

from 1 April 2014. On 26 March 2014, the MCA stated that another 183 sections will be notified from 1 April 2014.

One of the highlights of the Act is that, a substantial part of the law has been shifted from the main body of the law to the rule-making power of the Central government. The Law has been inspired with the desire to align Indian law with international law.

Certain important changes between the Companies Act 1956 and 2013 have been tabulated hereunder:

CHANGES WITH REGARD TO INCORPORATION PROCEDURE

S.No	Particulars	Companies Act, 1956	Companies Act, 2013
1.	Types of Companies	Private Company Public Company	Private Company Public Company One Person Company
2.	Maximum number of members for private companies	A private company can have a maximum of 50 members.	A private company can have a maximum of 200 members.
3.	Commencement of business	Provision is applicable only to public limited companies.	Now it is applicable to all companies having share capital.
4.	Registered office	Companies are required to furnish the details of the Registered office of the company by filing Form 18 at the time of incorporation.	A company from the 15 th day of its incorporation shall have a registered office for receiving any communications and notices as may be addressed to it.
5.	Object clause of Memorandum of Association	Object clause bifurcated into Main objects, Incidental or Ancillary Objects and other Objects.	Memorandum of Association the objects for which company is proposed to be incorporated and such other matters considered necessary in furtherance thereof.

Chapter 1

Companies Act Relating to Company Administration

Introduction

The Companies Act 1956 had been enacted with the object to consolidate and amend the law relating to the companies and the act has been in force for about fifty-five years and had been amended several times. The Central Government, after due deliberations decided to repeal the Companies Act 1956 and enact a new legislation to provide for new provisions to meet the changing national and international economic environment and further accelerate the growth of our economy. The corporate sector is the most important segment of the country's economy. The banking companies and public sector undertakings have also been registered as companies. The Companies Act is the basic statute that is responsible for the *incorporation, regulation, privileges, and restrictions* applicable to corporate sector. Therefore, this Act has been the growth engine of the country's economy.

The Companies Bill, 2009 was introduced in the Lok Sabha along with the Statement of its Objects and Reasons appended to the said Bill outlining its salient features. The said bill was referred to the parliamentary Standing Committee on finance for examination and report. After receiving several suggestions for amendments from the Standing Committee and various stakeholders, the Central Government decided to introduce a fresh bill incorporating therein the various recommendations. The revised Bill, namely, the Companies Bill, 2011 was drafted and submitted in December 2011. The revised bill of 2011 was once again referred to the Standing Committee in early January 2012 and the standing Committee submitted its report in June 2012. Thus, the passage of the Companies Act 2013 has spanned over several years.

Companies Act, 2013 is an Act of the Parliament of India which regulates incorporation of a company, responsibilities of a company, its directors, and dissolution of a company. The 2013 Act is divided into 29 Chapters containing 470 Clauses as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act has replaced The Companies Act, 1956 (in a partial manner) after receiving the assent of the President of India on 29 August 2013. The Act came into force on 12 September 2013 with only 98 provisions of the Act notified. On 27 February 2014, the Ministry of Company Affairs stated that Section 135 of the Act which deals with corporate social responsibility will come into effect

		Board], his office shall become vacant.	leave of absence of the Board.
6.	<i>Disclosure in Board's report</i>	Section 217 contains disclosure requirements of board's report.	Additional disclosures proposed by the Act namely, Extract of Annual Return, Number of Board meetings, CSR initiatives and policy, particulars of loans, guarantees, etc.

CHANGES WITH REGARD TO BOARD MEETINGS

S.no	Particulars	Companies Act, 1956	Companies Act, 2013
7.	<i>First Board Meeting</i>	No specific time stipulated for holding first board meeting.	Every company shall hold the first meeting of the board of directors within thirty days of the date of its incorporation.
8.	<i>Length of Notice</i>	No specific length of notice specified.	Meeting of the Board shall be called by giving not less than seven days notice.
9.	<i>Penalty</i>	Every officer of the company whose duty is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees.	Every officer of the company whose duty is to give notice as aforesaid and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.
10.	<i>Time gap between two meetings.</i>	At least one meeting to be held in every quarter.	Not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

CHANGES WITH REGARD TO DIRECTORS AND THEIR POWERS

S.no	Particulars	Companies Act, 1956	Companies Act, 2013
1.	<i>Maximum number of Directors</i>	Twelve. Beyond this limit, Central Government approval is required.	Fifteen. More number of directors can be appointed by passing special resolution and no approval from Central Government is required.
2.	<i>Maximum number of Directorship</i>	Fifteen [Excluding Private Companies, Unlimited Companies, Alternate Directorship, and Directorship in Non-Profit Associations].	Twenty. Out of which not more than ten can be public companies. It includes Alternate Directorship also. No specific exclusions provided.
3.	<i>Composition of the Board</i>	Minimum of two directors in case of private and three in case of public companies. Maximum twelve directors.	1. Prescribed class of companies are required to appoint at least one-woman director. 2. At least one director should be a person who has stayed in India for a period not less than 182 days in previous year. 3. Listed Companies to have at least one third independent directors.
4.	<i>Resignation of Directors</i>	No specific provision is available, except that any change in directors' composition is to be filed with ROC within thirty days.	Director has to send a copy of resignation letter and detailed reasons for resignation to Registrar within 30 days of resignation.
5.	<i>Vacancy of office for not attending Board meetings</i>	In the absence of a director from three consecutive Board meetings or all the meetings of the Board [without obtaining leave of absence from the	The office of a director shall become vacant in case of his absence from all the meetings of the board of directors held during a period of twelve months with or without seeking

Introduction to Company Law, 2013

Introduction

The Companies Bill as passed by LOKSABHA on 18th December 2012 (called Companies Bill, 2012) and passed by RAJYA SABHA on 8th August 2013 (became Companies Bill 2013). Section 1 came into effect from 30th August 2013 i.e. the date of notification in the official Gazette after it received assent of President of India on August 29, 2013 and became the Companies Act, 2013 (Act 18 of 2013).

The Companies Act, 2013 is more of a *rule-based legislation*. It contains 470 sections and a significant part of the legislation is in the form of rules. The *Companies Act 2013* intends to promote self-regulation and aims at building a smooth and easy corporate environment with the new and improved measures of *strong investor protection norms*.

Sections of the Act and Rules Notified: The Ministry of Corporate Affairs notified 98 sections of the Companies Act, 2013 which came to effect from 12th September 2013.

Definitions

In this Act, unless the context otherwise requires,—

- (1) "*abridged prospectus*" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board of India (SEBI) by making regulations in this behalf;
- (2) "*accounting standards*" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;
- (3) "*alter*" or "*alteration*" includes the making of additions, omissions and substitutions;
- (4) "*Appellate Tribunal*" means the National Company Law Appellate Tribunal constituted under section 410;
- (5) "*articles*" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;
- (6) "*associate company*", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

CHANGES WITH REGARD TO ANNUAL GENERAL MEETING

S.no	Particulars	Companies Act, 1956	Companies Act, 2013
11.	<i>Maximum time for holding first AGM</i>	18 months from incorporation or 9 months from closure of accounts, whichever is earlier.	9 months from closure of accounts.
12.	<i>Time and Day.</i>	Every AGM shall be called during business hours, on a day that is not a public holiday.	Every AGM shall be called during business hours, that is, between 9 a.m and 6 p.m on any day that is not a National Holiday.
13.	<i>Consent for Shorter Notice.</i>	Consent shall be given by all members entitled to vote at the meeting.	Consent shall be given by not less than 95 per cent of the members entitled to vote at the meeting.
14.	<i>Quorum.</i>	Private companies - 2 members. Public companies - 5 members.	Private companies - 2 members. Public companies - 5 members where total number of members do not exceed 1000. 15 members where total number of members exceeds 1000 but do not exceed 5000. 30 members where total number of members exceed 5000.
15.	<i>Penalty.</i>	Company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees everyday after the first during which such default continues.	Company, and every officer of the company who is in default, shall be punishable with fine which may extend to one-lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees every day after the first during which such default continues.

- (18) "Chief Executive Officer" means an officer of a company, who has been designated as such by it;
- (19) "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;
- (20) "company" means a company incorporated under this Act or under any previous company law;
- (21) "company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;
- (22) "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;
- (23) "Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by—
- (a) the Tribunal in case of winding up by the Tribunal; or
 - (b) the company or creditors in case of voluntary winding up, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;
- (24) "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;
- (25) "company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;
- (26) "contributory" means a person liable to contribute towards the assets of the company in the event of its being wound up.
- Explanation.*—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;
- (27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- (28) "cost accountant" means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959;

Explanation —For the purposes of this clause, "significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement.

- (7) "auditing standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;
- (8) "authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;
- (9) "banking company" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949; (10) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;
- (11) "body corporate" or "corporation" includes a company incorporated outside India, but does not include—
- (i) a co-operative society registered under any law relating to co-operative societies; and
 - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;
- (12) "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
- (13) "books of account" includes records maintained in respect of—
- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
 - (ii) all sales and purchases of goods and services by the company;
 - (iii) the assets and liabilities of the company; and
 - (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
- (14) "branch office", in relation to a company, means any establishment described as such by the company;
- (15) "called-up capital" means such part of the capital, which has been called for payment;
- (16) "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;
- (17) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949, who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;

- (39) "financial institution" includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934;
- (40) "financial statement" in relation to a company, includes—
- (i) a balance sheet as at the end of the financial year;
 - (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) cash flow statement for the financial year;
 - (iv) a statement of changes in equity, if applicable; and
 - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv);

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

- (41) "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year.

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

- (42) "foreign company" means any company or body corporate incorporated outside India which—
- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - (b) conducts any business activity in India in any other manner.
- (43) "free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:
- Provided that—
- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
 - (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

(29) "court" means—

- (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situated, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);
 - (ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situated in the district;
 - (iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;
 - (iv) the Special Court established under section 435;
 - (v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;
- (30) "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;
- (31) "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;
- (32) "depository" means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996;
- (33) "derivative" means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (34) "director" means a director appointed to the Board of a company;
- (35) "dividend" includes any interim dividend;
- (36) "document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;
- (37) "employees' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;
- (38) "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation — For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

(55) "member", in relation to a company, means—

- (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(56) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

(57) "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

(58) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(59) "officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

(60) "officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director;
- (ii) key managerial personnel;

(44) "Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

(45) "Government company" means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

(46) "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;

(47) "independent director" means an independent director referred to in sub-section (5) of section 149;

(48) "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

(49) "interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;

(50) "issued capital" means such capital as the company issues from time to time for subscription;

(51) "key managerial personnel", in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer; and
- (v) such other officer as may be prescribed;

(52) "listed company" means a company which has any of its securities listed on any recognised stock exchange;

(53) "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

(54) "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its

- (vi) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—
- (4) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereof of the Indian Companies Act, 1913; or
- (8) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 in so far as banking, insurance and financial corporations are concerned; and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 in so far as other corporations are concerned;
- (viii) the Portuguese Commercial Code, in so far as it relates to *societies anonymas*; and
- (ix) the Registration of Companies (Sikkim) Act, 1961;

(68) "private company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred;

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

(69) "promoter" means a person—

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act;

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
 - (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
 - (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
 - (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
 - (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;
- (61) "Official Liquidator" means an Official Liquidator appointed under sub-section (1) of section 359;
- (62) "One Person Company" means a company which has only one person as a member;
- (63) "ordinary or special resolution" means an ordinary resolution, or as the case may be, special resolution referred to in section 114;
- (64) "paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;
- (65) "postal ballot" means voting by post or through any electronic mode;
- (66) "prescribed" means prescribed by rules made under this Act;
- (67) "previous company law" means any of the laws specified below:—
- (i) Acts relating to companies in force before the Indian Companies Act, 1866;
 - (ii) the Indian Companies Act, 1866;
 - (iii) the Indian Companies Act, 1882;
 - (iv) the Indian Companies Act, 1913;
 - (v) the Registration of Transferred Companies Ordinance, 1942;
 - (vi) the Companies Act, 1956; and

(75) "Registrar" means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

(76) "related party", with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager is a member or director;
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

- (A) a holding, subsidiary or an associate company of such company; or
- (B) a subsidiary of a holding company to which it is also a subsidiary;
- (ix) such other person as may be prescribed;

(77) "relative", with reference to any person, means any one who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed;

(78) "remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961;

(79) "Schedule" means a Schedule annexed to this Act;

(80) "scheduled bank" means the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;

(81) "securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(82) "Securities and Exchange Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(70) "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) "public company" means a company which —

- (a) is not a private company;
- (b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed;

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(72) "public financial institution" means —

- (i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;
- (ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India;

Provided that no institution shall be so notified unless—

- (A) it has been established or constituted by or under any Central or State Act; or
- (B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

(73) "recognised stock exchange" means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(74) "register of companies" means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

2.13

- cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
- (89) "total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of company if all the members thereof or their proxies having a right to vote in that matter are present at the meeting and cast their votes;
- (90) "Tribunal" means the National Company Law Tribunal constituted under section 408;
- (91) "turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
- (92) "unlimited company" means a company not having any limit on the liability of its members;
- (93) "voting right" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;
- (94) "whole-time director" includes a director in the whole-time employment of the company;
- (95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

Companies Act 1956 Vs Companies Act 2013 – A comparative study

The Companies Act, 2013 has been passed by Lok Sabha as well as Rajya Sabha and the President has given his consent to the same in August 2013. 98 sections of the Act have come into force. 2 sets of the draft rules have also been circulated.

The Companies Act, 1956 contains 658 sections and XV schedules. The Act, has 464 sections and 7 schedules.

The Act, has lesser sections as the Companies will be governed more through the rules.

FORMATION OF COMPANY

Minimum No. of persons required to form a company

Companies Act, 2013: One Person can form a One Person Company. Minimum 2 for a private company other than OPC. Minimum 7 for a public company.

Companies Act, 1956: One Person can't form a company. Minimum 2 for a private company. Minimum 7 for a public company.

2.12

- (83) "Serious Fraud Investigation Office" means the office referred to in section 211;
- (84) "share" means a share in the share capital of a company and includes stock;
- (85) "small company" means a company, other than a public company,—
- paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
 - turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees;

Provided that nothing in this clause shall apply to—

- a holding company or a subsidiary company;
 - a company registered under section 8; or
 - a company or body corporate governed by any special Act;
- (86) "subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company;
- (87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—
- controls the composition of the Board of Directors; or
 - exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies;

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.— For the purposes of this clause,—

- a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
 - the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
 - the expression "company" includes any body corporate;
 - "layer" in relation to a holding company means its subsidiary or subsidiaries;
- (88) "sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than

ARTICLES OF ASSOCIATION

Entrenchment provisions in Articles

Companies Act, 2013: Articles may contain such provisions

Companies Act, 1956: No enabling provisions in 1956 Act for articles to contain entrenchment provisions

COMMENCEMENT OF BUSINESS

Commencement of Business

Companies Act, 2013: A company having a share capital (whether public or private) shall not commence any business or exercise any borrowing powers unless-

- (a) a declaration is filed by a director or with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid up capital of the company is not less than Rs.5,00,000 in case of a public company and not less than Rs.1,00,000 in case of a private company on the date of making this declaration; and
- (b) The company has filed with the Registrar a verification of its registered office in such manner as may be prescribed; [See also section 12(2) of the 2013 Act]. While section 149 of the 1956 Act applied only to public companies having share capital, section 11 of the 2013 Act, unlike the 1956 Act, empowers ROC to initiate action for the removal of the name of the company from the register under Chapter XVIII if the following conditions are satisfied:
 - no declaration has been filed with the Registrar as in Point (a) above within 180 days of the date of incorporation of the company and
 - the Registrar has reasonable cause to believe that the company is not carrying on any business or operations.

Companies Act, 1956: A company having a share capital cannot commence business or exercise borrowing powers unless it has complied with formalities as under:-

- (A) where the company has issued a prospectus
 - (i) the minimum number of shares which have to be paid for in cash have been allotted,
 - (ii) Every director has paid on his shares an amount equal to what is payable on shares offered to public on application and allotment

Types of Companies that can be formed

Companies Act, 2013: 15 Types of Companies in addition to the 10 types that could be formed under the 1956 Act as per Col. (3). The following 5 new types of Companies can be formed under the 2013 Act:

- One Person company (OPC) limited by shares
- OPC limited by guarantee & having share capital
- OPC limited by guarantee having no share capital
- OPC Unlimited Company having share capital.

Companies Act, 1956: 10 Types of companies can be formed as under:

- Public company limited by shares
- Public company limited by guarantee & having share capital
- Public company limited by guarantee & having share capital & having no share capital
- Public Unlimited company having share capital
- Private Company limited by shares.

Maximum number of members allowed in private company

Companies Act, 2013: 200 (for a private company other than OPC)

Companies Act, 1956: 50

MEMORANDUM OF ASSOCIATION (MOA)

Objects clause of Memorandum :

Companies Act, 2013: Objects of the Company to be classified and stated in MOA as : (i) the objects for which the company is proposed to be incorporated and (ii) any matter considered necessary in furtherance thereof.

Companies Act, 1956: Objects of the Company should be classified and stated in MOA as : (i) the main objects of the company; (ii) Objects incidental or ancillary to the attainment of the main objects and (iii) other objects of the company.

Availability of name

Companies Act, 2013: Sections 4(4) and 4(5)(i) of the 2013 Act incorporate the procedural aspects of application for availability of name of proposed company or proposed new name for existing company.

Companies Act, 1956: Procedural aspects of application for availability of name find no place in the 1956 Act.

Government shall dispose of the application within a period of 60 days

No requirement in the 2013 Act that insists that shifting be for specified purposes. Provisions of section 17(1) of the 1956 Act have been omitted by the 2013, Act

No time limit prescribed for filing special resolution and certified copy of Central Government's order confirming alteration under the 2013 Act. Only thing is that till documents are filed, alteration will not take effect

Companies Act, 1956 : There was no time-limit under the 1956 Act within which Central Government was bound to dispose of the applications for shifting registered office from one state to another

Shifting registered office from one state to another should be for one of the specified purposes [See section 17(1) of the 1956 Act]

Filing of a certified copy of the order of Central Government confirming the alteration along with a copy of memorandum as altered within 3 months from the date of the order with the Registrar of the State from which office is shifted and the Registrar of the State to which the office is to be shifted [See Sec 18(1)(b) & Sec.18(3) of the 1956 Act] Further if the documents required to be filed with the Registrar are not filed within the period of 3 months as aforesaid the alteration and the order of the Central Government and all proceedings connected therewith, shall, at the expiry of such period, would become void and inoperative. However, on sufficient cause shown, order could be revived.

Where a company has changed its name or names during the last two years-

Companies Act, 2013 : Where a company has changed its name or names during the last two years it shall paint affix or print, as the case may be (on the outside of every office or place of business, business letters, bill heads, letter papers, hundis, promotes, etc.) along with its name, the former name or names so changed during the last two years.

Companies Act, 1956 : No such requirement was there in the 1956 Act.

- (iii) No money is or may become refundable due to failure to apply for or obtain permission for listing from any recognized stock exchange(s); and
- (iv) A statutory declaration by the secretary or one of the directors that the above requirements have been complied with is filed with ROC
- (B) Where the company has not issued a prospectus
 - (i) It has filed with ROC a statement in lieu of prospectus at least 3 days before allotment; and
 - (ii) The conditions at (ii) and (iv) in (A) above are complied with.

REGISTERED OFFICE

Date from which the company must have a registered office

Companies Act, 2013 : On and from the 15th day of its incorporation

Companies Act, 1956 : From the earlier of the following two dates:

- The day on which it begins to carry on business,
- The thirtieth day after the date of its incorporation

Consequences of not furnishing verification of registered office / notice of change in registered office

- Companies Act, 2013 :**
- The company and every officer who is in default shall be liable to a penalty of Rs.1000 for every day during which the default continues but not exceeding Rs.1,00,000.
 - A company having share capital shall not be entitled to commence any business or exercise any borrowing power until it is furnished.

Notice of change of registered office address to ROC-Time Limit

Companies Act, 2013 : To be given to ROC within 15 days of such change.

Companies Act, 1956 : To be given to ROC within 30 days of such change.

Whether inclusion in the annual return of a company of a statement as to the address of its registered office is notice of situation of registered office / notice of change of registered office

Companies Act, 2013 : The 2013 Act is silent on this issue.

Companies Act, 1956 : No. [See Section 147(3) of the 1956 Act]

Alteration of the clause relating to the place of the registered office from one State to another

Companies Act, 2013 : The alteration procedure under the 2013 Act is lot more simplified and also time-bound. The Central

prospectus and still has any unutilized amount out of the money so raised, shall not change its objects as passed by the company and –

- (a) The details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one English and one vernacular) in the city where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating clearly the justification for such change;
- (b) The dissenting shareholders be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations specified by SEBI.

Companies Act, 1956 : No restrictions on alteration of objects clause where company has any unutilized proceeds of public issue

Registration of objects clause alteration by ROC

Companies Act, 2013 : To be registered within 30 days from date of filing special resolution altering the objects clause.

Companies Act, 1956 : No time-limit within which ROC to register the alteration

ALTERATION OF ARTICLES

Conversion of Public Company into Private Company

Companies Act, 2013 : Approval of Tribunal required

Companies Act, 1956 : No alteration which has the effect of converting public company into a private company, shall have effect unless such alteration has been approved by the Central Government (Power delegated to ROC)

SUBSIDIARY Co. NOT TO HOLD SHARES IN HOLDING Co.

Bar on subsidiary becoming member of holding company

Companies Act, 2013 : The bar in section 18 of the 2013 Act applies only to companies and not to bodies corporate other than companies as the wording in section 18(1) is "No company shall, either by itself or through its nominees, hold any shares in its holding company" as opposed to section 42(1) of the 1956 Act which stated "a body corporate cannot be a member of a company which is its holding company"

Companies Act, 1956 : Section 42 of the 1956 Act barred any body corporate from being a member of its holding company

ALTERATION OF NAME CLAUSE

Voluntary rectification of name by a company where company's name identical with or too nearly resembles the registered trade mark

Companies Act, 2013 : Not allowed

Companies Act, 1956 : Not allowed

Where name of the company too nearly resembles or is identical with Registered trade mark – Time-limit for Central Government to issue direction to company for rectification of name

Companies Act, 2013 : No time-limit in the 2013 Act for issue of direction by the Central Govt. to the company to rectify its name

Companies Act, 1956 : Under the 1956 Act there is time-limit for issue of direction by the Central Govt to the company to rectify its name by passing an ordinary resolution. The time limit was within 12 months of first registration / registration by new name.

The time limit for making application by proprietor of registered trade mark to the Central Government seeking a direction to the company for rectification name of the company where the name of the company resembles his trade-mark

Companies Act, 2013 : Three years of incorporation or registration of the company with name resembling / identical to registered trade mark when this fact of such registration came to the notice of the proprietor of the trade mark – this is irrelevant for computing the limitation period of 3 years.

Companies Act, 1956 : Five years from the date when this fact of registration of company with name identical to his registered trade mark came to the notice of the proprietor of registered trade mark

ALTERATION OF OBJECT CLAUSE

Purposes for which objects clause may be altered

Companies Act, 2013 : No requirement in the 2013 Act that alteration of objects clause should be for specified purposes. Provisions of section 17(1) of the 1956 Act have been omitted by the 2013 Act

Companies Act, 1956 : Alteration of objects clause should be for one of the specified purposes [See section 17(1) of the 1956 Act].

Where company has unutilized proceeds of public issue

Companies Act, 2013 : New restrictions on alteration of objects clause of memorandum – Where the company has any unutilized amount from proceeds of public issue and where a company which has raised money from public through

Thus, section 96(2) clarifies what is meant by 'business hours' – i.e., between 9 a.m. and 6 p.m. The term 'business hours' was not defined in the 1956 Act.

Companies Act, 1956: Section 160(2) of the 1956 Act required that every AGM should be called a time during business hours, on a day that is not a Public Holiday. [Section 2(38) of the 1956 Act defined public holiday]

NOTICE FOR MEETING

Giving notice for general meetings in electronic mode

Companies Act, 2013: Section 101 of the 2013 Act permits giving notice of the general meetings of the company through electronic mode – **PL/GPAEL**.

Companies Act, 1956: No express provision permitting notice to be given in electronic mode

Consent of members to shorter notice for general meetings

Companies Act, 2013: Consent for shorter notice is required from not less than 95% of the members entitled to vote at such meeting (irrespective of whether it is AGM or EGM) – for **All companies**

Companies Act, 1956: Consent for shorter notice is (i.e. less than 21 clear days notice) was required to be given by all the members entitled to vote thereat (for AGM) and by not less than 95% of the members entitled to vote at such meeting (for meetings other than AGM)

Mode of consent of members to shorter notice for general meetings

Companies Act, 2013: The 2013 Act requires that consent for shorter notice should be given in writing or by electronic mode. – **All companies**

Companies Act, 1956: The 1956 Act did not specify the mode in which consent for shorter notice for the meeting (i.e. less than 21 clear days notice) should be accorded.

Definition of 'material facts' in the context of Explanatory Statement annexed to Notice

Companies Act, 2013: Section 102 of the 2013 Act clarifies that material facts are those that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. – for **All companies**

Companies Act, 1956: Section 173 of the 1956 Act did not clarify what facts are 'material facts'.

SERVICE OF DOCUMENTS

Service of documents by electronic mode

Companies Act, 2013: Electronics mode for sending documents to the company recognized by the 2013 Act. The 2013 Act has also recognized "such electronic or other mode as may be prescribed" for service of documents to ROC.

Companies Act, 1956: Service by electronic mode not recognized by the 1956 Act.

Deemed service of notice of meeting on expiry of 48 hours

Companies Act, 2013: No provision of deemed service of notice under the 2013 Act.

Companies Act, 1956: Deemed service of notice of meeting on expiry of 48 hours when notice of meeting is sent by post

Service of documents on member / ROC by speed post / Courier

Companies Act, 2013: Recognised mode of service 'Courier' defined

Companies Act, 1956: Not a recognized mode of service

Right of member to demand sending of documents to him by courier / speed post, etc.

Companies Act, 2013: By paying fees fixed by general meeting, a member can demand service by any mode – even if it is non-prescribed, e.g. Courier / Speed post, etc.

Companies Act, 1956: The member could only demand in advance sending of documents to him by a certificate of posting or by registered post with or without acknowledgement due by pre-paying company's expenses for these modes of services.

Service of documents on joint holders of shares / on persons entitled to share on death / insolvency of member

Companies Act, 2013: No provision in this regard in the 2013 Act

Companies Act, 1956: Mode of service clearly spelt out in section 53 of the 1956 Act

ANNUAL GENERAL MEETING

Day, venue and time for AGMs

Companies Act, 2013: Section 96(2) of the 2013 Act provides that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday – **PL/GPAEL**.

Thus, quorum requirements for a public company having more than 1000 members stand increased from 5 members personally present to 15/30 members personally present.

Companies Act, 1956: Quorum requirements for public companies for general meetings are 5 members personally present unless the articles stipulate a larger number.

Quorum not present within half-an-hour

Companies Act, 2013: These provisions apply under 2013 Act regardless of what articles of the company provide. It is further provided that in case of an adjournment or of a change of day, time or place of adjourned meeting (which was adjourned inquorate), the company shall give not less than 3 days' notice to the members either individually or by press announcement.

Companies Act, 1956: Section 174(4)/(5) of the 1956 Act provided as to what would happen if quorum not present within half-an-hour. These provisions applied unless articles applied provided otherwise.

PROXY

How many members can a proxy act for

Companies Act, 2013: Section 105 of the 2013 Act provides that a person appointed as proxy shall act on behalf of such number of members not exceeding 50 and such number of shares as may be prescribed.

Companies Act, 1956: No such restriction in 1956 Act

A class or classes of companies whose members shall not be entitled to appoint proxies

Companies Act, 2013: Section 105 of the 2013 Act also provides that the Central Govt. may prescribe a class or classes of companies whose members shall not be entitled to appoint proxies.

Companies Act, 1956: No such restriction in 1956 Act

Restrictions on voting rights

Companies Act, 2013: Under the 2013 Act, the restriction stated under the 1956 Act shall apply to public companies as well as private companies. - for **All companies**

Companies Act, 1956: The restriction that a company shall not prohibit any member from exercising his voting right on any other ground other than non-payment of

Liability to compensate the company for No-disclosure or insufficient in Explanatory Statement annexed to Notice

Companies Act, 2013: Where as a result of the non-disclosure or insufficient disclosure in any Explanatory Statement, being made by a director, manager, if any, or other key managerial personnel, any benefit may accrue to such director, manager or other key managerial personnel or his relative. This director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him. - for **All companies**

Companies Act, 1956: No provision in this regard.

When disclosure of interest necessary in Explanatory Statement

Companies Act, 2013: Section 102 of the 2013 Act provides that where any item of special business relates to or affects any other company, the extent of shareholding interest in that other company of every director manager, if any, and of every other key managerial personnel of the first mentioned company shall be disclosed in the Explanatory Statement if the extent of such shareholding is 2% or more of the paid-up share capital of that other company - for **All companies**

Companies Act, 1956: Disclosure of interest in the explanatory statement was required if the extent of such shareholding interest is 20% or more of the paid-up capital of that other company.

QUORUM FOR MEETINGS

Quorum for general meetings for public companies

Companies Act, 2013: Section 102 of the 2013 Act fixes quorum for public companies based on the number of members of the company as under

- 5 members personally present if the number of members as on date of meeting is not more than 1000
- 15 members personally present if the number of members as on date of meeting is more than 1000 but not more than 5,000
- 30 members personally present if the number of members as on date of meeting is more than 5,000. -

PL/GPAEL

RESOLUTION

Votes cast electronically, whether to be counted
Companies Act, 2013: To be counted for determining whether ordinary or special resolution has been passed. –

Companies Act, 1956: The 1956 Act did not expressly allow electronic voting.

SPECIAL NOTICE

Special Notice of a resolution

Companies Act, 2013: Where any resolution requires special notice, notice of the intention to move such resolution shall be given to the company by such number of member holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000, as may be prescribed, has been paid up.

Companies Act, 1956: No requirements that notice should be given by any specified number of members

Special Notice of a resolution – Length of notice

Companies Act, 2013: No stipulation on how many days before meeting special notice is to be given –

Companies Act, 1956: 14 clear days notice before the day of meeting.

SECRETARIAL STANDARDS

Secretarial Standards

Companies Act, 2013: Every company shall observe such secretarial standards with respect to general and Board meetings as may be specified by the Institute of Company Secretaries of India and approved as such by the Central Government. - for All companies

Companies Act, 1956: The 1956 Act did not recognize secretarial standards. Secretarial standards were not mandatory under the 1956 Act.

MINUTES

Specific penalty / punishment for tampering of minutes

Companies Act, 2013: Section 118(12) of the 2013 Act provides that if a person is found guilty of tampering with the minutes of the proceedings of meeting he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than Rs.25,000 but which may extend to Rs.1,00,000. - for All companies

Companies Act, 1956: No specific punishment for tampering of minutes

Meaning of Company

A company is a voluntary association of persons who have come together for carrying on some business and sharing profits therefrom.

shares, applied only to public companies under section 182 of the 1956 Act

POLL

Persons entitled to demand Poll in case of a public company having share capital

Companies Act, 2013: The members present in person or by proxy and having not less than 10% of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000 or such higher amount as prescribed has been paid up.

Companies Act, 1956: Any member or members present in person or by proxy and holding shares in the company which confer 10% or more voting power on the resolution or on which Rs.50,000 or more in the aggregate has been paid-up.

Persons entitled to demand Poll in case of a private company having share capital

Companies Act, 2013: The members present in person or by proxy and having not less than 10% of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000 or such higher amount as prescribed has been paid up.

Companies Act, 1956: Any member or members present in person or by proxy and holding shares in the company which confer 10% or more voting power on the resolution or on which Rs.50,000 or more in the aggregate has been paid-up.

Persons entitled to demand Poll in case of a private company having share capital

Companies Act, 2013: The members present in person or by proxy and having not less than 10% of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000 or such higher amount as prescribed has been paid up. – for All Pvt. Companies

Companies Act, 1956: If 7 or less members having voting power personally present, then one member having right to vote on the resolution present in person or by proxy may demand a poll.

If more than 7 such members present – Two such members present in person or by proxy may demand poll.

POSTAL BALLOT

Postal Ballot

Companies Act, 2013: Applicable to all companies –

Companies Act, 1956: Applicable only to listed companies

transfer of interest in a business run as a proprietary concern or as a partnership firm. The shares can be transferred by filling up a *share transfer form* and handing it over to the buyer of shares along with the share certificates.

5. Owning of Properties

A company being a legal person, can acquire, own, enjoy and alienate property in its own name. No shareholder can make any claim upon the property of the company so long as the company is a going concern. The shareholders of the company are not the owners of the company's property. Only the company is the owner. The property is owned in the name of the company and not in the name of a director or a shareholder.

6. Capacity to sue and be sued

To sue means to institute legal proceedings against (a person) or to bring a suit in a court of law. Just as a person pursuing a legal action in his own name against another, a company being a legal entity, can sue and also be sued against its own name.

7. Borrowing Capacity

A company enjoys better opportunities for borrowing funds. It can issue debentures, secured as well as unsecured, accept deposits from the public. Even banking and financial institutions prefer to render huge financial assistance to joint stock companies rather than proprietary or partnership concerns.

8. Common Seal

A company's action by way of sanctioning any authority passed in the form of resolutions must be affixed with a common seal on documents or instruments in the presence of a director. Mere signature of a director without the common seal of the company will be considered invalid.

Company Vs Body corporate

The term 'body corporate' is defined in section 2(7) of the Companies Act as follows:

Body corporate includes a company incorporated outside India but does not include:

- * A corporation sole
- * A co-operative society
- * Any other body corporate which the Central Government may specify by notification.

Corporation sole refers to a single individual constituted as a corporation in respect of some office or function. For example, a Bishop under the English Law, President, Governor, Minister.

A Corporation sole is not a body corporate under the Companies Act though it is very much a legal person capable of holding property and becoming a member of a company.

Definition of a Joint Stock Company

A joint stock company may be defined as a voluntary association of persons, formed for some common purpose with capital divisible into transferable shares, limited liability, with a distinctive name, having a corporate body and a legal personality of its own.

Special features of a Joint Stock Company – Salient features of a company

A company stands out among various forms of business enterprises because of its peculiar characteristics owing to its corporate personality, perpetuity, limited liability of its members and its potentiality for its unlimited size. The following are the characteristics of a company.

1. Legal entity

A company is a separate legal entity. Here, entity means something that has a real existence, a thing with a distinct existence. It is a juristic person established under the Act.

Juristic person means one who is not a natural person or human being. It is an artificial person that is recognized as having legal personality. A company can own property; it can sue and be sued in its own name. It has perpetual existence, quite separate from its directors and shareholders. On incorporation, a company acquires its own personality. It is an artificial person created by law. It has its own legal entity, distinct from the shareholders composing it. It has nothing to do with the personality of the shareholders.

2. Perpetual succession

Perpetual succession means the continued existence of a company until it is legally dissolved. A company, being a separate legal person, is unaffected by the death or departure of any member but continues in its existence, no matter how many changes occur in its membership. Perhaps, one of the most important characteristics is its perpetual succession. Thus, members may come and members may go, but a company can function on forever.

3. Limited Liability

In a limited company, the liability of the members in respect of the company's debt is limited. *i.e.*, the liability of the members of a company is limited to the extent of the face value of shares held by them. The liability may be limited by shares, in which case the liability of the members on a winding up is limited to the amount (if any) unpaid on the amount of shares. The liability of members may also be limited by guarantee, where the liability of the members is limited by the memorandum to a certain amount, which the members undertake to contribute at the time of its winding up.

4. Transferability of shares

Shares of a company limited by shares are easily transferable by a shareholder to another person. The transfer is easy and least cumbersome as compared to the

of the corporate personality of a company is respected and in many cases the courts have refused to go behind the curtain to find out the real person composing the company. But, when people start misusing the veil of corporate personality, then it becomes necessary for the courts to pierce the corporate veil and look at the persons who are in fact the real beneficiaries. This is known as "lifting of or piercing the corporate veil."

It refers to the identification of a company with its members and when the veil is lifted, the individual members may be held liable for its acts. A corporate veil may be lifted under the following circumstances.

Lifting of Corporate Veil

1. *For determining the character or status of a company:* When it is suspected that the company, is owned or controlled by enemies of the country the courts may lift the corporate veil and examine the character of persons in control of the company. (*Daimler Co. Ltd Vs Continental Tyre & Rubber Co. Ltd*).

2. *For protection of revenue:* If a company used as a means to evade tax, then courts may disregard the corporate veil. [*Juggilal Kamlatpat vs Commissioner of Income Tax*]

3. *For preventing fraud or improper conduct:* The court may also lift the corporate veil of a company where it appears that the company was formed only for some fraudulent purpose to defraud creditors or to avoid legal obligations [*Gilford Motor Co., vs Horne*].

4. *Company acting as an agent of the shareholders:* As a general rule, the company is not an agent of its shareholders but under certain circumstances a company may be regarded as an agent or trustees of its members.

5. *Where the doctrine conflicts with the public policy:* Where the corporate veil conflicts with the public policy, the court lifts the veil for protecting the public policy. [*Connors vs Connors Ltd*].

6. *In case of Commitment of Economic Offences:* In case of commitment of economic offences in the court is entitled to lift the corporate veil and pay regard to economic realities behind the legal facade. (*Santanu Ray vs. Union of India*).

7. *To punish those who indulge the contempt of court:* *Jyothi Ltd vs Kanvaljit Kaur Bhasin*.

8. *For determining the technical competence of a company:* The Supreme Court in this case held that the experience of the promoters could well be considered as the experience of the company in determining its technical competence. [*New Horizons Ltd vs. Union of India*].

9. *Where a company is a mere cloak or sham:* The corporate veil shall be lifted to identify the company and its members when it is found that the corporate bodies were mere cloaks and that the devices of incorporation was really a ploy adopted for committing illegalities and to defraud people. (*Delhi Development Authority vs Skipper Construction Co Ltd.*).

Thus, broadly speaking, a body corporate may include any aggregate of persons, which is incorporated under some statute of a country or any foreign country and which exists as a legal entity, distinct from the members constituting it, having perpetual succession and common seal.

On the contrary, a company means a company formed and registered under the Companies Act.

'Corporate personality' explained through a famous case "*Solomon vs Solomon Co., Ltd.*"

Mr. Solomon was carrying on a proprietary business of manufacturing boots and shoes. He floated a company called 'Solomon & Co. Ltd. The company's nominal capital was £40,000, divided into £1 share each. The company consisted of himself, his wife, his daughter and his four sons and they took up one share of £1 each. The newly formed company purchased the sole proprietary business of Mr. Solomon for £38,782. Mr. Solomon received from the company purchase consideration in the form of 20,000 shares of £1 each and £10,000 debentures, which carried a floating charge over the assets of the company. The remaining amount of £8,782 was paid to Mr. Solomon in cash. Mr. Solomon was the managing director and two of his sons were other directors.

The company ran into financial difficulties and the debenture holders appointed a receiver and the company went into liquidation. The total assets of the company realized were £6050. The company owed £10,000 to Mr. Solomon (secured debentures) and £8,000 to unsecured creditors. Thus, after paying off the debenture holders nothing would have been left for the unsecured creditors. The creditors claimed priority over the debenture holders on the ground that Mr. Solomon and the Solomon & Co. Ltd were one and the same and the company was a mere agent of Mr. Solomon.

The trial Judge and the Appellate court agreed with the contention of unsecured creditors and decreed against Solomon. An appeal was filed in the House of Lords which disagreed with the lower courts and reversed the order of Appellate Court. It was held that as soon as the company was incorporated, it acquired a separate corporate personality and it was different from Solomon. Accordingly, Mr. Solomon, who was the secured creditor was given priority over the unsecured creditors. Here, the court recognized the separate and independent entity of the company. Thus, a shareholder can also be the creditor of the company.

Corporate Veil

When a company is formed and registered under the Companies Act, the company acquires an independent legal entity, quite distinct from the members. This clearly indicates that when a company is incorporated, all transactions should be with the company only and not with individuals of the company, however important they are who may be behind its operations. It means that there is a veil drawn between the company and its members. Normally, the principle

Directors

Introduction

"Director" means a director appointed to the Board of a company under S. 2(34) of the Companies Act 2013. So long as a person is duly appointed by the company to control the company's business and authorized by the Articles of Association to contract in the company's name on its behalf, he functions as the director of the company. Hence, the Articles must designate directors. S.2(10) of the Companies Act 2013 defines Board-of- Directors or Board as in relation to a company, means the collective body of the directors of the company.

Firm, Body corporate or Association cannot be a director

No firm, Body corporate or Association can be a director. Only an individual can become a director. [*Oriental Metal Pressing Works (P) Ltd. Vs. B.S. Thakoor*].

A holding company will be deemed to be a director for the purposes of Section 7 of the Companies Act.

Legal Position of Directors are

- Agents
- Trustees; and
- Managing Partners

Directors & Employees of the Company

- (i) Directors are elected representatives of the shareholders engaged in directing the Company on its behalf. Hence, Directors are agents of the company; not employees or servants of the company [*Lee Behrens & Co.,*].
- (ii) However, law does not prevent a director from accepting employment under the companies Act under a special contract which he may enter into with the company. When a director accepts employment with the company, under a separate service contract in addition to directorship, he is also treated as an employee or servant of the company. Directors are also treated as officers of the company for certain matters.

Appointment of First Directors

According to Section 7(1)(c) read with Section 152(1) of the companies Act, 2013, at the time of incorporation, a company may name some person as first directors of the company. If no provision is made in the articles of a company for the appointment of the first director, the subscribers to the

10. *Ultra Vires the Act* Directors of a company shall be personally liable for acts committed by them and if such acts committed are ultra vires, a company should not ratify their acts. Thus, in all the above cases the corporate veil shall be lifted and the members cannot hide behind the corporate veil.

A Company has a nationality but not citizenship

The company, though a juristic person, does not possess the body of a human being. It exists only in contemplation of law. Being an artificial person, it has to depend upon natural persons for getting its various work done. Although the company is a legal person, it is not regarded as a citizen of India either under the Constitution of India or under the Citizenship Act 1955. Corporations may have nationality in accordance with the country of incorporation, but the government does not necessarily confer any citizenship on them. This is because, the Constitution of India clearly distinguishes 'citizens' from 'persons'.

Review Questions

Part - A

1. Are the investors' interests adequately protected in the Companies Act, 2013?
2. Define a Joint Stock Company.
3. What do you understand by the term 'Corporate Veil'?
4. Explain the term Body Corporate.

Part - B

1. Is the Companies Act, 2013 a rule based one? Elaborate.
2. Distinguish between Joint and Stock Company and Body Corporate.
3. "A company has nationality and not a citizenship" – Explain.
4. What do you understand by the term 'Corporate veil' and explain lifting of corporate veil.

Part - C

1. Discuss the features of a Joint Stock Company.
2. "Men may come and men may go, but a company continues to go on forever until it is wound up"-Elucidate.
3. "All companies registered under Companies Act are body corporate but all body corporates need not necessarily be a company registered under Companies Act"-Discuss.

not apply. "Small shareholders" mean shareholders holding shares of nominal value of not more than Rs. 20,000/- or such other sum as may be prescribed. The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least 14 days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director. The names of the small shareholders who are proposing such person for the office of director must be mentioned. If the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

Appointment of Additional Director, Alternate director and Nominee Director

Section 161 of the Companies Act 2013 deals with the Appointment of Additional Director, Alternate Director and Nominee Director.

Additional Director

The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an *additional director* at any time. An additional director shall hold office upto the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

Alternate Director

The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an *alternate director* for a director. This situation arises during the absence of original director who is absent for a period of not less than 3 months. A person shall not be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act. An alternate director shall not hold office for a period longer than that is permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India. If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Nominee Director

Subject to the articles of a company, the Board may appoint any person as a *director nominated* by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

are individuals shall be deemed to be the first directors of the company, until the directors are duly appointed. In case of a *One Person Company*, an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

Appointment of Directors by Members at General Meeting

A person appointed as director shall not act as director unless he gives his consent to hold office of director. Such consent in Form DIR - 2 is filed with the registrar within thirty days of his appointment, according to Section 152, every director appointed by the company in general meeting. Separate motion should move for the appointment of each director as per section 162. A motion for approving a person for appointment or for nomination is treated as motion for his appointment. Under section 152(6), articles of a company may provide that all directors of the company shall be retiring by rotation. Where article does not provide for retirement by rotation for all directors, at least two-thirds of total number of directors of a public company shall be liable to be retired by rotation and be appointed by company in general meeting.

At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

Right of a Person other than Retiring Directors to stand for directorship

A person other than retiring director is eligible for appointment to the office of a director at any general meeting. For this, he himself or some member intending to propose him as a director must have at least fourteen days before the annual general meeting left a notice in writing under his signature proposing his candidature as director with a deposit of Rs one-lakh. This deposit may be refunded to him or the member if he is elected as director or gets more than 25 percent of total valid votes cast either on show of hand or on poll on such resolution [Section 160].

Small shareholders' director:

A listed company, may upon notice of not less than 1000 small shareholders or 1/10th of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders. It shall not prevent a listed company to opt to have a director representing small shareholders suo-moto and in such a case the provisions for appointment of such director shall

Minimum Number of Directors (S.149)

- (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—
- a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and
 - (b) a maximum of fifteen directors. A company may appoint more than fifteen directors after passing a special resolution. Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.
- (2) Every company existing on or before the date of commencement of this Act within one year from such commencement, comply with the requirements of the provisions of sub-section (1).
- (3) Every company must have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.
- (4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. Any fraction contained in such one-third-number rounded off as one.
- (5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules comply with the requirements of the provisions of sub-section (4).
- (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—
- who in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
 - who is or was not a promoter of the company or its holding, subsidiary or associate company;
 - who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
 - who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
 - none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or

Casual Vacancy

In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting *casual vacancy* may be filled by the Board of Directors at a meeting of the Board. *Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.*

Appointment of Directors by Tribunal

Under Section 242(2)(k) of Companies Act, 2013, the Tribunal may order for appointment if such numbers of persons as directors of the company and ask them to report to the Tribunal on matters as the Tribunal may direct. The directors, so appointed, may or may not be the members of the company. For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Tribunal shall not be taken into account. Such director or directors shall not liable to determination by retirement of directors by rotation. But they can be removed by the Tribunal at any time and other persons can be appointed by it in their place. Where the directors have been appointed by the Tribunal, it may also issue such directions to the company, as it may consider necessary or appropriate in regard to their affairs.

Appointment of directors voted individually (S.162)

- (1) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
- (2) A resolution moved in contravention of sub-section (1) shall be void, whether or not any objection raised
- (3) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment

Option to adopt principle of proportional representation for appointment of directors (S.163)

The articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting. Such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

3.7

- (10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
- (11) No independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. An independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.
- (12) An independent director;
a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.
- (13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Persons not eligible to become a Director (S.164)

- (1) A person shall not be eligible for appointment as a director of a company, if—
- he is of unsound mind and stands so declared by a competent court;
 - he is an undischarged insolvent;
 - he has applied to be adjudicated as an insolvent and his application is pending;
 - he has been convicted by a court of any offence, whether involving moral turpitude or otherwise. If he is sentenced to imprisonment because of that for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence. If a person has been convicted of any offence and sentenced to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
 - an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
 - he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
 - he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
 - he has not complied with sub-section (3) of section 152

- their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty-lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year,
- (e) who neither himself nor any of his relatives—
- holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
 - a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company or
 - any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm
 - hold together with his relatives two per cent. or more of the total voting power of the company or
 - is a Chief Executive or director, by whatever name called, of any nonprofit organization that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company or
- (f) who possesses such other qualifications as may be prescribed.
- (7) Every independent director gives a declaration that he meets the criteria of independence as provided in sub-section (6). "Nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.
- (8) The company and independent directors shall abide by the provisions specified in Schedule IV.
- (9) Subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option. However, he may receive remuneration by way of fee provided under sub-section (5) of section 197. He may receive reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

Company to inform Director Identification Number to Registrar (S.157)

- (1) Every company shall, within fifteen days of the receipt of intimation under section 156 furnish the Director Identification Number of all its directors to the Registrar or authority specified by the Central Government with such fees or with such additional fees.
- (2) If a company fails to furnish Director Identification Number under sub-section (1), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine. The fine shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Obligation to indicate Director Identification Number (S.158)

Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

Punishment for contravention (S.159)

If any individual or director of a company contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with imprisonment. The imprisonment shall be for a period extending to six months or with fine extending to fifty thousand rupees. Where the contravention is a continuing one, with a further fine extending to five hundred rupees for every day after the first during which the contravention continues.

Vacation of office of director (S.167)

(1) The office of a director shall become vacant in case—

- he incurs any of the disqualifications specified in section 164;
- he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
- he becomes disqualified by an order of a court or the Tribunal;

(2) No person who is or has been a director of a company which—

- has not filed financial statements or annual returns for any continuous period of three financial years; or
- has failed to repay the deposits accepted by it or pay interest on it or to redeem any debentures on the due date or pay interest due on it or to pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

(3) A private company may by its articles provide for any disqualification for appointment as a director in addition to those specified in sub-sections (1) and (2). The disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—

- for thirty days from the date of conviction or order of disqualification
- where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off or
- where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

Application for allotment of Director Identification Number (S.153)

Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

Allotment of Director Identification Number (S.154)

The Central Government shall, within one month from the receipt of the application allot a Director Identification Number to an applicant in the manner prescribed.

Prohibition to obtain more than one Director Identification Number (S.155)

No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.

Director to intimate Director Identification Number (S.156)

Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

Removal of directors (S.169)

- (1) A company may by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard of the total number of directors according to the principle of proportional representation.
- (2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.
- (3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, entitled to be heard on the resolution at the meeting.
- (4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—
- in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company. If a copy of the representation is not sent due to insufficient time or for the company's default the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting. Copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved. If the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; then the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.
- A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

If the vacancy not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act: Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

- he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months;

The office will be vacated by the director even if he has filed an appeal against the order of such court:

- he is removed in pursuance of the provisions of this Act;
 - he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.
- (2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment. The imprisonment is for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five-lakh rupees, or with both.
- (3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.
- (4) A private company, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

Resignation of director (S.168)

- (1) A director may resign from his office by giving a notice in writing to the company. The Board shall take note of the same and the company shall intimate the Registrar, within such time and in such form prescribed, place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.
- (2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later: Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.
- (3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

Duties of Directors (S.166)

- (1) A director of a company shall act in accordance with the articles of the company.
- (2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- (3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- (5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- (6) A director of a company shall not assign his office and any assignment so made shall be void.
- (7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five-lakh rupees.

Disclosure of interest by director (S.184)

- (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board disclose his concern or interest (shareholding interest) in any company or companies or bodies corporate, firms, or other association of individuals
- (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract/arrangement/proposed contract or arrangement entered into or to be entered into—
 - (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate participate in such meeting.
- (3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.
- (4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term, which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one-lakh rupees, or with both.

(8) Nothing in this section shall be taken—

- as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or
- as derogating from any power to remove a director under other provisions of this Act.

Powers of Directors (S.179)

- (1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. In exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles. The Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.
- (2) No regulation made by the company in general meeting shall invalidate any prior act of the Board, which would have been valid if that regulation not made.
- (3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—
 - (a) to make calls on shareholders in respect of money unpaid on their shares;
 - (b) to authorize buy-back of securities under section 68;
 - (c) to issue securities, including debentures, whether in or outside India;
 - (d) to borrow monies;
 - (e) to invest the funds of the company;
 - (f) to grant loans or give guarantee or provide security in respect of loans;
 - (g) to approve financial statement and the Board's report;
 - (h) to diversify the business of the company;
 - (i) to approve amalgamation, merger or reconstruction;
 - (j) to take over a company or acquire a controlling or substantial stake in another company;
 - (k) any other matter prescribed.

Contracts in which directors are interested (S. 189)

It is the duty of the directors to give consent under section 297 of the Companies Act only at a board meeting by passing a board resolution on certain types of contracts such as :

- * Contracts relating to sale, purchase or supply of goods materials or services or
- * Contracts relating to underwriting the subscription of any shares or debentures of the company.

This principle establishes the good faith and fiduciary relationship of directors of the company. However, if the company has a paid up capital of more than 1 crore of rupees, prior approval of the central government is required for entering into contracts where directors are interested.

Restrictions on voting powers of directors (S. 180)

It is one of the obligations of a director who is interested in a specific contract directly or indirectly not take part in the discussion of such contract at the board meeting and in case if the interested director casts his vote in favour of the contract, such a vote shall stand as void.

Audit Committee (S.177)

- (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
- (2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. The majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
- (3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement be reconstituted in accordance with sub-section (2).
- (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,—
 - (i) recommendations for appointment, remuneration and terms of appointment of auditors of the company
 - (ii) Review and monitor the auditor's independence and performance, and effectiveness of audit process
 - (iii) Examination of the financial statement and the auditors' report
 - (iv) Approval or any subsequent modification of transactions of the company with related parties;
 - (v) Scrutiny of inter-corporate loans and investments;

Loan to directors, (S.185)

- (1) No company shall directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested / give any guarantee or provide any security in connection with any loan taken by him or such other person. However, this section does not apply to
 - (a) giving loan to a managing or whole-time director—
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a special resolution
 - (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Any other person in whom director is interested" means—

- (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
 - (b) any firm in which any such director or relative is a partner;
 - (c) any private company of which any such director is a director or member;
 - (d) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - (e) any body corporate, the Board of directors, managing director or manager, who is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
- (2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine. This may not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Remuneration to Directors (S.197)

The remuneration payable to directors of a company must be determined in accordance with the company's

- (a) Articles of Association of the company
- (b) or by way a resolution passed at the board meeting
- (c) or by way of a special resolution passed at the annual general meeting of the company.

* Remuneration for managing director or whole time director must also be determined as per the articles, board resolution or special resolution.

* Remuneration to directors include:

- (a) Expenditure incurred by the company for providing rent free accommodation.
- (b) Provision of other benefits and amenities free of charge or at concessional rates.
- (c) to effect pension, annuity or gratuity insurance on the life of such person (director), his spouse or children.

* The remuneration payable to directors must include the remuneration payable for such directorial services rendered by him in any other capacity.

* A director may receive remuneration by way of sitting fees for each board meeting attended by him. It is also applicable for his attending committee meetings.

* The maximum sitting fees payable to a director is :

Companies with paid up capital & free reserves of Rs. 10 crores and above or a turnover of Rs. 50 crores & above For other companies	Maximum sitting fees Rs. 20,000/-
	Maximum sitting fees Rs. 10,000/-

- (vi) Valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) Evaluation of internal financial controls and risk management systems;
- (viii) Monitoring the end use of funds raised through public offers and related matters.

(5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

(6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

(7) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

(8) The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same disclosed in such report along with the reasons

(9) Every listed company or such class or prescribed classes of companies, shall establish a vigil mechanism for directors and employees to report genuine concerns.

(10) It shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases: Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

Corporate Governance

The concept of audit committee paved way for corporate governance and helped in achieving its objectives. Corporate governance is about promoting corporate fairness, transparency and accountability. It is a process through which the Board of Directors supervises the activities and performance of company's management. Thus, with corporate governance it is possible for a periodic review of internal control system, independent review of the financial position of the company and in enhancing the effectiveness of Board decisions of the company.

Thus, if any director draws remuneration in excess of the prescribed limit or without approval of central government, the person must refund the excess sum to the company. Any amount of refund cannot be waived by the company without the permission of the central government. Further, a managing director or a whole-time director who receives commission from the company shall not be entitled to receive commission or remuneration from its subsidiary.

But a company in general meeting with the approval of the central government may authorise a higher percentage of remuneration to directors on profits. The net profit for managerial remuneration must be computed in accordance with the Companies Act 2013.

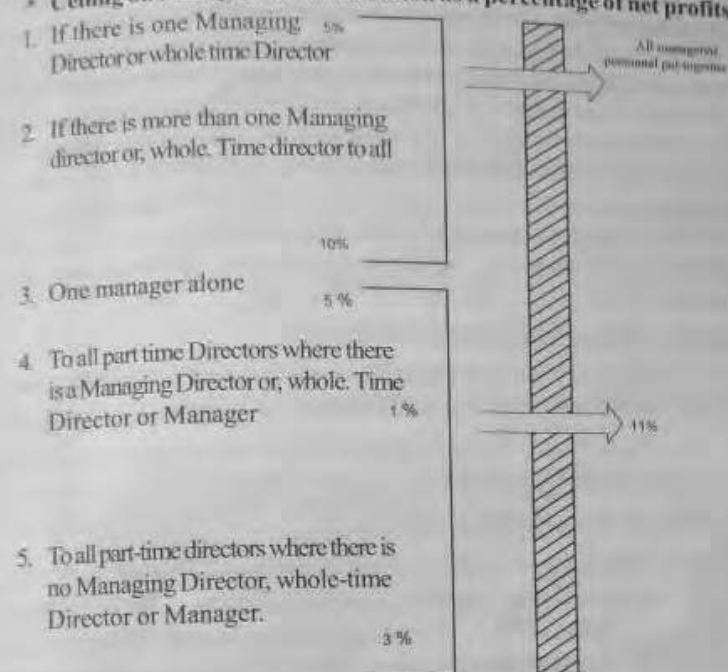
Appointment of key managerial personnel (S.203)

(i) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

- managing director, or Chief Executive Officer or manager and in their absence, a whole-time director
- (ii) company secretary; and
- (iii) Chief Financial Officer : Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise; or
 - (b) the company does not carry multiple businesses: Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.
- (2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
- (3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time: Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:
- (4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

* Ceiling on managerial remuneration as a percentage of net profits.



In case of public company or a private company which is a subsidiary of public company, the total managerial remuneration payable to directors must not exceed 11% per cent of net profits [S. 198 (1)].

The above maximum ceiling remuneration of 11% must be exclusive of sitting fees payable to directors [S. 198(2)]. Whole-time directors or managing director may be paid remuneration either on monthly basis or at a specified percentage of net profit or partly by one and partly by other.

In case of other directors remuneration may be paid either monthly, quarterly or annually with the approval of central government or by way of commission authorised by a special resolution.

The total remuneration payable to all managing directors or whole-time directors must not exceed

- (a) 5% of the net profits where there is one such director
- (b) 10% of the net profits for all such directors put together.

Total remunerations payable to all part-time directors must not exceed:

- (a) 1% of net profit if the company has a managing or whole-time director or manager.
- (b) 3% of the net profit in other cases.

Company Meetings and Resolutions

Introduction

A company is an association of several persons. Critical decisions are made according to the objectives of the company and various matters are discussed and decided upon. These discussions are arrived at the various meetings which take place between members and between the directors. Needless to say, the importance of meetings cannot be undermined in case of companies. The Companies Act, 1956 contains several provisions regarding holding of meetings. These provisions are to be understood and followed for a better understanding of meetings and their importance.

To start with, for a meeting, there must be at least 2 persons attending the meeting. One member cannot constitute a company meeting even if he holds proxies for other members.

Annual general meeting (S.96)

- (1) Every company other than a *One Person Company* shall in each year hold in addition to any other meetings, a general meeting as its *annual general meeting*. It shall specify the meeting as such in the notices calling it. Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next. However, the first annual general meeting, should be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year. If a company holds its first annual general meeting as stated above, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation. The Registrar however may, extend the time of any annual general meeting, other than the first annual general meeting, by a period not exceeding three months for reasons that are of special nature.
- (2) Every annual general meeting shall be called during business hours (that is, between 9 a.m. and 6 p.m.) on any day that is not a National Holiday. It is, either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. However, the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose. For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.

Directors

- (3) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees. It may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for everyday after the first during which the contravention continues.

Review Questions

1. Define 'Director' under Companies Act, 2013.
2. Can a firm or body corporate become a director?
3. Discuss the appointment of directors under Companies Act, 2013.
4. What are the
 - (a) powers
 - (b) rights
 - (c) duties
 - (d) liabilities of directors under Companies Act, 2013.
5. Discuss the qualification and disqualification of directors.
6. Define 'Managing Director' and how he is appointed?

tenth of such of the paid-up share capital of the company as on that date carries the right of voting.

- in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company within the period specified in subsection (4).
- (3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting called and shall be signed by the requisitionists and sent to the registered office of the company.
 - (4) If the Board does not (within twenty-one days from the date of receipt of a valid requisition in regard to any matter) proceed to call a meeting within forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves. (Within a period of three months from the date of the requisition).
 - (5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner called and held by the Board.
 - (6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company. The sums so paid deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

Notice of meeting

- (1) A general meeting of a company called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as prescribed. A general meeting is valid after giving a shorter notice if consent given in writing or by electronic mode by not less than ninety-five per cent of the members entitled to vote at such meeting.
- (2) Every notice of a meeting specify the place, date, day and the hour of the meeting and contain a statement of the business transacted at such meeting.
- (3) The notice of every meeting of the company given to—
 - every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
 - the auditor or auditors of the company; and
 - every director of the company.
- (4) Any accidental omission to give notice to any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

Power of Tribunal to call annual general meeting (S.97)

- (1) If any default made in holding the annual general meeting of a company under section 96, the Tribunal or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company. The tribunal shall give directions as it thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting.
- (2) A general meeting held in pursuance of sub-section (1) shall be deemed to be an annual general meeting of the company under this Act.

Power of Tribunal to call meetings of members (S.98)

- (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suo-motu* or on the application of any director or member of the company who would be entitled to vote at the meeting .
 - (a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit and
 - (b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company.

Such directions may include a direction that one member of the company present in person or by proxy deemed to constitute a meeting.

- (2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) for all purposes, deemed to be meeting of the company duly called, held and conducted.

Punishment for default in complying with provisions of sections 96 to 98 (S.99)

If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 the company and every officer of the company who is in default shall be punishable. The punishment shall be a fine which may extend to one-lakh rupees and in the case of a continuing default, with a further fine, which may extend to five thousand rupees for every day during which such default continues.

Calling of extraordinary general meeting

- (1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.
- (2) The Board shall, at the requisition made by,—
 - in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-

- ♦ thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.
- ♦ in the case of a private company, two members personally present shall be the quorum for a meeting of the company.

(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company —

- (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine or
 - (b) the meeting, if called by requisitionists under section 100, shall stand cancelled. In case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give at least three days notice to the members. The notice is served either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.
- (3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Chairman of meetings (S.104)

- (1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman on a show of hands.
- (2) If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act. The Chairman elected on a show of hands under sub-section (1) shall continue to be the Chairman of the meeting until some other person is elected as Chairman on a poll, and such other person shall be the Chairman for the rest of the meeting.

Proxies (S.105)

- (1) Any member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. However, a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This provision, unless the articles of a company otherwise provide, shall not apply in the case of a company *not* having a share capital. The Central Government may prescribe a class of companies whose members shall not be entitled to appoint another person as a proxy. The person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares prescribed.

Statement to be annexed to notice (S.102)

- (1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, is annexed to the notice of the meeting namely,
 - the nature of concern or interest, (financial or otherwise) if any, in respect of each item of
 - Every director and the manager, if any.
 - Every other key managerial personnel and
 - Relatives of the persons mentioned in sub-clauses (i) and (ii)
 - Other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1), —

- in annual general meeting, all business transacted are deemed special, other than —
 - the consideration of financial statements and the reports of the Board of Directors and auditors
 - the declaration of any dividend
 - the appointment of directors in place of those retiring
 - the appointment of, and the fixing of the remuneration of the auditors
 - In any other meeting, all business deemed special.
- (3) If any item of business refers to any document considered for the meeting, the statement shall specify the time and place where such document kept for inspection under sub-section (1).
 - (4) If as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (1) shall be liable to compensate the company to the extent of the benefit received by him.
 - (5) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine. The fine may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

Quorum for meetings (S.103)

(1) Unless the articles of the company provide for a larger number, —

- in case of a public company, —
 - ♦ five members personally present if the number of members as on the date of meeting is not more than one thousand.
 - ♦ fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand.

- (3) On a poll taken at a meeting of a company, a member or his proxy entitled to more than one vote need not, if he votes, use all his votes or cast in the same way all the votes he uses.

Voting by show of hands (S.107)

- (1) At any general meeting, a resolution put to vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.
- (2) A declaration by the Chairman of the meeting of passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution.

Voting through electronic means (S.108)

The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

Demand for poll (S.109)

- (1) Before or on the declaration of the result of voting on any resolution on show of hands, Chairman of the meeting may order a poll on his own motion or on demand.
- in the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five-lakh rupees or such higher amount as may be prescribed has been paid-up; and
 - in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

The person who demanded a poll may withdraw it at any time.

- (2) A poll demanded for adjournment or appointment of Chairman of the meeting must be responded immediately.
- (3) A poll demanded on any question other than adjournment or appointment of Chairman, taken not being later than 48 hours from the time of making the demand, as per the directions of the Chairman of the meeting.
- (4) If the Chairman decides on a poll, then he shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll and to report on it to him in the prescribe manner.
- (5) Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll to be conducted.
- (6) The result of the poll is the decision of the meeting on the resolution in relation to poll.

- (2) In every notice, calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy. If one or more proxies allowed, such proxy shall attend and vote instead of the member and that a proxy need not be a member.
- (3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine, which may extend to five thousand rupees.
- (4) Any provision contained in the articles of a company, which specifies a longer period than 48 hours before a meeting of the company, towards the appointment of proxy shall have effect as if a period of forty-eight hours had specified.
- (5) If invitations to appoint as proxy are issued at the company's expense to any member entitled to a notice and to vote thereat by proxy, every officer of the company who knowingly issues the invitations inadvertently or willfully, such issue shall be punishable with fine, which may extend to one-lakh rupees. However, an officer shall not be punishable for appointment of proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.
- (6) The instrument appointing a proxy shall—
- be in writing; and
 - be signed by the appointer or his attorney duly authorized in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorized by it.
- (7) An instrument appointing a proxy, if it is in the prescribed form, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.
- (8) Every member entitled to vote at a meeting of the company, or to move a resolution, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged. The members may inspect any time during the business hours of the company, provided they give at least 3 days' notice in writing of the intention so to inspect to the company.

Restriction on voting rights (S.106).

- (1) The articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

- (5) If any default made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

Representation of President and Governors in meetings (S.112)

- (1) The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.
- (2) A person so appointed to act under sub-section (1) shall be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, (including the right to vote by proxy and postal ballot) as the President or, the Governor could exercise as a member of the company.

Representation of corporations at meeting of companies and of creditors (S.113)

- (1) The directors of a body corporate, if it is a member of a company, authorize such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company.
- (b) The directors of the company, if it is a creditor, including a holder of debentures, of a company, authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act.
- (2) A person authorized by resolution under sub-section (1) shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

Ordinary and special resolutions (S.114)

- (1) A resolution shall be an ordinary resolution if passed by the votes cast, in favor of the resolution **exceed the votes**, cast against the resolution by members, so entitled.
- The voting may be on a show of hands, or electronically or on a poll, (including the casting vote, if any, of the Chairman) by members who, being entitled so to do, vote in person, or proxy, or by postal ballot.
- (2) A resolution shall be a special resolution when—
- the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution and
 - votes cast in favor of the resolution by members who, being entitled so to do is **at least three times the number of the votes**, if any, cast against the resolution.

Postal ballot (S.110)

- (1) A company—
- shall transact certain items of business notified by Central Government only by means of postal ballot; and
 - may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, instead of transacting such business at a general meeting.
- (2) If a resolution assented to by the requisite majority of the shareholders by means of postal ballot, it is deemed as passed, at a general meeting convened in that behalf.

Circulation of members' resolution (S.111)

- (1) A company shall, on requisition in writing of such number of members, as required in section 100,—
- give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and
 - circulate to members, any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.
- (2) A company not bound under this section to give notice of any resolution or to circulate any statement unless—
- a copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company,—
 - in the case of a requisition requiring notice of a resolution, at least six weeks before the meeting;
 - in the case of any other requisition, at least two weeks before the meeting; and there is a deposit or tender with the requisition, of a sum reasonably sufficient to meet the company's expenses.
- If, after a copy of a requisition requiring notice of a resolution is deposited at the registered office of the company, an annual general meeting is called on a date within 6 weeks after the copy deposited, it shall be valid deposit.
- (3) The company shall not be bound to circulate any statement as required by clause (b) of sub-section (1), if on the application either of the company or of any other person who claims aggrieved of being abused to secure needless publicity for defamatory matter.
- (4) The requisitionists shall pay, the cost incurred to the company by virtue of this section even though they are not parties to the application.

- resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;
- resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;
- resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;
- resolutions passed in pursuance of sub-section (3) of section 179; and
- any other resolution or agreement as may be prescribed and placed in the public domain.

Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot (S.118)

- (1) Every company shall record the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board.

It is prepared and signed in the manner prescribed. It should be kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

- (2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.
- (3) All appointments made at the company meetings shall be included in the minutes of the meeting.
- (4) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain—
 - (a) the names of the directors present at the meeting; and
 - (b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.
- (5) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—
 - is or could reasonably be regarded as defamatory of any person; or
 - is irrelevant or immaterial to the proceedings; or
 - is detrimental to the interests of the company.

- The voting may be on a show of hands, or electronically or on a poll, (including the casting vote, if any, of the Chairman) by members who, being entitled so to do, vote in person, or proxy, or by postal ballot.

Resolutions requiring special notice (S.115)

If, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, then the company shall give its members notice of the resolution in the prescribed manner.

Resolutions passed at adjourned meeting (S.116)

Where a resolution passed at an adjourned meeting of

- Company
- the holders of any class of shares in a company; or
- the Board of Directors of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Resolutions and agreements to be filed (S.117)

- (1) A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar.

It shall be filed within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed within the time specified under section 403.

- (2) If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine. The fine shall at least five-lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

- (3) The provisions of this section shall apply to—

- special resolutions;
- resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

- (7) In the case of any such refusal or default, the Tribunal may, without prejudice take any action under sub-section (3), and directs an immediate inspection of the minute books or direct that the copy required shall be sent to the person requiring it immediately.

Maintenance and inspection of documents in electronic form (S.120)

Any document, record, register, minutes,

- required to be kept by a company or
- allowed to be inspected or copies to be given to any person by a company may be kept or inspected. The copies may be given, in electronic form in such a form and manner as prescribed.

Report on annual general meeting (S.121)

- (1) Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made there under.
- (2) The company shall file with the Registrar a copy of the report referred to in subsection (1) within thirty days of the conclusion of the annual general meeting with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time as specified, under section 403.
- (3) If the company fails to file the report under sub-section (2) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine. The fine shall not be less than one-lakh rupees but which may extend to five-lakhs rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one-lakh rupees.

One Person Company (S.122)

- (1) The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company.
- (2) The ordinary businesses as mentioned under clause (a) of sub-section (2) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, be transacted in case of One-Person Company, as provided in sub-section (3).
- (3) For the purposes of section 114, any business transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution. The resolution is communicated by the member to the company and entered in the minutes' book maintained under section 118 duly signed and dated by the member. Such date shall be deemed to be the date of the meeting for all the purposes under this Act.

- (6) The Chairman shall exercise absolute discretion in relation to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

- (7) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded

- (8) The meetings so conducted by the company deemed to be valid, when the minutes are kept in accordance with sub-section (1) of S.118 until the contrary is proved.

- (9) No document purporting to be a report of the proceedings of general meeting of a company circulated or advertised at the expense of the company unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.

- (10) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

- (11) If any default made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

- (12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term, which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one-lakh rupees.

Inspection of minutes books of general meeting (S.119)

- (1) The books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall—

- be kept at the registered office of the company; and
- be open, during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

- (2) Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred to in sub-section (1).

- (3) If inspection under sub-section (1) refused, or if copy required under sub-section (2) not furnished within the time specified, the company shall be liable to a penalty of twenty-five thousand rupees. Every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default.

Quorum for meetings of Board (S.174)

- (1) The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of quorum under this sub-section.
- (2) The continuing directors may act in spite of any vacancy in the Board. However, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purposes of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.
- (3) Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being at least two, shall be the quorum during such time. "Interested director" means a director within the meaning of sub-section (2) of section 184.
- (4) If a meeting of the Board not held for want of quorum, then, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week. If that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.
- any fraction of a number shall be rounded off as one;
 - "Total strength" shall not include directors whose places are vacant.

Passing of resolution by circulation (S.175)

- (1) No resolution deemed to be passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any. It must be circulated to all the directors, or members of the committee at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means. It must be approved by a majority of the directors or members, who are entitled to vote on the resolution.
- (2) A resolution under sub-section (1) noted at a subsequent meeting of the Board or the committee, and made part of the minutes of such meeting.

Defects in appointment of directors not to invalidate actions taken (S.176)

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company.

- (4) Where there is only one director on the Board of Directors of a One-Person-Company, any business, transacted at the meeting of the Board of Directors of a company, the resolution by such director is entered in the minutes-book maintained under section 118. The register signed and dated by such director. Such date deemed as the date of the meeting of the Board of Directors for all the purposes under this Act.

Meetings of Board (S.173)

- (1) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation. Thereafter, hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board. However, Central Government direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.
- (2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. The Central Government may by notification, specify such matters, which shall not be dealt, with in a meeting through video conferencing or other audio-visual means.
- (3) A meeting of the Board be called by giving at least seven days' notice in writing to every director at his address registered with the company. Such notice sent by hand delivery or by post or by electronic means. A meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting be circulated to all the directors and shall be final only on ratification by at least one independent director, if any.
- (4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.
- (5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days. This section does not apply to One-Person-Company in which there is only one director on its Board of Directors.

Review Questions

1. Define Meetings.
2. State the different kinds of meetings.
3. Discuss the provisions of Companies Act, 2013 relating to convening and conducting of annual general meetings.
4. Write short notes on the following:
 - (a) Statutory Report
 - (b) Extraordinary General Meeting
 - (c) Quorum
 - (d) Proxy
 - (e) Minutes
 - (f) Voting and demand for a poll.
5. Distinguish between Adjournment and Preponement.
6. Define Resolution. Discuss various kinds of resolutions.
7. What are the provisions applied to holding an AGM of a One Person Company?

Meeting of debenture holders

A company issuing debentures may provide for the holding of meetings of the debentureholders. During such meetings, generally matters pertaining to the variation in terms of security or to alteration of their rights are discussed. All matters connected with the holding, conduct and proceedings of the meetings of the debentureholders are normally specified in the Debenture Trust Deed. The decisions at the meeting made by the prescribed majority are valid and lawful and binding upon the minority.

Meeting of creditors

Sometimes, a company, either as a running concern or in the event of winding up, has to make certain arrangements with its creditors. Meetings of creditors may be called for this purpose. For example, under section 393, a company may enter into arrangements with its creditors with the sanction of the Court for reconstruction or any arrangement with its creditors. The court, on application, may order the holding of creditors' meeting. If the scheme of arrangement is agreed upon by majority in number of holding debts to three-fourth of the total value of the debts, the court may sanction the scheme. A certified copy of the court's order is then filed with the Registrar and it is binding on all the creditors and the company.

Class Meeting

Class meetings are those which are held by holders of a particular class of shares, e.g., preference shareholders. Such meetings are normally called when it is proposed to vary the rights of that particular class of shares. During such meetings, the members discuss the *pros* and *cons* of the proposal and vote accordingly. Class meetings are held to pass resolutions which will bind only the members of the class concerned, and as such only members of that class can attend and vote.

Unless the articles of the company or a contract binding on the persons concerned otherwise provide, all provisions pertaining to calling of a general meeting and its conduct apply to class meetings in a manner similar to what applies with respect to general meetings of the company.

It should be noted that the Act is concerned with the development and regulation of only those industries specified in the *First Schedule* of the Act. Therefore, the scope of the Act has been limited in the first instance. Some of the industries mentioned in the First Schedule are: Metallurgical industries; Boiler and steam generating plants; Electrical equipment; Telecommunication; Transport; Industrial machinery; Machine tools; Agricultural machinery; Chemicals; Fertilizers etc. Though the Government is not empowered to make any addition of new undertaking to the First schedule, the parliament can do that.

Coverage of the Act

The Act extends to whole of India and came into force on 8th May 1956, but in Jammu and Kashmir, it came into force from February 15, 1962. The Act is implemented through the agencies of the Department of the Industrial Development, Ministry of Industry on whom the Central Government has vested the power to develop and regulate scheduled industries. The Act, however, empowers the Central Government to grant exemption to any undertaking or a scheduled industry or class of undertakings or scheduled industries from all or any of the provisions of the Act, Rules or orders made thereunder. Exemptions under Section 29B are granted having regard to the smallness of, or the number of workers employed in, or the amount invested in, any industrial undertaking or the desirability of encouraging small undertakings generally or the stage of development of any scheduled industry.

Some Important Definitions

The Act has given meaning and definition of some of the important expressions made in the Act for purposes of clarity, understanding and also applicability of the Act.

"Existing Industrial Undertakings": This means industrial undertakings pertaining to any of the industries in the First schedule as originally enacted, an industrial undertaking which was in existence on the commencement of the Act or for the establishment of which effective steps have been taken before such commencement.

"Factory" means any premises including the precincts thereof in any part of which a manufacturing process is being carried on or is ordinarily so carried on: (a) with the aid of power, provided that fifty or more workers are working or were working thereon on any day of the preceding 12 months; or (b) without the aid of power, provided that 100 or more workers are working or were working thereon on any day of the preceding 12 months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power (Section 3 C).

In *Delhi cloth and General Mills Co. Ltd., vs. Joint-secretary, Government of India* (1978) Tax. L.R. 2094, it had been held that it was not necessary that the manufacturing process should be carried on in the whole of the premises and

Industries (Development & Regulation) Act (I.D.R.A)

The first Industrial Policy Resolution of independent India was passed in 1948, which was amended by the second Industrial Policy resolution in 1956. This policy resolution of 1956 continues to be the basic framework for overall industrial policy of the government. Consistent with the Industrial policy Resolution of 1948, the Industries (Development and Regulation) Act, 1951 was passed which came into force on May, 8, 1952. This was intended to regulate the industries at the time of launching the First plan of India. The Act gave wide powers to the Government to take up any industrial unit in private sector after giving due notice. Further, the Industries (Development and Regulation) Act of 1951 introduced the licensing system to every industrial undertaking. The industrial policy resolution was amended from time to time depending upon the needs of the economy and accordingly the Act was also amended then and there, to be consistent with the prevailing industrial policy of the government.

The latest industrial policy was announced by the Government on 24th July 1991. In this, several liberalisation measures were introduced, abolishing many administrative and legal controls to meet the new challenges posed by the national and global economic environment. In this chapter, we shall briefly study about the Industries (Development and Regulation) Act, 1951 and the industrial licensing.

Objectives of I.D.R.A

The basic objectives of I (D&R) Act is to provide the Central Government sufficient means of implementing the industrial policy and to give adequate powers in directing the industrial development of the country. It is through this Act, the optimisation of scarce resources of the economy has been aimed at. Further, increasing production & productivity of industries depend upon proper control and direction and the Act aims at this. Further India is an agricultural country and strengthening the *Agro-industrial base* should be the pivotal objective of the policy and this Act aims at this. The Act also provides the government necessary powers to make rules for regulating the production and development of industries in the "schedule" and for consultation of Central Advisory Council and also provincial governments on these matters.

The number and term of office of the members and the procedure to be followed in the discharge of their functions and the manner of filling casual vacancies among the members of a Development Council, shall be such as may be prescribed.

Functions of Development Council

Section 6 (4) of the Act provides for the performance of any of the following functions by a Development Council, as assigned by the Central Government:

- (1) Recommending targets for production, co-ordinating production programmes and reviewing progress from time to time;
- (2) Suggesting norms of efficiency with a view to eliminating waste, obtaining maximum production, improving quality and reducing costs;
- (3) Recommending measures for securing the fullest utilisation of the installed capacity and for improving the working of the industry, particularly of the less efficient units;
- (4) Promoting arrangements for better marketing and helping in the devising of a system of distribution and sale of produce of the industry which would be satisfactory to the consumers;
- (5) Promoting standardisation of the products;
- (6) Assisting in the distribution of controlled materials and promoting arrangements for obtaining materials for the industry;
- (7) Promoting the training of persons engaged or proposing engagement in the industry and their education in technical or artistic subjects relevant thereto;
- (8) Promoting or undertaking scientific industrial research;
- (9) Promoting improvements and standardisation of accounting and costing methods and practices;
- (10) Promoting the adoption of measures for increasing the productivity of labour, including measures for securing safer and better working conditions and provision of amenities and incentive for workers;
- (11) Promoting or undertaking the collection and formulation of statistics which would help in the further development of strategies;
- (12) Investigating possibilities of decentralising stages and process of production with a view to encourage the growth of allied small-scale and cottage industries.
- (13) Advising on any matters relating to the industry (other than remuneration and conditions of employment) on which the central Government may request the Development council to advise it after making enquiries;
- (14) Preparing and transmitting a report including a statement of the audited accounts together with a copy of audit report on the functions discharged by it during the financial year completed. A copy of each such report shall be laid before parliament by the Central Government.

that even if part of premises was used for manufacturing process, the other could as well be included in factory premises.

"*Industrial Undertaking*" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government (Section 3.d.).

"*Owner*" in relation to an undertaking means the person or the authority who has the ultimate control over the affairs of the undertaking and where said affairs are entrusted to a manager, managing director or managing agent shall be deemed to be the owner of the undertaking. (Section 3.f).

"*New Article*" in relating to an industrial undertaking means any article which falls under the item in the first schedule, other than the item under which articles ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission, as the case may be.

Central Advisory Council

Section 5 of the Act provides that the Central Government may establish a Central Advisory Council for the purpose of advising it on matters concerning the development and regulation of the scheduled industries. The advisory council shall consist of a Chairman and other members, not exceeding 30 in number, all of whom shall be appointed by the Central Government from among persons who are in its opinion capable of representing the interests of owners, employees, consumers, primary suppliers, etc., of the industrial undertakings in the scheduled industries.

The term of office and the procedure to be followed in the discharge of their functions and the manner of filling casual vacancies among members of the Advisory Council shall be as may be prescribed.

The Central Government shall consult the Advisory council in regard to (a) the making of any rules; (b) in regard to any other matter connected with the administration of the Act in respect of which the Central Government may consider it necessary to obtain the advice of the Advisory Council.

Development Councils

Section 6 of the Act provides that the central Government may establish for any schedule industry or group of scheduled industries, a *Development Council* which shall consist of members, who in the opinion of the Central Government are (a) Persons capable of representing the interest of owners of industrial undertakings in the scheduled industry; or group of scheduled industries; (b) Persons having special knowledge of matters relating to the technical or other aspects of the scheduled industry or group of scheduled industry; (c) Persons capable of representing the interest of persons employed in industrial undertakings in the scheduled industry or group of scheduled industries; (d) Persons not belonging to any of the aforesaid categories, who are capable of representing the interest of consumers of goods manufactured or produced by the scheduled industry or group of scheduled industries.

POWERS TO INVESTIGATE, EXERCISE CONTROL AND TAKE-OVER MANAGEMENT

The Act empowers the Central Government to make or cause to be made a full and complete investigation of an industrial undertaking, if in the opinion of the Government, the scheduled industry or undertaking has resulted in an unjustifiable or substantial fall in the output or market deterioration in the quality of the output or unreasonable rise in the price of the output. If, after any such investigation, the Central Government is satisfied that action under Section 16 is desirable, it can initiate the same and give directions to the industrial undertaking regarding:

- Regulation the production of any article or class of articles by that undertaking and fixing the standard of production;
- Prescribing norms to stimulate the development of the industry to which it is related;
- Prohibiting the industrial undertakings from resorting to any act or practice which might reduce their production or capacity to produce or economic value;
- Controlling the prices, or regulating the distribution of any articles or class of articles which have been subject to investigation.

If the industrial undertaking failed to comply with the directives given by the Government, the latter is empowered to take over the management by any person or body of persons, after due notification.

The Act also provides that such a take-over can be contemplated and given effect to in the case of industrial undertaking which, in the opinion of the Central Government, after investigation, that it is mismanaged or managed in such a way to be detrimental to the scheduled industry or to the public interest.

The Act also empowers the Government to take-over the management or exercise the functions of control, with the permission of the High Court, of any undertaking owned by a company in liquidation, if it is satisfied that the running or restarting of the industrial undertaking is necessary in the public interest.

Take-over without investigation

Section 18-AA of the Act empowers the Central Government to takeover industrial undertaking *without investigation* under the following circumstances:

- Reckless investments or creation of encumbrances on the assets of the industrial undertaking, bringing about a situation which is likely to affect production.
- If the industrial undertaking has been closed for a period of not less than three months and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company is such that it is possible to restart the undertaking.

Such take-over is possible through the issue of a notified order which shall

REGULATION OF SCHEDULED INDUSTRIES

This forms the vital part of the Act, as it exercises full control and regulation of the scheduled industries. This mainly consists of *Registration of undertakings* and *Industrial Licensing*.

1. Registration of existing industrial undertaking

Section 10 requires the owner of every existing industrial undertakings (except not being the Central Government) to register the undertakings in the prescribed manner within the prescribed period. The Central Government shall cause to register its own existing industrial undertakings. The Ministry would grant a certificate of registration to the applicant. The productive capacity is also mentioned in the certificate after taking into consideration the following matters: (i) The productive or installed capacity of the undertaking as specified in the application for registration (ii) Level of production before the date on which the application was made. (iii) The level of the highest annual production during the three years, immediately preceding the introduction in the parliament of the Industries (Development and Regulation) Amendment Bill 1973. (iv) The extent to which production during the said period was utilised for export.

Registration in the following cases will not be necessary

- If it is a small-scale industrial undertaking
- If it is exempt from the licensing or registration as per Act
- If the undertaking does not come under the 'definition of a factory' as per this Act.

Penalty: The owner of industrial undertaking which is registrable, but has not been registered under Section 19(1) of the Act, is liable to be punished with imprisonment up to six months or fine extending up to Rs. 5,000 or with both, according to section 24 of the Act.

2. Licensing of Industrial Undertakings

After the commencement of the Act, no person or authority (other than the Central Government and other Government with the previous permission of the Central Government) can establish any new industrial undertaking, except under, and in accordance with, a licence issued in that behalf by the Central Government. However, the Government can grant exemption in this regard.

This licensing will be in the form of a written permission from the Central Government to an industrial undertaking to manufacture specified articles listed in the First Schedule. The licence includes particulars like (a) Location (b) Articles to be manufactured (c) Capacity on the basis of machinery and plant, etc. The licensee is subject to validity period within which the licensed capacity of the undertaking should be established.

The undertakings should not manufacture new articles or change the location of the factory without getting the permission of the government, which means, they have to get their licences duly changed with new or additional particulars. The decision of the Central Government whether to grant the licence or not is final.

Price and Distribution Controls

Section 18-G provides the Government with necessary powers to control the price and distribution of articles by the scheduled industry. By a notified order, the Government may provide for:

- (a) Controlling the price at which any such article, or class of articles thereof, may be bought or sold;
- (b) Regulating by licences, permits or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof.
- (c) Prohibiting the withholding from sale of any such article or class thereof ordinarily kept for sale;
- (d) Requiring any person manufacturing, producing or holding in stock such article or class of articles thereof to sell the whole or part of the articles to such person or class of persons and in such circumstances as may be specified in the order.
- (e) Regulating or prohibiting any class of commercial or financial transaction relating to such article or class thereof which in the opinion of the authority making the order, if unregulated, are likely to be, detrimental to public interest.
- (f) Requiring persons engaged in the distribution and trade and commerce in any such article or class thereof to mark the articles with sale price or to exhibit at some easily accessible place on the premises, the price-list of articles held for sale.
- (g) Collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and
- (h) Any incidental or supplementary matters, including in particular, the grant of issue of licences, permits or other documents and charging fees thereof.

No order made in exercise of any power conferred by this Section (18-G) shall be called in question in any court.

In this section (18-G), the expression "article or class of articles" relating to any scheduled industry includes any article or class of articles imported into India which is of the same nature or description, as the article or class of articles manufactured or produced in the scheduled industry.

INDUSTRIAL LICENSING

We have already studied that the essential part of Industries (Development & Regulation) Act, 1951 is licensing of industrial undertakings. We know that a licence is a written permission from the Government to an industrial undertaking to manufacture specified articles included in the schedule.

have the effect for a period not exceeding 5 years. The period may be further extended to 2 years at a time, so that the total period does not exceed 12 years.

The central Government's power to take-over an industrial undertaking without investigation under Section 18-AA does not extend to an industrial undertaking owned by a company which is being wound up by or under the supervision of the court.

POWERS TO PROVIDE RELIEF TO CERTAIN INDUSTRIAL UNDERTAKINGS

Section 18-FB deals with provisions which enables the Government to make certain relief to an industrial undertaking whose management has been taken over under Section 18-A, 18-AA, or 18-FA. If the Central Government is satisfied that it is necessary to do so in the interest of the general public with a view to preventing fall in the value of production of any scheduled industry, it can provide relief to the industrial undertaking or any part thereof. By this all or any part of the enactments specified in the Third Schedule to the Act shall not apply or shall apply with such modifications as may be specified.

Further, the operation of all or any of the contracts, assurances or property agreements, settlements, awards, standing order or other instruments in force immediately before the date of issue of take over order shall remain suspended, and shall be enforceable by such adoptions and in such manner as may be specified in Notified order.

The notified order shall remain in force, in the first instance, for a period of one year, but the duration of such order may be extended from time to time by a further notified order, by a period not exceeding one year at a time. It will not remain in force after the expiry of eight years in the aggregate.

Sale or Reconstruction

When the control has been taken over an industrial undertaking, the Government may at any time during the continuance of management or control, call for a report from the authorised person of the affairs and working of the industrial undertaking and on the basis of the report take any of the following actions:

(i) The industrial undertaking may be sold as a running concern, if the Government considers it necessary or expedient in the interest of the general public so to do; or

(ii) Reconstruct the company owning the industrial undertaking if the Government is satisfied that it is necessary so to do in the interest of the general public or the share-holders or to secure proper management of the company owning the industrial undertaking.

- (j) Conserving foreign exchange by proper allocation.
- (k) Ensuring employment generation and socio-economic equilibrium.

Activities Requiring Licence

Before the announcement of New Industrial Policy of Liberalisation, in July 1991, the Act required licence for the following purposes:

1. Establishment of new undertaking
2. Manufacture of new article
3. Substantial expansion of capacity
4. Continuation of business in certain cases
5. Changing the location of the industry

Exemption: Projects involving investment up to specified limits were exempted from licensing, subject to certain conditions. Before the announcement of New Industrial Policy in 1991 this limit was 15 crores in non-backward areas and Rs. 50 crores in backward areas.

LICENSING REQUIREMENTS UNDER THE NEW INDUSTRIAL POLICY 1991

The Government of India announced its New Industrial Policy on July 24, 1991 in view of the changing national and global economic environment. The new policy proposed a series of liberalisation measures. The new policy had abolished industrial licensing for all projects except for a short list of industries related to core sector. According to the new policy:

- (i) No licences are required to set up new units, expand or diversify the existing line of manufacture except in certain industries related to security and strategic considerations, social reasons, hazardous chemicals and over-riding reasons from environmental angle and items of elite consumption (in all 34 industries).
- (ii) Areas where security and strategic concerns predominate will continue to be in the public sector.
- (iii) In projects where imported capital goods are not required, automatic clearance will be given.
- (iv) A flexible location policy will be followed.
- (v) The system of phased manufacturing programme is abolished.
- (vi) No licensing will be required for the broad banding facility.
- (vii) Mandatory convertibility clause will no longer be applicable to long term loans from the financial institutions for new projects.
- (viii) Appropriate incentives and the design of investment in infrastructure development will be used to promote the dispersal of industry particularly to rural and backward areas and to reduce congestion in cities.

Procedure for obtaining a Licence

An application has to be made in the prescribed form (Form-12) to the Secretariat for Industrial Approvals, in the Department of Industrial Development, Ministry of Industry, accompanied by a demand draft of Rs. 2,500/-.

Letter of Intent

This is a provisional licence which is generally issued when the collaboration agreement and the capital goods import has not yet been finalised by the applicant's company. The initial validity period of a letter of intent is now three years. But the period of validity can be extended by the administrative Ministry concerned after referring the matter to the concerned Approval Committee.

It may be noted that the letter of intent shall not ordinarily be allowed to be extended beyond the period of 5 years from the date of issue. Further, Environmental Clearance is compulsory for the notified industries before letter of intent can be converted into an industrial licence.

Composite Application

In order to facilitate the expeditious disposal of varied clearances, the procedure now in practice is submission of a 'Composite Application' comprising of 'Form IL', 'Form FC', and 'Form E' (CG) for import of capital goods.

Objectives of Licensing

Licensing is a means to help achieve some of the objectives of the industrial policy. An examination of the type of regulations exercised by licensing under the Industries (Development & Regulation) Act indicates that the objectives of industrial licensing in India were the following:

- (a) Achieving the desired pattern of industrial dispersal in the country, particularly promoting industries in the backward regions.
- (b) Encouraging new entrepreneurs and wider dispersal of industrial ownership, so that the economy will be well-balanced.
- (c) Preventing concentration of economic power.
- (d) Protecting and promoting the small-scale sector.
- (e) Regulating foreign capital and technology.
- (f) Ensuring the use of proper technology and economies of scale.
- (g) Controlling the industrial pollution.
- (h) Achieving or maintaining Demand-supply equilibrium.
- (i) Encouraging exports and import-substitution.

Foreign Exchange Management Act

Business growth and industrialisation of the country mostly depend on the extent of investments made in the economy for starting many projects. Resources in the form of money and material are very essential for development. Capital for investment may be forthcoming within the country or it may also flow from foreign countries. Non-Resident Indians would be interested in investing in the Indian ventures. Further, the industrialists and big businessmen would have earned lot of foreign exchange for further investment. It has become an imperative need for the Government to regulate the flow of foreign capital and also stimulate investment for purposes of industrialisation and economic development of the country.

During the Second World War period, the then Government passed several ordinances regulating the foreign exchange transactions, in order to conserve foreign exchange. In 1947, after attaining independence, a full-fledged *Foreign Exchange Regulation Act* was passed by the Government of India. In the year 1973, the Act was modified and the *Foreign Exchange Regulation Act, 1973* was passed. The term foreign exchange includes foreign deposits and balances payable in foreign currency and also foreign securities.

Before studying about Foreign Exchange Management Act (FEMA) of 1999, let us briefly study about Foreign Exchange Regulation Act, 1973 which was repealed. A brief study of FERA 1973 will enable us to understand the background of foreign exchange regulations and also the liberalisations effected in 1999 in the context of liberalised Industrial policy of the Government in 1991.

Foreign Exchange Regulation Act, 1973 (FERA) in Brief :

The primary objectives of FERA were as follows :

1. Conservation of Foreign Exchange Resources.
2. Ensuring that all foreign exchange accruing to the country were properly accounted for.
3. Ensuring proper utilisation of the foreign resources of the country for the common good and economic development.

Review Questions

1. What is IDRA?
2. Define 'Factory' according to IDRA.
3. Define an 'Industrial undertaking'.
4. What is a letter of Intent?
5. Define 'Industrial Licensing'.
6. What are the objectives of IDRA?
7. Explain licensing of Industrial undertaking according to IDRA.
8. What was the role of Central Advisory Councils?
9. What were the objectives of Licensing?
10. What are the liberalisation measures announced in Industrial Licensing, according to New Industrial Policy 1991?
11. What were Development Councils according to IDRA? Analyse in detail the functions of Development Councils.
12. Discuss the powers to investigate and take-over the management of Industrial undertaking, according to IDRA.

In spite of several changes in the Foreign Exchange Regulation Act, there had been a long cry from the business and industrial circles for the repeal of this draconian and obnoxious law to atune the economy with economic liberalisation. After a thorough review, in August 1998, the Government introduced two bills to replace FERA. The result was *Foreign Exchange Management Act (FERA)* and the prevention of Money Laundering Act (PMLA). But, the business circles wanted to dilute the provisions of PMLA which they described as "another FERA through the back door". Hence, the Government notified FEMA 1999 to replace FERA and PMLA had been referred to a Select Committee of the Rajya Sabha, although it has been passed by Lok Sabha. Though the Government's earlier plan to notify FEMA along with PMLA, it dropped the passing of twin legislation, as it could not reconcile with several severe penalties in PMLA. This was because, a distinction was being made between crimes which were technical in nature and for which the ends of justice could be met through imposition of pecuniary penalties only. These were to be dealt with FEMA. The other major crimes of drug and arms running, as well as gross financial manipulation were to be dealt under PMLA, which would have strict penalties, including imprisonment. Hence, the Government notified only FEMA without PMLA.

Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act (FERA) 1999 had come into effect from June 1, 2000, replacing the Foreign Exchange Regulation Act (FERA). But, FERA too would continue to be in operation for two years, that is, till May 31, 2002. The two-year sunset clause for FERA had been incorporated in the FEMA legislation in order to allow the Enforcement Directorate to investigate and make ready all FERA violations cases for prosecution within that period. The Directorate, therefore, has two year's time to investigate and charge-sheet all those who have been accused of violating various provisions of the FERA. Further, any FERA violation cases which come to notice within this two year period would also be dealt with under the FERA legislation.

The differences between the objects of FERA and FEMA

According to Reserve Bank of India, "the object of Foreign Exchange Regulation Act, 1973 was to conserve foreign exchange resources, whereas the object of the new Act FEMA is to facilitate external trade and payments and to promote orderly maintenance of the foreign exchange market in India".

Further, a person resident outside India is permitted to hold shares, securities and properties acquired by him while he/she was resident in India. A person resident outside India is also permitted to hold such properties inherited from a person resident in India. The exchange drawn can also be used for purposes other than for which it is drawn provided drawal of exchange is otherwise permitted for such purpose.

Main Provisions of the Act

The Act empowered the Reserve Bank of India and also the Central Government (i) to exercise control to see that the foreign exchange earned by the exporters were properly accounted and realised; (ii) to control the holding of foreign exchange in any form and making of payments in foreign exchange; (iii) to frame appropriate rules and regulations regarding foreign exchange transactions and issue proper directions in this matter to all the banks and travel agencies.

Investment in 1991 40% to 51%
The Act had the following provisions: (i) Investment in India by foreign company had been restricted upto 40 per cent of non-resident interest. Under the New Industrial Policy of 1991, the non-resident interest had been raised to 51 per cent. (ii) Permission of Reserve Bank of India was essential for continuing any trading or commercial activity acquiring industrial interest in India. (iii) The Reserve Bank of India was empowered to authorise dealers in foreign exchange and dealings in foreign exchange would not be done except through authorised persons and agencies by the RBI. (iv) All export earnings in foreign exchange had to be deposited with the RBI and it was unlawful to hold these earnings abroad. (v) Over-invoicing of imports is prohibited. (vi) Assets held by non-residents could not be transferred, assigned pledged or charged except in accordance with the permission of the RBI. (vii) No person in India was allowed to hold or transfer property outside India without the permission of the RBI; and the Reserve Bank of India could direct a person to sell such property and acquire the proceeds through an authorised person or dealer. (viii) Owners of immovable property outside India, foreign exchange and foreign security outside India should submit returns to the RBI. (ix) The Act prohibited any person from overstaying abroad or visiting any country not authorised or approved by the RBI and no foreigner could be employed in India on salary or wages by any Indian without the permission of RBI. (x) Finally, the act also provided adequate powers to the Government to call for information, to search suspected persons or to seize documents or search any premises in connection with the enforcement of the Act.

After the liberalisation measures announced in the New Industrial policy of 1991, the Government announced some major concessions to FERA. On January 8, 1993, the Government promulgated an ordinance to amend FERA with immediate effect. The ordinance removed a large number of restrictions on companies with more than 40 per cent non-resident equity. It removed FERA controls on Indian firms setting up joint ventures abroad and allowed Indians to hold immovable property abroad, subject to certain conditions stipulated by the RBI. Further concessions given were as follows:

- (i) Companies with foreign share holdings could increase foreign equity to 51 per cent by remittances in foreign exchange in the 35 high priority industries.
- (ii) FERA companies (other than banking companies) wanting to borrow money need not get the permission of the RBI.

This Act is called the *Foreign Exchange Management Act, 1999* and it extends to the whole of India; and it shall also apply to all branches, offices and agencies outside India owned or controlled by a *person resident in India* and also to any contravention thereunder committed outside India by any person to whom this Act applies. This Act has come into force on 1st June 2000.

Definitions

Section 2 of Chapter 1 of the Act deals elaborately with the definitions of several expressions and terms mentioned in the Act.

"*Adjudicating Authority*" means an officer authorised under sub-section (1) of Section 16; and "*Appellate Tribunal*" means the Appellate Tribunal for Foreign Exchange established under Section 18.

"*Authorised Person*" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of Section 10 to deal in foreign exchange or foreign securities.

"*Bench*" means a Bench of the Appellate Tribunal.

"*Capital Account Transaction*" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets and liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of Section 6.

"*Chairperson*" means the Chairperson of the Appellate Tribunal.

"*Chartered Accountant*" shall have the meaning assigned to it in clause (b) of sub-section (1) of Section 2 of the Chartered Accountants Act, 1949.

"*Currency*" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

"*Currency Notes*" means and includes cash in the form of coins and bank notes.

"*Current account transaction*" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes: (i) payments due in connection with foreign trade, other current business, services and short-term banking and credit facilities in the ordinary course of business; (ii) payments due as interest on loans and as net income from investments (iii) remittances for living expenses of parents, spouse and children residing abroad; and (iv) expenses in connection with foreign travel, education and medical care of parents spouse and children.

"*Director of Enforcement*" means the Director of Enforcement appointed under sub-section (1) of Section 36.

"*Export*" means (i) the taking out of India to a place outside India any goods; (ii) provision of services from India to any person outside India.

"*Foreign Currency*" means any currency other than Indian currency;

anentially liberalised several things to The residents now going abroad for conferences/seminars need not seek of foreign exchange upto 25,000 dollars the basic travel quota has been increased per calendar year; gifts have been increased to 5,000 dollars from 2,500 dollars; maintenance of close relatives at 5,000

urrency (EEFC) account holders and unt holders are permitted to freely use or payment of all permissible current

India and Indian investment abroad are Now the rules permit Indian companies re shares of foreign companies engaged change through issue of ADRs/GDRs

at any offence committed under the old ert within two years from the repeal of rovisions of the old Act, as indicated FERA. Contravention under FEMA will Unlike in FERA, the burden of proof nt Agency and not on the implicated. machinery for total justice and fairness question of contravention.

oadly from two angles, namely, capital nt transactions: the former relates to erty and investment, as well as lending current account transactions which are ons relating to lotteries, football pools,

etail.

MANAGEMENT ACT, 1999
(1999)

and amend the law relating to foreign ing external trade and payments for maintenance of foreign exchange market

"Person resident outside India" means a person who is not resident in India.

"Prescribed" means prescribed by rules made under this Act.

"Repatriate to India" means bringing into India the realised foreign exchange and—

- (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or
- (ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the RBI; and

includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly.

"Security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944, Savings certificates to which the Government Savings Certificates Act, 1959 applies, deposit receipts in respect of deposits of securities and Units of the Unit Trust of India or any mutual funds and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as Security for the purposes of this Act.

"Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

"Special Director (Appeals)" means an officer appointed under Section 18.

"Specify" means to specify by regulations made under this Act and the expression "specified" shall be construed accordingly.

"Transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Chapter II of the Act deals with the "Regulation and Management of Foreign Exchange".

Dealings in Foreign Exchange

Section 3 of Chapter II deals with "Dealings in Foreign Exchange". Accordingly, no person shall deal in or transfer any foreign exchange or foreign security to any person not being an authorised person. No person shall make any payment to or for the credit of any person resident outside India in any

"Foreign Exchange" means foreign currency and includes: (i) deposits, credits and balance payable in any foreign currency; (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency, but payable in any foreign currency; (iii) Drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

"Foreign Security" means any security in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency.

"Import" means bringing into India any goods or services.

"Indian currency" means currency which is expressed or drawn in Indian rupees, but does not include special bank notes and special one rupee notes issued under Section 28A of the Reserve Bank of India Act, 1934.

"Member" means a Member of the Appellate Tribunal and includes the Chairperson thereof.

"Notify" means to notify in the official Gazette and the expression "notification" shall be construed accordingly.

"Person" includes: (i) an individual; (ii) A Hindu undivided Family; (iii) A company; (iv) A Firm; (v) An association of persons or a body of individuals, whether incorporated or not; (vi) Every artificial juridical person, not falling within any of the preceding sub-clauses; and (vii) Any agency, office or branch owned or controlled by such person.

"Person resident in India" means: (1) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year, but does not include—

- (A) a person who has gone out of India or who stays outside India, in either case—
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period;
- (B) a person who has come to or stays in India, in either case, otherwise than—
 - (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

(2) Any person or body corporate registered or incorporated in India; (3) An office, branch or agency in India owned or controlled by a person resident outside India; (4) An office, branch or agency outside India owned or controlled by a person resident in India.

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect any debt, obligation or other liability incurred –
 - (i) by a person resident in India and owned to a person resident outside India; or
 - (ii) by a person resident outside India.

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

Export of Goods and Services

Section 7 of Chapter II deals with 'Export of Goods and Services'.

7. (1) Every exporter of goods shall –

- (a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount

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

No person shall enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation: For the purpose of this clause, "Financial Transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

Regarding holding of foreign exchange, except as otherwise provided in this Act, no person resident in India shall acquire, hold, own possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Current Account Transactions:

Any person may sell or draw foreign exchange to or from an authorised person, if such sale or drawal is a current account transaction; *provided* that the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed.

Capital Account Transactions

Section 6 of Chapter II contemplates about Capital Account transactions;

6. (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government specify –

- (a) any class or classes of capital account transactions which are permissible;
- (b) the limit upto which foreign exchange shall be admissible for such transactions;

Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortisation of loans or for depreciation of direct investment in the ordinary course of business.

(3) Without prejudice to the generality of the provisions of sub-section (2) the Reserve Bank may, by regulations, prohibit, restrict or regulate the following: –

Section 10 (1): The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

(2) An authorisation under this Section shall be in writing and shall be subject to the conditions laid down therein.

(3) An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that— (a) it is in public interest so to do; or (b) the authorised person has failed to comply with the conditions subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder. The authorisation shall not be revoked without giving a reasonable opportunity of making a representation in the matter by the authorised person.

(4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders of the Reserve Bank given from time to time.

(5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction. He can also report the matter to the Reserve Bank.

(6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this Section.

Section 11: Reserve Bank's powers to issue directions to authorised person:

(1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.

representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of goods in a market outside India.

(b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

Realisation and Repatriation of Foreign Exchange

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

Exemptions from Realisation and Repatriation in Certain Cases

Section 9: The provisions of Sections 4 and 8 shall not apply to the following, namely:— (a) possession of foreign currency or foreign coins by any person upto such limit as the Reserve Bank may specify; (b) foreign currency account held or operated by such person or class of persons and the limit upto which the Reserve Bank may specify; (c) Foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the RBI; (d) foreign exchange held by a person resident in India upto such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom; (e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means upto such limit as the Reserve Bank may specify; and (f) such other receipts in foreign exchange as the Reserve Bank may specify.

Authorised Person

Chapter III of the Act, covering Section 10, 11 and 12 deals in detail about 'Authorised person', his duties and responsibilities and also about the powers of the Reserve Bank to issue directions to authorised person and also the power to inspect authorised person.

According to Section 35, any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order. In this section, "High Court" means the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gains. When the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondents, any of the respondents, ordinarily resides or carries on business or personally works for gain.

This Chapter contains Sections from 16 to 35, both inclusive, with several sub-section in each.

Directorate of Enforcement

Chapter VI deals with the *Directorate of Enforcement and its powers*.

Section 36. (1) : The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called Officers of Enforcement for the purpose of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

Section 37: Power of search, seizure, etc.

(1) The Director of Enforcement and other officers of Enforcement not below the rank of an Assistant Director, shall take up for investigation the contravention found out.

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

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

Section 38: Empowering other officers

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

(2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.

(3) Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the RBI may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

Section 12: Power of Reserve Bank to inspect authorised person

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

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

(2) It shall be the duty of every authorised person, whether a company or a firm, every director, partner or other officer of such firms, as the case may be, to produce necessary books, accounts, documents in his custody to the inspecting officer of the Reserve Bank.

Chapter IV of the Act deals with '*Contravention and Penalties*' in the enforcement of the rules and regulations of the Act. It also deals with enforcement of the orders of Adjudicating Authority. This Chapter covers Sections 13, 14 and 15 with several sub-sections.

Chapter V is devoted to '*Adjudication and Appeal*' for the persons alleged to have committed contravention and also provisions for making appeals by the affected person. It deals with the establishment of Appellate Tribunal; composition of Appellate Tribunal, qualifications of the Members; their terms of office; their resignation and removal, etc. It also deals with procedure and powers of Appellate Tribunal and Special Director (Appeals).

According to Section 34, no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which an Adjudicating Authority or the Appellate Tribunal or the Special Director (Appeals) is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

in good faith done or intended to be done or any rule, regulation, notification, direction or order made thereunder.

Section 45: Removal of Difficulties: If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything, not inconsistent with the provisions of the Act for the purpose of removing the difficulty.

Section 46: Power to make rules: The Central Government may, by notification, make rules to carry on the provisions of this Act. It can impose reasonable restrictions on current account transactions under Section 5; the manner in which the contravention may be compounded; the manner of holding an enquiry by the Adjudicating Authority; the form of appeal and fee for filing such appeal; the salary and allowance payable and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals); the salaries and allowances of other employees, etc.

Section 47: Power to make regulation: The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made thereunder. Without prejudice to the generality of the foregoing power, such regulations may provide for:

- (a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under Section 6;
- (b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of Section 7.
- (c) the period within which and the manner of repatriation of foreign exchange.
- (d) the limit upto which any person may possess foreign currency or foreign coins under Section 9.
- (e) the class of persons and the limit upto which foreign currency account may be held or operated under clause (b) of Section 9.
- (f) the limit upto which foreign exchange acquired may be exempted under clause (d) of Section 9.
- (g) the limit upto which foreign exchange acquired may be retained under clause (e) of Section 9.
- (h) any other matter which is required to be, or may be, specified.

Section 48: Rules and Regulations to be laid before parliament: Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, for approval.

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

Miscellaneous

Chapter VII deals with some 'Miscellaneous' items, covering Sections from 39 to 49 (both inclusive).

Section 39: This deals with the presumptions of documents produced as evidence. If any document is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or has been received from any place outside India (duly authenticated) in the course of investigation or proceedings under this Act, the document will be presumed as genuine, unless the contrary is proved.

The Adjudicating Authority can admit documents in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence. Similarly, the handwriting and signatures found in the document will be construed as that of the persons concerned, unless the contrary is proved.

Section 40: Suspension of operation of this Act: If the Central Government considers that it is necessary to restrict the operation of this Act, in the public interest, it can do so by notification. Or the rules may be relaxed indefinitely. Such type of actions should be ratified by the two houses of the parliament.

Section 41: Power of Central Government to give directions: For the purpose of this Act, the Central Government may, from time to time, give to the Reserve Bank such general or special directions as it thinks fit, and the Reserve Bank shall, in the discharge of its functions under this Act, comply with any such directions.

Section 42: Contravention by Companies: When contravention has been committed under this Act by a 'Company', every person in the company who was responsible for the conduct of the business, as well as the company shall be deemed guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Section 43: Death or Insolvency in certain Cases: Any right, obligation, liability, proceeding or appeal arising in relation to the provisions of this Act shall not abate by reason of death or insolvency of the person liable under that Section and upon such death or insolvency such rights and obligations shall devolve on the legal representative of such person or the official receiver or the official assignee, as the case be; provided that a legal representative of the deceased shall be liable only to the extent of the inheritance or estate of the deceased.

Section 44: Bar of legal proceedings: No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions or performing any duties under this Act

Section 49: Repeal and Saving

The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of Section 52 of the said Act shall stand dissolved.

All offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act, as if that Act had not been repealed.

RULES AND REGULATIONS FRAMED UNDER F.E.M.A.

In order to implement the various Sections of the Act, i.e., Foreign Exchange Management Act, 1999, the Reserve Bank of India framed several Rules and Regulations. These rules and regulations are as follows:

1. Foreign Exchange Management (Encashment of Draft, Cheque, instrument and payment of interest) Rules, 2000.
2. Foreign Exchange (Authentication of Documents) Rules, 2000.
3. Foreign Exchange Management (Current Account Transactions) Rules, 2000.
4. Foreign Exchange Management (Adjudication Proceedings and Appeals) Rules, 2000.
5. Foreign Exchange (Compounding Proceedings) Rules, 2000.
6. Foreign Exchange Management (Permissible Capital Account Transaction) Regulations, 2000.
7. Foreign Exchange Management (Issue of Security in India by a Branch, Office or Agency of a person Resident Outside India) Regulations, 2000.
8. Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000.
9. Foreign Exchange Management (Borrowing and Lending in Rupees) Regulation, 2000.
10. Foreign Exchange Management (Deposit) Regulations, 2000.
11. Foreign Exchange Management (Export and Import of Currency) Regulation, 2000.
12. Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000.
13. Foreign Exchange Management (Guarantees) Regulations, 2000.
14. Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000.
15. Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000.
16. Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000.
17. Foreign Exchange Management (Insurance) Regulations, 2000.
18. Foreign Exchange Management (Remittance of Assets) Regulations, 2000.
19. Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000.

20. Foreign Exchange Management (Compounding Proceedings) Rules, 2000.
21. Foreign Exchange Management (Permissible Capital Account Transaction) Regulations, 2000.
22. Foreign Exchange Management (Issue of Security in India by a Branch, Office or Agency of a person Resident Outside India) Regulations, 2000.
23. Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000.
24. Foreign Exchange Management (Borrowing and Lending in Rupees) Regulation, 2000.
25. Foreign Exchange Management (Deposit) Regulations, 2000.
26. Foreign Exchange Management (Export and Import of Currency) Regulations, 2000.
27. Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000.
28. Foreign Exchange Management (Guarantees) Regulations, 2000.
29. Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000.
30. Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000.
31. Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000.
32. Foreign Exchange Management (Insurance) Regulations, 2000.
33. Foreign Exchange Management (Remittance of Assets) Regulations, 2000.
34. Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000.

- (ii) Remittance by artiste, e.g., wrestler, dancer, entertainer, etc. (This restriction is not applicable to artists engaged by tourism related organisations in India like ITDC, State Tourism Development Corporations, etc., during special festivals or those artistes engaged by hotels in five-star category, provided the expenditure is met out of EEFC account).
- (iii) Release of exchange exceeding US dollar 5000 or its equivalent in one calendar year, for one or more private visits to any country (except Nepal and Bhutan).
- (iv) Gift remittance exceeding US dollar 5,000 per beneficiary per annum.
- (v) Donation exceeding US dollar 5,000 per annum per beneficiary.
- (vi) Exchange facilities exceeding US dollar 5,000 for person going abroad for employment.
- (vii) Exchange facility for emigration exceeding US dollar 5,000 or amount prescribed by country of emigration.
- (viii) Remittance for maintenance of close relatives abroad exceeding US dollar 5,000 per year per recipient.
- (ix) Release of foreign exchange, exceeding US dollar 25,000 to a person irrespective of period of stay, for business travel, or attending a conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment or check-up.
- (x) Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.
- (xi) Release of exchange for studies abroad exceeding the estimates from the institution abroad or US dollar 30,000 whichever is higher.
- (xii) Commission to agents abroad for sale of residential flats/commercial plots in India, exceeding 5% of the inward remittance.
- (xiii) Short-term credit to overseas offices of Indian Companies.
- (xiv) Remittance for advertisement on foreign television by a person whose export earnings are less than Rs. 10 lakhs during each of the preceding two years.
- (xv) Remittance of royalty and payment of lump-sum fee under the technical collaboration agreement which has not been registered with Reserve Bank.
- (xvi) Remittance exceeding US dollar 1,00,000 for architectural/consultancy services procured from abroad.
- (xvii) Remittances for use and/or purchase of trade mark/franchise in India.

It will not be possible to study all the rules and regulations mentioned above. We shall confine with the study of a few important rules and regulations.

FOREIGN EXCHANGE MANAGEMENT (CURRENT ACCOUNT TRANSACTIONS) RULES, 2000

Under these Rules, drawal of foreign exchange by any person for the following purposes is prohibited: (Rule 3)

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding, etc., or any other hobby.
3. Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.
4. Payment of commission on exports made towards equity investment in joint ventures/wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6. Payment of commission on exports under Rupee State Credit Route.
7. Payment related to "Call Back Services" of telephones.
8. Remittance of interest income on funds held in Non-resident Special Rupee Scheme account.
9. Drawal of foreign exchange is prohibited for a travel to Nepal and Bhutan, or a transaction with a person resident in Nepal or Bhutan.

Under Rule No. 4, no person shall draw foreign exchange for a transaction mentioned below, without prior approval of the Government of India with the concerned Ministry.

- (a) Cultural Tours (b) Advertisement abroad by any PSU/State and Central Government Department. (c) Remittance of Freight of Vessel chartered by a PSU. (d) Payment of import by a Govt. Department or a PSU on c.i.f. basis (i.e., other than f.o.b. and f.a.s. basis) (e) Multimodal transport operators making remittance to their agents abroad (f) Remittance of container detention charges exceeding the rate prescribed by Direct-General of Shipping (g) Remittance under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump-sum payment exceeds US dollar 2 million; (h) Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State level Sports bodies, if the amount involved exceeds US dollar 1,00,000. (i) Payment for securing insurance for health from a company abroad.

The above rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account or Exchange Earner's Foreign Currency (EEFC) Account of the remitter.

Under Rule No. 5, no person shall draw foreign exchange for the following transactions without prior approval of the Reserve Bank of India.

Schedule II: [Regulation 3(1) (B)]

Classes of capital account transactions of persons resident outside India:

- (a) Investment in India by a person resident outside India, that is to say,
 - (i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
 - (ii) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- (b) Acquisition and transfer of immovable property in India by a person resident outside India.
- (c) Guarantee by a person resident outside India in favour of or on behalf of, a person resident in India.
- (d) Import and export of currency/currency notes into/from India by a person resident outside India.
- (e) Deposits between a person resident in India and a person resident outside India.
- (f) Foreign currency accounts in India of a person resident outside India.
- (g) Remittance outside India of capital assets in India of a person resident outside India.

Regulation No. 4: Prohibition:

Save otherwise provided in the Act, rules or regulations made thereunder:

- (a) no person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction,
- (b) no person resident outside India shall make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage –
 - (i) in the business of Chit Fund, or
 - (ii) as Nidhi Company, or
 - (iii) in agricultural or plantation activities, or
 - (iv) in real estate business, or construction of farm houses, or
 - (v) in trading in Transferable Development Rights (TDRs)

Explanation

For the purpose of this regulation "real estate business" shall not include development of townships, construction of residential/commercial premises, roads and bridges.

"Transferable Development Rights" means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

The above state rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account or Exchange Earner's Foreign Currency (EEFC) Account of the remitter.

FOREIGN EXCHANGE MANAGEMENT (PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS) REGULATIONS, 2000

Permissible Capital Account Transactions

Regulation No. 3 (1): Capital account transactions of a person may be classified under the following heads, namely:—

- (A) transactions, specified in Schedule I, of a person resident in India;
- (B) transactions specified in Schedule II of a person resident outside India.

(2) Subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules: *Provided* that the transaction is within the limit specified in the regulations.

Schedule: I [Regulation 3(1) (A)]

Classes of Capital account transactions of persons resident in India:

- (a) Investment by a person resident in India in foreign securities.
- (b) Foreign Currency loans raised in India and abroad by a person resident in India.
- (c) Transfer of immovable property outside India by a person resident in India.
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- (e) Export, import and holding of currency/currency notes
- (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- (i) Loans and overdrafts by a person resident in India to a person resident outside India.
- (j) Remittance outside India of capital assets of a person resident in India.
- (k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

Form (CDF). This declaration shall not be necessary if the aggregate value of the foreign exchange at any one time does not exceed 10,000 US Dollars.

Export of Foreign Exchange and Currency notes

Regulation : 7 (1) : An authorised person may send out of India foreign currency acquired in normal course of business;

(2) any person may take or send out of India

- (i) cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000;
- (ii) foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder;

(iii) currency in the safes of vessels or aircrafts which has been brought into India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank;

(3) any person may take out of India:

- (i) foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulation, 2000;
- (ii) unspent foreign exchange brought back by him to India while returning from travel abroad and retained in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000;

(4) any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.

Export and Import of currency to or from Nepal and Bhutan

Regulation No. 8: Notwithstanding anything contained in these regulations a person may –

- (i) take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs. 100 in either case).
- (ii) bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs. 100 in either case);
- (iii) take out of India to Nepal or Bhutan, or bring into India from Nepal or Bhutan, currency notes being the currency of Nepal or Bhutan.

Method of Payment for Investment

Regulation No. 5: The payment for investment shall be made by remittance from abroad through normal banking channels or by debit to an account of the investor maintained with an authorised person in India in accordance with the regulations made by the Reserve Bank under the Act.

Declaration to be Furnished

Regulation No. 6: Every person selling or drawing foreign exchange out of India from an authorised person for a capital account transaction shall furnish to the Reserve Bank, a declaration in the form and within the time specified in the regulations relevant to the transaction.

FOREIGN EXCHANGE MANAGEMENT (EXPORT AND IMPORT OF CURRENCY) REGULATIONS, 2000

Export and Import of Indian currency and currency notes

Regulation : 3 (1): Save as otherwise provided in these regulations, any person resident in India,

(a) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes upto an amount not exceeding Rs. 5,000/- per person;

(b) may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation: 'Commemorative Coin' includes coin issued by Government of India Mint to Commemorate any specific occasion or event and expressed in Indian currency;

(c) who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes upto an amount not exceeding Rs. 5,000/- per person.

According to *Regulation No. 4*, no person shall take or send out of India the Indian coins which are covered by the Antique and Art Treasure Act, 1972.

According to *Regulation No. 5*, except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

Import of Foreign Exchange into India

Regulation 6: A person may (a) send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques; (b) bring into India from any place outside India without limit, foreign exchange (other than unissued notes); *provided* that bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the customs authorities in Currency Declaration

FOREIGN EXCHANGE MANAGEMENT (FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA) REGULATIONS, 2000

According to Regulation No. 2, under this, *Foreign Currency Account* means an account held or maintained in currency other than the currency of India or Nepal or Bhutan.

According to Regulation No. 4, a person resident in India may open, hold and maintain with an authorised dealer in India, a *Foreign Currency Account* to be known as *Exchange Earner's Foreign Currency (EEFC) Account*, subject to the terms and conditions of Exchange Earner's Foreign Currency Account Scheme specified in the schedule.

Opening, holding and maintaining a Resident Foreign Currency Account

Regulation No. 5 (1): A person resident in India may open, hold and maintain with an authorised dealer in India a Foreign Currency Account to be known as a *Resident Foreign Currency (RFC) Account* out of foreign exchange –

- (a) received as pension or any other superannuation or other monetary benefits from his employer outside India; or
- (b) realised on conversion of the assets referred to in sub-section (4) of the Section 6 of the Act, and repatriated to India; or
- (c) received or acquired as gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act; or
- (d) referred to in clause (c) of Section 9 of the Act, or acquired as gift or inheritance therefrom.

(2) The funds in a Resident Foreign Currency Account opened or held or maintained in terms of sub-regulation (1) shall be free from all restrictions regarding utilisation of foreign currency balances including any restrictions on investment in any form, by whatever name called, outside India;

Regulation No. 6:

A shipping or airline company incorporated outside India or its agents in India may open, hold and maintain a Foreign Currency Account with an authorised dealer in India for meeting the local expenses in India of such airlines or shipping company: *provided* that the credits to such accounts are only by way of freight or passage fare collection in India or by inward remittances through normal banking channels from its office outside India and, in the case of agent, from his principal outside India.

Note: As required under Regulation 6, the format of Currency Declaration Form (CDF) has been furnished by the Regulations. This form contains 'Instructions for Passengers' and also the necessary format for mentioning the 'Name of the Currency' and other particulars connected therewith, including details to be filled in by the Customs Officer.

FOREIGN EXCHANGE MANAGEMENT (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA) REGULATION, 2000

Regulation No. 3: Restriction on acquisition or transfer of immovable property outside India: Save as otherwise provided in the Act or in these regulations, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank.

Regulation No. 4: Exemptions: Nothing contained in these regulations shall apply to the property:

- (a) held by a person resident in India who is a national of foreign State;
- (b) acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.

Acquisition and Transfer of Immovable Property Outside India

Regulation No. 5 (1): A person resident in India may acquire immovable property outside India:

- (a) by way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4;
- (b) by way of purchase out of foreign exchange held in *Resident Foreign Currency (RFC)* account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulation, 2000.

(2) A person resident in India, who has acquired immovable property outside India under sub-regulation (1) of this regulation, may transfer it by way of gift to his relative who is a person resident in India.

Explanation: For the purpose of this regulation 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

Limit on holding in a Foreign Currency Account

Regulation No. 8: Unless otherwise stipulated by the Reserve Bank, a person resident in India who has opened and is maintaining a Foreign Currency Account in accordance with the provisions of Regulations 6 and 7, may hold therein foreign exchange without any limit.

Types of accounts

Regulation No. 9: A Foreign Currency Account with an authorised dealer in India under these Regulations may be opened, held and maintained –

- (1) in the form of current or savings or term deposits account in cases where the account holder is an individual and in the form of current account or term deposit account in all other cases;
- (2) singly or jointly in the name of person eligible to open, hold and maintain such account.

Remittances out of the accounts after the account holder's death

Regulation No. 10: On the death of a foreign currency account holder:

- (1) the authorised dealer with whom the account is held or maintained may remit to a nominee being a person resident outside India, funds to the extent of his share or entitlement from the account of the deceased account holders.
- (2) a nominee being a person resident in India, who is desirous of remitting funds outside India out of his share for meeting the liabilities abroad of the deceased, may apply to the Reserve Bank for such remittance.

Note: Only a brief sketch of FEMA has been given in this Chapter. Students who are more interested can refer to 'Foreign Exchange Management Act' (42 of 1999) in full and also the Rules and Regulations under FEMA, furnished by the Reserve Bank of India. The Act (FEMA) with Rules and Regulations have come into force from June 1, 2000.

Opening, holding and maintaining a Foreign Currency Account Outside India

Regulation No. 7 (1): An authorised dealer in India may open, hold and maintain with his branch or head office or correspondent outside India, a Foreign Currency Account for the purpose of transacting foreign exchange business and other matters incidental thereto, in accordance with the provisions of the Act or the rules or regulations made or the directions issued thereunder.

(2) A branch outside India of a bank incorporated or constituted in India may open, hold and maintain with a bank outside India, a Foreign Currency Account for the purpose of carrying on normal banking business outside India, subject to compliance with the directions or guidelines issued from time to time by the Reserve Bank, and the regulatory authority in the country where the branch is located.

(3) A shipping or airline company incorporated in India may open, hold and maintain with a bank outside India, a Foreign Currency Account for the purpose of undertaking transactions in the ordinary course of its business.

(4) Life Insurance Corporation of India or General Insurance Corporation of India and its subsidiaries may open, hold and maintain with a bank outside India, a Foreign Currency Account for the purpose of meeting the expenditure incidental to the insurance business carried on by them and for that purpose, credit to such account the insurance premia received by them outside India.

(5) A person resident in India, being an exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank outside India, provided that –

- (a) approval as required under the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 has been obtained for undertaking the contract/project/export of goods or services, and
- (b) the terms and conditions stipulated in the letter of approval have been duly complied with.

(6) A person resident in India who has gone abroad for studies or who is on a visit to a foreign country may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that on his return to India, the balance in the account is repatriated to India:

Provided that short visits to India by a person who has gone abroad for studies, before completion of his studies, shall not be treated as his return to India.

(7) A person resident in India who has gone out of India to participate in an exhibition/trade fair outside India may open, hold and maintain a Foreign Currency Account with a bank outside India for crediting the sale proceeds of goods on display in the exhibition/trade fair: *Provided* that the balance in the account is repatriated to India through normal banking channels within a period of one month from the date of closure of the exhibition/trade fair.

The Essential Commodities Act, 1955

Title and extent of the Act

The Essential Commodities Act, 1955 was enacted by the parliament in the sixth year of the Republic of India. It was formulated in the interests of the general public. It is to control production, supply and distribution and also for trade and commerce in certain commodities.

Definitions

In this Act, "Code" means the code of Criminal Procedure; "Collector" includes an Additional Collector and such other Officer authorized by the Collector to perform the functions and exercise the powers.

(a) "Essential commodity" means any of the following classes of commodities:

- cattle fodder, including oilcakes and other concentrates
- coal, including coke and other derivatives
- component parts and accessories of automobiles
- cotton and woolen textiles
- drugs
- foodstuffs, including edible oil and oilseeds
- iron and steel, including manufactured products of iron and steel
- paper, including newsprint, paperboard and straw board
- petroleum and petroleum products
- raw cotton, whether treated or untreated, and cotton seed
- raw jute
- any other class of commodity declared to be an essential commodity.

(b) "Food-crops" include crops of sugarcane.

(c) "Notified order" means any order notified in the Official Gazette.

(d) "Order" includes a direction issued there under.

(e) "State Government" in relation to a Union Territory, means the administrator thereof.

(f) "Sugar" means: (i) Any form of sugar containing more than ninety percent of sucrose; (ii) Sugar in powdered form; (iii) Sugar in process in sugar factory and (iv) Other words and expressions used.

Responsibility of authorised dealer maintaining foreign currency accounts

Regulation No. 11. An authorised dealer maintaining foreign currency accounts shall—

- (1) comply with the directions issued by the Reserve Bank from time to time; and
- (2) submit periodic returns of Statements; if any, as may be stipulated by the Reserve Bank.

In the *Schedule* under these 'Regulations', 'Exchange Earner's Foreign Currency (EEFC) Account Scheme' has been furnished in detail.

Review Questions

1. What were the objectives of FERA 1973?
2. What were the basic concessions announced through Ordinance on June 8, 1993 relating to FERA?
3. What was FERA and when it came into force?
4. What was sun-set clause incorporated in FEMA?
5. What was the *aim* of FEMA, 1999, according to FEMA?
6. What is the definition of 'Currency' According to FEMA?
7. What is EEFC? Can a person resident in India open, hold and maintain foreign currency account?
8. What is the definition of 'Person' according to FEMA 1999?
9. Briefly enumerate the stringent provisions of FERA 1973.
10. What were the essential differences in the objectives of FERA and FEMA?
11. Explain the term 'Security' according to FEMA.
12. Explain who is 'Person resident in India' according to FEMA.
13. What are the information to be furnished to RBI by exporters of goods and services, according to FERA?
14. What are the powers of the RBI to inspect 'authorised person' according to Section 12, Chapter III of FEMA?
15. State the rules which prohibit drawal of foreign exchange for certain purposes, according to Foreign Exchange Management (Current Account Transaction) Rules 2000.
16. Explain the duties and responsibilities of 'Authorised person' as contemplated in chapter III of the Act covering sections 10, 11 and 12 of FEMA.
17. Discuss about opening, holding and maintaining Resident Foreign Currency (RFC) Account and regulations connected therewith.
18. Critically analyse the differences between FERA and FEMA and indicate how the latter is more liberal and also beneficial.
19. Analyse in broad outline about rules and regulations framed under FEMA.

3c. Where any producer is required by an order to sell any kind of sugar to central or state government and there is no notification the amount shall be calculated by the central government having regard to the minimum price, the manufacturing cost of sugar, the duty or tax, etc. The prices determined vary from time to time, area to area, factory to factory or from one variety to another variety of sugar.

For the purposes of this sub-section, "Producer" means a person carrying on the business of sugar manufacture.

4. If the central government considers in maintaining or increasing the production and supply of an essential commodity, it may order on its own or through an authorized controller to exercise the control functions. The authorized controller functions as per the instructions of the central government and the undertaking or such activity shall be carried on as per the directions of the authorized controller.
5. An order made under this section shall in the case of a general order or order affecting a class of persons.
6. Every order made by the central government or officer shall be laid down before both Houses of Parliament for its approval.

Imposition of duties on the state government, etc.

An order made under section 3 may grant powers and impose duties upon the central or state government, and contain directions to execute the same.

Delegation of powers

The central government by a notified order delegates the powers under section 3 to (a) officer or authority to the central government or (b) state government.

Effect of orders inconsistent with other enactments

Any order made under section 3 shall have the say, if it is contradictory to any other act.

Confiscation of any essential commodity

1. Where any essential commodity is seized, a report of such seizure shall be made to the collector of the district or the presidency-town in which the commodity is seized. The collector may inspect the seized commodity and if convinced, issue order for confiscation of the essential commodity any package, covering or container in which such essential commodity is found or any animal, vehicle, vessel or other conveyance used for carriage.
2. Where the collector, on receiving a report, considers that the essential commodity is perishable or harmful to the public, he may order the same to be sold at the controlled price or order to be sold by a public auction.

Powers to control production, supply, distribution, etc., of essential commodities

1. If central government consider it is necessary for maintaining or increasing supplies of any essential commodity for equitable distribution at fair and reasonable prices, or for the defense or military operations it may increase, decrease or maintain the production, supply, distribution, etc., and trade and commerce therein.
2. Without injustice to the powers, an order made there under may provide for:
 - regulating the production or manufacture of any essential commodity
 - bringing under cultivation any waste or unused land, for the growing of food-crops, and also for increasing the cultivation of food-crops
 - controlling the price at which any essential commodity may be bought or sold in the market
 - regulating the storage, transport, distribution, disposal, acquisition, or consumption of any essential commodity
 - prohibiting the withholding of any commodity which is kept for sale
 - requiring any person holding stock, or engaged in the production, or in the business of buying or selling of any essential commodity
 - (i) to sell the whole or a specified part of the stock
 - (ii) to sell the whole or a part of such commodity to the central or state government.
3. Where any person sells any essential commodity in agreement with an order, he shall be paid the agreed price or controlled price the market rate prevailing in the locality.
- 3a. (i) If the central government is of opinion that it is necessary to take action for controlling the rise in prices, or prevent the hoarding of any food-stuff, it may, by notification specify the selling price.
 - (ii) Any notification issued shall remain in force for a period not exceeding three months.
 - (iii) Where, after the issue of a notification, the seller is paid the agreed price or controlled price or the average market rate of the preceding three months.
 - (iv) The average market rate shall be determined by an officer authorized by the central government and that rate shall be the final rate.
- 3b. Where any person is required to sell to the central or state the essential commodity for which no notification has been issued, they shall be paid the procurement price, having regard to the controlled price, the general crop prospects, the availability at reasonable prices and the recommendations of the Agricultural Prices Commission.

- 2a. If any person convicted of an offence is again convicted under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence and shall also be liable to a fine.
3. Where a person convicted of an offence is again convicted under the same sub-section for contravention of an order, the court shall impose penalty and direct that the person shall not carry on any business for a period of six months.

Power of central government to recover certain amounts as arrears of land revenue

1. Where any person, liable to pay any amount or deposit any amount to the credit of any Fund, makes any default in paying or depositing such amount, it shall be recoverable by government together with simple interest computed at the rate of fifteen per cent per annum as an arrear of 'land revenue' or as a 'public demand'.
2. The amount recovered shall be dealt with in accordance with the order.
3. Notwithstanding anything contained in any other law for the time being in force, no court shall make any order prohibiting the government from recovering any amount.
4. If the government has recovered any amount as arrears of land revenue or as a public demand and it is later declared invalid by a competent court, the government shall refund the amount, together with simple interest at the rate of fifteen percent per annum.

Attempts and abetment

Any person who attempts to contravene or attempt contravention of any order made under section 3 shall be deemed to have contravened that order. Where a person has abetted the contravention of any order for the purpose of procuring any essential commodity for his own use or for his family members or for any dependent person, and not for the purpose of carrying on any business or trade, the court may, impose a sentence or fine.

False statement

If any person, when required by any order made under section 3 to make any statement or furnish any information, gives any false details or makes any false records or records, he shall be punishable with imprisonment up to five years or with a fine, or with both.

Offences by companies

1. If the person contravening an order made under section 3 is a company, every person in the company as well as the company shall be liable to punishment.
2. Where an offence under this Act has been committed with the consent of, or negligence on the part of any director, manager, secretary or other

3. Where any essential commodity is sold, the sale proceeds after deduction of the selling expenses shall be paid to the owner or the person from whom it is seized.

Issue of show-cause notice before confiscation of essential commodity

1. An order for confiscating shall not be given without
 - (a) a notice in writing
 - (b) providing an opportunity of making a written complaint
 - (c) a reasonable opportunity of being heard in the matter
2. An order of confiscation shall not be made, if the owner proves to the collector that it was used without his knowledge and he had taken necessary precautions against such use.
3. A confiscation order shall not be invalid for reason of any defect in the notice.

Appeal

1. Any person aggrieved by an order of confiscation under section 6A may, within one month appeal to the state government. It shall, after giving an opportunity of being heard pass an order, confirming, modifying or cancelling the order of appeal.
2. Where an order under section 6A is modified or cancelled by the state government, and it is not possible to return the commodity seized, such person shall be paid the price along with reasonable interest.

Award of confiscation not to interfere with other punishment

The confiscation order given under this Act by the collector shall not prevent the person from any other punishment levied under this Act.

Bar of jurisdiction in certain cases

Whenever any essential commodity is seized, or any package, or container, or any animal, vehicle, vessel or other conveyance used in carrying and confiscation is pending, the collector or the state government shall not have the power to make contrary orders.

Penalties

1. If any person contravenes any order made under section 3, he shall be punishable with imprisonment and shall also be liable to fine. In case of any property or packing, covering or container, or any animal or vehicle, it shall be forfeited to the government.
2. If any person to whom a direction is given under section 3 fails to comply with the direction, he shall be punishable with imprisonment and shall also be liable to a fine.

1. A person shall not be qualified for appointment as a judge of a special court unless:

- (a) he is qualified for appointment as a judge of a High Court
- (b) he has been a Sessions judge or an Additional Sessions Judge for at least one year.

offences triable by special court

1. Notwithstanding anything contained in the code:

- (a) all offences under this Act shall be triable only by the special court constituted for the area.
 - (b) where a person accused of or suspected of an offence under this Act is forwarded to a Magistrate, he may be sent to custody for a period not exceeding fifteen days in case of a Judicial Magistrate and seven days in case of an Executive Magistrate. If satisfied, the magistrate may send him on bail. If not he is forwarded to the special court.
 - (c) the special court has the same powers of a Magistrate.
 - (d) no person shall be released on bail by any court other than a special court or the high court without giving him an opportunity to oppose the application for release. If the person is below 16 years, a woman or a sick person, the special court may direct release of such a person.
 - (e) a special court, upon checking the police report or upon a complaint made by an officer of the central or state government or any person aggrieved or any recognized consumer association, take notice of that offence.
 - (f) all offences under this Act shall be tried in a summary way and the relevant provisions apply. In the case of any conviction, the person is liable to imprisonment for a term not exceeding two years.
2. In case of any conviction for other offences, it shall not be lawful for the special court to pass a sentence of imprisonment.
3. A special court while obtaining the evidence of any person suspected in an offence, give a pardon to such person on his making a full and true disclosure.
4. Nothing contained in this section shall affect the special powers of the high court.

Appeal and revision

The High Court may exercise all the powers conferred by chapters XXIX and XXX of the code on a high court.

Application of code to proceedings before a special court

The provisions of the code shall apply to the proceedings before a special court. The special court shall be deemed to be a sessions court and the person conducting a prosecution, shall be deemed to be a public prosecutor.

officer of the company such person shall be deemed to be guilty of offence and shall be liable to punishment.

Explanation: For the purposes of this section: (a) "company" means any body corporate, a firm or other association of individuals and (b) "director" in relation to a firm means a partner in the firm.

Offences to be cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be cognizable and non-bailable.

Power of court to publish name, place of business, etc., of companies convicted under the Act

1. Where any company is convicted under this Act, the court shall order the company to publish particulars about the company and contravention, at the expense of the company in such newspapers or in other manner as the court may direct.
2. Publication shall be made only after the period of appeal against the court order has expired.
3. The expenses of any publication shall be recoverable from the company as if it was a fine imposed by the court.

Presumption of cognizable (guilty) mental state

1. For prosecution for any offence, the court shall presume the existence of guilty mental state and the accused has to prove that he is mentally fit.
2. A fact is said to be proved only when the court is clear and does not have any doubt.

Cognizance of offences

The court shall consider guilty of any offence punishable under this Act, only when a report in writing is given about the offence made by a person (public servant or recognized consumer association).

Explanation: For the purpose of this section "recognized consumer association" means voluntary consumer association registered under The Companies Act, 1956 or any other law for the time being in force.

Constitution of special courts

1. The state government may, for the purpose of speedy trial of the offences, constitute as many special courts as necessary in such areas.
2. A special court shall consist of a single judge appointed by the High Court.

The Consumer Protection Act, 1986 (68 of 1986)

Introduction

The industrial revolution and international trade along with commerce has led to the expansion of business and trade. This resulted in a variety of consumer goods in the market to fulfill the needs of the consumers and a host of services like insurance, transport, electricity, housing, entertainment, finance and banking have been made available to the consumers. A well-organized sector of manufactures and traders with better knowledge of markets has come into existence affecting the relationship between traders and consumers. The advertisements of goods and services in television, newspapers, magazines and websites influence the demand in spite of manufacturing defects or imperfections or short comings in the quality, quantity and the purity of the goods or existence of deficiency in the services rendered.

In spite of various provisions providing protection to the consumers and for stringent action against adulterated and sub-standard articles very little could be achieved in the field of consumers' protection. It became necessary to protect the consumers and safe guard their interests. In order to provide better protection to consumers, The Consumer Protection Bill, 1986 was introduced in the Lok Sabha on 5th December, 1986.

Objects and Reasons

1. The Consumer Protection Bill, 1986 seeks to provide protection to the interests of consumers and establish consumer councils and other authorities for the settlement of consumer disputes.
2. It seeks to promote and protect the rights of consumers:
 - (i) right against marketing of hazardous goods.
 - (ii) right to be informed, heard and assured of goods and consumer interests
 - (iii) right to seek redressal
 - (iv) right to education.
3. The objects are to be promoted and protected by the consumer protection council established at central and state level.
4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery to be set up at the district, state and central level.

Grant of injunction, etc. by civil courts

No civil court shall grant an injunction or make any order for any other relief against the central or state government or public officer in respect of any act done or to be done, till a notice is given to such government or officer.

Presumption as to orders

Where an order has been made and signed by an authority in exercise of any power, a court shall presume that such order was made within the meaning of the Indian Evidence Act, 1872.

Burden of proof in certain cases

Where a person is prosecuted for contravening any order which prohibits him from doing any act or hold a thing without a permit, license, etc. he has to prove that he has such authority.

Protection of action taken under the Act

No suit, prosecution or other legal proceeding shall lie against any person for anything done in good faith or intended to be done as per any order.

Prosecution of public servants

Where a public servant is accused of any offence in the discharge of his duty, no court shall take notice of such offence except with the previous sanction of the central or state government.

Repeals and savings

1. The following laws are hereby repealed (a) The Essential Commodities Ordinance, 1955 (b) any other law in force concerned with the control of the production, supply and distribution or trade and commerce in any essential commodity.
2. Notwithstanding such repeal, any order made by any authority, shall continue to be applied.
3. The provisions of sub-section (2) shall be without prejudice to the other provisions.

Review Questions

1. State the Object of Essential Commodities Act.
2. Define the different commodities described under the Essential Commodities Act.
3. State when and how essential commodities can be confiscated.

2 (c) "complaint" means any claim in writing made by a complainant that:

- (i) an unfair or a restrictive trade practice has been adopted by any trader
- (ii) the goods bought or agreed to be bought by him suffer from any defect
- (iii) the services hired or availed of or agreed to be hired or availed of suffer from deficiency of any kind
- (iv) a trader has charged a price in excess of the normal price fixed by or under any law for the time being in force or the price displayed on the goods
- (v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of any provisions.

2 (d) "consumer" means any person who:

- (i) buys any good for a consideration and includes any user of such goods, but does not include a person who obtains such goods for resale or for any other commercial purposes
- (ii) hires or avails of any services for a consideration and includes any beneficiary of such services.

2 (e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the claim in the complaint.

2 (f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force.

2 (g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance required by or under any law for the time being in force.

2 (h) "District Forum" means a Consumer Disputes Redressal Forum established under section 9.

2 (i) "goods" means goods as defined in the Sale of Goods Act, 1930.

2 (j) "manufacturer" means a person who:

- (i) makes or manufactures any goods or parts thereof
- (ii) does not make but assembles parts made or manufactured by others and claims the end product to be goods manufactured by himself
- (iii) put his own mark on any goods made or manufactured by others and claims such goods to be goods made by himself.

Explanation: Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer.

Act 68 of 1986

The Consumer Protection Bill, 1986 was passed by both the Houses of Parliament and it received the assent of the President on 24th December, 1986. It came on the Statutes Book as The Consumer Protection Act, 1986 (68 of 1986).

An Act to provide for better protection of the interests of consumers and make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. It was enacted by Parliament in the Thirty-seventh Year of the Republic of India.

Short title, extent, commencement and applications

1. This Act may be called The Consumer Protection Act, 1986.
2. It extends to the whole of India except the state of Jammu and Kashmir.
3. It shall come into force on such date as notified by the central government and may differ from one state to another state.
4. Unless otherwise expressly provided by the central government, this Act shall apply to all goods and services.

Definitions

1. According to this Act:

1 (a) "appropriate laboratory" means a laboratory or organization

- (i) recognized by the central government
- (ii) recognized by a state government, subject to the guidelines prescribed by the central government
- (iii) any such laboratory or organization established by or under any law for the time-being in force, which is managed by the central or state government. It is used for carrying out analysis or test of goods to determine whether such goods suffer any defect.

2 (aa) "branch office" means

- (i) any establishment described as a branch
- (ii) any establishment carrying on the same activity as that of its head office.

2 (b) "complainant" means

- (i) a consumer
- (ii) any voluntary consumer association registered under The Companies Act, 1956
- (iii) the central government or any state government
- (iv) one or more consumers, where there are numerous consumers having the same interest and are making a complaint.

- (vi) a false representation about the need for, or the usefulness of any goods or services
- (vii) any warranty or guarantee of the performance, value or length of life of a product or of any goods that is not actually true
- (viii) a representation to the public in a form that shows to be:
 - (i) a false warranty or guarantee of a product or of any goods or services
 - (ii) a false promise to replace, maintain or repair an article or to continue a service till the result is achieved
- (ix) misleads the public concerning the price at which a product or goods or services are sold or provided
- (x) false facts disapproving the goods, services or trade of another person.

2. Permits advertisement in any newspaper, for the sale or supply of goods or services at bargain price that are not meant for the same, or for a period, and in quantities that are, not reasonable.

Explanation: For the purposes of clause (2), "bargaining price" means

- (a) a price stated in advertisement to be a bargain price, by reference to an ordinary price
- (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices available in the market.

3. Permits

- (a) the offering of gifts, prizes or other items with no idea of providing them as free of charge but included in the transaction as a whole
- (b) the conduct of any contest, lottery, games for the purpose of promoting any product or any business.

4. Permits the sale or supply of goods to the consumers, knowing that they do not comply with the standards prescribed.

5. Permits the hoarding of goods, or refuses to sell the goods or to provide any service with the intention to raise the cost of those goods or services.

Act not in derogation of any other law

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

2(jj) "**member**" includes the President and a member of the National Commission or a State Commission or a District Forum.

2 (k) "**National Commission**" means the National Consumer Disputes Redressal Commission established under section 9.

2 (l) "**notification**" means a notification published in the Official Gazette.

2 (m) "**person**" includes:

- (i) a firm whether registered or not
- (ii) a Hindu Undivided Family (HUF)
- (iii) a co-operative society
- (iv) other association of persons whether registered under The Societies Registration Act, 1860 or not.

2 (n) "**prescribed**" means prescribed by rules made by the state government or the central government under this Act.

2 (nn) "**restrictive trade practice**" means any trade practice which requires fulfilment of a condition before actual buying, hiring or availing of other goods or services.

2 (o) "**service**" means service which is made available to potential users and includes the provision of facilities, but does not include the rendering of free or personal service.

2 (p) "**State Commission**" means a Consumer Disputes Redressal Commission established in a state under section 9.

2 (q) "**trader**" in relation to any goods means a person who sells or distributes any goods for sale, and if sold or distributed in a package form, includes the packer thereof.

2 (r) "**unfair trade practice**" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or services, adopts any unfair practice and include:

1. The practice of making any statement (oral or written) which falsely represents that:
 - (i) the goods are of a particular standard, quality, quantity, grade, composition, style or model
 - (ii) the services are of a particular standard, quality or grade
 - (iii) any re-built, second-hand, renovated, reconditioned or old goods as new goods
 - (iv) the goods or services have certain uses or characteristics which such goods or services do not actually have
 - (v) the seller or the supplier has an approval or affiliation which they do not have

3. The State Council shall meet as and when necessary but not less than two meetings in a year.

4. The State Council shall meet at such time and place as the chairman may specify and observe such procedure as may be prescribed by the state government.

Objects of the State Council

The objects of every State Council shall be to promote and protect the rights of the consumers within the state as laid down in section 6.

CONSUMER DISPUTES REDRESSAL AGENCIES

Establishment of Consumer Disputes Redressal Agencies

The following agencies shall be established for the purposes of this Act:

- a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the state by notification and the state government may establish more than one District Forum in a district
- a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the state government in the state by notification
- a National Consumer Disputes Redressal Commission established by the central government by notification.

Composition of the District Forum

1. Each District Forum shall consist of:

- a person who is, or has been, or is qualified to be a District Judge, shall be its President
- two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

1a. Every appointment under sub-section (1) shall be made by the state government on the recommendation of a selection committee consisting of the following persons:

- the President of the State Commission - Chairman
- Secretary, Law Department of the State - Member
- Secretary-in-charge of the Department dealing with consumer affairs in the state - Member.

2. Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier, and shall not be

CONSUMER PROTECTION COUNCILS

The Central Consumer Protection Council

- The central government may, by notification, establish a council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).
- The Central Council shall consist of the following members, namely:
 - the Minister-in-charge of consumer affairs in the central government, who shall be its Chairman and
 - such number of other official or non-official members.

Procedure for meetings of the Central Council

- The Central Council shall meet as and when necessary, but at least one meeting of the council shall be held every year.
- The Central Council shall meet at such time and place as the chairman may specify and shall follow the procedure prescribed.

Objects of the Central Council

The objects of the Central Council shall be to promote and protect the rights of the consumers such as the right:

- to be protected against the marketing of goods and services which are hazardous to life and property
- to be informed about the quality, quantity, purity, standard and price of goods or services, so as to protect the consumer against unfair trade practices
- to be assured, access to a variety of goods and services available at competitive prices
- to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums
- to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers
- to consumer education.

The State Consumer Protection Councils

- The state government may, by notification, establish a council to be known as the Consumer Protection Council (hereinafter referred to as the State Council).
- The State Council shall consist of the following members, namely:
 - the Minister-in-charge of consumer affairs in the state government who shall be its chairman
 - such number of other official or non-official members.

- (d) before any sample of the goods is sent to any laboratory, the District Forum may ask the complainant to deposit the specified fees to the credit of the Forum, to meet up the laboratory expenses
 - (e) the District Forum shall then remit the amount deposited to the appropriate laboratory to carry out the analysis or test and on receipt of the report, the District Forum shall forward a copy along with District Forum remarks to the opposite party
 - (f) if any of the parties is not satisfied with the findings of the appropriate laboratory, or not happy with the methods of analysis or test, the District Forum shall require the opposite party to submit his objections in writing
 - (g) the District Forum shall then give to the complainant and the opposite party an opportunity of being heard as to the correctness of the report.
2. The District Forum shall, if the complaint received by it under section 12 cannot be followed, or relates to any services:
- (a) refer a copy of such complaint to the opposite party directing him to give his views within a period of thirty days or such extended period not exceeding fifteen days
 - (b) where the opposite party, on receipt of a copy of the complaint fails to take any action within the time given, the District Forum shall proceed to settle the consumer dispute on the basis of evidence brought to its notice by:
 - (i) the complainant and the opposite party or
 - (ii) the complainant where the opposite party fails to take any action within the time given by the forum.
3. The procedure laid down in sub-sections (1) and (2) shall be final and cannot be questioned in any court on the ground of natural injustice.
4. For the purposes of this section, the District Forum shall have the same powers of a civil court, while trying a suit in respect of the following matters:
- (i) the summoning and attendance of any witness and examining them
 - (ii) the finding and producing any document as evidence
 - (iii) the response of evidence on affidavits
 - (iv) the seeking of report of the concerned test from the appropriate laboratory
 - (v) issuing of any commission for the examination of any witness
 - (vi) any other matter which may be prescribed.

eligible for re-appointment. A member may resign his office by writing to the state government and on such resignation being accepted, his office shall become filled by a person possessing requisite qualifications.

- 3. The salary or honorarium and other allowances payable and the other terms and conditions of service of the members shall be prescribed by the state government.

Jurisdiction of the District Forum

- 1. Subject to the other provisions of this Act, the District Forum has the power to accept complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees five lakhs.
- 2. A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction the opposite party of the complaint resides or has business, or works for gain.

Manner in which the complaint shall be made

A complaint in relation to any goods or services may be filed with a District Forum, by:

- (a) the consumer to whom such goods are sold or delivered or such service is provided
- (b) any recognized consumers association where the consumer is a member of such association or not
- (c) one or more consumers having the same interest, with the permission of the District Forum, for the benefit of all interested consumers
- (d) the central or state government.

Procedure on receipt of complaint

- 1. The District Forum shall, on receipt of a complaint relating to any goods:
 - (a) refer a copy of the complaint to the opposite party directing him to give his version of the case within thirty days or extension up to fifteen days as may be granted by the District Forum
 - (b) where the opposite party on receipt of a complaint, denies or disputes the claims contained in the complaint, or fails to take any action, the District Forum shall settle the dispute in the manner specified in clauses (c) to (g)
 - (c) where the complaint claims a defect in the goods which cannot be determined easily, the District Forum shall obtain a sample of such goods, seal it and send to the appropriate laboratory to determine whether such goods suffer from any defect and to report its findings back within a period of forty-five days or within such extended period

Composition of the State Commission

8.11

1. Each State Commission shall consist of:
 - (a) a person who is or has been a Judge of a High Court, appointed by the state government, who shall be its President
 - (b) two other members, who shall be persons of ability, integrity and standing and possess knowledge or experience in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman. Every appointment shall be made by the state government on the recommendation of a selection committee consisting of:
 - (i) President of the State Commission who shall be its Chairman
 - (ii) Secretary of the Law Department of the State as Member
 - (iii) Secretary in-charge of the Department dealing with consumer affairs in the State as Member.
2. The salary and other allowances payable to, and, the other terms and conditions of service of the members shall be prescribed by the state government.
3. Every member shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and are not eligible for re-appointment.
4. A person appointed as a President or as a member before the commencement of The Consumer Protection Act, 1993, shall continue to hold office till the completion of his term.

Jurisdiction of the State Commission

Subject to the other provisions of this Act, the State Commission shall have power:

- (a) to entertain (i) complaints where the value of the goods or services and compensation, is between rupees five lakhs and rupees twenty lakhs and (ii) appeals against the orders of any District Forum within the state
- (b) to call for the records and pass orders in any pending consumer dispute.

Procedure applicable to State Commission

The provisions of sections 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall be applicable to the State Commission also.

Vacancy in the office of the President

When the office of the President of the District Forum or of the State Commission is vacant or by reason of absence, unable to perform his duties, it shall be performed by a person, who is qualified and appointed accordingly.

8.10

5. Every proceeding before the District Forum is considered to be a judicial proceeding of the Indian Penal Code, and the District Forum shall be deemed to be a civil court.
6. Where the complainant is a consumer referred to in section 2, the provisions of Rule 8 of Schedule I to the Code of Civil Procedure, 1908 shall apply.

Finding of the District Forum

1. If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained suffer from defects or deficiency in the services are proved, it shall issue an order to the opposite party directing to do one or more of the following things:
 - (a) to remove the defect from the goods pointed out by the appropriate laboratory
 - (b) to replace the goods with new goods of similar description
 - (c) to return to the complainant the price, or the charges paid by the complainant
 - (d) to pay compensation to the consumer for any loss or injury suffered due to the negligence of the opposite party
 - (e) to remove the defects or deficiencies in the services provided
 - (f) to discontinue or not repeat any unfair trade practices or restrictive trade practices
 - (g) not to offer hazardous goods for sale or withdraw them from being offered for sale
 - (i) to provide for adequate costs to parties.
2. Every proceeding referred to in sub-section (1) shall be conducted by the President of District Forum and one member along with the other member conduct such proceeding.
- 2a. Every order made by the District Forum under sub-section (1) shall be signed by its President and the members who conducted the proceedings and if they differ on any point or points, the opinion of the majority shall be the final order.
3. Subject to the foregoing provisions, the procedure relating to the conduct of the members, its sittings and other matters shall be prescribed by the state government.

Appeal

Any person aggrieved by an order made by the District Forum may appeal to the State Commission within a period of thirty days and can be extended on reasonable grounds.

Appeal

Any person, aggrieved by an order made by the National Commission under section 21, may appeal to the Supreme Court within a period of thirty days from the date of order and can be extended at the desire of the Supreme Court.

Finality of order

Every order of a District Forum, State Commission or the National Commission shall, if no appeal has been made against, be the final order.

Limitation period

1. The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date of cause of action.
2. A complaint may be entertained after the period specified, if the complainant satisfies, that he had sufficient cause for not filing the complaint within such period.

Administrative control

1. The National Commission shall have administrative control over the State Commissions in the following matters:
 - (i) calling for regular returns regarding the institution, disposal or pendency of cases
 - (ii) issue instructions for adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by the parties, English translation of judgments written in any language, speedy grant of copies of documents, etc.
 - (iii) overseeing the functioning of the State Commissions or the District Forums.
2. The State Commission shall have administrative controls over the District Forums.

Enforcement of orders (by District Forum/State Commission/National Commission)

Every order made by the District Forum, the State Commission or the National Commission, may be enforced, in the same manner as if it were made by a court. It can be sent to the court if such order cannot be executed:

- (a) in the case of an order against a company, the registered office of the company or
- (b) in the case of an order against any other person, the place where the person resides or does business or works, and also the court to which the order is to be sent for execution.

Appeals

Any person aggrieved by an order made by the State Commission, may appeal to the National Commission within a period of thirty days from the date of the order and can be extended at the discretion of the National Commission.

CONSUMER DISPUTES REDRESSAL AGENCIES

Composition of the National Commission

1. The National Commission shall consist of:
 - (a) a person who is or has been a Judge of the Supreme Court, to be appointed by the central government, who shall be its President
 - (b) four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman and shall be appointed by the central government on the recommendation of a selection committee consisting of:
 - (i) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India - Chairman,
 - (ii) the Secretary in the Department of Legal Affairs in the Government of India - Member.
2. The salary and other allowances payable to and the other terms and conditions of service of the members shall be prescribed by the central government.
3. Every member shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and are not eligible for re-appointment.
4. A person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office, till the completion of his term.

Jurisdiction of the National Commission

Subject to the other provisions of this Act, the National Commission shall have power (a) to entertain (i) complaints where the value of the goods or services and compensation, exceeds rupees twenty lakhs and (ii) appeals against the orders of any State Commission. (b) to call for the records and pass orders in any pending consumer dispute of State Commission.

Power of and procedure applicable to the National Commission

The National Commission shall, in the disposal of any complaints or cases, have:

- (a) the powers of a civil court
- (b) the power to issue an order to the opposite party directing him to do things in section 14, and follow the procedure given by the central government.

Review Questions

Part - A

1. State the objects of The Consumer Protection Act, 1986.
2. Who is a complainant?
3. What is a complaint?
4. Who is a consumer?
5. Write a note on State Consumer Protection Council.
6. What is the manner in which a complaint shall be made?
7. Can an appeal be made against the order of the District Forum?
8. What is the penalty if an order of the District Forum is not complied?

Part - B

1. What do you mean by unfair trade practices?
2. Briefly explain the role and need for Central Consumer Protection Council.
3. Describe the composition and jurisdiction of the District Forum.
4. Explain the procedure to be followed by a District Forum on receipt of a complaint.
5. Explain the composition of the State Commission.
6. Describe in detail the importance of the National Commission.
7. Discuss the various consumer disputes redressal agencies.

Dismissal of frivolous or annoying complaints

Where a complaint instituted before the District Forum, the State Commission or the National Commission, is found to be frivolous or annoying, it shall, dismiss the complaint and order the complainant to pay the opposite party such cost, not exceeding ten thousand rupees.

Penalties

Where a trader or a person against whom a complaint is made fails to comply with any order made by the District Forum, the State Commission or the National Commission, shall be punishable with imprisonment, from one month to three years, or with a fine ranging between Rs. 2000-10000, or with both.

MISCELLANEOUS

Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission for executing any order.

Power to remove difficulties

1. If any difficulty arises in effecting the provisions of this Act, the central government may, by order allow alterations to be made for removing the difficulty.
2. Every order made, shall be laid before each House of Parliament.

Vacancies or defects in appointment not to invalidate orders

No act or proceedings of the District Forum, the State Commission or the National Commission shall be invalid because there is a vacancy amongst its members or any defect in the constitution.

Power to make rules

The central government or the state government may, by notification, make rules for carrying out the provisions of this Act.

Laying of rules

1. Every rule made by the central government under this Act shall be laid before each House of Parliament, while it is in session, for a period of thirty days. If both Houses agree in making any modification in the rule or agree that the rule should not be made, the rule shall then have effect only after modification or be of no effect, as the case may be.
2. Every rule made by a state government under this Act shall be laid, before the State Legislature.

- (d) "occupier", means the person who has control over the affairs of the factory or the premises, and also includes, the person in possession of the substance.
- (dd) "outlet" includes any pipe or channel, open or closed carrying sewage or trade effluent or any other holding arrangement which is likely to cause pollution.
- (e) "pollution" means contamination of water or alteration of the physical, chemical or biological properties of water, or discharge of any sewage or trade effluent, or of any other liquid, gaseous or solid substance into water or render water harmful to public health or safety or the life and health of animals or plants.
- (f) "prescribed" means prescribed by rules made under this Act by the central government or, the state government,
- (g) "sewage effluent" means effluent from any sewerage system or sewage disposal works.
- (gg) "sewer" means any pipe or channel, carrying sewage or trade effluent.
- (h) "State Board" means a State Pollution Control Board constituted under the Act.
- (i) "State Government" in relation to a Union territory means the Administrator appointed under article 239 of the Constitution.
- (j) "stream" includes:
 - (i) river; (ii) water course; (iii) inland water; (iv) subterranean waters; (v) sea or tidal waters specified in Official Gazette by the state government.
- (k) "trade effluent" includes any solid, liquid, or gaseous substance which is discharged from any premises used for carrying on any industry, operation or process, or in industrial sewage.

THE CENTRAL AND STATE BOARDS FOR PREVENTION AND CONTROL OF WATER POLLUTION

Constitution of Central Board

1. The central government shall, by notification in the Official Gazette, appoint, constitute a Central Board to be called the Central Pollution Control Board to exercise the powers and functions assigned under this Act.
2. The Central Board shall consist of the following members:
 - (a) a full-time chairman, being a person having special knowledge or practical experience in matters relating to environmental protection or a person having knowledge and experience in administering institutions, to be nominated by the central government.
 - (b) such number of officials, not exceeding five to be nominated by the central government.

Chapter 9

Water (Prevention and Control of Pollution) Act, 1974

The social consciousness of corporates improved its responsibility towards the society i.e., corporate social responsibility. This responsibility gave importance to The Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981. There is a need to protect the environment from both water and air pollutants. Hence, the Water (Prevention and Control of Pollution) Act, 1974 was passed. It is considered as an Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment of Boards, conferring on and assigning powers to such Boards for its efficient functioning. The Act was enacted by Parliament in the Twenty-fifth Year of the Republic of India.

PRELIMINARY

Short Title, Application and Commencement

1. This Act may be called the Water (Prevention and Control of Pollution) Act, 1974.
2. It applies in the first instance to the whole of the states of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and the Union territories and other states which adopts this Act under clause (1) or article 252 of the constitution.
3. It shall come into force, in the above states and in the union territories, and in any other state or union territory which adopts this Act under clause (1) of article 252 of the constitution on the date of such adoption or the date on which this Act comes into force.

Definitions

According to this Act:

- (a) "Board" means the Central Board or State Board.
- (b) "Central Board" means the Central Pollution Control Board constituted under the Act.
- (c) "members" means a member of a Board and includes the chairman thereof.

Terms and Conditions of Service of Members

1. A member of a Board, other than a member-secretary, shall hold office for a term of three years from the date of nomination and continue until his successor enters his office.
2. The term of office of a member of a Board shall come to an end as soon as he ceases to hold the office under the central government or the state government.
3. The central government or, the state government may, remove any member before the expiry of his term of office, after giving a reasonable opportunity of being heard.
4. A member of a Board, other than the member-secretary, may at any time resign by writing in his own handwriting:
 - (a) in the case of chairman, to the central government or, the state government and
 - (b) in any other case, to the chairman of the Board.
5. A member of a Board, other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, from three consecutive meetings of the Board. If he ceases to be a member, the vacation date shall be the date specified in notification in the Official Gazette.
6. A casual vacancy in a Board shall be filled by a fresh nomination.
7. A member of a Board shall be eligible for re-nomination.
8. The other terms and conditions of service of a member shall be as prescribed.
9. The other terms and conditions of service of the chairman shall be as prescribed.

Disqualifications

1. No person shall be a member of a Board, who:
 - (a) is, or at any time has been adjudged insolvent or has not been able to pay his debts, or
 - (b) is of unsound mind, or
 - (c) is, or has been, convicted of an offence which, in the opinion of the central government or, the state government, is immoral, or
 - (d) is, or at any time has been, convicted of an offence under this Act, or
 - (e) has directly or indirectly, involved in any company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus for the treatment of sewage or trade effluents, or

- (c) such number of persons, not exceeding five to be nominated by the central government, from amongst the members of the State Boards.
 - (d) such number of non-officials, not exceeding three to be nominated by the central government.
 - (e) two persons to represent the companies or corporations owned, controlled or managed by the central government.
 - (f) a full-time member-secretary, possessing qualifications, knowledge and experience to be appointed by the central government.
3. The Central Board shall be a body corporate having perpetual succession and a common seal, to acquire, hold and dispose of property and to contract, and may sue or be sued.

Constitution of State Boards

1. The state government shall, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board, to exercise the powers and functions assigned under this Act.
2. A State Board shall consist of the following members:
 - (a) a chairman (whole-time or part-time), being a person having special knowledge or practical experience in matters relating to environmental protection or a person having knowledge and experience in administering institutions, to be nominated by the state government.
 - (b) such number of officials, not exceeding five to be nominated by the state government.
 - (c) such number of persons, not exceeding five to be nominated by the state government, from amongst the members of the local authorities functioning within the state.
 - (d) such number of non-officials, not exceeding three to be nominated by the state government.
 - (e) two persons to represent the companies or corporations owned, controlled or managed by the state government.
 - (f) a full-time member-secretary, possessing qualifications, knowledge and experience to be appointed by the state government.
3. Every State Board shall be a body corporate having perpetual succession and a common seal, to acquire, hold and dispose of property and to contract, and may sue or be sued.
4. There will be no State Board for a Union territory, instead the Central Board shall exercise the powers and perform the functions and may also delegate.

- (f) is a director / secretary / manager / salaried officer / employee of any company having any contract with the Board, or with a local authority in the state, or with a government company, for carrying out treatment of sewage or trade effluents, or
 - (g) has so abused his position as a member, in the opinion of the central government or the state government, as to render his continuance detrimental to the interest of the general public.
2. No order of removal shall be made by the central government or the state government, unless the member concerned has been given a reasonable opportunity of showing cause.
 3. A member who has been removed under this section shall not be eligible for re-nomination as a member.

Vacation of Seat by Members

If a member of a Board becomes subject to any of the disqualifications specified in section 6, his seat shall become vacant.

Meetings of Boards

A Board shall meet at least once in every three months and shall follow the prescribed procedure in transaction of business at its meetings and in case of any urgency, he may convene a meeting at such time as he thinks fit.

Constitution of Committees

1. A Board may constitute as many committees consisting wholly or partly of members for various purposes.
2. A committee constituted shall meet at such time and place, and shall follow the prescribed procedure in regard to the transaction of business at its meetings.
3. The members of a committee shall be paid such prescribed fees and allowances, for attending its meetings and for attending to any other work of the Board.

Temporary Association of Persons with Board for Particular Purposes

1. A Board may associate with itself any person whose assistance or advice it may desire for performing any of its functions under this Act.
2. A person associated with the Board shall have a right to take part in the discussions of the Board relevant to that purpose, but shall not vote at a meeting or be a member for any other purpose.
3. A person associated with the Board for any purpose shall be paid such fees and allowances, for attending its meetings and for attending to any other prescribed work.

Terms and Conditions of Service of Members

1. A member of a Board, other than, a member-secretary, shall hold office for a term of three years from the date of nomination and continue until his successor enters his office.
2. The term of office of a member of a Board shall come to an end as soon as he ceases to hold the office under the central government or the state government.
3. The central government or, the state government may, remove any member before the expiry of his term of office, after giving a reasonable opportunity of being heard.
4. A member of a Board, other than the member-secretary, may at any time resign by writing in his own handwriting:
 - (a) in the case of chairman, to the central government or, the state government and
 - (b) in any other case, to the chairman of the Board.
5. A member of a Board, other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, from three consecutive meetings of the Board. If he ceases to be a member, the vacation date shall be the date specified in notification in the Official Gazette.
6. A casual vacancy in a Board shall be filled by a fresh nomination.
7. A member of a Board shall be eligible for re-nomination.
8. The other terms and conditions of service of a member shall be as prescribed.
9. The other terms and conditions of service of the chairman shall be as prescribed.

Disqualifications

1. No person shall be a member of a Board, who:
 - (a) is, or at any time has been adjudged insolvent or has not been able to pay his debts, or
 - (b) is of unsound mind, or
 - (c) is, or has been, convicted of an offence which, in the opinion of the central government or, the state government, is immoral, or
 - (d) is, or at any time has been, convicted of an offence under this Act, or
 - (e) has directly or indirectly, involved in any company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus for the treatment of sewage or trade effluents, or

JOINT BOARDS**Constitution of Joint Board**

1. Notwithstanding anything contained in this Act, an agreement may be entered into:
 - (a) by two or more governments of neighbouring states, or
 - (b) by the central government and one or more state governments, to be in force for such period and to be subject to renewal specified in the agreement to provide for the constitution of a Joint Board.
2. An agreement under this section may:
 - (a) provide for the apportionment between the participating states or between the central government and the participating state governments, of the expenditure in connection with the Joint Board.
 - (b) determine which of the participating state governments and central government shall exercise and perform the powers and functions.
 - (c) provide for consultation between the participating state governments and the central government either generally or with reference to specific matters arising under this Act.
 - (d) make such incidental and ancillary provisions, not inconsistent with this Act.
3. An agreement under this section shall be published, in the Official Gazette of the participating states and participating Union territories.

Composition of Joint Boards

1. A Joint Board constituted in an agreement entered into under clause (a) shall consist of the following members:
 - (a) a full-time chairman, being a person having special knowledge or practical experience in matters relating to environmental protection or a person having knowledge and experience in administering institutions is to be nominated by the central government.
 - (b) two officials from each of the participating states to be nominated by the concerned participating state government.
 - (c) one person to be nominated by each of the participating state governments from amongst the members of the local authorities.
 - (d) one non-official to be nominated by each of the participating state governments.
 - (e) two persons to be nominated by the central government to represent the companies owned, controlled or managed by the participating state government.
 - (f) a full-time member-secretary, possessing qualifications, knowledge and experience in aspects of pollution control, to be appointed by the central government.

Vacancy in Board not to Invalidate Acts and Proceedings

No act or proceeding of a Board or any committee shall be held up because of any vacancy in, or any defect in the constitution of the Board or such committee.

Delegation of Powers to Chairman

The chairman of a Board shall exercise such powers and perform such duties as may be prescribed from time to time, and delegated to him by the Board.

Member-secretary and Officers and Other Employees of the Board

1. Terms and conditions of service of the member-secretary shall be prescribed.
2. The member-secretary shall exercise such powers and perform such duties as may be prescribed from time to time, and delegated to him by the Board or its chairman.
3. Subject to the rules made by the central government or, the state government, a Board may appoint officers and employees necessary for the efficient performance of its functions.
- 3a. The method of recruitment and the terms and conditions of service of the officers and other employees of the Central Board or a State Board shall be determined by regulations made by the Central Board / State Board and shall not take effect unless:
 - (a) in the case of a regulation made by the Central Board, it is approved by the central government and
 - (b) in the case of a regulation made by a State Board, it is approved by the state government
- 3b. The Board may, by an order, and subject to conditions and limitations, delegate its powers and functions to any officer of the Board.
4. Subject to prescribed conditions, a Board may from time to time appoint any qualified person to be a consulting engineer to the Board with prescribed terms and conditions of service and pay him such salaries and allowances.

POWERS AND FUNCTIONS OF BOARDS

Functions of Central Board

1. The main function of the Central Board shall be to promote cleanliness of streams and wells in different areas of the states.
2. In addition, the Central Board may perform all or any of the following functions:
 - (a) advise the central government on matters concerning the prevention and control of water pollution.
 - (b) co-ordinate the activities of the State Boards and resolve disputes.
 - (c) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution.
 - (d) plan and organize the training of persons engaged in water pollution on terms and conditions specified by the Central Board.
 - (e) organize through mass media a comprehensive programme on prevention and control of water pollution.
 - (ee) perform the functions of any State Board.
 - (f) collect, compile and publish technical and statistical data relating to water pollution, the measures devised and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and circulate information.
 - (g) lay down, modify or cancel, in consultation with the state government concerned, the standards for a stream or well.
 - (h) plan and execute a nation-wide programme for the prevention, control or abatement of water pollution.
 - (i) perform other functions as may be prescribed.
3. The Board may establish or recognize a laboratory to enable the Board to perform its functions efficiently, including the analysis of samples of water or of any sewage.

Functions of State Board

1. The functions of a State Board shall be:
 - (a) to plan and execute a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the state.
 - (b) to advise the state government on matters concerning the water pollution.
 - (c) to collect and disseminate information relating to water pollution.
 - (d) to encourage, conduct and participate in investigations and research relating to problems of water pollution.

2. A Joint Board constituted in an agreement entered into under clause (b) shall consist of the following members:

- (a) a full-time chairman, being a person having special knowledge or practical experience in matters relating to environmental protection or a person having knowledge and experience in administering institutions is to be nominated by the central government.
 - (b) two officials from each of the participating Union territories to be nominated by the central government and two officials from the participating states to be nominated by the central government.
 - (c) one person each to be nominated by the central government and the state government from amongst the members of their respective local authorities.
 - (d) one non-official to be nominated by the central government and one person to be appointed by the participating state governments.
 - (e) two persons to be nominated by the central government to represent the companies owned, controlled or managed by the central government and two persons to be nominated by the central government to represent the companies owned, controlled or managed by the participating state government.
 - (f) a full-time member-secretary, possessing qualifications, knowledge and experience in aspects of pollution control, to be appointed by the central government.
3. When a Joint Board is constituted in pursuance of an agreement under clause (b), the provisions of sub-section (4) of section 4 shall not apply in relation to the Union territory.
 4. The provisions shall apply to the Joint Board and its member-secretary as they apply to a State Board and its member-secretary.
 5. Any reference in this Act to the State Board shall be including a Joint Board also.

Special Provision Relating to Giving of Directions

Where any Joint Board is constituted under section 13:

- (a) the government of the state for which the Joint Board is constituted shall give any direction for matters within the exclusive territorial jurisdiction of the state.
- (b) the central government shall be competent to give any direction for matters within the territorial jurisdiction of two or more states or pertaining to a Union territory.

Powers to Give Directions

1. In the performance of its functions under this Act:

- (a) the Central Board shall be bound by directions in writing given by the central government, and
- (b) every State Board shall be bound by directions in writing given by the central government or the state government.

If a direction given by the state government is inconsistent with the direction given by the Central Board, the decision of the central government shall be final.

- 2. Where the central government is of the opinion that the State Board has defaulted in complying with any given directions and an emergency has arisen, it may, by order, direct the Central Board to perform the functions of the State Board for such period and for such purposes, as may be specified in the order.
- 3. Where the Central Board performs any of the functions of the State Board, the expenses, incurred with respect to performance of such functions may be recovered by the Central Board with interest.
- 4. Any direction to perform the functions of any State Board given under sub-section (2) in respect of any area would not prevent it from performing such functions in any other area in the state or any of its other functions in that area.

PREVENTION AND CONTROL OF WATER POLLUTION**Power of State Government to Restrict the Application of the Act to Certain Areas**

- 1. If the state government, after consultation with the State Board, is of opinion that the provisions of this Act need not apply to the entire state, it may, by notification in the Official Gazette, restrict the application of this Act to few areas.
- 2. Each water pollution, prevention and control area may be declared by reference to a map or the line of any watershed or the boundary of any district or partly by one method and partly by another.
- 3. The state government, by notification in the Official Gazette:
 - (a) alter any water pollution prevention and control area (extension or reduction)
 - (b) define a new water pollution, prevention and control area which may be a merger of one or more existing areas.

- (c) to collaborate with the Central Board in organizing the training persons engaged in programmes relating to prevention, control, abatement of water pollution and to organize connected mass education programmes.
 - (f) to inspect sewage or trade effluents, works and plants for the treatment and to review them together with the disposal system.
 - (g) lay down, modify or cancel standards for the sewage and trade effluents.
 - (h) to evolve economical and reliable methods of treatment of sewage and trade effluents, taking into consideration the peculiar condition of soils, climate and water resources.
 - (i) to evolve methods of utilization of sewage and trade effluents in agriculture.
 - (j) to evolve efficient methods of disposal of sewage and trade effluents on land.
 - (k) to lay down standards of treatment of sewage and trade effluents to be discharged into stream taking into account the minimum fair weather dilution and tolerance limits of pollution permissible in the water, after discharge of effluents.
 - (l) to make, vary or revoke any order:
 - (i) for the prevention, control or abatement of discharge of waste into streams or wells.
 - (ii) requiring concerned person to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend existing system or to adopt remedial measures to prevent control or abate water pollution.
 - (m) to lay down standards to be complied with by persons dealing in discharge of sewage or sullage or both and to lay down, modify or cancel standards.
 - (n) to advise the state government on location of any industry the carrying on of which is likely to pollute a stream or well.
 - (o) to perform such other functions as may be prescribed from time to time by the Central Board or the state government.
2. The Board may establish or recognize laboratories to enable the Board to perform its functions efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents

4. When a sample of any sewage or trade effluent is taken for analysis and the person taking the sample serves on the occupier or his agent, a notice and still he willfully absents himself, then:
 - (a) the sample so taken shall be placed in a container, marked and sealed and signed by the person taking the sample and send for analysis to the laboratory and inform the Government Analyst in writing about the willful absence of the occupier or his agent.
 - (b) the cost of analysis of sample shall be payable by the occupier or his agent and in case of default, the same shall be recoverable, as an arrear of land revenue or public demand.
5. When a sample of any sewage is taken for analysis and the person taking the sample serves a notice and the occupier or his agent does not insist for dividing the sample into two parts, then, the sample shall be sealed, signed and sent to the laboratory.

Reports of Results of Analysis on Samples Taken Under Section 21

1. Where a sample of any sewage or trade effluent has been sent for analysis to the laboratory, the concerned Board analyst shall analyze the sample and submit a report in the prescribed form in triplicate to the Central Board or the State Board.
2. On receipt of the report, one copy of the report shall be sent, to the occupier or his agent, another copy shall be preserved for production before the court in case of any legal proceedings and the other copy shall be kept by the concerned Central or State Board.
3. Where a sample has been sent for analysis to any laboratory, the Government analyst shall analyze the sample and submit a report in the prescribed form in triplicate to the Central Board or, the State Board.
4. If there is any inconsistency or discrepancy between, the results of the laboratory established or recognized by the Central Board or the State Board, and that of the laboratory established under section 51 or section 52, the report of the latter shall prevail.
5. Any cost incurred in getting the sample analyzed at the request of the occupier or his agent shall be payable by them and in case of default it shall be recoverable as arrears of land revenue or of public demand.

Power of Entry and Inspection

1. Any person empowered by a State Board in this behalf shall have a right at any time to enter any place:
 - (a) for the purpose of performing any of the functions of the Board
 - (b) for the purpose of determining if the functions are being performed or if any provisions of this Act is being complied with,

Power to Obtain Information

1. For the purpose of enabling a State Board to perform its function, the State Board or any officer on its behalf, may make surveys of any area and measure and keep records of the flow and other characteristics of a stream or well. It can also be for the rainfall in such area and for the installation and maintenance of apparatus, and may take other steps necessary in order to obtain any information required.
2. A State Board may give directions requiring any person who in its opinion is abstracting excess water or is discharging sewage into any stream or well, to give information as to the abstraction or the discharge.
3. A State Board may, with a view to preventing or controlling pollution of water, give directions to any person in charge of establishment, to furnish the required information.

Power to Take Samples of Effluents and its Procedure

1. A State Board or any officer empowered by it shall have power to take samples of water or samples of any sewage for analysis.
2. The result of analysis of a sample of any sewage taken under sub-section (1) shall not be accepted as legal evidence unless the provisions of sub-sections (3), (4) and (5) are complied with.
3. When a sample of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall:
 - (a) serve on the person in charge or any agent, a notice, of his intention to have it for analysis purpose.
 - (b) in the presence of the occupier or his agent, divide the sample into two parts.
 - (c) place in separate containers which shall be marked and sealed and signed both by the person taking the sample and the occupier or his agent.
 - (d) send one container: (i) in a case where sample is taken from any area situated in a Union territory, to the laboratory established or recognized by the Central Board and (ii) in any other case, to the laboratory established or recognized by the State Board.
 - (e) on the request of the occupier or his agent, send the second container: (i) in a case where sample is taken from any area situated in a Union territory, to the laboratory established or specified under section 51; and (ii) in an other case, to the laboratory established or specified under section 52.

4. The State Board may:

(a) grant its consent, subject to conditions as it may impose, being the point of discharge, nature and composition, temperature, volume of discharge of trade effluent, and validity of consent.

(b) refuse such consent with reasons recorded in writing.

5. Where, without the consent of the State Board, any industry operation or process, or any treatment and disposal system or any extension, is established, or a new or altered outlet is brought into use for the discharge, a notice is served imposing conditions.

6. Every State Board shall maintain a register containing conditions imposed under this section, which shall be open to inspection at all reasonable hours by any interested person. It shall be conclusive proof that the consent was granted subject to conditions.

7. The consent shall, be deemed to have been given unconditionally on the expiry of a period of four months of making an application to the State Board.

8. For the purposes of this section and sections 27 and 30:

(a) the expression "new or altered outlet" means any outlet which is constructed on or after the commencement of this Act or is altered after such commencement

(b) the expression "new discharge" means a discharge which is not made within the preceding twelve months. A continuation of previous discharge shall not be deemed to be a new discharge.

Provision Regarding Existing Discharge of Sewage or Trade Effluent

Where immediately before the commencement of this Act any person was discharging any sewage or trade, the provisions of section 25 shall apply. The application for consent has to be made on or before the date specified by the state government.

Refusal or Withdrawal of Consent by State Board

1. A State Board shall not grant its consent, unless conditions imposed are complied with to enable it to exercise its right to take samples of the effluent.

2. A State Board may from time to time review:

(a) any condition imposed and may serve a notice on the person making variation or revoking any condition.

(b) the refusal of any consent referred to in section 25 or section 26 or the grant of consent without any condition, and may make such orders accordingly.

3. Any conditions imposed under section 25 or section 26 shall be subject to any variation and shall continue in force until revoked.

(c) for the purpose of examining any plant, record, register, or document or for conducting a search of any place or the rules made is being executed and for seizing them to be used as evidence.

2. The provisions of any law in force in that state, shall, apply to any search or seizure.

Prohibition on Use of Stream or Well for Disposal of Polluting Matter, Etc.

1. Subject to the provisions of this section:

(a) no person shall knowingly cause or permit any polluting matter to enter directly or indirectly into any stream or well or sewer or on land or

(b) no person shall knowingly cause or permit to enter into any stream any matter which may tend, to obstruct the proper flow of the water or lead to an aggravation of pollution.

2. A person shall not be guilty of an offence because of having done any of the following acts:

(a) constructing, improving or maintaining any building, bridge, dam or sewer on the bank or bed of any stream

(b) depositing any materials on the bank or in the bed of any stream for the purpose of protecting it provided such materials are not polluting the stream

(c) putting into stream any sand or gravel or other natural deposit which has been deposited by the current of such stream

(d) with the consent of the State Board, allow the deposit accumulated in a well, pond or reservoir to enter into any stream.

3. The state government may, with the consent of the State Board, provide certain exemptions by notification in the Official Gazette.

Restrictions on New Outlets and New Discharges

1. No person shall, without the previous consent of the State Board:

(a) establish any industry, process, or any treatment and disposal system or an extension or addition, which is likely to discharge sewage into a stream or well or sewer or on land (hereafter in this section referred to as discharge of sewage) or

(b) bring into use any new or altered outlets for the discharge of sewage or

(c) begin to make any new discharge of sewage.

2. An application for consent of the State Board shall be made in such form, with all particulars and prescribed fees.

3. The State Board may make inquiry in respect of the application.

Furnishing of Information to State Board and Other Agencies

1. If at any place where any industry, operation or process, or any treatment and disposal system or due to accident, any poisonous or polluting matter is being discharged into a stream or well or sewer or on land and, as such, the water is being polluted, then the person in charge of such place shall intimate the same to the State Board and other prescribed authorities or agencies.
2. Where any local authority operates any sewerage system or sewage works the provisions of sub-section (1) shall apply to such local authority.

Emergency Measures in Case of Pollution of Stream or Well

1. Where it appears to the State Board that any poisonous, or polluting matter is present in any stream or well or on land by reason of the discharge, and if the Board is of opinion that it is necessary to take immediate action, it may do so in writing citing the reasons.

It may carry out the operations necessary for all or any of the following purposes:

- (a) removing that matter from the stream or well or on land and disposing it off
- (b) remedying any pollution caused by its presence in the stream or well
- (c) issuing orders prohibiting the persons concerned from discharging any poisonous, or polluting matter into the stream or well or on land.
2. The power conferred by sub-section (1) does not include the power to construct any temporary works.

Power of Board to make Application to Courts for Restraining Apprehended Pollution of Water in Streams or Wells

1. Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by disposal of any matter, the Board may make an application to a court (Metropolitan Magistrate or a Judicial Magistrate of first class), for restraining such pollution.
2. On receipt of an application, the court may make such reasonable order.
3. Where the court makes an order restraining any person from polluting the water, it may:
 - (i) direct the person polluting water, to remove such matter from the stream or well
 - (ii) if the direction under clause (i) is not complied, authorize the Board, to undertake the removal and disposal of the matter in a manner specified by the court.

Appeals

1. Any person aggrieved by an order made by the State Board under Section 25, 26 or 27 may within thirty days, prefer an appeal to such authority (hereinafter referred to as the appellate authority) and may entertain late appeal if sufficient cause is provided.
2. An appellate authority shall consist of a single person or three persons as the state government may consider and appoint.
3. The form and manner of appeal, the fees payable and the procedure to be followed by the appellate authority shall be prescribed.
4. On receipt of an appeal, the appellate authority shall, after giving an opportunity of being heard, dispose of the appeal.
5. If the appellate authority determines that any condition was unreasonable, then:
 - (a) where the appeal is in respect of the unreasonableness of any condition, such authority may cancel that condition or substitute with reasonable conditions.
 - (b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct that the condition can continue or change it in a reasonable manner.

Revision

1. The state government may on its own motion or on an application made to it, call for the records of any case for the purpose of satisfying the legality of such order and may pass order after providing the person a reasonable opportunity of being heard
2. The state government shall not revise any order where an appeal lies to the appellate authority.

Power of State Board to Carry Out Certain Works

1. Where any conditions have been imposed on any person while granting consent and it requires execution of any work and it has not been executed within the specified time, the State Board may serve a notice requiring the person to execute the work.
2. If the person fails to execute the work within the specified time, the State Board may itself execute such work.
3. All expenses incurred by the State Board for the execution, together with interest, may be recovered from the person concerned, as arrears of land revenue, or of public demand.

Budget

The Central Board or, the State Board shall, during each financial year, prepare, in such form and time, a budget in respect of the next financial year showing the estimated receipt and expenditure, and copies forwarded to the concerned government.

Annual Report

1. The Central Board shall, during each financial year, prepare an annual report with full account of its activities during the previous financial year and copies forwarded within four months to the central government. This shall be laid before both Houses of Parliament within nine months from the last date of the previous financial year.
2. Every State Board shall, during each financial year, prepare an annual report with full account of its activities during the previous financial year and copies forwarded within four months to the state government. This shall be laid before the state legislature within a period of nine months from the last date of the previous financial year.

Account and Audit

1. Every Board shall maintain proper accounts and records and prepare an annual statement of accounts as prescribed by the central government or, the state government.
2. The accounts of the Board shall be audited by a duly qualified auditor.
3. The auditor shall be appointed by the central government or, the state government on the advice of the Comptroller and Auditor-General of India.
4. Every auditor so appointed shall have the right to demand the production of books, accounts, vouchers, other documents and papers and inspect any offices of the Board.
5. Every such auditor shall send a copy of his report together with an audited copy of the accounts to the central government or, the state government.
6. The central government shall, after the receipt of the audit report, cause the same to be laid before both Houses of Parliament.
7. The state government shall, after the receipt of the audit report, cause the same to be laid before the State Legislature.

PENALTIES AND PROCEDURE**Failure to Comply with Directions or Orders**

1. Whoever fails to comply with any direction within such specified time shall be punishable with imprisonment for a term of three months or with fine up to ten thousand rupees or with both. If the failure continues, an additional fine of five thousand rupees for every continuing day of failure is levied.

4. All expenses incurred by the Board in removing or disposing any matter may be adjusted against money obtained from such disposal and any balance outstanding shall be recoverable as arrears of land revenue or public demand.

Power to Give Directions

A Board may, in the exercise of its powers and performance of its functions, issue any directions in writing to any person, officer or authority who shall be bound to comply.

The power to issue directions includes the power to direct: (a) the closure, prohibition or regulation of any industry, operation or process or (b) the stoppage or regulation of supply of electricity, water or any other service.

FUNDS, ACCOUNTS AND AUDIT**Contributions by Central Government**

The central government may, after due appropriation made by Parliament of law, make contribution to the Central Board to perform its functions.

Contributions by State Government

The state government may, after due appropriation made by the Legislature of the State by law, make contributions to the State Board to perform its functions.

Fund of Central Board

1. The Central Board shall have its own fund, and all sums received from the central government and other receipts shall be carried to the fund and all payments shall be made there from.
2. The Central Board may expend such reasonable sums for performing its functions under this Act and it shall be treated as expenditure payable out of the fund.

Fund of State Board

1. The State Board shall have its own fund, and the sums received from the state government and other receipts shall be carried to the fund and all payments shall be made there from.
2. The State Board may expend such reasonable sums for performing its functions under this Act and it shall be treated as expenditure payable out of the fund.

Borrowing Powers of the Board

A Board may within its general or special authority given by the central or, the state government, borrow money from any source for the performance of its functions.

Enhanced Penalty After Previous Conviction

If any person who has been convicted of any offence under section 24 or 26 is again found guilty of an offence under the same provision, shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term of not less than one and half years and may extend to seven years and with a fine.

Penalty for Contravention of Certain Provisions of the Act

Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction, for which no penalty has been elsewhere provided, shall be punishable with imprisonment up to three months or with fine which may extend to ten thousand rupees or with both. In the case of continuing failure, an additional fine of five thousand rupees for every continuing day of failure is levied.

Publication of Names of Offenders

If any person convicted of an offence under this Act commits a like offence afterwards the court can publish the offender's name and place of residence, the offence and the penalty imposed at the offender's expense in such newspapers or in such other manner as the court may direct and the expenses shall be recoverable as a fine.

Offences by Companies

1. Where an offence has been committed by a company, every person in charge, and the company, shall be deemed to be guilty of offence and be proceeded against and punished. He can escape liability if he proves that the offence was committed without his knowledge and also that he exercised due diligence to prevent such offence.
2. If an offence is proved to be committed with the consent, or attributable to any neglect, any director, manager, secretary or other officer of the company, they shall also be deemed to be guilty and be liable to be proceeded against and punished accordingly.

For the purpose of this section (a) "company" means any body corporate, and includes a firm or other association of individuals and (b) "director" in relation to a firm means a partner in the firm.

Offences by Government Departments

Where an offence has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and be proceeded against and punished accordingly. He can escape liability, if he proves that the offence was committed without his knowledge or he exercised due diligence to prevent such offence.

2. Whoever fails to comply with any order issued shall be punishable with imprisonment for a term of not less than one year and six months and may extend to six years and with fine. If the failure continues, an additional fine of five thousand rupees for every continuing day of failure is levied.
3. If the failure referred continues beyond a period of one year, the offender shall, be punishable with imprisonment for a term of not be less than two years and may extend to seven years and with fine.

Penalty for Certain Acts

1. Whoever:
 - (a) destroys, pulls down, removes, or injures any pillar, post or stake fixed in the ground or any notice or other matter put up by or under the authority of the Board
 - (b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions
 - (c) damages any works or property belonging to the Board
 - (d) fails to furnish to any officer or other employees of the Board any information required by him
 - (e) fails to intimate the occurrence of an accident or other unforeseen act to the Board
 - (f) knowingly makes a false statement while he is giving any information
 - (g) knowingly makes a false statement while obtaining any consent under sections shall be punishable with imprisonment for a term of three months or with fine up to ten thousand rupees or with both.
2. Where for the grant of consent under provisions, the use of a meter or monitoring device is required; any person who knowingly interferes with that device shall be punishable with imprisonment for a term of three months or with fine up to ten thousand rupees or with both.

Penalty for Contravention of Provisions of Section 24

Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term of not be less than one year and six months and may extend to six years and with a fine.

Penalty for Contravention of Section 25 or Section 26

Whoever contravenes the provision of section 25 or 26 shall be punishable with imprisonment for a term of not be less than two years and may extend to six years and with a fine.

2. The state government in consultation with the State Board make rules prescribing:

- (a) the functions of the State Water Laboratory
- (b) the procedure for submission to the laboratory of samples of water or sewage or trade effluent for analysis, the form of laboratory's report and the fees for report
- (c) other matters necessary to enable that laboratory to carry out its functions.

Analysts

1. The central government, by notification in the Official Gazette appoint persons having the prescribed qualifications to be Government analysts for analysis of samples.
2. The state government, by notification in the Official Gazette, appoint persons having the prescribed qualifications to be Government analysts for analysis of samples
3. The Central Board or, the State Board, by notification in the Official Gazette, and with the approval of the central or state government, appoint persons having the prescribed qualifications to be Board analysts for the purpose of analysis of samples.

Reports of Analysts

Any document which is a report signed by a Government analyst or, a Board analyst may be used as evidence of the facts stated therein in any proceeding under this Act.

Local Authorities to Assist

All local authorities shall render help and assistance and furnish information to the Board for the discharge of its functions, and make available for inspection and examination records, maps, plans and other documents necessary for the discharge of its functions.

Compulsory Acquisition of Land for the State Board

Any land required by a State Board for the efficient performance of its function shall be deemed for a public purpose and be acquired under the provisions of the Land Acquisition Act, 1894 or under any other law for the time being in force.

Returns and Reports

The Central Board shall furnish to the central government, and a State Board to the state government and the Central Board such reports, returns, statistics, accounts and other information about its fund or activities, required from time to time.

Cognizance of Offences

1. No court shall take cognizance of any offence except on a complaint made by:
 - (a) a Board or any officer authorized in this behalf, or
 - (b) any person who has given notice of not less than sixty days, of the offence and of his intention to make a complaint, to the Board or officer.
2. On receipt of a complaint, the Board shall, on demand by such person, provide relevant reports in its possession, if it is not against public interest.
3. It shall be lawful for any Judicial Magistrate or Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees.

Members, Officers and Servants of Board to be Public Servants

All members, officers and servants of a Board when acting in pursuance of any of the provisions and rules made there under shall be deemed to be public servants.

MISCELLANEOUS

Central Water Laboratory

1. The central government may, by notification in the Official Gazette:
 - (a) establish a Central Water Laboratory or
 - (b) specify any laboratory or institute as a Central Water Laboratory, to carry out the functions entrusted under this Act.
2. The central government together with the Central Board make rules prescribing:
 - (a) the functions of the Central Water Laboratory
 - (b) the procedure for submission to the laboratory samples of water or sewage or trade effluent for analysis, the form of laboratory's report and the fees for report
 - (c) other matters necessary to enable that laboratory to carry out its functions.

State Water Laboratory

1. The state government may, by notification in the Official Gazette:
 - (a) establish a State Water Laboratory or
 - (b) specify any state laboratory or institute, to carry out the functions entrusted under this Act.

Power of State Government to Supersede State Board

1. If at any time the state government is of opinion:
 - (a) that the State Board has persistently made default in the performance of the functions, or
 - (b) that circumstances exist rendering it necessary in the public interest the state government may, by notification in the Official Gazette, supersede the State Board for such period, not exceeding one year.
2. Upon the publication of a notification superseding the State Board, the provisions in relation to the supersession of the Central Board or a Joint Board by the central government shall apply to the State Board also.

Power of Central Government to Make Rules

1. The central government may, with the Central Board, make rules in many matters.
2. Such rules may provide for all or any of the following matters:
 - (a) the terms and conditions of service of the members of the Central Board
 - (b) the intervals and the time and place at which meetings of the Central Board or any committee, shall be held and the procedure to be followed, including the quorum necessary for the transaction of business
 - (c) the fees and allowances to be paid to such members of a committee
 - (d) the manner and the purposes for which persons may be associated with the Central Board and the fees and allowances payable to such persons
 - (e) the terms and conditions of service of the chairman and the member-secretary of the Central Board
 - (f) conditions subject to which a person may be appointed as a consulting engineer to the Central Board
 - (g) the powers and duties to be exercised and performed by the chairman and member-secretary of the Central Board
 - (h) the form of the report of the Central Board analyst
 - (i) the form of the report of the Government analyst
 - (j) the form in which and the time within which the budget of the Central Board may be prepared and forwarded to the central government
 - (k) the form in which the annual report of the Central Board may be prepared
 - (l) the form in which the accounts of the Central Board may be maintained

Bar of Jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an appellate authority is empowered to determine, and no injunction shall be granted in respect of any action taken under this Act.

Protection of Action Taken in Good Faith

No suit or other legal proceedings shall lie against the government or any officer of government or Board in respect of anything which is done in good faith in pursuance of this Act or the rules made there under.

Overriding Effect

The provisions of this Act shall have effect notwithstanding anything contradictory contained in any enactment other than this Act.

Power of Central Government to Supersede the Central Board and Joint Boards

1. If at any time the central government is of opinion:
 - (a) that the Central Board or any Joint Board has persistently made default in the performance of its functions or
 - (b) that circumstances exist which render it necessary in the public interest, the central government, by notification in the Official Gazette, supersede the Central Board or such Joint Board, for such period not exceeding one year Provided, the central government shall give a reasonable opportunity to the Central Board or such Joint Board, to give explanation and shall consider the same.
 2. Upon publication of notification superseding the Central Board or any Joint Board,
 - (a) all the members shall, as from the date of supersession vacate their offices.
 - (b) all the powers, functions and duties shall, be exercised, performed or discharged by the Central Board or such Joint Board, and by such persons as the central government may direct.
 - (c) all property of the Central Board or such Joint Board shall, vest in the central government.
- On the expiration of the period of supersession, the central government may:
- (a) extend the period of supersession for further term, not exceeding six months or
 - (b) reconstitute the Central Board or the Joint Board, by fresh nomination or appointment, and in such case any person who vacated his office shall be qualified for nomination or appointment.

- (o) the form in which the accounts of the State Board may be maintained
- (oo) the manner in which notice of intention to make a complaint shall be given to the State Board or officer authorized by it
- (p) any other matter which has to be, or may be, prescribed.

Review Questions

Part - A

1. Give the application and commencement of The Water (Prevention and Control of Pollution) Act, 1974.
2. Define pollution, stream and trade effluent.
3. Who are the members of a State Board?
4. Does vacancy in Board invalidate acts and proceedings?
5. What is the power of state government to restrict the application of the Act in certain areas?
6. What are the emergency measures in case of pollution of stream or well?
7. What is a new or altered outlet?
8. Who is a government analyst?
9. What are the receipts and payments for the fund of a Central Board?
10. What are the offences by the companies?
11. What do you mean by cognizance of offences?
12. What is the power of state government to supersede State Board?

Part - B

1. Explain the constitution of a Central Board under The Water (Prevention and Control of Pollution) Act, 1974.
2. Discuss the terms and conditions of service of members of a State Board and their disqualifications.
3. Discuss the constitution and composition of Joint Boards.
4. Explain the functions of a Central Board.
5. Explain the functions of a State Board.
6. What are the powers of a State Board to take samples of effluents and state its procedure?
7. State the prohibitions on use of stream or well for disposal of polluting matter, etc.
8. Write a note on Central Water Laboratory.
9. State the power of central government to make rules in respect of the matters specified in sub-section (2).
10. State the power of state government to make rules to in respect of matters not falling within the purview of section 63.

- (m) any other matter relating to the Central Board, including the powers and functions of that Board in relation to Union territories
 - (n) any other matter which has to be, or may be, prescribed.
3. Every rule made by the central government shall be laid, before each House of Parliament for a total period of thirty days, for approval and if any modifications it will have effect only after modification.

Power of State Government to Make Rules

1. The state government may, with the constitution of the State Board, make rules to in respect of matters not falling within the purview of section 63.
2. Such rules may provide for all or any of the following matters:
 - (a) the terms and conditions of service of the members of the State Board
 - (b) the time and place of meetings of the State Board or any committee and the procedure to be followed, including the quorum necessary for the transaction of business.
 - (c) the fees and allowances to be paid to such members of a committee
 - (d) the manner and the purposes for which persons may be associated with the State Board and the fees and allowances payable to such persons
 - (e) the terms and conditions of service of the chairman and the member secretary of the State Board
 - (f) the conditions subject to which a person may be appointed as a consulting engineer to the State Board
 - (g) the powers and duties to be exercised and discharged by the chairman and the member-secretary of the State Board
 - (h) the form of the notice
 - (i) the form of the report of the State Board analyst
 - (j) the form of the report of the Government analyst
 - (k) the form of application for the consent of the State Board and its contents
 - (l) the manner in which inquiry may be made in respect of an application for obtaining consent of the State Board and matters to be taken into consideration
 - (m) the form and manner in which appeals may be filed, the fees payable and the procedure to be followed by the appellate authority in disposing of the appeals
 - (n) the form in which and the time within which the budget of the State Board may be prepared and forwarded to the state government
 - (nn) the form in which the annual report of the State Board may be prepared

- (g) **"Central Board"** means the Central Board constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974.
- (h) **"chimney"** includes any structure with an opening or outlet through which any air pollutant may be emitted or discharged.
- (i) **"control equipment"** means any apparatus, device, equipment or system to control the quality and manner of emission of any air pollutant and also devices used for efficient operation of any industrial plant.
- (j) **"emission"** means any solid or liquid or gaseous substance coming out of any chimney, or any other outlet.
- (k) **"industrial plant"** means any plant used for any industrial or trade purposes and discharging air pollutant into the atmosphere.
- (l) **"member"** means a member of the Central Board or a State Board, and includes the Chairman thereof.
- (m) **"occupier"** means the person who has control over the affairs of the factory or the premises, and includes the person in possession of any substance.
- (n) **"prescribed"** means approved by rules made under this Act by the central government or the state government.
- (o) **"State Board"** means in relation to a state in which the state government has constituted a State Board under section 4 or section 5 of this Act.

CENTRAL AND STATE BOARDS FOR THE PREVENTION AND CONTROL OF AIR POLLUTION

Central Board for the Prevention and Control of Air Pollution

The Central Board constituted under section 3 of The Water (Prevention and Control of Pollution) Act, 1974, shall, exercise the powers and perform the functions of the Central Board for the Prevention and Control of Air Pollution under this Act.

State Boards for the Prevention and Control of Air Pollution

The State Board constituted by the state shall be deemed to be the State Board for the Prevention and Control of Air Pollution and exercise the powers and perform the functions accordingly.

Constitution of State Boards

1. In any state in which The Water (Prevention and Control of Pollution) Act, 1974, is not in force, or not constituted, the state government shall, by notification in the Official Gazette, appoint and constitute a State Board to exercise the powers and perform the functions under this Act.
2. A State Board constituted under this Act shall consist of the following members:

The Air (Prevention and Control of Pollution) Act, 1981

Boards were established, granted and assigned powers and functions relating to prevention, control and abatement of air pollution. Decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. India participated and decided to take appropriate steps for the preservation of the natural resources of the earth, especially the quality of air and control of air pollution. In order to implement the decisions, The Air (Prevention and Control of Pollution) Act, 1981 was enacted by the parliament in the Thirty-second Year of the Republic of India.

PRELIMINARY

Short Title, Extent and Commencement

1. This Act may be called the Air (Prevention and Control of Pollution) Act, 1981 and it extends to the whole of India.
2. It shall come into force on such date as the central government may appoint by notification in the Official Gazette.

Definitions

According to this Act,

- (a) **"air pollutant"** means any solid, liquid or gaseous substance present in the atmosphere that is injurious to human beings or other living creatures or plants or property or environment.
- (b) **"air pollution"** means the presence of any air in the atmosphere.
- (c) **"approved appliances"** means any equipment or gadget used for the bringing of any combustible material or for generating or consuming any fume or gas and approved by the State Board for the purposes of this Act.
- (d) **"approved fuel"** means any fuel approved by the State Board for the purposes of this Act.
- (e) **"automobile"** means any vehicle run by internal combustion engine or by generating power to drive such vehicle by burning fuel.
- (f) **"Board"** means the Central Board or State Board.

6. A member of a State Board shall be prescribed.
7. The other terms and conditions of service of the Chairman and members shall be prescribed.

Disqualifications

1. No person shall be a member if he:

- is, or has been adjudged insolvent
 - is of unsound mind and has been so declared by a court
 - is, or has been, convicted of an offence by the State Board
 - is convicted of an offence under this Act
 - has involved in carrying on the business of manufacture, sale, or hire of machinery, plant, equipment or any apparatus for the quality of air or for the prevention, control or abatement of air pollution
 - is a director or a secretary, manager or other salaried officer or employee of any company having association with the Board, for air or air pollution programmes
 - has so abused, that the state government considers his continuance detrimental to the public interest.
2. The state government shall, by a written order remove any member who is subject to any disqualification after giving an opportunity of being heard.
3. A member removed shall not be able to hold office until his successor enters office, or be re-nominated as a member.

Vacation of seats by members

If a member is subject to any of the disqualifications specified in section 8, his seat shall become vacant.

Meetings of the Board

- A Board shall meet at least once in every three months and if the Chairman considers anything urgent, he may convene a meeting of the Board.
- Copies of minutes of the meetings shall be sent to the Central Board and the concerned state government.

Constitution of Committees

- A Board may constitute as many committees consisting wholly of members or other persons and for any purpose.
- The committee shall meet at such time and place, and follow the procedure with regard to conduct of meetings.
- The members of a committee who does not belong to the Board shall be paid fees and allowances accordingly.

- a Chairman, being a person having special knowledge or experience in matters relating to environmental protection, nominated by the state government
 - such number of officials, not exceeding five, to be nominated by the state government
 - such number of persons, not exceeding five, to be nominated by the state government from amongst the members of the local authorities within the state
 - such number of non-officials, not exceeding three, to be nominated by the state government
 - two persons to represent the companies or corporations owned, controlled or managed by the state government
 - a full-time member-secretary having qualifications, knowledge and experience in aspects of pollution control, to be appointed by the state government.
3. Every State Board constituted under this Act shall be a body corporate with the name specified by the state government, having perpetual succession, a common seal, acquire and dispose property and to contract, and may sue or be sued.

Central Board to Exercise the Powers and Perform the Functions of a State Board in the Union Territories

The Central Board shall exercise the powers and perform the functions of a State Board for that Union territory and no separate State Board shall be constituted. The Central Board may delegate them to such person or body of persons, specified by the central government.

Terms and Conditions of Service of Members

- A member of a State Board, other than the member-secretary, shall hold office for a term of three years and in few cases, continue until his successor enters upon his office.
- The terms of office of a member, shall end when he ceases to hold the office.
- A member, other than the member-secretary, may resign his office by writing to the state government in the case of the Chairman and to the Chairman in other cases.
- A member, other than the member-secretary, shall be deemed to have vacated, if he is absent for three consequent meetings without any valid reason.
- A casual vacancy shall be filled by a fresh nomination and the person nominated shall hold office only for the balance term.

- (dd) perform the functions of any State Board as may be specified in this behalf
- (e) plan and organize training programmes for persons engaged in the prevention, control or abatement of air pollution
- (f) organize comprehensive programmes through mass media
- (g) collect, compile and publish technical and statistical data relating to air pollution, and prepare manuals, codes or guides for the same
- (h) lay down standards for the improvement in the quality of air
- (i) collect and disseminate information relating to air pollution
- (j) perform other functions as may be prescribed from time to time.
3. The Central Board may establish or recognize a laboratory to perform its functions efficiently.
4. The Central Board may:
- delegate its functions generally or specially to any of the committees
 - do such other things and perform acts necessary for the discharge of its functions, and execute the purposes of this Act.

Functions of State Boards

- The functions of a State Board shall be:
 - to plan a comprehensive programme for the prevention, control or abatement of air pollution
 - to advise the state government on any matter concerning air pollution
 - to collect and disseminate information relating to air pollution
 - to work with the Central Board in organizing training programmes on air pollution and also to organize mass-educational programmes
 - to inspect any equipment, plant or manufacturing process and give directions
 - to inspect air pollution control areas, assess the quality of air and take related steps
 - to lay down standards in consultation with the Central Board for the quality of air and for emission of air pollutants into the atmosphere.
 - to advise the state government in matters relating to premises or location for carrying on any industry
 - to perform other functions prescribed by the Central Board or the State Government
 - to do other things and perform other acts necessary for the proper discharge of its functions and achieve the purposes of this Act.

Temporary Association of Persons with Board for Particular Purposes

- A Board may associate with such persons whose assistance or advice is required.
- A person so associated shall have a right to participate in the discussions but shall have no right to vote at meetings or be a member of the Board.
- A person associated with a Board shall be entitled to receive the fees and allowances.

Vacancy in the Board Shall Not Invalidate the Acts or Proceedings

No act or proceeding of a Board or any committee shall be questioned, because of existence of any vacancy or for any defect in the constitution of the Board or Committee.

Member-Secretary and Officers and Other Employees of State Boards

- The terms and conditions of service of the member-secretary shall be prescribed by the State Board.
- The member-secretary shall exercise such powers and perform such duties as may be prescribed or be delegated by the State Board or its Chairman.
- Subject to the rules made by the state government, a State Board may appoint officers and employees for the efficient performance of its functions.
- The method of appointment, the conditions of service and the pay scale of officers and employees shall be determined by the State Board.
- A State Board may from time to time appoint any qualified person to be a consultant and pay such salary and allowances or fees.

Delegation of Powers

A State Board may delegate its powers and functions to the Chairman, member-secretary, or other officer of the Board by a general or special order.

POWERS AND FUNCTIONS OF BOARDS

Functions of the Central Board

- The main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country.
- Without contrary to the above, the Central Board may:
 - advise the central government on any matter concerning air pollution
 - plan and assist to execute a nation-wide programme on air pollution
 - co-ordinate the activities of the state and resolve disputes among them
 - provide technical assistance and guidance to the State Boards for research purpose

Restrictions on use of Certain Industrial Plants

1. No person can operate any industrial plant in an air pollution control area without the consent of the State Board. If started, before the commencement of this section, consent has to be received within three months.
2. An application for consent of the State Board has to be made with the prescribed fees, in the prescribed form and shall contain particulars of the industrial plant.
3. The State Board may make any inquiry in respect of the application for consent.
4. Within four months after the receipt of application for consent, the State Board shall issue an order in writing granting the consent or can refuse consent. It can also cancel consent after giving an opportunity of being heard.
5. Every person granted consent shall comply with the following conditions:
 - (i) the control equipment with specifications approved by the State Board shall be installed and operated in the premises of the industry
 - (ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board
 - (iii) the control equipment shall be kept in good working condition
 - (iv) chimney with specifications approved by the State Board shall be erected or re-erected in such premises
 - (v) other conditions specified by the State Board
 - (vi) the conditions shall be complied within the period specified by the State Board.
6. If due to any technological improvement or for any other reason, the State Board requires any variation, it shall vary the conditions after giving an opportunity of being heard. The concerned person is bound to comply with the varied conditions.
7. Where a person to whom consent has been granted, transfers his interest in the industry to any other person, such consent shall be deemed to be granted to such other person and thereafter he shall be bounded by the specified conditions.

Persons Carrying on Industry, etc., and to Allow Emission of Air Pollutants

No person operating industrial plant, in any air pollution control area shall discharge any air pollutant in excess of the standards laid down by the State Board.

Power to Give Directions

1. In the performance of its functions (a) the Central Board is bound by the directions of the central government and (b) every State Board by the directions of the Central Board or the State Government.
2. Where the central government considers that any State Board has committed default in complying with the directions, resulting in an emergency, it may by order, direct the Central Board to perform the functions of the State Board.
3. Where the Central Board performs the functions of the State Board, the expenses incurred can be recovered along with interest.
4. The directions given to the Central Board to perform the functions of any State Board in any area would not prevent the State Board from performing functions in any other area or other functions in that area.

PREVENTION AND CONTROL OF AIR POLLUTION

Power to Declare Air Pollution Control Areas

1. The state government in consultation with the State Board, by notification declare any area within the state as air pollution control area.
2. The state government may:
 - (a) alter any air pollution control area for the purpose of extension or reduction
 - (b) declare a new air pollution control area by merging one or more existing areas.
3. If the state government is of the opinion that an unapproved fuel is used resulting in air pollution, it may by notification in the Official Gazette, prohibit the use of such fuel.
4. The state government in consultation with the State Board, by notification in the Official Gazette, direct use of only approved appliances in the premises.
5. If the state government, after consultation with the State Board, considers burning of any material may cause air pollution, it may prohibit such burning.

Power to Give Instructions to Ensure Emission Standards for Automobiles

In order to ensure that the standards for emission of air pollutants from automobiles are complied with, the state government in consultation with the State Board gives instructions to the concerned authority which has to comply with the instructions.

3. If any person wilfully delays or obstructs any person from discharging his duties, he shall be guilty of an offence under this Act.
4. If the provisions of the Code of Criminal Procedure, 1973, is not in force in any area, the provisions of any corresponding law in force, shall apply with regard to search or seizure.

Power to Obtain Information

To execute its functions, the State Board or any officer empowered by it may call for any information from the occupier or any person carrying on any industry or operating any equipment/plant and for verifying purposes shall have the right to inspect the premises.

Power to Take Samples and the Procedure to be Followed

1. A State Board or any officer empowered by it shall have the power to take samples of air or emission from any chimney or outlet for the purpose of analysis.
2. The result of any analysis of a sample shall not be acceptable as evidence unless the following two provisions (sub-sections (3) and (4)) are complied with.
3. When a sample of emission is taken for analysis, the person taking the sample shall:
 - (a) serve on the occupier or his agent, a notice of his intention to have it so analyzed
 - (b) in the presence of the occupier or his agent, collect a sample for analysis
 - (c) cause the sample to be placed in a container, marked and sealed and shall be signed both by the person taking the sample and the occupier or his agent
 - (d) send the container to the laboratory established or recognized by the State Board.
4. When a sample of emission is taken for analysis and the person taking the sample serves on the occupier or his agent, a notice, then:
 - (a) in a case where the occupier or his agent wilfully absents himself, the person shall collect the sample in a container, get it marked, sealed and signed by himself
 - (b) in a case where the occupier or his agent is present, but refuses to sign the container, it shall be signed by the person taking the sample and sent to the laboratory and inform the government analyst in writing, about the willful absence of the occupier or his agent, or, his refusal to sign the container.

Power of Board to Make Application to Court for Restraining Person from Causing Air Pollution

1. Where the Board, finds that a person operating an industrial plant is in excess emission of air pollutant, make an application to the court for restraining such person from excess emission.
2. On receipt of the application, the court may make any order accordingly.
3. Where under sub-section (2), the court makes an order restraining any person from discharging excess air pollutant it may, in that order-
 - (a) direct such person to stop such action that results in excess emission
 - (b) authorize the Board, to implement the direction or order issued by the court.
4. All expenses incurred by the Board in implementing the court order shall be recoverable from the person concerned as arrears of land revenue or of public demand.

Furnishing of information to State Board and Other Agencies in Certain Cases

1. Where in any area the emission of air pollutant is in excess of the standards laid down by the State Board, the person in charge of the premises shall intimate the fact to the State Board and such authorities as may be prescribed.
2. On receipt of such information, the State Board and the authorities shall, take the necessary remedial measure to mitigate the emission of such air pollutants.
3. Expenses incurred with respect to the remedial measures, together with interest, may be recovered from the person concerned, as arrears of land revenue, or of public demand.

Power of Entry and Inspection

1. Any person empowered by a State Board shall have a right to enter, at all reasonable times with such assistance for the purpose of:
 - (a) performing any of the functions of the State Board entrusted to him
 - (b) determining the manner in which the functions are being performed
 - (c) examining and testing any equipment, plant, record, register, document or any other material object or for conducting a search of any place and seizing them.
2. Every person operating any equipment or plant, in an air pollution control area shall have to render all assistance for inspection and if he fails to do so without any valid reason he shall be guilty of an offence under this Act.

Appeals

1. Any person aggrieved by the order of State Board may, within thirty days from the date on which the order is communicated to him, appeal to such authority (hereinafter referred to Appellate Authority) as the state government may constitute and days can be extended on reasonable grounds.
2. The Appellate Authority shall consist of a single person or three persons.
3. The form and the manner of appeal, the fees payable and the procedure to be followed by the Appellate Authority shall be prescribed.
4. On receipt of an appeal, the Appellate Authority, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal.

Power to Give Directions

A Board may, in the exercise of its powers and performance of its functions, issue any directions in writing to any person, officer or authority, and such person shall be bound to comply with such directions.

It includes the power to direct:

- (a) the closure, prohibition or regulation of any industry, operation or
- (b) the regulation of supply of electricity, water or any other service.

FUND, ACCOUNTS AND AUDIT**Contribution by Central Government**

The central government may, after due appropriation made by Parliament make contributions to the State Boards to perform their functions under this Act relating to prevention, control or abatement of air pollution.

Fund of the Board

1. Every State Board shall have its own fund for the purposes of this Act and all sums received be paid to the Central Government and all other receipts of that Board shall be carried to the fund of the Board and all payments by the Board shall be made there from.
2. Every State Board may expend such sums as it thinks fit for performing its functions and such sums shall be treated as expenditure payable out of the fund of that Board.
3. Nothing in this section shall apply to any Board constituted under section 4 of the Act which is empowered to expend money from its fund for performing its functions under any other law in force relating to the prevention, control or abatement of air pollution.

Borrowing Powers of Board

A Board may, with the consent of the central government or, the state government, borrow money by way of loans or issue of bonds, debentures, for discharging its functions under this Act.

Reports of the Analysis on Samples Taken Under Section 26

1. Where a sample of emission has been sent to the laboratory for analysis, the Board analyst shall analyze and submit a report in the prescribed form in triplicate to the State Board.
2. On receipt of the report, the State Board shall send one copy of the report to the occupier or his agent, another copy shall be preserved for production before the court in case of any legal proceedings and the third copy shall be kept by the State Board.
3. Where a sample has been sent for analysis to any other laboratory, the government analyst shall analyze and submit a report in the prescribed form in triplicate to the State Board.
4. Any cost incurred in getting any sample analyzed, shall be payable by such occupier or his agent and on default the same shall be recoverable from him as arrears of land revenue or of public demand.

State Air Laboratory

1. The state government may, by notification in the Official Gazette:
 - (a) establish one or more State Air Laboratories or
 - (b) specify one or more laboratories or institutes as State Air Laboratories to carry out the functions entrusted under this Act.
2. The state government may, in consultation with the State Board, make rules on:
 - (a) the functions of the State Air Laboratory
 - (b) the procedure for the submission of samples for analysis, the form of the Laboratory's report and the fees payable for report
 - (c) other matters necessary to enable that Laboratory to carry out its functions.

Analysis

1. The state government may, by notification in the Official Gazette, appoint capable persons with prescribed qualifications to be as government analysts.
2. The State Board may, by notification in the Official Gazette, and approval of the state government, appoint persons with prescribed qualifications to be Board analysts for the purpose of analysis of samples.

Reports of Analysis

Any document i.e., a report signed by a Government analyst or, a State Board analyst may be used as evidence of the facts in any proceeding under this Act.

PENALTIES AND PROCEDURE**Non-compliance with provisions of Section 21 / 22 or directions under Section 31A**

1. Whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31A, shall be punishable with imprisonment for a term which shall not be less than one year and six months but may extend to six years and with fine. If the failure still continues, with an additional fine of five thousand rupees for every day.
2. If the failure continues beyond a period of one year, the offender shall be punishable with imprisonment for a term which shall not be less than two years but may extend to seven years and with fine.

Penalties for Certain Acts**Whoever:**

- (a) destroys, pulls down, removes, injures any pillar, post or stake fixed in the ground or any notice put up by or under the authority of the Board
- (b) obstructs any person acting under the orders or directions of the Board
- (c) damages any works or property belonging to the Board
- (d) fails to furnish to the Board or any officer or other employee of the Board any information required for the purpose of this Act
- (e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board
- (f) in giving any required information, makes a statement which is false
- (g) for the purpose of obtaining consent under section 21, makes a false statement. Shall be punishable with imprisonment for a term up to three months or with a fine which may extend up to Rs. 29,000 or with both.

Penalty for Contravention of Provisions of the Act

Whoever contravenes any of the provisions of this Act or any order or direction issued, for which no penalty is levied elsewhere, shall be punishable with imprisonment which may extend to three months or with fine up to Rs. 10,000 or with both. In case of continuing contravention, an additional fine of up to Rs. 50,000 for every day is levied.

Offences by Companies

1. Where an offence has been committed by a company, every person directly in charge of or responsible for the conduct of the business of the company, as well as the company, shall be guilty of the offence and liable to be punished. He can escape liability, if he proves ignorance or has exercised all due diligence to prevent such an offence.

Budget

The Central Board or the State Board shall, during each financial year, prepare a budget in respect of the next financial year showing the estimated receipts and expenditure. The copies thereof shall be forwarded to the central government or the state government.

Annual Report

1. The Central Board shall, during each financial year, prepare an annual report in the prescribed format giving full account of its activities during the previous financial year. The copies thereof shall be forwarded to the central government within four months which shall be laid before both Houses of Parliament within nine months of the last date of the previous financial year.
2. Every State Board shall, during each financial year, prepare an annual report in the prescribed format giving full account of its activities during the previous financial year. The copies thereof shall be forwarded to the state government within four months which shall be laid before the State Legislature within a period of nine months from the date of the previous financial year.

Accounts and Audit

1. Every Board shall, in relation to its functions maintain proper accounts and other records and prepare an annual statement of accounts in the prescribed format.
2. The accounts of the Board shall be audited by a duly qualified auditor.
3. The said auditor shall be appointed by the central government or the state government on the advice of the Comptroller and Auditor General of India.
4. Every auditor shall have the right to demand the production of books, accounts, vouchers and other documents and papers and to inspect any of the offices of the Board.
5. Every such auditor shall send a copy of his report together with an audited copy of the accounts to the central government or the state government.
6. The central government shall cause the audit report to be laid before both Houses of Parliament.
7. The state government shall cause the audit report to be laid before the State Legislature.

Bar of Jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority is empowered and no injunction shall be granted by any court in respect of any action taken within the power conferred by or under this Act.

MISCELLANEOUS**Power of Central Government to Supersede State Board**

1. If at any time the state government is of opinion:
 - (a) that a State Board has persistently made default in the performance of the functions
 - (b) that circumstances exist which render it necessary in the public interest to do, the state government, by notification in the Official Gazette, supersede the State Board for such period, not exceeding six months, after giving an opportunity of being heard.
2. Upon the publication of a notification superseding the State Board:
 - (a) all the members shall, vacate their offices
 - (b) all the powers, functions and duties performed or discharged by the State Board shall, be executed by such persons as the State Government may direct
 - (c) all property owned or controlled by the State Board shall, vest with the state government.
3. On the expiration of the period of supersession, the state government may:
 - (a) extend the period of supersession for such further term, not exceeding six months
 - (b) reconstitute the State Board by a fresh nomination or appointment and any person who vacated his office, shall also be eligible for nomination or appointment.

Special Provision in Case of Supersession of the Central Board / State Boards Constituted under the Water (Prevention and Control of Pollution) Act, 1974

Where the Central Board or any State Board constituted under the Water (Prevention and Control of Pollution) Act, 1974, is superseded by the central government or the state government, all the powers, functions and duties of the Board shall be executed by the persons, of the Central Board or such State Board.

2. Where an offence has been committed by a company and it is proved then director, manager, secretary or other officer of the company, they shall be deemed to be guilty of offence and are liable to be punished accordingly.

Offences by Government Departments

1. Where an offence under this Act has been committed by any Department of Government, the Head shall be guilty of the offence and be punished. He can escape liability, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent such offence.
2. Where it is proved that an offence under this Act has been committed with the consent of any officer of the Department of Government, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished.

Protection of Action Taken in Good Faith

No suit, prosecution or other legal proceeding shall be taken against the government or any officer or member or other employee of the Board in respect of anything done in good faith in pursuance of this Act or the Rules there under.

Cognizance of Offence

1. No court shall take cognizance of any offence except on a complaint made by:
 - (a) a Board or any officer authorized by the Board
 - (b) any person who has given notice of the offence with not less than sixty days, in the prescribed manner, to the Board.
2. Where a complaint has been made, the Board shall, on demand, provide the reports in its possession to that person, if it is not against public interest.

Members, Officers and Employees of Board to be Public Servants

All the members, officers and employees of a Board, acting in pursuance of any of the provisions of this Act or the rules made there under shall be deemed to be public servants.

Reports and Returns

The Central Board, in relation to its functions, furnish to the central government, and a State Board to the state government and to the Central Board such reports, returns, statistics, accounts and other information as required from time to time.

- (e) the manner and the purposes for which persons may be associated with the Central Board
- (d) the fees and allowance to be paid to persons associated with the Central Board
- (c) the functions to be performed by the Central Board
- (f) the form and time within which the budget of the Central Board may be prepared and forwarded to the central government
- (ii) the form in which the annual report of the Central Board may be prepared.

Review Questions

Part - A

1. Define air pollutant.
2. What are control equipments?
3. What is a State Board?
4. Can a Central Board exercise the powers and perform the functions of a State Board in the union territories?
5. What are the powers to declare air pollution control areas?
6. What is a State Air Laboratory?
7. What is an appeal?
8. Write a note on the fund of the Board.
9. What do you mean by cognizance of offence?
10. How can State Boards constituted under the Act be dissolved?

Part - B

1. Explain the provisions and regulations related to the State Board.
2. Discuss the functions of the Central Board.
3. Give the various functions of the State Board.
4. Explain the various restrictions on use of certain industrial plants.
5. Discuss the powers Explain the provisions with regard to offences by companies and government departments.
6. Of the State Board to take samples and the procedure to be followed.
7. Discuss the powers of the central government to supersede State Board.

Dissolution of State Boards Constituted under the Act

1. As and when the Water (Prevention and Control of Pollution) Act, 1974 comes into force in any State and the state government constitutes a State Board under that Act, the State Board constituted earlier shall stand dissolved and the new Board shall exercise the powers and perform the functions.
2. On the dissolution of the State Board constituted under this Act:
 - (a) all the members shall vacate their offices
 - (b) all moneys and property owned by the State Board, shall stand transferred to and vest in the State Board for the Prevention and Control of Water Pollution
 - (c) every officer and other employee of the State Board shall be transferred and hold office for the same tenure, same remuneration and on the same terms and conditions of service
 - (d) all liabilities and obligations of the State Board, shall be deemed to be the liabilities or obligations of the State Board for the Prevention and Control of Water Pollution.

Power to Amend the Schedule

It is replaced by the Air (Prevention and Control of Pollution) Amendment Act, with effect from 1-4-1988.

Maintenance of Register

1. Every State Board shall maintain a register of the persons to whom consent has been granted, the standard for emission laid down in relation to each such consent and such other particulars as may be prescribed.
2. The register maintained shall be open to inspection at all reasonable hours by any person interested in or affected by such standards for emission.

Effect of Other Laws

As otherwise provided by or under the Atomic Energy Act, 1962, in relation to radioactive air pollution the provisions of this Act shall apply.

Powers of the Central Government to Make Rules

1. The central government in consultation with the Central Board by notification in the Official Gazette make rules in respect of the following matters:
 - (a) the intervals and the time and place at which meetings of the Central Board or any committee thereof shall be held and the procedure to be followed, including the quorum necessary for the transaction of business
 - (b) the fees and allowances to be paid to the members of a committee / board