UNIT-1

ETHICS – DEFINITION AND CONCEPT

Ethics is the study of what is right or wrong in human conduct. This is a branch of Philosophy which studies moral principles. Hence, Ethics is also known as Moral Philosophy.

Ethics, also called **moral philosophy**, the discipline concerned with what is morally good and bad and morally right and wrong. The term is also applied to any system or theory of moral values or principles.

Many people use the words Ethics and Morality interchangeably. However, there is a difference between Ethics and Morals.

To put it in simple terms, Ethics = Morals + Reasoning.

Essence of Ethics

Ethics is the study of morality. The essence of Ethics (core of ethics) is to understand those philosophies which guide us in determining what is right or wrong.

Determinants of Ethics

Determinants are the sources from which the ethical standard arises. There are multiple determinants of ethics like

- Religion
- Law
- Society
- Individual
- Knowledge
- Time

Consequences of Ethics

A consequence is the outcome of any act. Doing good with proper reasoning (being ethical) has many positive consequences like

- Safeguarding the society.
- Feeling good.
- Creating credibility.
- Satisfying basic human needs etc.

However, being unethical has many negative consequences like

- Loss of trust.
- Nepotism.
- Corruption.
- Crimes etc.
  - Professional ethics is important because it dictates to professionals a series of rules related to the way a professional acts towards the people with whom he/she relates professionally.
  - From a philosophical point of view, ethics has to do with morality and with the way people act in the sense of goodness or badness.

- Professional ethics is constituted by all the moral standards that govern the behavior and actions of professionals. It should be noted that for each profession these rules may vary, but they will always be based on principles and values.

- It is also pertinent to conceptualize a professional, morals and ethics.

- **Professional**. Generally refers to a university graduate who has completed a degree and who exercises his or her profession with ability and application.

- **Moral**. This term refers to a person's way of acting, in terms of his or her social and individual life, relating this action to good and evil or to goodness and malice.

- **Ethics.** It refers to the moral norms on which the conduct of a person is based in the environment in which he/she develops; be it individual, social or professional, among others. Ethics is divided into three branches or types: metaethics, normative and applied.

Professional ethics are important because they serve to create organizations based on moral standards of conduct.

Here are a number of reasons why professional ethics are important.

- Based on a set of rules, it can organize a group of professionals from the same profession.
- The organization formed contributes to the personal growth of the associated professional.
- Motivates teamwork and increases the bonds between colleagues.
- Creates a system for each profession, called a code of ethics; in which the duties to be fulfilled by each professional are twinned.
- Provides personal and professional benefits by regulating the actions of a profession and highlighting the virtues of the professional.

Professional ethics refers to principles and criteria that regulate the actions of a professional; however, there are several types of professional ethics, each of which is related to a profession. The following are the most relevant ones.

- **Legal ethics**. It has as its main characteristic professional secrecy and refers to the practice of law.
- **Medical ethics**. It regulates the actions to be followed in a conflict between the morals of a health professional and his or her professional duty.
- **Engineering ethics**. Refers to placing the best interests of communities above personal desires.
- **Teaching ethics**. As a guidance counselor and role model for children and young people, this professional should observe the best of conduct.
- **Military ethics**. Indicates a series of criteria to limit their actions in relation to the use of force.
- **Administrator ethics**. Loyalty, honesty and legality, among others are basic aspects expected of this professional.
- **Ethics of the psychologist**. Respect for the individual, confidentiality, honesty, and responsibility are the most important aspects of this professional.

Compliance with professional ethics is evident when:

- A physician who suppresses prejudices and interests to save a life.
- The lawyer who defends his client and respects confidentiality even when it is against his personal ethics.

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- The journalist who listens to both sides of the story and disseminates it objectively and impartially.
- Offering respectful treatment to colleagues in the same profession, or to any other professional with whom he/she interacts.

Engineering ethics is the field of applied ethics and system of moral principles that apply to the practice of engineering. The field examines and sets the obligations by engineers to society, to their clients, and to the profession. As a scholarly discipline, it is closely related to subjects such as the philosophy of science, the philosophy of engineering, and the ethics of technology.

Engineering Ethics - Introduction

Engineering is the process of developing an efficient mechanism which quickens and eases the work using limited resources, with the help of technology. **Ethics** are the principles accepted by the society, which also equate to the moral standards of human beings. An engineer with ethics, can help the society in a better way.

Hence the study of **Engineering ethics**, where such ethics are implemented in engineering by the engineers, is necessary for the good of the society. Engineering Ethics is the study of decisions, policies and values that are morally desirable in engineering practice and research.

Morals

The word "Morality" originates from the Latin word "mos" meaning "custom". Morals are the principles or habits with respect to right or wrong of one's own conduct. They are not imposed by anyone. Morals are what you think is good and bad personally.

Though morals are not imposed, they can be understood as the preaching of our inner self. Depending on a few factors, our mind filters things as good or bad. These are the ideas that help frame our personality so that we can distinguish between what is right and what is wrong.

A moral is the code of conduct that you develop over time and set for yourself to follow, just like

- Being good to everyone
- Speaking only the truth
- Going against what you know is wrong
- Having chastity
- Avoid cheating
- Being a nice human being etc.

Morals are always defined by one's own personality. Morals can be changed according to one's beliefs as they are completely dependent on one's perception towards the ethical values.

Ethics

The word "Ethics" originates from the Greek word "ethos" meaning "character". Ethics are a set of rules or principles that are generally considered as standards or good and bad or right and wrong, which are usually imposed by an external group or a society or a profession or so.

Ethics can be understood as the rules of conduct proposed by a society or recognized with respect to a particular class of human actions or a particular group or culture. Ethics are dependent on others definition. They may or may not vary from context to context.

Ethics in Engineering

Ethics are principles followed depending upon the moral responsibility that a person feels. The study of related questions about moral ideals, character, policies and relationships of people and organizations involved in technological activity, can be termed as **Engineering ethics**.

An engineer whether he works individually or works for a company, has to go through some ethical issues, mostly under the conditions such as, conceptualization of a product, issues arising in design and testing departments, or may be on the issues involving the manufacturing, sales and services. Questions related to morality also arise during supervision and team works.

The ethical decisions and moral values of an engineer need to be considered because the decisions of an engineer have an impact the products and services - how safe they are to use, the company and its shareholders who believe in the goodwill of the company, the public and the society who trusts the company regarding the benefits of the people, the law which cares about how legislation affects the profession and industry, the job and his moral responsibilities and about how the environment gets affected, etc.

Our behavior should include the following −

- Respecting others and ourselves.
- Respecting the rights of others.
- Keeping promises.
- Avoiding unnecessary problems to others.
- Avoiding cheating and dishonesty.
- Showing gratitude towards others and encourage them to work.

Morality commands respect for persons, both others and ourselves. It involves being fair and just, meeting obligations and respecting rights and not causing unnecessary harm by dishonesty and cruelty or by hubris.

Steps to Deal with Issues

Whenever there occurs an issue, one should possess a few skills in order to sort out the problem. The issues that engineers face, have to be dealt with patience and few moral goals have to be kept in mind while dealing with such issues. They are as follows −

- **Moral Awareness** − One should be able to recognize the moral problems and issues that occur in Engineering. The analysis on the problem is necessary in order to differentiate and judge according to ethics or according to the rules to follow.
- **Cogent Moral Reasoning** − In order to come to a conclusion on an issue, the argument has to be assessed and comprehended. The argument on both sides has to be considered with all the probabilities and the nature of the argument should be logical and moral.
- **Moral Coherence** − After having gone through all the logical and moral facts, consistent and comprehensive view points are to be formed based upon a consideration of relevant facts.
- **Moral Imagination** − The moral issues and the practical issues have to be dealt separately. Alternative responses are to be found out for dealing with moral issues while creative solutions should be found out for practical difficulties.
- **Moral Communication** − The language to communicate about one's moral views should be so precise and clear, that the expression or words should not alter the original meaning.

Though one has all these moral goals, the ethical reasoning for achieving moral conduct with responsibility and commitment is obtained by a few skills that are described below.

Important Skills for Ethical Reasoning

Let us now discuss the important skills for ethical reasoning −

- **Moral Reasonableness** − The ability and willingness to be morally reasonable that one should have while dealing such issues. Unless one is willing and improve such ability, justice cannot be done.

- **Respect for Persons** − The persons involved in the issue, should be treated with genuine concern by one. Such concern should also be there with oneself along with being there for others.
- **Tolerance of diversity** − One should have a broader perspective towards ethnic and religious differences that the people have. Every person differs with another when compared on grounds of moral reasoning. The acceptance of those differences is really important.
- **Moral hope** − The moral conflicts can be resolved by using better communication and having rational dialogue which is evident-based and open-ended which is acceptable and appreciable by both the parties.
- **Integrity** − The moral integrity has to be maintained. Being honest and having strong moral principles helps one to resolve an issue in an efficient manner. An individual also needs to consider other's professional life and personal convictions while solving a problem.

Engineering Ethics - Moral Issues

A moral issue can be understood as an issue to be resolved not only by considering the technical stuff but also by keeping moral values in mind. To be more precise, let us consider the definition in general.

"Moral issue is a working definition of an issue of moral concern is presented as any issue with the potential to help or harm anyone, including oneself."

Types of Moral Issues

There are mainly two types of Moral issues that we mostly come across while keeping the ethical aspects in mind to respond. They are −

Micro-ethics

This approach stresses more on the problems that occur on a daily basis in the field of engineering and its practice by engineers.

Macro-ethics

This approach deals with social problems which are unknown. However, these problems may unexpectedly face the heat at both regional and national levels.

Types of Inquiries

The issues can be resolved by following an investigation procedure, step by step in order to have a clear understanding towards the issue. Here we have three different types of inquiries.

Judging the issues has to be followed by a systematic procedure to avoid any flaws. Engineering ethics involves investigations into values, meanings and facts. Following are the different types of inquiries made for this.

- Normative inquiries
- Conceptual inquiries
- Factual or descriptive inquiries

Normative Inquiries

Normative Inquiry refers to the description that describes **what one ought to do** under a specific circumstance. This is the expected ideal response, which might differ from what one believes to be right or wrong.

This list identifies and justifies the morally desirable nature for guiding individuals or groups. This includes the responsibility of engineers to protect the public safety and how they should respond

under such dangerous practices. Normative inquiries also quote the laws and procedures that affect the engineering practice on moral grounds. They refer to the thought process where the moral rights are to be implemented in order to fulfill their professional obligations.

Conceptual Inquiries

Conceptual Inquiry refers to the description of the meaning of concepts, principles and issues related to engineering ethics. The ethics that an engineer should possess to protect the safety, health and welfare of the public, etc. are described under conceptual inquiries.

It describes what safety is and mentions the marginal issues of safety along with the precautions an engineer should take to avoid risk. Conceptual inquiries mention the moral aspects of bribery and how its effects, along with the professional ethics and professionalism.

Factual and Descriptive Inquiries

Factual Inquiry or the descriptive inquiry help to provide the facts for understanding and finding solutions to the value based issues. The engineer has to conduct factual inquiries by using scientific techniques.

This helps in providing the information regarding the business realities such as engineering practice, history of engineering profession, the effectiveness of professional societies, the procedures to be adopted when assessing risks and psychological profiles of engineers.

Let us now go through the concept of Moral dilemma that a person faces when confronted with a situation.

Engineering Ethics - Moral Dilemmas

At times, the situations occur where one cannot make immediate decisions as the moral reasons come into conflict. The moral reasons can be rights, duties, goods or obligations, which make the decision making complex.

Types of Complexities

The difficulties in arriving to a solution, when segregated, can be divided into the following three sections.

Vagueness

This refers to the condition where the doubt lies in whether the action refers to good or bad. This is just like having a thought that following the rules is mandatory. This sometimes includes the unwritten rules like being loyal, having respect, maintaining confidentiality, etc.

Conflicting reasons

When you know about the solutions you have, the making of better choice among the ones you have, will be the internal conflict. Fixing the priorities depends upon the knowledge and the moral values one has. The reason why the particular choice is being made, makes sense.

Disagreement

When there are two or more solutions and none among them is mandatory, the final solution selected should be best suitable under existing and the most probable conditions. The interpretation regarding the moral reasons behind the choice and analysis should be made keeping in mind whether this is the better or the worse solution in the probable aspects.

Steps in Facing Moral Dilemmas

Whenever a person is faced with a moral dilemma, the issue is to be solved with a stepwise approach as this will generate a better output. The steps include the following −

Identification

The step of identification involves the following −

- The issue has to be thoroughly understood.
- The duties and the responsibilities of the persons involved are to be clearly known.
- The moral factors related to the issue are to be understood.
- The conflicting responsibilities, the competing rights and the clashing ideas involved are to be identified.

Ranking

The considerations in the issue are to be listed down. Then they have to be ranked according to the priorities. The moral aspect has to be considered to rank the issues. The advantages of a single person should never be given any importance unless any moral reason is there behind it. No partiality is allowed.

Inquiries

The inquiry of details involved in the issue is to be completely made. All the facts related to the issue are brought into light. Considering the alternative courses of action for resolving and tracing, full implications are also needed.

Discussions

Discussions are to be made with other members, as different minds look at the issue in different views to give different solutions. The complete analysis of a problem gives chances to different viewpoints, perspectives and opinions from which a better solution can be drawn.

Final Solution

After analyzing different perspectives and considering the facts and reasons on the basis of truths and understanding the flaws which lead to the issue, a final solution has to be drawn out. This solution will add value to the whole analysis, in all aspects.

Engineering Ethics - Moral Autonomy

Moral Autonomy is the philosophy which is self-governing or self-determining, i.e., **acting independently** without the influence or distortion of others. The moral autonomy relates to the individual ideas whether right or wrong conduct which is independent of ethical issues. The concept of moral autonomy helps in improving self-determination.

Moral Autonomy is concerned with independent attitude of a person related to moral/ethical issues. This concept is found in moral, ethical and even in political philosophy.

Moral Autonomy – Skills Needed

- **Ability to relate the problems with the problems of law, economics and religious principles** − It is essential to have the ability to analyze a problem and finding the relation with the existing law or the topic of issue with the existing principles on that topic. The ability to distinguish between both of them and finding the moral reasons.
- **Skill to process, clarify and understand the arguments against the moral issues** − If the issue is against some moral values or the ethical values to be followed in the society, then clarity should be maintained about the differences and similarities. Both of these differences and similarities are to be judged based on why they are a matter of concern and in what aspect.
- **Ability to suggest the solutions to moral issues on the basis of facts** − If the moral issues are not fulfilling and needs to be, then the solutions are to be suggested according to the moral issues based on the facts and truths of the issue. These suggestions must be consistent and must include all the aspects of the problem. No partiality is to be allowed in any such aspect.

- **Must have the imaginative skill to view the problems from all the viewpoints** − After having known about the facts and illusions of the issue, a clear understanding is attained in viewing the problem in all kinds of viewpoints. This enables one to be able to suggest a proper alternative solution.
- **Tolerance while giving moral judgment, which may cause trouble** − When the whole analysis is made considering all the viewpoints of the issue, the final output might be or might not be pleasing to the persons involved. Hence while declaring the judgment or the decisions taken, a detailed description of the actions done should be given, while the actions ought to be done should be presented in a better way, to ensure others that the decisions have been taken without any partialities towards any party.
- **Tolerance while giving moral judgment, which may cause trouble** − When the whole analysis is made considering all the viewpoints of the issue, the final output might be or might not be pleasing to the persons involved.

Professions and Professionalism

In our previous chapters, we discussed the different aspects of solving a conflict. Let us now understand what do we mean by profession and professionalism. The words "Profession" and "Professionalism" are often referred in the moral issues.

Profession

Profession means a job or an occupation, that helps a person earn his living. The main criteria of a profession involves the following.

- **Advanced expertise** − The criteria of a profession is to have sound knowledge in both technical aspects and liberal arts as well. In general, continuing education and updating knowledge are also important.
- **Self-regulation** − An organization that provides a profession, plays a major role in setting standards for the admission to the profession, drafting codes of ethics, enforcing the standards of conduct and representing the profession before the public and the government.
- **Public good** − Any occupation serves some public good by maintaining high ethical standards throughout a profession. This is a part of professional ethics where each occupation is intended to serve for the welfare of the public, directly or indirectly to a certain extent.

Professionals

A person who is paid for getting onvolved in a particular profession in order to earn a living as well as to satisfy the laws of that profession can be understood as a Professional. The definition of a professional is given differently by different experts in the field. Let us see the following definitions –

- *"Only consulting engineers who are basically independent and have freedom from coercion can be called as professionals."* − **Robert L. Whitelaw**
- "Professionals have to meet the expectations of clients and employers. Professional restrains are to be imposed by only laws and government regulations and not by personal conscience." − **Samuel Florman**
- *"Engineers are professionals when they attain standards of achievement in education, job performance or creativity in engineering and accept the most basic moral responsibilities to the public as well as employers, clients, colleagues and subordinates."* **- Mike martin and Ronald Schinzinger**

Models of Professional Engineers

An engineer who is a professional, has some tasks to perform by which he acts as any of the following, which can be termed as Models of Professional Engineers.

- **Savior** − A person who saves someone or something from any danger is called a Savior. An engineer who saves a group of people or a company from a technical danger can also be called a **Savior**. The Y2K problem that created problems for computers and computer networks around the world was solved by engineers who were the saviors.
- **Guardian** − A person who knows the direction towards a better future is known to be the Guardian for the same. An engineer who knows the direction in which there is scope for the technology to develop can also be called a **Guardian**. This engineer provides the organization with innovative ideas for technological development.
- **Bureaucratic Servant** − A person who is loyal and can solve problems when they occur using his own skills, is a Bureaucratic servant. An engineer who can be a loyal person to the organization and also the one who solves the technical problems the company encounters, using his special skills can be termed as a **Bureaucratic servant**. The company relies on his decision-making capability for the future growth.
- **Social Servant** − A person who works for the benefit of the society without any selfish interest and does not work on any business grounds, is called a Social servant. An engineer who receives a task as part of the government's concern for the society considering the directives laid by the society and accomplishes the assigned tasks can be termed as a **Social Servant**. He knows what the society needs.
- **Social Enabler or Catalyst** − A person who makes the society understand its welfare and works towards the benefits of the people in it, is a Social Enabler. An engineer who plays a vital role in a company and helps company along with society to understand their needs and supports their decisions in work can be termed as a **Social Enabler or Catalyst**. This person quickens the procedure and helps maintain good environment in the company.
- **Game Player** − A person who plays a game according to the rules given is a Game player in general. An engineer who acts as neither a servant nor a master, but provides his services and plans his works according to the economic game rules in a given time, can be termed as a **Game player**. He is smart enough to handle the economic conditions of the company.

Professionalism

Professionalism covers comprehensively all areas of practice of a particular profession. It requires skills and responsibilities involved in engineering profession. Professionalism implies a certain set of attitudes.

The art of **Professionalism** can be understood as the practice of doing the right thing, not because how one feels but regardless of how one feels. Professionals make a profession of the specific kind of activity and conduct to which they commit themselves and to which they can be expected to conform. Moral ideals specify virtue, i.e., desirable feature of character. Virtues are desirable ways of relating to other individuals, groups and organizations. Virtues involve motives, attitudes and emotions.

According to Aristotle, virtues are the **"acquired habits that enable us to engage effectively in rational activities that defines us as human beings."**

Professional Ideals and Virtues

The virtues represent excellence in core moral behavior. The essentials for any professional to excel in the profession are behavior, skills and knowledge. The behavior shows the moral ideology of the professional.

The moral ideals specify the virtue, i.e., the desirable character traits that talk a lot about the **motives, attitude** and **emotions** of an individual.

- Public spirited virtues
- Proficiency virtues
- Team work virtues

- Self-governance virtues

The virtues mentioned above show the professional responsibility of an individual. Hence, the professionalism that comes in with these virtues is called **Responsible Professionalism**. Let us now understand each virtue in detail.

Public-spirited Virtues

An engineer should focus on the good of the clients and the public at large, which means no harm should be done intentionally. The code of professional conduct in the field of engineering includes avoiding harm and protecting, as well promoting the public safety, health and welfare.

Maintaining a sense of community with faith and hope within the society and being generous by extending time, talent and money to professional societies and communities, an engineer can maintain the public-spirited virtue. Finally, justice within corporations, government and economic practices becomes an essential virtue that an engineer should always possess.

Proficiency Virtues

These refer to the virtues followed in the profession according to the talent and intellect of an engineer. The moral values that include this virtue are competence and diligence. The **competence** is being successful in the job being done and the **diligence** is taking care and having alertness to dangers in the job. Creativity should also be present in accomplishing the assigned task.

Teamwork Virtues

These virtues represent the coordination among team members which means working successfully with other professionals. These include cooperative nature along with loyalty and respect towards their organization, which makes the engineers motivate the team professionals to work towards their valuable goals.

Self-governance Virtues

These virtues are concerned with moral responsibilities which represent integrity and self-respect of the person. The integrity actually means the moral integrity which refers to the actions, attitude and emotions of the person concerned during his professional period.

The self-governance virtues center on commitment, courage, self-discipline, perseverance, self-respect and integrity. The truthfulness and trustworthiness which represent his honesty are the crucial moral values to be kept up by a professional.

Code of ethics:

Both Code of Ethics and a Code of Conduct are similar as they are used in an attempt to encourage specific forms of behaviour by employees. Ethics guidelines attempt to provide guidance about values and choices to influence decision making. Conduct regulations assert that some specific actions are appropriate, others inappropriate. With similarities, comes differences.

1. Code of Ethics are referred to as a Values, which behaves like the Constitution with general principles to guide behaviour, outlining a set of principles that affect decision-making.
2. Code of ethics would include the principles of integrity, impartiality, commitment to public service, accountability, devotion to duty, exemplary behaviour etc.
3. It defines the minimum requirements for conduct, and behavioural expectations instead of specific activities.
4. When faced with ethical dilemmas or debatable situations, what's articulated in the Code of Ethics can help guide decision making.
5. Code of ethics helps members in understanding what is right or wrong. The codes are disclosed publicly and hence addressed to the interested parties to knoaw the way the company does business.

Example of code of ethics: E.g. Civil servants are committed to public services. The Code of Ethics will state that decisions of the public servant should be guided by larger common good and to choose the most beneficial solution for the community.

Code of Conduct:

1. It is a set of rules, standards, principles and values outlining the expected behaviour for the members of an organisation.
2. These are legally enforceable which sets out the standards of behaviour expected of those working in the public service.
3. These are designed to prevent certain types of behaviours like conflict of interest, self-dealing, bribery and inappropriate actions.
4. The Code of Conduct outlines specific behaviours that are required or prohibited as a condition of ongoing employment.

Example of code of conduct: E.g. code of conducts include guidelines on acceptance of gifts by government servants and specific behaviour regulating codes (class I officer shall not permit son or daughter to take employment with a company with which she has official dealings' or 'acquiring immovable property with previous knowledge of prescribed authority' and so on).

CODE OF ETHICS	CODE OF CONDUCT
It include core ethical values, principles and ideals of the organisation.	It is a directional document containing specific practices and behaviour, that are followed or restricted under the organisation.
Code of ethics is a set of principles which influence the judgement.	Code of conduct is a set of guidelines that influence employee's actions.
Code of ethics are wider in nature as compared to code of conduct.	Code of conduct are narrow.
Ethical standards generally are non-specific and are designed to provide a set of values or decision-making .	Conduct standards generally provides a fairly clear set of expectations about which actions are required, acceptable or prohibited.
It enable employees to make independent judgments about the most appropriate course of action.	It enable employees to work in compliance with rules and actions are guided by the codes.
A particular rule in the Code of Ethics might state that all employees will obey the law.	A Code of Conduct might list several specific laws relevant to specific areas of organisational operations, that employees need to obey.

Personal ethics refer to a person's personal or self-created values and codes of conduct. From the very beginning, these ethics are instilled in an individual, with a large part having been played by their parents, friends, and family. Common examples may include honesty, openness, commitment, unbiased behavior, and sense of responsibility.

Professional ethics are those values and principles that are introduced to an individual in a professional organization. Each employee is meant to strictly follow these principles. They do not have a choice. Also, this approach is imperative in professional settings as it brings a sense of discipline in people as well as helps maintain decorum in offices. Some examples may include confidentiality, fairness, transparency and proficiency. These ethics make employees responsible.

Conflict of Interest

A conflict of interest happens when an individual involved in multiple interests finds themselves in a decision-making situation where serving one of those interests would harm another. Interests include many different types of commitments, duties, obligations, and values, such as:

- Contractual or legal obligations (to business partners, vendors, employees, employer, etc.)
- Loyalty to family and friends
- Fiduciary duties
- Professional duties
- Business interests

An individual's potential interests can be grouped broadly into 4 types:

1. **Direct Interests** – An individual's own personal self-interest, family-interest and personal business interests.
2. **Indirect Interests** – Personal, family, and business interests of people or groups with whom the individual associates.
3. **Financial Interests** – Involve a gain or loss of money or value.
4. **Non-financial Interests** – Involve personal or familial relationships and other potential sources of bias.

Conflicts of interest create a risk that the individual will act in a way that betrays their duties or obligations, usually to their primary employer.

Three Common Types of Conflicts of Interest

Many different types of corruption stem from conflicts of interest that arise between an individual's professional duties and direct or indirect interests.

Nepotism

Nepotism happens when an individual in charge of a hiring process chooses to award a job offer to someone in their own family or with whom they have a personal relationship. In this case, the individual's duty to their employer (choosing the most qualified or best candidate for the role) may conflict with their loyalty to a family member (choosing a family member to receive the benefits of the job instead of an unknown person).

Self-Dealing

A corporate fiduciary is legally obligated to act in the best interests of the corporation and its shareholders. When a fiduciary acts in their own best interests instead of in the best interests of their client, this is known as self-dealing. Self-dealing involves a conflict of interests between an individual's fiduciary duties (legal obligation to the client) and financial interests (desire for personal financial gain).

Business Relationships

Many conflicts of interest stem from personal business interests. An individual who works for two businesses in the same industry, or who works for the public sector while maintaining interests in companies that bid on government contracts may experience a conflict of interest when their job duties and business interests come into competition. In addition, a conflict of interest could be sitting on the board of another company, owning stock in another company, and deciding which vendor gets a contract.

Example of a Conflict of Interest

Conflicts of interest can appear in any decision-making process where the individual making the decision has multiple interests at stake. Some common situations could include:

- Hiring an unqualified friend or relative to fill a position instead of the most qualified candidate.
- Preferentially awarding a government contract to an organization in which you or someone you know owns stock.
- Performing part-time or contract-based work for a competitor organization

A famous conflict of interest took place in 1967 when a group of Harvard scientists were paid by the Sugar Association to publish a paper that minimized the relationship between heart health and sugar consumption. These scientists violated their obligation to publish truthful and reputable research in order to support their personal financial interests.

How to Handle an Employee Conflict of Interest

Organizations should establish a clear Conflict of Interest policy that describes how such conflicts will be handled. Employees should be encouraged to talk to their managers and voluntarily disclose any perceived conflicts of interest.

When a public or private sector employee experiences a conflict of interest, they may resolve the situation by choosing to either:

1. abandon one of the conflicting roles, or
2. recues themselves from the relevant decision-making process

Gift vs. bribe

A gift is something of value given without the expectation of return; A bribe is the same thing given in the hope of influence or benefit

A bribe is a quid pro quo situation where an individual gives a gift, something of value, to a public official with the intent that it influences the public official's actions. The public official does not have to accept that for the individual to be prosecuted for a bribe.

Basic difference is: Gift is given to someone without any expectation in return. Value of gift is often based on closeness in relationship, time of gifting, economic condition of giver and receiver. Bribe is given with expectation of favor towards giver.

Environmental Breaches

Environmental Violation means (a) any direct or indirect discharge, disposal, spillage, emission, escape, pumping, pouring, injection, leaching, release, seepage, filtration or transporting of any

Hazardous Substance at, upon, under, onto or within the Leased Premises, or from the Leased Premises to the environment

Breaches may be related to **spills, emissions, pollution and overuse of resources** . Procedures for dealing with these will be outlined in documents such as manuals and in signs. When there is an environmental hazard or breach, a report is required to document details and the actions taken.

Negligence

To be negligent is to be neglectful. Negligence is an important legal concept; it's usually defined as **the failure to use the care that a normally careful person would in a given situation** . Negligence is a common claim in lawsuits regarding medical malpractice, auto accidents, and workplace injuries.

5 Common Examples of Medical Negligence Cases

- Incorrect Medication. Incorrect medication prescriptions or administration of drugs is one of the most common cases of medical negligence reported. ...
- Prenatal Care and Childbirth Negligence. ...
- Surgery Mistakes. ...
- Anesthesia Administration.

Definition of state of the art

the level of development (as of a device, procedure, process, technique, or science) reached at any particular time usually as a result of modern methods.

Exploring Deficiencies in State-of-the-art Automatic Software **Vulnerability Mining Technologies** .

Vigil mechanism/ Whistle blowing

A Vigil mechanism provides a channel to employees and Directors of a Company to report to the management concerns about unethical behavior, actual or suspected fraud or violation of the Codes of Conduct or any Policy of the Company.

The Whistle Blower Policy is an integral part of Vigil Mechanism , which provides for adequate safeguards against victimization of individuals who utilize such mechanism to report any concerns.

In the Rules under Companies Act'2013, among others, **a company which has borrowed money from banks and public financial institutions in excess of Rs. 50 crore** need to have a vigil mechanism. being a Listed Company proposes to establish a Whistle Blower Policy/ Vigil Mechanism and to formulate a policy for the same.

The Whistle blowing System is **a mechanism to avoid and reduce the possibility of violations** , which is not limited to business ethics and work ethics (code of ethics), Articles of Association, Partnership Agreements, contracts with external parties, company secrets, conflicts of interest, and the applicable regulations.

Key Takeaways. **Whistleblowers report illegal, unsafe, or fraudulent activities within a private or public organization** . Whistleblowers are protected from retaliation by various laws enforced by the Occupational Safety and Health Administration (OSHA) and the Securities and Exchange Commission (SEC).

Protected Disclosure

Protected Disclosure" means **any communication made in good faith that discloses or demonstrates information that may evidence unethical or improper activity** h. "Subject" means a person against or in relation to whom a Protected Disclosure has been made or evidence gathered during the course of an investigation.

"Protected Disclosure" means a written communication of a concern made in good faith, which discloses or demonstrates information that may evidence an unethical or improper activity under the title "SCOPE OF THE POLICY" with respect to the Company. It should be factual and not speculative and should contain as much specific information as possible to allow for proper assessment of the nature and extent of the concern. "Subject" means a person or group of persons against or in relation to whom a Protected Disclosure is made or evidence gathered during the course of an investigation.

GST & How it Works

GST stands for Goods and Services Tax. It is an Indirect tax which introduced to replacing a host of other Indirect taxes such as value added tax, service tax, purchase tax, excise duty, and so on. GST levied on the supply of certain goods and services in India. It is one tax that is applicable all over India.

Given below is how will GST works:

- Manufacturer: The manufacturer will have to pay GST on the raw material that is purchased and the value that has been added to make the product.
- Service Provider: Here, the service provider will have to pay GST on the amount that is paid for the product and the value that has been added to it. However, the tax that has been paid by the manufacturer can be reduced from the overall GST that must be paid.
- Retailer: The retailer will need to pay GST on the product that has been purchased from the distributor as well as the margin that has been added. However, the tax that has been paid by the retailer can be reduced from the overall GST that must be paid.
- Consumer: GST must be paid on the product that has been purchased.

Types of GST

The four different types of GST are given below:

1. **Central Goods and Services Tax** : CGST is charged on the intra state supply of products and services.
2. **State Goods and Services Tax** : SGST, like CGST, is charged on the sale of products or services within a state.
3. **Integrated Goods and Services Tax** : IGST is charged on inter-state transactions of products and services.
4. **Union Territory Goods and Services Tax** : UTGST is levied on the supply of products and services in any of the Union Territories in the country, viz. Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli, Lakshadweep, and Chandigarh. UTGST is levied along with CGST.

Who is Eligible for GST

The below mentioned entities and individuals must register for Goods And Services Tax:

- E-commerce aggregators
- Individuals who supply through e-commerce aggregators
- Individuals who pay tax as per the reverse change mechanism
- Agents of input service distributors and suppliers
- Non-Resident individuals who pay tax
- Businesses that have a turnover that is more than the threshold limit
- Individuals who have registered before the GST law was introduced

Registration of GST

Any company that is eligible under GST must register itself in the GST portal created by the Government of India. The registered entities will get a unique registration number called GSTIN.

It is mandatory for all Service providers, buyers, and sellers to register. A business that makes a total income of Rs.20 lakhs and more in a financial year must be required to do GST registration. It takes 2-6 working days to process.

Know the GSTIN - GST Identification Number

A 15-digit distinctive code that is provided to every taxpayer is the GSTIN. The GSTIN will be provided based on the state you live at and the PAN. Some of the main uses of GSTIN are mentioned below:

- Loans can be availed with the help of the number.
- Refunds can be claimed with the GSTIN.
- The verification process is easy with the help of the GSTIN.
- Corrections can be made.

Verify GST Number Online by visiting **https://services.gst.gov.in/services/searchtp**. Enter the GSTIN mentioned on the invoice in the search box and followed by captcha, Final click "enter" to view the details.

GST Certificate

A GST Certificate is an official document that is issued by the concerned authorities for a business that has been enrolled under the GST system. Any business with an annual turnover of Rs.20 lakh or more and certain special businesses are required to be registered under this system. The GST registration certificate is issued in Form GST REG-06. If you are a registered taxpayer under this system, you can download the GST Certificate from the official GST Portal. The certificate is not issued physically. It is available in digital format only. GST Certificate contains GSTIN, Legal Name, Trade Name, Constitution of Business, Address, Date of liability, Period of Validity, Types of Registration, Particulars of Approving Authority, Signature, Details of the Approving GST officer, and Date of issue of a certificate.

Stakeholder

- Customers. Stake: Product/service quality and value. ...
- Employees. Stake: Employment income and security. ...
- Investors. Stake: Financial returns. ...
- Suppliers and Vendors. Stake: Revenues and safety. ...
- Communities. Stake: Health, safety, economic development. ...
- Governments. Stake: Taxes and GDP.

Identifying the key **stakeholders** (along with their roles, responsibilities, and interests in the project) will help you communicate and work with them more efficiently. The goal is to identify and satisfy their needs and achieve the project requirements successfully.

The chart below is an example of the composition of a project team at SSU. The chart is followed by a table that describes the general role and responsibilities for each of these stakeholders.

Project Coordinators are allocated depending on the project's characteristics. In projects with no Project Coordinators, the IT Project Lead will perform the project coordination activities.

The following roles and responsibilities are generic descriptions and these can be modified and tailored according to the specific needs of each project. For instance, a team member can be a subject matter expert in *software development* and hence his/her responsibilities will need to be adjusted to describe the specific activities that they will be executing as part of their role in the project. The Project Charter must include the list of stakeholders as well as their roles and responsibilities in the project.

UNIT-2

The law of contract is the most important branch of Mercantile Law. Without such a law it would be difficult, if not impossible, to carry on any trade or business in a smooth manner. The law of contract is applicable not only to business but also to all day-to-day personal dealings.

In fact, each one of us enters into a number of contracts from sunrise to sunset. When a person buys a newspaper or rides a bus or purchases goods or gives his radio for repairs or borrows a book from library, he is actually entering into a contract.

All these transactions are subject to the provisions of the law of contract. The term business law refers to those rules which govern and regulate business transactions. These rules, regulations etc bring a sense of seriousness and definiteness in business dealings. They provide for rules regarding the validity of making contracts and their performances.

INDIAN CONTRACT ACT, 1872 In the year 1861,the third law commission of British India under the chairmanship of Sir John Romily presented the report on contract law for India.The law commission submitted a draft on 28th July 1866.The draft contract law after several amendments was enacted as The Act 9 of 1872 on 25th April 1872 and the INDIAN CONTRACT ACT 1872 came into force w.e.f1st September 1872.

The Indian Contract Act, 1872 is one of the oldest in the Indian law regime, passed by the legislature of pre-independence India; it received its assent on 25th April 1872. The statute contains essential principles for formation of contract along with law relating to indemnity, guarantee, bailment, pledge and agency.

CONTRACT

Broadly speaking, a contract is an agreement made between two or more persons to do or to abstain from doing a particular act. A contract invariably creates a legal obligation between the parties by which certain rights are given to one party and a corresponding duty is imposed on the other party.

The law of contract is the most important part of mercantile law in India. It determines the circumstances in which the promise made by the parties to a contract shall be binding on them and provides for the remedies available against a person who fails to perform his promise.

The law of contract is contained in the Indian Contract Act, 1872, which deals with the general principles of law governing all contracts 'and covers the special provisions relating to contracts like bailment, pledge, indemnity, guarantee and agency.

Agreement

Section 2(e) of the Contract Act defines agreement as every promise 'and every set of promises forming the consideration for each other. In this context a promise refer to a proposal (offer) which has been accepted. For example, Ramesh offers to sell his T.V. for Rs. 8,000 to Shyam. Shyam accepts this offer. It becomes a promise and treated as an agreement between Ramesh and Shyam. In other words, an agreement consists of an offer by one party and its acceptance by the other.

Thus, Agreement = Offer + Acceptance.

CLASSIFICATION OF CONTRACTS

Contracts can be classified on a number of basis. They are:

1) On the basis of creation.

2) On the basis of execution.

3) On the basis of enforceability.

1) On the Basis of Creation A contract may be

(i) made in writing or by word of mouth or

(ii) inferred from the conduct of the parties or circumstances of the case.

The first category of contract is termed as 'express contract' and the second as 'implied contract' '

i) Express Contract: An express contract is one where the terms are clearly stated in words, spoken or written. For example, A wrote a letter to B stating "I offer to sell my car for Rs. 30,000 to you", B accepts the offer by letter sent to A. This is an express contract. Similarly, when A asks a scooter mechanic to repair his scooter and the mechanic agrees, it is an express contract made orally by spoken words.

ii) ii) Implied Contract: A contract may be created by the conduct or acts of parties (and not by their words spoken or written). It may result from a continuing course of conduct of the parties. For example, where a coolie in uniform carries the luggage of A to be carried out of railway station without being asked by A to do so and A allows it, the law implies that A has agreed to pay for the services of the coolie. This is a case of an implied contract between A and the coolie.

2. On the Basis of Execution On the basis of the extent to which the contracts have been performed, we may classify them as

(i) executed contracts, and

(ii) executory contracts.

i) Executed Contracts: It is a contract where both the parties have fulfilled their respective obligations under the contract. For example, A agrees to sell his book to B for Rs. 30. A delivers the book to B and B pays Rs. 30 to A. It is an executed contract.

ii) ii) Executory Contracts: It is a contract where both the parties to the contract have still to perform their respective obligations. For example, A agrees to sell a book to B for Rs. 30. If the book has not been delivered by A and B has not paid the price. the contract is executory. A contract may sometimes be partly executed and partly executor

3. On the Basis of Enforceability From the point of view of enforceability a contract may be

(i) valid,

(ii) void, ,

(iii) voidable,

(iv) illegal or

(v) unenforceable.

i) Valid Contract: A contract which satisfies all the conditions prescribed by law is a valid contract. If one or more of these elements is/are missing, the contract is either void, voidable, illegal or unenforceable.

ii) Void Contract: According to Section 2 (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. It is a contract without any legal effects and is a nullity. You should note that a contract is not void from its inception. It is valid and binding upon the parties when made, but subsequent to its formation, due to certain reasons, it becomes unenforceable and so treated as void.

iii) Voidable Contract: According to Section 2(i) of the Contract Act, An agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of the other or others, is a voidable contract. Thus, a voidable contract is one which can be set aside or repudiated at the option of the aggrieved party.

iv) Illegal or unlawful contract: The word illegal means contrary to law. You know that contract is an agreement enforceable by law and therefore, it cannot be illegal. It is only the agreement which can be termed as illegal or unlawful. Hence, it is more appropriate to use the term 'illegal agreement' in place of 'illegal contract'.

v) Unenforceable contract: It is a contract which is actually valid but cannot be enforced because of some technical defect. This may be due to non-registration of the agreement, nonpayment of the requisite stamp fee, etc. Sometimes, the law requires a particular agreement to be in writing. If such agreement has not been put in writing, it becomes unenforceable.

ESSENTIALS OF A VALID CONTRACT

An agreement enforceable by law is a contract. An agreement in order to be enforceable must have certain essential elements. Thus, an agreement becomes a valid contract if it has the following elements.

1) Proper offer and its proper acceptance

2) Intention to create legal relationship

3) Free consent

4) Capacity of parties to contract

5) Lawful consideration

6) Lawful object .

7) Agreement not expressly declared void

8) Certainty of meaning

9) Possibility of performance

10) Legal formalities

OFFER

For making a valid contract there must be a lawful offer and a lawful acceptance of that offer. An offer is also called ‘proposal'. The words 'proposal' and 'offer' are synonymous and are used interchangeably. Section 2(a) defines the term 'proposal' as follows: "When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. " From the above definition of offer you will notice that an offer involves the following elements.

i) It must be an expression of readiness or willingness to do or to abstain from doing something. Thus, it may involve a 'positive' or a 'negative' act. For example, A offers to sell his book to B for Rs. 30. A is making a proposal to do something i.e., to sell his book. It is a positive act on the part of the proposer A. On the other hand, when A offers not to file a suit against B if the latter pays A the outstanding amount of Rs. 1,000, the act of A is a negative one i.e., he is offering to abstain from filing a suit.

ii) It must be made to another person. There can be no 'proposal' by a person to himself,

iii) It must be made with a view to obtain the assent of that other person to such act or abstinence.

The person making the offer is called the 'offerer' or the 'promisor' and the person to whom it is made is called the 'offeree'. When the offeree accepts the offer, he is called the 'acceptor' or the 'promisee'. For example, Ram offers to sell his scooter to Prem for Rs. 10,000 This is an offer by Ram. He is the offerer or the promisor. Prem to whom the offer has been made is the offeree and if he agrees to buy the scooter for Rs. 10,000 he becomes the acceptor or the promisee.

Legal Rules for a Valid Offer

An offer or proposal made by a person cannot legally be regarded as an offer unless it satisfies the following conditions.

1) Offer must intend to create legal relations: An offer will not become a promise even after it has been accepted unless it is made with a view to create legal obligations. It is so because the very purpose of entering into an agreement is to make it enforceable in a court of law.

2)Terms of offer must be certain, definite and not vague: No contract can be formed if the terms of the offer are vague, loose and indefinite. The reason is quite simple. When the offer itself is vague or loose or uncertain, it will not be clear as to what exactly the parties intended to do.

3) The offer must be distinguished from a mere declaration of intention: Sometimes a person may make a statement without any intention of creating a binding obligation. Such statement or declaration only indicate that he is willing to negotiate and an offer will be made or invited in future. For example an auctioneer advertised in a newspaper that a sale of office furniture will be held on a certain date.

4) Offer must be distinguished from an invitation to offer: An offer must be distinguished from an invitation to receive an offer or to make an offer or to negotiate. In the case of invitation to offer there is no intention on the part of the person sending out the invitation to obtain the assent of the other party to such invitation. On the other hand, offer is a final expression of willingness by the offerer to be bound by his promise, should the other party choose to accept it.

5) The offer must be communicated: An offer must be communicated to the person to whom it is made. It means that an offer is complete only when it is communicated to the offeree. You should note that a person can accept the offer only when he knows about it.

6) Offer should not contain a term the non-compliance of which would amount to acceptance: The offer should not impose on the offeree an obligation to reply.

7) Special terms or conditions in an offer must also be communicated: The offerer is free to lay down any terms and conditions in his offer, and if the other party accepts the offer then he will be bound by those terms and conditions

ACCEPTANCE

When an offer is accepted, it results in an agreement. Acceptance is an expression by the offeree of his willingness to be bound by the terms of the offer.

This results in the establishment of legal relations between the offerer and offeree. Section 2(b) of the Indian Contract Act defines the term 'acceptance' as "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. " For example, A offers to sell his book to B for Rs. 20. B agrees to buy the book for Rs. 20. This is an acceptance of A's offer by B.

Legal Rules for a Valid Acceptance :The acceptance of an offer to be effective must fulfil certain conditions. These are:

1) Acceptance must be absolute and unqualified : Section 7 (1) of the Indian Contract Act provides that 'In order to convert a proposal into a promise, the acceptance must be absolute and unqualified . This is so because a qualified and conditional acceptance amounts to a counter offer leading to the rejection of the original offer. No variation should be made by the offeree in the terms of offer.
2) Acceptance must be in the prescribed manner : Where the offerer has prescribed a mode of acceptance, it must be accepted in that very manner. If the offer is not accepted in the prescribed manner it is up to the offerer to accept or reject such acceptance. But when the acceptance is not in the prescribed manner and the offerer wants to reject it, he must inform the acceptor within a reasonable time that he is not bound by acceptance since it is not in the prescribed manner.
3) Acceptance must be communicated: Acceptance should be signified. In other words, the acceptance is complete only when it has been communicated to the offerer. A mere mental acceptance, not evidenced by words or conduct, is no acceptance. In Brogen v. Metropolitan Railway Co.'s case an offer to supply coal to the railway Co. was made. The manager wrote on the letter 'accepted', put it in his drawer and forgot all about it. It was held that no contract was made because acceptance was not commumicated.
4) Acceptance must be communicated by a person who has the authority to accept: For an acceptance to be valid it should be communicated by the offeree himself or by a person who has the authority to accept. Thus, if acceptance is communicated by an unauthorised person, it will not give rise to legal relations. The case of Powell v. Lee can be mentioned in support of this point. In this case P applied for the post of a headmaster in a school.
5) Acceptance must be made within the time prescribed or within a reasonable time: Sometimes the offerer while making the offer fixes the period within which the offer should be accepted. In such a situation, the acceptance must be given within the prescribed time and if no time is prescribed, it should be . accepted within a reasonable time. What is the reasonable time depends upon the facts of the case.
6) Acceptance must be given before the offer lapses or is withdrawn: The acceptance must be given while the offer is in force. Once an offer has been withdrawn or stands lapsed, it cannot be accepted.

Contractual Capacity/ Competence of Parties

Section 11 of the Indian Contract Act clearly states as to who shall be competent to contract. It provides that every person is competent to contract

(i) who is of the age of majority according to the law to which he is subject,
(ii) (ii) who is of sound mind, and
(iii) (iii) who is not disqualified from contracting by any law to which he is subject. Thus, a person to be competent to contract should not be
i) a minor, or
ii) of an unsound mind, or
iii) disqualified from contracting.

FREE CONSENT

Section 14 of the Act states that Consent is said to be free when it is not caused by

(i) coercion, or
(ii) (ii) undue influence, or
(iii) (iii) fraud, or
(iv) (iv)misrepresentation, or
(v) (v)mistake.

Thus, the consent of the parties to a contract is regarded as free if . it has not been induced by any of the five factors stated under Section 14. In other words, the consent is not free if it can be proved that it has been caused by coercion, undue influence, fraud, misrepresentation, or mistake,

CONTINGENT CONTRACTS

A contingent contract is a contract to do or not to do something if some event, collateral to such contract, does or does not happen (section 31). For example, A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.
The following are the essential features of a contingent contract.
1. Performance of a contingent contract is made dependent upon the happening or nonhappening of dome event.
2. The event on which the performance is made to depend, is an event collateral to the contract i.e., it does not form part of the reciprocal promises which constitute the contract. 3. The contingent event should not be the mere will of the promisor.

Rules Regarding Enforcement of Contingent Contracts

The rules regarding contingent contracts are summarised hereunder (sections 32 to 36):

1 .Contracts contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. And if, the event becomes impossible, such contract becomes void (section 32).

2 .Contracts contingent upon the non-happening of a certain future event can be enforced when the happening of that event becomes impossible, and not before (section 33).

3 .If a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything, which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies. (section 34).

4 .Contracts contingent upon the happening of an uncertain specified event within a fixed time become void if, at the expiration of the time fixed, such event has not happened or if, before the time fixed, such event becomes impossible (section 35)

5 .Contracts contingent upon the non-happening of a specified event within a fixed time may be enforced by law when the time fixed .has expired and such event has not happened, or before the time fixed expired, if it becomes certain that such event will not happen' (section 35).

TERMINATION AND DISCHARGE OF A CONTRACT

The term 'discharge of a contract' means that the parties to it are no more liable under the contract. A contract may be discharged in any one of the following ways:

1 By performance

2 By mutual agreement

3 By lapse of time

4 By operation of law

5 By impossibility of performance

6 By breach.

Discharge by Performance :

The most obvious or natural mode of discharge of a contract is by performance.

The term 'performance' means that the parties to the contract have fulfilled or carried out their respective obligations arising out of the contract. For example, A contracts.to sell his book to B for Rs. 50. A delivers the book and B makes the payment, the contract is discharged by performance. Section 37 of the Indian Contract Act lays down.the obligations of the parties regarding performance.

Types of Performance

From Section 37 you can infer that the performance may be either actual or attempted.

a)Actual performance: When a party to a contract has done, what he had undertaken to do and there remains nothing to be done by him the promise is said to have been actually performed and the liability of such a party comes to an end.

b)Attempted Performance: Sometimes, when the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance. This is known as 'attempted performance' or 'tender.

REMEDIES FOR BREACH OF CONTRACT

When a contract is broken by a party, there are several courses of action (remedies) which the other party may pursue. These remedies include:

1. Rescission of the contract

2. Suit for damage

3. Suit for specific performance

4. Suit for injunction

5. Suit upon quantum meruit

1. Rescission of the Contract : Section 39 of the Act provides that when a party to a contract has refused to perform, or disabled himself from performing his promise in. its entirety, the promisee may put an end to the contract. This is called right of rescission

2. Suit for Damages :In the event of breach of contract; the aggrieved party besides rescinding the contract can claim for damages. Damages are monetary compensation allowed for loss suffered by the aggrieved party due to the breach of contract.

3. Suit for Specific Performance : In certain cases of breach of contract, damages may not be considered as an adequate remedy. The aggrieved party may not be interested in monetary compensation. The court may, in such cases, direct the defaulting party to carry out the promise according to the terms of the contract. This is called 'Specific Performance' of the contract.

4. Suit for Injunction :Where a party is in breach of a negative term of a contract (i.e., where he does something which he promised not to do) the court may by issuing an order, prohibit him from doing so. Such an order issued by court is called an 'injunction'.

5.Suit upon Quantum Meruit The phrase 'Quantum Meruit' means 'as much as is merited (earned)'. The normal rule of law is that unless a party has performed his promise in its entirety, he cannot claim performance from the other. To this rule, however, there are certain exceptions on the basis of quantum meruit.

COERCION

Coercion means forcibly compelling a person to enter into a contract i.e., the consent of the party is obtained by use of force or under a threat.

Section 15 of the Contract Act defines 'coercion' as Coercion is

(i) the committing or threatening to commit, any act forbidden by the Indian Penal Code; or

(ii) the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

the implications of this definition.

1) Committing any act forbidden by the Indian Penal Code : When the consent of a person is obtained by committing any act which is forbidden by the Indian Penal Code, the consent is said to be obtained by coercion.

2) Threatening to commit any act forbidden by the Indian Penal code : From the definition you will observe that not only the committing of an act forbidden by the Indian Penal Code amounts to coercion but even a threat to commit such act amounts to coercion. Thus, a threat to shoot, to murder, to kidnap or to cause bodily injury will amount to coercion.

3) Unlawful detaining of any property : If a person unlawfully detains the property of another person and compels him to enter into a contract with him, the consent is said to be induced by coercion.

4) Threatening to detain any property unlawfully : If a threat is held out to detain any property of another person, this also amounts to coercion.

5) Intention of causing any person to enter into an agreement : The act of coercion must have been done with the object of inducing or compelling any person to enter into a contract.

6)Threat to File a Suit: Sometimes a doubt may arise whether a threat to file a suit amounts to coercion or not.

7)Threat to Commit Suicide: Under the Indian Penal Code a suicide and a 'threat to commit suicide' are not punishable. But, an attempt to commit suicide is punishable. Now, the question arises whether a 'threat to commit suicide' shall amount to coercion or not.

Introduction

Contract of guarantee and contract of indemnity perform similar commercial functions in providing compensation to the creditor for failure of a third party to perform their obligation. However, there are some major differences between the two. In this article, the author will talk about the differences between the contract of indemnity and contract of guarantee along with relevant legal provisions of the Indian Contract Act, 1872.

Meaning

Indemnity

The dictionary meaning of the term ‘indemnity’ is protection against future loss. Indemnity is the protection against loss in the form of a promise to pay for loss of money, goods, etc. It is security against or compensation for loss incurred.

According to Halsbury, indemnity refers to an express or implied contract that protects a person who has entered or is going to enter into a contract or incur any other duty from loss, irrespective of the default incurred by a third person.

As per the Oxford Dictionary of Law, indemnity is an agreement by one person to pay to another, a sum that is owed or which may be owed, to him by a third person. It is not conditional on the third person defaulting on the payment.

Guarantee

Guarantee enables a person to get a loan, to get goods on credit, etc. Guarantee means to give surety or assume responsibility. It is an agreement to answer for the debt of another in case he makes default.

The Oxford Dictionary of Law defines guarantee as a secondary agreement in which a person (guarantor) is liable for a debt or default of another (principal debtor) who is the party primarily liable for the debt. A guarantor who has paid out on his guarantee has a right to be indemnified by the principal debtor.

Contract of Indemnity

Chapter VIII of the Indian Contract Act, 1872 contains the legal provisions governing a contract of indemnity and a contract of guarantee in India.

Section 124 : Contract of indemnity

Section 124 of the Act defines a contract of indemnity as a contract wherein one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

A contract of indemnity can provide protection against loss caused—

1. By the conduct of promisor, or
2. By the conduct of any other person.

Under Indian law, a contract of indemnity can only provide for losses caused by human agency whereas in England, it includes a promise to save the other person from loss caused whether by acts of promisor or of any other person or any other event like fire, accident, etc.

Indemnifier

The person who makes a promise to indemnify against the loss or to make good the loss (promisor) is called an indemnifier.

Indemnity-holder

The person in whose favour such a promise to indemnify is made (promisee) is called indemnity-holder.

For example, Anil enters into a contract with Swapnil to indemnify him against the consequences of any proceedings which Mrinal may initiate against Swapnil in respect of a certain sum of Rs. 2000/-. In this contract, Anil is the indemnifier and Swapnil is the indemnity-holder.

Main features

1. It involves two parties i.e. promisor being the indemnifier and promisee being the indemnity holder.
2. Object of the contract of indemnity is to protect from a loss.
3. As per the Indian Contract Act, the contract of indemnity must be to indemnify against a loss caused by any act or conduct of the promisor himself or by the conduct of any other person.
4. It is not contingent on the default of some third person.

What are the rights of an indemnity holder

Section 125 of the Act covers '*Rights of indemnity-holder when sued'.* This Section provides for the right of the indemnity holder to recover the damages and costs that he may have been compelled to pay in a suit filed against him, in a case where the indemnity-holder has promised such indemnity, i.e., where a contract of indemnity to that effect exists. The rights of the indemnity holder are-

1. Right to recover from the promisor, the damages that he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
2. Right to recover from the promisor all the costs that he may be compelled to pay in any suit, provided—

1. that he did not contravene any of the orders of the promisor in filing or defending such suit, and
2. that he acted in a manner as would have been prudent for him to act in the absence of any such contract of indemnity, or
3. that the promisor had authorised him to file or defend such a suit.

4. Right to recover from the promisor all such sums that he paid under the terms of any compromise of any such suit, provided-

Contract of guarantee

Section 126 of the Indian Contract Act defines the term contract of guarantee, surety, principal debtor and creditor. The purpose behind a contract of guarantee is to give additional security to the creditor that his money will be paid back by the surety if the debtor makes a default.

Contract of guarantee : Section 126

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default.

The contract of guarantee has three parties involved, namely, the principal debtor, the creditor, and the surety.

Surety

The person who gives the guarantee is called the Surety. The liability of the surety is secondary, i.e., he has to pay only if the principal debtor fails to discharge his obligation to pay.

Principal debtor

The person in respect of whose default the guarantee is given is the Principal debtor. The principal debtor has the primary liability to pay.

Creditor

The person to whom the guarantee is given is called the creditor.

For example, Anil orders certain goods of the value of Rs. 2000/- from Swapnil on credit. Mrinal guarantees that, if Anil will not pay for the goods, she will. This is a contract of guarantee. Here, Rs. 2000 is the principal debt, Anil is the principal debtor, Mrinal is surety and Swapnil is the creditor.

Main features

1. A contract of guarantee may be oral or written: According to Section 126, a contract of guarantee may be oral or in writing. However, under English law, for a contract of guarantee to be valid, it has to be in writing and signed.

2. There must be a principal debt: The existence of a principal debt is necessary for a contract of guarantee. If there is no principal debt, then there is no existing obligation to pay. As a result of the absence of such obligation to pay, there cannot be any promise/guarantee. If there is a promise to pay for compensating some loss without there being any principal debt, such a contract will become a contract of indemnity.

3. Contract of guarantee is tripartite in nature: There being three parties involved in a contract of guarantee, three contracts take place in a contract of guarantee-

- The principal debtor promises to make payment to the creditor.
- Surety undertakes to pay the creditor in event of default of payment by the principal debtor.
- An implied promise by the principal debtor in favour of surety to indemnify him in case he discharges the liability of the principal debtor.

4. There is a promise to pay upon default of payment by the debtor: In a contract of guarantee, the surety's promise to pay is dependent on the default of the debtor i.e. surety pays only when the debtor defaults.

5. The consideration is the benefit to the debtor: As per Section 127, anything done or promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee

6. The consent of the surety should not have been obtained by misrepresentation or concealment of material facts: Section 142 of the ICA, 1872 provides that a guarantee obtained using misrepresentation made by the creditor or with his knowledge or assent, concerning a material part of the transaction is invalid.

Introduction

"Agency is a relationship which exists where one person (the principal) authorizes another (the agent) to act on his behalf, and the agent agrees to do so."

While the contract of agency has been very diligently explained under chapter 10 (section 182-238) of the Indian Contract act, 1872 and by the Hon'ble courts of justice, time and again; A contract of agency, in its essence, is nothing but a fiduciary relationship between two parties where one party (the principal) contracts-with and authorizes (implicitly or explicitly) another person (the agent) to act on his behalf and provides him with the capacity to create legal relationships between the principal and third parties.

Essentials: Contract of Agency

The Special Contract of Agency has been defined under Chapter 10 (section 182-238) of the Indian Contract Act, 1872; where beyond the general essentials (section 10) provided for a contract, the Act also lays down certain specific principles and essentials for the Special Contract of Agency.

The major essentials to the contract of agency include:

Competency of the Principal

The requirement for the competency of the principal has been repeated (as Sec.10 of the "act" also requires for "parties competent to contract") and laid down in the Indian Contract Act under sec. 183, where the requirements for a competent principal have been listed down to;

- Majority, i.e. the principal must have attained the age of majority, under the relevant laws.
- Sound mind, i.e. the principal must be of sound mind, at least at the moment of appointing the agent.

The basic rule of thumb here is that the principal should be capable of performing the tasks (in law), which he wants his agent to do for him.

Thus any appointment of an agent by a minor[2] or a person of unsound mind is explicitly declared to be void.

Competency of the Agent

The requirements regarding the competency of the agent have been listed down in Sec. 184 of ICA, 1872, where it has been explicitly mentioned that anyone between the principal and the third party may become an agent, regardless of its age or soundness of his mind. It prescribes that any person, including a minor and an unsound person, may become an agent. However, they (the agent) may not be liable to the principal unless they have attained the age of majority and are of sound mind.

From the general description provided under the section, it can be interpreted that, any person, including ones who themselves might not be competent enough to contract (minors and persons of unsound mind included), have the capacity to represent and bind their principals into direct and valid contractual relationships.

Consideration not required

As per the view of the Indian Contract Act, even consideration is not an essential element for the creation of an Agency; hence no consideration is required to be presented while the formation of an agency.

However, these provisions do not deprive the agent of his legal and justified remunerations unless proven to be specified otherwise in the contract.

These principles of the contract act are based upon the ideologies of Common Law, which specify that no consideration is required to give an individual the authority of an agent, neither does it bar

any one of the parties from suing each other, either it be for the negligence on part of the agent or for the recovery of due compensation from the principal.

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Introduction

The sale or purchase of goods is the most recurring transaction in almost every kind of business. Every now and then, businessmen get involved in the sale & purchase of goods and enter into the contract of sale. These contracts are governed by the Sale of Goods Act,1930. It is important for every individual, be it a legal professional or a common man who deals in the transaction of sales on a regular basis, to have an understanding of the important terms in the Sale of Goods Act,1930. In this article, we will discuss some common yet important terms in the Sale of Goods Act,1930. Give a quick reading to this article to have comprehension about the terms related sale of goods.

Important Terms: Sale of Goods Act, 1930

Buyer and Seller

- *Buyer [Section 2(1)]*

The definition of the 'buyer' is stated under Section 2(1) of the Act. It defines Buyer as a person who either buys or agrees to buy certain commodities. In the contract of sale, the Buyer is one of the parties to the contract.

- *Seller [Section 2(13)]*

On the contrary, the Act defines 'seller' as a person who either sells or agrees to sell particular commodities under Section 2(13). The Seller becomes the other party to the contract. The existence of both the parties i.e. the Buyer and the Seller must be there to enter into a contract of sale.

The conjoint reading of the above two sections give us a conclusion that to be recognized as a Buyer or Seller under the Act, it is not necessary to actually transfer the goods. Even if you agree or promise to buy or sell the goods you would be considered and identified as a Buyer or Seller as per the Act.

Goods [Section 2(7)]

The dictionary meaning of the term goods is merchandise or possession. The term "Goods" is one of the crucial clauses in the Contract of Sale.

According to Section 2(7) of the Act, "goods" include-

- Any movable property except actionable claims and money;
- Stock and shares;
- The growing crops, standing timber, grass;
- The things that are attached or forming part of the land which is agreed to be severed from the land before the sale. It has been held in the *State of Maharashtra v. Champalal*

Kishanlal Mohta that things which are attached to land are the subject matter of the contract of sale if they are severed before the sale.

For eg: A resort was offering stay along with food at a consolidated charge. If customers do not take food, the rebate on food is not allowed as the supply of food does not come under the definition of "goods" as per the Act.

It is concluded from the above definition that the Act deals with the sale of goods i.e. movable property only. On the other hand sale of immovable property is governed by the Transfer of Property Act,1882. It is noted that the actionable claims and money are excluded from the ambit of the definition. Actionable claims are the claim or debt for which legal action can be taken and can be enforced. For eg: recovery of refund is an actionable claim and is not included in the purview of the above definition. Further, the goods can be classified under several categories. Let's see below.

Types of goods

The classification of goods in terms of business law can be quite ticklish to understand. Section 6 of the Act describes the types of goods. The goods are classified into existing goods, future goods, and contingent goods. Let's study all three briefly.

Existing Goods

If the goods are physically present at the time of contract and are in the legal possession or owned by the seller during the formulation of the contract of sale is referred to as existing goods. The existing goods are further classified into:

- Specific Goods [Section 2(14)]: Referring to Section 2(14) of the Act, the goods that are specifically identified and agreed upon to be transferred at the time of the formation of the contract are called specific goods.

Illustration- 'A' wants to sell his HP Laptop of a particular model number and advertises the same. 'B' agrees to purchase the laptop. Both entered into the contract of sale. Here the laptop is a specific good.

- Ascertained Goods: The Act does not define the ascertained goods but is conferred by judicial interpretation. The goods are said to be ascertained wherein some or whole part of goods is identified and set aside for the purpose of the contract. Such goods are specifically earmarked for sale.
- Unascertained Goods: The goods that have not been specifically identified to be sold are known as unascertained goods. For example, from 1000 quintals of wheat, the seller agreed to sell 500 quintals. Here the goods are not specified. The seller has the liberty to choose from the bulk.

Future Goods [Section 2(6)]

The goods which are not in existence and to be manufactured or produced or acquired by the seller after entering into the contract of sales are considered as future goods. It must be noted that there can only be an agreement to sell contracts as there can be no actual sale in respect of future goods. This is defined under Section 2(6) of the Sale of Goods Act.

Illustration – Amit is a manufacturer of chairs. Shyam ordered Amit to manufacture 200 units of chairs of specific design and they made an agreement for the same. This is the sale with respect to future goods.

In the case of *Union of India v. K.G. Khosla & Co. Ltd*, goods were manufactured according to the specification mentioned in the contract. Therefore, the goods are "future goods" within the meaning of Section 2(6) of the Act.

Contingent Goods [Section 6(2)]

According to Section 6(2), the sale of certain goods which depend upon happening or non-happening of certain events is termed as contingent goods. For instance, 'A' has agreed to sell 'B' certain goods at a particular date if the former receives the goods from the manufacturer before the said date. This agreement is based on contingencies, hence such goods are called contingent goods.

Delivery [Section 2(2)]

By delivery of goods we mean, the voluntary transfer of the possession of goods from one person to the other. The transfer of possession is the end result of the whole delivery process. It is not necessary that the person to whom the goods are delivered is a buyer, he can be any other person authorized by the buyer. The definition of the term delivery is defined under Section 2(2) of the Act.

Kinds of Delivery

There are different forms of delivery of goods according to the Sale of Goods Act, 1930:

Actual Delivery

Actual delivery takes place when the goods are physically handed over to the buyer or any person authorized by him. Say for example A, the seller of furniture handed over the ordered furniture to B, the case is of actual delivery of the goods.

Constructive Delivery

In the case of constructive delivery, the transfer of goods can be done without a change in the possession or custody of goods. Acknowledgment and attornment can be called constructive delivery.

Constructive delivery can be effected in the following ways:

- Wherein the seller agrees to hold the sold goods as a bailee.
- Wherein the buyer who is in the actual possession of goods as a bailee of the seller holds the goods as his own after the sale.
- Where a third party like transporter or agent, agrees to hold the goods for the buyer.

Symbolic Delivery

Symbolic delivery is made wherein the goods are heavy and bulky and it is difficult to hand over the goods to the buyer physically. In this situation, the delivery is made by indicating or giving a symbol that the goods are under the possession of the buyer. For example, the delivery of the keys of the warehouse where the goods are kept is considered to be the symbolic delivery. A document like a bill of lading must be given to the buyer to make him entitled to hold the delivered goods.

The document of the Title to Goods [Section 2(4)]

As per Section 2(4), we can confer that the Document of the title to goods includes a bill of lading, dock-warrant, warehouse keeper's certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods. It also includes any other documents that are used in the usual course of business proving the possession or control of goods or which proves the authority of the possessor to transfer or receive the goods. The document is a very imperative document for taking any legal action without which one cannot proceed with the proceeding in the court.

Fault [Section 2(5)]

Any wrongful act or default committed is considered as "fault" under Section 2(5) of the Sale of Goods Act, 1930.

Mercantile Agent [Section 2(9)]

As per the definition given under Section 2(9) of the Act, Mercantile Agent is a person who is having the authority in the customary course of business either to sell or consign the goods under the given contract. The Agent is authorized to act on behalf of the buyer or seller. An agent can also raise money on the security of the goods if authorized. The example includes agents, auctioneers, brokers, dealers, etc.

Price [Section 2(10)]

According to Section 2(10) of the Act, The consideration for the sale of goods is called price. Price is the money that is paid or promised to be paid by the buyer or any person authorized by the buyer to the seller. Below are the different modes by which price can be determined:

- Parties mutually decide the price of the goods in the contract of sale. *In Aluminium Industries Ltd. v. Minerals and Metals Trading*, it is observed that the price prevailing on the date of delivery will be the price to be paid by the buyer. Subsequently, the seller issued a delivery note for the goods but without any valid reason delayed the delivery. The seller demanded an increased price which occurred due to delayed delivery. It was held that the seller was at fault thus he could not compel the buyer to pay an increased price.
- It may be left to be fixed in the future.
- It may be determined in the course of dealing between the parties.

Property [Section 2(11)]

According to Section 2(11) of the Act, property generally means title or the ownership rights of the goods. In the process of a sale, there is a transfer of ownership or we can say the transfer of property from one party to the other.

Quality of Goods [Section 2(12)]

Section 2(12) of the said Act gives the definition of "quality of goods". The quality includes the state or condition in which the goods are expected or promised to be delivered. It is one of the important clauses to be included in the Contract of Sale. If the quality of the delivered goods has not complied with the contract then it is considered to be the breach of the Contract.

Insolvent [Section 2(8)]

A person who ceases to pay his debts in the normal course of business, or is unable to pay even his due debts in the eyes of law is declared as insolvent. Section 2(8) states the definition of the term "insolvent". The law gives certain rights and duties to an insolvent person.

Performance of Sale of Goods Contract

A sale of goods contract is automatically created whenever a good or product is sold. The resulting contract imposes the duties that are required of both parties involved:

- The seller.
- The buyer.

If either of the involved parties fails in carrying out his or her respective duties under the contract's terms, the resulting consequences can have adverse effects. When it comes to performing a sale of goods contract, there are three general dimensions. These dimensions are outlined in the Sale of Goods Act of 1983, specifically in section 27, which states it is the seller's duty to deliver the purchased goods and it is the buyer's duty to pay for and accept them. These duties are in accordance with the contract of sale that comes into play when the transaction begins.

Simply put, the three dimensions of performing a sale of goods contract are as follows:

- The seller delivers the goods.
- The buyer accepts the goods.

The buyer pays for the goods.

Note that these elements do not need to happen in any particular order. They each deserve further individual consideration in their own right. In the event the claim is made that a sale of goods contract has been performed, it doesn't matter in what order these three events have occurred. It only matters that they have all three, in fact, taken place. In other words, to make a valid claim that a sale of goods contract has been performed:

- The seller must have delivered the goods to the buyer.
- The buyer must have accepted the delivered goods from the seller.

- The buyer must have paid the seller for the delivered goods.

If one or more of these events has not occurred, a sale of goods contract has not been performed. These requirements can be seen in written law by referring back to section 27 in the Sale of Goods Act of 1983 that states the seller is required to deliver the goods in question and the buyer is required to pay for and accept those goods.

Again, however, the law does not have a specific requirement regarding the order in which these criteria are met. A typical sale will play out in order as follows:

- Delivery.
- Acceptance.
- Payment.

If the sale plays out in a different order, though, the only thing that matters from a legal standpoint is that all three requirements are met.

Delivery of Goods

Delivery of goods happens when one person or legal entity voluntarily transfers the possession of goods to another. There are no specific requirements surrounding how to determine when delivery of goods has occurred. Instead, it is left up to the involved parties to agree on what will be considered as delivery. By default, delivery results in the goods ending up in the possession of the buyer or some other person or entity who the buyer authorizes to receive the goods on his or her behalf.

Actual delivery refers to the act of physically transferring the goods from the seller's possession to the buyer's. Alternatively, an agent acting on behalf of the seller can make this delivery to an agent acting on behalf of the buyer. When goods are large or bulky, it's not uncommon for the seller to provide what is known as "symbolic delivery." For instance, if a large amount of lumber is sitting in a warehouse, delivering a key to that warehouse has the same effect as physically delivering the lumber.

UNIT-3

Historical Background of Arbitration

Once human beings started to live and trade together as a community, various forms of adjudications begin to emerge. Why the concept of Arbitration emerged as an alternative dispute resolution? For answering this question one has to look back at the history of arbitration.

In India

- The earliest evolution of arbitration in India can be traced back to "*Brihadaranyaka Upanishad*" under the Hindu Law. It provided for various types of arbitral bodies which consisted of three primary bodies namely:

1. The local courts
2. The people engaged in the same business or profession
3. Panchayats.

- The members of the Panchayats known as panchas, were that times arbitrators, which used to deal with the disputes under a system.
- However thereafter the first legislative council for British India was formed and India got its first enactment on Arbitration known as the 'Indian Arbitration Act, 1899' but the Act was applicable to only presidency towns i.e., Calcutta, Bombay, and Madras. This Act was fundamentally based on the British Arbitration Act, 1889.
- Thereafter came the Arbitration Act, 1940 which applied to the whole of India including Pakistan and Baluchistan. However, post independence the same was modified via ordinance.
- Due to various shortcomings in the 1940 Act like lack of provisions prohibiting an arbitrator from resigning any time during an arbitration proceeding, the rules providing for filing awards differed from one High Court to another, the act was replaced by the Arbitration and Conciliation Act, 1996 that ratified the problems in 1940 Act.

Arbitration

"***Arbitration is a form of Alternative Dispute Resolution (ADR)"***.

- The concept of arbitration means resolution of disputes between the parties at the earliest point of time without getting into the procedural technicalities associated with the functioning of a civil court.
- The dictionary meaning of Arbitration is "***hearing and determining a dispute between the parties by a person or persons chosen by the parties***".
- In an English judgement named ***Collins v. Collins, 1858 28 LJ Ch 184: 53 ER 916*** the court gave a wide definition to the concept of Arbitration which reads as follows:"***An arbitration is a reference to the decisions of one or more persons either with or without an umpire, a particular matter in difference between the parties***". It was further observed by the court that proceedings are structured for dispute resolution wherein executives of the parties to the dispute meets in presence of a neutral advisor and on hearing both the sides and considering the facts and merits of the dispute, an attempt is made for voluntary settlement.
- Arbitration can be a voluntary one i.e., agreed between the parties or it can be ordered by the court.
- Unlike litigation, arbitration proceeding takes place out of the court and the arbitrator's decision is final and the courts rarely reexamine it.

- There are several modes of dispute resolution outside the Judicial process. These modes are as follows:

1.
    1. Negotiation
    2. Mediation
    3. Conciliation
    4. ***Arbitration***
    5. Mini Trial

- But Arbitration is considered as an important Alternative Dispute Resolution mechanism and is been encouraged in India due to the high pendency of cases in the courts.

Some Important Terms in Arbitration

Arbitration Clause

- An Arbitration clause ***is a section of the contract that defines the rights of the parties in the case any dispute arises over the contractual obligation or any other matter related to such contract***.
- Generally, an arbitration clause contains that the parties will not sue each other in the court of law, if any dispute arises, instead they will resolve the dispute through arbitration.

Arbitration Tribunal

- According to Section 2(1)(d) of the Arbitration and Conciliation Act, an Arbitration Tribunal ***means a sole arbitrator or a panel of arbitrators***.
- Thus from the interpretation of this definition, ***the parties are free to determine the number of arbitrators.***
- However, if the ***parties fails to determine the number of arbitrators***, then in that case, ***the arbitration tribunal shall consist of a sole arbitrator.***

Principle Characteristics of Arbitration

- **Arbitration is consensual:** An arbitral proceeding can only take place if both the parties to the disputes have agreed to it. Generally, parties insert an arbitration clause in the contract for future disputes arising from non- performance of contractual obligations. An already existing dispute can also be referred to arbitration if both the parties to the dispute agree to it (submission agreement).

- Parties choose the Arbitrators: Under the Indian Arbitration Act parties are allowed to select their arbitrator and they can also select a sole arbitrator together who will act as an umpire. However, the parties should always choose an arbitrator in an odd number.

- Arbitration is neutral: Apart from selecting neutral persons as arbitrators, the parties can choose other important elements of proceeding such as the law applicable, language in which the proceedings should be conducted, the venue for arbitration proceedings. All these things ensure that no party enjoys a home court advantage.

- Decision of the Arbitral Tribunal is final and easy to enforce: The decision or award given by the arbitral tribunal is final and binding on the parties and persons only after the expiry of the time limit prescribed under Section 33 and 34 of the Act.

When the award becomes final it shall be enforced under the Code of Civil Procedure, 1908, in the same manner, one enforces a decree passed by the court.

Advantages of Arbitration in India

- **Expertise in Technical matters:** An arbitrator can easily deal with technical matters which is scientific in nature because generally arbitrators are appointed based on their expertise and skill in a particular field. Thus the disputes are resolved more effectively and efficiently.

1. The ***arbitral process is cost effective*** and ***less time consuming*** than the traditional way of dispute resolution in the court of law.
2. There is the ***convenience of the parties*** as they are able to decide on the language, venue and time of the proceedings.
3. ***Privacy and confidentiality of the parties*** are maintained as there is no unnecessary publicity of the dispute.
4. ***Arbitral proceeding is more flexible than the court proceeding*** as under the arbitral proceeding one does not have to follow the strict and rigid rules and regulation as that of the court. This is due to the reason that parties set the rules and regulations of the proceedings.

Conclusion

The growth of arbitration is taken as a healthy sign by many legal commentators as it eases the load on the constantly overloaded judicial system.

Conciliation

Conciliation is defined as an alternative dispute resolution mechanism that is designed to resolve a dispute among the parties through a non-adjudicatory and non- Antagonistic way. It involves the

neutral third party who makes the disputant parties arrive at a conclusion and a satisfactory dispute settlement.

The conciliation conference is not a public hearing, a court of law or a tribunal. That means parties do not have to prove or disprove the complaint. Instead conciliation **allows people to state their point of view, discuss the issues in dispute and settle the matter on their own terms**.

informal conciliation; where disputes are addressed between a client and lawyer over the phone, by email or in writing. formal conciliation (otherwise known as a 'conciliation conference'); where a client and lawyer meet to discuss, and try to resolve the issue with the help of a conciliator in attendance.

The conciliation proceeding are initiated by **one party sending a written invitation to the other party to conciliate**. The invitation should identify the subject of the dispute. Conciliation proceedings are commenced when the other party accepts the invitation to conciliate in writing.

Introduction

The Arbitration and Conciliation Act, 1996, as the name itself suggests, deals with two types of proceedings; domestic arbitration and conciliation proceedings. While provisions relating to domestic arbitration are contained in **Part 1** which includes **Sections 1 to 43**, the conciliation proceedings which includes **Sections 61 to 81** (Part II deals with enforcement of foreign awards). On perusal of the provisions of the Act, it is apparent that there is a clear distinction in the statute between arbitration proceedings and conciliation proceedings.

Conciliation', as defined in **Halsbury's Laws of England**, "*Is a process of persuading parties to reach an agreement, and is plainly not arbitration, nor is the chairman of a Conciliation Board an arbitrator*."

Conciliation undoubtedly is the most commonly accepted form of alternative dispute resolution mechanism. It is essentially a non-judicial power as against arbitration which may be in a judicial or non-judicial form. Briefly speaking conciliation may be defined as a process of setting of disputes without recourse to Court of law or litigation.

Meaning of Conciliation

Briefly stated, conciliation means any third party assisted alternate dispute resolution (ADR) approach. He discusses the details of the dispute with the parties and on the basis of facts collected, he himself draws up and proposes a solution, which in his opinion is most fair and reasonable. It differs from mediation, the mediator only assists the parties to resolve their dispute without, however, himself drawing up a solution. It is far less informal than the process of conciliation.

Conciliation is generally a voluntary process and discussions made in the process of conciliation are not binding on the parties unless the parties themselves agree to treat as binding. It is an (ADR) process of settling the dispute outside the Court.

Features Of Conciliation

The main features of conciliation under the Arbitration and Conciliation Act, 1996 are as follows:

- The process is non-adversary in nature there being no plaintiff or defendant or claimant or opposite party.
- It is voluntary in nature, depending on parties to agree or not to agree with the solution drawn up by the conciliator.
- The conciliator has discretion to decide the procedure so as speedy and less expensive disposal of the dispute. Thus it is fairly flexible.

In conciliation, the causes of dispute or differences are first identified and then resolved by the conciliator thus protecting the interests of the parties. The process of conciliation being flexible and more or less informal, the parties readily agree to get their disputes resolved through this method. When the parties enter upon conciliation and reach an agreement on a settlement of dispute, the agreement so reached has the status and effect as if it was an arbitral award. The Act also provides confidentiality in respect of all matters in the conciliation proceedings.

Application & Scope Of Conciliation In India

Section 61 of the Arbitration and Conciliation Act of 1996, provides for the Application and Scope of Conciliation.

Section 61 points out that the process of conciliation extends, in the first place, to disputes, whether contractual or not. But the disputes must arise out of the legal relationship. It means that the dispute must be such as to give one party the right to sue and to the other party the liability to be sued. The process of conciliation extends, in the second place, to all proceedings relating to it.

But **Part III** of the Act does not apply to such disputes as cannot be submitted to conciliation by the virtue of any law for the time being in force.

Appointment Of Conciliators

Section 64 deals with the appointment of the conciliators.

Where the parties agree to take recourse to conciliation with one conciliator, the conciliator so appointed will be called the sole conciliator and he will be named by the parties themselves. When the parties prefer conciliation proceedings to be conducted by two conciliators, each party may appoint (name) one conciliator. However, where the parties opt for conciliation by three conciliators, each party may appoint one conciliator and both the parties may agree upon the name of the third conciliator who shall act as the presiding conciliator.

Section 64 sub section 2, also provides for institutional appointment of conciliators, that is, the parties may seek the assistance of suitable institutions or persons for appointment of conciliator/conciliators, if they so desire. The institutions would maintain a panel of skilled negotiators who have special expertise in different fields so that they may make the services of well qualified conciliators available to the parties needing their assistance for appointment of suitable persons as conciliators

In case of sole or third conciliator's appointment, the appointing institution has to take into consideration the advisability of appointing a person of a nationality other than the nationalities of the parties in dispute. This proviso is intended to ensure impartiality and independence of the conciliator.

Number & Qualification Of Conciliators

Section 63 fixes the number of conciliators. There shall be one conciliator. But the parties may by their agreement provide for two or three conciliators. Where the number of conciliators is more than one, they should as general rule act jointly.

Principles of Conciliation Procedure

Independence And Impartiality– Section 67(1)

According to it the conciliator should be independent and impartial. He should assist the parties in an independent and impartial manner while he is attempting to reach an amicable settlement of their dispute.

Fairness and justice- Section 67(2)

According to it the conciliator should be guided by the principles of fairness and justice. He should take into consideration, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute including any previous business practices between the parties.

Confidentiality- Section 70

According to it the conciliator and the parties are duly bound to keep confidential all matters relating to conciliation proceedings. Similarly when a party gives information to the conciliator on the condition that it be kept confidential, the conciliator should not disclose that information to the other party.

Disclosure Of The Information– Section 70

According to it when the conciliator receives information about any fact relating to the dispute from a party, he should disclose the substance of that information to the other party. The purpose of this provision is to enable the other party to present an explanation which he might consider appropriate.

Co-operation Of The Parties With Conciliator– Section 71

According to it the parties should in good faith cooperate with the conciliator. They should submit the written materials, provide evidence and attend meetings when the conciliator requests them for this purpose.

Procedure Of Conciliation

Commencement of the conciliation proceedings– Section 62

According to it the conciliation proceedings are initiated by one party sending a written invitation to the other party to conciliate. The invitation should identify the subject of the dispute. Conciliation proceedings are commenced when the other party accepts the invitation to conciliate in writing. If the other party rejects the invitation, there will be no conciliation proceedings. If the party inviting conciliation does not receive a reply within thirty days of the date he sends the invitation or within such period of time as is specified in the invitation, he may elect to treat this as rejection of the invitation to conciliate. If he so elects he should inform the other party in writing accordingly.

Submission of Statement to Conciliator- Section 65

According to it the conciliator may request each party to submit to him a brief written statement. The statement should describe the general nature of the dispute and the points at issue. Each party

should send a copy of such a statement to the other party. The conciliator may require each party to submit to hima further written statement of his position and the facts and grounds in its support. It may be supplemented by appropriate documents and evidence. The party should send the copy of such statements, documents and evidence to the other party. At any stage of the conciliation proceedings, the conciliator may request a party to submit to him any additional information which he may deem appropriate.

Conduct of Conciliation Proceedings- Section 69(1) and 67(3)

According to it the conciliator may invite the parties to meet him. He may communicate with the parties orally or in writing. He may meet or communicate with the parties together or separately. In the conduct of the conciliation proceedings, the conciliator has some freedom. He may conduct them in such a manner as he may consider appropriate. But he should take in account the circumstances of the case, the express wishes of the parties, a party's request to be heard orally and the need for speedy settlement of the dispute.

Administrative assistance- Section 68

It facilitates administrative assistance for the conduct of conciliation proceedings. Accordingly, the parties and the conciliator may seek administrative assistance by a suitable institution or the person with the consent of the parties.

Difference Between Conciliation and Arbitration

Though like arbitration, conciliation is also another means of settling disputes, the two differ in many vital aspects. The only similarity that appears between the two is that a 'third person' is chosen or nominated by the parties to resolve their disputes.

Russel, in his Book on Arbitration has brought out the distinction between functioning of an arbitrator and conciliator in the following words:-

"*An arbitrator is not a conciliator. He cannot ignore the law, or misapply it in order to do what he thinks is just and reasonable. Unlike a conciliator, an arbitrator, is a tribunal constituted by parties to decide disputes in accordance with the law."*

The main points of difference between arbitration and conciliation may be stated as follows:

- In case of arbitration, a prior 'agreement in writing to submit to arbitration disputes which have arisen or which may arise in future, is necessary. But conciliation may be resorted to without the existence of such prior agreement and it generally relates to disputes which have already arisen.
- As a corollary of this, it follows that there being a prior arbitration agreement between the parties, both of them are bound by the agreement. But in case of conciliation, since a written invitation is made by one party, the other party may or may not accept the same.
- While the role of conciliator is to help and assist the parties to reach an amicable settlement of their dispute, the arbitrator does not merely assist the parties but he also actively arbitrates and resolves the dispute by making an arbitral award.
- In case of conciliation a party may require the conciliator to keep the factual information confidential and not disclose it to the other party, but it is not so in arbitration as the information given by a party is subjected to scrutiny by the other party. Thus there is no question of confidentiality in case of arbitration awards.

- A settlement agreement may be made by the parties themselves and the conciliator shall authenticate the same. An arbitration award on the other hand, is not merely a settlement agreement but it is a judgment duly signed by the arbitrator.
- The conciliation proceedings may be unilaterally terminated by a written declaration by a party to the other party and the conciliator, but arbitration proceedings cannot be so terminated.
- Conciliator is subjected to certain disabilities under Section 80 of the Act and he cannot act as arbitrator or as a council or a witness in any arbitral or judicial proceedings but there are no such disabilities imposed on an arbitrator or parties to arbitral proceedings.
- The arbitration proceedings or awards may be used as evidence in any judicial proceedings but the conciliation proceedings cannot be used as evidence in any arbitral or judicial proceedings.
- Last but not the least, an arbitrator has to decide according to law, but a conciliator can conciliate irrespective of law.

Conclusion

The introduction of conciliation as a means of alternate dispute resolution in the Act is definitely a positive step towards encouraging parties to opt for it. Taking into consideration the time, effort and money involved in pursuing cases before a court or an arbitrator in India, conciliation should act as the perfect means for resolving disputes, especially those of commercial nature.

Alternative dispute resolution (ADR) refers to **the different ways people can resolve disputes without a trial**. Common ADR processes include mediation, arbitration, and neutral evaluation. These processes are generally confidential, less formal, and less stressful than traditional court proceedings.

The ADR techniques mainly include **arbitration, conciliation, mediation, and negotiation**. In India, Lok Adalat stands as another additional form of ADR mechanism, which combines different techniques like conciliation, mediation, and ne Arbitration, Conciliation, Mediation, Judicial Settlement, and Lok Adalat are the most commonly used ADR processes in civil proceedings. ...

Methods of Alternative Dispute Resolutions

- Arbitration;
- Conciliation;
- Mediation;
- Judicial Settlement;
- Lok Adalat.
- Negotiation.

There are only three principles driving effective dispute resolution: **Be fair - treat people fairly and follow fair processes**. **Put things right**. **Learn from outcomes**.

UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. The Model Law is designed to assist States in reforming and modernizing their

laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration.

1940's Arbitration Act was **an attempt to consolidate & amend the law pertaining to domiciliary conflicts**. To reduce the already overworked judicial system in India, the legislation introduced Arbitration & Conciliation Act, 1996 for speedy, thrifty, & flexible disposal of disputes.

The UNCITRAL Model Laws for E-commerce. The Model Law has been divided into two parts. The Part I relates to the general provisions relating to e-commerce, it legislates the three principles of **non-discrimination, technological neutrality, and functional equivalence**.

International commercial arbitration

International commercial arbitration is an alternative method of resolving disputes between private parties arising out of commercial transactions conducted across national boundaries that allows the parties to avoid litigation in national courts.

international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is

There are four main principles recognized by Model Law by which international commercial arbitration is governed.

The said principles are **Party Autonomy, Separability, Competence-Competence, Territorial Principle and Enforceability**.

International arbitration is sometimes called a hybrid form of international dispute resolution, since it blends elements of civil law procedure and common law procedure, while allowing the parties a significant opportunity to design the arbitral procedure under which their dispute will be resolved.

In addition to International Commercial Arbitration, **Investment Treaty Arbitration** is another form of international arbitration. There are many differences between the two. International Commercial Arbitration settles disputes between private parties of equal status, usually of different nationalities.

The following are the different types of arbitration as per the jurisdiction of the case:

- Domestic arbitration. ...
- International arbitration. ...
- International commercial arbitration

- Ad-hoc Arbitration. ...
- Fast track Arbitration. ...
- Institutional Arbitration.

Judicial Intervention in Arbitration. **the intervention of a third person, but without having recourse to a Court of Law**. arbitrator, though Court may have to intervene to regulate arbitration proceedings, or, to give the award of the arbitrator a sanction of law.

The Arbitration was adopted to remove pressure on the courts. Arbitration is **a speedy, money-saving, time-saving method to resolve the dispute**. Although arbitration is a whole different process/method to resolve the dispute, the Courts can intervene in the proceedings as mentioned under the Act, 1996 itself.

Difference between conciliation, arbitration, negotiation and mediation

Arbitration is a formal process and can follow similar procedures to court proceedings where witnesses can be called and evidence can be presented to argue the parties' respective cases. Conciliation is an informal process and normally involves a 'round table' discussion.

The difference between negotiation and mediation, in brief, is that negotiation involves only the parties, and mediation involves the intervention and assistance of a third party (the mediator) as a facilitator in the parties' effort to resolve their dispute.

Arbitrator listens to facts and evidence and renders an award. Mediator helps the parties define and understand the issues and each side's interests. Parties present case, testify under oath. Parties vent feelings, tell story, engage in creative problem-solving.

Conciliation, mediation and arbitration are **methods of resolving collective disputes in industrial relations**. Generally, arbitration is distinguished by the fact that the arbitration decides the dispute, whereas conciliation and mediation only aim to assist the parties to reach a settlement of the dispute.

Introduction:

Alternate Dispute Resolution (ADR) is a dispute resolution method that employs non-adversarial (i.e. out of court) ways to adjudicate legal controversies. ADR methods are informal, cheaper and faster, in comparison to the traditional litigation process. It includes arbitration, conciliation and mediation.

The primary difference between arbitration, conciliation and Mediation is based on the role played by the third party who is selected by the parties seeking a settlement, in consensus. That **Arbitration** is the process by which parties select an independent person, who renders a decision regarding the case. Conversely **Conciliation** attempts to make parties come to an agreement about the problem at hand. In **Mediation**, the mediator acts as a facilitator who helps the parties in agreeing.

Effects on Industry:

Industrial disputes are always harmful to all the stakeholders-employees, society, management, Government etc. Resulting in loss of revenue, production profit and much more. However, it is the employees who are worst affected by the industrial disputes, as the consequences would be a lockout which may lead to loss of wages and even jobs. Industries are the backbone of the economy, and if the strife may continue for long, the whole economy may collapse. So, the settlement of industrial disputes should be done as soon as possible.

Arbitration, Conciliation and Mediation are such methods of resolving industrial disputes out of the court. So, look at the article to understand the differences between Arbitration, Conciliation and Mediation.

Content: For Differences amongst Arbitration, Conciliation and Meditation:

1. Definition
2. Comparison chart
3. Key Features
4. Conclusion

Definition of Arbitration:

Arbitration is a powerful means of resolving disputes between the organization and its employees. It is a process in which an independent third party analyses the bargaining situation, listens to both parties and collects necessary data and make recommendations which are binding on the parties concerned.

Arbitration is proved successful in resolving disputes between labour and management. The parties themselves establish arbitration and decision is acceptable to them. The decision taken by the arbitrator is accompanied by a written opinion providing reasons supporting the decision.

Further, the procedure is comparatively expeditious than courts and tribunals. However, the process is a bit expensive, and if there is a mistake in selecting an arbitrator, the judgement becomes arbitrary.

Definition of Conciliation:

Conciliation can be described as the method adopted by the parties for resolving the dispute, wherein the parties out of their free consent appoint an unbiased and disinterested third party, who attempts to persuade them to arrive at an agreement, by way of mutual discussion and dialogue.

Conciliation is characterized by the voluntary will of the parties who want to conciliate the dispute. Its basic component is confidentiality in which the parties and the conciliator are not permitted to share or disclose to the external party, anything associated with the proceedings.

The conciliator plays an advisory role, wherein he/she suggests potential remedies to the problem. The conciliation process completes with a settlement between the parties which is final and binding upon the parties.

Basis for Comparison	**Arbitration**	**Conciliation**	**Mediation**
Meaning	Arbitration is a dispute settlement process in which an impartial third party is appointed to study the dispute and hear both the parties to arrive at a decision binding on both the parties.	Conciliation is a method of resolving dispute wherein an independent person helps the parties to arrive at the negotiated settlement.	Mediation is a process of resolving issues between parties wherein a third party assist them in arriving at an agreement.
Enforcement	An arbitrator has the power to enforce his decision.	A conciliator does not have the power to enforce his decision.	The decision made by the mediator is not enforceable like an arbitral award.
Regulated by	The Arbitration and Conciliation Act, 1996	Arbitration and Conciliation Act, 1996	Code of Civil Procedure, 1908
Prior Agreement	Required	Not Required	Not Required
Available for	Existing and future disputes.	Existing disputes.	Existing disputes.
Example	Damages in case of breach of contract, matters of the right to the office, time barred claims etc.	Resolving disputes between contractors and subcontractors etc.	Commercial transactions in patents, trademark licenses, Joint ventures and R & D Contracts, music and film contracts etc.

Definition of Mediation:

Mediation is a form of alternate dispute resolution, wherein parties mutually appoint an independent and impartial third party, called as the mediator who helps the parties in reaching an agreement which is mutually accepted by the parties concerned.

Mediation is a systematic and interactive process, which employs negotiation techniques to assist the parties in finding the best possible solution to their problem.

As a facilitator, mediator attempts to facilitate discussion and build an agreement between the parties with an aim to settle the dispute. The decision made by the mediator is not binding like an arbitral award.

Comparison Chart:

Key Features:

1. Arbitration refers to a method of resolving industrial disputes, wherein the management and the labour present their respective positions to the neutral third party, who takes a decision and imposes it. Conciliation is a method of resolving the dispute, wherein an independent person, who meet the parties jointly and severally and helps them to arrive at the negotiated settlement or resolve their differences. The process of dispute resolution in which a third party intervenes in an attempt to resolve it, by enabling communication between parties is called mediation

2. The decision made by the arbitrator is acceptable to the parties concerned. On the other hand, the conciliator & Mediator does not have the right to enforce his decision.

3. Arbitration requires a prior agreement between parties known as the arbitration agreement, which must be in writing. As against this, the process of conciliation doesn't require any prior agreement.

4. Arbitration is available for the current and future disputes whereas the conciliation & Mediation can be adopted for existing disputes only.

5. Arbitration is like a courtroom proceeding, wherein witnesses, evidence, cross-examination, transcripts and legal counsel are used. On the contrary, Conciliation is an informal way of resolving disputes between the management and labour and in mediation, the role of the third party is a facilitator, who facilitates interaction between the parties.

6. Minimizing the cost-exposure entailed in settling the dispute, maintenance of control over the dispute-settlement process and speedy settlement of disputes.

Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.

Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Under the said Act, the award (decision) made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law.

Lok Adalat is a system of a dispensation of justice which has come into existence to grapple with the problem of giving cheap and speedy justices to the people. Lok Adalat as the very name suggests means **people's court**. Lok stands for people and the Adalat means court.

Nature and Scope: Generally speaking, Lok Adalat is not a court in its accepted connotation. The difference between Lok Adalat and law court is that the law court sets at its premises where the litigants come with their lawyers and witnesses goes to the people to delivers justice at their door step. It is a forum provided by the people themselves or by interested parties including social activities or social activist legal aiders, and public spirited people belonging to every walk of life. It is just a firm forum provided by the people themselves for enabling the common people to ventilate their grievances against the state agencies or against other citizens and to seek a just settlement if possible.

The basic philosophy behind the Lok Adalat is to resolve the people dispute by discussion, counseling, persuasion and conciliation so that it gives speedy and cheap justice, mutual and free consent of the parties. In short it is a party's justice in which people and judges participate and resolve their disputes by discussion, persuasion and mutual consent.

Types of cases at Lok Adalat: The types of cases dealt with generally are:

1. Mutation of land cases.
2. Compoundable criminal offences.
3. Family disputes.
4. Encroachment on forest lands.
5. Land acquisition disputes.
6. Motor accident claim, and
7. Cases which are not sub-judice.

Resources and achievement of Lok Adalat: Lok Adalat can only expect gratitude of the people in distress in return.

Lok Adalats are known as Peoples festivals of justice because settlements are not always necessarily according to legal principles settlements have an eye mainly on;

a. Social goals like ending quarrels
b. Restoring family peace
c. Providing succor for destitute.

UNIT- 4

Under the RECS Act, every building worker between the ages of 18 to 60 years who engaged in any building or construction work for at least 90 days (during the past one year) is eligible to register as a beneficiary.

An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

The four labour codes — the Code on Wages, Industrial Relations Code, Social Security Code and the Occupational Safety, Health and Working Conditions Code — are set to replace 29 labour laws

The objective of the law is: - to promote the construction development by using modern technique and technology in coordination with the local knowledge as well as the usage of both domestic and imported materials.

Types Of Construction Projects

- Residential Building Project.
- Private Project.
- Commercial Project.
- Industrial Project.
- State Construction Project.
- Infrastructure and Heavy Construction Project.
- Federal Construction Project.

Some of the most common are:

- Vaginal Birth.
- Natural Birth.
- Scheduled Cesarean.
- Unplanned Cesarean.
- Vaginal Birth after C-Section (VBAC)
- Scheduled Induction.

Terms in this set (5)

1. Employees decide to seek collective representation.
2. The union organizing campaign begins.
3. If there is sufficient support, the union receives official recognition.
4. The union and management negotiate to arrive at a mutually satisfactory collective agreement.
5. Day-to-day contract administration begins.

Civil engineering laborers **perform routine tasks in connection with the building and maintenance of roads, railways, dams and other civil engineering projects**. (e) Cleaning worksites and removing obstructions.

The site engineer's responsibilities include managing different parts of construction projects, supervising crew members, preparing estimates for time and material costs, completing quality assurance, observing health and safety standards, and compiling reports for different stakeholders.

Managing the planning and design stages of construction projects. Contributing technical expertise to project drawings and designs. Performing cost calculations and preparing financial projections. Preparing work schedules in collaboration with the project manager.

Responsibilities

- Assist tradesmen and machine operators in construction projects.
- Erect and break up scaffolding, ramps etc. ...
- Unload and carry materials at construction sites.
- Use equipment to break old forms and structures.
- Use explosives to demolish structures according to instructions.

It is important that you:

- Work safely.
- Follow instructions.
- Ask if you're not sure how to safely perform the work.
- Use personal protective equipment (PPE) in the way you were trained and instructed to use it.

Engage contract labour **through a services agreement with the contractor and clearly capture the contractor's role and responsibilities** (including timely payments and renewal of statutory registrations, with proof to be submitted to the company).

How to Engage Employees

- Get to know them. ...
- Provide them with the tools for success. ...
- Let them know how the company is doing. ...
- Allow them to grow. ...
- Support them and the authority you've granted. ...
- Recognize your team and their hard work. ...
- Encourage teamwork among employees. ...
- Find employees that care about the customer.

The Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 regulates the Indian labour law so far as that concerns trade unions as well as individual workmen employed in any industry in the Indian mainland. It was one of the last legislative act before the passing of the Indian Independence Act of 1947.

Overview of the Industrial Disputes Act, 1947

A cursory detail of the act is given in the table below:

Long Title	An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.
Territorial Extent	Territories under direct British control, later implemented in the Princely States upon their integration with the Indian Union
Enacted by	Central Legislative Assembly
Assented to	11th March 1947
Commenced	1st April 1947

Industrial Disputes Act, 1947

To know more about the legislation passed in British India, click on the linked article.

Objectives of the Industrial Disputes Act, 1947

The act was drafted to make provision for the investigation and settlement of industrial disputes and to secure industrial peace and harmony by providing mechanism and procedure for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication which is provided under the statute.

This Act was passed was with a key objective of "Maintenance of Peaceful work culture in the Industry in India" which are mentioned under the Statement of Objects & Reasons of the statute.

The Act also lays down:

1. The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.
2. The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
3. The actions to be taken against unfair labour practices on part of an employer or a trade union or workers.

Industrial Disputes Act, 1947

1. Hesitation in hiring
2. Lower investments
3. Lower overall manufacturing performance
4. Foreign investors are deterred from investing in India.

Apart from Chapter V-B, Section 9-A is also a cause of concern. This section says that if employers are modifying the wages and other allowances, they need to provide the labour commission a notice 21 days in advance. Thus, if employers quickly need to redeploy the employees to meet certain time-bound targets, this practice disallows that.

Types of industrial relations

- Employer-Employee Relations.
- Group Relations.
- Labor Relations.
- Public Relations (Community Relations)

Definition of Industrial Dispute

Industrial dispute implies any distinction of conclusion, contest, injury between the business and the representatives, or between the laborers and bosses, or between the labourers or workers itself which is all concerned with the work or non-business terms or terms of business dependent on the terms of state of work of any person.

The following principles judge the nature of an industrial dispute:

1. The dispute must affect a large number of workmen who have a community of interest and the rights of these workmen must be affected as a class.

2. The dispute must be taken up either by the industry union or by a substantial number of workmen.

3. The grievance turns from individual complaint into a general complaint.

4. There must be some nexus between the union and the dispute.

5. According to Section 2A of the Industrial Disputes Act, 1947, a workman has a right to raise an industrial dispute with regard to termination, discharge, dismissal, or retrenchment of his or her service, even though no other workman or any trade union of workman or any trade union of workmen raises it or is a party to the dispute.

According to Patterson “Strikes constitute militant and organised protest against existing industrial relations. They are symptoms of industrial unrest in the same way that boils symptoms of disordered system”.

Depending on the purpose, Mamoria et. al. have classified strikes into two types: primary strikes and secondary strikes.

(i) Primary Strikes:

These strikes are generally aimed against the employers with whom the dispute exists. They may include the form of a stay-away strike, stay-in, sit-down, pen-down or tools- down, go-slow and work-to-rule, token or protest strike, cat-call strike, picketing or boycott.

(ii) Secondary Strikes:

These strikes are also called the 'sympathy strikes'. In this form of strike, the pressure is applied not against the employer with whom the workmen have a dispute, but against the third person who has good trade relations with the employer.

General and political strikes and bandhs come under the category of other strikes:

Lock-Outs:

Lock-out is the counter-part of strikes. While a 'strike' is an organised or concerted withdrawal of the supply of labour, 'lock-out' is withholding demand for it. Lock-out is the weapon available to the employer to shut-down the place of work till the workers agree to resume work on the conditions laid down by the employer.

Gherao:

Gherao means to surround. It is a physical blockade of managers by encirclement aimed at preventing the egress and ingress from and to a particular office or place.

Gherao of the vice chancellor:

The non-teaching employees of a Central University in the North-East India had some demands with the University authority for quite some time.

Collective bargaining is **the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment**, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family, and more.

Factors include:

- The existence of both common and competitive interests linking the groups;
- How groups are recognized as participants in a dispute;
- The balance of power between the competing groups;
- The frequency of negotiations;

- The number of bargaining groups:
- The existence of bargaining deadline;
    - **Objectives:**
    - The basic objective of collective bargaining is to arrive at an agreement between the management and the employees determining mutually beneficial terms and conditions of employment.
    - **This major objective of collective bargaining can be divided into the following sub-objectives:**

1. To foster and maintain cordial and harmonious relations between the employer/management and the employees.

2. To protect the interests of both the employer and the employees.

3. To keep the outside, i.e., the government interventions at bay.

4. To promote industrial democracy.

Importance:

The need for and importance of collective bargaining is felt due to the advantages it offers to an organisation.

1. Collective bargaining develops better understanding between the employer and the employees:

It provides a platform to the management and the employees to be at par on negotiation table. As such, while the management gains a better and deep insight into the problems and the aspirations of die employees, on the one hand, die employees do also become better informed about the organisational problems and limitations, on the other.

2. It promotes industrial democracy:

Both the employer and the employees who best know their problems, participate in the negotiation process. Such participation breeds the democratic process in the organisation.

3. It benefits the both-employer and employees:

The negotiation arrived at is acceptable to both parties—the employer and the employees.

4. It is adjustable to the changing conditions:

A dynamic environment leads to changes in employment conditions. This requires changes in organisational processes to match with the changed conditions.

5. It facilitates the speedy implementation of decisions arrived at collective negotiation:

The direct participation of both parties—the employer and the employees—in collective decision making process provides an in-built mechanism for speedy implementation of decisions arrived at collective bargaining.

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The direct participation of both parties—the employer and the employees—in collective decision making process provides an in-built mechanism for speedy implementation of decisions arrived at collective bargaining.

The Employees Compensation Act,1923

The Employees Compensation Act,1923 is the first social security measure undertaken in India to provide workmen and their dependents relief for injury by accident resulting in either death or disability. According to the theory of notional extension of employment, a fictitious employment extension is a presumptive or imaginary extension of an employee's working time under certain circumstances in order to enjoy temporary benefits under various laws by the employer

Applicability of Act

The Act applies to factories, mines, plantations, transport, establishment, construction works, railways, other hazardous occupations and employment as specified in Schedule II. Establishments which are covered under ESI Act, 1948, are kept outside the purview of this Act because the same benefit is provided under ESI Act, 1948 for disablement and death to the workmen and their dependents.

Section 2 (1) (m) of the workman Compensation Act defines wages as any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of an employee towards any pension or provident

fund or a sum paid to an employee to cover any special expenses entailed on him by the nature of his employment.

Benefits included in the wages are –

1. Free accommodation;
2. Cleanliness allowance;
3. Overtime pay;
4. Benefits in the form of food and clothing;
5. Bonus;
6. Dearness allowance;
7. Value of any other concessions, benefits or privileges capable of being estimated in money.

Section 3 Employer's Liability for Compensation – A workman is entitled to receive compensation from the employer in the following circumstances:-

A. In case of an accident;

B. In case of occupational disease;

C. The said accident or disablement has arisen out of and in the course of employment

An Act to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of ...

Real Estate Regulatory Authority

RERA, the full form of which is Real Estate Regulatory Authority, stands for **transparency in the real estate industry**. It was brought to action to eradicate the existing discrepancies and problems within the sector.

The Real Estate (Regulation & Development) Act, 2016 has included, among its many regulations, a provision for the establishment of a state level Real Estate Regulatory Authority (RERA). The founding objective of this body is **to monitor the real estate sector and adjudicate disputes related to real-estate projects**.

Need for the Real Estate (Regulation and Development) Act, 2016

1. To control and regulate the real estate sectors by shutting out malpractices;
2. To keep consumers out of perils such as delayed delivery, transfer of title of the property, the quality of amenities provided and necessary changes to be made etc., before purchase;
3. To appoint authorities to manage the real estate sector and to establish an Appellate Tribunal for each State. To enable home buyers to file complaints in case of any wrongdoing committed by the builders or developers;
4. To contribute a good percentage to India's GDP;
5. To create accountability and responsibility for the authorities so appointed;
6. To tighten the security on the use of investments done by the home buyers or investors;
7. To have a supreme authorisation on the registration for the projects required to be registered; and
8. To maintain quality in delivering the project to the buyers as per their interest and give scope for complaints to the authorities in case of any structural defects.

Importance of the Real Estate (Regulation and Development) Act, 2016

Real estate's working was previously unregulated. The enforcement of RERA intends to protect the buyers or investors and in turn boost their confidence. It requires transparency and authority to keep track of its functioning approach. In reality, it now serves as a spotless ground for buyers as well as reducing the risk of those buyers or investors who bought or invested in the real estate before the implementation of the Act. The Act clarifies the relationship between property buyers and developers. It lays down the process of establishing trust between suppliers and purchasers. It has even created a state agency to oversee real estate and business transactions. The RERA Act is now assisting home buyers in receiving their real estate projects on schedule which is a huge comfort for Indian homebuyers.

Salient features of the Real Estate (Regulation and Development) Act, 2016

1. To regulate and promote the real estate sector by establishing the Real Estate Regulatory Authority.
2. To carry out the sale of plots, buildings or apartments as the case may be, or the sale of all the real estate projects transparently and efficiently.
3. To protect the interests of the consumers and buyers and ensure the prevention of malpractices against them.
4. To establish adequate and speedy dispute redressal systems and also establish Appellate Tribunals to hear and adjudge appeals from the orders, directions or decisions of the Real Estate Regulatory Authority.
5. Establishes state-level regulatory authorities called RERA.
6. To work on residential real estate projects and register all the projects that are to be undertaken without which the promoters cannot promote or sell.

7. To cast duties on the promoters to upload details of the project on the website including layout and site plans.
8. To ensure that two-thirds of the allottees give their written consent in addition to RERA's written approval when a promoter has to transfer or assign a majority of the rights and responsibilities in a real estate project to a third party.
9. To ensure that the buyer or promoter, as the case may be, pays an equal sum in the event of any default.
10. Where the promoter causes the buyer any loss as a result of other people claiming property (defective title of property) that has been built or is being built, the promoter shall be liable to pay compensation to the buyer.
11. To ensure that the money collected from project buyers must be kept in a separate bank account and utilised solely for the construction of the project. This sum is subject to change by the State Government.
12. The Act provides the right to legal representation on behalf of the client by a CA, CS or CMA or legal practitioners
13. It imposes a stringent penalty on promoters, and real estate agents and also prescribes imprisonment.

The National Building Code of India (NBC), a comprehensive building Code, is **a national instrument providing guidelines**. **for regulating the building construction activities across the country**.

Dangers to avoid: According to the code, "Every building shall be constructed, equipped, maintained and operated as to avoid undue danger to the life and safety of the occupants from fire, smoke, fumes or panic during the time period necessary for escape."

Over time we have learned fundamental fire safety principles for preventing fire events and managing their impact (i.e. the Common Principles: **Prevention, Detection and Communication, Occupant Protection, Containment and Extinguishment**) that can be consistently applied internationally.

UNIT-5

IPR

Property thing or things belonging to someone; possessions collectively. Ex :(mobiles, car, land and Buildings……..etc.)

An attribute, quality, or characteristic of something.

Ex: (Skill, Color, Character and Intelligence…….etc.) Property is broadly classified as

1. Immovable Property
2. Movable Property

Almost all Immovable properties are known as Real properties. Ex :(land and buildings……..etc.)

Whereas Movable property is known as personal property Ex :(mobiles, car, Skill, Color, Character and Intelligence…….etc.)

Property further classified into

1. Tangible Property (Real property, Personal Property
2. Intangible Property (Personal property, Intellectual property)

The Concept of Intellectual Property

According to the (WIPO) Intellectual Property refers to creation of mind i.e. inventions, industrial designs for article, literary & artistic work, symbols etc. used in commerce.

Ex: Literary works (Books, Novels, Scripts...etc.), inventions (First Aero plane, CAR, Bulb……..etc.)

INTELLECTUAL PROPERTY RIGHTS:

Intellectual property Rights, very broadly, means the legal rights which result from intellectual Activity in the industrial, scientific, literary and artistic fields.

Countries have laws to protect intellectual property for two main reasons.

1. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations.
2. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

"Copyright." includes artistic and literary property.

Nature of Intellectual Property Rights:

- Creation of human mind(Intellect)
- Intangible property
- Exclusive rights given by statutes
- Attended with limitations and exceptions
- Time-bound
- Territorial

Importance of IPR for Engineers:

1. Intellectual Properties are today's economic engines.
2. Perform preliminary infringement analyses
3. Engineers can became Patent Analyze and do the following:

a) Search for prior art
b) Analyze patent file histories
c) Identify potential licensees
d) An engineer can Gather and analyze technical literature
e) Prepare claim charts
f) Direct reverse-engineering efforts
g) Report findings in a timely and high-quality manner

Benefits of IPR's:

1. Idea Based products are creating wealth for companies and countries.
2. IP ownership is an Incentive for individuals (Inventors).
3. Knowledge of IP adds tremendous monetary value to your work.
4. To improve the quality of your own work.
5. Opens up a world of new career opportunities for you.
6. Empowers you to take your own decisions.
7. Special value for qualified engineers in terms of consultancy promotion.

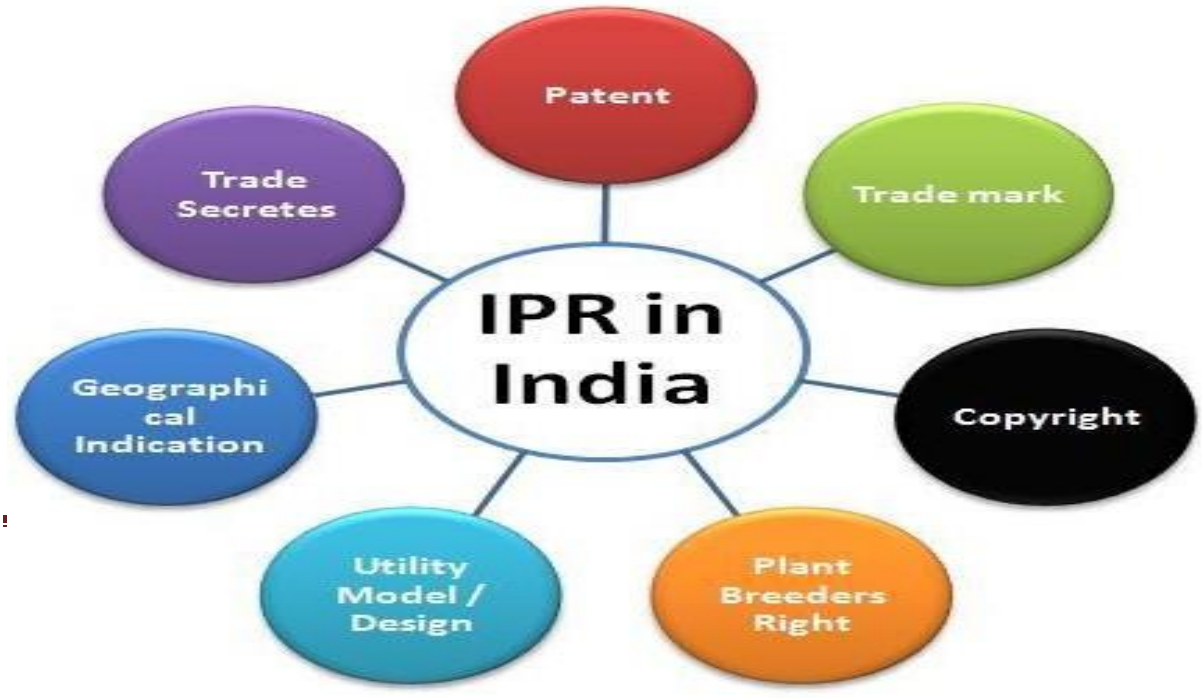
Intellectual Property System in India

- As discussed above, historically the first system of protection of intellectual property came in the form of (Venetian Ordinance) in1485.
- This was followed by Statute of Monopolies in England in 1623, which extended patent rights for Technology Inventions.
- In India Patent Act was introduced in the year 1856 which remained in force for over 50 years, which was subsequently modified and amended and was called "**The Indian Patents and Designs Act, 1911**".

- After Independence a comprehensive bill on patent rights was enacted in the year 1970 and was called "**The Patents Act, 1970".** The latest amendments made to the Patents Act, 1970 in2005.
- In India, copyrights were regulated under the Copyright Act, 1957; The Copyright Act, 1957 amended a number of times, the latest is called Copyright (Amendment) Act,2012;
- Trade Marks, were regulated under the Trade Mark Act, 1999; Designs Act, 1911 was replaced by the Designs Act,2000;
- Geographical Indications of Goods (Registration and Protection) Act,1999.
- Protection of Plant Varieties and Farmers' Rights Act,2001.
- The Semi-Conductor Integrated Circuits Layout Design Act, 2000respectively.
- Over the past fifteen years, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy.

TYPES OF INTELLECTUAL PROPERTY RIGHTS:

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields.
These rights Safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and non-exhausted consumption.



TYPES/TOOLs OF IPRs:

a. Patents.
b. Trademarks.
c. Copyrights and related rights.
d. Geographical Indications.
e. Industrial Designs.
f. Trade Secrets.
g. Layout Design for Integrated Circuits.
h. Protection of New Plant Variety.

a. **Patent**

- A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.
- It provides protection for the invention to the owner of the patent. The protection is granted for a limited period, i.e. 20years.

- Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may -or may not - use the patented invention for the period in which the invention is protected.

- The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms.
- The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others.

b. **Trademarks:**

- A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise.

- It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three- dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colors used as distinguishing features.

- It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment.

- It helps consumers identify and purchase a product or service because its nature and

quality, indicated by its unique trademark, meets their needs.

c. **Copyrights and related rights**:

- Copyright is a legal term describing rights given to creators for their literary and artistic works.

- The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.

Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work &creator is the owner of the work.

- Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment.

- These payments are often made dependent on the actual use of the work, and are then referred to as royalties.

d. **Geographical Indications (GI):**

- GI are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin.

- Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.

- They may also highlight specific qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions.

- A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein.

- It is important that the product derives its qualities and reputation from that place. Place of origin may be a village or town, a region or a country.

- It is an exclusive right given to a particular community hence the benefits of its registration is shared by the all members of the community.

e. **Industrial Designs**:

- Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design.

- The essential purpose of design law it to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries.

- The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments.

f. **Trade Secrets**:

- It may be confidential business information that provides an enterprise a competitive edge may be considered a trade secret. Usually these are manufacturing or industrial secrets and commercial secrets.

- These include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. Contrary to patents, trade secrets are protected without registration.

- A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information.

g. **Layout Design for Integrated Circuits**:

- Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

- The aim of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout Designs and for matters connected therewith or incidental thereto.

- The main focus of SICLD Act is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it.

Cyber law

Cyber law or Internet law is a term that encapsulates the legal issues related to use of

the Internet. It is less a distinct field of law than intellectual property or contract law, as it is a domain covering many areas of law and regulation.

Cyber law in India

When Internet was developed, the founding fathers of Internet hardly had any inclination that Internet could transform itself into an all pervading revolution which could be misused for criminal activities and which required regulation.

Today, there are many disturbing things happening in cyberspace. Due to the anonymous nature of the Internet, it is possible to engage into a variety of criminal activities with impunity and people with intelligence, have been grossly misusing this aspect of the Internet to perpetuate criminal activities in cyberspace. Hence the need for Cyber laws in India.

Importance of Cyber law

Cyber law is important because it touches almost all aspects of transactions and activities on and concerning the Internet, the World Wide Web and Cyberspace.

Initially it may seem that Cyber laws are a very technical field and that it does not have any bearing to most activities in Cyberspace.

But the actual truth is that nothing could be further than the truth. Whether we realize it or not, every action and every reaction in Cyberspace has some legal and Cyber legal perspectives.

ETHICAL OBLIGATION IN IPR:

- HONESTY
- INTEGRITY. ...
- PROMISE-KEEPING & TRUSTWORTHINESS. ...
- LOYALTY
- FAIRNESS.
- CONCERN FOR OTHERS
- RESPECT FOR OTHERS
- LAW ABIDING

INTRODUCTION TO COPYRIGHTS:

Copyright is a form of protection arising from the patent and copyright clause of the

INDIAN constitution.

DEFINITION: Copyright protects the works of author and artists to ensure their products are not unlawfully reproduced, distributed, performed, or displayed, acts that deprive them of revenue and discourage further creative work.

History:

In India, the law relating to copyright is governed by the Copyright Act, 1957 which has been amended in 1983, 1984, 1985, 1991, 1992, 1994, 1999 and 2012 to meet with the national and international requirements. The amendment introduced in 1984 included computer program within the definition of literary work and a new definition of computer program was inserted by the 1994 amendment. The philosophical justification for including computer programs under literary work has been that computer programs are also products of intellectual skill like any other literary work.

The present act provides protection to nearly anything that can be expressed in tangible form, including sound recordings, video tape and computer software. Copyright law protects the creators of books, music and art by providing them with the exclusive right to reproduce their works and derive income from them. Protecting these rights, fosters creative effort there would be little to be gained from investing and pouring effort into composing a song or writing novel if others could reproduce the song or book at will without compensating its creator.

SUBJECT MATTERS OF COPYRIGHT

1. ORIGINALITY OFMATERIAL:

According to sec 13, to be eligible for copyright protection, material must be original, meaning that it must have been independently created and must possess a modicum of creativity.

(i)A work can be original even if it is striking similar or identical to that of author. The copyright act only requires originality, meaning independent creation by the

author. Thus, if there are two photographers and each take photograph of Washington memorial, each will have copyright protection for the work (as long as one did not copy another

2. FIXATION OF MATERIALS (tangible form of expression)**:**

"The copyright act protects works of authorship that are "fixed in any tangible form of expression". There are thus two categories of tangible expression in which works can be fixed:

1. Copies,
2. Phonorecords.

Copy: A copy is material object from which a work can be perceived, reproduced or communicated either directly by human perception or with the help of a mission.

Phonorecords: Phonorecord is material object in which sounds (other than those accompanying

A motion picture or other audiovisual work) are fixed and from which the sounds can be Perceived, reproduced or communicated either directly by human perception or with the help of a machine.

3. WORKS OFAUTHORSHIP:

The copyright act provides that copyright protection subsists in original works of authorship fixed in any tangible medium of expression, now known or hereafter developed, from which they can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine.

Section; 13 lists eight categories of protectable works:

i. Literary works

ii. Musical works

iii. Dramatic works

iv. Pantomime and choreographic works

v. Pictorial, graphic and sculptural works

vi. Motion pictures and other audiovisual work

vii. Sound recordings

viii. Architectural works

(i).Literary work: A literary work is one expressed in words, numbers or other verbal or numerical symbols, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, films, tapes, discs or cards, in which they are embodied. Poetry, catalogues, reports, speeches, pamphlets and manuscripts.

Note: Works such as computer programs, databases and websites are also treated as literary works because they are expressed in letters and numbers.

(ii). **Musical work:** A musical work, together with its accompanying words, is copyrightable. A musical work or composition maybe in the form of a notated copy (such as music sheet) or in the form of a phonorecord (such as a record, a cassette tape, or a CD). The author of a musical work is usually the composer and the lyricist if any.

(iii). **Dramatic works:** A dramatic work is usually a theoretical performance or play performed for stage movie, television or radio. Dramatic works usually include spoken text, plot and direction foraction.**EX:**Phantom of the opera, cats, death of sale.

(iv). **Pantomimes and choreographic work:** Pantomime or mime is a performance using gestures and expressions to communicate with an accompanying sound.

The 1976 act was the first statute to include choreography as a copyrightable work. Choreography is the composition and arrangement of dance movements and patterns'

(v). **Pictorial, graphic and sculptural works:** Pictorial, graphic and sculptural works include two dimensional and three dimensional works of fine, graphic and

applied art.

Ex: Photographs, prints, posters, maps, globes, charts, diagrams, and art work applied to clothing, bumper stickers, cartoons, jewellery designs, games, puzzles. A minimum threshold of creativity is required.

(vi). **Motion pictures and audiovisual works:** A motion picture is an audiovisual work consisting of a series of related images that, when shown in succession; impart an impression of motion, together with accompanying sounds.

Ex: Videodiscs,videotape.

(vii). **Sound recordings:** A sound recording is a work that results from the fixation of a series of musical, spoken or other sounds, regardless of the nature of the material objects, such as discs, tapes or other phonorecords in which they are embodied.

Ex: Cassette tape, album by DSP.

(viii). **Architectural works:** an architectural work is the design of a building as embodied in any tangible medium of expression.

Ex: Buildings, architectural plans or drawings.

EXCLUSIONS FROM COPYRIGHT PROTECTION:

Section 13 of copyright act stated the following are specifically excluded from copyright protection.

1. Copyright protects expression, not ideas, methods.
2. Blank forms, titles, short phrases and common property.
3. Public domain works
4. Expired and forfeited copyrights
5. Facts
6. Computing and measuring devices.

COPYRIGHT REGISTRATION&FORMALITIES

Copyright is secured automatically when the work is created. A work is "created" when it is forced in a copy or phonorecord for the first time.

Registration is a condition precedent for bringing is infringement suit for works India

origin.

To register a work the applicant must send the following three elements to the copyright office:-

I) properly completed application form,

II) Filling fee

III) Deposit of the work being registered may be made at any time within the life of the copyright Parties who may file application:-

I. The author (either actual creator of work, the employer or commissioning party in case work made for hire)
II. The copyright claimant (who possess all right)
III. The owner of exclusive right (ex;- derivative works)
IV. The duly authorized agent (on behalf of owner).

Application forms:-

The copyright office provides form for applications for copyright registration.

The type of form used is dictated by the type of work that is the subject of copyright

I) PROPERLY COMPLETED APPLICATIONFORM

Following are the form used for copyright application

Form TX:- this type is used for registration of published or unpublished no dramatic literary works. This class includes, fiction, nonfiction, essays, poetry, compilations of information, textbooks, reference books, catalogs.

Form PA: - PA is used for works of the performing arts including plays, pantomimes, choreographic, motion picture, musical compositions, and songs.

Form VA: - it is used for polished or published works of visual arts, including two-three dimensional works of fine, graphic and applied art. Like: cartons, dolls, toys, games and puzzles.

Form SR: - it is used for sound recording

Form SE: - it is used for each individual issue of a serial such as periodicals, newspaper, annuals.

Short form: - the copyright office offers a short version of some of its application form to make registering a copyright claim easier

Minimum information and brief instructions are required.

Other forms:- Form RE : for renewals

FormCA : To correct or amplify

Obtaining applications form

Forms and circulars hotline:- a person can call the copyright office and leave a recorded message asking for forms by name and leaving a mail address. The forms will sent within a week or two

Ordering by mail: - copyright applications can be obtained by mailing a request to copyright office Internet: - All copyright application now available on the internet **http://WWW.COPYRIGHT.GOV .**You must have adobe acrobat reader to view files

PREPARING THE APPLICATION FORM

Generally, these are several sections or "spaces" that must be completed

Space 1Title:- every work submitted for copyright registration must be give a title to identify. The applicants should furnish full extent of name also mention that work has been known under a previous title. **Space 2: Author(s):-** the fullest form of author's name should be mention. In case of work made for hire employer (or) commissioning party name should be furnish and incase of joint work all author should be identified. In case the author's dead the firth name and death date should be given.

Space 3 : Creation and publication:- Application requires an identification of the year in which creation of work was completed. It requires that the month, day and year of the first publication.

Space 4: claimant (s):- The names and addresses of the copyright claimant of the work must be give ever if they are the same as there of the author(s).

Space 5: previous Registration: - It is intended to show whether an earlier revision has been made for the work if so, is there any basis for new registration.

Space 6: Derivative work or Compilation: - It requires the applicant to indicate if the work is a derivation work or compilation.

Derivative work: A work base on preexisting work

Compilation work: A work formed by collecting and assembling preexisting material

Remaining spaces:-

a) Deposit accord:- Applicants who files many application can open a deposit account with copyright office with a deposit of$450

b) Correspondence:- The applicant should provide name, e-mail,address,telephone for correspond

c) Certification:- The applicant should certify that the information provided in the application is correct and for that applicant should be hand written signature In case of false information subject to fine$2,500.

II) FILINGFEE:-

Sec 50 authorizes the copyright office to charge fees. Non-refundable fee for filling a paper application is

$45. (Not updated)

Fee may be paid by deposit account (or) by check (or0 by money order payable to register of copyrights. Cash is not accepted.

III) DEPOSITMATERIALS:-

Section 407 of the copyright Act requires that the owner of copyright to deposit material within three months after publication.

1. f the work is published, one complete copy orphonorecord
2. If the work was first published in the India on or after Jan1, 1978 two complete copies or phonorecods of best edition.

"Best edition" requirement is intended to discourage exterior deposit material and encourage deposit materials of high quality,

Deposit material requirements for specific works:-

a) **Visual Arts materials** :- photographs are acceptable for these works because these are large and impossible to submit

b) **Literary works** :- copies of the text book, advertising copy, and so forth must be submitted

c) **Performing arts works**: - for plays, cinema, reds the scripts themselves should be deposited or the works may be described in written text.

d) **Architectural work**: - one complete copy of an architectural drawing or blueprint. Photographs showing the work

e) **Motion pictures**: - one copy of the work as first published is required additionally a separate description of the work is required such a script.

f) **Musical compositions** :- Generally the sheet of music or full score must be submitted

g) **Sound recordin**g :- The deposit for sound recording is two complete phonorecods of the best edition

h) **Computer programs** :- generally first and last 25 pages of source code must be submitted as the deposit

i) **Multimedia works** :- generally the deposit should be a complete multimedia kit containing all element Covered by the registration.

The application process & registration of copyright filling:-

I. After the correct application form has been selected and completed
II. Correct deposit materials have been identified
III. The application may be filed with the INDIAN copyright office
IV. The application can sent by regular(or) empress mail

Examinations:-

I. Examination of the application is not substantive as is the case with triode

mark and patent application

II. Generally a copyright application is examined only to ensure that the material in which copyright is claimed is copyrightable

III. There are four major examining sections

   a. Literary work
   b. Performing arts
   c. Visual arts
   d. For renewals.

Within appose 12 to16 weeks of filling the application the copyright office will either issue a certificate of registration or it contact the applicant for additional information or call for explanation usually the applicant has 120 days to respond

Refusal of registration:- If registration is refused by the copyright office reconsideration can be requested by making a written request and paying the fee $250 within three months after retinal

Special Handing: - In some instances the applicants may not be able to wait for 12 to16. Weeks he can request for spatial handing

a. Pending or prospective litigation
b. Customs matters
c. Contract or publishing deadlines.

SUPPLEMENTARY COPYRIGHT REGISTRATION:

If information in a registration is incorrect (or) incomplete an application may be filed for Supplementary copyright restoration to correct (or) to amplify the given information

a. If the original application identify an incorrect author
b. A coauthor was omitted

c. A change in the name or title of work has changed

Pre-registration:- A new procedure in the copyright office allows pre-registration for certain classes of works that have a history of prerelease infringement

The creative work of the human mind is protected through several measures and the main motivation for the same is that such protection is a definite measure of encouragement for the creative activity. Several forms of protection of the creative activity have come about including those which are of particular interest in the industrial development, Patents being one of them. Generally speaking, patent is a monopoly grant and it enables the inventor to control the output and within the limits set by demand, the price of the patented products.

HISTORY OF INDIAN PATENTSYSTEM:

The origin of the Indian Patent System could be traced to the Act of 1856 granting exclusive privileges to inventors. The patent regime at the time of Independence was governed by the Patents and Designs Act, 1911, which had provisions both for product and process patents. It was, however; generally felt that the patent law had done little good to the people of the country. The way the Act was designed benefited foreigners far more than Indians. It did not help at all in the promotion of scientific research and industrialization in the country, and it curbed the innovativeness and inventiveness of Indians.

Shortly after Independence, therefore, in 1949, a committee was constituted under the chairmanship of Justice (Dr.) BakshiTek Chand, a retired judge of the Lahore High Court, to undertake a comprehensive review of the working of the 1911 Act. The committee's recommendation prompted the Government to introduce a bill (Bill no. 59 of 1953) in Parliament, but the bill was not pressed and it was allowed to lapse.

In 1957, another committee came to be appointed under the chairmanship of Justice N. RajagopalaAyyangar .Justice Ayyangar submitted a comprehensive Report on Patent Law Revision in September 1959 and the new law of patent, namely, the Patents Act, 1970, came to be enacted mainly based on the recommendations of the report, and came into force on April 20, 1972 replacing the Patents and Designs Act, 1911. However, the 1911 Act continued to be applicable to designs.

TERM OF DURATION:

Section 53 provides that the term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, shall be twenty years from the date of filing of application for the patent.

Explanation to Section 53(1) clarifies that the term of patent in case of international applications filed under the PCT designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.

SUBJECT MATTER

Elements of Patentability: As stated above, a patent is granted for an invention which may be related to any process or product. An invention is different from a discovery. Discovery is something that already existed but had not been found. Not all inventions are patentable. An invention must fulfill certain requirements known as conditions of patentability. The word "invention" under the Patents Act 1970 means "a new product or process involving an inventive step and capable of industrial application. (Section 2(1) (j)).

"New invention" is defined as any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art [Section 2(1)(l);

Novelty

A novel invention is one, which has not been disclosed, in the prior art where prior art means everything that has been published, presented or otherwise disclosed to the public on the date of patent (The prior art includes documents in foreign languages disclosed in any format in any country of the world.) For an invention to be judged as novel, the disclosed information should not be available in the 'prior art'. This means that there should not be any prior disclosure of any information contained in the application for patent (anywhere in the public domain, either written or in any other form, or in any language) before the date on which the application is first filed i.e. the 'priority date'. Therefore, an invention shall be considered to be new, if it does not form part of the prior art. Although the term prior art has not been defined under the Indian Patents Act, it shall be determined by the provisions of Section 13 read with the provisions of Sections 29 to34.

Inventive Step (Non-obviousness)

Inventive step is a feature of an invention that involves technical advance as compared to existing knowledge or having economic significance or both, making the invention non obvious to a person skilled in art. Here definition of inventive step has been enlarged to include economic significance of the invention apart from already existing criteria for determining inventive step.

Exemption to Patens:

An invention may satisfy the condition of novelty, inventiveness and usefulness but it may not qualify for a patent. The following are not inventions within the meaning of Section 3 of the Patents Act, 1970:

- An invention which claims anything obviously contrary to well established **natural laws**;
- An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or ***which causes***

serious prejudice to human, animal or plant life or health or to the environment;

- The mere discovery of a **scientific principle or the formulation of an abstract theory or discovery** of any living thing or non-living substances **occurring in nature**;
- The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant; Explanation to clause Clarifies that salts, esters, polymorphs, metabolites, pure
-
- form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.
- A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- Omitted by Patents (Amendment) Act,2002.

Application for Patent

Section 6 of the Act provides that an application for a patent for an invention may be made by any of the following persons either alone or jointly with another:

(a) By any person claiming to be the true and first inventor of the invention;

(b) By any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;

(c) By the legal representative of any deceased person who immediately before his death was entitled to make such an application.

Form of Application

Section 7 dealing with form of application requires every application for a patent to be made for one invention only.

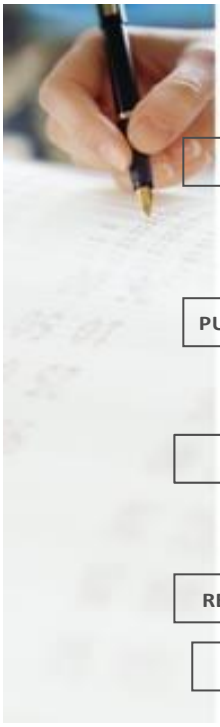
In respect of one single invention there must be one single patent. A patent may be in respect of a substance or in respect of a process.

Every international application under the Patent Cooperation Treaty (PCT) for a patent, as may be filed designating India shall be deemed to be an application under the Act, if a corresponding application has also been filed before Controller in India.

Types of Patent Applications

1. Ordinary Application, i.e., an Application which has been filed directly in the Indian Patent Office.
2. Convention Application.
3. PCT Application.
4. Divisional Application, which can result from division of a Patent Application.
5. Patent of Addition, which may be filed subsequent to the Filing of an Application for Patent, for an improvement or modification. [Section 7,54,135]

PROCEDURE



STAGES - FILING TO GRANTOF PATENT

FILING OF APPLICATION

PUBLICATION OF APPLICATION

- PROMPTLY AFTER 18 MONTHS FROMP.D.

REQUEST FOR EXAMINATION

- WITHIN 48 MONTHS FROMF.D.

3rd Party Representation

EXAMINATION-ISSUE OF FER

GRANT OF PATENT

OPPOSITION

Decision of

- WITHIN 12MONTHS

Appeal

Appellate Board

Revocation/Amendment

Filing of a Patent Application

A patent application shall be filed on Form-1 along with Provisional / Complete Specification, with the prescribed fee as given in First Schedule at an appropriate office.

However, a provisional specification cannot be filed in case of a Convention Application (either directly or through PCT routes). Normal fee shall be applicable for applications containing up to thirty pages in specification and up to 10 claims. If the specification exceeds thirty pages or claims are more than ten in number, additional fee as given in First Schedule is payable. [Section 7, First Schedule].

Contents of Patent Application

A patent application should contain:

1. Application for grant of patent inForm-1.

2. Applicant has to obtain a ***proof of right*** to file the application from the inventor. The Proof of Right is either an endorsement at the end of the Application Form-1 or a separate assignment.

3. Provisional / complete ***specification inForm-2***.

4. Statement and *undertaking under Section 8 in Form- 3*,if applicable. An applicant must file Form 3 either along with the application or within 6 months from the date of application.

5. *Declaration as to inventor ship* shall be filed in Form for Applications accompanying a Complete Specification or a Convention Application or a PCT Application designating India. However, the Controller may allow Form-5 to be filed within one month from the date of filing of application, if a request is made to the Controller inForm-4.

6. Every application shall bear the Signature of the applicant or authorized person / Patent Agent along with name and date in the appropriate space provided in the forms.

7. The Specification shall be signed by the agent/applicant with date on the last page of the Specification. The drawing sheets should bear the signature of an applicant or his agent in the right hand bottom corner.

8. The Application form shall also indicate clearly the source of geographical origin of any biological Material used in the Specification, wherever applicable. [Section 7. Rule 8, 12, 13, 135. Also Section 6 of the Biological Diversity Act, 2002 & Rule 17.1 of Regulations made under the PCT]

E-filing

1. The Patent Office provides the facility to file a Patent Application online from the native place of the agent of the applicant or applicant through-filing.

2. For e-filing, applicant/agent must have a digital signature. For the first time, applicant/agent has to register as a new user and has to create login ID and password on the Patent office portal. (Rule 6. Details regarding procedure for e-filing are provided athttp://www.ipindia.nic.in.]

Processing of Application

Initial processing

1. On receipt of an application, the Office accords a date and serial number to it. PCT national phase Applications and non-PCT Applications are identified by separate serial numbers.

2. All applications and other documents are digitized, verified, screened, classified and uploaded to the internal server of the Office.

3. Patent applications and other documents are arranged in a file wrapper and the Bibliographic sheet is prepared and pasted on the file cover, so that the files move on for storing in the compactors.

4. The Application is screened for:

(a) International Patent Classification.

(b) Technical field of invention for allocation to an examiner in the respective field.

(c) Relevance to defense or atomic energy.

(d) Correcting/completing the abstract, if required. If found not proper, the abstract will be recanted suitably, so as to provide better information to third parties. However, such amendments should not result in a change in the nature of invention.

5. Requests for examination are also accorded separate serial number.

SCRUTINY OF APPLICATION

1. The Office checks whether the Application has been filed in appropriate jurisdiction. If the jurisdiction is not appropriate, the application shall not be taken on record and the applicant is informed accordingly.

2. The Office checks for proof of right to file the application. If the proof of right is not filed along with the application, it shall be filed within a period of six months from the date of filing of the application. Otherwise, the applicant shall file the same along with a petition under Rule137/138.

3. TheOfficechecks whether the application and other documents have been filed in the prescribed format

i.e. prescribed forms, request, petitions, assignment deeds, translation etc.

Further, the Office checks whether:

(a) The documents are prepared on a proper sized paper, typed in appropriate font with proper spacing,

(b) The documents are duly signed,

(c) Abstract, drawings (if any) have been filed in proper format,

(d) Meaningful Claim(s) are present in a complete specification,

(e) Power of Attorney or attested copy of General Power of Attorney (if any) is filed,

(f) Form-5 has been filed (along with complete after Provisional or for filing PCT-NP/Convention Application),

(g) The invention has been assigned to another person and Form 6 has been duly filed. If the right is assigned from an individual to a legal entity, the legal entity is invited to pay the balance fees.

Publication of Application

Section 11A (1) provides that no application for patents shall ordinarily be open to public for such period as may be prescribed.

Sub-section (2) entitles an applicant to request the Controller, in the prescribed manner, to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3).

The Controller on receipt of such request shall publish such application in the Official Journal as soon as possible. Every application for patent shall be published on expiry of the period specified in sub-section (1) except those applications in which secrecy direction is imposed under Section 35; or application has been abandoned under section 9(1); or application has been withdrawn three months prior to the period specified under sub-section (1).

Rule 24 dealing with procedure for publication of application provides that the period for which an application for patent shall not ordinarily be open to public under Section 11A(1) shall be eighteen months from the date of filing of application or the date of priority of the application, whichever is earlier.

A request for publication under Section 11A (2) is required to be made in Form 9.

The publication of every application shall include the particulars of the date of

application, number of application, name and address of the applicant identifying the application and an abstract. Upon publication of an application for a patent, the depository institution shall make the biological material mentioned in the specification available to the public. The patent office may, on payment of prescribed fee make the specification and drawings, if any, of such application available to the public.

Request for Examination

1. As per Section 11B an application for a Patent will not be examined unless the applicant or any other person interested makes a request for examination in the prescribed manner. The request is to be filed in Form-18 with the fee as prescribed in First Schedule.
2. A request for examination has to be made within forty eight months from the date of priority of the application or from the date of filing of the application, whichever is earlier. If no such request for examination is filed within the prescribed time limit, the application shall be treated as withdrawn by the applicant.
3. In a case where secrecy direction has been issued under Section 35, the request for examination may be made within six months from the date of revocation of the secrecy direction, or within forty-eight months from the date of filing or priority, whichever is later.
4. The Office will not examine an application unless it is published and a request for examination is filed.

Examination of Application

Section 12 dealing with examination of application provides that when the request for examination has been filed in respect of an application for a patent in the prescribed manner under Section 11B (1) or (3), the application and specification and other documents related thereto shall be referred at the earliest by the Controller to an examiner for making a report to him in respect of the following matters, namely:

(a) Whether the application and the specification and other documents relating thereto are in accordance with the requirements of the Act and of any rules made thereunder;

(b) Whether there is any lawful ground of objection to the grant of the patent in pursuance of the application;

(c) The result of investigations made under Section 13,and

(d) Any other matter which may be prescribed.

The examiner to whom the application and the specification and other documents relating thereto are referred shall ordinarily make the report to the Controller within the prescribed period.

Grant of patents subject to conditions

As per Section 47 the grant of a patent shall be subject to the conditions that:

(1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;

(2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;

(3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and

(4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the official gazette.