of previous accumulation dues from existing	PF 28(EPF)	As and when required	Concerned RPFC
10	Form 11	Details of past employment /			Concerned RPFC

/		membership of employee As and when required		
11	Challan there is one consolidate d challan of accounts 1,2,10,21 & 22)	Remittance of PF contribution, Pension fund, Administration & Inspection Charges, EDLI & its admin. Charges	within 15 days of the close of month	Concerned RPFC
12		Form to be used by a member of EPS 1995 for claiming withdrawal benefit / Scheme Certificate As and when required		Concerned RPFC
13	Form- 10 D	Form to be used for claiming superannuation pension, Retirement pension, Short Service Pension, Disablement pension,	Widow Pension, Children Pension, Orphan Pension As and when required	Concerned RPFC
14	Form- 19	Claim form to be used by a major member of the EPF scheme	As and when required	Concerned RPFC
15	Form- 20	Claim form to be used by a nominee/ or a legal heir in case of death of a member of the EPF scheme	As and when required	Concerned RPFC



UNIT-6 PAYMENT OF BONUS ACT, 1965

The Payment of Bonus Act, 1965 provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

The term 'honus' is not defined in the Payment of Bonus Act, 1965. However, Webster's International Dictionary, defines bonus as "something given in addition to what is ordinarily received by or strictly due to the recipient".

APPLICATION OF THE ACT

The Act shall apply to

- (a) Every factory; and
- (b) Every other establishment in which twenty or more persons are employed on any day during an accounting year.

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty.

Bonus in the case of new establishment

In the first 5 accounting years following the year in which of employer being to sell his goods or render services, bonus is payable only in respect of that accounting year in which the employer derives the profit.

EMPLOYEE

"Employee" means any person (other than an apprentice) employed on a salary or wages not exceeding ₹21,000 in any industry to do any skaled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work.

ELIGIBILITY FOR BONUS

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, provided he has worked in the establishment for not less than **thirty working days** in that year.

DISQUALIFICATION FOR BONUS

An employee shall be disqual fied from receiving bonus under this Act, if he is dismissed from service for:-

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises or the establishment; of
- (c) theft, misappropriation or sabotage of any property of the establishment. (Section 9)

MINIMUM BONUS

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be **8.33 per cent** of the salary or wage earned by the employee during the accounting year or **one hundred rupees** whichever is **higher** whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words one hundred rupees the words sixty rupees were substituted.



Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 (State v. Sardar Singh Majithia)

MAXIMUM-BONUS

Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that Section, the employer can distribute bonus at higher rates but subject to a maximum of 20 % of salary or wage. (Section-11).

TIME LIMIT FOR PAYMENT OF BONUS

Where there is a dispute regarding payment of bonus pending before any authority, bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

In any other case, the bonus should be paid within a period of **eight months** from the close of the accounting year.

OFFENCES AND PENALTIES

If any person contravenes any of the provisions of this Act or any rule made there under; he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.





		Check List - P	ayment Of	Bonus Act, 1965		
S. No.	Type & Nature of Document	Description of the Form	Relevant Clause	Schedule of Submission/ Maintenance	Submitting Authority	Remarks
1	Form A	Register showing the computation of allocable surplus	Rule 4(a)	To be maintained by the employer		
2	Form B	Register showing the set on & set off of the allocable surplus	Rule 4(b)	To be maintained by the employer		
3	Form C	Register showing the details of amount of bonus due to each of the employees, the deductions under section 17 & 18 and the amount actually disbursed	Rule 4(c)	To be maintained by the employer		
4	Form D	Annual Return stating the amount of bonus paid to employees for the accounting year ending on 31st March	Rale 5	Within 30 days after the expiry of time limit specified for payment of bonus	Inspector	Time limit for the said purpose is within a period of eight months from the close of accounti ng year

UNIT- 7 PAYMENT OF GRATUITY ACT, 1972

The Payment of Gratuity Act provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

"Gratuity is a retirement benefit. Gratuity is a lump sum payment made by the employer us a mark of recognition of the service rendered by the employee when he retires or leaves service.

APPLICATION OF THE ACT

The Act applies to:-

- (a) every factory, mine, oilfield, plantation, port and railway company;
- **(b)** every shop or establishment in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf.

A shop or establishment, to which the Act has become applicable once, continues to be governed by it, even if the number of persons employed therein at any time after it has become so applicable falls below ten.

WHEN IS GRATUITY PAYABLE

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or diseas

The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

TO WHOM IS GRATUITY PAYABLE

It is payable normally to the employee himself.

However, in the case of **death** of the employee, it shall be paid to his nominee and if no nomination has been made, to his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

AMOUNT OF GRATUITY PAYABLE

Gratuity is calculated on the basis of continuous service i.e. for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is ₹10, 00,000/-. Gratuity up to ₹10, 00,000 is tax-free.

MANNER OF PAYMENT

Any person to whom the gratuity amount is payable shall make a written application to the employer. The employer is required to determine the amount of gratuity payable and give notice in writing to the person to whom the same is payable thereby specifying the amount of gratuity payable.



The employer is under obligation to pay the gratuity amount within 30 days from the date it becomes payable. Simple interest at the rate of 10% p.a. is payable on the expiry of the said period.

Assignment of gratuity is prohibited.

FORFEITURE OF GRATUITY

Gratuity can be forfeited for any employee whose services have been terminated for any act, willful omission or negligence causing damage or destruction to the property belonging to the employer. It can also be forfeited for any act which constitutes an offence involving moral turpitude.

The right of forfeiture is limited to the extent of damage. In absence of proof of the extent of damage, the right of forfeiture is not available.

Sharat Gold Mines Ltd. v. Regional Labour Commissioner	It has been held in this case that w involves moral turpitude, gratuity st	
Bharat Gold Mines	It has been held that any decision	forfeit the gratuity can be taken
ν.	only after giving an opportunity	of being heard to the concerned
Regional Labour Commissioner	employee.	

PROTECTION OF GRATUITY

(1) Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court.

OFFENCES AND PENALTIES

Imprisonment for 6 months or fine up to Rs.10 000 for avoiding to make payment by making false statement or representation.

Imprisonment not less than 3 months and up to one year with fine on default in complying with the provisions of Act or Rules.





		Check List - Pa	yment of G	ratuity Act, 1972	
S. No.	Type & Nature of Document	Description of the	Relevant Clause	Schedule of Submission/ Maintenance	Submittin g Authority
1	Form A	Notice Of Opening	Rule 3 (1)	Within 30 days from which the rules become applicable	Concerned controlling authority of the area
2	Form B	Notice Of Change	Rule 3 (2)	Within 30 day of any change in the particulars of the establishment like name, address or nature of business	Concerned controlling authority of the area
3	Form C	Notice Of Closure	Rule 3 (3)	Atleast 60 days before the intended closure of the business	Concerned controlling authority of the area
4	Form D	Notice for excluding husband from family	Pule 5 (1)	employer in triplica	by the employee to the ate. The employer after copy to the concerned of the area.
5	Form E	Notice of withdrawal of notice for excluding husband from family	Rule 5 (2)	employer in triplica	otice in form D to the ate. The employer after copy to the concerned
6	Form F	Nomination	Rule 6 (1)	employed in duplica 30 days of the recei with the service	by the employee to the ate. The employer within pt of nomination, verify particulars and after back a copy to the
7	Form G	Fesh Nomination	Rule 6 (3)		the employee within 90 amily to the employer
8	Form H	Modification Of Nomination	Rule 6 (4)	To be submitted b	by the employee to the including where a nominee
9	Form	Application for gratuity by an employee	Rule 7 (1)	payment of gratuity 30 days from whice payable.	the employee, eligible for to the employer, within the the gratury becomes
10	Form J	Application for gratuity by a nominee	Rule 7 (2)	employee to the en	by the nominee of an imployer within 30 days attuity payable to him/her.

		T		
				For this purpose an application in plain paper may also be accepted
11	Form K	Application for gratuity by a legal heir	Rule 7 (3)	To be submitted by the legal heir of an employee, eligible for payment of gratuity, to the employer, within 1 year from the date of gratuity payable to him/her
12	Form L	Notice for payment of gratuity	Rule 8 (1)	On verification of claims made for payment of gratuity, the employer, within 15 days of receipt of an application issue a notice to the applicant employee, his nominee or legal heir, specifying the amount of gratuity payable and fixing a date of payment not later than the 30th day of receipt of the application.
13	Form M	Notice rejecting payment of gratuity	Rule 8 (1)	On verification of claims made for payment of gratuity, if the claim is found inadmissible, the employer may issue a notice to the applicant employee, his nominee or legal heir, specifying the reasons why the claim is found inadmissible
14	Form N	Application direction for	Rule 10 (1)	In cases wherein the employer refuses to accept a claim application or issues a notice specifying a amount of gratuity which is considered less by the applicant or fails to issue a notice under rule 8, the claimant employee/ his nominee/ legal heir may within 90 days of occurrence of cause for application, apply in form N to the concerned controlling authority of the area for issuing a direction
15	Form O	Notice for appearance before the controlling authority	Rule 11 (1)	On receipt of form N, the concerned controlling authority of the area may call upon the applicant and the employer to appear before him on a specified date, time and place.
16	Form P	Summons	Rule 14	The controlling authority may, at any stage of proceedings, issue summons to the applicant or the employer to produce evidences, documents etc.
17	Form Q	Particulars of application under Section 7	Rule 16(1)	The controlling authority to record the particulars of each case in form Q
18	Form R	Notice for payment of Gratuity	Rule 17	on subsequent verification of the genuineness of the claims made, the controlling authority to issue a notice, specifying to the employer, the amount of gratuity payable and directing the employer for payment of gratuity within 30 days of receipt of notice.
19	Form S	Notice for payment of Gratuity as determined by appellate authority	Rule 18(8)	The controlling authority on receipt of the decision of the appellate authority, modify his direction for payment of gratuity and issue a

				notice to the employer, specifying the modified amount of gratuity and directing payment within 15 days of receipt of notice by the employer.
20	Form T	Application for recovery of gratuity	Rule 19	In situations wherein, the employer fails to pay the gratuity due under the act in accordance with the notice of the controlling authority, the employee/ his nominee/legal heir may apply to the controlling authority in duplicate for recovery
21	Form U	Display of abstract of the act and rules	Rule 20	The employer to display an abstract of the act and rules framed there under in English and a language understood by the majority of employees at a conspicuous place or near the main entrance of the establishment

UNIT-8 EMPLOYEES' COMPENSATION ACT, 1923

The Employees' Compensation Act, 1923 is one of the important social security legislations. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions.

The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law.

PARTIAL DISABLEMENT

Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

- (a) <u>temporary partful disablement</u> Such disablement as reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident resulting in the disablement; and
- **(b)** Permanent partial disablement- Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time.

TOTAL DISABLEMENT

"Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement.

EMPLOYER'S LIABILITY FOR COMPENSATION

Section 3 of the Act provides for employers hability for compensation in case of occupational disease or personal injuries to workman.

Compensation shall be payable to a workman in respect of any disease if the disease is <u>directly</u> attributable to a specific injury by <u>accident arising out of and in the course of</u> his employment.

CASE LAW



Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous mock or break-down or mental strain (*Indian News Chronicle v. Mrs. Lazarus*)

WHEN EMPLOYER IS NOT LIABLE

In the following ases, the employer shall not be liable:-

- (a) When the injury does not result in disablement for a period exceeding 3 days.
- (b) When the injury not resulting in death or permanent total disability is due to any of the following reasons:
 - the workman was at the time of accident, under the influence of drink or drugs, or
 - the workman wilfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or



the workman, wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workmen.

However where a workman dies due to an accident arising out of and in the course of employment, it cannot be pleaded that death was due to any of the reasons stated from (a) to (c) and the employer will be liable. (R.B. Moondra & Co. v. Mst. Bhanwari,).

AMOUNT OF COMPENSATION

Amount of compensation is payable in the event of a workman meeting with an accident resulting into temporary or permanent disability or disease. Compensation shall be paid as soon as it falls due. It is payable to **dependants of employee in case of death** compensation must be paid through the Commissioner of Employees' Compensation, appointed by the Government in case of death and total disablement

In case of <u>death</u>, compensation payable is an amount equal to 50% of monthly wages of deceased employee multiplied by a factor depending on the age of the employee (more the age, lower the compensation), subject to a minimum compensation of ₹1,20,000/-. In addition to this, funeral expenses of ₹5,000/- are also paid to the eldest family member of the deceased person.

In case of **permanent total disablement**, compensation payable is an amount equal to 60% of monthly wages of disabled employee (more the age, lower the compensation), subject to a minimum compensation of ₹1, 40,000/-.

In case of **permanent partial disablement**, compensation is paid based on percentage of loss of earning capacity, subject to a minimum compensation of 90,000/-.

Time Limit for disposal of cases relating to compensation

The Compensation Commissioner shall dispose of the matte relating to compensation within a period of **three months** from the date of reference and intimate the decision in respect thereof within the said period to the employee.

DUTY OF EMPLOYER TO DEFORM EMPLOYED OF HIS RIGHTS

According to Section 17A of the Employee's Compensation (Amendment) Act, 2017, every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under the Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.



UNIT-9 CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

The objective of the Contract Labour (Regulation and Abolition) Act, 1970 is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

APPLICABILITY OF ACT

The Act applies:

- (a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;
- **(b)** to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

The Government may, after giving not less than two months notice of its intention to do so, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

ESTABLISHMENT

"Establishment" means

- (a) any office or department of the Government or local authority, or
- (b) any place where any industry, trade, jusiness, manufacture or occupation is carried on.

CONTRACT LABOUR

A workmen shall be deemed to be employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

CONTRACTOR

"Contractor" in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.

REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR

Every establishment covered by the Act, if it wants to engage twenty or more persons through a contractor has to get itself registered. Act lays down that every principal employer of an establishment to which the Act applies shall make an application to the registering officer in the prescribed manner for registration of the establishment within the prescribed time limit.

Revocation of registration in certain cases

The registration can be revoked in the following circumstances:-

- (a) If the registering officer is satisfied, either on a reference made to him in his behalf or otherwise, that the registration has been obtained by mis-representation or suppression of any material fact, or
- (b) that the registration has become useless and become ineffective for any other reason and, therefore, requires to be revoked.



EFFECT OF NON-REGISTRATION

No principal employer of an establishment to which the Act applies can employ contract labour, if:-

- (a) he has not obtained the certification of registration; or
- (b) a certificate has been revoked after being issued.

PROHIBITION OF EMPLOYMENT OF CONTRACT LABOUR

Act empowers the Government to prohibit employment of contract labour in any process, operation or other work in any establishment by issuing a notification in the Official Gazette.

WELFARE AND HEALTH OF CONTACT LABOUR

The contractors are required to take certain specific measures for the welfare and health of contract labour. These measures include providing Canteen facilities, Rest rooms, wholesome drinking water, First Aid facilities etc.

CONTRACT LABOUR (REGULATION AND ABOLITION) CENTRAL RULES, 1970

Important provisions of rules regarding wages are:-

- (a) The contractor shall fix wage periods in respect of which wages shall be payable.
- (b) No wage period shall exceed one month.
- (c) The wage of every person employed as contract labour in an establishment or by a contractor where less than one thousand such persons are employed shall be paid before the expiry of tenth day after the last day of the wage period in respect of which wages are payable.
- (d) Wages due to every worker shall be paid to him direct or to other authorised by him in his behalf.
- (e) Wages shall be paid without any deductions of any kind except those specified by the Central Government by general or special order in this behalf or permissible under the Payment of Wages Act, 1936.
- (f) A notice showing the wage-period and the place and time of disbursement of wages shall be displayed at the place or work and a copy sent by the contractor to the Principal Employer under acknowledgement.

OFFENCES AND PENALTIES

offences	Penalty
In case of default by employer	50% of the compensation amount + interest to be paid to the workman or his dependents as the case may be.
Deposit of Compensation	Within one month with the Compensation Commissioner



UNIT-10 INDUSTRIAL DISPUTES ACT, 1947

Industrial Disputes Act, 1947 provides machinery for peaceful resolution of disputes and to promote harmonious relation between employers and workers.

OBJECTIVES OF THE ACT

In the case of **Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate**, the Supreme Court laid down following objectives of the Act:-

- (i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.
- (ii) Investigation and set lement of industrial disputes between employers and employers,
- (iii) Prevention of illegal strikes and lock-outs.
- (iv) Relief to workmen in the matter of lay-off and retrenchment.

INDUSTRY

"Industry" means any business, trade, undertaking, manufacture of employers and includes any service, employment, handicraft, or industrial occupation of workmen.

In the case <u>Bangalore Water Supply and Sewerage Board v. A Rajiappa</u>, Supreme Court, laid down the following tests to determine whether an activity is covered by the definition of "industry" or not. It is also referred to as the **triple test**.

Where there is :-

- (i) Systematic activity,
- (ii) Organised by co-operation between employer and employee,
- (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an "industry" in that enterprise.

Absence of profit motive or gamful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector.

Hence, the Supreme Court observed that professions, clubs, educational institutions. co-operatives, research institutes, charitable projects are industries for the purpose of Act if they fulfil the triple tests

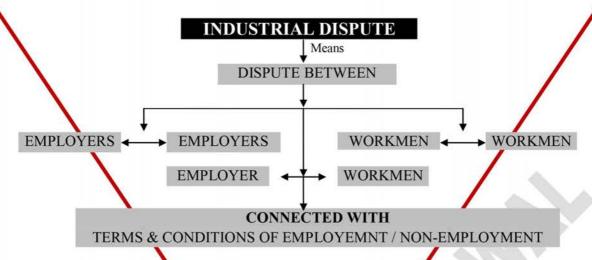
INDUSTRIAL DISPUTE

"Industrial Dispute" means any dispute or difference:-

- (a) between employers and employers, or
- (b) between employers and workmen, or
- (c) between workmen and workmen,

Which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person





An Industrial Dispute exists only when the same has been raised by the workmen with the employer. A mere demand to the appropriate government without a dispute being raised by the workmen with their employer cannot become an industrial dispute. (Sindhu Resettlement Corporation Ltd. v. Industrial bunal)

Who can raise a dispute?

Industrial Disputes Act provides that a dispute between an employer and a single workman does not fall within the definition of Industrial Dispute, but if the workman as a body or a considerable section of them makes a common cause with the individual workman, then such a dispute will be an Industrial Dispute.

Thus an Industrial Dispute is a collective dispute supported by either a trade union or a substantial number of fellow workers.

However, in respect of certain disputes relating to dismissal, discharge, retrenchment or termination of services, even a single workman can raise a dispute.

EMPLOYEE/WORKMAN

Any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes:-

- (a) any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or
- (b) any person whose dismissal, discharge or retrenchment has led to that dispute,

but does not include any such person:-

- (a) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957; or
- (b) who is employed mainly in a managerial or administrative capacity; or
- (c) who is employed in a supervisory capacity drawing more than ₹ 10,000 permonth as wages;

A Salesman whose duties included manual as well as clerical work such as to attend to the customer, prepare cash memos, to assist manage in daily routine is a workman. [Carona Salu Co. v. Labour Court]

STRIKE

"Strike" means a **cessation of work** by a body of **persons employed** in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.





CASE LAW



In <u>National Textiles Workers Union v. Meenakshi Mills</u>it was held that if on the death of a fellow worker, the workmen acting in combination refuse to resume work, it amount to strike.

Refusal to do work which the employer has no right to ask for performances, such a refusal does not constitute a strike. (Northbrook Jute Co. Ltd. v. Their Workmen)

Where in pursuance of a common understanding, the employees entered the premises of the Bank and refused to take their pens in their hands, it was held to be a strike. (Punjab National Bank Ltd. v. All India Punjab Bank Employees' federation)

TYPES OF STRIKE

(i) Stay-in, sit-down, pen-down or tool-down strike

In all such cases, the workmen after taking their seats refuse to do work. Even when asked to leave the premises, they refuse to do so. All such acts on the part of the workmen acting in combination, amount to a strike. Since such strikes are directed against the employer, they are also called primary strikes.

(ii) Go-slow

Go-slow does not amount to strike, but it is a serious case of misconduct. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For this reasons, 'go-slow' has always been considered a serious type of misconduct."

Go-slow does not amount to strike. (Bharat Sugar Mills Ltd. v. Jai Singh)

(iii) Sympathetic strike

Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take disciplinary action for the absence of workmen.

However, in <u>Ramalingam v. Indian Metallurgical Corporation</u>, <u>Madras</u>, it was held that such cessation of work will not amount to astrike since there is no intention to use the strike against the management.

(iv) Hunger strike

Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, it will not constitute a strike. But if due to such an act, even those present for work, could not be given work, it will amount to strike (*Peparach Sugar Mills Ltd. v. Their Workmen*).

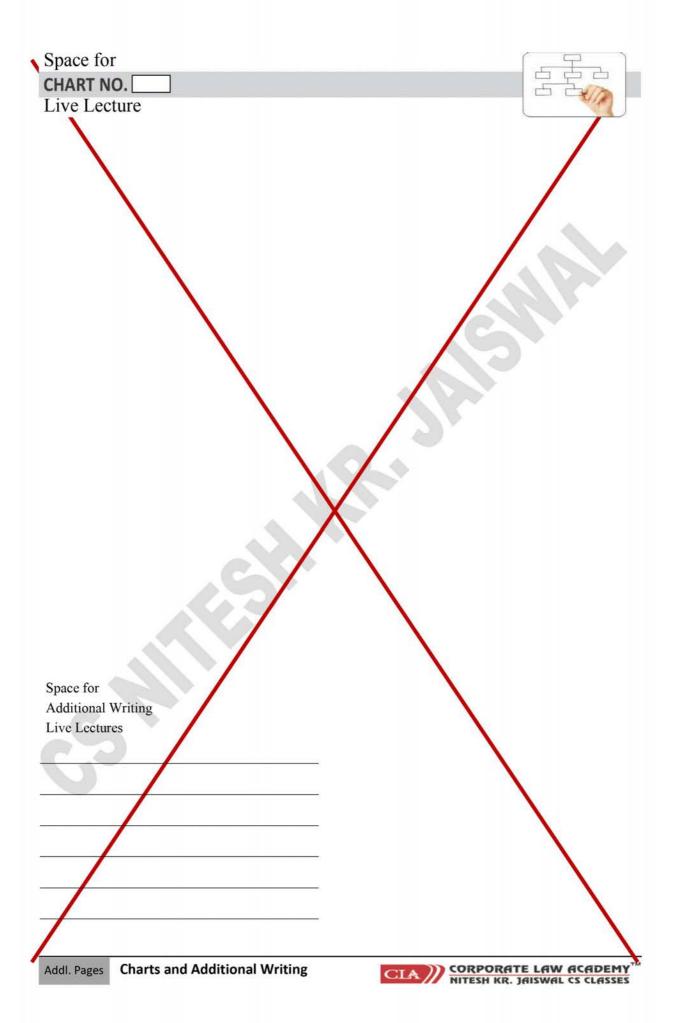
(v) Work-to-rule

Since there is no essation of work, it does not constitute a strike.

LOCK-OUT

"Lock-out" means the **temporary closing** of a **place** of employment, or the **suspension of work**, or the **refusal by an employer** to continue to employ any number of persons employed by him.

A closure of a place of business for a short duration of 30 days in retaliation to certain acts of workmen was held to be a lockout. (Lord Krishna Sugar Mills Ltd. v. States of U.P.)



GENERAL PROHIBITION OF STRIKES AND LOCK-OUTS

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:

- (a) during the pendency of conciliation proceedings before a Board and seven days the conclusion of such proceedings;
- (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
- (c) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings,
- (d) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

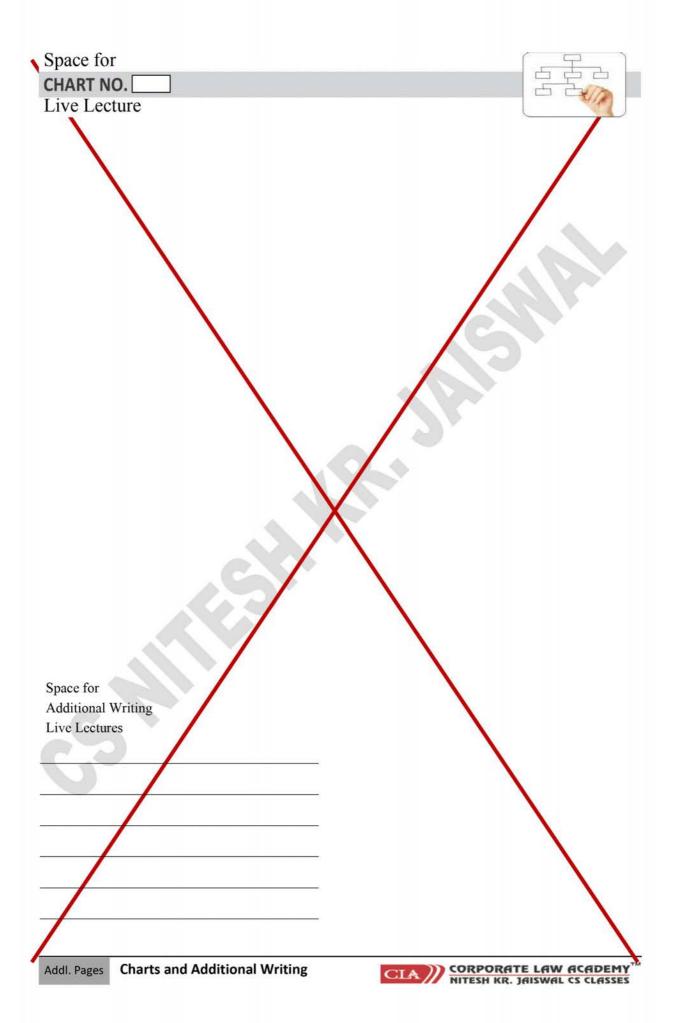
PROHIBITION OF STRIKES AND LOCK-OUTS IN PUBLIC UTILITY SERVICE

- 1. No person employed in a public wility service shall go on strike in breach of contract.
 - (a) without giving to the employed notice of strike, as bereinafter provided, within six weeks before striking, i.e., from the date of the notice to the date of strike a period of six weeks should not have elapsed; or
 - (b) within 14 days of giving of such notice, i.e., a period of 14 days must have elapsed from the date of notice to the date of strike; or
 - (c) before the expiry of the date of strike specified in any such notice as aforesaid, i.e., the date specified in the notice must have expired on the day of striking; or
 - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings.
- 2. No employer carrying on any public utility service shall lock-out any of his workmen:-
 - (a) without giving them notice of lock-out as hereinafter provided within six weeks before lockingout; or
 - (b) within 14 days of giving such notice; or
 - (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
 - (d) During the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conciliation of such proceedings.

JUSTIFIED AND UNJUSTIFIED STRIKES

If a strike is in **contravention** of the **above provisions**, it is an **illegal strike**. Since strike is the essence of collective bargaining, if workers resort to strike to press for their **legitimate rights**, then it is **justified**.

Whether stake is justified or unjustified will depend upon the fairness and reasonableness of the demands of workers. Thus, if workmen go on strike without contravening statutory requirements, in support of their demands, the strike will be justified. In the beginning strike was justified but later on workmen indulged in violence, it will become unjustified.



WAGES FOR STRIKE PERIOD

The payment of wages for the strike period will depend upon whether the strike is justified or unjustified.

The Court held in <u>Syndicate Bank v. Umesh Nayak</u> that where the strike is unjustified, the workers are not entitled for wages for the strike period

DISMISSAL OF WORKMEN AND ILLEGAL STRIKE

If workers participate in an illegal strike, the employer is within his right to dismiss the striking workmen on ground of miscorduct. For this it is necessary that a proper and regular domestic enquiry is held.

Principles governing Domestic Enquiry

- 1. The enquiry should be conducted by an unbiased person.
- 2. The enquiry officer should conduct the enquiry in an objective and fair manner.
- 3. The employee should be given a fair opportunity to defend himself.
- 4. Proper procedure, rules, regulations, etc. should be followed while conducting enquiry.
- 5. The enquiry officer should report whether chargers are proved of not.

State of Rajasthan	The Supreme C	ourt has held that	in case of unauthorized ab	sence of an
ν.	employee for a	long period, the	termination of services after	holding the
Sujata Malhotra	departmental end	quiry is proper.		

JUSTIFICATION OF LOCK-OUT AND WAGES FOR LOCK-OUT PERIOD

A lock-out in violation of the statutory requirements is illegal and unjustified and workers are entitled to wages for the lock-out period. For legal lock out, no wages are payable to workmen.

LAY-OFF

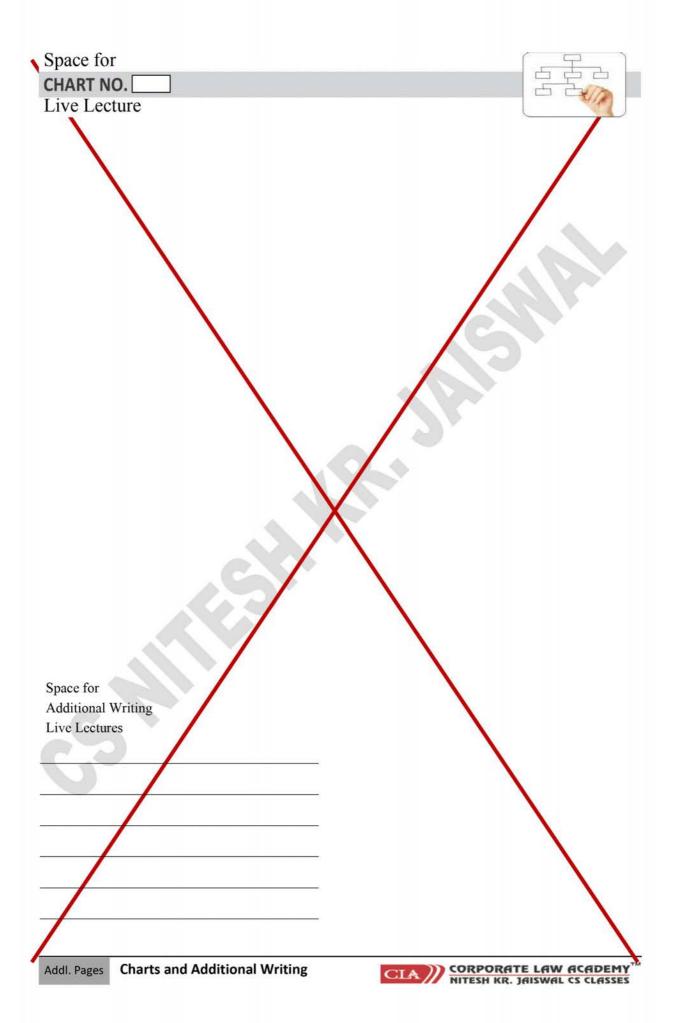
"Lay-off" means the failure, refusal or inability of an employed to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:-

- (a) shortage of coal, power or raw materials, or
- (b) accumulation of stocks, or
- (c) break-down of machinery, or
- (d) natural calamity, or
- (e) For any other connected reason.

Lay off means not giving employment within 2 hours after reporting to work. Lay off can be for half day also wherein the worker shall be asked to come in the second half of the shift.

DIFFERENCE BETWEEN LAY-OFF AND LOCK-OUT

- (a) In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.
- (1) In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.



- (c) In a lock-out, there is **no** question of any **wages** or compensation being paid unless the lock-out is held to be unjustified.
- (d) Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.
- (e) hock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of **temporary nature** and in both cases the contract of **employment is not terminated** but remains in suspended animation.

RETRENCHMENT

"Retrenchment" means the **termination** by the employer of the service of a workman for any reason whatsoever, **otherwise than as a punishment** inflicted by way of disciplinary action, but does not include:-

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman or reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.
- (d) termination of the service of workman on the ground of continued ill-health.

Thus, the definition contemplates following requirements for retrenchment:

- (a) There should be termination of the service of the workman.
- **(b)** The termination should be by the employer
- (c) The termination is not the result of punishment inflicted by way of disciplinary action.

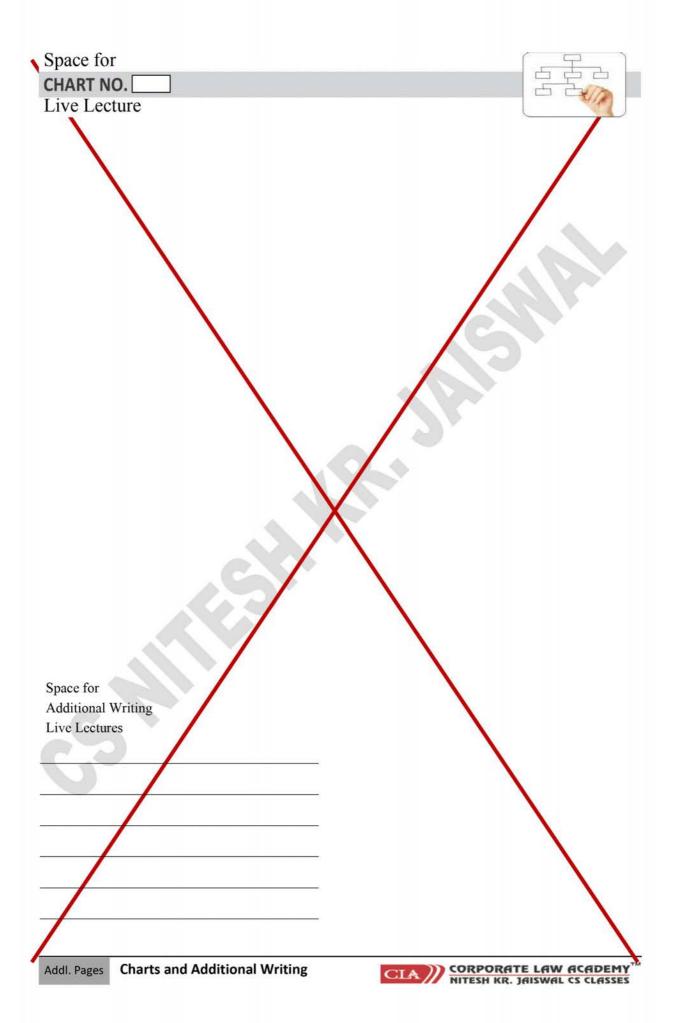
CASE LAW



Anand Bihari	The Supreme Court held that termination of services of a bus driver on
V.	the gound of weak eyesigh does not amount to retrenchment under the
Rajasthan State Road	Industrial Disputes Act because here the employee is being terminated
Transport	on the ground of continued ill health and not because of surplus.
U.P. V. Labour Court, Haldwani	Retrenchment does not include disengagement from service of person employed for working on daily wages
Tapan Kumar Jana	
V.	Termination of services of casual workers after their work is over, is not
The General Manager,	a retrenchment.
Calcutta Teleptiones	
PrabhudayalJat	
V	Where the services of an employee irregularly appointed were
Alwar Sehkari Bhumi Vikas Bank Ltd.	terminated it was held to be a case of retrenchment.

AWARD

"Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration ward made under Section 10A.



SETTLEMENT

"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

AUTHORITIES UNDER THE ACT

The Act provides for following Authorities for Investigation and settlement of industrial disputes:

- 1. Works Committee (in case of 100 or more workers)
- 2. Conciliation Office
- 3. Boards of Conciliation
- 4. Court of Inquiry.
- 5. Labour Tribunals.
- 6. Industrial Tribunals.
- 7. National Tribunals

JURISDICTION OF INDUSTRIAL TRIBUNALS

As per Section 7A of the Industrial Disputes Act, 1947 the appropriate Government may, by notification in the Official Gazette, constitute one or more industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or Third Schedule and for performing such other functions as may be assigned to them under this Act.

The **Third Schedule** of the Industrial Disputes Act, 1947 deals with matters within the jurisdiction of Industrial Tribunals. These are as follows:-

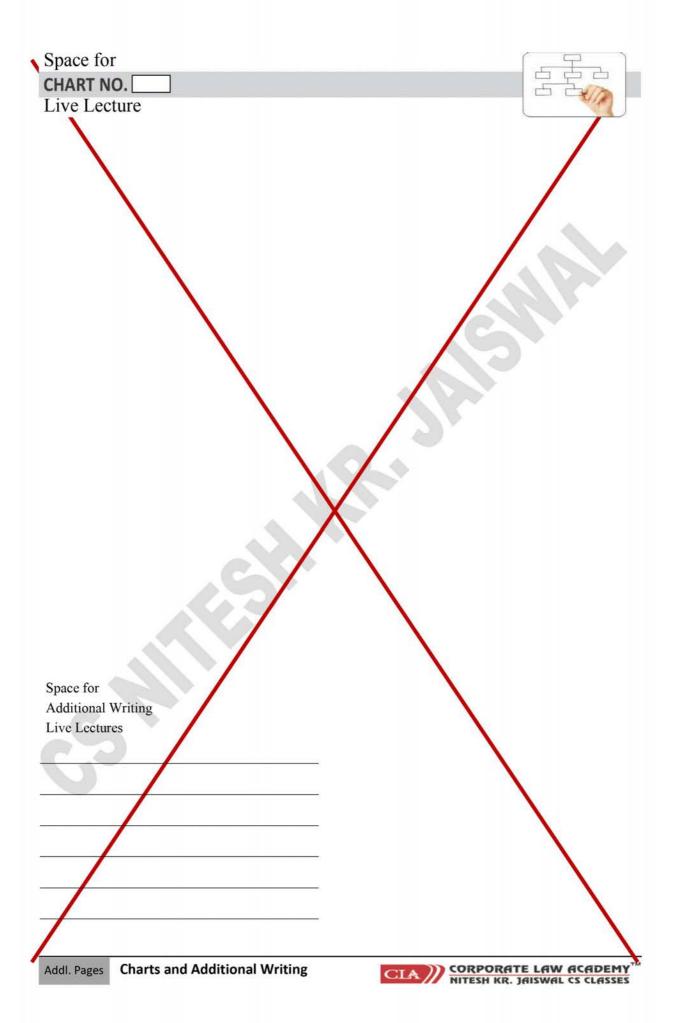
- 1. Wages, Including the period and mode of payment;
- 2. Compensatory and other allowances;
- 3. Hours of work and rest intervals;
- 4. Leave with wages and holidays;
- 5. Bonus, profit sharing, provident fund and gratuity;
- 6. Shift working otherwise than in accordance with standing orders;
- 7. Classification by grades;
- 8. Rules of discipline;
- 9. Rationalisation; and
- 10. Any other matter that may be prescribed.

ARBITRATION AND ADJUDICATION

Adjudication involves intervention in the dispute by the third party appointed by the government for the purpose of deciding the nature of final settlement. On getting a report of failure of conciliation, the government has to decide whether it would be appropriate to refer the dispute to adjudication.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties out for a private dispute resolution procedure instead of going to court.

The circumstances under which an industrial dispute may be voluntarily referred to arbitration have been stipulated under Section 10A of the Industrial Dispute Act, 1947.



Voluntary Reference to Arbitration

Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at an time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal of National Tribunal) as an arbitrator as may be specified in the arbitration agreement.

An arbitration agreement shall be in such form and shall be signed by the parties thereto as prescribed. A copy of the arbitration agreement shall be forwarded to the appropriate Government and a conciliation officer and the appropriate Government shall, within one month from the date of receipt of such copy, publish the same in the official Gazette.

OFFENCES AND PENALTIES

Offences	Penalty
Committing unfair labour practices	Imprisonment of up to 6 months or with fine up to ₹3,000.
Illegal strike and lock-outs	Imprisonment up to one month or with fine up to ₹50 (₹1000 for lock-out) or with both.
Instigation etc. for illegal strike or lock-outs.	Imprisonment up to 6 months or with fine up to ₹1,000
Giving financial aid to illegal strikes and lock outs.	Imprisonment for 6 months or with fine up to \$1,000
Breach of settlement or award	Imprisonment up to 6 months or with fine. On continuity of offence fine uptoRs.200 per day
Disclosing confidential information pertaining to Sec.21	Imprisonment up to 6 months or with fine up to ₹1,000
Closure without 60 days' notice under Sec. 25 FFA	Imprisonment up to 6 months or with fine up to ₹5,000
Contravention of Sec.33 pertaining to change of conditions of Service during pendency of dispute etc.	Imprisonment up to 6 months or fine up to ₹1,000.
When no penalty is provided for contravention	Fine up to ₹100 or as the Court decides.



ADVANCE YOUR KNOWLEDGE



	Check List - Industrial Dispute Act, 1947					
S. No.	Type & Nature of Document	Description of the	Relevant Clause	Schedule of Submission/ Maintenance	Submittin g Authority	Remarks
1	Form A	Form of application for the reference of an industrial dispute to a board of conclustion/court of enquiry(labour court/ national hibunal	Rule 3	As & when a dispute is sought to be referred	Labour Secretary, GOI/Chief Labour Commissio ner/RLC(C)/ALC(C)	
2	Form B	Notice to represent persons on board	Rule 6	To be issued by Secretary to the par them to nominate a persons to represe board	ties requiring certain no. of	
3	Form C	Agreement	Rule 7	As & when a dispute ought to be referred for arbitration	Labour Secretary, GOI/Chief Labour Commissio ner/RLC(C)/ALC(C)	
4	Form D	Summons	Rule 17	parties to produce	nal/ national equires the	
5	Form E	Notice of change of service conditions proposed by an employer	Rule 34	As & when a change ought to be effected	Labour Secretary, GOI/Chief Labour Commissio ner/RLC(C)/ALC(C)/Secretar y of registered trade union	
6	Form F	Form Of Authority	Rule 36	to be sent to th authority giving th representatives	e concerned	

7	Form G	Form Of Nomination Paper	Rule 47	To be delivered to the employer nominating a candidate for election to the works' committee, duly signed by the proposer and the candidate
8	Form G-1	Progress Report on Constitution and functioning of Works Committee for the half year ending 30th June/31st December	Rule 56-A	Not later than 20th day of the month following the half year
9	Form H	Form for memorandum of settlement	Rule 58	To be sent to Labour Secretary, GOI/ Chief Labour Commissioner/RLC(C)/ ALC(C) duly signed by the parties to the proceedings.
10	Form I	Complaint under Section 33-A of the act	Rule 59	every complaint to be verified and to be presented in triplicate and to be accompanied by as many copies as there are opposite parties to the complaint. The complaint ought to be presented before the labour court/tribunal/National Tribunal
11	Form J	Application for permission	RMo 60(1)	to be made by the employer seeking express permission in writing of the Conciliation officer/board/labour court/tribunal/national tribunal
12	Form K	Application for permission ander Section 33	Rule 60(2)	to be made by the employer seeking express permission in writing of the Conciliation officer/board/labour court/tribunal/national tribunal for any action taken under Section 33-2(a) or (b)
13	Form K-1	Application for recovery of dues	Rule 62(1)	to be made by the workman or group of workmen to the Labour Secretary/ RLC when any money is due from an employer to a workman or group of workmen
14	Form K-	Application by a person authorised by a workman or heir of deceased workman for recovery of dues	Rule 62(1)	to be made by a person authorised in writing by the workman or in the case of death of workman, the assignee or heir of the deceased workman to the Labour Secretary/ RLC when any money is due from an employer to a workman or group of workmen

15	Form K-3	Application to the labour court to receive entitlements	Rule 62(2)	To be made by a workman or group of workmen to the labour court to receive entitlements due from an employer	
16	Form K-4	Application to the labour court by a person authorised by a workman or heir of deceased workman to receive entitlements	Rule 62(2)	To be made by the assignee or heir of the deceased workman to the labour court to receive entitlements due from an employer	
17	Form L	Form of notice of strike to be given by Union/ Workmen in a Public Utility Service	Rule 71	To be made by Union/Workmen to the employer, with copy to ALC (C)/RLC(C)	
18	Form M	Form Of Notice of Lock Out to be given by an employer carrying on a Public Utility Service	Rule 72	To be made by the Employer with a copy to The Secretary of the Registered Union/ ALC(C)/RLC(C)/CLC(C)	
19	Form N	Form of Report of Strike or Lock Out in a Public Utility Service	Rule 73	Information in this form to be submitted immediately on the occurrence of strike or lock out in a public utility service to the ALC(C) for the local area concerned	
20	Form O	Register Of Settlements	Rule 75	To be filed by the conciliation officer in respect of settlements effected under this act in respect of areas within his jurisdiction	
21	Form O-1	Notice of commencement of layoff	Rule 75-A	within 7 days of commencement of lay off RLC(C) with a copy forwarded to ALC(C)	
22	Form O-2	Notice Of Termination of lay off	Rule 75-A	within 7 days of termination of lay off RLC(C) with a copy forwarded to ALC(C)	
23	Form O-3	Form of application for permission to lay off, to continue the lay off of workmen in industrial	Rule 75- B(1)	to be sent to the concerned authority and sent through registered post acknowledgement due	
24	For B	establishments to which provisions of Chapter V-B of the act applies Form of Notice of	Rule 76	To be since within 2 days from	
24	Form P	Retrenchment to be given by an employer under clause © of section 25(F) of this act	Kuie /6	To be given within 3 days from the date on which notice is served to the workman Central Government/ RLC(C)/ ALC(C)/concerned employment exchange	

25	Form P-A	Form of Notice of Retrenchment to be given by an employer under clause (d) of section 25(N) of this act	Rule 76- A(1)	to be served by the employer to the central govt. or such authority as specified under the act	
26	Form Q	Form of notice of closure to be given by an employer under Section 25-FFA of The Industrial Disputes Act, 1947	Rule 76-B	to be sent by the employer to the Labour Secretary(GoI)/ BLC(C)/ALC(C)/Local Employment Exchange	
27	Form Q-A	Form of notice of closure to be given by an employer under Section 25-O(1) of The Industrial Disputes Act, 1947	STATISTICS AND ADDRESS.	to be served by the employer to the Labour Secretary(GoI) with a copy to the Registered Trade Union of the establishment	



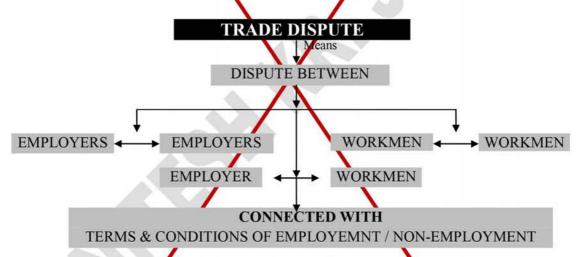
UNIT-11 TRADE UNION ACT, 1926

•	(a) Gives legal and corporate status to the registered trade unions.
T T 1 II.	(b) deals with the registration of trade unions, their rights, their liabilities and responsibilities
The Trade Union	(c) Ensures that funds of trade unions are utilised properly.
Act, 1926:-	(d) Seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class.
	(e) Is applicable not only to the union of workers but also to the association of employers.

TRADE UNION- MEANING

Trade union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, **or** for imposing restrictive conditions on the conduct of any trade or business, **and** includes any federation of two or more trade unions.

TRADE DISPUTE- MEANING



Trade dispute means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person.

"Workmen" means all persons employed in trade or industry whether or not in the employment of the employer with the whom the trade disputes arises.

REGISTRATION OF TRADE UNION-PROCEDURE

Any seven or more members of a trade union may by subscribing their names to the rules of the trade union and by otherwise complying with the provisions of this act with respect to registration, apply for registration of the trade union.

It may be noted that trade union of workmen shall be registered **only if**, at least **ten percent, or one hundred of the workmen**, **whichever is less**, engaged or employed in the establishment or industry with which it is connected **are the members** of such trade union on the date of making of application for registration.



APPLICATION FOR REGISTRATION OF TRADE UNION

Section 5 stipulates that every application for registration of a trade union shall be made to the registrar and shall be accompanied by a copy of the rules of the trade union and a statement of the following particulars, namely:-

- (a) The names, occupations and address of the members making application;
- (b) In the case of a trade union of workmen, the names, occupations and addresses of the place of work of the members of the trade union making the application;
- (c) The name of the trade union and the address of its head office; and
- (d) The titles, names, ages, addresses and occupations of the office-bearers of trade union.

Where a trade union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the registrar, together with the application, a general statement of the asset and liabilities of the trade union prepared in such form and containing such particulars as may be prescribed.

CERTIFICATE OF REGISTRATION

The Registrar, on being satisfied that the trade union has complied with all the requirements of the Act in regard to registration, shall register the trade union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the trade union contained in the statement accompanying the application for registration.

The registrar, on registering a trade union, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the trade union has been duly registered under the Act.

REGISTERED TRADE UNION-LEGAL STATUS

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

CANCELLATION OF CERTIFICATE OF REGISTRATION

A certificate of registration of a Trade Union may be withdrawn or cancelled by the registrar on the <u>following</u> grounds:-

- (a) An application of the trade union for cancellation of certificate of registration;
- (b) If the registrar is satisfied that the certificate has been obtained by fraud or mistake or that the union has ceased to exist;
- (c) If the registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members

IMMUNITY FROM CIVIL SUIT IN CERTAIN CASES

No suit of other legal proceeding shall be maintainable in any civil court against any registered Trade Union or any office bearer or any member thereof in respect of any act done in contemplation for furtherance of a trade dispute to which any member of the Trade Union is a party on the ground only that such Act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour.



PROTECTION IN CASE OF CRIMINAL CONSPIRACY IN TRADE UNION DISPUTES

No office bearer or member of a registered trade union shall be liable to punishment under Section 120B of the Indian Penal Code, 1860, in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in Trade Union Act unless the agreement is an agreement to commit an offence.

RETURNS UNDER THE ACT

There shall be sent annually to the registrar on or before such date as may be prescribed, a general statement audited in the prescribed manner, of all receipts and expenditures of every registered Trade Union during the year ending on the 31st day of December.

Together with the general statement there shall be sent to the registrar a statement showing all changes of office bearers made by the Trade Union during the year to which me general statement refers, together with a copy of the rules of the Trade Union corrected up to the date of the dispatch thereof.

A copy of every alteration made in the rules of a registered Trade Union shall be sent to the registrar within fifteen days of the making the alteration.

OFFENCES AND PENALTIES

Offences	Penalty
For making false entry in or any omission in general	Fine up to ₹500. On continuing default, additional
statement required for sending returns.	fault, ₹5 for each week (not exceeding ₹50).
For making false entry in the form.	Fine up to ₹500.
Supplying false information regarding Trade Union	Fine up to ₹200



UNIT-12 MATERNITY RELIEF ACT, 1961

The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working.

The Maternity Benefit Act, 1961 is applicable to mines, factories, circus industry, plantations, shops and establishments employing **ten or more persons**. It can be extended to other establishments by the state governments.

EMPLOYMENT OF OR WORK BY WOMEN PROHIBITED DURING CERTAINPERIODS

No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. It also specifies that no women shall working any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

Further, she shall not be given to do any work during the period of the month immediately preceding the period of six weeks, before the date of her expected delivery, which is of an harduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

RIGHT TO PAYMENT OF MATERNITY BENEFITS

Every woman shall be entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

The average daily wage means the overage of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

PERIOD OF MATERNITY BENEFIT

A woman shall be entitled to maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than six weeks shall precede the date of her expected delivery. However the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be welve weeks of which not more than six weeks shall precede the date of her expected delivery.

If a woman dies during this period, the maternity benefit shall be payable only for days up to and including the day of her death.



Where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period. If the child also dies during the said period, then, for the days up to and including the date of the death of the child

A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of **twelve weeks** from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

"Commissioning Mother" means a biological mother who uses her egg to create an embryo implanted in any other woman

NURSING BREAKS

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

CRECHE FACILITY

Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her. Every establishment shall intimate in writing and vectronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

NOTICE FOR CLAIM FOR MATERNITY BENEFIT

Any woman entitled to maternity benefit may give notice to her employer, stating that her maternity benefit and any other amount to which she may be entitled may be paid to her and that she will not work during the period for which she receives maternity benefit.

Such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Any woman, who has notice, when she was pregnant, may give such notice as soon as possible after the delivery.

The employer shall on receipt of the notice, permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

The amount of naternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof, as may be prescribed, that the woman is pregnant and the amount due for the subsequent period shall be paid by the employer to the woman, within 48 hours of production of such proof as may be prescribed, that the woman has been delivered of a child.



PENALTY FOR CONTRAVENTION OF ACT BY EMPLOYER

Section 21 provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees. However, the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term of fine only in lieu of imprisonment. If any employer contravenes the provisions of the Act or the rules made there under, he shall, if no other penalty is elsewhere provided by or under the Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both. Where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto



UNIT-13 CHILD & ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 2016

The Child Labour (Prohibition & Regulation) Amendment Act, 2016 which came into force w.e.f. 1.9.2016.

PURPOSE OF THE ACT

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to

- (a) prohibit the engagement of children in all occupations and
- (b) Prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith oxincidental thereto. It extends to whole of India.

It prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibits employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

DEFINITION

1. ADOLESCENT

Adolescent means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

2. CHILD

Child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

3. ESTABLISHMENT

Establishment includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

PROHIBITION OF EMPLOYMENT OF CHILDREN IN ANY OCCUPATIONS AND PROCESSES

Section 3 of the Act provides that no child shall be employed or permitted to work in any occupations or process except:-

- (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
- (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials of any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.

However no such work shall effect the school education of the child.

[&]quot;family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother;

^{&#}x27;family enterprise' means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;



PROHIBITION OF EMPLOYMENT OF ADOLESCENTS IN CERTAIN HAZARDOUS OCCUPATIONS AND PROCESSES

Section 3A provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.

The hazardous occupations or processes set forth in the Schedule are as under:

- (1) Mines.
- (2) Inflammable substances or explosives.
- (3) Hazardous process.

"Hazardous process" has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

However, the Central Government may, by notification, specify the nature of the nonhazardous work to which an adolescent may be permitted to work under the Act.

HOURS AND PERIOD OF WORK

- Section 7 provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.
- 2. The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour
- 3. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
- 4. No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- 5. No adolescent shall be required or permitted to work evertime.
- 6. No adolescent shall be required or perplitted to work in any establishment on any day on which he has already been working in another establishment.
- 7. Weekly holidays As per section 8 every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

NOTICE TO INSPECTOR

Section 9 provides that every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars namely: —

- 1. The name and situation of the establishment
- 2. The name of the person in actual management of the establishment
- 3. The address to which communications relating to the establishment should be sent;
- 4. The nature of the occupation or process carried on in the establishment.



MAINTENANCE OF REGISTER

Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing

- 1. the name and date of birth of every adolescent so employed or permitted to work;
- 2. hours and periods of work of any such adolescent and the intervals of rest to which be is entitled;
- 3. the nature of work of any such adolescent; and
- 4. Such other particulars as may be prescribed.

DISPLAY OF NOTICE

Every railway administration every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3A and 14.

PENALTIES

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

However; the parents or guardians of such child/adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3 or 3A. The parents or guardians of any child or adolescent shall not be liable for punishment, in case of the first offence.

Whoever, having been convicted of an offence under section 3 of section 3A commits a like offence afterwards; he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

The parents or guardians having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.

Whoever fails to comply with or contravenes any other provisions of the Act or the rules made there under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

DISTRICT MAGISTRATE TO IMPLEMENT THE PROVISIONS

Section 17A of the Act provides that the appropriate Government may confer such powers and impose such auties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.



UNIT-14 PREVENTION AND EARLY DETECTION OF DISABILITIES

PREVENTION AND EARLY DETECTION OF DISABILITIES

In order to prevent the occurrence of disabilities, the **appropriate government authorities** have to (within their economic capacity and development):

- (a) undertake surveys, investigations and research concerning the cause of occurrence of disabilities
- (b) promote various methods of preventing disabilities
- (c) screen all the children at least once in a year for the purpose of identifying "at risk" cases
- (d) provide facilities for training to the staff at the primary health centres
- (e) sponsor awareness campaigns and disseminate information on general hygiene, health and sanitation,

EDUCATION

In order to provide equal opportunities for the disabled in education, the appropriate government and local authorities have been entrusted with:

- (a) Ensuring that every child with disabilities have access to free education in an appropriate environment till 18 years of age.
- (b) Promoting the integration of students with disabilities in normal schools.
- (c) Promoting setting up of special schools in government and private sector in such a manner that children with disabilities living in any part of the country have access to such schools and equip these schools with vocational training facilities.
- (d) Imparting education through open schools or open universities;
- (e) Conducting class and discussions through interactive electronic or other media;
- (f) Providing every child with disability free of cost special books and equipments needed for his education. (Section 27).

Comprehensive schemes are to be prepared by the government for:

- (a) Transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools.
- (b) The supply of books, uniforms and other materials to children with disabilities attending school.
- (c) The grant of scholarship to students with disabilities.
- (d) Setting up of appropriate forums for the redressal of grievances of parent regarding the placement of disabled children;
- (e) Suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;
- (f) All government educational institutions and other educational institutions receiving aid from the government are to reserve not less than 3 per cent of its seats for disabled persons. (Section 39).

EMPLOYMENT

SECTION 32

The appropriate governments are to identify posts in government establishments, which can be reserved for disabled persons and review the list of posts at periodic intervals (not exceedingly three years).





SECTION 33

At least 3 percent of vacancies in every government establishment are to be reserved for persons with disabilities. Out of which 1 per cent each shall be reserved for persons suffering from blindness or low vision and the other 2 percent for persons with hearing impairment and loco motor disability or cerebral palsy. But the central government may exempt any establishment from the above requirements if the nature of work in such establishments is such that disabled persons are unable to work in such establishments.

SECTION 3

If a vacancy cannot be filled up due to non-availability of a suitable disabled person the vacancy is to be carried forward to the next recruitment year and if in that next recruitment year a suitable person with disability is not found, the post is to be filled by an interchange of categories of disabled persons. Only if there is no suitable disabled person available for the job, can an able person be employed.

SECTION 38

In order to ensure employment of disabled persons, schemes are to be formulated by the appropriate government for:

- (a) The training and welfare of persons with disabilities;
- (b) The relaxation of upper age limit
- (c) Regulating the employment;
- (d) Health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;
- (e) Constituting the authority responsible for the administration of the scheme.

Affirmative action

The appropriate governments have to frame schemes to provide aids and appliances to disabled persons. (Section 42)

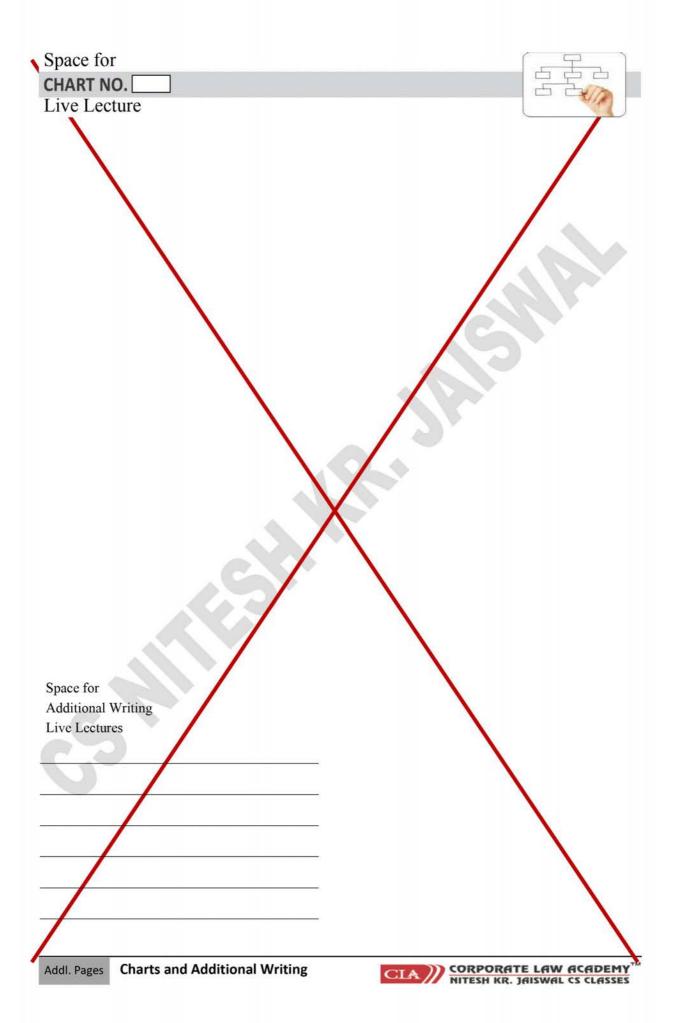
Special schemes are to be notified for the preferential all timent of land at confessional rates for:

- (a) Housing
- **(b)** Setting up business
- (c) Setting up special recreational centers
- (d) Establishment of special schools
- (e) Establishment of research centers
- (f) Establishment of factories by entrepreneurs with disabilities (Section 43)

NON-DISCRIMINATION

In order to create a physical barrier free environment for disabled persons, the appropriate governments or local authorities have to (in their economic capacity and development) take special measures to:

- (a) Adapt rail compartments, buses. vessels and aircrafts in such a way as to period easy access to such persons;
- (b) Adapt toilers in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently. (Section 44)
- (c) Install auditory signals at red lights in the public roads for the benefit of persons with visually handicap;
- (d) Make curb cuts and slopes in pavements for the easy access of wheel chair users;
- (e) Engrave the surface of the zebra crossing for the blind or for persons with low vision;
- (f) Provide ramps in hospitals, primary health centers and other medical care and rehabilitation institutions. (Section 46)



RESEARCH AND MANPOWER DEVELOPMENT

The appropriate government and local authorities are entrusted with sponsoring and promoting research in Following areas:

- (a) prevention of disability;
- (b) rehabilitation including community based rehabilitation;
- (c) development of assistive devices including their psycho-social aspects;
- (d) job identification;
- (e) On site modifications in offices and factories. (Section 48)

Universities, other lastitutions of higher learning, professional bodies and non-governmental organizations. That undertake research on special education, rehabilitation and manpower development are to be provided. Financial assistance by appropriate governments for undertaking research for education, rehabilitation and Manpower development. (Section 49)

INSTITUTION FOR PERSONS WITH SEVERE DISABILITIES

SECTION 56

The concerned government may establish and maintain institutions for persons with severe disabilities at Such places it thinks fit or recognize any private institution.

SOCIAL SECURITY

SECTION 66

While formulating rehabilitation policies the appropriate governments have to consult non-governmental organizations working in the field of disability.

SECTION 67

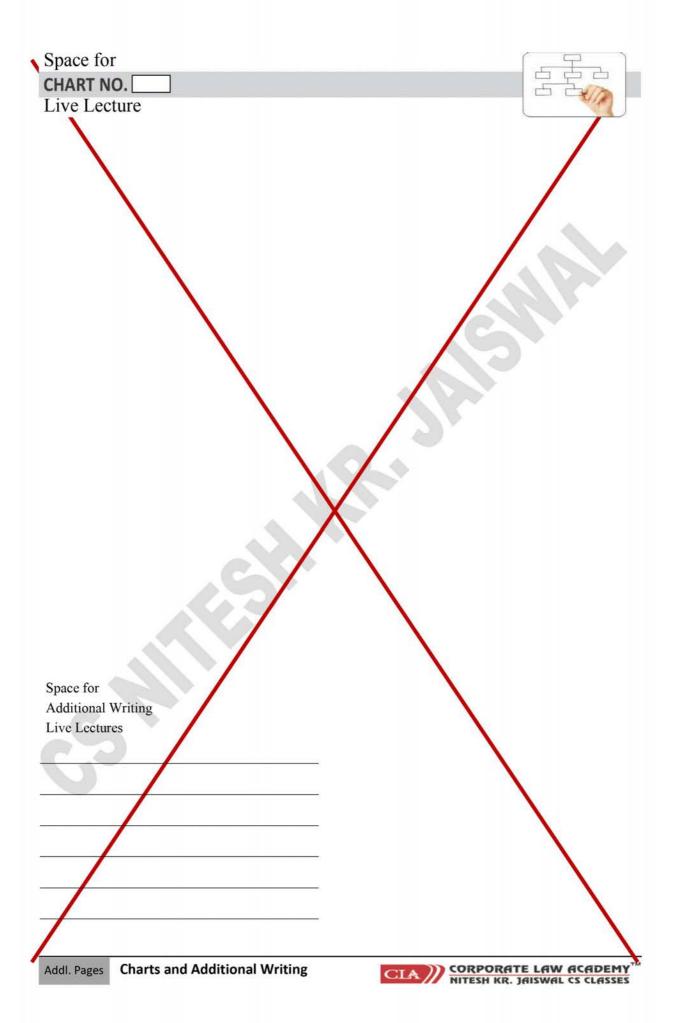
Insurance schemes or alternate security schemes are to be framed by the appropriate government forth benefit of its employees with disabilities.

SECTION 68

Schemes are also to be framed for payment of an unemployment allowance to persons with disabilities that are registered with the special employment exchange for more than two years and have not been placed in any gainful occupation.

IMPLEMENTATION AGENCIES

- (a) The act has set up a central coordination committee at the national level to serve as a national focal point for disability natters to facilitate the continuous evaluation of a comprehensive policy towards solving the problems faced by disabled the persons. (Section 8)
- (b) At the state level a state coordination committees have been set up. (Section 13)
- (c) To assist the central coordination committee and state coordination committees, a central executive committee (Section 10) and a state coordination committee have been set up. (Section 23)
- (d) The Chief Commissioner and Commissioners for persons with disabilities have to safe guard the rights of persons with disabilities and submit reports to the government on implementation of the act.
- (e) If there is any violation of the act, the aggrieved person can approach the head of the establishment under which he/she is employed or the Chief Commissioner or the Commissioner for Persons With Disabilities or the High court under article 226 of the Constitution of India or the Supreme Court under article 32 of the Constitution of India or even the National or State Human Rights Commissions.



UNIT-15 PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION; PROHIBITION AND REDRESSAL) ACT; 2013

PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

In 2013, the government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the 'Act') for prevention of sexual harassment against women at the workplaces.

OBJECTIVES OF THE ACT

The Act is enacted to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected there with or incidental thereto.

Sexual harassment is termed as a violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and right white and to live with dignity under Article 21 of the Constitution of India.

Sexual harassment is also considered a violation of a light to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

Section 3 of the Act provides that no woman shall be subjected to sexual harassment at any workplace. This section further provides the **circumstances** which if present or connected with any act or behaviour of sexual harassment may amount to sexual harassment such as implied or expressed promise to preferential treatment or implied or explicit threat of detrimental treatment in her employment, implied or explicit threat about her present or future employment, interference with work or creating an intimidating or offensive or hostile work environment, humiliating treatment likely to affect health or safety of a woman.

SEXUAL HARASSMENT- DEFINITION

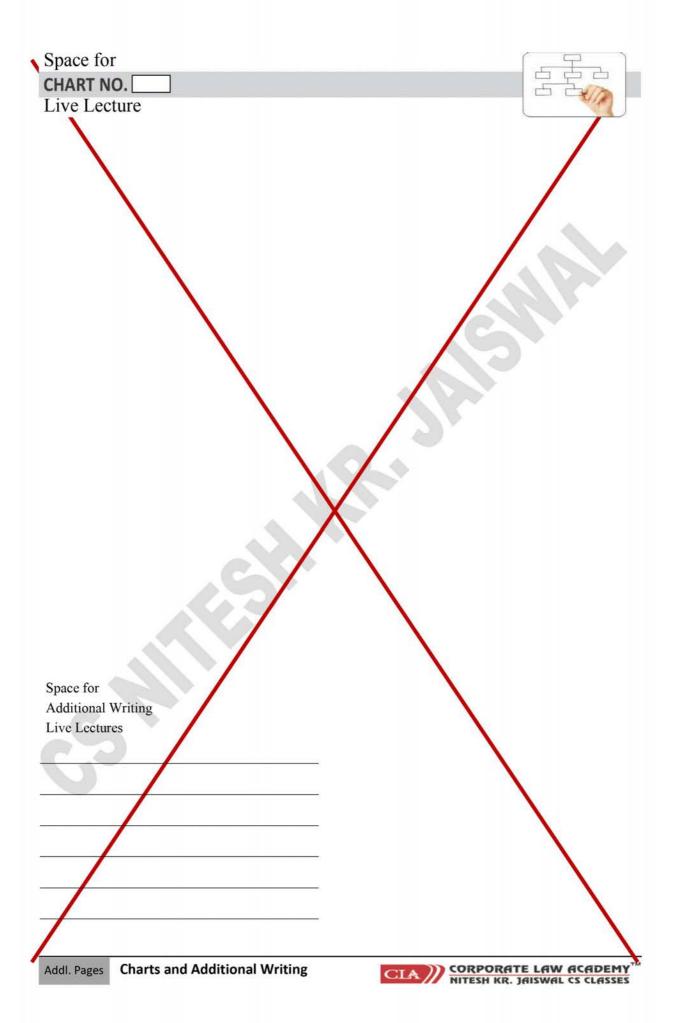
The Act has adopted the definition of 'sexual harassment' from Vishaka Judgment and the term sexual harassment includes any unwelcome acts or behaviour such as physical contact and advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

COMPLAINTS COMMITTEE & COMPLAINT PROCEDURE

Interval Complaints Committee

The Act makes it mandatory for <u>every employer</u> to constitute an <u>internal complaints committee</u> (<u>VCC''</u>) which entertains the complaints made by any aggrieved women.





The members of the ICC are to be nominated by the employer and ICC should consist of

- A Presiding Officer;
- (ii) Not less than two members from amongst employees preferably committed to the cause or women or who have had experience in social work or have legal knowledge and;
- (iii)One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. In order to ensure participation of women employees in the ICC proceedings, the Act requires that at least onehalf of the members of ICC nominated by employer are women.

Local Complaints Committee

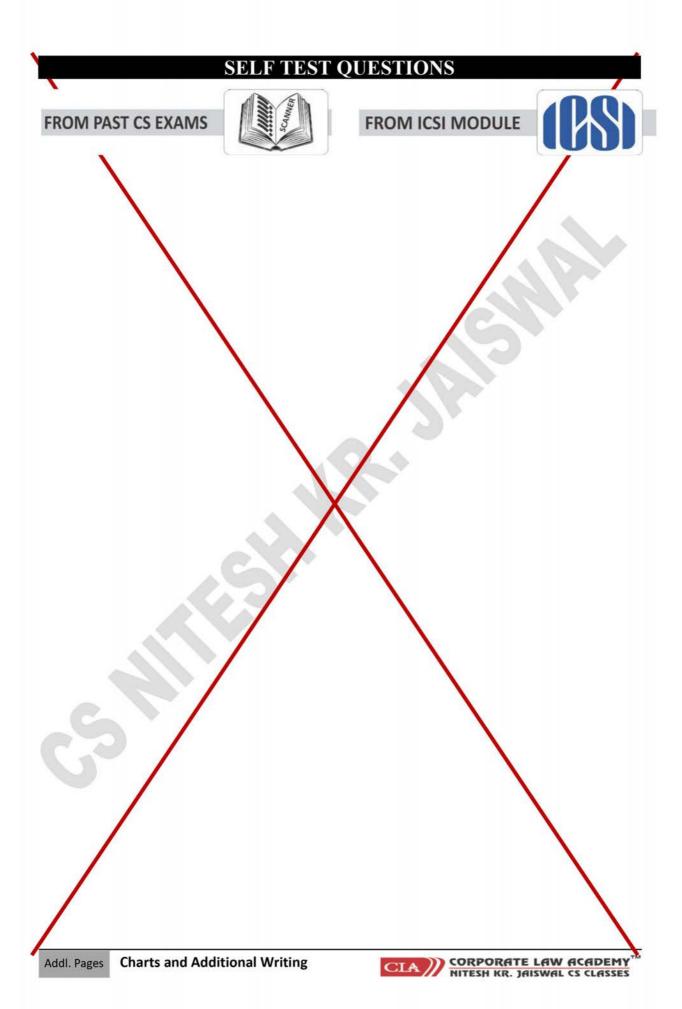
Provisions are provided under the Act to form <u>Local Complaints Committee (LCC)</u> for every district forreceiving complaints of sexual harassment from establishments where the LCC has not been formed due tohaving less than 10 workers or if the complaint is against the employer himself.

COMPLAINT PROCEDURE

The Act stipulates that aggrieved woman can make written complaint of sexual harassment at workplace to the ICC or to the LCC (in case a complaint is against the employer), within a period of three months from the date of incident and in case of a sexies of incidents, within a period of three months from the date of last incident.

If the aggrieved woman is unable to make complaint in writing, reasonable assistance shall be rendered.

In case the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed inter alia by her relative or riend or her co-worker or an officer of the National Commission for Woman or State Women's Commission or any person who has knowledge of the incident, with the written consent of the aggrieved woman.





Q. 1. Answer to Question No. 1:-



Q. 2. Answer to Question No. 2:-

CHAPTER

(11)

POLLUTION CONTROL AND ENVIRONMENT PROTECTION

Covering-

- Sustainable Development
- Environmental Protection in India Regulatory Framework
- Water (Prevention and Control of Pollution) ACT, 1974
- Air (Prevention and Control of Pollution) ACT, 1981
- The Environment (Protection) ACT, 1986
- Public Liability Insurance ACT, 1991
- National Green Tribunal ACT, 2010
- Advance Your Knowledge
- Self Test Questions
 - > From Past CS Exam
 - > From ICSI Module

EXPECTED
MARKS COVERAGE
(10 to 15)

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POLLUTION CONTROL AND ENVIRONMENT PROTECTION



SUSTAINABLE DEVELOPMENT

The word sustainable is derived from the sustain or sustained. The synonyms of the word sustained includes perpetual, prolonged, steady.

Sustainable development is a broad concept that balances the need for economic growth with environmental protection and social equity.

It is a process of change in which the exploitation of resources, the directions of investment, the orientation of technological development, and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.

The principles of sustainable development as laid down in strategy for sustainable living, focus on respect and care for the community of life, improving the quality of human life, conserving the earths vitality and diversity, minimizing the depletion of non-renewable resources, keeping within the earths carrying capacity, changing personal attitudes and practices, enabling communities to care for their own environments, providing a natural framework for integrating development and conservation.

ENVIRONMENTAL PROTECTION IN INDIA – REGULATORY FRAMEWORK

Following Acts constitute the regulatory framework for environmental protection in India:-

- 1. WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974
- 2. AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981,
- 3. THE ENVIRONMENT (PROTECTION) ACT, 1986
- 4. PUBLIC LIABILITY INSURANCE ACT, 1991
- 5. THE BIODIVERSITY ACT, 2002
- 6. HAZARDOUS HANDLING WASTES (MANAGEMENT, AND TRANSBOUNDARY MOVEMENT) RULES, 2008
- 7. NATIONAL GREEN TRIBUNAL ACT, 2010

All the above mentioned Acts are administered by Ministry of environment and forests, Government of India.

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WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

OBJECT OF ACT

Act has been enacted to provide for the prevention and control of water pollution and maintaining or restoring wholesomeness of water, and for the establishment of Boards, with a view to carrying out these purposes, for the prevention and control of water pollution.

It necessitate to:

- (a) Provide information to the SPCB
- (b) Provide access to the SPCB for taking samples
- (c) Allow entry to the SPCB to ascertain that the provisions of the Act are being compiled with.

Responsibilities:

- (a) Obtain "Consent to Establish"
- (b) Obtain "Consent to Operate"
- (c) Apply for renewal of the "Consent to Operate" before the expiry of validity period
- (d) Consent to be deemed as granted automatically and unconditionally after four months from the date of application already given or refused before this period
- (e) Refusal of "Consent" to be recorded in writing
- (f) Pay Water Cess as indicated in the assessment order
- (g) Affix water meters of the prescribed standards
- (h) Provide access to SPCB
- (i) Pay interest in case of delay in paying the Water Cess
- (j) Pay penalty for non-payment of Cess
- (k) Industry is entitled to 25% rebate if meeting certain conditions.

DEFINITIONS

OCCUPIER

Occupier in relation to any factory or premises means the person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance.

POLLUTION

Pollution means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or any other liquid, gaseous or solid substance into water (whether directly or indirectly) which is likely to, create or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of acquatic organisms.

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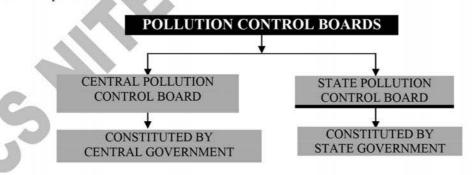
CENTRAL AND STATE POLLUTION CONTROL BOARDS



Section 3 of the Act provides for the constitution of the Central Pollution Control Board for prevention and control of water pollution.

The Central Pollution Control Board constituted shall exercise the powers and perform the functions of the Central Pollution Control Board under the Act.

Section 4 of the Act provides for the constitution of the State Pollution Control Board for prevention and control of water pollution.



PREVENTION AND CONTROL OF WATER POLLUTION

1. PROHIBITION ON USE OF STREAM OR WELL FOR DISPOSAL OF POLLUTING MATTER

Section 24 prohibits any person to knowingly cause or permit any poisonous, or polluting matter to enter whether directly or indirectly into any stream or well, or sewer or on land.

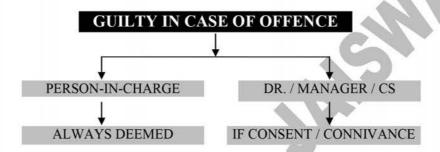
This section also prohibits any person to knowingly cause or permit to enter into any stream any other matter which may tend either directly or indirectly to impede the proper flow of water of the stream.

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2. RESTRICTION ON NEW OUTLETS AND NEW DISCHARGES

Without the previous consent of the State Pollution Control Board no person is authorised (a)		Establish or take any steps to establish any industry, operation or process which is likely to discharge sewage or trade effluent into a stream or well.
		bring into use any new or altered outlet for discharge of sewage; or
<u>to:-</u>	(c)	Begin to make any new discharge of sewage or trade effluent.

The application for consent should be made in the specified form and manner accompanied by the prescribed fee. While granting consent for establishment of any industry, operation etc. or for bringing into use any new or altered outlet, the Board may impose conditions as to the point of discharge of sewage or trade effluent.



WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977

This Act authorises the levy and collection of a cess on water consumed by person carrying on certain industries and by local authorities. The object of the Cess Act is to ensure that the State or Central Boards are able to raise sufficient finance in the effective discharge of functions contemplated under the Pollution Control Laws.



ADVANCE YOUR KNOWLEDGE



Ch	Checklist under Water (Prevention and Control of Pollution) Act, 1974and the Rules therein				
S. No.	Particulars	Compliance	Remarks		
1	The Company has got any direction from the State Board or any officer empowered by it for abstracting water from any such stream or well in the area in quantities which are substantial in relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into any such stream or well, to give such information as to the abstraction or the discharge at such times and in such form as may be specified in the directions.				
2	Whether the company complied with the direction of State Board or any other officer empowered.				
3	The State Board or any officer authorized in this behalf have taken (i) Samples of water from any stream or well. (ii) Samples of any sewage or trade effluent passing from any plant or vessel or over any place into any such stream or well.				
4	Person authorized by the State Board have inspected the premises of the company to determine whether an order or direction is being complied with or for the purposes of examining plant, premises or any material object or for search and seizure of any material object which may furnish evidence of Commission of an offence under the Act.				
5	Prior Consent of the State Board under section 25 is taken (i) to set up any industry, plant or process which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land; or i. Bring into use any new or altered outlets for the discharge of sewage; or ii. Begin to make any new discharge of sewage.				
6	Any Notice has been received by the company from state board for not taking prior consent required as per section 25 (1) to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the new or altered outlet for discharge of sewage or started new discharge of sewage, as the case may be.				
7	The company has received order from State Board to remove the matter, which is, or may cause pollution; or remedy or mitigate the pollution, or issue prohibition orders to the concerned persons from discharging any poisonous or noxious or polluting matter.				
8	The company has received an order under section 33 (2) restraining the company from polluting the water in any stream or well.				
9	The company has received any directions in writing for the closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of supply of electricity, or water or any other service under section 33A.				

AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

OBJECT OF ACT

An Act to provide the **prevention, control and abatement of air pollution**, for the **establishment**, with a view to carrying out the aforesaid purposes, of **Boards**, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

Under this statute, one has to comply,

- (a) Comply with the conditions in the "Consent to Establish" or "Consent to Operate'
- (b) Not to discharge air pollutant(s) in excess of the prescribed standards
- (c) Furnish information to the SPCB of any accident or unforeseen act or event
- (d) Allow entry to the SPCB to ascertain that provisions of the Act are being complied with
- (e) Provide information to enable SPCB to implement the Act
- (f) Provide access to the SPCB for taking samples Comply with the directions issued in writing by the SPCB
- (g) Obtain "Consent to Establish"
- (h) Obtain "Consent to Operate"
- (i) Apply for the renewal of "Consent to Operate" before expiry of the validity period
- (j) Consent to be deemed as granted after four months from the date of receipt of application if no communication from the SPCB is received
- (k) A prior "Notice of Inspection" to be served by the SPCB
- (1) Industry to ensure that specified emission sampling procedure is being followed by the SPCB
- (m) Opportunity to file objections with the SPCB within 15 days from the date of service of notice
- (n) PCB to record reasons in writing in case it does not provide an opportunity to the industry to file objections.

DEFINITIONS

AIR POLLUTANT

Air Pollutant means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

> AIR POLLUTION

Air Pollution means the presence in the atmosphere of any air pollutant.

CONTROL EQUIPMENT

Control Equipment means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and includes any device used for securing the efficient operation of any industrial plant.

CENTRAL AND STATE POLLUTION CONTROL BOARDS

Section 3 of the Act provides for the constitution of the Central Pollution Control Board for prevention and control of air pollution.

The Central Pollution Control Board constituted shall exercise the powers and perform the functions of the Central Pollution Control Board for the prevention and Control of Air Pollution under the Act.



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Section 4 of the Act provides that at the State level in which the Water (Prevention and Control of Pollution) Act, 1974 is in force, and the State Government concerned has constituted a State Pollution Control Board then such State Board shall be the State Board for Prevention and Control of Air Pollution under the Act

Section 5 of the Act provides that where, in any State there is no such State Pollution Control Board the State Government shall constitute a State Board for prevention and control of air pollution.

RESTRICTIONS ON ESTABLISHMENT OF CERTAIN INDUSTRIAL PLANTS

Section 21 of the Act deals with restriction on establishment of certain industrial plants. Accordingly, no person is allowed, without the previous consent of the State Board, to establish or operate any industrial plant in an air pollution control area. In case, a person already operates in any such air pollution control area, such person is also required to make the application in the prescribed manner within 3 months of the declaration of that area to be an air pollution control area. Within a period of 4 months after the receipt of the application, the State Board may, grant the consent applied for, subject to such conditions and for such period as may be specified therein.

Every person to whom consent has been granted by the State Board has been put under obligation to comply with the following conditions, namely:

- (a) the control equipment as the State Board may approve shall be installed and operated in the premises.
- (b) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;
- (c) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;
- (d) chimney, wherever necessary, as the State Board may approve in this behalf shall be erected or re-erected in such premises;
- such other conditions as the State Board may specify in this behalf, and

CONTROL OF NOISE POLLUTION

Noise pollution simply connotes unwanted sound in the atmosphere. It is unwanted because it lacks the agreeable musical quality. Noise is therefore, sound, but it is pollution when the effects of sound become undesirable.

In order to control the noise pollution caused from various sources such as industrial activity, construction activity, generator sets, loud speakers, public address system, music systems, vehicular horns and other mechanical devices the Central Government has framed rules known as 'The Noise Pollution (Regulation and Control) Rules, 2000.

An area comprising 100 metres around hospitals, educational institutions and courts has been declared as the silence area/zone. A loud speaker or a public address system shall not be used at night (between 10:00 p.m. to 6:00 a.m.) except in closed premises for communication.

Whoever commits any offence of playing music or uses any sound amplifiers, beats a drum or blows a horn, etc. in a silence zone/area shall be liable to a penalty.



ADVANCE YOUR KNOWLEDGE



S. No.	Particulars	Compliance	Remarks
1	The Company has established any industrial plant in an air		V // V
	pollution control area. If yes, whether the company has taken	4.7	
	previous consent of the State Pollution Control Board.		
2	The Company has made an application for consent of the State		(P
	Board under subsection (1) in the prescribed form and the		
	application contained the prescribed particulars.		
3	The company has got consent in writing from the State Board.		
	Whether the consent given to company has been cancelled by		
	State Board before the expiry of the period for which it is granted		
	for non-fulfilment of conditions subject to which the consent was		
120	granted.		
4	The Company has complied with the following conditions as laid		
	in the consent by the State Board namely; i. Installation and		
	operation of the control equipment of such specification as the		
	State Board may approve. ii. Alteration or replacement of the		
	existing control equipment if any, in accordance with the		
	directions of the State Board; iii. Keeping the control equipment		
	referred above in good running condition; iv. Erection or re-		
	erection of Chimney, wherever necessary of such specifications as		
	the State Board may approve in this behalf; v. Such other		
5	conditions as the State Board may specify in this behalf. The Company has got any order from court restraining the		
3	company discharging or causing or permitting to be discharged the		
	emission of any air pollutants.		
6	The Company has received any direction from the State Board for		
U	supply of any information (including information regarding the		
	types of atmosphere and the level of the emission of such air		
	pollutants).		
7	Whether any person authorized in this behalf by the State Board		
	has inspected the premises of the company for the purpose of		
	verifying the correctness of information supplied.		
8	A State Board or any officer empowered by it in this behalf has		
	taken any samples of air or emission from any chimney, flue or		
	duct or any other outlet for the purpose of analysis.		
9	The Company is discharging or causing or permitting to be		
	discharged the emission of any air pollutant in excess of the		
	standards laid down by the State Board under section 17(1)(g)		

THE ENVIRONMENT (PROTECTION) ACT, 1986

OBJECT OF ACT

Although various legislations dealt with several environmental matters, therefore, the need was felt for a general legislation for environmental protection.

Act provides for the **protection and improvement of environment** and the **prevention** of **hazards** to human beings, other living creatures, plants and property.

Under this Act, one is necessitated to

- (a) Comply with the directions issued by the Central Government. The direction may include: closure, prohibition or regulation of any industry, or stoppage or regulation of the supply of electricity, water or any other service
- (b) Prevent discharges or emissions excess of the prescribed standards
- (c) Furnish information of any accidental or unforeseen event
- (d) Allow entry and inspection to ascertain compliance
- (e) Allow samples to be taken
- (f) Submit an "Environmental Statement" every year to the SPCB
- **(g)** Obtain prior "Environmental Clearances" from MoEF, in case of a new project or for modernization/ expansion of the existing project.

DEFINITIONS

> ENVIRONMENT

Environment include water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

> ENVIRONMENT POLLUTANT

Environment Pollutant means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment.

> ENVIRONMENTAL POLLUTION

Environmental Pollution means the presence in the environment of any environmental pollutant.

PREVENTION AND CONTROL OF ENVIRONMENTAL POLLUTION

1. ENVIRONMENTAL CLEARANCE AND LOCATION OF INDUSTRIES

Environment Protection Rules, 1986, empowers the Central Government to prohibit or restrict the location of industries after taking into consideration factors, such as standards for quality of environment in an area, the maximum allowable limits of concentration of environmental pollutants for an area, the likely emission or discharge from the proposed industry.

It has been notified that the setting up of any new industrial project or the expansion or modernisation of any existing industry shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central or any State Government, as the case may be..

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Any person wishing to undertake any of these operations in the said area is required to submit an application in the prescribed form along with an Environment Impact Statement and an Environmental Management Plan to the Secretary, Ministry of Environment and Forests, New Delhi.

Clearance would be so accorded only on the basis of an Environmental Impact Assessment of the project and the necessary Environmental Management Plan for the prevention, elimination or mitigation of the adverse impacts, right from the inception stage of the project.

2. ENVIRONMENTAL AUDIT

Rule 14 of the Environment Protection Rules, 1986 provides for the submission of environmental audit report. Accordingly, every person carrying on an industry, operation or process requiring consent under Water (Prevention and Control of Pollution) Act or Air (Prevention and Control of Pollution) Act or both or authorisation under the Hazardous Wastes (Management and Handling) Rules, 1989 is required to submit an environmental audit report in Form V for the financial year ending on 31st March every year on or before the 15th of May, to the concerned State Pollution Control Board.

1. POWER TO ENTRY AND INSPECTECTION

The central government is empowered to authorise any person to enter into any place, for the purpose of:-

- (a) performing any of the functions entrusted to him;
- (b) determining whether any provisions of the Act or Rules made thereunder or any notice, order, direction given under the Act is being or has been complied with or not;

Every person is bound to render all assistance to the person empowered by the C/G to enter such premises for inspection. A person who wilfully delays or obstructs entry of such person into the premises shall be guilty of an offence under the Act.

2. POWER TO TAKE SAMPLES OF EFFLUENTS

Central Government is empowered to take for the purpose of analysis samples.

When a sample is taken, the person taking the sample shall;-

- (a) Serve on the occupier or his agent, a notice,
- (b) In the presence of the occupier or his agent collect a sample for his analysis;
- (c) Cause the sample to be placed in a container to be marked, sealed and signed by both the persons taking the sample and the occupier or his agent;
- (d) Send, without delay, the container to the Environmental laboratory.
- (e) On receipt of the report from laboratory, the State Board shall send one copy of the same to the occupier.

ENVIRONMENTAL LABORATORIES

Section 12 of the Act empowers the Central Government to establish by notification in the official Gazette, one or more environmental laboratories or recognise one or more laboratories or institutes as environmental laboratories to carry out certain functions under the Act.

	(a) To evolve standardised methods for sampling and analysis of various types of environmental pollutants;
FUNCTIONS	(b) To analyse samples sent by the Central Government
OF ENVIRONMENTAL LABORATORIES:-	(c) To carry out such investigations as may be directed by the Central Government
	(d) To send periodical reports regarding its activities to the Central Government;
	(e) To carry out such other functions as may be entrusted to it by the Central Government from time to time.

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OFFENCES AND PENALTIES

Section 15 makes contravention of any of the provisions of the Act punishable with imprisonment upto5 years or with fine upto₹1 lakh or with both. An additional fine of ₹5,000 would also be leviable for every day of continuing default.

Section 15 further provides that where such contravention continues beyond a period of one year from the date of conviction, the offender shall be punishable with imprisonment upto seven years.

OFFENCES BY COMPANIES

Where an offence has been committed by a company, every person who at the time the offence was committed was in charge of, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.





ADVANCE YOUR KNOWLEDGE



Cl	Checklist under Water (Prevention and Control of Pollution) Act, 1974and the Rules therein			
S. No.	Particulars	Compliance	Remarks	
1:	The Company has received any direction from the Central Government in writing for the closure, prohibition or regulation of any industry, operation or process; or stoppage or regulation of the supply of electricity or water or any other service under section 5 of the Act			
2	The company compiled with the directions received from Central Government under section 5 of the Act.	3		
3	The Company does not discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as specified under section 7 of the Environment (Protection) Act, 1986 read with rule 3A of the Environment (Protection) Rules, 1986.			
4	The Central Government or any officer empowered by it in this behalf have taken samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed for the purpose of analysis.			
5	Any person empowered by the Central Government has carried out inspection for determining whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorization served, made, given or granted under this Act is being or has been complied with.			
6	The company complied with the safeguard measure as prescribed for handling any hazardous substance.			
7	In case of discharge of environmental pollutant in excess of prescribed standard, the Company has given intimation of the fact of such occurrence or apprehension of such occurrence to all the following authorities or agencies, namely — i. The officer-in-charge of emergency or disaster relief operation in a district or other region of a state or Union territory specified by whatever designation by the Government of the said State or Union territory, and in whose jurisdiction the industry, process or operation is located. ii. Central Board or a State Board as the case may be and its regional officer having local jurisdiction who have been delegated powers under section 20, 21, 23 of the Water (Prevention and Control of Pollution) Act 1974 and section 24 of the Air (Prevention and Control of Pollution) Act, 1981. iii. The statutory authorities or agencies specified in column 3 in relation to places mentioned in column 2 against thereof of the Schedule II.]			
8	The Company has submitted an environmental audit report for the financial year ending the 31st March in Form V to the concerned State Pollution Control Board on or before the 30th Day of September			

PUBLIC LIABILITY INSURANCE ACT, 1991

OBJECT OF ACT

The Public Liability Insurance Act, 1991, was enacted for the purpose of providing **immediate relief** to the **persons affected by accidents** occurring while handling any hazardous substance and for other incidental and connected matters.

The salient features of compliance under this Act are as below:

- (a) Owner to provide relief in case of death or injury or damage to property from an accident on the principle of no fault.
- (b) Owner to draw insurance policies more than the paid-up capital but less than
- (c) Rs. 50 Crores.
- (d) 'Paid-up Capital' is the market value of all assets and stocks on the date of insurance.
- (e) Owner to pay additional amounts as contribution to the 'Environmental Relief Fund'.
- (f) Owner to provide any information required for ascertaining compliance with the provisions of the Act.
- (g) Owner to allow entry and inspection to ascertain compliance with the provisions of the Act.
- (h) Owner to pay the amount of an award as specified by the Collector.
- (i) Comply with the directions issued in writing by the Central Government, directions may include; (i) Prohibition or regulations of handling of any hazardous substances, or (ii) Stoppage or regulation of the supply of electricity, water or any other service.

DEFINITIONS

> ACCIDENT

Accident means an accident involving a fortuitous or sudden or unintentional occurrence while handling any hazardous substance resulting in continuous, or repeated exposure to death of, or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity.

> HANDLING

Handling in relation to any substance means the manufacture, processing, treatment, package, storage transportation, use, collection, destruction, conversion, offering the sale, transfer or the like of such substance.

> HAZARDOUS SUBSTANCE

Hazardous Substance means any substance or preparation which, by reason of its chemical or physicochemical properties or handling is liable to cause harm to human beings, other living creatures, microorganism, property or the environment.

> OWNER

Owner means a person who **owns** or **has control** over handling any hazardous substance at the time of accident and includes partners of a firm, members of an association and in the case of a company, its **directors, managers, secretaries**, or other officers who is directly incharge of and is responsible to, the company for the conduct of its business.

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MAJOR PROVISIONS OF THE ACT

1. LIABILITY TO GIVE RELIEF

Section 3 of the Act incorporates the **principle of liability without fault** and imposes on the owner liability to give relief in case of death or injury to any person or damage to any property, resulting from an accident occurring while handling any hazardous substance.

2. COMPULSORY INSURANCE

Section 4 requires the owner to take out **one or more insurance policies, before starting the handling of hazardous substance**. Such insurance policy should provide for contract of insurance, whereby he is insured against liability to give relief under Section 3(1) of the Act.

The amount of insurance policy should not be less than the amount of paid up capital of the undertaking handling any hazardous substance and more than the amount, not exceeding rupees fifty crore, as may be prescribed.

3. VERIFICATION AND PUBLICATION OF ACCIDENT

Section 5 of the Act requires the **collector to verify**, whenever it comes to his notice that an accident has occured at any place within his jurisdiction, the occurrence of such accident and cause publicity to be given in such manner as he deems fit for inviting applications for claim for relief as provided under the Act.

4. APPLICATION FOR CLAIM FOR RELIEF

Section 6 deals with manner of making application for claim for relief and provides that <u>an application</u> for claim for relief may be made by the;-

- (a) person who has sustained injury;
- (b) by owner of the property to which damage has been caused;
- (c) in the case of death resulting from accident, by all or any of the legal representatives of the deceased;
- (d) By any agent duly authorised by such person or owner of such property.

Every application is required to be submitted to collector in the prescribed form along with prescribed documents.

5. AWARD OF RELIEF

Section 7 of the Act requires the **collector**, on receipt of application for claim for relief, **to hold an inquiry** into the claim or each of the claims, after giving notice of application to owner and after giving the parties an opportunity of being heard and make an award determining the amount of relief payable to person or persons. Sub-section (3) **requires the insurers to deposit, within 30 days** from the date of announcement of the award, the amount in such manner as specified by the collector.

6. ESTABLISHMENT OF ENVIRONMENT RELIEF FUND

Section 7A of the Act empowers the Central Government to establish Environment Relief Fund, by notification in the official Gazette, to be utilised for paying relief under the award made by the collector under Section 7 of the Act.

NKJ-CLASSROOM PRACTICE



Q. 1. Write short notes on Public Liability Insurance.

[June. 2019; 3 Marks]

Q. 1. Discuss the procedure for award of relief under the Public Liability Insurance Act, 1991. [June. 2017; 3 Marks]

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NATIONAL GREEN TRIBUNAL ACT, 2010



The Central Government has enacted the National Green Tribunal Act, 2010 thereby repealing National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997.

OBJECTIVE OF THE ACT

National Green Tribunal Act, 2010 provides for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

NATIONAL GREEN TRIBUNAL

ESTABLISHMENT

Section 3 of the Act empowers the Central Government, by issue of notification, to establish, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the National Green Tribunal Act, 2010.

COMPOSITION OF THE TRIBUNAL

The Tribunal shall consist of a full time Chairperson; and not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify; and not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.

The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

JURISDICTION

Section 14 provides that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the Act.

	(1) The Water (Prevention and Control of Pollution) Act, 1974;	
	(2) The Water (Prevention and Control of Pollution) Cess Act, 1977;	
Schedule I specifies	(3) The Forest (Conservation) Act, 1980;	
following	(4) The Air (Prevention and Control of Pollution) Act, 1981;	
enactments:	(5) The Environment (Protection) Act, 1986;	
	(6) The Public Liability Insurance Act, 1991	
	(7) The Biological Diversity Act, 2002,	

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NATIONAL GREEN TRIBUNAL – POWERS & PROCEDURES

The following are the powers of the National Green Tribunal:-

- The Green Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.
- (2) The Tribunal shall have power to regulate its own procedure.
- (3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act,
- (4) The Tribunal shall have, for the purposes of discharging its functions, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or document or copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) reviewing its decision;
 - (g) dismissing an application for default or deciding its ex parte;
 - (h) setting aside any order of dismissal of any application for default or any order passed by it ex
 - (i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;
 - (i) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;
 - (k) Any other matter which may be prescribed.
- (5) All proceedings before the Tribunal shall be deemed to be judicial proceedings and the Tribunal shall be deemed to be a civil court.

APPLICATION OR APPEAL TO THE TRIBUNAL

Section 18 states
that an
application for
grant of relief or
compensation or
settlement of
dispute may be
made to the
Tribunal;-

- (a) by the person who has sustained the injury;
- **(b)** by the owner of the property to which the damage has been caused;
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased;
- (d) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased as the case may be;
- (e) by any representative body or organization, functioning in the field of environment and recognised by the Central Government,
- (f) by the Central Government or a State Government or a local authority.

The application, or as the case may be, the appeal filed before the Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

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Appeal to the Supreme Court

Section 22 states that any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him.

However, the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.

HEADS UNDER WHICH COMPENSATION FOR DAMAGES MAY BE CLAIMED

The Schedule II to the Act lists out the following heads under which compensation for damages May be claimed:-

- (a) Death;
- (b) Permanent, temporary, total or partial disability or other injury or sickness;
- Loss of wages due to total or partial disability or permanent or temporary disability;
- (d) Medical expenses incurred for treatment of injuries or sickness;
- Damage to private property;
- Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;
- (g) Loss to Government or local authority arising out of, or connected with, the activity causing any damage;
- (h) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;
- Claims on account of any harm, damage or destruction to the flora including aquatic flora, crops, vegetables, trees and orchards;
- Loss of business or employment or both;
- Any other claim arising out of or connected with, any activity of handling of hazardous substance.

PENALTY FOR FAILURE TO COMPLY WITH ORDER OF THE TRIBUNAL

Section 26 provides that whoever, fails to comply with any order or award or decision of the Tribunal, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

In case a company fails to comply with any order or award or a decision of the Tribunal, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.



Q. 1. Explain the heads under which compensation or relief for damages may be claimed under the National Green Tribunal Act, 2010. [June. 2017; 5 Marks]

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