



SREENARAYANAGURU
OPEN UNIVERSITY

Self
Learning
Material

LEGAL ASPECTS OF
BUSINESS
MASTER OF COMMERCE



M21CM03DC

SREENARAYANAGURU OPEN UNIVERSITY

The State University for Education, Training and Research in Blended Format, Kerala

Vision

To increase access of potential learners of all categories to higher education, research and training, and ensure equity through delivery of high quality processes and outcomes fostering inclusive educational empowerment for social advancement.

Mission

To be benchmarked as a model for conservation and dissemination of knowledge and skill on blended and virtual mode in education, training and research for normal, continuing, and adult learners.

Pathway

Access and Quality define Equity.

Legal Aspects of Business

Course Code: M21CM03DC

Semester-I

**Discipline Core Course
Master of Commerce
Self Learning Material**



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Documentation



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Message from Vice Chancellor

Dear

I greet all of you with deep delight and great excitement. I welcome you to the Sreenarayanaguru Open University.

Sreenarayanaguru Open University was established in September 2020 as a state initiative for fostering higher education in open and distance mode. We shaped our dreams through a pathway defined by a dictum 'access and quality define equity'. It provides all reasons to us for the celebration of quality in the process of education. I am overwhelmed to let you know that we have resolved not to become ourselves a reason or cause a reason for the dissemination of inferior education. It sets the pace as well as the destination. The name of the University centers around the aura of Sreenarayanaguru, the great renaissance thinker of modern India. His name is a reminder for us to ensure quality in the delivery of all academic endeavors.

Sreenarayanaguru Open University rests on the practical framework of the popularly known "blended format". Learner on distance mode obviously has limitations in getting exposed to the full potential of classroom learning experience. Our pedagogical basket has three entities viz Self Learning Material, Classroom Counselling and Virtual modes. This combination is expected to provide high voltage in learning as well as teaching experiences. Care has been taken to ensure quality endeavours across all the entities.

The university is committed to provide you stimulating learning experience. The master's programme in Commerce is considered to be an academic progression of the bachelor programme in form and content. It heavily leans on the knowledge level of a normal undergraduate learner. The discussions on the theories and accounting practices are kept integrated with a view to ensure cohesiveness in understanding of the learner. The worked out problems and its procedures constitute the conspicuous identity of the programme. Mathematical knowledge is enhanced over the modules. We assure you that the university student support services will closely stay with you for the redressal of your grievances during your studentship.

Feel free to write to us about anything that you feel relevant regarding the academic programme. Wish you the best.



Regards,

Dr. P.M. Mubarak Pasha

01.11.2023

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01 BLOCK | LEGAL ENVIRONMENT

Block Content

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Unit - 2 | Intellectual Property Rights |

Unit 1

Legal Environment

Learning Outcomes

By the completion of this unit, the learner will be able to:

- ♦ grasp the meaning of Law and its importance
- ♦ acquaint themselves with the various components of the legal environment
- ♦ differentiate between the legal environment during the pre-independence and post-independence periods
- ♦ classify various types of law

Background

In our day-to-day life, often we are subject to various rules and regulations. We may just begin with an instance where the law is applied. When you buy a product say a Television/mobile phone which involve a series of steps like preparation of invoice, payment terms, delivery of the product, its warranty, post-sales service etc. If any violation either from the side of the seller or buyer shall lead to breach of contract which in turn lead to penalty and prosecutions under the respective law.

Many situations in one's life we have to be evidenced by supportive documents, for e.g. marriage certificates, birth & death certificates etc. All such documents are conclusive evidence where a question of fact is raised.

From the above discussion you might have understood how law will affect in our day-to-day life or otherwise. Law has varied and multiple sources. Like one case narrated above in the matter of business transactions, a citizen or an entity is confronted with different types of laws. In the context of business varied types of laws are applied depending on the situation. The law interfaces with, regulates, and facilitates all aspects of businesses. Business and law are inseparably intertwined. Thus, the study of the legal aspects of business has been an integral part of management education.

Keywords

Law, Indian Contract Act 1972, Negotiable Instrument Act 1881, Sale of Goods Act 1930, Companies Act 2013, Principles of natural justice

Discussion

1.1.1 Law

♦ Significance

Law signifies a rule applied indiscriminately to all actions. It is a notional pattern of conduct to which actions conform or ought to conform. Law is a body of rules and regulations, based mainly on general principles of justice, fair play, and convenience, which have been worked out by governmental bodies to regulate human activities. In a broader sense, law denotes the whole process by which organised society, through government bodies and personnel (law-makers, courts, tribunals, law enforcement agencies, and executive, penal, and corrective institutions.) attempts to apply rules and regulations to establish and maintain peaceful and orderly relations amongst the people in the society.

♦ Complexity

The idea of law as a guide to human conduct is as old as the existence of civilized society. The relevance of law to human behaviour has become so intimate today that every person has his or her own conception about its nature, which is influenced, of course, by his or her own perspective. Not surprisingly, the search for an agreed-upon definition of law has been an endless journey.

♦ Diverse views

There have been conflicting and divergent views of jurists regarding the nature, concept, basis, and functions of Law. Law has been regarded as a divinely ordained rule or a tradition of the old customs or recorded wisdom of the wise men or a philosophically discovered system of principles that express the nature of things or as a body of ascertainment and declaration of an eternal and immutable moral code, or as a body of agreements of men/women in politically organised society, or as a reflection of divine reason or as a body of commands of the sovereign, or as a body of rules discovered by human experience, or a body of rules developed through juristic writings and judicial decisions or as a body of rules imposed on men/women in society by the dominant class, or as a body of rules in terms of economic and social goals of the individuals.

Therefore, Law can be defined from different angles based on:

- ♦ Nature, reason, religion, or ethics
- ♦ Sources like customs, precedent, and legislation
- ♦ Its effect on the life of the society.
- ♦ The method of its formal expression or authoritative application.
- ♦ The ends that it seeks to achieve.

Broadly speaking, it may be defined as the rules of conduct recognised and enforced by the state to control and regulating people's behaviour with a view to securing justice, peaceful living, and social security. Some of the important definitions are as follows:

“Law is a rule of civil conduct, prescribed by the supreme power of the state, commanding what is right and prohibited what is wrong”.

-Blackstone

“Law is the body of principles recognised and applied by the state in the administration of justice”

♦ Rules

-Salmon

From the above definition, you will notice that law is a set of rules and principles relating to human actions in respect of one another and in relation to the society. You know that the society is not static; its value system keeps on changing. Hence, the law will be changing in tandem changing needs of the society

♦ Flexibility

There are several branches of law like criminal laws and civil laws enacted by the Government in order to ensure a peaceful life on earth. In business too we have numerous laws like mercantile law or commercial law, labour laws etc which is not a separate branch which deals with the rights, and obligations of mercantile persons arising out of commercial transactions.

♦ Set of rules

1.1.1.1 Nature of Law

The nature of law refers to its fundamental characteristics and attributes. It encompasses the principles, rules, and regulations that govern human behavior within a society, providing a framework for establishing rights, responsibilities, and obligations. It provides the foundation for regulating human conduct, resolving disputes, and maintaining social order within a society. Here are some key aspects of the nature of law:

♦ Framework

◆ Establishes a system

◆ Reflex society

◆ Diverse law

◆ Classification of law

◆ Hierarchical structure with different sources of law

◆ Equal to all

◆ Move with changes in the society

◆ Ensure compliance and maintain order

1. **Binding authority:** Law possesses a binding authority that commands compliance and obedience from individuals and institutions within a legal jurisdiction. It establishes a system of rules and guidelines that people are expected to follow, with enforceable consequences for non-compliance.
2. **Normative nature:** Law is normative, meaning it sets standards and norms for behavior, conduct, and interactions within a society. It reflects the collective values, beliefs, and aspirations of a community and seeks to promote order, justice, and social cohesion.
3. **Cross-cultural variations:** The nature of law may vary across different legal systems and cultures. Each legal system is shaped by historical, social, and cultural factors, leading to variations in legal principles, procedures, and practices.
4. **Public and private law:** Law can be categorised into public and private law. Public law deals with the relationship between the government and individuals, including constitutional law, administrative law, and criminal law. Private law, on the other hand, governs relationships between individuals, such as contract law, property law, and tort law.
5. **Hierarchy and sources:** Legal systems often have a hierarchical structure with different sources of law. Constitutions serve as supreme law, followed by legislation enacted by the legislature, regulations issued by the executive branch, and judicial decisions interpreting and applying the law.
6. **Rule of law:** The concept of the rule of law is a fundamental aspect of the nature of law. It emphasises that laws should be applied uniformly, impartially, and consistently to all individuals, irrespective of their status, power, or influence. The rule of law ensures accountability, protects individual rights, and promotes fairness and justice.
7. **Flexibility and adaptability:** The nature of law also exhibits flexibility and adaptability to accommodate changing social, economic, and technological circumstances. Laws are subject to interpretation, evolution, and revision to meet the evolving needs of society and address emerging challenges.
8. **Enforcement mechanisms:** Law relies on enforcement mechanisms to ensure compliance and maintain order. These mechanisms may include courts, law enforcement

agencies, regulatory bodies, and other institutions responsible for upholding and applying the law.

1.1.2 Sources of Business Law

Business law is a part of civil law that oversees trade and commerce in a country. It encompasses important laws relevant to business activities, such as contracts, partnerships, companies, negotiable instruments, insurance, carriage of goods, arbitration, etc. The Indian Acts are largely influenced by English mercantile law, with certain adaptations due to unique conditions in India.

The main sources of business law in India are as follows:

1. **English mercantile law:** Our laws are based primarily on the English laws which has developed through customs and usages of merchants or traders in England, these customs and usages governed these merchants in their dealings with each other. This law is also known as 'common law'. As a matter of fact, it is an unwritten law based on customs, usages, and precedents. The most important part of mercantile law, namely, the law of contracts, is still a part of common law in England.
2. **Indian statute law:** The Acts passed by the Indian Legislature are the main source of Indian business law. The important Acts passed by the Indian Legislature are the Indian Contract Act, 1872; The Negotiable Instruments Act, 1881; The Sale of Goods Act, 1930; The Indian Partnership Act, 1932; The Companies Act, 2013; The Consumer Protection Act, 1986; The Securities and Exchange Board of India Act, 1992; The Information Technology Act, 2000, and so on.
3. **Judicial decision (or case law):** The past judicial decisions of courts are another important source of law. They are generally followed by the courts while deciding similar cases before them. The past decisions have persuasive and guiding value. Wherever the law is silent on a point, the judge has to decide the case according to the principle of equity, justice, and good conscience. The decisions of English courts are also frequently referred to as precedents in deciding various cases and for interpreting Indian statutes.
4. **Customs and usages:** The customs and usages of particular trade are yet another important sources of Indian mercantile law. They play an important role in regulating the dealings between the merchants of that trade. But it is necessary that

◆ Components

◆ Unwritten law based on customs, usages, and precedents

◆ Acts contributing to Indian Business Law

◆ Past decisions

Regulating the dealings between the merchants of that trade

such customs or usages must be widely known, reasonable, constant, and must not be inconsistent with the law.

1.1.3 Classification of Law

♦ Organising the legal landscape

Law, as a complex and diverse field, encompasses a wide range of rules and regulations that govern human behaviour and interactions within society. To understand and navigate this vast legal landscape, it is essential to classify law into different categories based on various criteria. The classification of law helps in organising and categorising legal principles, facilitating legal analysis, and providing a framework for studying and comprehending different branches of law.

Law is classified into four different categories: –

1. Municipal Law and International Law
2. Public Law and Private Law
3. Civil Law and Criminal Law
4. Substantive Law and Procedural Law

1. Municipal Law and International Law

i. Municipal Law

Municipal law, also known as local law or urban law, refers to the body of legal rules and regulations that govern the administration, management, and governance of a municipality or local government. A municipality typically refers to a city, town, or other local jurisdiction with a designated population and territorial boundaries.

♦ Governing local administration

Municipal law covers a wide range of legal matters that pertain to local governance, public administration, and the rights and obligations of individuals and entities within the municipality. It encompasses both substantive and procedural aspects of law relevant to local government functions.

ii. International Law

International law is a system of rules and principles that govern the conduct and relations between states, international organisations, and individuals on the global stage. It encompasses various legal norms and sources, including treaties, customary practices, and judicial decisions, which aim to regulate state behaviour, promote peace, cooperation, and respect for human rights. International law covers a wide range of areas, such as

diplomatic relations, trade, environmental protection, human rights, and the resolution of disputes between states. It recognises the sovereignty and equality of states as fundamental principles, while also addressing the responsibilities and rights of individuals and international organisations. The enforcement of international law relies on diplomatic negotiations, international tribunals, and the collective action of the international community to ensure compliance and resolve conflicts in a peaceful and lawful manner.

♦ Governing global relations and cooperation

International law can be classified into four: –

- a. **Customary international law:** – These are rules that have been in force since ancient times between countries such as the law of the sea.
- b. **Treaty law:** – These are rules made by treaties between two or more countries.
- c. **Public international law:** – These are the rules that govern the conduct and relations of the state with others.
- d. **Private international law:** – It contains rules and principles according to which cases with foreign elements are decided.

2. Public Law and Private Law

i. Public Law

Public law is the part of the law that governs relations between legal persons and a government, between different institutions within a state, between different branches of government, as well as relationships between persons that are of direct concern to society. The activities of the state are regulated by public law. It determines and controls the organisation and functioning of the state and also determines the relationship of the state with its subjects. The term ‘public’ means a state or a sovereign part of it or a body, or a person holding a delegated authority under the state.

♦ Governing state power and relations with society

Public law can be further divided into: –

- a. **Constitutional Law:** – Constitutional Law is the law that determines the nature of the state and the structure of government. Constitutional Law is considered superior and supreme to ordinary or general law because it forms the basis upon which all other laws derive their validity and authority. It establishes the structure and function of the three organs of the state, namely the executive, legislative,

♦ Supreme to general or ordinary laws

♦ Governing agencies and implementing powers

♦ Defining offenses, punishment, and justice

♦ Disputes of individuals

and judicial branches. The Constitution provides the framework within which these organs exercise their powers and responsibilities, and any laws or actions inconsistent with constitutional provisions can be declared unconstitutional and invalidated by the judiciary.

b. Administrative Law: – Administrative law is the body of law that gives permission for the creation of public regulatory agencies and includes all the laws, judicial decisions, and rules. This law is created by administrative agencies and the purpose is to implement their powers and duties in the form of rules, regulations, orders and decisions.

c. Criminal Law: – It is the body of law that defines criminal offenses, regulates the cognizance, create charges and trial of suspects, and also fixes the methods of punishment and treatment applicable to the convicted. Its purpose is to stop crime and punish the wrongdoer.

i. Private Law

Private law is the branch of law that deals with the rights and duties of private individuals and the relationship between them. Private law deals with the rights and obligations of individuals, families, businesses, and small groups and exists to assist citizens in disputes involving private matters.

Further classification of private law is as follows: –

- ♦ Law of the person
- ♦ Property law
- ♦ Law of liability conflict of laws

The law of liability is divided into 3 classes: –

- ♦ The contracts
- ♦ Quasi-contract
- ♦ Torts

3. Civil Law and Criminal Law

i. Civil Law

Civil law deals with behaviours that cause injury to an individual or other private party, such as a corporation. Example of civil law is defamation, breach of contract, negligence which is resulting in injury or death, and property damage. In civil law, cases are initiated (suits are filed) by a private party (the plain-

tiff); cases are usually decided by a judge; punishment almost always consists of a monetary award and never consists of imprisonment; the plaintiff must establish the defendant's liability only according to the "preponderance of evidence"; and defendants are not entitled to the same legal protections as are the criminally accused.

♦ Civil offence

ii. Criminal Law

Criminal law deals with behaviours that can be recognised as a crime against the public, society, or the state – even if the immediate victim is a person. Examples of the same are murder, assault, theft, and drunk driving. Criminal law, deals with looking after public interests. It involves punishing and rehabilitating offenders, and protecting society. The police and prosecutor are hired by the government to put the criminal law into effect. Public funds are used to pay for these services. If suppose you are the victim of the crime, you report it to the police, and then it is their duty to investigate the matter and find the suspect. In most cases, if a charge has been properly presented and if there is evidence supporting it, the Government, not the person who complains of the incident, prosecutes it in the courts.

♦ Criminal offence

4. Substantive Law and Procedural Law

i. Substantive Law

Substantive law encompasses the legal framework that regulates the fundamental rights and responsibilities of individuals. It can originate from sources such as common law, statutes, or constitutional provisions. For instance, a common law substantive right could arise in cases involving breach of contract, negligence, or fraud. This body of laws pertains to the set of rules that govern the rights and obligations of individuals and groups collectively.

♦ Regulates the fundamental rights

ii. Procedural Law

Procedural law establishes the legal rules by which substantive law is created, enforced and applied, especially in a court of law. Procedural law refers to the different processes through which a case proceeds. Procedural laws define the rules with which substantive laws may be enforced.

♦ Process

1.1.4 Principles of Natural Justice

The principles of natural justice, also known as the principles

♦ Fairness and equity

of procedural fairness, are a set of legal principles that govern the decision-making process in administrative and judicial proceedings. These principles ensure that individuals ensure fair and equitable whenever are treated fairly and justly when their rights, interests, or legitimate expectations are at stake.

♦ Fairness

Different interpretations of natural justice exist among authors, attorneys, and legal systems. It is sometimes equated with concepts such as the Common Law of the Nations, Jus Gentium, and Divine Law. While the notion encompasses the idea of adapting materials, it does not imply that there are no established principles of natural justice. These principles can be discerned from the decisions of various courts, even though their applicability in specific cases may depend on different circumstances. In a welfare state like India, administrative bodies' roles and authority are rapidly expanding. If these institutions were not entrusted with fulfilling these obligations, the concept of the rule of law would lose its validity.

♦ Protection

The Constitution of India lays a robust foundation for the principles of natural justice through its multiple articles. Article 21, which introduces the concept of substantive and procedural due process, encompasses the fairness inherent in natural justice when an individual is deprived of their life or personal liberty. The principles of natural justice are also incorporated in other areas under Article 14 of the Constitution. Article 14 covers instances of arbitrary or discriminatory state action and discriminatory class legislation. Violations of natural justice infringe upon the equality clause of Article 14 since they result in arbitrariness, which contravenes the principle of equality. Therefore, the constitutional principles of natural justice cannot be disregarded entirely by law, as it would risk encroaching upon the fundamental freedoms protected by Articles 14 and 21 of the Constitution.

There are mainly two principles of natural justice. These two principles are:

♦ Fairness

1. **The principle of audi alteram partem:** This Latin phrase translates to “hear the other side.” It refers to the right of all parties to be heard. The principle ensures that individuals are given an opportunity to respond to the allegations raised against them and present their evidence, and make arguments in their defence.

♦ Impartiality

2. **The principle of nemo judex in causa sua:** This Latin phrase means “no one should be a judge in his own cause.” It emphasises the requirement of impartiality and prohibits any person or authority involved in a decision making process from having a personal interest or bias in

the outcome. This principle ensures that decision makers are unbiased, neutral, and free from any conflicts of interest. It is essential to maintain public confidence in the fairness and integrity of the process.

1.1.5 Ethics and Law

Ethics and law play crucial roles in the realm of business, guiding the behaviour of organizations and individuals within the commercial landscape. While ethics focus on moral principles and values, law provides a legal framework for regulating business activities.

♦ Moral Values

“Consider while a manufacturing company that produces consumer goods the company should identify the importance of environmental sustainability in terms of green practices, using eco-friendly materials, and reducing waste accumulations that support the long-term well-being of the planet.

However, in legal terms too company has to abide by such regulations enforced by the law that might include obtaining permits for waste disposal, adhering to emission standards, and complying with regulations related to the use and disposal of hazardous materials. Compliance with these laws ensures that the company operates responsibly within the legal framework.”

In this example, the company’s ethical commitments to environmental sustainability may go beyond what is strictly required by law. By voluntarily implementing green practices and reducing their impact on the environment, the company demonstrates a commitment to ethics that exceed legal obligations.

♦ Ethics and Law

Ethics in business:

Ethics in business refer to the moral principles and values that guide the conduct of organisations and individuals in their commercial activities. It involves considerations such as integrity, transparency, fairness, social responsibility, and environmental sustainability. Ethical business practices prioritise the well-being of stakeholders, including customers, employees, suppliers, and the wider community.

♦ Moral practices

Law in business:

Law in the business domain refers to the legal framework that governs commercial activities. It encompasses statutes, regulations, and legal precedents that define the rights, obligations, and responsibilities of businesses. Laws in business cover are contracts, intellectual property, consumer protection, employment practices, competition, and environmental regulations. Compliance with these laws ensures that businesses operate within the

♦ Legal framework

legal boundaries of their respective jurisdictions.

In the business scenario, ethics and law play intertwined roles, guiding responsible behaviour and ensuring compliance with legal requirements. Ethical considerations go beyond legal compliance, reflecting a company's commitment to societal values, stakeholder well-being, and sustainable practices. While laws provide a minimum standard of conduct, ethical behaviour in business establishes a higher standard of responsibility. By embracing both ethics and law, businesses can balance responsibility and compliance, contributing to a more ethical and sustainable business landscape.

♦ Balance responsibility and compliance

1.1.5.1 Relevance of Ethics in Business

Ethics play a crucial role in the business world and have significant relevance for organizations. Here are some key reasons why ethics are relevant in business:

♦ Integrity, transparency, and social responsibility

♦ Honesty, fairness and respects

♦ Positive work environment

♦ Career development opportunities

1. **Reputation and brand image:** Ethical behaviour helps to develop a good image for the business. When companies demonstrate integrity, transparency, and social responsibility, they earn the trust and loyalty of customers, employees, investors, and other stakeholders. A strong ethical reputation enhances a company's competitiveness in the long run.
2. **Customer trust and loyalty:** Ethical business practices foster trust and loyalty among customers. When customers believe that a company operates with honesty, fairness, and respect for their interests, they are more likely to develop and maintain brand loyalty. The satisfied customers are thus retained leading to a sound customer base.
3. **Employee morale and engagement:** Ethical organisations create a positive work environment that values and respects employees. When employees observe ethical behaviour from the top leadership, they feel motivated, valued, and engaged. This can lead to higher productivity, increased employee retention, and a stronger organisational culture.
4. **Attracting and retaining talent:** Ethical practices help attracting and retaining the top talented people seeking employers who demonstrate committed practices that sounds good for sustainable development. They are more likely to be engaged, motivated, and committed to their work, leading to higher levels of productivity and lower employee turnover rates.
5. **Stakeholder relationships:** Ethical behaviour strength-

ens relationships with various stakeholders, such as suppliers, business partners, and communities. By prioritising fair and ethical dealings, businesses can establish long-term partnerships, foster collaboration, and contribute positively to the communities in which they operate.

♦ Build long-term partnerships

6. **Legal and regulatory compliance:** Ethics and compliance with laws and regulations often go hand in hand. Ethical behaviour ensures that a business operates within the legal boundaries of its industry, avoiding legal disputes, penalties, and reputational damage that can arise from non-compliance.

♦ Statutory requirement

7. **Risk management:** Ethical decision-making and practices help mitigate risks for businesses. By considering the potential ethical implications of their actions, companies can identify and address potential risks before they escalate into significant legal, financial, or reputational crises.

♦ Mitigate risks

8. **Long-term sustainability:** Ethical practices contribute to the long-term sustainability of businesses. By integrating ethical considerations into their strategies and operations, organisations can address environmental, social, and governance (ESG) concerns. This, in turn, helps build resilience, adaptability, and sustainable growth.

Environmental, social, and governance (ESG) concerns

1.1.6 Business Environment

Business environment includes all forces surrounding to it having a remarkable impact on the functioning of the business in the context of social, technological, economic, legal and political environment, which will have its impact upon its decisions, strategies, processes, and performances.

♦ Business surroundings

The business is an organized effort to meet the needs and desires of diverse people. While profit is the primary goal of every business, it cannot survive in the long run if it does not also contribute to the economic wellbeing of society by providing quality products and services and creating jobs. Hence, the role of business is crucial from the point of view of individuals and the society as well.

♦ Inseparable relation

1.1.6.1 Components of Business Environment

1. Political environment

Political factors refer to the impact of government policies, regulations, and political stability on a business. For example, changes in tax policies or trade agreements can impact a company's profits or access to markets.

♦ Government related laws and regulations

A company operating in a politically unstable country may also face challenges related to security and business continuity.

2. Economic environment

Economic factors refer to the broader economic conditions in which a business operates. For example, changes in interest rates, inflation, or exchange rates can affect a company's costs, revenues, and profitability. Economic downturns can also affect consumer spending and demand products or services.

♦ Combination of economic parameters

3. Technological environment

Technological factors refer to the impact of technological innovations and advances on a business. For example, the rise of e-commerce and mobile technology has disrupted traditional retail models and created new business opportunities. The technological environment contains new technological innovation, new products, the status of technology, how it is used to maximise inputs and outputs, how it becomes obsolete, and how dynamic changes frequently take place in technologies that help businesses gain a competitive advantage. A company that fails to keep up with technological advances may find itself at a competitive disadvantage.

♦ Innovation, research and development

4. Socio-cultural environment

Socio-cultural factors refer to the impact of social and cultural trends on a business. For example, changes in consumer preferences or attitudes towards sustainability can affect a company's branding and marketing strategies. A company that fails to align with changing societal values may face a backlash from consumers or struggle to attract new customers.

♦ Trends in surrounding

5. Environmental factors

Environmental factors refer to the impact of environmental regulations and concerns on a business. For example, a

company operating in the oil and gas industry may face increasing pressure to reduce its carbon footprint and invest in renewable energy sources. Failure to address environmental concerns can also damage a company's reputation and brand.

♦ Environmental regulations

6. Legal environment

Legal factors refer to the impact of laws and regulations on a business. For example, changes in employment laws or data privacy regulations can impact a company's operations and compliance requirements. A company that fails to comply with legal requirements may face fines, lawsuits, or other penalties.

♦ Business law and Regulations

1.1.7 Legal Environment

The legal environment of a business refers to the laws and regulations that impact its operations. This includes court rulings and decisions that can greatly affect the business and its managers. Every business must operate within the framework of the law and comply with industry-specific laws and regulations. For example, a child is employed in a business is against the law and reputation of the land. Selling adulterated products, polluting the environment, paying lesser tax by committing frauds in the books of accounts etc. are all against the public policies. Such companies fail to satisfy the laws and regulations which will attract fines, penalties and prosecution under the provisions of the relevant Acts passed by the government.

♦ Laws and regulations



Legal Environment of business

Figure 1.1.2

Legal environments typically place limitations on the business-man, but they can also present opportunities.

The various aspects of legal environments are:

♦ Legalities

- ♦ Various laws and legislative acts.
- ♦ Legal policies relating to licensing.
- ♦ Legal policies relating to foreign trade.
- ♦ Statutory warning to be printed on the label.
- ♦ Laws to keep a check on advertisements

Recent developments in the Indian legal environment that impact business include the following:

- ♦ Easier capital collection due to capital market deregulation;
- ♦ Increased foreign investment due to foreign exchange liberalization;
- ♦ Prohibition of alcohol advertisements;
- ♦ Mandatory statutory warnings on tobacco products; and
- ♦ Changes in industrial licensing policies.

1.1.7.1 Importance of Legal Environment

A strong legal framework is a requirement for any firm to succeed which is created by the legislature, which turns out as laws, rules, and regulations. Following are some of the ways that the legal environment affects business:

♦ Framework

♦ Help businesses to grow, develop and expand

- ♦ ***Provides a framework for businesses to operate within the law:*** The legal environment establishes a set of rules and regulations that businesses must follow, creating a framework for them to operate. This ensures that all businesses operate on a level playing field, competing based on their merits rather than their ability to break the law.
- ♦ ***Provides stability and predictability:*** A clear and predictable legal environment provides businesses with stability and, allowing them to make informed decisions about their operations, investments, and business strategies. This can help businesses to grow, develop and expand as it is strongly bonded to the surroundings, which facilitates to estimate the possible risks and opportunities associated with their activities.
- ♦ ***Encourages entrepreneurship and innovation:*** A favour-

able legal environment can encourage entrepreneurship and innovation, by providing businesses with the necessary legal protections and incentives to take risks and invest in new ventures. For example, patent and copyright laws protect businesses' intellectual property, encouraging them to invest in research and development, knowing that they can protect their innovations from competitors.

♦ Favourable legal environment

- ♦ **Protects businesses from legal risks:** The legal environment also provides businesses with protections from legal risks. For example, contract laws establish clear terms for business agreements, ensuring that both parties understand their obligations and responsibilities. Employment laws protect workers and businesses from unfair labour practices, ensuring that businesses operate ethically and legally.

♦ Safety and security

- ♦ **Promotes ethical business practices:** The legal environment also promotes ethical business practices, by establishing laws and regulations that require businesses to operate in a socially responsible manner. For example, environmental laws regulate the disposal of hazardous materials, ensuring that businesses minimize their impact on the environment.

♦ Establishing laws and regulations

- ♦ **Discourages corruption:** A well-functioning legal environment can discourage corruption, by establishing clear rules and regulations and enforcing them fairly. This creates an even playing field for businesses, making it more difficult for corrupt practices to go unpunished.

♦ Presence of standardised rules

- ♦ **Provides a basis for resolving disputes:** The legal environment also provides a basis for resolving disputes between businesses and individuals, allowing them to seek legal recourse if necessary. This ensures that disputes are resolved in a fair and impartial manner, without resorting to violence or other forms of conflict.

♦ Resolving disputes between businesses and individuals

- ♦ **Taxation:** The government's taxation of businesses is one of the regulatory measures that can impact their success. Higher tax rates can negatively impact a business, while lower rates can help businesses earn more profits.

♦ Tax structure

- ♦ **Promoting economic growth:** A proper legal environment can help promote economic growth by regulating taxation and other measures. This can protect consumers' rights and keep them safe from exploitation and other illegal factors.

♦ Measures to promote economic growth

- ♦ **Consumer protection:** The legal environment also directs businesses to protect consumers from exploitations, unfair means, and frauds. This helps to ensure that consumers can

♦ Enhance customer trust

♦ Co-ordination

trust businesses and feel confident in making purchases.

- ♦ **Business success:** The legal environment can determine the success of any business. Regulatory activities such as pollution limits, employment regulations, minimum wage laws, and safety regulations for food and medicine can impact businesses' operations and success.

1.1.8 Components of Legal Environment

♦ Branch of law

According to S R Davar, business law “means that branch of law which is applicable to or concerned with trade and commerce in connection with various mercantile or business transactions”.

The Indian Business Laws cover the following laws that the Indian Legislature occasionally passes. The following are key laws:

1. The Indian Contract Act, 1872.
2. The Negotiable Instruments Act, 1881.
3. The Sale of Goods Act, 1930.
4. The Indian Companies Act, 2013

1.1.8.1 The Indian Contract Act, 1872

The law relating to contracts is governed by the Indian Contract Act, 1872. The Act came into force on the first day of September, 1872. The preamble to the Act says that it is an Act “to define and amend certain parts of the law relating to a contract”. It extends to the whole of India. The Act is by no means exhaustive on the law of contract. It does not deal with all the branches of the law of contract. Thus, contracts relating to partnership, sale of goods, negotiable instruments, insurance, etc. are dealt with by separate Acts. In accordance with the Indian Contract Act:

♦ Law relating to contract

1. The general principles applicable to all contracts;
2. The conditions, which are essential for making a valid contract;
3. The principles applicable to quasi-contracts;
4. The principles, which are applicable to a few special contracts, namely,
 - a. The contracts of indemnity,
 - b. The contracts of guarantee,
 - c. The contracts of bailment and agency,
 - d. The contracts of the agency.

The Law of Contract constitutes the most important branch of Mercantile or Commercial Law. It affects everybody, more so, trade, commerce, and industry. It may be said that the contract is the foundation of the civilized world.

♦ Foundation

“A contract is an agreement creating and defining obligations between the parties”.

– **Salmond**

“A contract is an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others”.

– **Anson**

“Every agreement and promise enforceable at law is a contract”.

– **Sir Fredrick Pollock**

The Indian Contract Act has defined a contract in Section 2(h) as “an agreement enforceable by law”. A contract, therefore, is a combination of two elements: (1) an agreement and (2) an obligation.

Agreement

An agreement gives birth to a contract.

As per Section 2(e) of the Indian Contract Act, “every promise and every set of promises, forming the consideration for each other, is an agreement. It is evident from the definition given above that an agreement is based on a promise.

♦ Promise

What is a promise? According to Section 2(b) of the Indian Contract Act “when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise”.

♦ Accepted proposal

An agreement, therefore, comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto. In nutshell, an agreement is the sum total of offer and acceptance.

♦ Offer and acceptance

An analysis of the definition given above reveals the following characteristics of an agreement:

a. Plurality of persons: There must be two or more persons to make an agreement because one person cannot enter into an agreement with himself.

b. Consensus ad idem: The meeting of the minds is called consensus-ad-idem. It means both the parties to an agreement must agree about the subject matter of the agreement in the same sense and at the same time.

Obligation

♦ Legal duty

An obligation is the legal duty to do or abstain from doing what one has promised to do or abstain from doing. A contractual obligation arises from a bargain between the parties to the agreement and they require to fulfil the promises which is obligatory. In broad sense, a contract is an exchange of promises between two or more persons. If anyone violates the terms and conditions stated in the contract, it will attract legal proceedings.

Rights and Obligations

♦ Correlative

Where parties have made a binding contract, they have created rights and obligations between themselves. The contractual rights and obligations are correlative, e.g., A agrees with B to sell his car for ₹10,000 to him. In this example, A is under an obligation to deliver the car to B. B has the right to receive the car but equally obliged to pay the agreed sum. So the rights are correlated to each other.

All agreements are not contracts

An agreement to become a contract must give rise to legal obligation. If an agreement is incapable to be enforced by law, it remains only an agreement and not a contract, such as (a) Social Agreements (b) Agreements without legal intention (c) Agreements without consideration, etc., are agreements but not contracts. However, all contract is agreement. Further, all legal obligations are not contracts. Only those obligations which have their source in the contract are enforceable under the provisions of the Indian Contract Act. Three consequences follow from the above discussion:

♦ Contract = Agreement + Enforceable by law

1. To constitute a contract, the parties must intend to create a legal relationship.
2. The law of contract is the law of those agreements which create obligations, and those obligations which have their source in agreement.
3. Agreement is the genus of which contract is the specie and, therefore, all contracts are agreements but all agreements

are not contracts.

1.1.8.2 The Negotiable Instruments Act, 1881

The law concerning negotiable instruments serves as a crucial framework within the realm of commerce. It was created to streamline and expedite trade and commercial transactions by providing legal recognition to credit instruments that can be readily converted into money and easily transferred between parties. Without such instruments, trade and commerce would face significant obstacles, as it would be impractical for businesses to carry large amounts of physical currency at all times. The Indian law pertaining to negotiable instruments draws its origins from the English Common Law, serving as its primary source of influence.

♦ Credit instruments

The main objective of the Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods.

The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881. This is an Act to define and amend the law relating to promissory notes, bills of exchange and cheques. The Act applies to the whole of India, but nothing herein contained affects the Reserve Bank of India Act, 1934, (section 21 which provides the Bank to have the right to transact Government business in India), or affects any local usage relating to any instrument in an oriental language.

♦ Law relating to negotiable instruments

Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it has come into force on the first day of March, 1882.

♦ Inclusion

The provisions of this Act are also applicable to Hundis, unless there is a local usage to the contrary. Other native instruments like Treasury Bills, Bearer Debentures etc. are also considered as negotiable instruments either by mercantile custom or under other enactments.

♦ Applicability

The Negotiable Instruments Act, 1881 (N.I. Act) has undergone several amendments in recent years to address emerging needs and concerns. The three significant amendments made to the N.I. Act include the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002; the Negotiable Instruments (Amendment) Act, 2015; and the Negotiable Instruments (Amendment) Act, 2018.

♦ Amendments

The Negotiable Instruments (Amendment) Act, 2018 received the assent of the President and was notified in the Official Gazette on

♦ Interim compensation

♦ Transferable instruments

2nd August, 2018 and came into effect from September 1, 2018. The Amendment Act 2018 contains two significant changes – the introduction of Section 143A and Section 148. These sections provide for interim compensation during the pendency of the criminal complaint and the criminal appeal.

Negotiable Instrument is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument pass to a bonafide transferee for value.

The Act does not define the term ‘Negotiable Instruments’. However, Section 13 of the Act provides for only three kinds of negotiable instruments namely, bills of exchange, promissory notes and cheques, payable either to order or bearer.

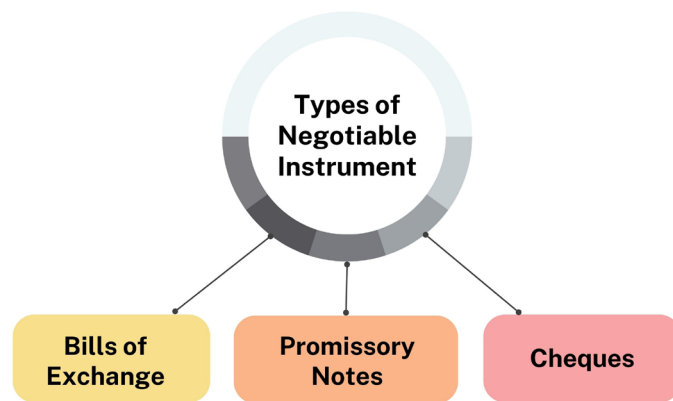


Figure 1.1.2

Types of negotiable instrument

General conditions of negotiability:

- a. The instrument should be freely transferable by the custom of trade. Transferability may be by (i) delivery or (ii) endorsement and delivery.
- b. The person who obtains it in good faith and for consideration gets it free from all defects and can sue upon it in his own name.
- c. The holder has the right to transfer. The negotiability continues till maturity.

Significant features of negotiable instruments

The following are crucial properties of negotiable instruments:

- a. It must be in writing.
- b. It should be signed.
- c. It is freely transferable from one person to another.
- d. Holder's title is free from defects.
- e. The sum payable, the time of payment, the payee, must be certain.
- f. It can be transferred any number of times till its satisfaction.
- g. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
- h. The instrument should be delivered. Mere drawing of instrument does not create liability

1.1.8.3 The Sale of Goods Act, 1930

Contract of sale is a generic term which contains provisions regarding sales as well as agreement to sell. The Sale of Goods Act, 1930, contains the legal provisions governing the sale of goods or movables in India. Before the passage of the Sale of Goods Act 1930, the law governing the sale of products was found in Chapter VII of the Indian Contract Act of 1872. The Act covers the entirety of India and has 66 parts.

♦ Act relating to sales

Contract of sale under Section 4 (1) of the Sale of Goods Act, 1930, the contract of sale of goods is defined as follows:

“A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price”.

A contract of sale may provide for:

- a. **Sale:** A selling agreement may be either unconditional or conditional. The contract is a sale when the buyer receives the seller's ownership interest in the items.
- b. **Agreement to sell:** Under the agreement to sell the transfer of ownership of the items is scheduled for a later date or is contingent on the fulfilment of additional requirements.

♦ Executed contract

♦ Executory contract

The distinction between sale and agreement to sell

The following points will bring out the distinction between a sale and an agreement to sell:

Table 1.1.1

Sale and agreement to sell

Point	Sale	Agreement to Sell
Ownership of Goods at Contract	Ownership of goods passes to the buyer	Ownership does not pass at the time of the contract
Contract Status	Executed contract	Executory contract
Nature of Contract	Contract plus conveyance	Contract pure and simple

Remedies for Breach by Seller	Personal remedy (claim for damages) against seller	Personal remedy (claim for damages) against seller and additional remedies as an owner (e.g., suit for conversion or detinue)
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Risk of Loss on Goods Destruction	Falls on the buyer	Falls on the seller
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Essentials of a valid contract of sale

- a. Contract:** All the essential elements of a contract must be present in a contract of sale.
- b. Two parties:** There must be two parties to constitute a contract of sale namely; a buyer and a seller. The same person cannot both be a seller and a buyer.
- c. Goods:** The subject matter of a contract of sale will always be goods. The goods may be either existing goods, future goods, or contingent goods.
- d. Transfer of property:** In a contract of sale, the seller must transfer or agree to transfer property in the goods to the buyer.
- e. Price:** The consideration for a contract of sale must be money called the price.

Classification of goods

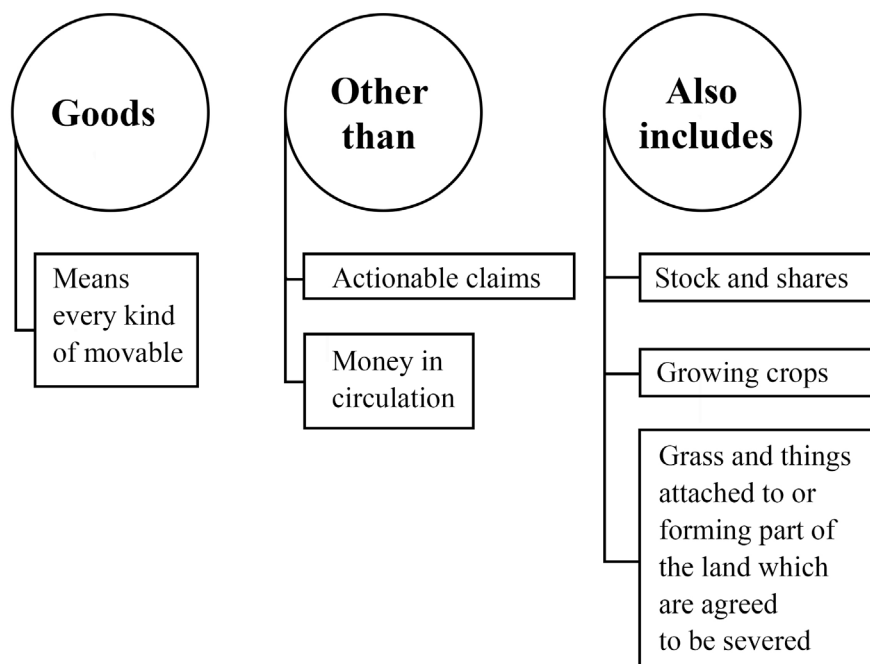


Figure 1.1.3
Goods as per Sales of Goods Act,1930

The subject matter of the contract of sale is essential goods. According to Section 2(7) of the Sale of Goods Act, “goods” means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Actionable claims and money are not goods and cannot be bought and sold under this Act. Money means current money, i.e., the recognised currency in circulation in the country, but not old and rare coins that may be treated as goods. An actionable claim is what a person cannot make a present use of or enjoy, but what can be recovered by him by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned.

Goods may be (a) existing, (b) future, or (c) contingent. The existing goods may be (i) specific or generic, (ii) ascertained or unascertained.



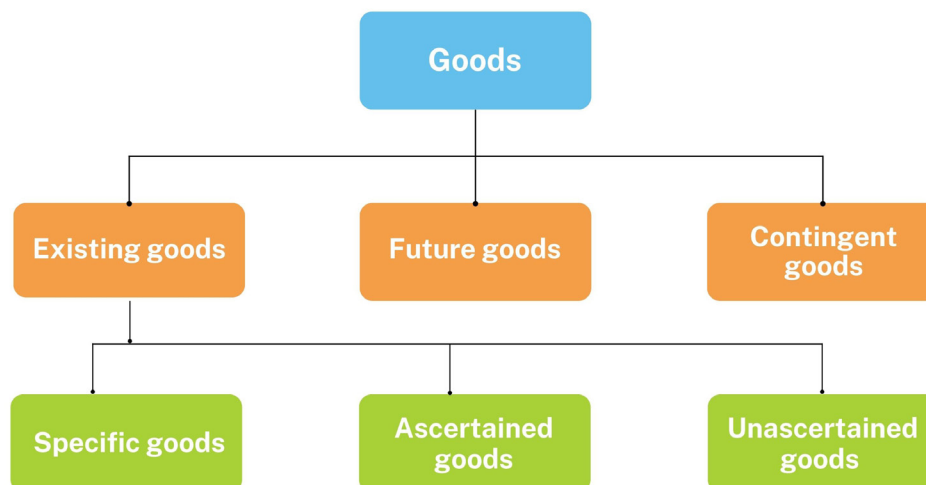


Figure 1.1.4 Classification of goods

A. Existing goods: Existing goods are goods that are either owned or possessed by the seller at the time of the contract. The sale of goods possessed but not owned by the seller would be by an agent or pledgee.

a. Specific goods

♦ Identified

Specific goods mean identified and agreed upon at the time a contract of sale is made section 2(14). eg: Any specified and finally decided goods like Samsung Galaxy S23, Godrej 1.5 Ton 3 Star Inverter Split AC etc.

b. Ascertained goods

When a contract of sale is made, ascertained goods refer to goods that are identified in accordance with the agreement. Although the term “ascertained goods” is not explicitly defined in the Act, it has been interpreted by the judiciary. In practical terms, “ascertained goods” is used interchangeably with “specific goods.” When a specific number or quantity is chosen from a larger quantity of unascertained goods, those identified goods are then considered ascertained.

E.g., A wholesaler of cotton has 100 bales in their storage facility. After the contract of sale is made, the wholesaler agrees to sell 50 specific bales, which are then carefully selected and set aside from the larger

quantity. These selected bales are now considered ascertained goods. The contract is now specifically for the sale of these identified cotton bales, which were determined and agreed upon after the initial contract was formed. It is important to note that prior to the identification of these goods, the contract was for the sale of unascertained goods, as the specific bales were not yet designated.

♦ Specific goods

c. Unascertained goods

Unascertained goods are the goods which are not specifically identified or ascertained at the time of making of the contract. They are indicated or defined only by description or sample.

E.g., A farmer agrees to sell a bushel of wheat from his crop. The wheat is not yet harvested, so the exact bushel of wheat to be sold has not been identified or specified at the time of the agreement. Another example of unascertained goods is a futures contract. A futures contract is an agreement to buy or sell a certain quantity of a commodity at a certain price on a certain date in the future. The commodity is not yet physically present, so it is considered unascertained goods at the time of the contract.

♦ Unidentified goods

B. Future goods: Future goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. A agrees to sell all the mangoes which will be produced in his garden next season. This is an agreement for the sale of future goods. [Section 2(6)]

♦ Agreement to sell

C. Contingent goods: Contingent goods refer to goods whose acquisition by the seller is dependent on a contingency that may or may not happen. These goods fall under the category of future goods, which are either yet to be produced or acquired by the seller. For instance, if a seller, A, agrees to sell a rare painting by Ravi Varma to buyer B, but only if A is able to purchase it from its current owner, this constitutes an agreement to sell contingent goods. In such a scenario, if A fails to acquire the painting due to circumstances beyond his control, A will not be held liable for damages. It is important to note that while an actual sale can only occur for specific goods with property passing to the buyer at the time of the contract, contingent goods can be the subject of an agreement to sell, involving goods that are yet to be produced or acquired.

♦ Future event

Effect of perishing of goods

In a contract of sale of goods, the goods may perish before the sale is complete. Such a stage may arise in the following cases:

♦ Mutual mistakes

- i. **Goods perishing before making a contract.** Where in a contract of sale of specific goods, the goods without the knowledge of the seller have, at the time of making the contract perished or become so damaged, the contract is void. This is based on the rule that a mutual mistake of fact essential to the contract renders the contract void. (Section 7)

♦ Avoidance

- ii. **(ii) Goods perishing after an agreement to sell.** If specific goods in an agreement are destroyed or perished before the buyer assumes the risk, the agreement will be called off. However, if the goods are not specifically identified, the seller is still obligated to deliver them, even if they are destroyed. (Section 8)

Price

No sale can take place without a price. Thus, if there is no valuable consideration to support a voluntary surrender of goods by the real owner to another person, the transaction is a gift and is not governed by the Sale of Goods Act. Therefore, price, which is monetary consideration for the sale of goods, constitutes the essence of a contract of sale. It may be money actually paid or promised to be paid. If a consideration other than money is to be given, it is not a sale. The price may be fixed:

♦ Price determination

- ♦ at the time of contract by the parties themselves
- ♦ may be left to be determined by the course of dealings between the parties
- ♦ may be left to be fixed in some way stipulated in the contract
- ♦ may be left to be fixed by some third-party

1.1.8.4 The Companies Act 2013

The Companies Act, 2013 was introduced with the objective of consolidating and amending the Companies Act, 1956, in response to the evolving national and international economic landscape and to aid the rapid expansion and inclusive growth of the Indian economy. The Companies Act, 2013 comprises of 470 sections and seven schedules, organized into 29 chapters. Additionally, a significant portion of the Act is in the form of Companies Rules. This legislation aims to enhance corporate governance, streamline regulations, safeguard the rights of

♦ Company law reform

minority investors and for the first time, legislates the roles of whistle-blowers and provisions relating to class action suits. By enacting this law, the government aims to modernise and update the corporate regulations in our country.

The Companies Bill, 2012 was assented by the President of India on 29.08.2013 and notified in the Gazette of India on 30.08.2013. It finally became the Companies Act, 2013.

Passed in Loksabha	-	December 18, 2012
Passed in Rajya Sabha	-	August 08, 2013
President's assent	-	August 29, 2013
Total number of sections	-	470
Total number of chapters	-	29
Total number of schedules	-	7

The Companies Act 2013 has introduced new concepts supporting enhanced disclosure, accountability, better board governance, better facilitation of business, and so on. It includes the following aspects: - Associate Company, One-person company, Small Company, Dormant Company, Independent director, Women director, Resident director, Special court, Secretarial standards, Secretarial audit, Class action, Registered valuers, Rotation of auditors, Vigil mechanism, Corporate Social Responsibility, Cross-border mergers and Prohibition of insider training.

♦ Enhanced corporate regulations

Applicability of the Companies Act, 2013:

The provisions of the Act shall apply to-

- ♦ Companies incorporated under this Act or under any previous company law.
- ♦ Insurance companies (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
- ♦ Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
- ♦ Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)

- ♦ Any other company governed by any special Act for the time being in force.
- ♦ Such body corporate which are incorporated by any Act for time being in force, and as the Central Government may by notification specify in this behalf.

1.1.9 Legal Environment during the Pre-independence Period and Post-independence Periods

This year 2023, India has completed 76 years of Independence from the Crown Rule of the British. On 14th August 1947 the Indian Independence Act, 1947, was given royal assent by the British Parliament which made provisions for creating two independent dominions namely, India and Pakistan. Consequently, India gained independence on 15th August 1947. India Independence Act, 1947, marked the establishment of the sovereignty of India which now would be governed under a democratic framework.

♦ Partition of India

♦ Changes in country's judicial and executive structure

The post-independence era also saw major changes in the country's judicial and executive structure. The form and structure of government as of now are a result of its evaluation which has been shaped by various enactments. The organisation of the judiciary at present differs from that in the pre-independence era where most of its control was in the hands of the British.

1.1.9.1 Pre-Independence Judiciary of India

♦ British influence on Indian judiciary

The Britishers started modifying the judiciary in India according to their rule over India. Warren Hastings who has the first Governor General of India (1732-1818) established the civil administration system. Concurrently, he also helped set up the civil court and criminal court in each district in 1772.

♦ Court setup

Lord Cornwallis brought various reforms in the legal and civil administration. To increase efficiency in the working of the judicial system, he also took the initiative to establish provincial circuit criminal courts in places such as Sardar Nizammat Adalat was set up in Kolkatta. In addition to this, Munsifs which were local courts that cooked over civil matters were also set up.

♦ Legal codification and formation of IPC

Subsequently, around 1829, India saw the abolishment of circuit courts and the codification of the law system and its procedures. Later, in the year 1861, we witnessed the landmark formation of the Indian Penal code, the draft of which was chaired by the first law commission in 1834. Therefore, the criminal procedure code was passed by British Parliament in the year 1861.

Taking a step ahead, the Govt. of India Act, 1935 established the Federal Court of India in New Delhi on the 1st of October, 1937. It supervised all three types of jurisdictions, original, appellate, and advisory. Later, British Rule saw its end under the Indian Independence Act, 1947. In the historic feat, India bore the title of an independent dominion on what we now celebrate as our Independence Day.

♦ Establishment of Federal Court and end of British rule

During the pre-independence period in India, the legal environment for business was primarily governed by British colonial laws and regulations. Here are some key aspects of the legal environment during that time:

1. **British Legal System:** The legal system in India was based on English common law principles, and the courts followed the British legal framework.
2. **Trade and Commerce:** The Indian Merchandise Marks Act of 1889 aimed to protect consumers from fraudulent practices in trade by regulating the marking and labelling of goods. The act addressed issues related to trademarks, quality marks, and deceptive trade practices. However, it did not specifically focus on promoting Indian businesses.
3. **Companies Act of 1850:** The Companies Act of 1850 was the first legislation regulating companies in India. It provided a legal framework for the incorporation, functioning, and winding up of companies.
4. **Companies Act of 1913:** The Companies Act of 1913 was in force during this period, regulating the formation, governance, and winding up of companies. The act provided guidelines for the incorporation, management, and dissolution of companies, but it primarily favoured British interests.
5. **Partnership Act of 1932:** The Partnership Act of 1932 governed partnerships in India. It defined the rights, duties, and liabilities of partners and regulated the formation and dissolution of partnerships.
6. **Indian Contract Act of 1872:** The Indian Contract Act of 1872 governed contracts in India. It defined the principles of contract law, including offer, acceptance, consideration, and remedies for breach of contract.
7. **Indian Sale of Goods Act of 1930:** The Indian Sale of Goods Act of 1930 regulated the sale of goods in India. It outlined the rights and obligations of buyers and sellers in commercial transactions.
8. **Factory Act of 1881:** The Factory Act of 1881 imposed

♦ Follow British rules in India

♦ Preventing fraudulent practices in trade

♦ First Act for companies

♦ More precise Act for Companies

♦ Act for partnership

♦ Governing contracts in India

♦ Regulating the sale of goods in India

♦ Regulating working conditions in factories

♦ Legal framework for taxation

♦ Governing land ownership, tenancy rights, and agricultural practices

♦ Restriction on trade

♦ Changes in the legal environment

♦ Abolition of privy council jurisdiction

♦ Democratic regime

♦ Highest court in the country

regulations on working conditions in factories, including provisions related to safety, health, working hours, and employment of women and children.

9. Indian Income Tax Act of 1922: The Indian Income Tax Act of 1922 imposed income tax on individuals and companies in India. It provided the legal framework for taxation and the assessment of income.

10. Land Revenue Laws: Various land revenue laws were in place to govern land ownership, tenancy rights, and agricultural practices. These laws varied across different regions of India.

11. Import and Export Regulations: The British government imposed restrictions on imports and exports to protect British industries. The Indian businesses had to comply with these regulations for international trade.

The legal environment during the pre-independence period was shaped by colonial interests and often favoured the British ruling class. After India gained independence in 1947, significant legal reforms were undertaken to establish a legal system that reflected the aspirations and needs of an independent nation.

1.1.9.2 Post-Independence Judiciary of India

When India achieved its independence, the abolition of the privy council jurisdiction Act was passed in 1949 which abolished the jurisdiction of the privy council (formerly England's highest court of appeal), to entertain new appeals. The pending appeals were then transferred to the Federal court of India.

Finally, the constitution of India, drafted by B.R. Ambedkar which came into effect in January 1950 laid down the foundation and the structure of the Indian Govt. as well as the lines on which the sovereign nation would be governed. The flag of leadership was held by two great lawyers, Jawahar Lal Nehru the "first Prime Minister of India" and Mahatma Gandhi who popularly came to be the executive and the administrative structure for the country.

The court of India in the Independence India was organised under a three-tier system as hereunder;

1. Supreme Court of India: The highest court in the country, the Supreme Court of India was established under the constitution. It started its operation on 28th January 1950 and inherited the jurisdiction of the federal court and then it was abolished. The court has original, appellate jurisdiction for the matters adjudicated by high courts along with other

Tribunals, revisional and advisory jurisdiction.

2. **The High Courts:** The High Courts of the States are subordinate to the supreme court and preside over the lower courts in the appellate, civil, and criminal jurisdiction. Some of the high courts were already established during the British Act, of 1861, and the rest were formed or continued under special acts or the constitution.
3. **Lower Courts in India:** The district court and other subordinate courts fall under the third tier of the Indian Judiciary. The District Courts exercise judicial power on a district level. The Nyaya Panchayat extends Judicial Service to the villages of India.

♦ Subordinate to the supreme court

♦ Third tier of the Indian Judiciary

The pre-independence judiciary of India was under the direct control of British rule and the post-independence era marked an organised and independent judiciary. The role of the judiciary has been significantly increased by the constitution of the world. The independent judiciary has proved to be a driving factor for the efficient delivery of justice in India by upholding the principles of a democratic system.

♦ Transformation of judiciary in independent India

After India gained independence in 1947, the legal environment for businesses underwent significant changes as the country sought to establish its own legal framework and promote economic development. Several laws and regulations were enacted to support indigenous businesses, protect the rights of workers, and foster industrial growth. Here are some key aspects of the legal environment for businesses during the post-independence period in India:

1. **Constitution of India:** The Constitution of India, adopted in 1950, provided the fundamental principles and framework for governance, including economic and business-related matters. It laid the foundation for establishing a socialist, mixed economy and included provisions related to property rights, fundamental rights, and the promotion of social welfare.
2. **Industrial policy:** The Indian government formulated industrial policies to guide economic development and regulate the industrial sector. The Industrial Policy Resolution of 1948 emphasized state control and regulation of key industries, particularly those considered vital for national development. Subsequent policy revisions in 1956 and 1991 brought about changes in the approach towards industrial licensing, foreign investment, and economic liberalization.
3. **Company law:** The Companies Act of 1956, based on the English Companies Act of 1948, governed the formation,

♦ Fundamental principles and framework for governance

♦ Control and regulation of key industries

♦ Regulations for incorporation, corporate governance, and shareholder rights

♦ Policies to promote foreign investment

♦ Prevent the concentration of economic power and control unfair trade practices

♦ Tax structure

♦ Law for protecting labours

management, and winding up of companies. It provided regulations for incorporation, corporate governance, and shareholder rights. Amendments to the Companies Act have been made over the years to align with changing economic circumstances and global best practices.

4. **Foreign investment and exchange control:** India adopted a policy of economic nationalism after independence, emphasizing self-reliance and protection of domestic industries. The Foreign Exchange Regulation Act (FERA) of 1973 imposed strict controls on foreign exchange transactions and foreign investment. However, this was later replaced by the Foreign Exchange Management Act (FEMA) in 1999, which introduced more liberalised policies to promote foreign investment and simplify foreign exchange regulations.
5. **Monopolies and restrictive trade practices:** The Monopolies and Restrictive Trade Practices Act (MRTP), 1969 aimed to prevent the concentration of economic power and control unfair trade practices. The act regulated monopolistic practices, mergers, and acquisitions, and protected consumer interests.
6. **Taxation:** The government introduced a tax regime to generate revenue and promote economic development. The Income Tax Act, 1961, laid down the provisions for income taxation, while the Central Excise Act, 1944, and the Customs Act, 1962, regulated excise duties, customs duties, and GST, respectively. With the implementation of Goods and Services Tax (GST) from July 1, 2017, the indirect tax landscape underwent a significant transformation. GST replaced multiple indirect taxes, such as Central Excise Duty and Service Tax, and became the primary tax framework for the supply of goods and services in India. Under GST, businesses are required to register, file regular GST returns, and comply with the provisions of the GST law. It simplified the tax structure, reduced cascading effects, and aimed to create a seamless and unified national market.
7. **Labour laws:** The post-independence period witnessed the introduction of various labour laws to protect the rights of workers and promote social welfare. The Factories Act of 1948 was enacted to regulate working conditions, health, safety, and welfare provisions in factories. Other labour laws included the Industrial Disputes Act (1947), Minimum Wages Act (1948), and the Employees' Provident Funds and Miscellaneous Provisions Act (1952).
8. **Intellectual property rights:** India established a legal framework to protect intellectual property rights (IPR)

through acts such as the Patents Act (1970), the Copyright Act (1957), and the Trademarks Act (1999). These laws provided mechanisms for the registration, protection, and enforcement of patents, copyrights, and trademarks, encouraging innovation and creativity.

- 9. Competition law:** The Competition Act of 2002 aimed to prevent anti-competitive practices, promote fair competition, and protect consumer interests. It established the Competition Commission of India (CCI) to regulate and monitor competition in various sectors.

The legal environment for businesses in India has undergone significant evolution over time, adapting to changing economic policies, globalization, and the imperative to attract foreign investment. The legal framework has continually evolved through amendments, revisions, and reforms to address the evolving needs of a dynamic business landscape. These modifications reflect the government's commitment to create a favourable environment for business operations, foster economic growth, and stay in tune with emerging trends. This ongoing process ensures that the legal framework remains responsive and adaptable to meet the demands and challenges of a rapidly changing business environment.

♦ Law for IPR

♦ Prevent unfair trade practices

♦ Evolving legal framework for business in India

Summarised Overview

Law and ethics are important aspects of the business world. Law provides a framework for businesses to operate within, while ethics guide businesses in making morally sound decisions. Businesses that prioritize ethics can build a strong reputation and attract top talent. The interplay between law and ethics is crucial for businesses to thrive in the legal environment. While the law sets the minimum standards that businesses must follow, ethics provide a higher moral compass, guiding decision-making processes. Integrating ethics into business operations not only ensures legal compliance but also promotes long-term sustainability and positive social impact.

Self-Assessment Question

1. What are the key principles of natural justice?
2. What are the components of the legal environment in business?
3. What is the significance of ethics in business?
4. How does the legal environment impact businesses in India?
5. How does law interact with ethics in the business context?
6. What is an agreement to sell?
7. Differentiate between a sale and an agreement to sell.
8. What are negotiable instruments?
9. What are the key changes in the Companies Act 2013?
10. What are the classifications of goods under the Sale of Goods Act 1930?

Assignments

1. Examine the role of the legal environment in shaping business operations, focusing on the components of the legal framework in India.
2. Explain how the ethical practices contribute to the reputation and sustainability of business.
3. Assess the evolution of the legal environment in India from the pre-independence era to the post-independence period, highlighting key legislative developments and their implications for businesses.
4. Compare and contrast the interplay between law and ethics in the business context, discussing the importance of both in guiding decision-making and responsible behaviour.
5. Explore the sources of law and their influence on the legal framework, analysing the role of constitutional law, statutes, precedents, customs, and international treaties.
6. Discuss the principles of natural justice and their application in ensuring fairness and impartiality in administrative and judicial proceedings.
7. Investigate the relationship between ethics, law, and stakeholder relationships in business, emphasizing how ethical behaviour and legal compliance contribute to building trust and positive engagement.

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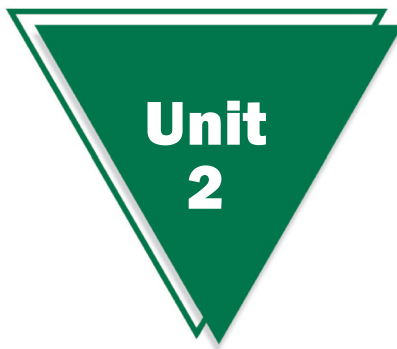
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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



Intellectual Property Rights

Learning Outcomes

After completion this unit, the learner will be able to:

- ◆ learn about the intellectual property rights
- ◆ gain awareness on the advantages of intellectual property rights
- ◆ assess the legal procedures of infringement of IPR
- ◆ familiarise with the procedures for getting Patents, Copyrights, Trade Marks, Industrial Design and Geographical Indications

Background

It is the creative mind of the entrepreneur that turns into novel products with unique features. Let us now feel the story of Satwika, who has dedicated her life composing and recording of a collection of songs that resonate with listeners worldwide. It is a well-known fact that individuals with innovative skills tend to succeed in their endeavours. However, there is also a likelihood the products or services may be duplicated or reproduced, leaving people like Satwika exposed to fraudulent deeds.

To safeguard Satwika's creative work, she has registered her songs for copyright protection, which grants her exclusive rights over the music and lyrics. With copyright protection in place, Satwika can release her songs on various platforms, including streaming services and music stores. Individuals who wish to listen to or use Satwika's music in public performances, advertisements, or films must obtain permission or negotiate a licensing agreement. This ensures that Satwika maintains control over the usage of her songs and allows her to earn royalties when others wish to utilize her music.

Copyrights serve as a legal means to protect an individual's own creations, safeguarding them from unauthorised use and preserving the rights of the producer. Furthermore, copyrights also safeguard the financial interests of the producer.

Keywords

Patents, Copyrights, Trade Marks, Industrial Design and Geographical Indications

Discussion

1.2.1 Protection of intellectual property

♦ Legal protection

Intellectual property (IP) refers to creations of the human mind, such as inventions, artistic works, trademarks, and trade secrets. These intangible assets are valuable and can be protected through various legal mechanisms to provide exclusive rights to their creators or owners. The protection of intellectual property is crucial in fostering innovation, creativity, and economic growth by incentivizing individuals and organizations to invest in the development and dissemination of new ideas and creations. There are several forms of intellectual property rights that can be protected such as Patents, Copyrights, Trade Marks, Industrial Design and Geographical Indications.

Novartis vs. Union of India

One interesting case study related to Intellectual Property Rights (IPR) in India is the Novartis vs. Union of India case. This case revolved around the patentability of the cancer drug Glivec (Imatinib Mesylate) and had significant implications for patent laws and access to affordable medicines.

Novartis, a pharmaceutical company, filed a patent application for Glivec in India in 1998. However, the Indian Patent Office rejected the application in 2006, citing that the drug did not meet the criteria for patentability under Indian law. Novartis challenged the decision and the case reached the Supreme Court of India in 2013.

The key issue in this case was the interpretation of Section 3(d) of the Indian Patents Act, which states that inventions that are mere “new forms of known substances” or have only “trivial” changes will not be eligible. On the other hand, opponents argued that Glivec was not a genuine innovation and was merely an amended form of a known substance.

In a landmark judgment, the Supreme Court upheld the rejection of Novartis’ patent application, ruling that Glivec did not meet the standards of patentability under Section 3(d).

1.2.1.1 Patent

The patent is granted for an “invention” – this is a universally accepted principle of patent law. Patents grant inventors exclusive rights to their inventions for a limited period. They protect novel and non-obvious inventions, processes, and designs, preventing others from making, using, or selling the patented invention without the owner’s permission. The patent specification describes the invention and if the application is granted by the Patent Office, the patentee is entitled to exclusive rights over the “invention”. As you may see, in many ways, the concept of the invention forms the foundation of patent law.

♦ Invention

Section 2(j) of the Patents Act, 1970 defines the term invention in the following terms: “invention” means a new product or process involving an inventive step and capable of industrial application” For ease of understanding, let’s break down this definition into its constituent parts:

The invention must be a “product” or a “process”.

In order to qualify as an invention, a product, or a process:

1. Must be “new”; and
2. Must involve an “inventive step”; and
3. Must be “capable of industrial application”

It is critical to note that the abovementioned requirements are conjunctive factors that need to be satisfied for a product or process to be considered an invention. While we will elaborate further on the concepts of “new”, “inventive step” and “industrial application” later, it may already be evident that these requirements conjunctively create a fairly high threshold which has later turned out as a copyright or trademark law). The grant of a patent confers on the patentee an exclusive right and control over the product or service. Thus, the law seeks to ensure that such a monopoly is granted with caution and only where the patentee is able to show that the product or process is truly worthy of such a monopoly. An application for the grant of a patent can be made by an inventor or any other person to whom the inventor has given the right. For example, a scientist working for a research and development laboratory may assign his rights in the inventions to his employer. In such a case, the employer will make the patent application. The application is a detailed one and it requires the descriptive of the invention in all its aspects, including its newness, use and best method of performance. The application contains descriptive and drawings to aid the description.

♦ Monopoly right in the use of an invention

Product patent and process patent

♦ Types of Patents

A patent is granted for an invention that may either be a product or a process but such a product or process should be new, involve an inventive step, and be capable of industrial application. Prior to the Patents Amendment Act 2005, only process patents were granted in respect of food, drugs, and pharmaceuticals in India. No product patent was granted in respect of the substances themselves.

Legal protection of patent

In India, the legal protection of patents is governed by the Patents Act, 1970, and its subsequent amendments. Here are the key aspects of patent protection in India and the actions that can be taken against someone who uses a patented product without the patentee's consent:

♦ 20 years

1. Patent rights: A patent provides the patentee with exclusive rights to make, use, sell, import, or distribute the patented invention in India for a limited period, typically 20 years from the date of filing the patent application.

♦ Unauthorised use

2. Infringement: If someone uses a patented product or process without the consent of the patentee, it may constitute patent infringement. Infringement can occur through any of the exclusive rights granted to the patentee.

♦ Legal actions

3. Civil remedies: The patentee can initiate civil proceedings by filing a lawsuit in a court with jurisdiction. The court can grant various remedies, including an injunction (to stop the infringing activity) for damages on account of loss of profits (compensation for the infringement), and delivery of the infringing products for destruction.

♦ Demanding to stop the infringing activity

4. Cease-and-desist notice: Prior to initiating legal action, the patentee may choose to send a cease-and-desist notice to the alleged infringer, demanding them to stop the infringing activity. This notice serves as a warning and provides an opportunity for the parties to resolve the matter amicably.

♦ Preventing infringing products from entering to or leaving for the country

5. Customs intervention: The patentee can request the Indian customs authorities to prevent the import or export of goods that infringe their patented invention. This can help in preventing infringing products from entering to or leaving for the country.

♦ Wilful and for commercial purposes

6. Criminal action: Patent infringement is also a criminal offense in certain circumstances. If the infringement is wilful and for commercial purposes, the patentee can file a criminal complaint with the police. If found guilty, the

infringer may face imprisonment and/or fines.

- 7. Patent revocation:** If there are grounds for challenging the validity of a patent, interested parties can file for patent revocation before the Intellectual Property Appellate Board or the High Court. If the patent is revoked, the protection it offers will cease.

♦ Challenging the validity of a patent

Applying for a patent

The Patents Act lays down the procedure for the grant of a patent to an inventor to exploit his invention for 20 years subject to the fulfillment of certain conditions. The first step is to make an application in the prescribed form along with provisional or complete specifications. The application is thereafter published and examined (if requested) and a search for anticipation is made. Oppositions are invited from the public, where there is no opposition or the opposition is raised in favor of the inventor, the patent is granted and sealed which confers certain rights on the patentee.

♦ Application

Form of application

According to Section 7, every application for a patent shall be for one invention only. The application is to be filed in the Patent Office. Under the Patents Act, 1970 patent offices could be established at various places. An application for a patent is to be made in the form prescribed and filed in the appropriate patent office. Every international application for a patent under the Patent Cooperation Treaty (PCT) is deemed to be an application under this Act, if a corresponding application has also been filed before the Controller General of Patents, Designs and Trade Marks in India. The filing date of such application and its complete specification processed by the Patents Office as designated office or elected office shall be the international filing date accorded under the PCT. An applicant in respect of an international application designating India shall before the aforesaid time (i) pay the prescribed national fee and other fee to the patent office (ii) and where the international application was either not filed or has not been published in English, file with the patent office, a translation of the application in English, duly verified by the applicant or the person duly Authorised by him that the contents thereof are correct and complete. Where an application is made by virtue of an assignment of the right to apply for a patent for the invention, proof of the right to make the application is to be furnished either along with the application or thereafter in the prescribed time.

♦ Procedure

Steps in getting a patent

♦ Application for a patent

1. Filing of patent application

Patent documents can be filed either through online or at the patent office in respective jurisdiction

♦ 18 Months

2. Publication

A patent application will be published automatically in the official journal after expiry of 18 months from date of filing or date of priority of the application containing title, abstract, application no. and name of applicant[s] and inventor[s].

♦ Opposition against the patent before granting

3. Opposition (If any)

a. **Pre grant opposition [Section 25(1)]** Upon publication but before the grant of patent, any person, based on different grounds may file a pre grant opposition, in writing, represent by way of opposition to the Controller against the grant of patent. However, the opposition will be taken by the patent office only after the filing of request for examination.

♦ Opposition against the patent after granting

b. **Post grant opposition [Section 25(2)]** Upon grant of patent any interested person, based on different grounds may file a post grant opposition in Form 7 to the Controller against the grant of patent.

♦ 48 Months

4. Request for examination

No Request, No Grant in Form 18 [sec 11B; rules 20(4) (ii) and 24B (1)(i)] (in duplicate when filed in physical copy) within period of 48 months from date of filing or priority, whichever is earlier.

♦ First statement of the application

5. First Examination Report (FER)

After proper examination of patent application on the criteria of novelty, inventiveness and industrial application, the Patent Examiner will issue a First Examination Report (FER) and will send along with the application and specification to the applicant or Authorised agent.

♦ Rectification phase

6. Amendment of objections by the applicant

The issued FER give an opportunity to the applicant to file a response and overcome the objections raised by the Examiner.

7. Grant of patent

The Controller will grant the application upon satisfactory response by the applicant to overcome all of the objections raised

in the FER. On the grant of a patent, the application will be accorded a number, called serial number in the series of numbers accorded to patents under the Indian Patents Act, 1970(39 of 1970).

♦ Issue of patent

8. Renewal fees

- a. To keep a patent in force, the renewal fees shall be payable at the expiration of the second year from the date of the patent or of any succeeding year and the same shall be remitted to the patent office before the expiration of the second or the succeeding year.
- b. While paying the renewal fee, the number and date of the patent concerned and the year in respect of which the fee is paid shall be quoted.
- c. The annual renewal fees payable in respect of two or more years may be paid in advance.

♦ Fee for renewal of patent

Patent infringement

Patent infringement refers to the unauthorised use, making, selling, importing, or distribution of a patented invention without the consent of the patent holder. It occurs when someone violates the exclusive rights granted to the patentee under patent law. Let's examine the legal provisions related to patent infringement in India:

♦ Unauthorised use

- i. **Scope of patent claims:** The patent claims define the boundaries of the patent protection. The claims specify the features, elements, or steps that make the invention novel and inventive. Infringement occurs when someone uses a product or process that falls within the scope of the patent claims. E.g., Suppose a patent claims a new type of mobile phone with specific technical features. If someone manufactures and sells mobile phones with identical technical features, it may constitute patent infringement.
- ii. **Literal infringement:** Literal infringement occurs when each and every element of a patent claim is used or reproduced without any variation. If all the elements specified in a patent claim are found in a product or process, literal infringement is established. E.g., If a patent claims a method comprising steps A, B, and C, and someone uses the same method with exactly steps A, B, and C, it may constitute literal infringement.
- iii. **Doctrine of equivalents:** The doctrine of equivalents allows for finding infringement even if the accused product or process does not literally match each element of a

♦ Boundaries

♦ Unauthorised use

♦ Each element of a patent claim

patent claim, but performs substantially the same function in substantially the same way to achieve the same result. E.g., If a patent claims a mechanical device with a specific arrangement of gears, and someone uses a different arrangement of gears that achieves the same result, it may still be considered infringement under the doctrine of equivalents.

♦ Third party

iv. Indirect infringement: Indirect infringement occurs when someone contributes to or induces another party to infringe a patent. This provision addresses situations where a third party assists or facilitates the infringing activities. E.g., If a company supplies components to another company, knowing that those components will be used to assemble and sell infringing products, it may be held liable for indirect infringement.

♦ Evidence

v. Burden of proof: In patent infringement cases, the burden of proof lies with the patent holder to establish that the alleged infringer's actions fall within the scope of the patent claims. The patentee must provide evidence to demonstrate the infringement.

Patent documents

A patent document is a legal document that contains the information and specifications related to a granted patent or a patent application. It serves as a public record of the invention and provides detailed information about its technical aspects and legal protection. The contents of a patent document typically include the following sections:

♦ Legal document

♦ Concise description

♦ Brief summary

♦ Detailed explanation

♦ Legal boundaries

i. Title: The title provides a concise description of the invention.

ii. Abstract: The abstract provides a brief summary of the invention, highlighting its key features and advantages.

iii. Description: The description section is the main body of the patent document. It provides a detailed explanation of the invention, including its technical details, components, operation, and any supporting diagrams or figures. The description should be clear and comprehensive, enabling a person skilled in the relevant field to understand and reproduce the invention.

iv. Claims: The claims section defines the legal boundaries of the invention. It consists of one or more numbered paragraphs that specify the particular features or elements of the invention that are protected by the patent. The claims define the scope of protection and are the basis for deter-

mining patent infringement.

- v. **Drawings:** If necessary, the patent document may include drawings or diagrams that illustrate the invention, its structure, or its operation. The drawings provide visual support and further clarification of the written description.
- vi. **Prior art:** The patent document may include a discussion of prior art, which refers to existing knowledge or inventions that were publicly available before the filing date of the patent application. The prior art section establishes the novelty and inventiveness of the claimed invention by comparing it to existing technology.
- vii. **Priority data:** If the patent application claims priority based on an earlier application, the patent document may include information about the priority application, including the filing date and country.
- viii. **Legal and bibliographic information:** The patent document also contains legal and bibliographic information, such as the patent application number, publication date, patentee's name, and any assigned patent classifications or references.

♦ Illustrate the invention

♦ Novelty and inventiveness of the claimed invention

Information about the priority application

♦ Patent details

Recent development in patent system

The Patents (Amendment) Rules, 2021 introduced various changes to the procedures and regulations concerning patent registration and the rights of patent owners. Individuals affiliated with educational institutions, including students, teachers, and professors, who invent something eligible for a patent during their employment, are entitled to an 80% reduction in patent fees. However, this benefit can only be availed if the patent application is filed in the name of the institution.

♦ Reduction in patent fee

The amendment also expanded to the categories of patents, including Small and Medium Enterprises, overnment departments, Female applicants, Institutions established by a Central, Provisional or State Act, Government companies, Government-aided companies, and applicants under the Patents Prosecution Highway.

♦ Expansion of scope

A new initiative called the Patent Prosecution Highway was introduced to expedite the patent examination process by facilitating the exchange of information between selected patent offices. Compulsory licensing is another concept introduced, granting permission to use, manufacture, import, and sell a patented invention. However, this permission is granted by government authorities, not the patent owners. Compulsory licenses can only be obtained under exceptional circumstances such as national

♦ Expedite the patent examination process

emergencies, extreme urgency, or anti-competitive practices.

Some significant advancements in the global patent system include the following:

♦ Technological advancements

♦ Streamline procedures, enhance cooperation, and improve accessibility

♦ Improving examination efficiency

♦ Emerging technologies

♦ Medicines Patent Pool

- 1. Patentability of software and computer-implemented inventions:** The patentability of software and computer-implemented inventions has been a subject of debate and evolving standards in many jurisdictions. Various countries, including the United States and European countries, have established specific guidelines and legal precedents to determine the patent eligibility of software-related inventions. The interpretation of patentability criteria such as novelty, inventive step, and industrial applicability continues to evolve in light of technological advancements.
- 2. Harmonisation of international patent systems:** Efforts have been made to harmonize patent systems globally, aiming to streamline procedures, enhance cooperation, and improve accessibility. For example, the Patent Cooperation Treaty (PCT) facilitates the international filing and search of patent applications, while the Global Patent Prosecution Highway (GPPH) program allows for expedited examination based on work products from participating patent offices.
- 3. Patent examination efficiency and quality:** Patent offices worldwide have been focusing on improving examination efficiency and ensuring the quality of granted patents. This includes leveraging technology and artificial intelligence to expedite search and examination processes, enhancing the use of prior art databases, and implementing measures to address backlog and reduce pendency periods.
- 4. Patenting in emerging technologies:** The rise of emerging technologies, such as artificial intelligence, blockchain, and biotechnology, has posed new challenges and opportunities for the patent system. Patent offices have been adapting to handle patent applications related to these technologies, considering their unique aspects and legal considerations.
- 5. Access to medicines and patent flexibilities:** Balancing patent protection with access to affordable medicines has been a significant concern globally. Countries have explored legal provisions, such as compulsory licensing and patent flexibilities, to ensure the availability of essential medicines and address public health needs. Initiatives like the Medicines Patent Pool and voluntary licensing agreements aim to facilitate access to patented medicines in developing countries.

- ◆ Shaping of patent law

- ◆ Unique symbol

◆ Protection from third party

from third parties who use them without permission from the trademark owner. Unregistered trademarks, on the other hand, have less legal protection than registered trademarks. As a result, even though the Act does not require trademark registration, it is preferable to do so in order to obtain broad legal protection for the trademark. The legal status of registered and unregistered trademarks are discussed below:

◆ Unauthorised use

A. Legal protection for registered trademark

The Act protects a registered trademark owner from trademark infringement or reputational harm caused by another entity. A trademark infringement occurs when someone other than the registered owner of a trademark uses a mark that is identical or similar to a registered trademark without permission.

In such cases, the trademark owner can take legal action and sue the person who is using the trademark without permission. A trademark registration provides the following advantages that an unregistered trademark does not have in India:

◆ Benefits of trade mark registration

- ◆ It provides prima facie evidence of validity and ownership.
- ◆ It provides statutory protection.
- ◆ It helps to prevent others from unlawful usage of the trademark.
- ◆ It allows for filing a suit for infringement.

Protection against trademark infringement

According to the Act, trademark registration grants the registered proprietor the exclusive right to use the trademark for the goods and services for which the trademark is registered, as well as to seek relief for trademark infringement. The following are the requirements for filing a suit/case for trademark infringement in India:

- ◆ The plaintiff (the party filing the suit for infringement) must be the registered proprietor or owner of the trademark.
- ◆ The defendant (the party against whom the suit for infringement is filed) must use a mark deceptively identical or similar to the plaintiff's trademark.
- ◆ The defendant must use the mark concerning the goods or services for which the plaintiff's mark is registered.
- ◆ The defendant must use the mark in the course of trade, and it must not be accidental.

The plaintiff should file a suit for a trademark infringement

before the district court where the plaintiff resides or carries on business. The court can award the below remedies to the plaintiff in case of trademark infringement:

- ♦ Temporary or permanent injunction.
- ♦ Account of profits, i.e. damages in the amount of the profits gained by the defendant from the infringement.
- ♦ Damages.
- ♦ Destruction of goods containing the infringing mark.
- ♦ Cost of legal proceedings.

♦ Legal remedies

B. Protection for unregistered trademark

In India, trademark ownership is determined on a first-to-use basis. Thus, the common law protects passing-off for unregistered trademarks that are in use. The trademark owner of an unregistered trademark can file a suit of passing-off against a third party for using his/her trademark. Several judicial decisions have provided that a passing-off action means a misrepresentation made by a person in the course of trade to proposed or ultimate customers of a manufacturer of the goods or supplier of services, which acts deliberately done that may cause damages to the business in terms of its reputation and profit.

♦ First-to-use basis

In an infringement case, the burden of proof is on the defendant to show that he/she did not use the registered trademark without any authorisation.

Legal protection against false usage of trademarks

The Act also provides legal protection to registered and unregistered trademark owners against any person who:

- ♦ Falsifies the trademark.
- ♦ Falsely applies the trademark to goods or services without the permission of the trademark owner.
- ♦ Sells, hires, lets or exposes for sale of goods to which any false trademarks are applied.

The court awards the following punishment to a person who commits the above-mentioned offences:

♦ Legal consequences

- ♦ Imprisonment for a period not less than six months which may extend to three years.
- ♦ A fine that is not less than ₹50000 which may extend to ₹200000.

The Act provides that a person is deemed to commit the of-

fence of falsifying a trademark, when such person makes a trademark or deceptively similar trademark without the permission of the trademark owner.

Procedure for applying trademark

To obtain a trademark in India, you need to follow a specific procedure outlined by the Indian Trademarks Act, 1999, and the rules and regulations set by the Trademarks Registry. Here is a general overview of the trademark registration process in India:

♦ Indian Trademark Registry's online database

i. **Trademark search:** Before filing a trademark application, it is advisable to conduct a thorough search to ensure that your proposed mark is not already registered or similar to existing trademarks. You can perform a search through the Indian Trademark Registry's online database.

♦ Submission of application

ii. **Filing the application:** Once you have conducted a search and are confident that your mark is available, you can proceed with filing the trademark application. You can file the application online through the Trademarks Registry's website or physically at one of the five Trademarks Registry offices in India (The Head Office of the Trademarks Registry is at Mumbai and branch offices are at Ahmedabad, Chennai, Delhi and Kolkata. For the purposes functions related to international applications and registrations under the Madrid Protocol, an International Registration wing is set up in the Head Office of the Trademarks Registry at Mumbai).

♦ Formalities and substantive requirements

iii. **Application examination:** After filing, the Trademarks Registry will examine your application for compliance with the formalities and substantive requirements. The examination includes assessing the distinctiveness of the mark and checking for conflicts with existing trademarks. If any objections or discrepancies are identified, you will receive an examination report.

♦ 30 days

iv. **Response to examination report:** If you receive an examination report with objections, you must respond within 30 days from the date of receipt. You can address the objections raised by submitting a written response or attending a hearing, if required. The response should provide valid arguments and evidence to overcome the objections.

♦ 4 months for opposition

v. **Publication in the trademark journal:** If the Registrar is satisfied with your response or if no objections are raised, your application will be published in the Trademark Journal. The purpose of publication is to allow interested parties to oppose the registration within 4 months from the date of publication.

vi. Opposition proceedings: If there are no oppositions or if the opposition is decided in your favour, your application will proceed for registration. However, if an opposition is filed, the Registrar will initiate opposition proceedings, where both parties can present their case, provide evidence, and argue their positions.

◆ Proceedings

vii. Registration and certificate: If your application successfully passes through the opposition stage or if no opposition is filed, the Registrar will issue a registration certificate. You will need to pay the prescribed registration fee, and your trademark will be registered for an initial period of 10 years from the date of application.

◆ 10 years

The actual timeline for obtaining a trademark in India can vary depending on various factors, including the complexity of the application, objections, and opposition proceedings.

1.2.1.3 Copyright

Copyright (or author's right) is a legal term used to describe the rights of creators over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. Some jurisdictions require "fixing" copyrighted works in a tangible form. It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights holders. These rights frequently include reproduction, control over derivative works distribution, public performance and moral rights such as attribution.

◆ Literary and artistic works

Copyrights can be granted by public law which is known by the term "territorial rights". This means that copyrights granted by the law of a certain state, do not extend beyond the territory of that specific jurisdiction. Copyrights of this type vary by country; many countries, and sometimes a large group of countries, have made agreements with other countries on procedures applicable when works "cross" national borders or national rights are inconsistent. Typically, the public law duration of a copyright duration expires 50 to 100 years after the creator dies, depending on the jurisdiction. Some countries require certain copyright formalities to establish copyright, others recognise copyright in any completed work, without formal registration. When the copyright of a work expires, it enters the public domain.

◆ Jurisdiction

Legal protection of copyright

If someone uses a copyrighted work without the owner's per-

mission in a manner that violates the exclusive rights, it constitutes copyright infringement. Copyright owners can take legal action against infringers and seek remedies such as injunctions, damages, and account of profits. Copyright owners have several legal actions available to them against copyright infringers in India. Here are some of the common legal remedies and actions that can be pursued:

♦ Prevent further infringement

♦ Compensation

♦ Declaration of profit from the unauthorised use of copyright

♦ Seizure and destruction of infringing copies

♦ Copyright owner to enter the premises of the infringer

♦ Criminal prosecution

♦ Block access to infringing websites

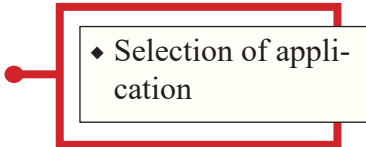
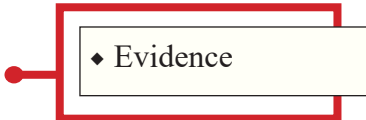
- i. **Injunction:** Copyright owners can seek an injunction from the court to prevent further infringement of their copyrighted work. An injunction is a court order that prohibits the infringer from engaging in the unauthorised use, reproduction, distribution, or public display of the copyrighted material.
- ii. **Damages:** Copyright owners may claim damages or monetary compensation for the losses suffered as a result of the infringement. The damages can include actual damages (losses incurred) and/or statutory damages, which are predetermined amounts set by the court.
- iii. **Account of profits:** Copyright owners can request an account of profits, whereby the infringer is required to disclose and account for any profits or financial gains derived from the unauthorised use of the copyrighted work. The court may award a portion of these profits to the copyright owner.
- iv. **Seizure and destruction:** In some cases, the court may order the seizure and destruction of infringing copies of the copyrighted work, including physical copies, pirated materials, or counterfeit goods.
- v. **Anton piller order:** An Anton Piller order, also known as a “search and seizure” order, allows the copyright owner to enter the premises of the infringer, accompanied by an Authorised officer, to secure evidence of infringement and seize infringing copies.
- vi. **Criminal proceedings:** Copyright infringement in certain circumstances can be a criminal offense in India. The copyright owner can file a complaint with the police, leading to criminal prosecution. If found guilty, the infringer may face fines and imprisonment.
- vii. **Website blocking:** In cases where copyrighted content is being unlawfully distributed or made available on websites, copyright owners can seek a court order to block access to those infringing websites.

Procedure for applying Copyrights

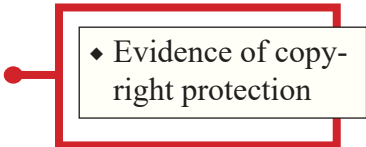
To apply for copyright protection in India, you need to follow the registration process outlined by the Copyright Office. Here is a step-by-step guide on how to apply for copyrights in India:

- i. **Application form:** Obtain the appropriate application form for copyright registration. The forms can be downloaded from the official website of the Copyright Office (<http://copyright.gov.in>).

- ii. **Application fee:** Pay the prescribed application fee for copyright registration. The fee varies depending on the type of work being registered.

- iii. **Form completion:** Fill out the application form with accurate and complete information. Provide details about the work, such as the title, description, language, year of creation, authorship, and ownership information. Different forms are available for different types of works (literary, artistic, musical, etc.), so select the appropriate form based on your work.

- iv. **Supporting documents:** Attach the necessary supporting documents along with the application form. This may include copies of the work being registered, such as manuscripts, books, drawings, photographs, or recordings. In some cases, you may need to provide additional documents, such as a no-objection certificate if the work is created for hire.

- v. **Sending the application:** Submit the completed application form, along with the supporting documents and the application fee, to the Copyright Office. You can send the application by post or courier to the Copyright Office in New Delhi or submit it in person.

- vi. **Acknowledgment:** Once the Copyright Office receives your application, they will issue an acknowledgment receipt. The receipt will have a unique Diary Number, which can be used for tracking the application status.

- vii. **Copyright registration certificate:** After the application is processed and verified, and if there are no objections or discrepancies, the Copyright Office will issue a copyright Registration Certificate. This certificate serves as evidence of copyright protection.


The duration for obtaining the copyright Registration Certificate can vary, but it typically takes several months. The Copyright Office may require additional information or clarification during the registration process, and you may need to respond

◆ Benefits of registration

to any queries or objections raised by the Copyright Office. It's important to note that copyright protection is automatic upon the creation of an original work, and registration is not mandatory. However, registering your work provides additional benefits, such as legal evidence of ownership and the ability to enforce your rights more effectively.

1.2.1.4 Industrial Design

◆ Design protection

It is one of the forms of IPR that protects the visual design of the object which is not purely utilized. It consists of the creation of features of shape, configuration, pattern, ornamentation, or composition of lines or colours applied to any article in two or three-dimensional form or a combination of one or more features. Design protection deals with the outer appearance of an article, including decoration, lines, colours, shape, texture, and materials. It may consist of three-dimensional features such as colours, shapes, and shapes of an article or two-dimensional features such as shapes or surface textures, or other combinations.

◆ Designs Act

The registration and protection of industrial designs in India is administered by the Designs Act, 2000 and corresponding Designs Rules, 2001 which came into force on 11th May 2001 repealing the earlier Act of 1911. The Design Rules, 2001 was further amended by Designs (Amendment) Rules 2008 and Designs (Amendment) Rules 2014. The last amendment in Designs Rules came in to force from 30th December, 2014, which incorporates a new category of applicant as small entity in addition to natural person and other than small entity.

Legal protections of industrial design

Under the Designs Act, 2000 in India, there are several legal actions that can be taken against an infringer of an industrial design. Here are the key provisions and remedies available to the owner of an industrial design:

◆ Legal action

i. Infringement proceedings: If someone uses, sells, or offers for sale a design that is identical or similar to a registered design without the owner's permission, it constitutes infringement. The owner can initiate infringement proceedings before the appropriate court to seek remedies.

◆ Demanding to stop the infringing activities

ii. Cease-and-Desist Notice: The owner of the registered design can send a cease-and-desist notice to the alleged infringer, informing them about the infringement and demanding that they stop the infringing activities. The notice may also request compensation for damages or a licensing agreement.

iii. Injunction: The court may grant an injunction to the own-

er of the registered design, prohibiting the infringer from further manufacturing, selling, or using the infringing design. An injunction is a court order that can be temporary (interim injunction) or permanent (permanent injunction).

◆ Prohibit

- iv. **Damages and accounts of profits:** The owner of the registered design can claim damages from the infringer as compensation for the loss suffered due to the infringement. Alternatively, the court can order an account of profits, requiring the infringer to provide a detailed account of the profits derived from the infringing activities.

◆ Compensation

- v. **Delivery and destruction:** The court may also order the delivery or destruction of the infringing articles, components, or materials used in the production of the infringing design.

◆ Order of the court

- vi. **Conversion of civil action into a criminal complaint:** In cases of intentional or fraudulent copying of a registered design, the owner can file a criminal complaint. If the court finds the accused guilty, they can be subject to imprisonment and/or fines.

◆ Criminal offence

Procedure for applying industrial designs

To obtain industrial design protection in India under the Designs Act, 2000, you need to follow a specific procedure. Here is an overview of the process for obtaining industrial design registration in India:

- i. **Filing the application:** The first step is to file an application for Industrial Design registration with the Design Office of the Indian Patent and Trademark Office (IPTO). The application can be filed online or physically at one of the four regional offices of the IPTO.

◆ Design Office of the Indian Patent and Trademark Office

- ii. **Application requirements:** The application should include the following information and documents:

- Name, address, and nationality of the applicant(s) and designer(s).
- Representation or drawings of the industrial design (multiple views if necessary).
- A brief description explaining the design's features, novelty, and its intended application.
- Details of priority if claiming priority from a previously filed application in a convention country (if applicable).

◆ Required information

- iii. **Formal examination:** After filing, the Design Office conducts a formal examination to ensure that the application meets the requirements and contains all the necessary in-

♦ Verifying requirements

♦ Novelty and originality

♦ Four months

♦ Registration certificate

♦ Geographical location

formation and documents. If any deficiencies are found, the applicant is given an opportunity to rectify them within a specified period.

- iv. **Substantive examination:** Once the formal requirements are met, the Design Office conducts a substantive examination to assess the novelty and originality of the industrial design. The examination is conducted based on the prior art available in India.
- v. **Publication and opposition:** If the application passes the substantive examination, the Design Office publishes the design in the Official Designs Journal. The publication allows interested parties to file oppositions against the registration within four months from the date of publication.
- vi. **Grant of registration:** If no oppositions are filed or if the opposition proceedings are decided in favour of the applicant, the Design Office grants the registration for the industrial design. A registration certificate is issued to the applicant.

1.2.1.5 Geographical Indications

A Geographical Indication (GI) is a name or sign used on products which correspond to a specific geographical location or origin (e.g., a town, region, or country). The use of a Geographical Indication, as an indication of the product's source, is intended as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a good reputation due to its geographical origin. Examples of a region indicative of a distinctive quality are Assam tea, Dehradun Basmati rice, and Nagpur oranges.

GI Tags of Kerala:

- i. Aranmula Kannadi (Handicraft)
- ii. Alleppey Coir (Handicraft)
- iii. Navara Rice (Agricultural)
- iv. Palakkadan Matta Rice (Agricultural)
- v. Malabar Pepper (Agricultural)
- vi. Monsooned Malabar Arabica Coffee (Agricultural)
- vii. Monsooned Malabar Robusta Coffee (Agricultural)
- viii. Alleppey Green Cardamom (Agricultural)
- ix. Maddalam of Palakkad (Handicraft)
- x. Screw Pine Craft of Kerala (Handicraft)
- xi. Brass Brodered Coconut Shell Crafts of Kerala (Handicraft)

- xii. Pokkali Rice (Agricultural)
- xiii. Vazhakulam Pineapple (Agricultural)
- xiv. Cannanore Home Furnishings (Handicraft)
- xv. Balaramapuram Sarees and Fine Cotton Fabrics (Handicraft)
- xvi. Kasargod Sarees (Handicraft)
- xvii. Kuthampully Sarees (Handicraft)
- xviii. Central Travancore Jaggery (Agricultural)
- xix. Wayanad Jeerakasala Rice (Agricultural)
- xx. Wayanad Gandhakasala Rice (Agricultural)
- xxi. Payyannur Parithra Ring (Handicraft)
- xxii. Chendamangalam Dhoties & Set Mundu (Handicraft)
- xxiii. Kaipad Rice (Agricultural)
- xxiv. Chengalikodan Nendran Banana (Agricultural)
- xxv. Kuthampally Dhoties & Set Mundu (Handicraft)
- xxvi. Nilambur Teak (Agricultural)
- xxvii. Wayanaad Robusta Coffee (Agricultural)
- xxviii. Marayoor Jaggery (Marayoor Sharkara) (Agricultural)
- xxix. Tirur Betel Leaf (Tirur Vettala) (Agricultural)

You can search the GI products and their current status in India using this link, <https://search.ipindia.gov.in/GIRPublic/>

Kerala tops GI tag list in FY 2022-23

According to data shared by the GI Registry, Kerala has secured the highest number of Geographical Indication (GI) tags for products among all states in India in FY23. Several products from Kerala, including Attappady Aattukombu Avara (beans), Attappady Thuvara (red gram), Onattukara Ellu (sesame), Kanthalloor Vattavada Veluthuli (garlic), and Kodungallur Pottuvellari (snap melon) have been recognised with the GI tag.

Functions of GIs

- i. GIs identify the source of a product along with quality.
- ii. Assures consumers of a certain standard and unique quality.
- iii. Protects livelihood of artisans and craftsmen.

- iv. Generates employment and additional rents to producers.
- v. Retains the population in the specific regions.
- vi. Provides information to the consumers on the product quality, reputation, characteristics attributed to a geographical area.

Thus, the function of a geographical indication is that it points to a specific place or region of production that determines the characteristic qualities of the product that originates from there.

♦ Link between products and place of production

The product must derive its qualities and reputation from place. Since these qualities depend on the geographical place of production, a specific link exists between the products and their original place of production.

Need for protection of GIs

- i. Identify a product source along with quality;
- ii. Inform customers that the product has a certain quality, reputation or other exquisite quality due to their geographical origin;
- iii. Trade interests are protected as GI tag suggest that the product comes from a particular area.
- iv. It protects livelihood of artisan and craftsmen;
- v. It assures consumers of a certain standard and unique quality;
- vi. GI tag qualifies for protection under TRIPs and domestic IP laws;
- vii. Secures customers loyalty for the product; and
- viii. Provides cultural protection for the craftsmen/artisans/producers.

Legal protections of GI

In India, the legal protection of Geographical Indications (GIs) is primarily governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999. This act provides a framework for the registration and protection of GIs in India. Here are the key legal protections of GIs in India:

♦ Application for registration

1. **Registration:** The Act establishes a registration system for GIs. Producers or organizations representing a specific geographical area can apply for the registration of a GI. The application should contain the details of the geographical area, the goods or products associated with the GI, and the characteristics that make them distinct.

2. **Prohibition of unauthorised use:** Once a GI is registered, it is protected against unauthorised use. No person or entity can use a registered GI in relation to goods that do not originate from the specified geographical area. This protection extends to both Indian and foreign goods.
3. **Infringement actions:** The Act provides for civil and criminal remedies against the infringement of a registered GI. The registered proprietor of a GI can take legal action against any person or entity that uses a registered GI without authorisation. The remedies include injunctions, damages, and even imprisonment in case of criminal offenses.
4. **Authorised use:** The Act allows for the authorised use of a registered GI by producers or organisations from the specified geographical area. It can use the GI to market and promote their products, thereby benefiting from the reputation and quality associated with the GI.
5. **Licensing and assignment:** The Act allows for the licensing and assignment of GIs. The registered proprietor of a GI can license others to use the GI in return for royalties or other considerations. They can also assign their rights in the GI to another person or entity.
6. **Protection for foreign GIs:** India provides protection to GIs of foreign countries through an international treaty called the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Under TRIPS, India is obligated to protect GIs of foreign countries on a reciprocal basis.

♦ Protection

♦ Civil and criminal remedies

♦ Recognition

♦ Royalties

♦ International treaty

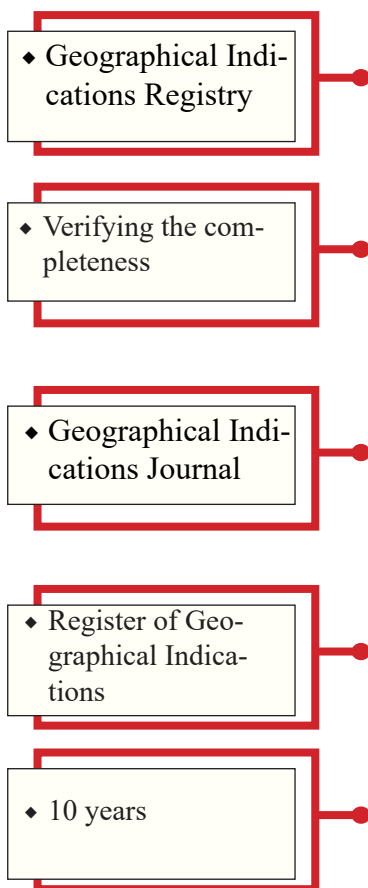
Procedure for applying GI

The procedure for applying for a Geographical Indication (GI) registration in India, as per the Geographical Indications of Goods (Registration and Protection) Act, 1999, involves the following steps:

1. **Determine eligibility:** Ensure that the product or goods for which you are seeking GI protection qualify under the Act. GIs are granted to goods that possess qualities, reputation, or characteristics attributable to their geographical origin.
2. **Preparing the application:** Collect all the necessary information and documentation required for the application. This includes details about the geographical area, the specific qualities or characteristics of the product, and evidence of the link between the product and the geographical area.
3. **Filing the application:** Submit the application to the Geographical Indications Registry, which is under the control

♦ Eligibility checking

♦ Collection of documents



of the Office of the Controller General of Patents, Designs, and Trademarks. The application should be filed in the prescribed format along with the required fees.

4. **Examination:** The Registry examines the application to ensure it meets the necessary requirements. This includes verifying the completeness of the application, conducting a preliminary search to check for any conflicting or similar GIs, and assessing the compliance with the Act's provisions.
5. **Publication and opposition:** If the application is found to be in order, it is published in the Geographical Indications Journal. During this period, which lasts for a minimum of three months, any person can file an opposition to the registration of the GI if they believe it conflicts with their rights or if they have any other valid grounds for opposition.
6. **Registration:** If no opposition is filed, or if an opposition is dismissed, the GI application proceeds to registration. The GI is entered into the Register of Geographical Indications, and a certificate of registration is issued to the applicant.
7. **Renewal:** The registered GI must be renewed periodically. The initial term of registration is ten years, and it can be renewed indefinitely for further periods of ten years each.

Summarised Overview

Intellectual property rights (IPRs) are legal protections that give creators of original works of authorship the exclusive right to exploit them for a certain period of time. IPRs come in a variety of forms, including patents, trademarks, copyrights, geographical indications (GIs), and industrial designs.

Patents protect new inventions, giving the inventor the exclusive right to make, use, sell, or import the invention for a period of 20 years. Trademarks protect words, phrases, symbols, and other devices that identify and distinguish the goods or services of one party from those of others. Copyrights protect original works of authorship, such as books, movies, music, and software. GIs protect names that identify products that come from a particular region and have a specific quality, reputation, or other characteristic attributable to that region. Industrial designs protect the ornamental features of a product, such as its shape, pattern, or ornamentation. IPRs play an important role in the global economy. They encourage innovation and creativity, protect investments in research and development, foster fair competition, and promote economic growth. IPRs give inventors and creators the incentive to invest their time and resources in creating new and innovative works. This leads to new products, services, and technologies that benefit society as a whole. IPRs also protect investments in research and development. This encourages businesses to invest in new technologies and products, which can lead to economic growth.

Self-Assessment Question

1. What is the purpose of a patent?
2. What is the difference between a trademark and a copyright?
3. How long does a trademark registration last?
4. What is the significance of a Geographical Indication (GI)?
5. How does one enforce their copyright?
6. Can patents be granted for software inventions?
7. What is the primary purpose of industrial design protection?
8. How can one differentiate their product using a trademark?

Assignments

1. Write note on the relevance of geographical indication in India
2. Write a short note on the recent laws related to intellectual property rights announced by Supreme Court.
3. Explain Intellectual Property Rights with the help of examples
4. Analyse the implications of emerging technologies, such as artificial intelligence and blockchain, on intellectual property rights.
5. Discuss the concept of fair use and its role in balancing intellectual property rights with freedom of expression and creativity.
6. Evaluate the effectiveness of alternative models, such as Creative Commons licenses and open-source software, in promoting innovation while respecting intellectual property rights.
7. Discuss the importance of intellectual property rights in fostering innovation and creativity in a knowledge-based economy.
8. Compare and contrast the protection of patents and copyrights as forms of intellectual property rights.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

02 BLOCK

COMMERCE LAWS AND REGULATIONS IN INDIA

Block Content

- Unit - 1 | Competition Act 2002 |
- Unit - 2 | Information Technology Act 2000 |
- Unit - 3 | Enforcement Of Online Contracts |

Unit 1

Competition Act 2002

Learning Outcomes

After completing this unit, the learners will be able to:

- ♦ familiarise with the concept of Competition Act 2002.
- ♦ identify the significance of competition for the fulfilment of national objectives.
- ♦ differentiate the horizontal and vertical agreement.
- ♦ know how combinations and mergers are regulated as per the Competition Act 2002
- ♦ analyse the importance of Competition Commission in the implementation of the Competition Act 2002.

Background

The Competition Act of 2002 is a comprehensive competition law in India that replaced the outdated Monopolies and Restrictive Trade Practices Act, 1969. The need for a new competition law was recognized due to the significant changes in the Indian economy since the introduction of the new industrial policy in 1999. During the year 1999 the Government of India appointed a committee to review the competition law framework in the country. The committee submitted a report in 2000, which recommended a new competition law that would align with global best practices and address the changing economic realities of India.

Based on the committee's recommendations, the Competition Act was drafted and introduced in the Lok Sabha (lower house of the Indian Parliament) in 2001 and passed the same on 20 May 2003. The Competition Act is a comprehensive legislation that covers all types of enterprises, including private and public companies, partnerships, and individuals. The Act aims to promote and sustain competition in the market, protect consumer interests, and prevent anti-competitive practices. The Competition Commission of India (CCI) is the primary regulator under the Act, with the power to investigate and penalise companies for anti-competitive practices. The CCI is responsible for promoting competition, protecting the interests of consumers, and ensuring a fair and transparent market. The Competition Act has undergone several amendments since its introduction, to align it with changing market conditions and global best practices.

Keywords

Horizontal agreement, Vertical agreement, Abuse of dominant position, Competition Commission of India

Discussion

2.1.1 Competition Act 2002

- ◆ Promote and regulate competition

The Competition Act of 2002 is a comprehensive competition law in India. The Competition Act was introduced to promote and regulate competition in the market, protect consumer interests, and prevent anti-competitive practices. The Act aims to ensure a fair opportunity for all market players, prevent monopolies, promote innovation and efficiency, and ultimately benefit consumers. The Competition Act covers all types of enterprises, including private and public companies, partnerships, and individuals. It prohibits anti-competitive agreements, abuse of dominant position, and regulates combinations (mergers and acquisitions). Anti-competitive agreements are agreements between enterprises that restrict competition, such as price-fixing, bid-rigging, and market-sharing. The Competition Act prohibits such agreements and provides for penalties for those found to have violated the Act.

- ◆ Playing field for all market players

The Competition Act has undergone several amendments since its introduction, to align it with changing market conditions and global best practices. The latest amendment was in 2019, which introduced significant changes to the merger control provisions, among other changes. The Competition Act is an essential piece of legislation that plays a critical role in promoting competition in the Indian market. It has contributed to the growth of the Indian economy by providing a level playing field for all market players, preventing monopolies, promoting innovation and efficiency, and ultimately benefiting consumers. The Act has had a significant impact on various sectors of the Indian economy. It has led to increased competition in every sector, resulting in lower prices, better quality products and services, and increased innovation. The Competition Act has also contributed to the growth of small and medium-sized enterprises (SMEs) in India. SMEs have traditionally faced difficulties competing with larger enterprises, but the Act has provided them with a level playing field and allowed them to grow and compete with larger players.

2.1.2 Salient Features of the Competition Act 2002

The Competition Act has come into force from March 31st 2002 by replacing Monopolies and Restrictive Trade Practices Act, 1969.

The following are the important features of the Competition Act:

- i. Competition Act, 2002 strives for the economic development of the country through the establishment of Competition Commission.
- ii. This act includes nine chapters. Each chapter is related with different aspects of the competition.
- iii. Anti-Competitive Agreement are prohibited as per this Act due to its adverse effect on competition. . Anti-Competitive Agreement may be horizontal or vertical. Both are void as per this Act. Section 3 of the act gives a detailed explanation of the Anti-Competitive Agreement and its effect on competition.
- iv. This Act does not allow any enterprise to abuse its dominant position.
- v. If the transaction meets the threshold limit for combination, then there is an obligation to give notice to the Competition Commission of India.
- vi. Every combination which creates appreciable adverse effect on competition is prohibited as per this act.
- vii. Establishment of Competition Commission of India. It is a high-powered body constituted by the government to probe into the anti-competitive agreement which causes any abuse of dominant position in the Indian market. The commission can take cases on suo-moto basis. The commission can exercise the powers as per the provisions of this Act.
- viii. As per Section 35 of the Act, following persons are entitled to appear before the Commission
 - ♦ The plaintiff; or
 - ♦ The defendant; or
 - ♦ The Director General

They may either appear in person or authorise appropriate persons like CAs or CMAs or CSs or Advocates.

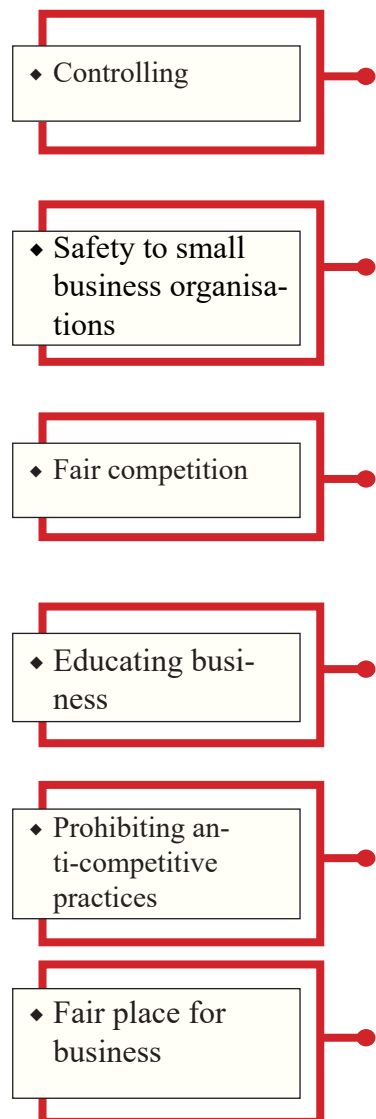
- ix. National Company Law Appellate Tribunal constituted under section 410 of the Companies Act, 2013 is the current Appellate Tribunal for the purposes of this Act.
- x. Competition (Amendment) Act 2007 and Competition

(Amendment) Act 2009 are the important amendments of the 2002 Act.

- xi. The Competition Act 2002 can be amended by inserting provisions in the Finance Acts which can be passed by the Indian Parliament.
- xii. The competition Act 2002 stands for the efficient allocation of resources in the Indian Economy.
- xiii. Every company and its officers will be liable for punishment in the case of contravention of the provisions of this Act.
- xiv. The Act do not admit bid rigging on contracts especially in the state-run institutions.

2.1.3 Objectives of Competition Act 2022

The objectives of the Competition Act 2002 are:

- 
- ♦ Controlling
 - ♦ Safety to small business organisations
 - ♦ Fair competition
 - ♦ Educating business
 - ♦ Prohibiting anti-competitive practices
 - ♦ Fair place for business
- i. Prohibiting anti-competitive agreements:* The Act prohibits agreements that have the effect of restricting or distorting competition in the market. This includes agreements among businesses to fix prices, limit production or supply, or allocate markets.
 - ii. Preventing abuse of dominant position:* The Act prohibits businesses from abusing their dominant position in the market. This includes practices such as charging excessive prices, imposing unfair conditions, or refusing to deal with competitors.
 - iii. Regulating mergers and acquisitions:* The Act regulates mergers and acquisitions to ensure that they do not result in a significant adverse effect on competition in the market.
 - iv. Promoting competition advocacy:* The Act empowers the Competition Commission of India (CCI) to promote competition advocacy, which involves educating businesses and consumers about the benefits of competition and the risks of anti-competitive practices.
 - v. Protecting the interests of consumers:* The Act aims to protect the interests of consumers by promoting competition in the market and prohibiting anti-competitive practices that harm consumers.

The Competition Act 2002 seeks to create a level playing field for businesses, promote competition in the market, and ensure that consumers are protected from anti-competitive practices.

2.1.3.1 Differences between the MRTP Act 1969 and the Competition Act 2002

Table 2.1.1 Differences between the MRTP Act 1969 and the Competition Act 2002.

MRTP ACT 1969	Competition Act 2002
It did not contain any competition Advocacy provisions	It contains competition Advocacy provisions
The main focus of the Act was consumers	Larger interest of public welfare is the main focus of the Competition Act 2002
Domination of monopolistic firms was determined on the basis of the size of the firm.	Structure of the firm is important as per the Competition Act 2002 in the determination of the dominance.
Event though, the MRTP Act listed out offences, there was no specific corresponding penalties.	The Competition Act 2002 includes specific penalty for each offence.
The MRTP Act was the act of pre-liberalisation and pre-globalisation era,	Competition Act 2002 is the act of the liberalisation and globalisation era.
Dominant position by a firm was a major problem as per the MRTP Act 1969.	Abuse of such dominant position by a firm is to be prevented as per this Act. Dominant position by a firm is not a major problem.

2.1.4 Scope or Focus of the Act

i. Anti-competitive agreements

The Competition Act prohibits agreements between businesses that have the effect of limiting or controlling the production, supply, distribution, or acquisition of goods or services. This includes agreements between competitors that fix prices, divide markets, or rig bids. The Act also prohibits vertical agreements between businesses that lead to the foreclosure of competition, such as exclusive dealing arrangements, tied selling, and refusal to deal.

♦ Limiting and controlling

ii. Abuse of dominant position

The Competition Act prohibits businesses with a dominant market position leading to abuse their position to eliminate or harm competition. This includes practices such as predatory pricing, tying and bundling, refusal to deal, and discriminatory pricing. The Act also provides for the determination of what constitutes a dominant position and the factors that may be considered in assessing dominance.

♦ Preventing the dominance

iii. Merger control

The Competition Act requires businesses that propose to merge or acquire control over other businesses to notify the Competition Commission of India (CCI) for approval. The CCI evaluates the merger or acquisition for its impact on competition and may impose conditions or prohibit the merger if it has an adverse effect on competition.

♦ Restriction

iv. Competition advocacy

The Competition Act provides for the CCI to undertake advocacy activities to promote competition and raise awareness of competition law. This includes conducting studies and research, organizing conferences and seminars, and providing advice and guidance to businesses and other stakeholders.

♦ Promote competition

v. Consumer protection

The Competition Act aims to protect the interests of consumers by prohibiting unfair trade practices and promoting consumer welfare. The Act prohibits false or misleading advertisements, deceptive pricing, and unfair business practices that harm consumers. The Act also provides for the establishment of the Consumer Affairs Authority, which is responsible for promoting and protecting consumer interests.

♦ Consumer affairs authority

vi. Penalties and remedies

The Competition Act provides for penalties and remedies against businesses that violate the provisions of the Act. This includes the imposition of fines, disgorgement of profits, and injunctive relief. The Act also provides for compensation to consumers who have suffered harm as a result of anti-competitive practices.

♦ Compensation

vii. Extraterritorial application

The Competition Act has extraterritorial application and applies to businesses that operate outside India if their activities have an impact on competition in the Indian market. This allows the CCI to investigate and take action against businesses that engage in anti-competitive practices that harm competition in India.

♦ Investigation

viii. Sector-specific regulations

The Competition Act applies to all sectors of the economy, including goods and services, and public and private sectors. However, there are sector-specific regulations that may have

an impact on competition in certain sectors. For example, the Telecom Regulatory Authority of India (TRAI) regulates competition in the telecommunications sector, while the Securities and Exchange Board of India (SEBI) regulates competition in the securities market.

♦ Specific laws

2.1.5 Anti-Competitive Agreement

Sec 2(b) of the Competition Act 2002 defines the term agreement as follows: -

“Agreement” includes any arrangement or understanding or action in concert,

- i. Whether or not, such arrangement, understanding or action is formal or in writing; or
- ii. Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

♦ Agreement

Sec 3 of the Act gives explanation to the term Anti-Competitive Agreement.

1. Sec 3(1)

Any agreement with respect to the following should be known as Anti-Competitive Agreement if it causes an appreciable adverse effect on competition within India. Therefore, no enterprise or association of enterprises shall not enter into such type of agreements.

- i. production of goods
- ii. supply of goods
- iii. distribution of goods.
- iv. storage of goods.
- v. acquisition of goods
- vi. control of goods
- vii. provision of services,

♦ Adverse effect on competition

Following are the Anti-competitive agreements. Anti-Competitive agreements may be

- a. Horizontal
- b. Vertical

2. Sec 3(3) horizontal anti-competitive agreements

Sec 3(3) of the Act deals with horizontal agreements. Any

agreement entered into between enterprises or associations of enterprises or persons who are engaged in identical or similar trade of goods or provision of services. They cause appreciable adverse effect on competition and the agreements are made among the persons. The agreements which determines purchase or sale prices. The following are examples.

♦ Identical or similar business

- i. The agreements which can limit or control production, supply, markets, technical development, investment or provision of services;
- ii. The agreements which help to share the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- iii. The agreements which directly or indirectly result in bid rigging or collusive bidding (also refer explanation to the Sec 3(3)).

3. Sec 3(4) of the Act gives explanation about vertical Anti-Competitive agreements.

Vertical anti-competitive agreements

Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, with respect to the following should be known Vertical Anti-Competitive agreements if it causes an appreciable adverse effect on competition within India. Therefore, no enterprise or association of enterprises shall not enter into such type of agreements.

♦ Enterprises engaged in different stages of production

- i. production of goods
- ii. supply of goods
- iii. distribution of goods.
- iv. storage of goods.
- v. acquisition of goods
- vi. control of goods
- vii. provision of services

Types of Vertical Anti-Competitive agreements:

Vertical agreements are agreements between businesses operating at different levels of the supply chain, such as agreements between manufacturers and distributors or between suppliers and retailers. These agreements can potentially restrict compe-

tition and harm consumer welfare. In India, vertical anti-competitive agreements are regulated by the Competition Act, 2002, and are subject to scrutiny by the Competition Commission of India (CCI).

♦ Different levels of the supply chain

There are various types of vertical anti-competitive agreements that can be deemed unlawful under Indian competition law. These include:

► Resale Price Maintenance (RPM)

RPM refers to an agreement where a manufacturer or supplier sets a minimum resale price for its products, preventing the retailer from selling below that price. RPM agreements can restrict price competition and limit consumer choice. For example, if a manufacturer of electronic goods enters into an agreement with retailers, mandating them to sell the goods at a fixed minimum price, it can limit price competition and affect consumers' ability to find lower-priced options.

♦ Minimum resale price

► Exclusive distribution agreements

These agreements involve an arrangement where a manufacturer or supplier grants exclusive rights to a particular distributor to sell its products within a specific territory or to a specific group of customers. While exclusive distribution agreements are generally permissible, they can become anti-competitive if they create barriers to entry for other distributors or limit consumer access to alternative suppliers. For instance, if a mobile phone manufacturer enters into an exclusive distribution agreement with a single retailer, effectively excluding other retailers from selling its products, it can restrict competition and limit consumer choices.

♦ Specific retailer

► Tie-in arrangements

A tie-in arrangement occurs when a supplier put conditions of the sale of one product (the tying product) upon the buyer's agreement to purchase another product (the tied product). These arrangements can be anti-competitive when they restrict consumer choice or prevents market access for competing products. For example, if a software company ties the sale of its operating system with the purchase of its productivity suite, thereby making it mandatory for consumers to buy both products together, it can limit consumer options and harm competition.

♦ Tied and tying product

► Refusal to deal

A refusal to deal occurs when a dominant supplier refuses to supply goods or services to a particular customer or group

♦ Tying sales limits the consumer choice

of customers without any reasonable justification. If a dominant supplier withholds supply to foreclose competition or to harm competitors, it is considered anti-competitive. For instance, if a major pharmaceutical company refuses to supply essential medicines to a competitor pharmacy chain, it can restrict competition and harm consumer access to those medicines.

Section 3(5) of the Competition Act, 2002 in India provides protection to agreements that are entered into for the protection of certain rights as specified under various acts. This section states that agreements that are undertaken to protect rights as per the following acts shall not be considered as anti-competitive agreements:

♦ Protection to agreements

1. The Copyright Act, 1957
2. The Patents Act, 1970.
3. The Trade and Merchandise Marks Act, 1958
4. The Trade Marks Act.
5. The Geographical Indications of Goods (Registration and Protection) Act of 1999
6. The Designs Act of 2000.
7. The Semi-conductor Integrated Circuits Layout-Design Act 2000.

♦ Jurisdiction of the competition Act

The inclusion of Section 3(5) in the Competition Act recognises that certain agreements entered into for the protection of intellectual property rights, such as copyrights, patents, trademarks, Geographical Indications, and designs, should not be considered anti-competitive. This provision acknowledges the importance of encouraging innovation, creativity, and the protection of intellectual property, while ensuring that such agreements do not unduly restrict competition in the market.

2.1.6 Abuse of Dominant position (Sec 4)

♦ Use of market power to restrict competition

Abuse of dominant position is a type of anti-competitive behaviour that is prohibited under the Competition Act 2002. It refers to the conduct of a dominant enterprise in the market that uses its market power to restrict competition, to the detriment of consumers and other competitors. A dominant enterprise is one that has the ability to operate independently of competitive forces in the market.

Section 4 of the Competition Act prohibits the abuse of dominant position in India. It defines dominant position as a position of strength enjoyed by an enterprise in the relevant market which enables it to operate independently of competitive forces in the

market or affect its competitors or consumers or the relevant market in its favour. An enterprise is considered to have abused its dominant position if it engages in any conduct that has the effect of denying market access to its competitors or limiting the production or technical development of goods or services to the prejudice of consumers or engages in practices that lead to the imposition of unfair or discriminatory conditions or price.

◆ Prohibits the abuse of dominant position

Abuse of dominant position can be seen in the following circumstances: -

1. When an enterprise or group of enterprises imposes unfair or discriminatory (either directly or indirectly)
 - a. Stipulations in purchase or sale of goods or service; or
 - b. Price related with purchase or sale (including predatory price) of goods or service.
 - c. The price needed to meet the competition is an exception to the above clause2 (a).
2. When an enterprise or group of enterprises limiting or restricting: -
 - a. Production of goods or provision of services or
 - b. Technical or scientific development relating to goods or services to the prejudice of consumers; or
3. When an enterprise or group of enterprises denies market access to other persons in any manner; or
4. If any person makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
5. When an enterprise or group of enterprises uses its dominant position in one relevant market to gain advantage in another relevant market.

◆ Types of abuse of dominant position

Regulation of combinations

The regulation of combinations or mergers and acquisitions (M&A) is an important aspect of competition law. The purpose of such regulation is to prevent firms from engaging in anti-competitive M&A activities that could harm competition, consumers, and other firms in the market. In many countries, the regulation of combinations is carried out by a competition authority, such as the Federal Trade Commission (FTC) in the United States or the European Commission (EC) in the European Union. The competition authority is responsible for reviewing proposed

◆ Merger and acquisition

mergers and acquisitions to determine whether they are likely to have an adverse effect on competition. The competition authority typically considers a range of factors when reviewing a proposed combination, including the size and market power of the firms involved, the structure of the relevant markets, the potential for coordinated or unilateral effects on competition, and the potential impact on consumers and other market participants.

♦ Regulatory body

In India, the regulation of combinations, including mergers and acquisitions, is governed by the Competition Act, 2002, and the Competition Commission of India (CCI) is the regulatory body responsible for enforcing the Act. The CCI ensures that combinations do not have an adverse impact on competition in the relevant market. Under the Competition Act, a combination is defined as an acquisition of one or more enterprises by one or more persons, or merger or amalgamation of enterprises that crosses certain thresholds. These thresholds are based on the assets and turnover of the enterprises involved in the combination, and the notification to the CCI is mandatory if these thresholds are crossed.

♦ Examination by CCI

Upon receiving a notification of a combination, the CCI examines whether the combination is likely to have an appreciable adverse effect on competition in the relevant market. The CCI evaluates various factors such as market shares, barriers to entry, countervailing buyer power, and efficiencies to determine the likely effect of the combination on competition. If the CCI finds that the combination is likely to have an adverse impact on competition, it may propose modifications to the combination to address the competition concerns. These modifications may include divestitures or behavioural remedies. If the parties do not accept the proposed modifications, the CCI can order the parties to comply with the modifications, or in severe cases, prohibit the combination.

♦ Competition Commission of India

In addition to the Competition Act, the Indian government has also issued rules and regulations to govern the regulation of combinations. These include the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, which set out the procedures for filing and examining notifications of combinations. The regulation of combinations in India is an important tool for promoting competition and protecting consumers in the market. By preventing anti-competitive mergers and acquisitions, the Competition Act helps to ensure that the market remains open, competitive, and efficient, ultimately benefiting consumers and promoting economic growth.

2.1.7 Amalgamation

Under the Competition Act, 2002 in India, amalgamation is defined as the combination of two or more enterprises into one new entity, through an agreement or otherwise, and includes mergers and acquisition of control, assets or shares. The Competition Commission of India (CCI) is responsible for regulating amalgamations and ensuring that they do not result in anti-competitive practices that harm competition in the relevant market.

- ♦ Combination of two or more enterprises into one new entity

Section 6 of the Competition Act mandates that an enterprise proposing to enter into an amalgamation must notify the CCI, if it meets the asset or turnover thresholds specified under the law. The CCI examines the notification to determine whether the amalgamation is likely to cause an appreciable adverse effect on competition in the relevant market. The CCI evaluates the effects of the amalgamation on various factors such as market shares, entry barriers, countervailing buy power, and efficiencies. If the CCI finds that the amalgamation is likely to cause an adverse effect on competition, it may require the parties to modify the amalgamation to address the competition concerns. The CCI may also prohibit the amalgamation if it is likely to cause significant harm to competition. In such cases, the parties may appeal to the National Company Law Tribunal (NCLT) for a review of the decision.

- ♦ Modification of terms

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, lays down the procedures for filing and examining notifications of amalgamations. The regulations provide for a detailed procedure for submitting the notification, the time frame within which the CCI is required to examine the notification, and the manner in which the parties may request modifications or appeal against the decision of the CCI. The Competition Act, 2002 in India provides a comprehensive framework for regulating amalgamations and ensuring that they do not result in anti-competitive practices. The CCI plays a vital role in regulating amalgamations and ensuring that they do not harm competition in the relevant market.

- ♦ Comprehensive framework

2.1.8 Mergers and Acquisitions

In India, mergers and acquisitions are regulated by the Competition Act, 2002, and overseen by the Competition Commission of India (CCI). The Act aims to promote and sustain competition in the market, prevent anti-competitive practices, and protect the interests of consumers. The merger control provisions of the Competition Act govern the process of reviewing

- ♦ Regulation

and approving mergers to ensure that they do not have adverse effects on competition.

Here is an overview of the merger process under the Competition Act in India:

1. Filing of notice

The first step is for the parties involved in the merger to file a notice with the CCI. The notice should be submitted within 30 days of the execution of the binding document related to the merger, such as a merger agreement or a memorandum of understanding. The notice should contain relevant details of the merger, including the nature of the transaction, details of the parties involved, and the impact on competition.

- ◆ 30 days

2. Review by CCI

After receiving the notice, the CCI reviews the merger to determine whether it will have an appreciable adverse effect on competition in the relevant market(s) in India. The CCI examines factors such as market concentration, entry barriers, market share of the merging parties, and the likelihood of the creation or strengthening of a dominant position.

- ◆ Verification

3. Public and stakeholder consultation

The CCI may seek public comments and consult with stakeholders, including competitors, suppliers, and customers, to gather additional information and perspectives on the merger's potential impact on competition.

- ◆ Comments from public and stakeholders

4. Approval or investigation

Based on its review, the CCI may take one of the following actions:

- ◆ Proceed if the merger is not harmful

- ◆ In depth investigation if merger seems to be harmful

- ◆ **Approval:** If the CCI is satisfied that the merger is unlikely to cause an appreciable adverse effect on competition, it may approve the merger unconditionally or subject to certain modifications.
- ◆ **Investigation:** If the CCI has concerns regarding the adverse impact of the merger on competition, it may initiate an in-depth investigation, known as the “Phase II” investigation, which can last up to 210 days. During this investigation, the CCI can request additional information from the parties, examine market dynamics, and seek expert opinions.

5. Decision

Once the investigation is complete, the CCI makes a final decision based on the findings. If the CCI finds that the merger is likely to cause an appreciable adverse effect on competition, it may prohibit the merger or approve it with certain conditions, such as divestiture of certain assets or compliance with specific behavioural or structural remedies.

♦ Final decision

2.1.9 Competition Commission of India (CCI)

The Competition Commission of India (CCI) is a regulatory body established under the Competition Act, 2002, with the mandate to promote and sustain competition in the Indian market. Sec 7 of the Act deals with Competition Commission of India (CCI). The CCI is responsible for preventing anti-competitive practices, ensuring fair market competition, and protecting the interests of consumers in India.

♦ Regulatory Body

- ♦ Established by the Central Government with effect from 14th October 2003.
- ♦ It consists of a chairperson and not less than two and not more than six other members appointed by the Central Government.

Features of the Competition Commission of India (CCI)

The Competition Commission of India (CCI) possesses the following features based on the provided points:

1. The Central Government has the authority to appoint the Competition Commission of India as per the provisions of the Competition Act, 2002.
2. The CCI is a body corporate with the power to act in accordance with the provisions of the Act. It has the capacity to exercise its functions and powers independently.
3. The CCI has perpetual succession, which means it continues to exist until it is dissolved. It also has a common seal to authenticate its official documents.
4. The CCI has the power to acquire, hold, and sell any type of property, including movable and immovable assets, as required for its functioning.
5. The CCI can enter into contracts and agreements with various stakeholders to carry out its activities effectively.
6. The CCI can sue or be sued in its own name, indicating its separate legal entity from its members or employees.

♦ Establishment by Central Government

♦ Body corporate

♦ Perpetual succession and common seal

♦ Power to acquire and hold property

♦ Contractual capacity

♦ Legal entity

♦ Head office and regional office	7. The CCI's head office is located at a place (New Delhi) determined by the government, and it has the authority to establish regional offices in different parts of India.
♦ Enforcement and advocacy	8. The CCI has the mandate to use both enforcement and advocacy measures to address market-distorting practices, such as monopolistic trade practices, and promote healthy competition.
♦ Suo-Motu powers	9. The CCI can initiate cases on its own, without receiving a complaint, and has the power to impose monetary penalties on parties found to be in contravention of the Competition Act.
♦ Collaboration	10. The CCI can collaborate with competition authorities from other countries to exchange information, experiences, and best practices in order to enhance its effectiveness.
♦ Enquiry of bid-rigging	11. The CCI has the authority to investigate cases of bid-rigging involving various stakeholders to ensure fair competition in the market.
♦ Power to make regulations	12. The CCI has the power to make regulations in alignment with the Competition Act and the rules related to the Act, as per Section 64 of the Act.
♦ Tenure	13. The Chairman and other members of the CCI hold office for a term of five years from the date of their appointment.
♦ Director general	14. The CCI can appoint a Director General and other employees to assist in carrying out its activities effectively.
♦ Enforcement contravention	15. The CCI has the authority to inquire into alleged contraventions of Section 3 or Section 4 of the Competition Act, 2002.
♦ Superseding powers	16. The CCI receives grants from the Government of India for conducting its activities, and its accounts are audited by the Comptroller and Auditor General of India (CAG).
♦ Grants and Audit	17. In certain circumstances, as per Section 56 of the Act, the Central Government has the authority to supersede the Competition Commission of India.
♦ Reporting	18. Information reporting: Any person can provide information to the CCI, which then acts upon the information, subject to the provisions of the Competition Act, 2002.

2.1.10 Powers and Functions of CCI

♦ Apex institution	The Competition Commission of India is established under Chapter III Section 7 of the Competition Act, 2002. The act includes duties, responsibilities and functions of the Competition Commission. It is the apex institution and it has the responsibility
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ity to implement the act including Competition Advocacy as per sec 49 of the act. Following are the powers of C.C.I.

Powers of C.C.I.

Chapter IV of the Competition Act 2002 deals with the duties, powers and functions of the competition commission of India. Under the Competition Act 2002, the Competition Commission of India (CCI) is vested with various powers and functions to ensure fair competition in the market. Here are the key powers and functions of the CCI:

1. **Regulation and enforcement (Section 19):** The CCI has the power to regulate and enforce competition laws to prevent anti-competitive practices such as abuse of dominant position, anti-competitive agreements, and combinations that have an adverse impact on competition.
2. **Inquiry into anti-competitive practices (Section 26):** The CCI can conduct inquiries into alleged contraventions of the provisions of the Act relating to anti-competitive agreements, abuse of dominant position, and combinations.
3. **Imposition of penalties (Section 27):** The CCI has the authority to impose penalties on entities found guilty of anti-competitive practices, including fines up to 10% of the average turnover of the last three financial years.
4. **Merger control (Sections 5 and 6):** The CCI reviews and approves mergers, acquisitions, and combinations that may have an appreciable adverse effect on competition in the market. It ensures that such transactions do not result in a substantial lessening of competition.
5. **Competition advocacy (Section 49):** The CCI engages in advocacy activities to promote competition and create awareness about the benefits of competition law and policy. It advises the government on matters related to competition policy and market regulations.
6. **Competition research and advocacy fund (Section 37A):** The CCI has the power to establish a fund for promoting research, advocacy, and training activities related to competition law and policy.
7. **Leniency provisions (Section 46):** The CCI has the authority to grant leniency to entities that provide vital information about anti-competitive practices in exchange for reduced penalties or immunity from prosecution.
8. **Market studies (Section 26(1A)):** The CCI can conduct

♦ Controlling power

♦ Enquiry

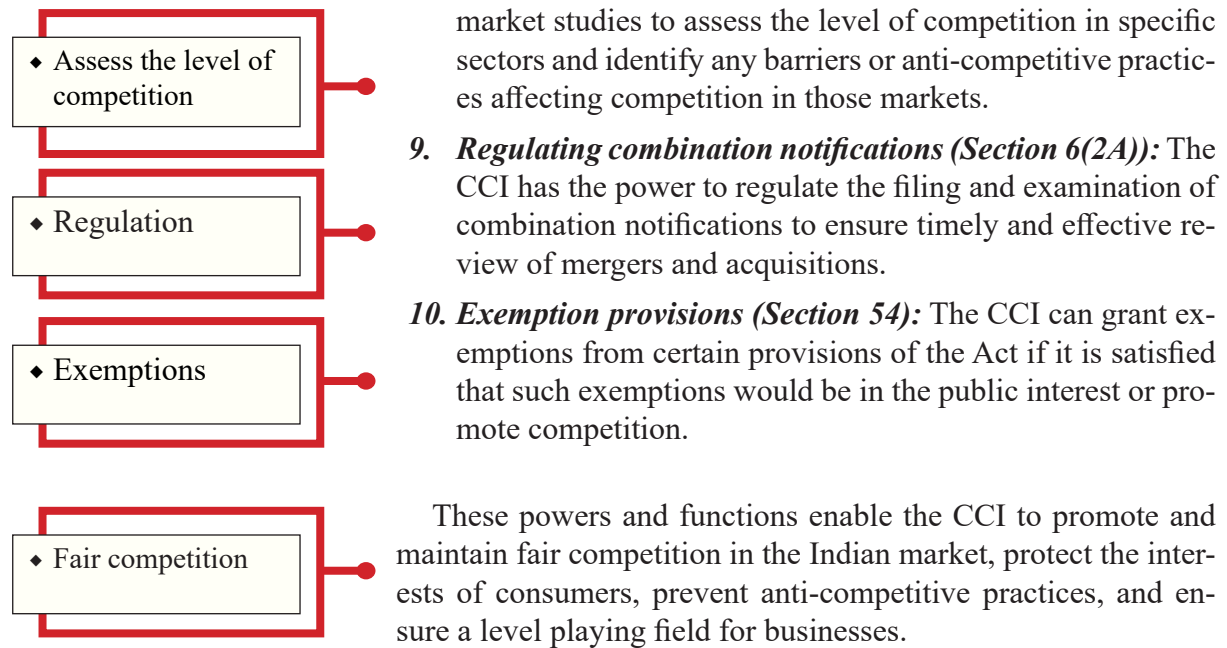
♦ Up to 10%

♦ Review proposal

♦ Promotion of competition

♦ Establishment of fund

♦ Grant leniency



Summarised Overview

The Competition Act 2002 is a comprehensive legislation enacted in India to promote and sustain fair competition in the market. The Act aims to prevent anti-competitive practices, protect consumer interests, and foster economic efficiency. It establishes the Competition Commission of India (CCI) as the regulatory authority responsible for enforcing competition laws. The Act covers various aspects of competition, including abuse of dominant position, anti-competitive agreements, and regulation of mergers and acquisitions. It grants the CCI the power to conduct inquiries, impose penalties, and promote competition advocacy. The Act also includes provisions for leniency, market studies, and exemptions. Therefore, the Competition Act 2002 provides a legal framework to ensure fair competition, prevent monopolistic practices, and create a level playing field for businesses, thereby promoting efficiency, innovation, and consumer welfare in the Indian market.

Self-Assessment Question

1. Explain the difference between MRTP act and Competition Act.
2. What is the primary focus of the Competition Act 2002?
3. Describe the concept of abuse of dominant position under the Competition Act.
4. How does the Competition Act regulate anti-competitive agreements?
5. What powers does the Competition Commission of India (CCI) have regarding mergers and acquisitions?
6. Write a short note on Competition Commission in India.
7. Briefly explain about Regulation of combinations.
8. What do you mean by Horizontal Anti-Competitive Agreements?
9. Briefly explain the abuse of dominant position
10. Discuss the leniency provisions under the Competition Act.

Assignments

1. Prepare a case study on a recent merger or acquisition in India, assessing its impact on competition and consumer welfare.
2. Evaluate the effectiveness of competition advocacy initiatives in promoting fair competition in India.
3. Assess the challenges and opportunities for small and medium enterprises (SMEs) in the context of competition law.
4. Explore the role of intellectual property rights in the context of competition law.
5. Analyse the implications of anti-competitive agreements on market dynamics in India.
6. Investigate the role of the Competition Commission of India in regulating abuse of dominant position.
7. Assess the impact of competition law on consumer protection and welfare in India.
8. Study and assess recent supreme court of India judgements involving Indian Competition Act 2002
9. Make a study on the recent CCI investigation in India.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Unit 2

Information Technology Act 2000

Learning Outcomes

After learning this unit, the learners will be able to:

- ◆ gain insights into the various aspects covered under the IT Act of 2000
- ◆ familiarise oneself with the amendments made to the IT Act in 2008
- ◆ learn about the legal issues and challenges in E-commerce
- ◆ identify the issue of jurisdiction in disputes in E-commerce

Background

The lifestyle of the people and the business has undergone an enormous change ever since the electronic data took its own pace and no field is almost left wherein information technology is not in use. Everything is now available at a fingertip, which has resulted in savings of time and cost appreciably. Despite the numerous benefits, it is not free from drawbacks such as hacking, virus attacks, phishing, cyber stalking etc.

The increased rate of cybercrimes necessitated the need to develop an Act to govern such issues. Thus the Information Technology Act 2000 was enacted by the Indian parliament to deal with cybercrimes and transactions related to E-commerce. The present unit deals with the core aspects covered under the IT Act 2000 and the amended IT Act of 2008.

Keywords

Information Technology Act 2000, Information Technology Act 2008, E-Commerce

Discussion

2.2.1 History of the Information Technology Act 2000 and Information Technology Act 2008

The Information Technology Act is an Indian legislation that addresses issues related to electronic commerce, digital signatures, cybercrime, and data protection. Enacted in 2000 and amended in 2008, it provides a legal framework to regulate online activities, promote secure electronic transactions, and address cyber offenses. The Act establishes guidelines for electronic governance, protects personal data, and prescribes penalties for various cybercrimes, ensuring a secure and reliable digital environment in India.

♦ Regulate online activities

Here is a timeline of the history of the IT Act:

2000: The IT Act is passed by the Indian Parliament.

2008: The IT Act is amended with the introduction of Section 66A.

2015: The Supreme Court strikes down Section 66A.

2018: The IT Act is further amended with the introduction of a new section on cyber terrorism, and the strengthening of the penalties for cybercrimes.

The United Nations General Assembly has adopted the Model Law on Electronic Commerce on January 30, 1997 which is known as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on E-Commerce.

♦ Uncitral

The Government of India has passed the Information Technology Act in May 2000 based on the draft on the UN. Initially the Act was named as E-commerce Act 1998, which was redrafted in 1999 as Information Technology bill and later passed in 2000. It was the first comprehensive law to address electronic governance, digital signatures, and cybercrimes in the country. The Act was formulated to provide legal recognition to electronic transactions, facilitate e-commerce growth, and promote electronic governance.

♦ IT Act 2000

Key Provisions of the IT Act 2000 are as follows

- ♦ Legal recognition of electronic records and digital signatures.

♦ First law

- ♦ Establishment of the Controller of Certifying Authorities (CCA) to regulate digital signatures.
- ♦ Criminalised unAuthorised access to computer systems, data theft, and computer-related offenses.
- ♦ Introduced the concept of “cyber offenses” and prescribed penalties for various cybercrimes.
- ♦ Defined the liability of intermediaries, such as internet service providers, for hosting unlawful content.

♦ IT Act 2008

To address the evolving needs and requirements of Information Technology and communication, the Information Technology Act 2000 was amended through the Information Technology (Amendment) Act 2008. The President gave assent to the amendment on February 5, 2009, and it came into force on October 27, 2009.

Key Amendments of IT Act 2008 are as follows:

♦ Amendments

- ♦ Expanded the scope of cybercrimes and introduced new offenses such as cyberterrorism, identity theft, and child pornography.
- ♦ Increased penalties for certain offenses to enhance deterrence.
- ♦ Introduced the concept of “data protection” and laid down rules for handling sensitive personal information.
- ♦ Enabled the Indian government to prescribe guidelines for cybersecurity practices.
- ♦ Included provisions to facilitate the collection of electronic evidence.

♦ CERT-IN

The nodal agency for Information Technology related activity is called Computer Emergency Response Team- India (CERT-IN). It came into force on 2004 under the Ministry of Information and broadcasting. The Information and Technology act primarily focusses on information security and legal protection for digital signature.

♦ Section 66A

The IT Act was first passed by the Indian Parliament in 2000. It was amended in 2008, with the most controversial amendment being Section 66A, which gave authorities the power to arrest anyone accused of posting content on social media that could be deemed ‘offensive’. This amendment was passed in the Parliament without any debate, and was later struck down by the Supreme Court in 2015.

The IT Act has been further amended in 2018, with the most notable changes being the introduction of a new section on cyber terrorism, and the strengthening of the penalties for cybercrimes.

♦ Amendment in 2018

2.2.2 Objectives of the Act

The first country to implement cyber law was USA. The Information Technology Act 2000 was the first cyber law in India to govern the issues related to cybercrime and E-commerce transactions. The Act encompasses 94 sections which includes 13 chapters and 4 schedules. The Act has also made revisions in the sections of Indian Penal Code 1860, the Indian Evidence Act 1872, the Bankers' Books Evidence Act 1891, and the Reserve Bank of India Act 1934.

♦ 94 sections, 13 chapters and 4 schedules

Following are the important objectives of the Act:

1. To recognise E-transactions and Digital Signatures
2. To recognise E-filing of data and information
3. To admit electronic storage of data
4. To recognise electronic forms of books and accounts
5. To facilitate electronic fund transfer between banks and financial institutions

♦ 94 sections, 13 chapters and 4 schedules

2.2.3 Chapters of the Information Technology Act 2000

The act includes the following Chapters:

1. Chapter I Preliminary Sections.
2. Chapter II Digital Signature and Electronic Signature
3. Chapter III Electronic Governance.
4. Chapter IV Attribution, Acknowledgement and Despatch of Electronic Records.
5. Chapter V Secure Electronic Records and Secure Electronic Signature
6. Chapter VI Regulation of Certifying Authorities
7. Chapter VII Electronic Signature Certificates
8. Chapter VIII Duties of Subscribers
9. Chapter IX Penalties, Compensation and Adjudication
10. Chapter X The Cyber Regulations Appellate Tribunal
11. Chapter XI Offences

12. Chapter XII Intermediaries not to be Liable in Certain Cases.

13. Chapter XIII Miscellaneous

2.2.4 Applicability of the Act

♦ Jurisdiction

1. The provisions of the Information Technology Act are applicable whole over India including Jammu and Kashmir.
2. The act is also applicable to offences committed outside India
3. Any person is punishable irrespective of his/ her nationality if an offence involves a computer or a computerised system or network located in India.

The provisions of the Information Technology Act, 2000 is not applicable to the following documents:

♦ Not applicable

4. Execution of Negotiable Instrument under Negotiable Instruments Act, 1881, except cheques.
5. Execution of a Power of Attorney under the Powers of Attorney Act, 1882.
6. Creation of Trust under the Indian Trust Act, 1882.
7. Execution of a Will under the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
8. Entering into a contract for the sale of conveyance of immovable property or any interest in such property.
9. Any such class of documents or transactions as may be notified by the Central Government in the Gazette.

2.2.5 Salient features of the Information Technology Act 2000 and Information Technology Act 2008.

Following are the salient features of the latest Information Technology Act 2000 (by incorporating all amendments)

1. Digital signature is recognised as a legal method of authentication of electronic documents (sec 3).
2. Any person can verify the electronic record through using his/her unique public key. (Sec 3).
3. The Act grants legal recognition to electronic records along with other forms of writing and displaying information. (Sec 4)

4. A subscriber may authenticate electronic records using reliable electronic signature. (Sec 3A)
5. Under section 5 of the act, electronic signature is equal to the manual signature which is legally valid
6. Where any law provides that certain documents, records or information shall be retained in electronic form for such period and it is equal to other legal forms of retention. (Sec 7)
7. Now, the Government and its agencies may use the electronic signature (Sec 6)
8. According to Section 6A, Government can authorise any service provider to set up, maintain and upgrade the computerised facilities and perform such other services for efficient delivery of services to the public through electronic means.
9. Electronic Gazette is permitted.
10. Documents, records or information processed and maintained in the electronic form is liable to be audited as per different acts. (Sec 7A)
11. Contracts formed through electronic means are enforceable. (Sec 10 A)
12. The Central Government may appoint a Controller of Certifying Authorities for the purposes of this Act (Sec 17)
13. Sections 35-39 of the Act deal with Electronic Signature Certificates.
14. Where a person cause damage to computer, computer system, computer network, or computer resources, then that person will be liable for a penalty and compensation. (Sec 43)
15. Where a person does not provide any document, return, report to the controller or certifying authority, then that person will be liable to pay penalty of maximum ₹150000 per failure. (Sec 44)
16. A body corporate shall be liable to pay damages by way of compensation to the person so affected (if the body corporate is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person). (Sec 43 A)
17. Tampering with computer source documents is punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both. (Sec 65)
18. If any person, dishonestly or fraudulently, does any of the acts as per sec 43 of the act, he shall be punishable with imprisonment for a term which may extend to three years

or with fine which may extend to five lakh rupees or with both. -Sec 66.

Section 43 offences includes:

- a. Dishonestly receiving stolen computer resource or communication device
 - b. Identity theft
 - c. Cheating by personation by using computer resource
 - d. Violation of privacy
 - e. Cyber terrorism
19. An intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by the intermediary. (Sec 79)
20. The Central Government may designate any organization of the Government as the national nodal agency in respect of Critical Information Infrastructure Protection as per sec 70 of the Act.
21. The First Schedule of the Act gives a list of documents to which the Act shall not apply
- a. A negotiable instrument as per Negotiable Instruments Act, 1881.
 - b. A power-of-attorney as defined in the Powers-of-Attorney Act, 1882.
 - c. A trust as defined in the Indian Trust Act, 1882.
 - d. A will.
 - e. Any contract for the sale or conveyance of immovable property or any interest in such property.

**Applications of Information Technology Act
2000 and 2008 in daily life.**

- 1. Income Tax Return Filing.
- 2. GST Return Filing.
- 3. Land Tax Payment.
- 4. Building Tax Payment.
- 5. Online payment of Exam fees
- 6. Online Payment of KSEB Bills.
- 7. Covid-19 Vaccination Certificates.

2.2.6 Legal Issues and Challenges of E-Commerce

Following are the important legal issues related to E-Commerce:

- i. **Jurisdictional challenges:** Determining jurisdiction can be complex in e-commerce transactions, especially when parties are located in different states or countries. Resolving disputes and enforcing legal remedies across borders can pose challenges.
- ii. **Contract enforcement:** Ensuring the enforceability of electronic contracts and addressing issues related to contract formation, validity, and interpretation in e-commerce transactions can be challenging. The Indian Contract Act, 1872, governs these aspects, but the application of electronic contracts may require specific considerations.
- iii. **Consumer protection:** E-commerce transactions involve consumer rights and protection, including issues related to misleading advertisements, product quality, refunds, and dispute resolution. The Consumer Protection Act, 2019, provides a framework for addressing these concerns, but compliance and effective enforcement can be challenging for e-commerce businesses.
- iv. **Data protection and privacy:** Collecting, storing, processing, and transferring personal data in e-commerce activities must comply with data protection and privacy laws. The upcoming Personal Data Protection Bill, 2019, aims to establish a comprehensive data protection framework in India, but businesses need to be prepared for compliance challenges.
- v. **Intellectual property infringement:** E-commerce platforms face the risk of intellectual property rights (IPR) infringement, including trademark violations, copyright infringement, and counterfeiting. Safeguarding against such infringements and implementing effective mechanisms for reporting and removing infringing content is a significant challenge.
- vi. **Cybersecurity and fraud:** E-commerce platforms are susceptible to cybersecurity threats, data breaches, and fraudulent activities. Implementing robust security measures, protecting customer data, and addressing fraud-related issues are ongoing challenges for e-commerce businesses.
- vii. **Taxation and regulatory compliance:** Complying with complex taxation laws, including Goods and Services Tax

♦ Location of parties

♦ Requirement of special consideration

♦ Chance of fraudulent activities

♦ Privacy issues

♦ Infringement

♦ Cybersecurity threats

◆ Complexity in taxation

◆ Data theft

◆ Financial frauds

◆ Absence of compliance redressal mechanism

(GST), and other regulatory requirements pose challenges for e-commerce businesses. Adhering to tax obligations, obtaining necessary licenses, and meeting regulatory compliance requirements can be daunting tasks.

viii. Data breaches: E-commerce businesses need to take steps to protect customer data from being hacked or stolen. If a data breach occurs, the business may be liable for damages to customers.

ix. Fraud: E-commerce businesses need to be aware of the risk of fraud. This includes credit card fraud, identity theft, and phishing scams. Businesses should have measures in place to detect and prevent fraud.

x. Dispute resolution: E-commerce businesses need to have a process in place for resolving disputes with customers. This may involve mediation, arbitration, or litigation.

Data Protection Bill 2023

The Data Protection Bill, 2023 is a proposed law in India that aims to protect the privacy of individuals and regulate the processing of personal data. The bill was introduced in the Lok Sabha (lower house of Parliament) on August 3, 2023.

The bill defines personal data as any information that can be used to identify an individual, directly or indirectly. It also defines the processing of personal data as any operation or set of operations performed on personal data, such as collection, storage, use, and disclosure.

The bill gives individuals a number of rights with respect to their personal data, including the right to:

- ◆ Know what personal data is being collected about them.
- ◆ Request access to their personal data.
- ◆ Request correction or deletion of their personal data.
- ◆ Object to the processing of their personal data.
- ◆ File a complaint with the Data Protection Authority.

The bill also sets out a number of obligations for data fiduciaries, which are organizations that collect or process personal data. These obligations include:

- ◆ Obtaining consent from individuals before collecting or processing their personal data.
- ◆ Taking steps to protect the security of personal data.

- ◆ Providing individuals with access to their personal data.
- ◆ Deleting personal data upon request from individuals.
- ◆ Reporting data breaches to the Data Protection Authority.

The Data Protection Bill, 2023 is a significant piece of legislation that will have a major impact on the way personal data is collected and processed in India. The bill is still under consideration by Parliament, and it is not yet clear when it will be passed into law.

Here are some of the key features of the Data Protection Bill, 2023:

- ◆ It creates a new Data Protection Authority (DPA) to oversee the implementation of the law.
- ◆ It gives individuals a number of rights with respect to their personal data, including the right to access, correct, and delete their data.
- ◆ It requires data fiduciaries to obtain consent from individuals before collecting or processing their personal data.
- ◆ It sets out a number of security requirements for data fiduciaries.
- ◆ It creates a framework for dealing with data breaches.

The Data Protection Bill, 2023 is a complex piece of legislation, and it is still under consideration by Parliament. However, it is clear that the bill will have a major impact on the way personal data is collected and processed in India.

2.2.7 Issues of Jurisdiction in Disputes in E-Commerce

Issues of jurisdiction in disputes related to e-commerce in India arise due to the nature of online transactions that transcend geographical boundaries. Determining the appropriate jurisdiction for resolving such disputes can be complex. Factors such as the physical location of parties, the place of contract formation, and the location of the servers hosting the e-commerce platform may all play a role. Additionally, conflicts may arise when different states or countries have varying laws and regulations regarding e-commerce. Resolving jurisdictional challenges requires a careful analysis of applicable laws, contractual agreements, and potentially engaging in alternative dispute resolution mechanisms. The Information Technology Act 2000, provides certain provisions for jurisdiction in e-commerce disputes, but practical implementation and enforcement can be challenging in cross-border scenarios. International cooperation and agreements play a crucial role in facilitating effective jurisdictional determination and enforcement in e-commerce disputes.

- ◆ Conflicts due to jurisdictional determination

The courts of law have to deal with jurisdictions related to E-Commerce disputes, deciding territorial jurisdiction gets more complicated as there are no borders between the countries in the internet world. The following are the Issues of Jurisdiction in E Commerce.

♦ Intermediaries

1. Information Technology Act 2000 and E-Commerce

According to the rules under the IT Act 2000 and IT Act 2008, E-commerce websites operating in India are considered intermediaries. If a person residing abroad commits fraud through an E-commerce website, they can be prosecuted in India under the Indian IT Act 2000.

♦ Prosecution

2. Indian Penal Code 1860 and E-Commerce

A person residing abroad can be prosecuted in India under the Criminal Procedure Code, 1973 (or the Indian Penal Code, 1860) if they commit an offense using an E-commerce website.

♦ Local civil court

3. Code of Civil Procedure, 1908, and E-commerce

In case of a plaintiff seeking compensation for losses caused by the defendant's actions through a website, they can approach the local civil court, regardless of where the defendant resides.

♦ MSMED Act

4. MSMED Act 2006 and E-Commerce

A plaintiff can utilize sections of the MSMED Act to seek compensation related to E-commerce business activities.

♦ Consumer Protection Act 2019

5. Consumer Protection Act 2019

Consumers can use the sections of the Consumer Protection Act 2019 to seek compensation for issues related to E-commerce business activities.

♦ ASCI

6. Advertising Standards and Consumer Rights

E-commerce companies must adhere to advertising standards set by the Advertising Standards Council of India (ASCI). Additionally, the rights of consumers, such as right to information, right to return, and right to refund, are protected under consumer laws.

♦ Obligation to enforce IPR

7. Intellectual Property Laws

E-commerce platforms are obligated to enforce intellectual property rights and ensure that counterfeit or pirated goods are not sold on their platforms. Copyright, trademark, and patent laws apply to E-commerce businesses to protect intellectual property.

Summarised Overview

The Information and Technology Act 2000 was enacted by the Government of India to address cybercrime and regulate E-commerce transactions. It is the first cyber law in India and is applicable nationwide, including Jammu and Kashmir. In order to address the evolving landscape of IT and security threats, the Information Technology Act 2000 was subsequently amended, leading to the passing of the Information Technology Act 2008. E-commerce websites are considered intermediaries under the Information Technology Act 2000. Transactions conducted through E-commerce websites are governed by multiple laws, including the Information Technology Act 2000, the Consumer Protection Act 1986, the MSMED Act, and the Code of Civil Procedure 1908.

Self-Assessment Question

1. State the objectives of Information Technology Act 2000.
2. Explain briefly the applicability of Information Technology Act 2000.
3. List out the areas where the Information Technology Act 2000 is not applicable.
4. What are the features of Information Technology Act 2000?
5. What are the legal issues and challenges of E-Commerce?
6. How does the Code of Civil Procedure 1908 come into play in E-commerce transactions?
7. Describe the MSMED Act and its relevance to E-commerce activities.
8. Explain the relation between Indian Penal Code 1860 and E-Commerce

Assignments

1. Write a short note on the Issues of jurisdiction in Disputes in E-Commerce.
2. Study about recent supreme -court of India judgements involving Indian Information Technology Act 2000.
3. Write a note on the relevance of the Indian Information Technology Act 2000 in the revenue department of Kerala.
4. Explain the role of E-commerce websites according to the Information Technology Act 2000.
5. Name the laws that govern transactions carried out through E-commerce websites.
6. What is the Consumer Protection Act 1986, and how does it relate to E-commerce transactions?

7. Discuss the objectives of the Information Technology Act.
8. Explain the scope of the Information Technology Act in regulating cybercrime and E-commerce transactions.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Unit 3

Enforcement of Online Contracts

Learning Outcomes

After completing this unit, the learners will be able to:

- ◆ familiarise with the concept of online contracts.
- ◆ gain insights on the concept and application of electronic signature.
- ◆ aware of data protection
- ◆ identify the issues relating to privacy.

Background

The usage of electronic media, such as emails, WhatsApp, etc., has replaced the earlier practice of exchanging letters as a means of communication. Contracts that were previously entered into via oral or written methods have now transformed into the digital mode. To provide legal recognition to such electronic records, the Information Technology Act of 2000 was enacted. The use of electronic signatures has further widened the scope of electronic contracts. The present unit deals with the concepts of these online contracts, electronic signatures, and the related data protection and privacy issues.

Keywords

Online Contracts, Electronic Signature, Data protection

Discussion

2.3.1 Online Contracts

Online contracts are similar to traditional contracts in all respects, but they are created with the help of a software system. Online contracts refer to agreements that are formed using the internet through means such as email, websites, and other digital platforms. They are also commonly known as electronic contracts.

♦ Electronic contracts

The following are the important features of online contracts:

- a. Those are paperless contracts which are in electronic form.
- b. Modern technology and changes in the various laws necessitated the contract to be in electronic form.
- c. E-contract is a contract using a software system
- d. They are very similar to traditional commercial contracts. Therefore, they require the basic elements of a contract as per the Indian contract 1972
- e. The following are the essentials of the E-contracts: -
 - ♦ Valid offer
 - ♦ Valid acceptance
 - ♦ Intention to create legal relationship
 - ♦ Lawful object
 - ♦ Valid consideration
 - ♦ Capacity to contract
 - ♦ Possibility of performance
 - ♦ Free Consent
 - ♦ Legal formalities
- f. Speed, accuracy and reliability.
- g. Digital signature instead of manual signing is to be used in the online contracts as per relevant provisions of the Information Technology Act 2000.
- h. Web site of the offeror acts as a display to the world at large.

♦ Paperless

- i. E-mails are used as a communication medium in the online contracts.

2.3.1.1 Types of Online Contracts

1. Click-wrap contracts

◆ Agreement equivalent to signature

When an E-business transaction is performed, customers will have to give their consent by giving a tick mark on the 'I agree', 'I accept', 'I submit' and so forth. In most cases, a hyper link will be attached to enable the customer to read the terms of the contract. The acceptance of the same will bind the customers to the terms of use of that particular irrespective of whether the customers have read the terms of contract or not. Putting a tick on 'I agree' is equivalent to a signature.

2. Browser-wrap contracts

◆ Web-wrap contracts

There are websites that mention the 'terms and conditions' at the end of the page. Such 'terms and conditions' declare that a visit to the site or use of the site is subject to the terms. It is also called as web-wrap contracts. The users visit to such websites will be subject to the terms and conditions. Enforceability of such contracts is uncertain since the arrangement lacks the consent of the customer.

3. Contract by exchange of communication

◆ EDI contracts

Online contracts use electronic platforms such as E-mail, WhatsApp and so forth to facilitate the exchange of communication. It is also called Electronic Data Interchange (EDI) contract. The enactment of Information Technology Act 2000 has given legal recognition to such electronic records. Thus, consumer contracts are formed through E-mails, SMS, and WhatsApp.

2.3.2 Electronic Signature

◆ Legally recognised

It is a signature which is created using electronic methods by fulfilling the conditions of the Information Technology Act 2000. An electronic signature is like a handwritten signature. But it is created by using electronic methods. The IT Act 2000 grants legal recognition to electronic signature along with manual signatures.

An electronic signature is not same as digital signature. Unlike electronic signatures, digital signatures are created using cryptographic algorithms. Digital signature therefore offers high

security when compared to electronic signature. Following are the important provisions of the Information Technology Act 2000 with respect to the electronic signature:

♦ Paper less

1. A subscriber may authenticate any electronic record by electronic signature which is considered reliable. It may be specified in the Second Schedule of the Act.
2. Electronic authentication technique is to be reliable if it fulfils the following conditions:
 - i. The signature creation data or the authentication data are linked to the signatory or the authenticator and to no other person. Besides, such data should be under the control of the signatory or the authenticator and to no other person.
 - ii. Any alteration to the electronic signature after affixing or to the information made after its authentication by electronic signature is detectable.
 - iii. It fulfils such other conditions (as may be prescribed)
3. The Central Government may prescribe the procedure for the purpose of ascertaining authenticity of the electronic signature.
4. The Central Government may omit any electronic signature or electronic authentication technique and the procedure for affixing it from the Second Schedule.
5. Every notification issued under sub-section (4) of sec 3A shall be laid before each House of Parliament.

Chapter III of the Information Technology Act 2000 (By incorporating the provisions of the amended Act 2008)

1. The Act grants legal recognition to electronic records along with other forms of writing and displaying information. (Section 4)
2. The Act grants legal recognition to electronic signatures along with manual signatures. (Section 5)
3. Where any law provides for filing, issue, grant, receipt or payment, now such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is affected by means of such electronic form as may be prescribed by the appropriate Government. (Section 6)
4. Secure electronic signature. - An electronic signature shall be deemed to be a secure electronic signature if:

♦ Legal recognitions

- i. the signature creation data, at the time of affixing signature was under the exclusive control of signatory and no other person and
 - ii. Signature creation data was stored and affixed in such exclusive manner as may be prescribed.
5. Signature creation data means the private key of the subscriber (in the case of digital signature) (Section 15)

2.3.3 Data Protection and Issues Relating to Privacy

◆ Information overload

The rapid progress in Information and Communication Technology (ICT) has led to a seamless exchange of information. However, this progress can sometimes lead to an overwhelming flood of information, a situation known as “information overload.” In this context, data itself holds value akin to property. Therefore, when data is shared from one individual to another, it could be seen as infringing upon the ownership rights of the data’s original possessor.

◆ Privacy issues

An additional concern in the realm of data protection is the potential exposure of sensitive information by individuals who have Authorised access to it. This kind of unauthorised sharing can result in a breach of privacy.

◆ Data leakage

1. The Information Technology Act, 2000
2. The Information Technology Act, 2008

Even after the 2008 amendments, the overall status of data-protection and privacy law remains unclear in India.

Following are the important sections of the Information Technology Act 2000, and the Information Technology Act, 2008 which is related with above aspects.

1. Where a person causes damage to the following resources, then that person will be liable for penalty and compensation (Sec 43).
 - a. Computer
 - b. Computer system
 - c. Computer Network
 - d. Computer resources.
2. A body corporate shall be liable to pay damages by way of compensation to the person so affected (if the body corpo-

rate is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person) (Sec 43 A).

3. Tampering with computer source documents is punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both (Sec 65).
4. If any person, dishonestly or fraudulently, does any of the acts as per sec 43 of the Act, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both (Sec 66).

The following are the examples of sec 43 offences:

- a. Dishonestly receiving stolen computer resource or communication device
 - b. Identity theft
 - c. Cheating by personation by using computer resource
 - d. Violation of privacy
 - e. Cyber terrorism
5. Use of Electronic signature through dishonest means or fraudulent means is punishable offence. Punishment is imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh. (Section 66C)
 6. Preservation and Retention of Information by Intermediaries- An Intermediary has to preserve and retain the information as may be specified for such duration and in such manner and format as the central government may prescribe and if any intermediary who contravenes the provision shall be punished with an imprisonment for a term which may extend to three years and also be liable to fine. (Section 67C)
 7. Penalty for Breach of Confidentiality and Privacy- If any person (who has secured access) discloses any electronic record, book, register, correspondence, information, document or other material to any other person (without the consent of the person concerned), then he shall be liable for penalty up to ₹100000 or imprisonment up-to 2 years or both. (Section 72)

8. Offences by Companies- Where a person committing a contravention of any of the provisions of this act and the related rules is a company, then both the officers in charge of the company and the company are liable to be prosecuted as per this act. (Section 85)

2.3.3.1 Other Developments Relating to Data Protection and Issues Relating to Privacy

Following are the other major developments in India in the field of data protection and issues relating to privacy:

◆ Data protection rules and acts

- ◆ The Supreme Court of India ordered the right to privacy as a fundamental right as per the Indian Constitution in 2017.
- ◆ The Supreme Court of India recommended the Indian Central Government to set up a data protection regime that considers the interests of individuals as well as the legitimate concerns of the state in 2017.
- ◆ The government appointed an expert committee headed by former Supreme Court judge Justice B.N. Srikrishna to draft a Personal Data Protection Bill in 2017.
- ◆ The expert committee submitted its report along with a draft legislation on data protection in July 2018.
- ◆ Government of India introduced The Personal Data Protection Bill in Lok Sabha -2019.
- ◆ The Bill amends the Information Technology Act, 2000 and amends the Information Technology Act, 2008.

Summarised Overview

Online contracts are the electronic version of normal contracts. It includes contracts that are entered electronically via internet by making use of E-mail, websites and social media such as WhatsApp, Facebook and so forth. The three types of online contracts include Click Wrap contract, Browse Wrap contract, and EDI contract. Online contract makes use of electronic signature. It is a signature which is created using electronic methods by fulfilling the conditions of the Information Technology Act 2000. The Information Technology Act 2000 and the Information Technology Act 2008 mention the various provisions to be followed for data protection and issues related to privacy.

Self-Assessment Question

1. What do you mean by an online contract?
2. What are the features of an online contract?
3. What are the various types of online contracts?
4. What is an electronic signature?
5. State the provisions in Information Technology act 2000 related to electronic signature.
6. Differentiate e-signature and digital signature.
7. What are Click-wrap contracts?

Assignments

1. Mention the important sections related to Data protection and issues related to privacy
2. Write a note on the Personal Data Protection bill, 2019.
3. Analyse the significance of data privacy in the context of online contracts and its impact on consumer trust and confidence.
4. Explore the legal obligations and responsibilities of parties involved in online contracts regarding data protection and privacy, taking into account relevant laws and regulations.
5. Discuss the challenges faced in safeguarding data privacy in online contracts and propose effective strategies and solutions to address these challenges.
6. Examine the consent requirements for collecting and processing personal data in online contracts, considering the legal frameworks and best practices for obtaining informed and valid consent.
7. Analyse the legal implications and challenges associated with cross-border data transfers in online contracts, taking into consideration the differing data protection laws and regulations across jurisdictions.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

03 BLOCK

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Block Content

- Unit - 1 | Foreign Exchange Management Act |
- Unit - 2 | Adjudication And Appeal |

Unit 1

Foreign Exchange Management Act

Learning Outcomes

After completing this unit, the learner will be able to familiarise with the:

- ♦ objectives and scope of FEMA
- ♦ important terms under FEMA
- ♦ application of FEMA, 1999

Background

FEMA stands for the Foreign Exchange Management Act, an official Act that consolidates and updates the laws governing foreign exchange in India. It was passed by the Parliament in 1999 to replace the worn out provisions contained in the Foreign Exchange Regulation Act (FERA) of 1973. This Act has been scrapped and the Reserve Bank of India (RBI) proposed FEMA in its place to manage foreign trade and exchange transactions in the modern scenario of globalised economy. It came into effect on June 1, 2000, with the aim of facilitating external trade and payments in India to ease the conduct of foreign exchange operations and the functioning of India's foreign exchange market by establishing procedures, formalities, and regulations for all foreign exchange transactions.

Keywords

FERA Act 1973, FEMA Act 1999, Foreign exchange, External trade

Discussion

3.1.1 Introduction

♦ Transformation

In the background of severe crisis of Foreign Exchange in the country, the Foreign Exchange Regulation Act of 1973 (FERA) was enacted and came into force with effect from January 1, 1974. FERA had a controversial 27 years during which period the corporate world found themselves at the mercy of the Enforcement Directorate. FERA imposed strict and several restrictions in foreign currency conversions. It dealt on foreign exchange currencies, which had an indirect impact on foreign trade transactions in a great deal. Due to the control imposed over the foreign exchange regulation, this Act has become incompatible with the pro-liberalisation policies of the Government of India. It was abolished in 1999 by the government of Atal Bihari Vajpayee and was replaced by the Foreign Exchange Management Act, which liberalised foreign exchange controls and restrictions on foreign investment in the country. FEMA had become the need of the hour. It brought out a new management administration of foreign exchange consistent with the emerging framework of the World Trade Organisation (WTO).

♦ Liberal and changing global environment

The Foreign Exchange Management Act (1999), or in short FEMA has been introduced as a replacement for earlier Foreign Exchange Regulation Act (FERA), 1973. FEMA was enacted by the Parliament of India and it came into force on June 1, 2000. This Act extends to the whole of India including branches, offices, and agencies outside India, owned or controlled by a person resident in India. The Act is not applicable to citizens of India unless they are residents of India. There are 49 Sections divided into 7 chapters. FERA was passed due to the deficient foreign exchange in the country and FEMA was passed with the objective to relax the controls on foreign exchange in India. The Directorate of Enforcement is responsible for enforcement of the FEMA. The head office of FEMA is located in New Delhi.

♦ Outcome of New Economic Policy

The liberalisation reforms started in India as a major initiative under the purview of the LPG (Liberalisation-Privatisation-Globalisation) policy, which was introduced in 1991. The Act has increased the pace of foreign exchanges in the country, thereby resulting in many exchange reserves. This led to the abolition of FERA and the introduction of FEMA. The Foreign Exchange Management Act (FEMA) is a legislation that controls the inflow and outflow of foreign exchange in the country. The basic aim of FEMA is to regulate all aspects relating to foreign exchange.

Objectives

The FERA has outlived its utility on account of its developments since the process of liberalisation and globalisation started. Some of the major developments were:

- i. Substantial increase in foreign exchange resources.
- ii. Growth in foreign trade.
- iii. Rationalisation of tariffs.
- iv. Current account convertibility.
- v. Liberalisation of Indian investments abroad.
- vi. Increased access to Indian corporates for external commercial borrowings.
- vii. Foreign Institutional Investor's participation in the stock market in India.

Considering these developments in economic environment, FEMA aims at simplifying, consolidating and amending the law relating to foreign exchange with the objective of facilitating external trade and payments and promoting the orderly development and maintenance of foreign exchange market in India.

♦ Purpose of FEMA

3.1.2 Features of FEMA, 1999

Important features of Foreign Exchange Management Act, 1999 are discussed below:

1. It gives powers to the Central Government to regulate the flow of payments to and from a person residing outside India.
2. It is more transparent in its application as it lays down the areas requiring specific permissions of the RBI/Government of India on acquisition/holding of foreign exchange.
3. All financial transactions concerning foreign securities or exchanges cannot be carried out without the approval of FEMA. All transactions must be carried out through "Authorised Persons."
4. In the general interest of the public, the Government of India can restrict an authorised individual from carrying out foreign exchange deals within the current account.
5. It provides full liberty to a person resident in India who was earlier resident outside India to hold/own/transfer any foreign security/immovable property positioned outside India and acquired when he/she was a resident.

6. It gives power to the Reserve Bank for specifying in consultation with the Central Government, the classes of capital account transactions and limits to which exchange is admissible for such transactions.
7. FEMA is a civil law and the contraventions of the Act provide for arrest only in exceptional cases.

3.1.3 Scope of FEMA, 1999

◆ Consolidate and modify the law

◆ International trade

◆ Controlling role

◆ Current and capital account transactions

◆ Regulation from Government and RBI

1. **Objective as per Preamble:** The objective is to consolidate and modify the law relating to foreign exchange in regard to:
 - a. Facilitating external trade and payments.
 - b. Promoting development and maintenance of foreign exchange market in India.
3. **Central legislation:** It deals with inbound investments into India and outbound investments from India and deals with trade and business between India and the other countries.
4. **RBI:** Foreign Exchange Management Act 1999 envisages that RBI shall have a controlling role in management of foreign exchange in the country. Since RBI cannot directly supervise foreign exchange transactions, it permits “Authorised Persons” to deal in foreign exchange.
5. **Provisions:** Foreign Exchange Management Act, 1999 makes provisions for dealings in foreign exchange. Broadly, all Current Account transactions are free. However, the Central Government can impose reasonable restrictions by issuing rules. Capital Account transactions are permitted to the extent specified by Reserve Bank of India (RBI) by issuing regulations.
6. **Penalty, adjudication, appeal:** Foreign Exchange Management Act, 1999 also makes provisions for enforcement, penalties, adjudication and appeal and also contains the basic legal framework. The practical aspects are covered in rules made by Central Government and regulations made by Reserve Bank India.

Definitions under FEMA

Section 2 of the Foreign Exchange Management Act, 1999 provides a list of definitions/ terms which have been defined in the Act. In this Act, unless the context otherwise requires,-

1. “*Adjudicating Authority*” means an officer authorised under Section 16 (1) [Section 2(a)];
2. “*Appellate Tribunal*” means the Appellate Tribunal for foreign exchange referred to in section 18 [Section 2(b)];

3. “*Authorised Person*” means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities [Section 2(c)];
4. “*Authorised Officer*” means an officer of the Directorate of Enforcement authorised by the Central Government under section 37A;
5. “*Bench*” means a Bench of the Appellate Tribunal [Section 2(d)];
6. “*Capital account transaction*” means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6 [Section 2(e)];
7. “*Chairperson*” means the Chairperson of the Appellate Tribunal [Section 2(f)];
8. “*Chartered accountant*” shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) [Section 2(g)];
9. “*Currency*” includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank [Section 2(h)];
10. “*Currency notes*” means and includes cash in the form of coins and bank notes [Section 2(i)];
11. “*Current account transaction*” defined under Section 2(j) means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes-
 - ♦ Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
 - ♦ Payments due as interest on loans and as net income from investments,
 - ♦ Remittances for living expenses of parents, spouse and children residing abroad, and
 - ♦ Expenses in connection with foreign travel, education and medical care of parents, spouse and children;

12. “*Director of Enforcement*” means the Director of Enforcement appointed under sub-section (1) of section 36 [Section 2(k)];
13. “*Export*”, with its grammatical variations and cognate expressions, means:
 - ♦ The taking out of India to a place outside India any goods,
 - ♦ Provision of services from India to any person outside India [Section 2(l)];
14. “*Foreign currency*” means any currency other than Indian currency [Section 2(m)];
15. “*Foreign exchange*” means foreign currency and includes-
 - ♦ Deposits, credits and balances payable in any foreign currency,
 - ♦ Drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
 - ♦ Drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency [Section 2(n)];
16. “*Foreign security*” means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency [Section 2(o)];
17. “*Import*”, with its grammatical variations and cognate expressions, means bringing into India any goods or services [Section 2(p)];
18. “*Indian currency*” means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (2 of 1934) [Section 2(q)];
19. “*Legal practitioner*” shall have the meaning assigned to it in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961) [Section 2(r)];
20. “*Member*” means a Member of the Appellate Tribunal and includes the Chairperson thereof [Section 2(s)];
21. “*Notify*” means to notify in the Official Gazette and the expression “notification” shall be construed accordingly [Section 2(t)];

tion 2(t)];

22. “Person” includes-

- ♦ an individual,
- ♦ a Hindu Undivided Family,
- ♦ a company,
- ♦ a firm,
- ♦ an association of persons or a body of individuals, whether incorporated or not,
- ♦ every artificial juridical person, not falling within any of the preceding sub-clauses, and
- ♦ any agency, office or branch owned or controlled by such person [Section 2(u)];

23. “Person resident in India” means:

A. a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-

a. a person who has gone out of India or who stays outside India, in either case-

- ♦ for or on taking up employment outside India, or
- ♦ for carrying on outside India a business or vocation outside India, or
- ♦ for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

b. a person who has come to or stays in India, in either case, otherwise than-

- ♦ for or on taking up employment in India, or
- ♦ for carrying on in India a business or vocation in India, or
- ♦ for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

B. any person or body corporate registered or incorporated in India,

C. an office, branch or agency in India owned or controlled by a person resident outside India,

D. an office, branch or agency outside India owned or controlled by a person resident in India [Section 2(v)];

24. “Person resident outside India” means a person who is not resident in India [Section 2(w)];

25. “*Prescribed*” means prescribed by rules made under this Act [Section 2(x)];
26. “*Repatriate to India*” means bringing into India the realised foreign exchange and—
- ♦ the selling of such foreign exchange to an authorised person in India in exchange for rupees, or
 - ♦ the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank, and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression “repatriation” shall be construed accordingly [Section 2(y)]
27. “*Reserve Bank*” means the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934) [Section 2(z)];
28. “*security*” means shares, stocks, bonds and debentures, Government securities, deposit receipts in respect of deposits of securities and units of the Unit Trust of India or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act [Section 2(za)].
29. “*Service*” means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service [Section 2(zb)];
30. “*Special Director (Appeals)*” means an officer appointed under Section 18 [Section 2(zc)]

31. “Specify” means to specify by regulations made under this Act and the expression “specified” shall be construed accordingly [Section 2(zd)];
32. “Transfer” includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien [Section 2(ze)].

3.1.4 Regulation and Management of Foreign Exchange

This Act empowered the Reserve Bank, and in certain cases the Central Government, to control and regulate dealings in foreign exchange payments outside India, export and import of currency notes and bullion, transfer of securities between residents and non-residents, acquisition of foreign securities, and acquisition of immovable property in and outside India, among other transactions. These regulations in India are governed by the Foreign Exchange Management Act. The apex body on these matters in India is the Reserve Bank of India which regulates the rules and regulations.

♦ Exchange control

3.1.4.1 Dealing in Foreign Exchange (Section 3)

Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall-

- deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;
- make any payment to or for the credit of any person resident outside India in any manner;
- receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation- For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

♦ Rules for holding foreign exchange

- enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation- For the purpose of this clause, “financial transaction” means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

Section 3 of the Foreign Exchange Management Act (FEMA) deals with the regulation of dealings in foreign exchange. This section outlines the provisions and guidelines related to the buying, selling, and transfer of foreign exchange in India. Here is an explanation of the key aspects of Section 3 of the FEMA Act:

♦ Approval for holding foreign exchange

♦ Provision for transaction of foreign exchange

♦ Restrictions on volume

♦ Restrictions on unauthorised person

♦ Legal compliances

1. **Authorised Persons:** Section 3 empowers the Reserve Bank of India (RBI) to authorise certain individuals, entities, or banks as “Authorised Persons” to deal in foreign exchange. These Authorised Persons are responsible for facilitating foreign exchange transactions and ensuring compliance with FEMA regulations.
2. **Transactions in foreign exchange:** Section 3 enables residents and non-residents to undertake transactions involving foreign exchange. It establishes that any person in India can buy, sell, hold, or transfer foreign exchange or foreign securities, subject to the provisions of FEMA and regulations prescribed by the RBI.
3. **Restrictions on dealing in foreign exchange:** Section 3 also specifies certain restrictions and conditions on dealing in foreign exchange. These restrictions may include limitations on the amount of foreign exchange that can be acquired or held, the purposes for which foreign exchange can be utilised, and the countries or entities with which transactions are restricted.
4. **Prohibition of dealing in certain foreign exchange:** Section 3 prohibits dealing in any foreign exchange, foreign security, or immovable property situated outside India if it involves any person or entity that is not authorised by the RBI.
5. **Penalties and offences:** Violation of the provisions of Section 3 or any other provisions of FEMA may lead to penalties, including monetary fines, confiscation of foreign exchange or securities, or imprisonment, as prescribed by the law.

3.1.4.2 Holding of Foreign Exchange

Section 4 of the Foreign Exchange Management Act, 1999 (FEMA) deals with the holding of foreign exchange. According

to section 4 of the FEMA Act 1999, “*Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India*”.

♦ Section 4

Section 4 of the Foreign Exchange Management Act, 1999 (FEMA) relates to the authorised persons who can deal in foreign exchange transactions. The section specifies that only authorised persons, such as authorised banks or money changers, can undertake foreign exchange transactions in India.

♦ Authorised person

The Reserve Bank of India (RBI) is responsible for authorising entities to deal in foreign exchange transactions. The RBI may grant authorisation to banks or other entities subject to their compliance with the conditions laid down by the RBI. Furthermore, the section also states that any person, other than an authorised person, who wishes to undertake any foreign exchange transaction, must obtain prior permission from the RBI. This is to ensure that foreign exchange transactions in India are carried out in a regulated and controlled manner.

♦ Permission from the RBI

3.1.4.3 Realisation and Repatriation of Foreign Exchange

According to section 8 in the Foreign Exchange Management Act, 1999, “*Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.*”

♦ Identify and bringing to India

1. Definition of Repatriate to India: Section 2(y): Repatriate to India means bringing into India the realised foreign exchange and –

- ♦ the selling of foreign exchange to an authorised person in India in exchange for rupees, or
- ♦ the holding of realised amount in an account with an authorised person to the extent notified by the RBI, and
- ♦ use of the realised amount for discharge of a debt or liability denominated in foreign exchange.

♦ Bringing to India

2. Provision relating to realisation and repatriation of foreign exchange [Section 8]: Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within specified period and in specified manner by the RBI.

♦ Actions from person

3. Exemption from realisation and repatriation in certain cases [Section 9]: In following cases foreign exchange need not be repatriated to India:

- ♦ Possession of foreign currency or coins by any person up to specified limit.
- ♦ Foreign currency account held or operated as specified by RBI.
- ♦ Foreign exchange acquired or received before the 8.7.1947 or any income arising or accruing which is held outside India by any person in pursuance of a general or special permission granted by the RBI.
- ♦ Foreign exchange acquired and held by way of gift or inheritance by a person resident in India up to limit as specified by RBI.
- ♦ Foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to limit specified by the RBI.
- ♦ Such other receipts in foreign exchange as may be specified by the RBI.

♦ Exemptions

♦ Take all reasonable steps in realisation and repatriation of foreign exchange to India

Any person who is resident in India to whom any amount of foreign exchange is due or has accrued shall, except according to the extent of specific provisions made under Foreign Exchange Management Act, 1999 (FEMA), Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015 or any rules or with specific permission of the Reserve Bank of India (RBI), take all reasonable steps in realisation and repatriation of foreign exchange to India. That person shall in no case do or refrain from doing any or take or refrain from taking any action which has the effect of securing-

- a. that the receipt by him or part of such foreign exchange gets delayed; or
- b. that such foreign exchange ceases in whole or in part to be receivable by him

What is meant by repatriation of foreign exchange?

Repatriation of foreign exchange refers to the conversion of foreign currency into the home currency and the transfer of those funds back to the home country. In the context of India, the Foreign Exchange Management Act (FEMA) regulates the repatriation of foreign exchange.

Under FEMA, a person resident in India is required to repatriate any amount of foreign exchange that is due or accrued to them within a specified time period. The time period is typically 30 days, but it can be longer in some cases.

♦ Transfer of funds back to the home country

For example, if an Indian resident develops a software product and sells it to a company based outside of India. If the person to whom he sold the product is untraceable, it is the seller's responsibility to make all reasonable efforts to recover from residents outside India or otherwise report the matter to the RBI.

♦ Within a specific period

Manner of repatriation of foreign exchange

Once a person has realised an amount of foreign exchange which is due, it shall be his duty to repatriate such foreign exchange in India i.e., bring into or receive in India and –

- a. sell such foreign exchange to an authorised person in exchange of Indian currency i.e., rupees; or
- b. retain or hold such amount in an account with a foreign dealer in India up to the ceiling limit specified by the Reserve Bank of India; or
- c. use such foreign exchange to discharge a debt or any liability denominated in foreign exchange to the extent and manner prescribed by the Reserve Bank of India.

♦ Duty of the concerned person

It must be noted that the due foreign exchange amount means an amount which a person has a right to claim or right to receive in foreign exchange.

3.1.4.4 Authorised Person

Under Section 10 of the FEMA Act, an “Authorised Person” refers to individuals, entities, or financial institutions that are authorised by the RBI to deal in foreign exchange or conduct specific capital account transactions. These authorised persons are permitted to undertake certain foreign exchange activities on behalf of others, subject to the conditions and limitations set by the RBI.

♦ Person dealing in foreign exchange

Such authorisation shall be in writing, and such authorisation shall be revoked in case the RBI believes that it is in public interest to do so or where the authorised person has failed to comply with the conditions upon which the authorisation was granted. However, a reasonable opportunity of being heard shall be provided before revoking such authorisation.

♦ Legal actions

According to Section 10-

1. The Reserve Bank may, on an application made to on this behalf, authorise any person to be known as authorised per-

son to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

2. An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein.
3. An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that-
 - a. it is in public interest so to do; or
 - b. the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder:

If no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

◆ Person authorised to deals with foreign exchange

4. An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time
5. An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification etc..
6. Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made there under shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

Reserve Bank's powers to issue directions to Authorised person-

It is impossible to think that the Reserve Bank can do all transactions in the foreign exchange on its own. Therefore, the RBI delegates its powers to an authorised person under FEMA who deals in foreign exchange and securities.

As per Section 2(c) of the Foreign Exchange Management Act 1999, authorised person means an authorised dealer, money changer, off shore banking unit or any other person who has been authorised under Section 10(1) of the FEMA to deal in foreign exchange and foreign securities.

Section 11 of the Foreign Exchange Management Act, 1999 discuss the powers of RBI to issue directions to the authorised persons/ authorised dealers which are detailed below:

1. The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.
2. The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.
3. Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

♦ Delegation by RBI

♦ Authorised dealer, money changer, off shore banking unit

♦ Regulatory

♦ Supervisory

♦ Enforcement

Power of Reserve Bank to inspect Authorised person

Section 12 discusses the powers of RBI to inspect authorised persons. The powers are laid down below:

- i. The Reserve Bank may, at any time, conduct an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of—

♦ Inspection

- a. verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;
- b. obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;
- c. securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

- ii. It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

♦ Compliance

3.1.5 Contravention and Penalties

The Foreign Exchange Management Act, 1999 (FEMA) is a regulatory framework that governs foreign exchange transactions in India. Contravention of the provisions of FEMA can result in penalties and fines. Contravention refers to any violation or breach of the provisions of the FEMA Act or any rule, regulation, notification, direction, or order issued by the Reserve Bank of India (RBI) under the Act.

♦ Breach of the provisions

Penalties for contravention under FEMA can be either monetary or non-monetary. The monetary penalties can range from a minimum of ₹10000 to a maximum of three times the amount involved in the contravention, or up to ₹200000, whichever is more. In certain cases, imprisonment may also be imposed.

♦ Monetary and non-monetary penalties

In addition to monetary penalties, non-monetary penalties can also be imposed, such as the seizure of foreign currency or any other property involved in the contravention. The RBI also has the power to impose other penalties or disciplinary action against individuals or entities that contravene the provisions of the Act.

♦ Seizure of foreign currency

Some of the common contraventions under FEMA include dealing in foreign exchange without authorisation, failure to comply with the conditions specified in an authorisation granted by the RBI, failure to furnish information or furnishing false information to the RBI, and contravening any other provisions of the Act declared to be a contravention by the RBI.

♦ Common contraventions

Section 13 deals with the contraventions as civil offences as

distinguished from criminal offences under FEMA. The Adjudicating officers are empowered to impose the following penalties:

1. If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

♦ Penalties

(1A) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the provision to sub-section (1) of section 37A, he shall be liable to a penalty up to three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, the foreign exchange, foreign security or immovable property.

♦ Forfeiture

(1B) If the Adjudicating Authority, in a proceeding under sub-section (1A) deems fits, he may, after recording the reasons in writing, recommend for the initiation of prosecution and if the Director of Enforcement is satisfied, he may, after recording the reasons in writing, may direct prosecution by filing a criminal complaint against the guilty person by an officer not below the rank of Assistant Director.

♦ Prosecution

(1C) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the provision to sub-section (1) of section 37A, he shall be, in addition to the penalty imposed under sub-section (1A), punishable with imprisonment for a term which may extend to five years and with fine.

♦ Sanctions

(1D) No court shall take cognizance of an offence under sub-section (1C) of section 13 except as on complaint in writing by an officer not below the rank of Assistant Director referred to in sub-section (1B).

♦ Procedure

◆ Confiscation

2. Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation- For the purposes of this sub-section, “property” in respect of which contravention has taken place, shall include-

◆ Civil and criminal offences

- (a) deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency; and
- (c) any other property which has resulted out of the conversion of that property.

Table 3.1.1 Contravention and Penalty

Section No.	Contravention	Penalty
Section 11	By Authorised person any direction by RBI or failure to file any return as directed by RBI	◆ Upto ₹10000. ◆ If continuing offence additional penalty upto ₹2000 per day.
Section 13	Of any provision of the Act, or any rule, regulation, notification, direction or order or of any condition subject to which an authorisation issued	◆ Upto three times, the sum involved, if it is quantifiable. ◆ If not quantifiable upto ₹200000 ◆ If continuing offence, further Penalty upto ₹5000 per day after first day.

Section 13(1A) and 13(1C)	Acquisition of any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A	♦ Upto three times, the sum involved. ♦ Confiscation of the value equivalent of foreign assets involved in contravention, situated in India. ♦ W.r.t contravention related to 13(1C), in addition to the penalty imposed above i.e. for 13(1A), Imprisonment upto 5 years and with a fine
Section 14	Failure to pay penalty as above • where demand is of an amount exceeding ₹1crore. • in any other case	Civil imprisonment. ♦ Upto 3 years ♦ Upto 6 months.

Summarised Overview

FEMA, the Foreign Exchange Management Act, can be seen as an enhanced version of the previous FERA Act, designed to address the shortcomings and unusual offenses associated with its predecessor. Enacted in 1999, FEMA holds the legal jurisdiction to regulate foreign exchange transactions, taking into account various crucial factors. Its primary objectives encompass the supervision of export realisations, ensuring that authorised individuals are involved in foreign exchange dealings. Only authorised persons possess the authority to engage in foreign exchange activities, such as selling foreign withdrawals from the Reserve Bank of India. However, anyone can sell foreign exchange and subsequently report the transaction to the RBI either immediately or at a later stage. Additionally, FEMA emphasizes the repatriation of foreign exchange, highlighting the importance of bringing back foreign currency within the legal framework. Non-compliance or contravention of the Act leads to penalties and repercussions, which serve as deterrents for any violations or offenses committed under its purview.

Self-Assessment Question

1. How does the FEMA Act of 1999 influence the exchange rate?
2. What are the shortcomings of the FERA Act?
3. What are the reasons behind the formulation of the FEMA Act?
4. What is a fixed exchange rate?
5. What is a flexible exchange rate?
6. Who has the authority to deal with foreign exchange under FEMA?
7. What is the role of the Reserve Bank of India in foreign exchange transactions?
8. What is the significance of repatriation of foreign exchange under FEMA?
9. What are the consequences of contravening the provisions of FEMA?
10. Can anyone sell foreign exchange without reporting to RBI?

Assignments

1. What is the impact of the FEMA Act on the Indian industrial sector?
2. Differentiate between FERA Act and FEMA Act?
3. Why was FEMA Act constituted after 1991?
4. How FEMA Act influences Indian stock market?
5. How does NEP change the foreign relation of India?
6. What are the consequences and penalties for contravening the provisions of FEMA?
7. How does FEMA differ from the Foreign Exchange Regulation Act (FERA) and what improvements have been made?
8. Explain the impact of FEMA on Foreign Direct Investment (FDI) inflows into India and explain how the provisions within the act affect foreign investors.

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Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



Unit 2

Adjudication and Appeal

Learning Outcomes

After completing this unit, the learner will be able to familiarise with the:

- ◆ concept of Adjudicating Authority, Appeal and Appellate Tribunal.
- ◆ meaning of Appeal to Appellate Tribunal and its Composition.
- ◆ importance of Directorate of Enforcement.
- ◆ important Provisions related to FEMA.

Background

FEMA serves as a complex legal framework that governs foreign exchange transactions, and provides a comprehensive understanding of Adjudication and Appeal and the Directorate of Enforcement. These provisions hold significant power in investigating and prosecuting those who violate FEMA regulations, making it even more important to study them. By doing so, individuals and businesses can grasp the compliance requirements and safeguard their interests in foreign exchange transactions. The Directorate of Enforcement plays a pivotal role in enforcing FEMA regulations and investigating violations. Learning about the details of Adjudication and Appeal and the Directorate of Enforcement under FEMA Act allows individuals and businesses to comprehend the extent of the Directorate's authority and the implications of non-compliance. Additionally, Adjudication and Appeal provide a mechanism for resolving disputes and appealing decisions made by the Directorate of Enforcement. Thus, studying these provisions becomes essential for grasping the legal framework, adhering to regulations, protecting interests, and enforcing regulations concerning foreign exchange transactions in India.

Keywords

Adjudicating authority, Enforcement Directorate, Appeal

Discussion

3.2.1 Adjudication and Appeal

Under the Foreign Exchange Management Act (FEMA), adjudication refers to the process of determining and imposing penalties for violations of the Act. Adjudication is conducted by the Adjudicating Authority, which assesses the nature of the offense and levies appropriate penalties. If dissatisfied with the adjudication order, an appeal can be filed before the Appellate Tribunal, providing an opportunity for parties to challenge the decision and seek redressal.

♦ Adjudication Process

Table 3.2.1 Adjudication and Appeal

Section No.	Obligation	Time Limit
Section 14	Full penalty to be paid	Within 90 days from the date on which notice for payment of penalty is served.
Section 15	Compounding of Contravention under section 13	Within 180 days of receipt of application by Directorate of Enforcement or RBI.
Section 16	Complaint under section 16(1) to be dealt by Adjudicated Authority	Within 1 year of receipt of complaint.
Section 17	Appeal to Special Director (Appeals)	Within 45 days from receipt of order.
Section 19	Appeal to Appellate Tribunal	Within 45 days from receipt of order.
Section 19(5)	Appeal to be dealt with by Appellate Tribunal	Will try to dispose off the appeal within 180 days from receipt of appeal.
Section 35	Appeal to High Court	Within 60 days of communication of order or decision.

3.2.2 Adjudicating Authority (Section 16)

Section 16 provides for appointment of Central Government officers as Adjudicating Authorities for holding an inquiry for the purpose of imposing penalty for contravention.

♦ Inquiry

According to Section 16:

♦ Appointment

1. For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit. They are obliged to hold an inquiry in the manner prescribed after giving an opportunity of being heard to the person who is allegedly contravened the provisions of FEMA. If the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, any payment of penalty imposed, he may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

♦ Fixing jurisdictions

2. The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions.

♦ Rule of enquiry

3. No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

♦ Take assistance

4. The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

♦ Power of Adjudicating Authority

5. Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—

a. all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

b. shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

♦ Evidence for the delay

6. Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavour shall be made to dispose the complaint finally within one year from the date of receipt of the complaint. If the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period.

3.2.3 Appeal to Special Director (Appeals) (Section 17)

1. The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.
2. Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals).
3. Every appeal under sub-section (1) shall be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed. Provided that the Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period.
4. On receipt of an appeal under sub-section (1), the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit confirming, modifying or setting aside the order appealed against.
5. The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority.
6. The Special Director (Appeals) shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—
 - a. all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);
 - b. shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

♦ Special Directors

♦ Assistant Director of Enforcement

♦ Appeal within forty-five days

♦ Appellate Review

♦ Appeal

♦ Jurisdiction

3.2.4 Appeal to Appellate Tribunal (Section 19)

Appellate Tribunal (Section 18): The Central Government shall, by notification, establish an Appellate Tribunal to be

◆ Appellate Tribunal

known as the Appellate Tribunal for foreign exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals) under this Act.

◆ Appellate Jurisdiction

As provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

◆ Deposit Requirement

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

◆ Appeals against Adjudicating Authorities and the Special Director

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

◆ Appeal filing requirements and timeline

1. Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

◆ Opportunity of being heard

2. On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

◆ Dissemination

3. The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.
4. The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

5. Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.
6. The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and makes such order in the case as it thinks fit.

♦ Time limit

♦ Examine the legality

3.2.5 Appeal to High Court (Section 35)

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

♦ Appeal against Appellate Tribunal

Explanation: In this section “High Court” means:

- (a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
- (b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there is more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain

♦ Jurisdiction of High Court

3.2.6 Directorate of Enforcement

The Directorate of Enforcement (ED) is a law enforcement agency in India that is responsible for enforcing economic laws and regulations, primarily related to foreign exchange, money laundering, and financial frauds. It operates under the Department of Revenue, Ministry of Finance.

♦ Enforcement Agency

The main objective of the Directorate of Enforcement is to enforce two major laws in India: the Foreign Exchange Man-

◆ Regulation and Enforcement

agement Act (FEMA) and the Prevention of Money Laundering Act (PMLA). These laws aim to regulate foreign exchange transactions, prevent money laundering and terrorist financing, and ensure the stability and integrity of the Indian financial system.

◆ Economic enforcement

The ED investigates cases involving violations of FEMA, such as unauthorised foreign exchange transactions, illegal money transfers, and evasion of foreign exchange regulations. It also probes cases related to money laundering, where illegally obtained money is made to appear as legitimate through a series of complex transactions.

◆ Establishment

Section 36 deals with the establishment of Directorate of Enforcement. Section 36 states that:

◆ Delegation

1. The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.
2. Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

◆ Officers of enforcement

3. Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

Power of search, seizure, etc. (Section 37)

◆ Investigation

1. The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

◆ Authorised Officers

2. Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

◆ Investigation

3. The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.

Special provisions relating to assets held outside India in contravention of Section 4 (Section 37A)

1. Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

♦ Section 4

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

2. The order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of thirty days from the date of such seizure.
3. The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

♦ Competent authority

♦ Timeframe for decision making

Explanation- While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

4. The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under sub-section (1):

♦ Seizure and adjudication

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved

person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under sub-section (1).

5. Any person aggrieved by any order passed by the Competent Authority may prefer an appeal to the Appellate Tribunal.
6. Nothing contained in section 15 shall apply to this section.

Empowering other officers (Section 38)

◆ Delegation of Powers

1. The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such powers and discharge such duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be stated in the order.

◆ Creation of authority and responsibility

2. The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the income tax authorities under the Income-tax Act, 1961 (43 of 1961), subject to such conditions and limitations as the Central Government may impose.

3.2.7 Opportunities for Indian Business

◆ FEMA Introduction

The FEMA (Foreign Exchange Management Act) was introduced in India in 1999 to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and promoting the orderly development and maintenance of the foreign exchange market in India. The FEMA act has created a number of opportunities for Indian businesses, particularly those engaged in international trade and investment.

◆ FDI Facilitation

a. Foreign direct investment (FDI)

The FEMA act has allowed for foreign direct investment (FDI) in India. Indian businesses can now attract FDI from foreign investors and expand their operations in India with the help of capital investments from abroad. This has led to an increase in foreign investment and has helped to strengthen the Indian economy.

b. Liberalisation of trade

The FEMA act has also led to the liberalisation of trade in India, making it easier for Indian businesses to trade with other

countries. This has created new opportunities for Indian businesses to expand their markets and increase their revenue.

c. Simplified procedures for import and export

The FEMA act has simplified the procedures for import and export, making it easier for Indian businesses to import raw materials and export finished products. This has helped to reduce the cost of doing business and has made Indian products more competitive in international markets.

♦ Trade with other countries

♦ Import-Export Simplification

d. Access to foreign markets

The FEMA act has also facilitated Indian businesses in accessing foreign markets. Indian businesses can now enter into joint ventures and partnerships with foreign companies, allowing them to expand their reach and access new markets. This has helped to increase the competitiveness of Indian businesses in the global market.

♦ Global Market Access

e. Greater flexibility in capital flows

The FEMA act has allowed for greater flexibility in capital flows, making it easier for Indian businesses to access capital from abroad. This has helped to reduce the cost of capital for Indian businesses and has made it easier for them to invest in new projects and expand their operations.

♦ Capital Mobility

f. Reduced cost of doing business

The simplification of procedures for import and export, liberalisation of trade, and greater flexibility in capital flows have reduced the cost of doing business for Indian businesses.

♦ Simplification of procedures

g. Increased competitiveness

Access to foreign markets and capital, and reduced costs have made Indian businesses more competitive in the global market.

♦ Enhance competition

h. Expansion opportunities

The FEMA act has created opportunities for Indian businesses to expand their operations and explore new markets.

♦ New market

i. Technology transfer

FDI has not only brought capital but also new technologies to India, leading to technological transfer and advancement for Indian businesses.

♦ Collaboration

j. Economic growth

The opportunities created by the FEMA act have contributed to the growth of the Indian economy and the overall development of the country.

♦ Expansion of economy

♦ Enhance trade

The FEMA act has created a number of opportunities for Indian businesses. The act has allowed for FDI, liberalised trade, simplified procedures for import and export, facilitated access to foreign markets, and created greater flexibility in capital flows. These opportunities have helped Indian businesses to expand their operations, access new markets, and increase their revenue, ultimately contributing to the growth of the Indian economy

3.2.8 Challenges to Indian Companies

While the FEMA Act has generally been seen as a positive development for Indian businesses, there are some ways in which it could potentially have adverse effects. Here are some examples:

a. Compliance costs

♦ Documentation

One of the major challenges for companies operating under FEMA is the cost of compliance. The act imposes a number of reporting and documentation requirements on businesses that engage in foreign exchange transactions, and these can be time-consuming and expensive to fulfill. Small and medium-sized companies may find it particularly challenging to comply with these regulations, which could put them at a disadvantage relative to larger, more established firms.

b. Restrictions on certain transactions

♦ Speculative transaction

FEMA places restrictions on certain types of transactions, such as the purchase of foreign currency for speculative purposes. This could limit the ability of Indian businesses to engage in certain types of international trade and investment activities, which could in turn limit their growth potential.

c. Impact on exchange rates

♦ Regulation

Since FEMA regulates the buying and selling of foreign currency, it could potentially have an impact on exchange rates. In some cases, the act may limit the ability of businesses to obtain foreign currency at favourable rates, which could increase their costs and reduce their competitiveness in global markets.

d. Burdensome documentation

♦ Time-consuming

Indian companies must submit various forms and documentation when conducting foreign exchange transactions. The documentation process can be burdensome and time-consuming.

e. Impact on cash flow

♦ Cash flow

The FEMA Act can have an adverse impact on the cash flow of Indian companies. The regulations can limit the amount of money that companies can transfer outside India, which can af-

fect their financial operations.

e. Impact on foreign investment

The FEMA Act can have an impact on foreign investment in India. The regulations can make it difficult for foreign companies to invest in India, leading to a reduction in foreign investment and economic growth.

♦ Reduction in foreign investment

f. Adverse impact on competitiveness

The restrictions imposed by the FEMA Act can have an adverse impact on the competitiveness of Indian companies. Companies may face difficulties in competing with foreign companies that have fewer restrictions on foreign exchange transactions.

♦ Negative competition

g. Negative impact on reputation

Violations of the FEMA Act can lead to penalties and fines, which can damage the reputation of Indian companies. This can have long-term effects on the company's business operations and future growth prospects.

♦ Penalties and fines

3.2.9 Measures to Overcome the Adverse Effects of FEMA Act 1999

To overcome the adverse effects of FEMA Act on Indian companies, the following steps can be taken:

1. **Compliance:** Companies should ensure that they are fully compliant with the provisions of the FEMA Act. This will help them avoid penalties and legal complications.
2. **Proper documentation:** Companies should maintain proper documentation for all foreign exchange transactions, including invoices, contracts, and agreements. This will help them provide evidence of their compliance with the law.
3. **Use of Authorised dealers:** Companies should use Authorised dealers for their foreign exchange transactions. This will ensure that they are complying with the provisions of the law and will also help them get better rates.
4. **Training:** Companies should train their employees on the provisions of the FEMA Act and how to comply with them. This will help them avoid unintentional violations of the law.
5. **Due diligence:** Companies should conduct due diligence before entering into any foreign exchange transactions. This will help them identify potential risks and avoid transactions that may violate the provisions of the law.

♦ Compliance importance

♦ Documentation

♦ Authorised dealers

♦ Employee training

♦ Identify potential risks

♦ Regulators

6. **Engage with regulators:** Companies should engage with regulators to understand their obligations and seek clarifications if required. This will help them avoid any misunderstandings and ensure that they are fully compliant with the law.

♦ Compliance processes

7. **Use of technology:** Companies should use technology to automate their foreign exchange transactions and compliance processes. This will help them reduce the risk of errors and ensure that they are fully compliant with the law.

♦ Avoid legal complications

8. **Seek professional help:** Companies can seek professional help from lawyers, accountants, and consultants who specialize in the provisions of the FEMA Act. This will help them ensure that they are fully compliant with the law and avoid any legal complications

Summarised Overview

Adjudication and appeal are important components of the FEMA Act 1999. Adjudication refers to the process of resolving disputes between parties by a judicial or quasi-judicial authority. Under the FEMA Act, the adjudicating authority has the power to impose penalties, confiscate property and impose restrictions on foreign exchange transactions. The Act also provides for an appeal mechanism whereby aggrieved parties can appeal against the decision of the adjudicating authority to the Appellate Tribunal for foreign exchange. This provides a system of checks and balances and ensures that the rights of all parties involved in foreign exchange transactions are protected.

The Directorate of Enforcement is responsible for the enforcement of the FEMA Act. It has the power to investigate and prosecute cases of violation of the Act. The Directorate can also impose penalties, confiscate property, and restrict foreign exchange transactions. This helps to ensure that Indian businesses are compliant with the provisions of the Act and helps to maintain the integrity of the foreign exchange market. Despite the strict provisions of the FEMA Act, there are still many opportunities for Indian businesses to engage in foreign exchange transactions. The Act provides a framework for such transactions and lays down clear guidelines and procedures. Indian businesses can take advantage of these opportunities by ensuring that they are fully compliant with the provisions of the Act and by engaging in due diligence and seeking professional help when required.

Self-Assessment Question

1. What is Adjudication under the FEMA Act?
2. What powers does the Adjudicating Authority have under the FEMA Act?
3. What is the Appeal mechanism provided under the FEMA Act?
4. What is the role of the Directorate of Enforcement under the FEMA Act?
5. What are the benefits of the Adjudication and Appeal mechanism under the FEMA Act?
6. How can Indian businesses ensure compliance with the FEMA Act?
7. What opportunities are available for Indian businesses under the FEMA Act?
8. What is the significance of the FEMA Act in maintaining the integrity of the foreign exchange market?
9. What are the penalties for violating the FEMA Act?
10. How can businesses navigate the complex provisions of the FEMA Act?

Assignments

1. Discuss the role of the Adjudicating Authority under the FEMA Act, and explain its powers with relevant examples.
2. Explain the importance of the Appeal mechanism provided under the FEMA Act? Explain the procedure for filing an appeal before the Appellate Tribunal for foreign exchange.
3. Analyse the role of the Directorate of Enforcement under the FEMA Act, and discuss the various powers it has to ensure compliance and enforcement of the Act.
4. Explain major challenges faced by Indian businesses in complying with the provisions of the FEMA Act? Suggest some measures that can be taken to overcome these challenges.
5. Critically examine the opportunities provided to Indian businesses under the FEMA Act, and evaluate the potential benefits and risks associated with foreign exchange transactions.
6. Discuss the significance of the FEMA Act in maintaining the integrity of the foreign exchange market, and explain the various guidelines and procedures that businesses need to follow to ensure compliance.
7. Write a short note on the penalties and consequences for violating the provisions of the FEMA Act? Analyse the impact of such penalties on the functioning of Indian businesses.

8. Evaluate the effectiveness of the adjudication and appeal mechanism under the FEMA Act in protecting the rights of businesses and individuals. Suggest some measures that can be taken to improve the effectiveness of this mechanism.

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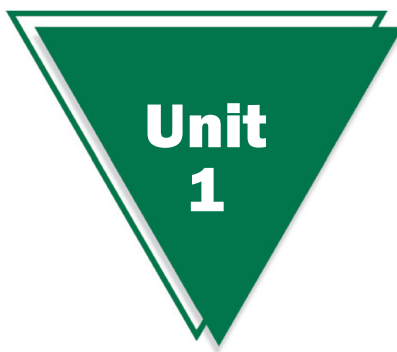
04 BLOCK

LAWS RELATING TO ENVIRONMENTAL PROTECTION

Block Content

Unit - 1 | Sustainable Development |

Unit - 2 | Laws Relating To Environmental Protection |



Sustainable Development

Learning Outcomes

After studying this unit, the learners will be able to:

- ♦ familiarise with the concept of sustainable development.
- ♦ learn the role of carbon credit in the conservation of biodiversity.
- ♦ gain insights on the Government policies related to environmental protection.
- ♦ understand the impact of Government policies on environmental protection.

Background

We were not much concerned with business law and environmental protection until recently. This was due to a variety of factors, including the limited understanding of the impact of human activities on the environment and the lack of sophisticated legal systems to regulate business activities. During the industrial revolution, businesses were focused on maximising profits and increasing production without much consideration for the environment. The effects of industrialisation on air and water quality were not well understood. During the age of exploration and colonisation, businesses primarily focused on resource extraction and exploitation. The impact on the environment was not a significant concern, and there were few laws or regulations to govern business activities in newly acquired territories.

Overall, the lack of understanding of the impact of human activities on the environment and the limited legal systems meant that business law and environmental protection were not major issues in the past. However, as our understanding of the environment has evolved and legal systems have become more sophisticated, the importance of these issues has increased significantly.

In today's society, businesses operate in a complex legal environment where they must comply with a wide range of laws and regulations. As a business owner or aspiring entrepreneur, it is essential to understand the legal framework that governs your operations and the environmental impact of your activities. The different types of legal systems and structures that exist in various countries around the world and the critical role they play in regulating business activities are different.

We have to explore the various laws and regulations related to environmental protection, including the Clean Air Act, Clean Water Act, and the Endangered Species Act. A deep understanding of the regulatory frameworks that exist to ensure businesses operate in a socially responsible manner and protect the environment for future generations is essential. In this unit, the learners will be able to familiarise a wealth of resources, including case studies, real-world examples, and interactive activities, which helps in developing a practical understanding of the legal aspects of business and environmental protection.

Keywords

Sustainable development, Biodiversity, Carbon credit, Environmental protection

Discussion

4.1.1 Introduction

There was a small village in a lush green valley who were content to live their life so happily. They are blessed with bountiful resources it provided. However, as time passed, the outside world began to encroach upon their idyllic existence. Large companies began to clear the surrounding forests, and pollution from nearby factories began to pollute the air and water. The villagers realised that if they didn't take action, their way of life would soon be destroyed. They gathered together and raised their voice against this action of the corporates and started a journey towards sustainable development. They began by planting trees and creating sustainable farming practices that protected the land from degradation. They also built a waste management system that reduced pollution and ensured that their water remained clean.

As the years went by, the villagers' efforts paid off. The forest began to grow back, and the air and water quality improved. The village became a model of sustainable development for others to follow, and tourists flocked to visit the picturesque valley. The villagers learned that sustainable development is not just about protecting the environment, but also about ensuring social and economic prosperity for future generations. They created job opportunities in eco-tourism, which helped to support the

♦ Transition

♦ Social and economic prosperity for future generations

local economy. They also invested in education and healthcare for their community, ensuring that their children had the tools they needed to succeed. The village prospered, and the villagers lived in harmony with their surroundings. They had successfully balanced economic development with environmental and social responsibility, and their way of life had become a shining example of what could be achieved through sustainable development.

4.1.2 Concept

◆ Profitable and environment friendly economic growth

Sustainable development is a concept that aims to balance economic growth and development with the protection of the environment and the well-being of society. It is a long-term approach to economic, social, and environmental issues, which ensures that the needs of the present generation are met without compromising the resources of future generations to meet their own needs. From a commerce perspective, sustainable development involves creating economic growth that benefits both the business and the society as a whole. This means that businesses must take into account the impact of their operations on the environment and society as a whole, and work to minimise any negative effects.

◆ Environmental management

Business decisions and strategies are influenced by the business environment, which includes external factors like economic conditions, political and regulatory factors, social and demographic trends, technological advancements, and natural resources. Internal factors like the organisation's resources, capabilities, and power relationships also play a role in shaping business decisions. To survive and succeed, firms must consider both internal and external factors. Environmental management is necessary for sustainable development and to prevent destruction or overuse of natural resources, reduce pollution, and mitigate the degradation of nature. Making decisions about the environment is crucial for the welfare of future generations. Environmental management involves organising initiatives to address various ecological issues affecting the planet, including land, marine, and atmospheric conditions such as global warming, marine life preservation, and deforestation. The primary objective of environmental management is to ensure that we leave the planet in a healthy state for future generations and preserve all forms of life, including marine life and vegetation.

Sustainability refers to the long-term support of human systems. In environmental terms, it relates to the potential for sustained subsistence of living beings, ecological confirmation systems, such as the planet's climate system, agriculture, industry, and fisheries systems, and social communities as a whole. The

concept of sustainable development is continually evolving, and there is no set rule or formula for achieving it due to its multi-dimensional and complex nature. Sustainable development is dynamic and adapts to changing conditions and needs over time.

Sustainable development and environmental management are closely linked. Sustainable development is essential as it helps conserve natural resources, saves national budgets, fulfills the needs of people, fosters coordination between natural resources and people, and preserves natural resources for future generations. Making decisions about the environment with a long-term perspective is crucial for achieving sustainable development.

♦ Dynamic and multi-dimensional

♦ Sustained subsistence of living beings

4.1.3 Case Studies related to Sustainable Development

- ♦ **Unilever's sustainable living plan:** Unilever is a multinational consumer goods company that has committed to making its operations more sustainable. Their sustainable living plan includes a range of initiatives, such as reducing greenhouse gas emissions, using sustainable agriculture practices, and promoting gender equality in their supply chain. By prioritising sustainability, Unilever has been able to create a more resilient and profitable business model.
- ♦ **Patagonia's environmental and social responsibility:** Patagonia is an outdoor tools and clothing company that has a strong commitment to sustainability. They have implemented a range of initiatives to reduce their environmental impact, such as using recycled materials in their products and investing in renewable energy. They also prioritise social responsibility, with initiatives such as fair labour practices and support for grassroots environmental organisations.
- ♦ **The eco-industrial park in Kalundborg, Denmark:** The Eco-Industrial Park in Kalundborg is a collaboration between multiple businesses that aims to create a closed-loop system, where waste from one company is used as a resource by another. This innovative approach has resulted in significant reductions in waste and greenhouse gas emissions, while also creating economic opportunities for local businesses.
- ♦ **The sustainable apparel coalition:** The Sustainable Apparel Coalition is a group of apparel and footwear companies that have come together to address sustainability challenges in the fashion industry. They have developed the Higg Index, a tool that allows companies to measure and improve their environmental and social impact across the entire supply chain. By working together, these companies are able to drive change at scale and promote more sustain-

♦ Sustainability commitment

♦ Environmental responsibility

♦ Circular economy

♦ Industry collaboration

able practices across the industry.

♦ Green building

- ♦ **The LEED green building certification:** The Leadership in Energy and Environmental Design (LEED) certification is a rating system for green buildings. It assesses factors such as energy efficiency, water use, and indoor air quality to promote sustainable building practices. Many businesses and organisations have adopted LEED certification as a way to demonstrate their commitment to sustainability and reduce their environmental impact.

♦ Sustainability initiatives

- ♦ **The Tata group's sustainable business initiatives:** The Tata Group is a diverse conglomerate with interests in industries such as steel, automotive, and hospitality. They have implemented a range of sustainable business initiatives, such as reducing carbon emissions, promoting renewable energy, and improving water conservation. They also prioritise social responsibility, with initiatives such as community development programmes and employee training on sustainability.

♦ Sustainable urban planning

- ♦ **The Gujarat International Finance Tec-City (GIFT):** GIFT is a planned city in Gujarat that aims to be a hub for global finance and technology companies. The city was designed with sustainability in mind, with features such as green buildings, renewable energy, and water conservation measures. GIFT has also implemented a range of smart city technologies to improve efficiency and reduce environmental impact.

♦ Green transportation

- ♦ **The Delhi Metro Rail Corporation's green initiatives:** The Delhi Metro is a rapid transit system that serves the National Capital Region of India. The Delhi Metro Rail Corporation has implemented a range of green initiatives, such as using regenerative braking technology to reduce energy consumption, installing solar panels at stations, and promoting rainwater harvesting. These initiatives have resulted in significant reductions in carbon emissions and energy consumption.

♦ Sustainable agriculture

- ♦ **The Chetna organic farming project:** The Chetna Organic Farming Project is a collaboration between farmers, NGOs, and businesses to promote sustainable agriculture practices in the state of Maharashtra. The project promotes organic farming methods, such as using natural fertilisers and pesticides, to improve soil health and reduce environmental impact. It also provides support to farmers to help the transition to organic farming and improve their livelihoods.

- ♦ **The Adani Group's renewable energy investments:** The Adani Group is a conglomerate with interests in energy, infrastructure, and logistics. In recent years, they have made significant investments in renewable energy, with a goal of reaching 25 GW of renewable energy capacity by 2025. This includes solar and wind power projects across India, as well as a focus on energy storage and electric vehicles.

♦ Renewable energy investments

- ♦ **Cochin International Airport, located in Kochi, Kerala, India:** The airport has implemented several sustainable development measures to reduce its environmental impact and promote sustainable practices. Here are some details:

- * **Solar power:** The airport has one of the largest solar power plants in the country, with a capacity of 30 MW. The solar plant meets the majority of the airport's energy needs and has helped the airport become the world's first fully solar-powered airport.
- * **Rainwater harvesting:** The airport has a rainwater harvesting system that collects rainwater from the airport's roofs and pavements. The harvested water is used for landscaping and other non-potable purposes.
- * **Waste management:** The airport has implemented a waste management system that segregates waste at the source and recycles a significant portion of the waste generated at the airport.
- * **Green transportation:** The airport has introduced electric vehicles for ground transportation within the airport premises. The airport also promotes the use of public transport, such as buses and trains, to reduce the number of vehicles on the road.
- * **Biodiversity conservation:** The airport has developed a green belt around its perimeter that serves as a habitat for several species of birds and butterflies. The airport has also installed bird diverters on its runways to prevent bird strikes.
- * **Energy-efficient buildings:** The airport has implemented energy-efficient measures in its

buildings, such as the use of energy-efficient lighting and air conditioning systems, to reduce energy consumption.

These sustainable development measures have helped Cochin International Airport reduce its carbon footprint and promote sustainable practices in the aviation industry.

Sustainable development also involves ensuring social equity and fairness, which means that economic growth must benefit all members of society, including marginalised groups. This requires businesses to consider the needs of their employees, customers, and local communities, and work to build strong relationships based on trust and mutual respect. Sustainable development recognises that economic, social, and environmental issues are interconnected, and that long-term solutions must take all of these factors into account. By embracing this approach, businesses cannot only improve their bottom line, but also contribute to a more just and sustainable world for all.

♦ Social equity and fairness to all

4.1.4 Biodiversity

Let us consider a hypothetical forest ecosystem. In this forest, there are many different species of trees, such as oak, maple, and pine, which provide habitats for a variety of birds, insects, and mammals. The forest floor is covered with different types of vegetation, such as ferns and wildflowers, which provide food and shelter for a variety of small animals. If we were to take a closer look at the soil, we would find a complex network of microorganisms, such as fungi and bacteria, that play an essential role in nutrient cycling and maintaining the health of the ecosystem. In the streams and rivers that flow through the forest, we would find different species of fish, amphibians, and reptiles, which form an intricate food web and contribute to the overall diversity of the ecosystem.

♦ Biodiverse forest ecosystem

This example illustrates how biodiversity is not just about the number of species in an ecosystem but also about the interconnectivity and relationships between different species. Each species plays a unique role in the ecosystem, and the loss of even one species can have a significant impact on the entire system. Biodiversity is a term used to describe the variety of life on Earth, from the smallest microorganisms to the largest mammals. It encompasses all the different species of plants, animals, and microorganisms that exist in the world and the ecosystems they inhabit.

♦ Interconnectivity between different species

Biodiversity is essential for the functioning of ecosystems and the provision of ecosystem services such as pollination, soil

fertility, and water regulation. It also has significant economic and cultural value, as many communities rely on biodiversity for their livelihoods and cultural traditions. Therefore, it is crucial to protect and conserve biodiversity for the well-being of both the planet and its inhabitants.

♦ Ecosystem services and cultural value

India is a land of diversity, not only in terms of culture, but also in terms of biodiversity. India is a country that is home to a vast range of geographical features, ranging from the Himalayan mountain ranges in the north to the Deccan plateau in the south. This diverse landscape has resulted in a wide range of ecosystems, which in turn, have given rise to an incredible diversity of plant and animal species. This biodiversity is one of the key defining features of India and is essential to the country's ecological, cultural, and economic well-being.

♦ Describes the variety of life on Earth

India's biodiversity is truly remarkable, with over 47,000 species of plants and over 89,000 species of animals identified so far. These include a diverse range of animals, such as the majestic Bengal tiger, the graceful Indian elephant, the one-horned rhinoceros, and the elusive snow leopard. India is also home to over 1,300 bird species, making it a bird watcher's paradise. The country's plant species are equally diverse, ranging from the towering oak trees of the Himalayas to the unique flora of the Western Ghats.

♦ Biodiversity in India

The biodiversity of India is not limited to its flora and fauna, but also extends to its ecosystems. The country is home to a wide range of ecosystems, including tropical rainforests, deciduous forests, grasslands, wetlands, and marine ecosystems. These ecosystems are essential to maintaining the ecological balance of the country and provide a wide range of benefits, including clean air and water, nutrient cycling, and soil formation.

♦ Ecological balance

The cultural diversity of India is also closely linked to its biodiversity. Many of India's diverse communities have developed their unique ways of life, based on the natural resources available to them. For instance, the tribal communities of the Northeast have developed a deep understanding of the forests and wildlife of the region, and have developed sustainable practices that allow them to live in harmony with nature. Similarly, the pastoral communities of Rajasthan have developed a unique relationship with the desert ecosystem, where they rely on their knowledge of the land to raise livestock and cultivate crops.

♦ Cultural interdependence with biodiversity

India's biodiversity is a key defining feature of the country, which is not only essential to its ecological well-being but also to its cultural and economic well-being. The diverse range of ecosystems, flora, and fauna found in India provide numerous benefits, including ecosystem services, cultural heritage, and

♦ Carbon credit

economic opportunities. Therefore, it is essential to conserve and protect India's biodiversity, for the present and future generations to enjoy. With the second-largest population in the world, India has a huge demand for energy and resources, which puts immense pressure on its natural resources. However, in recent times, the country has become aware of the importance of biodiversity conservation and the role it plays in mitigating climate change. This has led to the emergence of a new concept - carbon credit.

Bhutan is a small landlocked country located in the eastern Himalayas. It is known for its focus on preserving its environment and has been recognised for its commitment to sustainability. Bhutan's constitution mandates that at least 60% of the country's land must remain under forest cover, and the country has been able to achieve this goal.

Bhutan has also been involved in the carbon credit market. The country has been able to earn revenue by selling carbon credits to other countries and organisations that need to offset their carbon emissions. Bhutan's carbon credit programme is based on the country's ability to maintain its forest cover and reduce carbon emissions.

The carbon credit market provides an economic incentive for countries and organisations to reduce their carbon emissions. By selling carbon credits, Bhutan has been able to generate revenue while also promoting sustainable practices.

4.1.5 Carbon credit

Carbon credits are a type of tradable permit that represents a unit of greenhouse gas (GHG) emissions reduction or removal from the atmosphere. They are used to encourage businesses and individuals to reduce their carbon footprint and contribute to the fight against climate change. To illustrate the concept of carbon credits, let's consider a hypothetical company that produces electricity using coal-fired power plants. The company is required to reduce its GHG emissions to comply with local or national regulations. To achieve this, the company can invest in renewable energy sources such as wind or solar, or they can implement energy efficiency measures such as upgrading equipment and reducing waste.

♦ Greenhouse gas

If the company reduces its GHG emissions by a certain amount, they can earn carbon credits, which can be traded on the carbon market. Each carbon credit represents one tonne of carbon dioxide equivalent (CO₂e) that has been prevented from entering the atmosphere. Other companies or individuals who are unable to reduce their emissions can purchase these carbon credits to offset their own emissions. This creates a financial incentive for companies to reduce their GHG emissions, as they can earn revenue from the sale of carbon credits. Carbon credits can also be generated through carbon sequestration projects such as reforestation or afforestation, where trees absorb carbon dioxide from the atmosphere and store it in their biomass or soil.

♦ Carbon Credits and Offset Mechanisms

Carbon credits are a pretty nifty concept that has been gaining popularity in recent years as the world becomes more aware of the impact that human activity has on the environment. Essentially, a carbon credit is a permit that allows an individual or company to emit a certain amount of carbon dioxide or other greenhouse gases into the atmosphere. The idea behind carbon credits is to create a financial incentive for individuals and companies to reduce their greenhouse gas emissions by providing them with a way to offset the emissions they do produce.

♦ Offers financial incentive

Here's how it works: Let's say that a company produces 100,000 tons of carbon dioxide emissions per year. Instead of trying to immediately reduce their emissions to zero, they can purchase carbon credits that represent a reduction of 100,000 tons of carbon dioxide from another entity that has reduced its emissions. This other entity could be anything from a renewable energy project to a company that has invested in energy efficiency measures. By purchasing these carbon credits, the company is essentially funding the reduction of greenhouse gas emissions elsewhere. This creates a financial incentive for companies to reduce their emissions, as it becomes more cost-effective to purchase carbon credits than it is to continue emitting greenhouse gases at the same rate.

♦ Emission reduction and Carbon Credit purchases

By creating a market for carbon credits, the aim is to incentivise emissions reductions and provide a mechanism for funding low-carbon initiatives. This helps to accelerate the transition to a low-carbon economy and contributes to the global effort to mitigate the impacts of climate change. In fact, carbon credits are a way to put a price on GHG emissions and create a financial incentive for emissions reductions, thereby helping to promote sustainable development and combat climate change. Carbon credit is a permit that allows companies and countries to emit a certain amount of carbon dioxide or other greenhouse gases. The concept of carbon credit was introduced to promote the re-

♦ Funding of low-carbon initiatives

duction of carbon emissions and encourage the use of renewable sources of energy. The idea is simple - a company that emits less carbon than the allowed limit can sell its surplus allowance to another company that emits more than the allowed limit.

The concept of carbon credits has been praised for its potential to encourage businesses to become more sustainable and reduce their carbon footprint. Additionally, it provides a way for individuals and companies to offset their emissions if they're unable to reduce them in the short term. Carbon credits are a promising tool in the fight against climate change. They provide a way to create financial incentives for reducing greenhouse gas emissions, while also encouraging individuals and companies to take responsibility for their impact on the environment.

Calculating carbon credits can be a complex process that involves many factors, such as the amount of greenhouse gases emitted, the type of project or activity that is reducing emissions, and the specific carbon offset standard that is being used. However, here are the basic steps to calculate carbon credits:

♦ Carbon Credit benefits and climate action

♦ Establishing baseline emissions

♦ **Establish a baseline:** The first step in calculating carbon credits is to establish a baseline, which is the amount of greenhouse gas emissions that would have occurred if the project or activity was not implemented. The baseline should take into account factors such as historical emissions, projected emissions, and any regulatory or policy requirements.

♦ Calculating emission reductions

♦ **Determine the project emissions:** Once the baseline has been established, the next step is to determine the amount of greenhouse gas emissions that will be reduced or avoided by the project or activity. This can be done through measurements, estimates, or other methods.

♦ Calculating Carbon Offsets

♦ **Calculate the carbon offset:** The carbon offset is the difference between the baseline emissions and the project emissions. To calculate the carbon offset, you multiply the amount of emissions reduced by the carbon dioxide equivalent (CO₂e) factor, which takes into account the global warming potential of the greenhouse gases emitted.

♦ Independent verification

♦ **Verify the carbon offset:** The carbon offset must be verified by an independent third party to ensure that it meets the requirements of the specific carbon offset standard being used.

♦ Carbon exchange

♦ **Register and trade the carbon credits:** The verified carbon offset can then be registered and traded on a carbon exchange or through other markets.

It is important to note that calculating carbon credits can be a complex process and may require the expertise of a carbon offset specialist or consultant to ensure accuracy and compliance with specific standards and regulations. Carbon credits are a way for countries and companies to offset their greenhouse gas emissions by supporting projects that reduce emissions elsewhere. Therefore, it's difficult to say which country has the best carbon credits as it depends on various factors such as the type of projects being supported, the transparency of the carbon market, and the credibility of the organisations issuing the credits.

♦ Steps to calculate carbon credits

That being said, there are some countries that are known for their strong commitments to reducing greenhouse gas emissions and have well-established carbon markets. For example, the European Union has the world's largest carbon market through the EU Emissions Trading System (ETS), which has been in operation since 2005. Other countries with established carbon markets include the United States, China, and South Korea. Additionally, there are a number of organisations that certify carbon credits and provide assurance to buyers that the credits are legitimate and represent a real reduction in emissions. Some of these organisations include the Gold Standard, Verified Carbon Standard, and Climate, Community and Biodiversity Standards.

♦ Notable carbon markets and certification organisations

Ultimately, the effectiveness of a carbon credit depends on its ability to incentivise emission reductions and support sustainable development. Buyers of carbon credits should carefully evaluate the projects and standards behind the credits to ensure they align with their sustainability goals. In India, the concept of carbon credit has gained popularity in the business and commerce world. Several companies have started adopting measures to reduce their carbon footprint by investing in renewable sources of energy and implementing energy-efficient practices. For instance, a company that uses solar energy to power its manufacturing plant can generate carbon credits, which it can sell to another company that emits more carbon.

♦ Sustainability alignment and Carbon Credit utilisation

The Indian government has also taken several steps to promote biodiversity conservation and carbon credit trading. The National Biodiversity Act, 2002, was introduced to regulate the use of biological resources and ensure their sustainable use. The government has also launched several schemes to encourage the adoption of renewable sources of energy, such as the National Solar Mission and the National Wind Energy Mission.

♦ Government schemes

For getting a detailed awareness some examples of carbon credits are listed below.

- ♦ **Renewable energy:** A company that generates electricity through renewable sources, such as wind or solar power,

♦ Renewable sources

can earn carbon credits for reducing greenhouse gas emissions. The carbon credits can then be sold on a carbon exchange to other companies that need to offset their own carbon emissions.

♦ Carbon stored in the trees is considered a carbon offset

♦ **Forest conservation:** A company that owns a forest can earn carbon credits by preserving it from deforestation. The carbon stored in the trees is considered a carbon offset, and the company can sell the credits to other companies as a way to offset their own carbon emissions.

♦ Generate electricity

♦ **Methane capture:** A landfill can earn carbon credits by capturing the methane gas that is produced from decomposing waste. The methane can then be used to generate electricity, reducing the need for fossil fuels. The carbon credits earned from the methane capture can be sold to other companies.

♦ Energy-efficient technology

♦ **Energy efficiency:** A company that invests in energy-efficient technology or equipment, such as LED lighting or energy-efficient HVAC systems, can earn carbon credits for reducing energy consumption and therefore reducing greenhouse gas emissions. The carbon credits earned can be sold to other companies to offset their own carbon emissions.

♦ Sequestering carbon in the soil

♦ **Agriculture:** A farmer who uses sustainable farming practices, such as crop rotation and reduced tillage, can earn carbon credits for sequestering carbon in the soil. The carbon credits can then be sold to companies that need to offset their own carbon emissions.

♦ Challenge- lack of awareness

However, despite the potential benefits of carbon credit trading, the concept has faced several challenges in India. One of the major challenges is the lack of awareness about the concept among businesses and individuals. Many companies are still unaware of the potential benefits of carbon credit trading and the steps they need to take to reduce their carbon footprint. Another challenge is the lack of a well-established carbon credit market in India. While several companies have started generating carbon credits, there is still a limited number of buyers. This has resulted in a lack of demand for carbon credits, which has made it difficult for companies to monetise their surplus carbon allowances.

♦ Carbon credit market

Biodiversity conservation and carbon credit trading are crucial concepts that play a significant role in mitigating climate change. While India has made significant progress in promoting biodiversity conservation and adopting renewable sources of energy, there is still a long way to go. It is essential for businesses and individuals to become more aware of the potential benefits of carbon credit trading and take steps to reduce their carbon

footprint. The government also needs to take proactive measures to establish a well-established carbon credit market in the country. Only then can India achieve its goal of sustainable development and a green future.

4.1.6 Government Policy regarding Environment

India, a land of diverse cultures, languages, and landscapes, has always been a hub for environmental diversity as well. The government of India has recognised the importance of preserving the environment and has implemented policies to ensure sustainable development. India's government policies on the environment reflect a commitment to sustainable development and preserving the country's natural resources. These policies aim to balance economic growth with environmental protection, ensuring that future generations can enjoy the beauty and diversity of India's natural environment.

♦ Policies for environmental protection

1. **National Action Plan on Climate Change (NAPCC):** The NAPCC was launched in 2008 and includes eight missions that focus on areas such as solar power, energy efficiency, sustainable habitat, water conservation, sustaining the Himalayan ecosystem, and creating a green India. Some of the specific initiatives under the missions include:

The National Solar Mission which aims to promote the development and use of solar energy for power generation and other applications.

The National Mission for Enhanced Energy Efficiency, which aims to reduce energy consumption in various sectors such as buildings, transport, and industry.

The National Water Mission, which aims to improve water use efficiency, increase water security, and promote conservation of water resources.

♦ Eight missions

2. **Swachh Bharat Abhiyan (Clean India Mission):** The Swachh Bharat Abhiyan was launched in 2014 with the aim of making India clean and free of open defecation by 2019. The mission includes building toilets in households, schools, and public places, promoting waste segregation and recycling, and creating awareness about the importance of hygiene and sanitation. Some of the specific initiatives under the mission include:

- ♦ The construction of over 110 million toilets in households, schools, and public places.

♦ Clean India mission

- ♦ The promotion of the use of toilets through behaviour change communication and community mobilisation. The implementation of solid waste management practices, including segregation of waste at source, collection, transportation, and disposal in scientific landfills.

3. National Green Tribunal (NGT): The National Green Tribunal is a specialised court that was established in 2010 to deal with environmental disputes and violations. The tribunal has the power to hear cases related to air and water pollution, forest conservation, and biodiversity. Some of the key features of the NGT are:

♦ Environmental disputes and violations

- ♦ It has jurisdiction over all civil cases related to environmental issues and has the power to issue orders and judgments that are binding on all parties.
- ♦ The NGT consists of both judicial and expert members who are appointed by the central government.
- ♦ The tribunal has benches located across the country to ensure accessibility to justice.

4. Forest Conservation Act (1980): The Forest Conservation Act was enacted in 1980 with the aim of conserving and protecting forests and wildlife in India. The act prohibits the diversion of forest land for non-forestry purposes without the approval of the Central Government. Some of the key features of the act are:

♦ Protecting forests and wildlife

- ♦ It requires State Governments to seek prior approval from the Central Government for any diversion of forest land for non-forestry purposes.
- ♦ It mandates the collection of compensatory afforestation charges for any diversion of forest land, which are used for afforestation and regeneration of degraded forests.
- ♦ The act also provides for the constitution of a National Board for Wildlife and State Wildlife Advisory Boards to advise the Central and State Governments on matters related to wildlife conservation.

5. National River Conservation Plan (NRCP): The National River Conservation Plan was launched in 1995 with the aim of improving the water quality of rivers in India. The plan includes measures such as sewage treatment, afforestation, and riverbank erosion control. Some of the specific initia-

tives under the plan are:

- ♦ The construction of sewage treatment plants and sewage interception and diversion works to treat domestic and industrial wastewater before it is discharged into rivers.
- ♦ The promotion of afforestation and tree planting to prevent soil erosion and stabilise riverbanks.
- ♦ The implementation of riverfront development projects to create recreational spaces and promote tourism.

♦ Improving the water quality of rivers

6. **National Biodiversity Act (2002):** The National Biodiversity Act was enacted in 2002 to provide for the conservation and sustainable use of biodiversity in India. The act mandates the establishment of a National Biodiversity Authority and State Biodiversity Boards to regulate access.

♦ Sustainable use of biodiversity

The government policies regarding the environment have had a significant impact on the outlook of business and commerce in India. The policies have encouraged businesses to adopt more sustainable practices, reduce their environmental footprint, and comply with environmental regulations. Here are some ways in which the government policies have changed the outlook of business and commerce:

- ♦ **Increased adoption of sustainable practices:** The government policies have encouraged businesses to adopt more sustainable practices in their operations. For example, the National Action Plan on Climate Change has led to increased adoption of renewable energy sources such as solar power, which has helped businesses reduce their carbon footprint. The Swachh Bharat Abhiyan has led to increased adoption of waste segregation and recycling practices, which has helped businesses reduce their waste generation.
- ♦ **Compliance with environmental regulations:** The government policies have also made it mandatory for businesses to comply with environmental regulations. For example, the Forest Conservation Act has forced businesses to obtain the necessary approvals and comply with the regulations of the Central Government if forest land is diversified for non-forestry activities. Similarly, the National Green Tribunal has the power to issue orders and judgments that are binding on all parties, which has made businesses more cautious in their environmental practices.
- ♦ **Increased awareness of environmental issues:** The gov-

♦ Sustainable business initiatives

♦ Enforced environmental compliance

♦ Environmental awareness impact

ernment policies have created awareness among businesses about the importance of environmental issues. For example, the National River Conservation Plan has highlighted the need to improve the water quality of rivers in India, which has made businesses more conscious of their wastewater management practices. This has led to increased investment in wastewater treatment plants and other pollution control measures.

♦ Rise of green marketing

- ♦ **Increased focus on green marketing:** The government policies have also led to increased focus on green marketing by businesses. Green marketing refers to the marketing of products and services that are environmentally friendly. Businesses are now promoting their sustainable practices and environmental initiatives to attract environmentally conscious consumers.

♦ Transforming business landscape

The government policies regarding the environment have changed the outlook of business and commerce in India. The policies have encouraged businesses to adopt more sustainable practices, comply with environmental regulations, increase awareness of environmental issues, and focus on green marketing. These changes have not only helped protect the environment but have also created new opportunities for businesses to grow and innovate in a more sustainable manner.

Summarised Overview

Sustainable development refers to the long-term approach to economic, social, and environmental issues, which ensures that the needs of the present generation are met without compromising the ability of future generations to meet their own needs. Sustainable development and environmental management are closely linked and highlights on balance economic growth, social well-being, and environmental protection. Biodiversity is the interconnectivity and relationships between different species in the ecosystem.

Carbon credits are a type of tradable permit that represents a unit of greenhouse gas (GHG) emissions reduction or removal from the atmosphere. The idea behind carbon credits is to create a financial incentive for individuals and companies to reduce their greenhouse gas emissions by providing them with a way to offset the emissions they

do produce. The Government policies related to the protection of environment included National Action Plan on Climate Change, Swachh Bharat Abhiyan, National Green Tribunal, Forest Conservation Act, National River Conservation Plan, and National Biodiversity Act.

Self-Assessment Question

1. What do you mean by sustainable development?
2. Explain the term carbon credit.
3. Write a short note on the Government policies relating to environmental protection.
4. Explain briefly the impact of Government policies on environmental protection.
5. What are the challenges involved in the implementation of carbon credit?
6. Explain in brief any two case studies on sustainable development.
7. What is environmental management?
8. What do you mean by the term 'sustainability'?

Assignments

1. List out 5 case studies related to sustainable development.
2. Explain the process of calculation of carbon credit.
3. Discuss the key environmental challenges faced by India and evaluate the effectiveness of the government's policies in addressing these issues.
4. Examine the initiatives taken by the Indian government to promote renewable energy sources and reduce the country's dependence on fossil fuels.
5. Evaluate the impact of the Swachh Bharat Abhiyan (Clean India Mission) in improving sanitation and waste management practices in India.

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Suggested Reading

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5. The Environment (Protection) Act, 1986 - Bare Act 2020 Edition

Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.

Unit 2

Laws Relating to Environmental Protection

Learning Outcomes

After studying this unit, the learners will be able to:

- ◆ familiarise with air pollution and laws and regulations related to air pollution
- ◆ gain insights on the Environmental Protection Act
- ◆ learn the role of the National Green Tribunal

Background

The study of environmental law, specifically the law relating to the prevention and control of air pollution and water pollution, is essential in today's world, as environmental issues continue to gain attention and importance globally. The history of environmental law can be traced back to the 19th century, when industrialisation and urbanisation led to increased pollution and degradation of the environment. The first major legislation to address environmental issues was passed in the United States in 1900, when the Lacey Act was enacted to regulate the trade in wildlife.

In the 1960s and 1970s, environmental issues gained prominence, and the United States passed several major environmental laws, including the Clean Air Act and the Clean Water Act. These laws served as models for other countries around the world to follow. In India, the Water (Prevention and Control of Pollution) Act was passed in 1974, followed by the Air (Prevention and Control of Pollution) Act in 1981. These acts aimed to prevent and control pollution by regulating the discharge of pollutants into water and air, respectively.

In addition to these acts, the Indian government has also implemented several policies and initiatives to address environmental issues, including the National Clean Energy Fund, the National River Conservation Plan, and the Swachh Bharat Abhiyan. The study of environmental law relating to the prevention and control of air and water pollution involves a thorough understanding of the legal frameworks, policies, and initiatives that have been put in place to address these issues. It also involves an understanding of the scientific and technological aspects of pollution, as well as the social and economic factors that contribute to environmental degradation.

Keywords

Air pollution, Water pollution, National Green Tribunal

Discussion

4.2.1 Prevention and Control of Air and Water Pollution

Environmental protection laws are legal measures aimed at safeguarding the environment and promoting sustainable practices. They encompass regulations governing air and water quality, waste management, conservation of natural resources, and protection of endangered species. These laws establish standards, permit systems, and penalties for non-compliance to ensure that individuals, businesses, and governments take responsibility for minimising pollution, preserving ecosystems, and mitigating the impact of human activities on the environment.

◆ Promote sustainability

Air pollution is the presence of harmful substances in the Earth's atmosphere, which can have negative effects on human health, the environment, and the climate. These substances, known as pollutants, can come from both natural and human-made sources. To illustrate the concept of air pollution, let's consider a hypothetical urban area. In this area, there are many different sources of air pollution, such as factories, vehicles, and power plants, which emit pollutants such as particulate matter, nitrogen oxides, sulfur dioxide, and carbon monoxide into the air. These pollutants can have harmful effects on human health, such as respiratory diseases, cardiovascular diseases, and cancer. They can also have adverse effects on the environment, such as acid rain, ozone depletion, and global warming. In addition, air pollution can have economic impacts, such as reduced agricultural productivity, increased healthcare costs, and damage to infrastructure.

◆ Sources of air pollution

Air pollution can also be a problem in rural areas, where burning of biomass for cooking and heating, as well as agricultural practices such as crop burning and livestock farming, can release significant amounts of pollutants into the air. Governments and international organisations have taken steps to reduce air pollution through regulations, such as emissions standards for

♦ Pollutants into the air

vehicles and industrial sources, and incentives for clean energy sources. Individuals can also take actions to reduce their personal contribution to air pollution, such as using public transportation, conserving energy, and avoiding burning waste.

India's efforts to address air pollution can be traced back to the early 20th century, when several Indian cities began implementing regulations to control smoke emissions from factories and power plants. The first major air pollution law in India was the Indian Boilers Act of 1923, which required factories and power plants to obtain permits and comply with emissions standards. However, it was not until the 1980s that air pollution became a major public health concern in India. In 1981, the Air (Prevention and Control of Pollution) Act was passed, establishing the legal framework for air pollution control in India. This law created the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs), which were responsible for implementing and enforcing air pollution regulations at the national and state levels. In 1989, the government of India passed the National Clean Air Programme (NCAP), which was designed to address the growing problem of air pollution in urban areas. The NCAP focused on reducing emissions from sources such as industrial facilities, transportation, and solid waste management. It also called for the development of air quality monitoring systems and public awareness campaigns to promote cleaner air. Over the past few decades, India has continued to enact and strengthen air pollution regulations. In 1998, the government of India introduced the Noise Pollution (Regulation and Control) Rules, which aimed to regulate noise pollution from various sources, including construction sites, vehicles, and loudspeakers. In 2002, the government introduced the National Ambient Air Quality Standards, which established limits on pollutants such as particulate matter, sulfur dioxide, and nitrogen dioxide. More recently, the government of India has implemented several initiatives to address air pollution, including the National Clean Energy Fund, which supports the development of renewable energy projects, and the Swachh Bharat Abhiyan, which aims to improve sanitation and waste management practices. In 2019, the government introduced the National Clean Air Programme (NCAP), which is a five-year action plan aimed at reducing particulate matter pollution by 20-30% by 2024. Overall, India's laws and regulations related to air pollution have evolved over time, reflecting a growing recognition of the importance of addressing this issue for public health and environmental sustainability.

♦ Laws and regulations related to air pollution

India has various laws and regulations that address air pollution and water pollution. Some of the main points that are included in these laws are:

- ♦ Air (Prevention and Control of Pollution) Act, 1981
- ♦ Water (Prevention and Control of Pollution) Act, 1974
- ♦ National Green Tribunal (NGT)
- ♦ The Air Quality Index (AQI)
- ♦ Water (Prevention and Control of Pollution) Cess Act, 1977
- ♦ Municipal Solid Waste (Management and Handling) Rules, 2000
- ♦ The Clean Energy Cess
- ♦ Forest Conservation Act, 1980

These are some of the main laws and regulations related to air pollution and water pollution in India. There are also many other laws and regulations that address specific aspects of pollution control, waste management and environmental protection. India has several laws and regulations in place to control air and water pollution. Some of the key laws include:

1. **The Air (Prevention and Control of Pollution) Act, 1981:**

The Air (Prevention and Control of Pollution) Act, 1981 is a comprehensive law enacted by the Indian government to prevent and control air pollution in the country. The act aims to preserve and improve the quality of air in India by controlling and reducing air pollution levels. Some of the key provisions of the act are:

- ♦ **Prevention and control of air pollution:** The act provides for the prevention and control of air pollution from various sources such as industries, automobiles, and domestic sources. It empowers the pollution control boards to take measures to prevent and control air pollution, including the setting of emission standards for industries and vehicles.
- ♦ **Authorisation of industries:** The act requires industries to obtain authorisation from the pollution control boards before commencing operations. The authorisation is granted only if the industry meets the prescribed emission standards and other requirements.
- ♦ **Inspection and monitoring:** The act empowers the pollution control boards to inspect and monitor the emission levels of industries and other sources of air pollution. The boards can also collect samples of air for analysis and take necessary action against the violators.

♦ Air Pollution Control Act

♦ Source regulation authority

♦ Industrial authorisation process

♦ Emission monitoring authority

♦ Enforcement and penalties

- ♦ **Penalties and punishment:** The act provides for penalties and punishment for violations of its provisions. These include fines, imprisonment, and closure of industries that fail to comply with the emission standards and other requirements.

♦ Evolution of air pollution regulation

The Air (Prevention and Control of Pollution) Act, 1981 has been amended several times to make it more comprehensive and effective. The act has played a crucial role in controlling air pollution in India by regulating emissions from various sources and promoting the use of cleaner technologies.

♦ Water pollution

Water pollution refers to the contamination of water bodies, such as lakes, rivers, oceans, groundwater, and even small streams, by various substances and pollutants, making the water unsuitable or harmful for human use or for sustaining aquatic life. It occurs when harmful pollutants, either chemical, physical, or biological in nature, are introduced into the water environment, causing a disturbance in its natural balance. There are several sources of water pollution, including industrial activities, agricultural practices, urban runoff, improper disposal of waste, sewage discharge, oil spills, and the use of harmful chemicals and pesticides. These pollutants can have detrimental effects on the ecosystem and human health.

♦ Prevention against water pollution

2. Water (Prevention and Control of Pollution) Act, 1974: The Water (Prevention and Control of Pollution) Act, 1974 is an important legislation enacted by the Indian government to address the growing concerns regarding water pollution and its detrimental effects on the environment and human health. The Act aims to prevent and control water pollution by regulating and overseeing various activities that have the potential to pollute water bodies. The Act establishes the Central Pollution Control Board (CPCB) at the national level and State Pollution Control Boards (SPCBs) at the state level, which are responsible for implementing the provisions of the Act. These boards have the authority to grant and revoke permits for the discharge of pollutants into water bodies, lay down standards for effluent and sewage treatment, and conduct inspections and monitoring of industries to ensure compliance.

The Act also empowers the government to declare certain areas as pollution control areas where stricter regulations and measures are implemented to control pollution. It provides for the appointment of designated officers with powers to inspect premises, collect samples, and initiate legal proceedings against violators of the Act. Under the Water Act, industries and other establishments are required to obtain consent from the relevant pollution control boards before discharging any effluent or sew-

age into water bodies. They must also adhere to the prescribed standards for effluent quality, install pollution control devices, and maintain records of their operations. The Act imposes penalties for non-compliance, including fines and imprisonment, to deter violators. It also encourages public participation in pollution control efforts and provides provisions for the public to file complaints against polluting activities.

♦ Legal compliances as per Water (Prevention and Control of Pollution) Act, 1974

4.2.2 Environment (Protection) Act 1986

This act provides for the protection and improvement of the environment and for the prevention of hazards to human beings, other living creatures, plants, and property. The Indian government has implemented various laws and regulations to prevent and control air and water pollution. Some of the important laws related to these issues are as follows:

1. **Air (Prevention and Control of Pollution) Act, 1981:** This act was enacted to prevent, control, and abate air pollution. It provides for the establishment of State Pollution Control Boards and Central Pollution Control Board to monitor and control air pollution.
2. **Water (Prevention and Control of Pollution) Act, 1974:** This act was enacted to prevent and control water pollution. It provides for the establishment of State Pollution Control Boards and Central Pollution Control Board to monitor and control water pollution.
3. **National Green Tribunal Act, 2010:** This act was enacted to provide effective and expeditious disposal of causes related to environmental protection and conservation of forests and other natural resources, including prevention and control of pollution.
4. **Motor Vehicles (Amendment) Act, 2019:** This act was enacted to regulate the emission of pollutants from motor vehicles.
5. **Swachh Bharat Abhiyan:** This is a national campaign launched by the government of India in 2014 to clean the streets, roads, and infrastructure of the country's cities and towns.
6. **National Clean Energy Fund:** This fund was created in 2010 to support research and development of clean energy technologies and encourage the use of renewable energy.

♦ Preventing air pollution

♦ Preventing water pollution

♦ Comprehensive environmental protection

♦ Regulate the emission of pollutants from motor vehicles

♦ National campaign

♦ Energy conservation

These laws and regulations are enforced by various authorities, including the State Pollution Control Boards, Central Pollu-

♦ Regulation and management of environmental issues

tion Control Board, and National Green Tribunal, to ensure the prevention and control of air and water pollution in the country. The Environment Protection Act, 1986 is a comprehensive legislation enacted by the Indian government for the protection and improvement of the environment. The act was introduced in response to the growing concerns about the deteriorating state of the environment and the need for a legal framework to regulate and manage environmental issues. The act has several key provisions and objectives, which are discussed below:

4.2.3 Objectives

The primary objectives of the Environment Protection Act are as follows:

- a. To protect and improve the environment

♦ Environmental safeguarding framework

The Environment Protection Act (EPA) of 1986 is an umbrella legislation aimed at protecting and improving the quality of the environment in India. The act provides a framework for the prevention, control, and abatement of environmental pollution, as well as for the protection of public health and the conservation of natural resources. Here are some ways in which the EPA works to protect and improve the environment:

♦ Regulatory authority for pollution control

- ♦ **Regulation of polluting activities:** The EPA empowers the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) to regulate and control activities that can cause pollution and environmental damage, such as industrial processes, transportation, and waste disposal. The boards can set standards for emissions and effluent discharge, and monitor compliance with these standards.

♦ Hazardous substance management

- ♦ **Hazardous substances:** The EPA provides for the regulation and management of hazardous substances, including their manufacture, storage, transportation, and disposal. It also provides for emergency response measures in case of accidental spills or releases.

♦ Evaluation of environmental effects

- ♦ **Environmental impact assessment:** The EPA mandates the assessment of the potential environmental impacts of new projects, such as industrial plants or infrastructure development. This process involves evaluating the likely environmental effects, identifying mitigation measures, and obtaining clearance from the relevant authorities before the project can proceed.

- ♦ **Protection of environmentally sensitive areas:** The EPA

provides for the declaration of ecologically fragile and environmentally sensitive areas, such as national parks and wildlife sanctuaries, as protected areas. It also regulates activities within these areas to minimise environmental damage and protect natural habitats.

♦ Protected area conservation

- ♦ **Prevention and control of pollution:** The EPA empowers the CPCB and SPCBs to take measures for the prevention and control of pollution, such as issuing directions to industries and factories to stop or modify their operations, and ordering closure of polluting units that violate environmental norms.

♦ Pollution control authority

- ♦ **Public participation:** The EPA provides for public participation in environmental decision making processes, including public hearings and consultations, and the right to access information related to environmental matters.

♦ Public involvement and transparency

b. To promote sustainable development

The provisions of the EPA are designed to regulate activities that may harm the environment and to promote sustainable development practices. Here are some ways in which the EPA provides provisions to promote sustainable development:

♦ Supporting sustainable development

- ♦ **Environmental Impact Assessment (EIA):** The EPA requires an EIA to be carried out before any new project is started. The EIA assesses the potential environmental impact of the project and identifies measures to mitigate or avoid adverse effects. This helps to ensure that new projects are sustainable and do not harm the environment.

♦ Project sustainability assessment

- ♦ **Pollution control:** The EPA provides provisions for controlling pollution from various sources, such as industrial processes, vehicles, and waste disposal. This helps to reduce the negative impact of pollution on the environment and promotes sustainable development by ensuring that natural resources are conserved.

♦ Pollution control for resource conservation

- ♦ **Waste management:** The EPA also provides provisions for managing waste in a sustainable manner. This includes regulating the disposal of hazardous waste and promoting recycling and reuse of materials. By promoting sustainable waste management practices, the EPA helps to reduce the amount of waste generated and conserve natural resources.

♦ Sustainable waste management

- ♦ **Conservation of biodiversity:** The EPA also provides provisions for the conservation of biodiversity. This includes protecting endangered species, preserving habitats, and

♦ Biodiversity conservation measures

promoting sustainable use of natural resources. By conserving biodiversity, the EPA helps to ensure that natural ecosystems are preserved and that the benefits they provide are sustained for future generations.

c. To safeguard human health and well-being

♦ Health safeguarding through regulations

♦ **Protection of air and water quality:** Environmental protection laws play a critical role in safeguarding human health by regulating emissions from factories, power plants, and other sources of pollution. These laws ensure that people have access to clean air and water, reducing the risk of respiratory illnesses and other health issues caused by pollution.

♦ Ecosystem health and sustainability

♦ **Conservation of ecosystems:** Environmental protection laws help promote healthy ecosystems by regulating activities that can harm them, such as deforestation, overfishing, and habitat destruction. By protecting ecosystems, these laws ensure the availability of diverse and sustainable food sources, as well as natural resources necessary for human well-being.

♦ Resource sustainability regulations

♦ **Sustainable resource management:** Environmental protection laws regulate the use of natural resources such as timber, oil, and minerals to ensure their sustainable exploitation. By promoting responsible resource management, these laws help maintain the long-term availability of these resources and prevent overexploitation that could harm ecosystems and compromise future generations' well-being.

♦ Vulnerable population protection

♦ **Protection of vulnerable populations:** Environmental protection laws are crucial for safeguarding vulnerable populations, such as children and the elderly, who are more susceptible to the negative impacts of pollution and environmental degradation. These laws aim to mitigate risks associated with air pollution, climate change, and other environmental factors that can disproportionately affect these groups, protecting their health and overall well-being.

d. To fill gaps in the existing environmental legislation

♦ Comprehensive legal framework

The EPA provides a framework for environmental protection in areas that were not covered by previous laws, such as hazardous waste management and environmental impact assessment.

The EPA also sets out a number of specific provisions, including:

- ♦ The establishment of the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) to oversee environmental protection.
- ♦ The power to regulate and control pollution from industries, automobiles, and other sources.
- ♦ The power to prohibit or restrict the setting up of new industries or the expansion of existing industries that are likely to cause environmental pollution.
- ♦ The power to impose penalties on those who pollute the environment.

4.2.4 Provisions

The Environment Protection Act has several provisions aimed at achieving its objectives, including the following:

Setting up of Central and State Pollution Control Boards (CPCB and SPCB):

The act provides for the establishment of CPCB and SPCB to monitor and control pollution. The CPCB is a statutory body established under the Environmental Protection Act, 1986, and it is responsible for coordinating the activities of the SPCBs and other agencies involved in environmental protection. The CPCB also advises the central government on environmental issues and provides technical assistance to the SPCBs. The SPCBs are established by the State Governments and are responsible for implementing and enforcing the provisions of the Environmental Protection Act within their respective states. The SPCBs monitor and control pollution from industries, as well as from other sources such as vehicles, construction sites, and domestic waste.

The CPCB and SPCBs have various functions and powers to monitor and control pollution. Some of the key functions of these boards include:

- ♦ **Granting of consent:** The CPCB and SPCBs grant consent to industries and other sources of pollution to operate after ensuring that they comply with the prescribed environmental standards.
- ♦ **Monitoring and analysis:** The boards conduct regular monitoring and analysis of air, water, and soil quality to assess pollution levels and identify sources of pollution.
- ♦ **Enforcement:** The boards have the power to take legal action against polluting industries and other sources of pollu-

♦ Environmental protection authorities

♦ Comply with the prescribed environmental standards

♦ Regular monitoring

♦ Legal action

♦ Sustainable development

tion that do not comply with the prescribed environmental standards.

- ♦ **Research and development:** The boards conduct research and development activities related to environmental protection and promote sustainable development.

4.2.5 National Green Tribunal (NGT)

♦ National Green Tribunal (NGT)

The Environment Protection Act is enforced by CPCB and SPCB. These bodies have the power to issue directions to industries, individuals, and organisations to prevent and control pollution. They can also take legal action against violators of the act. The act also provides for the establishment of the National Green Tribunal (NGT) to hear cases related to environmental issues. The NGT has the power to enforce its decisions and impose penalties and punishments on violators of the act. The National Green Tribunal (NGT) is a specialised court in India that was established on October 18, 2010, under the National Green Tribunal Act, 2010. The NGT was formed to handle environmental disputes and violations under various environmental laws.

♦ National Green Tribunal (NGT)

The NGT has its principal bench in New Delhi, with regional benches located in Pune, Bhopal, Chennai, and Kolkata. The Tribunal is composed of a Chairperson, Judicial Members, and Expert Members. The Chairperson must be a retired judge of the Supreme Court or a Chief Justice of a High Court, while the Judicial Members must be judges of High Courts or retired judges of High Courts. The Expert Members are appointed on the basis of their qualifications and experience in environmental and related fields. The NGT has the power to hear all civil cases relating to environmental issues and violations, including disputes arising from laws such as the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, and the Biological Diversity Act, 2002. It has the authority to issue orders and judgments on matters related to the protection of the environment, conservation of forests and other natural resources, and the prevention and control of pollution.

The NGT has also been given the power to hear appeals against decisions taken by regulatory bodies such as the Ministry of Environment and Forests, Central Pollution Control Board, and State Pollution Control Boards. It can also impose fines and penalties on individuals and companies found to be violating environmental laws, and order compensation to be paid to those affected by environmental damage. The National Green Tribunal (NGT) in India is a specialised judicial body that handles cas-

es related to environmental protection and conservation. While there are many cases that have been heard by the NGT, here are a few important case studies related to business and commerce:

♦ Regular monitoring

Sterlite industries (India) ltd. Vs. Union of India

This is a landmark case in India that pertains to the operation of a copper smelting plant in Thoothukudi, Tamil Nadu. The plant, owned by Sterlite Industries (India) Ltd., had been in operation since 1996 and was one of the largest copper smelting plants in India. In 2013, the National Green Tribunal (NGT) ordered the closure of the plant, citing concerns over air and water pollution caused by the plant's operation. The NGT found that the plant had been operating without the necessary environmental clearances and that its operations had resulted in significant environmental damage, including the pollution of the nearby groundwater and air. Sterlite Industries challenged the NGT's order in the Supreme Court of India, arguing that the closure of the plant would result in significant job losses and economic damage. However, in February 2019, the Supreme Court upheld the NGT's order and ordered the permanent closure of the plant.

♦ Sterlite copper smelting plant case

The Supreme Court's decision was based on the finding that the plant's operations had caused significant harm to the environment and that the company had failed to take adequate measures to address these concerns. The court also noted that the company had a history of non-compliance with environmental regulations and had been fined several times for violating pollution norms. The closure of the Sterlite plant has been hailed as a significant victory for environmental activists and local communities who had been fighting for the plant's closure for many years. However, the decision has also been criticised by some who argue that the closure of the plant has resulted in significant job losses and economic damage to the region.

♦ NGT ordered the closure of the plant

Vardhaman Kaushik Vs. Union of India and others

This is a significant case related to the impact of plastic waste on the environment. The case was filed by Vardhaman Kaushik, a law student, in the National Green Tribunal (NGT) in 2013. The petitioner argued that plastic waste was a major source of environmental pollution and that the government had failed to take adequate measures to address the issue. The NGT, in response to the petition, directed the Central Pollution Control Board (CPCB) to issue guidelines for the management of plastic waste in the country. The NGT also ordered state governments to enforce a ban on plastic bags that are less than 50 microns in thickness. The order was based on the finding that thin plastic bags are more likely to be littered and can cause significant harm to the environment, particularly to marine ecosystems. The NGT

♦ Plastic waste management case

also directed the government to create awareness campaigns to educate people about the harmful effects of plastic waste and the need for its proper disposal.

♦ Issue of plastic waste

The case has been seen as a significant step towards addressing the issue of plastic waste in India. Plastic pollution has become a major environmental concern in the country, with India being one of the largest consumers of single-use plastics in the world. The NGT's decision has led to several State Governments enforcing bans on thin plastic bags, and the guidelines issued by the CPCB have provided a framework for the proper management of plastic waste in the country. The case has also raised awareness about the harmful effects of plastic waste and the need for sustainable alternatives.

Samarth trust Vs. Union of India and others

♦ Hazardous waste dumping case

The case of Samarth Trust vs. Union of India and Others is a landmark environmental case that deals with the illegal dumping of hazardous waste in a village in Uttar Pradesh. The case was filed in 2012 by Samarth Trust, a non-governmental organisation (NGO), in the National Green Tribunal (NGT). The dumping of hazardous waste in the village of Loni in Uttar Pradesh had caused severe environmental pollution and had adversely affected the health of the local residents. The waste had been dumped by a company called Ramky Enviro Engineers Limited, which had been contracted by the Delhi Metro Rail Corporation (DMRC) to dispose of the waste generated during the construction of the Delhi Metro.

♦ Hazardous waste violation case

The NGT, in its order, directed the Central Pollution Control Board (CPCB) to conduct an investigation into the matter and submit a report to the tribunal. The NGT also directed the State Government of Uttar Pradesh to take action against those responsible for the dumping and to ensure that the waste was removed from the site. The CPCB, in its investigation report, found that the waste dumped in Loni was hazardous and had not been treated properly before disposal. The report also revealed that Ramky Enviro Engineers Limited had violated several environmental laws and regulations.

♦ Illegal dumping of hazardous waste

Based on the investigation report, the NGT ordered the closure of the Ramky Enviro Engineers Limited plant in Loni and imposed a penalty of ₹10 crores on the company. The NGT also directed the DMRC to pay a compensation of ₹50 lakh to the Samarth Trust for the environmental damage caused by the dumping of waste. The case of Samarth Trust vs. Union of India and Others is significant as it highlights the importance of holding companies accountable for their environmental actions and emphasises the need for strict enforcement of environmental laws

and regulations. The case also underscores the crucial role that NGOs can play in bringing environmental issues to the attention of the courts and in holding governments and corporations accountable for their actions.

Bhopal gas tragedy

The Bhopal Gas Tragedy was one of the world's worst industrial disasters that occurred on the night of 2 December 1984, when a gas leak from the Union Carbide plant in Bhopal, India, exposed over 500,000 people to toxic gas, resulting in thousands of immediate deaths and long-term health consequences for many others. The NGT's involvement in the Bhopal Gas Tragedy case primarily relates to the environmental impact and remediation of the Union Carbide plant site. The NGT has been monitoring and issuing orders concerning the remediation work and the implementation of environmental standards at the site. In its orders, the NGT has directed the Central Pollution Control Board (CPCB) to prepare a comprehensive plan for the removal of hazardous waste from the plant site and to ensure the remediation of the site in accordance with environmental standards. The NGT also ordered the authorities to provide clean drinking water to the affected communities, improve healthcare facilities, and compensate the victims and their families. The NGT has been closely monitoring the progress of the remediation work at the site and the implementation of the various orders issued in connection with the Bhopal Gas Tragedy.

♦ World's worst industrial disasters

Summarised Overview

Air pollution is the presence of harmful substances in the Earth's atmosphere, which can have negative effects on human health, the environment, and the climate. These substances, known as pollutants, can come from both natural and human-made sources. The Air (Prevention and Control of Pollution) Act, 1981 is a comprehensive law enacted by the Indian government to prevent and control air pollution in the country. The Environment Protection Act (EPA) of 1986 is an umbrella legislation aimed at protecting and improving the quality of the environment in India. The primary objectives of the EPA are to prevent and control pollution, and the act contains several provisions for this purpose. Environmental protection laws are essential for promoting human health and well-being by ensuring access to clean air and water, healthy food and ecosystems, and a sustainable environment. The Environment Protection Act provides for the establishment of a National Green Tribunal (NGT) to handle cases related to environmental

disputes and violations. The NGT has the power to hear cases related to the enforcement of environmental laws and the award of compensation for damage caused to the environment.

Self-Assessment Question

1. Write a short note on the different sources of air pollution
2. What are the key provisions of The Air (Prevention and Control of Pollution) Act?
3. Mention the primary objectives of the Environment Protection Act?
4. State the year of Environment Protect Act.
5. What is air pollution?
6. Explain Water (Prevention and Control of Pollution) Act, 1974.
7. Briefly describe the key functions of CPCB and SPCB.
8. Describe the composition of National Green Tribunal

Assignments

1. List out 5 case studies related to Environmental protection Act.
2. List out 3 case studies related to Air (Prevention and Control of Pollution) Act, 1981.
3. Discuss the measures taken by the government to control air pollution in major cities like Delhi and assess their effectiveness.
4. Examine the objectives and key provisions of the National Green Tribunal Act, 2010. Evaluate its effectiveness in resolving environmental disputes and promoting environmental justice in India.
5. Conduct a comparative analysis of the Environmental Protection Acts in different countries. Explore the similarities and differences in their provisions and assess their impact on environmental protection.
6. Explore the challenges and opportunities in the implementation of the Environmental Protection Act in India. Discuss the role of the National Green Tribunal in ensuring compliance with environmental regulations and promoting sustainable practices.

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4. Dr. Usha Tandon and Dr. Sushil Kumar (2019). *Environmental Law and Policy in India: Overview and Implementation*
5. Dr.Gurdip Singh and Dr. S. K. Srivastava (2018) *Environmental Law: Policy and Practice*

Suggested Reading

1. Benson Gathoni, Salim Hamad Bakar, Egbo Philips Nnajofofor, S. Bilal, E.M Amah (2022). *Environmental Changes on Natural Resources*. AJPO journals and books publishers.
2. S C Shastri, (2022). *Environmental Law*. Eastern Book Company.
3. Chuck Lancaster. (2017). *Environmental Protection: Policies and Management*. Syrawood Publishing House.
4. Robert L. Glicksman, William W. Buzbee. (2023). *Environmental Protection: Law and Policy*. Aspen Publishing.
5. The Environment (Protection) Act, 1986 - Bare Act 2020 Edition

Space for Learner Engagement for Objective Questions

Learners are encouraged to develop objective questions based on the content in the paragraph as a sign of their comprehension of the content. The Learners may reflect on the recap bullets and relate their understanding with the narrative in order to frame objective questions from the given text. The University expects that 1 - 2 questions are developed for each paragraph. The space given below can be used for listing the questions.



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