RKDF University, Bhopal

Open Distance Learning (ODL) Material

Faculty of Commerce

Semester –I

Subject- BUSINESS REGULATORY FRAMEWORK

Syllabus

Units	Topic	Duration (In Hours)	Marks
I	Historical Background of Business Laws in India, Indian Contract Act 1872-General Laws भारत में व्यावसायिक सन्नियामों की एतिहासिक पृष्ठभूमि, भारतीय अनुबंध अधिनियम 1872–सामान्य उपबंध	26	20
II	Contract Relating to Indemnity and Guarantee हानि रक्षा एवं प्रतिभूति अनुबंध (धारा 124 से 147 तक)	10	20
III	Negotiable Instrument act 1881- General Introduction, Negotiable Instrument (amendment) Act 2002 पराक्राम्य विलेख अधिनियम 1881 का सामान्य परिचय तथा संशोधित पराक्राम्य विलेख (संशोधन) एअधिनियम 2002 का परिचय	18	20
IV	General Introduction of Consumer Protection Act 1986 and 2018, FEMA (Foreign Exchange Management Act). उपभोक्ता संरक्षण अधिनियम, 1986 का सामान्य परिचय एवं उपभोक्ता संरक्षण अधिनियम, 2018 का परिचय एवं वर्णन फेमा	18	20
V	Indian Partnership Act 1932- General Introduction. Limited Liability Partnership act 2008. भारतीय साझेदारी अधिनियम, 1932 ए सीमित देयता साझेदारी अधिनियम, 2008	18	20

UNIT – I

HISTORICAL BACKGROUND OF BUSINESS LAWS IN INDIA

The historical background of business laws in India can be traced back to the colonial era when the British introduced various laws and regulations to govern commercial activities in the Indian subcontinent. Here's a brief overview of the historical development of business laws in India:

1. British East India Company Era (1600-1857):
    - During this period, the British East India Company was granted exclusive trading rights and legal powers to govern certain regions in India.
    - The company introduced various laws and regulations to manage its commercial operations, such as the Indian Penal Code (1860) and the Indian Contract Act (1872).
2. Post-Independence Era (1947-1991):
    - After India's independence in 1947, the country adopted a mixed economy model, with a significant role for the public sector.
    - The government introduced various laws and regulations to control and manage the economy, such as the Industries (Development and Regulation) Act (1951) and the Foreign Exchange Regulation Act (1973).
3. Economic Liberalization Era (1991-present):
    - In 1991, India initiated a process of economic liberalization, which led to the introduction of several pro-business laws and regulations.
    - Some of the key laws introduced during this period include the Foreign Exchange Management Act (1999), the Competition Act (2002), and the Companies Act (2013).

What is Business Law?

All the laws which pertain to how, what and why of how businesses are legally allowed to and supposed to function are encompassed by what is business law. Business law meaning includes contract laws, manufacturing and sales laws, and also hiring practices and ethics. In simple words, it refers to and pertains to the legal laws of business and commerce in the public as well as the private sector. Note that it is also known as commercial law and corporate law, due to its nature of regulating these worlds of business.

Significance of Business Law

Business law is an important aspect of law in general because, without the same, the corporate sector, manufacturing sector, and retail sector would be in tyranny. The aim of putting business and law together is to maintain safe and functional working spaces for all individuals involved in the business, whether they're running it or working for the people running it.

Types of Business Law

There are several types of business law that are recognised and followed by countries the world over. Some of these include the types of business law sections that follow.

1. **Contract Law**

   A contract is any document that creates a sort of legal obligation between the parties that sign it. Contracts refer to those employee contracts, sale of goods contracts, lease contracts, etc.

2. **Employment Law**

   Employment law is where it is imperative for business and law to meet. These laws enforce the rules and regulations that govern employee-employer relationships. These cover when, how and for how much and how long employees should work.

3. **Labour Law**

   Labour law also indicates the appropriate relationship between employee and employer, and also pay grades and the like. However, an additional element to labour laws is the relationship of the union with the employer and employee.

4. **Intellectual Property Law**

   Intellectual property refers to the intangible products of the working of the human mind or intellect, which are under the sole ownership of a single entity, such as an individual or company. The validation of this ownership is provided by intellectual property law, which incorporates trademarks, patents, trade secrets, and copyrights.

5. **Securities Law**

   Securities refer to assets like shares in the stock market and other sources of capital growth and accumulation. Securities law prohibits businesspersons from conducting fraudulent activities taking place in the securities market. This is the business law section that penalizes securities fraud, such as insider trading. It is, thus, also called Capital Markets Law.

6. **Tax Law**

   In terms of business law, taxation refers to taxes charged upon companies in the commercial sector. It is the obligation of all companies (except a few tax-exempt small-time companies) to pay their taxes on time, failure to follow through which will be a violation of corporate tax laws.

Business Laws in India

Let us now take a look at some of the important business laws in India. In the Indian context, there are several business law sections of major importance to the country's commercial sector. Here are some Indian business law notes that you will find helpful.

Indian Contract Act of 1872

The Indian Contract Act governs the working of contract laws in our country. Some of its requirements for contract laws are:

- Absolute acceptance of the contract by both parties.
- Lawful consideration from both parties.
- Competent to contract:
  - Neither party should be a minor.
  - Neither party should be of unsound mind.
- **Free consent:** neither party should have been coerced into signing.
- **Agency:** when one party engages another party to act in place of it.
- Final enforcement of contracts

Sale of Goods Act 1930

The transfer of ownership of a tangible, immovable commodity between a buyer and a seller for a decided amount of money warrants a sale of goods contract, whose specifics are governed by the Sale of Goods Act of 1930.

Indian Partnership Act 1932

A partnership in business refers to when two or more business entities come together to create a new venture together. The investment and profits are split evenly between the involved parties. The Indian Partnership Act provides the laws under which partnerships in India can function.

Limited Liability Partnership Act 2008

This Act is differentiated from the IAP of 1932. A Limited Liability Partnership is a separate legal entity, which continues with its business as is, even if a partnership dissolves, only suffering the liability as mentioned in the contract.

Companies Act 2013

This is the ultimate business law, which oversees and provides the rules pertaining to each aspect of creation as well as dissolution of companies established in India.

<u>Indian Contract Act 1872-General Laws</u>

The Indian Contract Act, 1872 is a comprehensive law governing contracts in India. It was enacted by the British government during the colonial era and is still in effect today. Here are some key points about the Indian Contract Act, 1872:

(a) **Definition of a Contract:** The Act defines a contract as "an agreement enforceable by law." It outlines the essential elements of a valid contract, such as offer, acceptance, consideration, capacity of parties, and free consent.

(b) **Types of Contracts:** The Act recognizes different types of contracts, including express contracts, implied contracts, contingent contracts, and quasi-contracts.

(c) **Essentials of a Valid Contract:** The Act specifies the essential elements for a valid contract, including the capacity of the parties, their free consent, lawful consideration, and the legality of the object.

(d) **Proposal and Acceptance:** The Act outlines the rules governing the making of an offer, the revocation of an offer, and the acceptance of an offer.

(e) **Consideration:** The Act defines consideration and explains the requirements for a valid consideration.

(f) **Void Agreements:** The Act identifies certain agreements that are considered void, such as agreements in restraint of trade, agreements in restraint of legal proceedings, and agreements by way of wager.

(g) **Discharge of Contracts**: The Act discusses the different ways in which a contract can be discharged, such as by performance, by mutual agreement, by operation of law, or by breach of contract.

(h) **Remedies for Breach of Contract:** The Act outlines the remedies available to the aggrieved party in the event of a breach of contract, including damages, specific performance, and rescission.

Important Definitions (Section 2)

1. Offer 2(a): An offer refers to a promise that is dependent on a certain act, promise, or forbearance given in exchange for the initial promise.

2. Acceptance 2(b): When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.

3. Promise 2(b): A proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.

4. Promisor and Promisee 2(c): When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.

5. Consideration 2(d): When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something such act or abstinence or promise is called a consideration for the promise. Price paid by one party for the promise of the other Technical word meaning QUID-PRO-QUO which means something in return.

6. Agreement 2(e): Every promise and every set of promises forming the consideration for each other. In short,

7. Reciprocal Promises 2(f): Promises which form the consideration and part of the consideration for each other are called 'reciprocal promises'.

8. Void agreement 2(g): An agreement not enforceable by law is void.

9. Contract 2(h): An agreement enforceable by Law is a contract. Therefore, there must be an agreement and it should be enforceable by law.

10. Voidable contract 2(i): An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.

11. Void contract 2(j): A contract becomes void when it ceases to be enforceable by law.

Offer

According to Section 2(a), an offer refers to a promise that is dependent on a certain act, promise, or forbearance given in exchange for the initial promise.

Types of Offer

- **Express offer:** offer made by using words spoken or written is known as an express offer. (Section 9)
- **Implied offer:** The offer which could be understood by a conduct of parties or circumstances of case.
- **General offer:** It is an offer made to public at large with or without any time limit.
- **Specific offer:** It is a type of offer, where an offer is made to a particular and specified person, it is a specific offer.
- **Cross offer:** When a person to whom proposal (offer) is made his assent, the proposal is said to be accepted.

- **Continuous offer:** An offer which is made to the public at large and if it is kept open for public acceptance for a certain period of time.
- **Cross offer:** When a person to whom proposal (offer) is made signifies his assent, the proposal is said to be accepted.
- **Counteroffer:** Upon receipt of an offer from an offeror, if the offeree instead of accepting it straightway, imposes conditions which have the effect of modifying or varying the offer.

Acceptance in contract

1. It should be **absolute and unqualified**.. If the parties are not concurred on all matters concerning the offer and acceptance, there is no valid contract. For example, "A" says to "B" "I offer to sell my car for Rs. 50,000/-. "B" replies "I will purchase it for Rs. 45,000/-". This is not acceptance and hence it amounts to a counter offer.
2. It should be **communicated to the offeror**. To conclude a contract between parties, the acceptance must be communicated in some prescribed form. A mere mental determination on the part of offeree to accept an offer does not amount to valid acceptance.
3. Acceptance must be in the **mode prescribed**. If the acceptance is not according to the mode prescribed or some usual and reasonable mode (where no mode is prescribed) the offeror may intimate to the offeree within a reasonable time that acceptance is not according to the mode prescribed and may insist that the offer be accepted in the prescribed mode only. If he does not inform the offeree, he is deemed to have accepted the offer. For example, "A" makes an offer to "B" says to "B" that "if you accept the offer, reply by voice. "B" sends reply by post. It will be a valid acceptance, unless "A" informs "B" that the acceptance is not according to the prescribed mode.
4. Acceptance must be given within a **reasonable time before the offer lapses**. If any time limit is specified, the acceptance must be given within the time, if no time limit is specified it must be given within a reasonable time.
5. It **cannot precede an offer**. If the acceptance precedes an offer it is not a valid acceptance and does not result in contract. For example, in a company shares were allotted to a person who had not applied for them. Subsequently, when he applied for shares, he was un aware of the previous allotment . The allotment of share previous to the application is not valid.
6. Acceptance by the way of conduct.
7. Mere silence is no acceptance.

Silence as Acceptance

Silence does not per-se amounts to communication- Bank of India Ltd. Vs. Rustom Cowasjee- AIR 1955 Bom. 419 at P. 430; 57 Bom. L.R. 850- Mere silence cannot amount to any assent. It does not even amount to any representation on which any plea of estoppel may be found, unless there is a duty to make some statement or to do some act free and offeror must be consent.

1. Acceptance must be unambiguous and definite.
2. Acceptance cannot be given before communication of an offer.

Lawful consideration

According to Section 2(d), Consideration is defined as: "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise". Consideration means 'something in return'.

Essentials of Valid Consideration

An agreement must be supported by a lawful consideration on both sides. Essentials of valid consideration must include:-

- It must **move at the desire of the promisor**. An act constituting consideration must have been done at the desire or request of the promisor. If it is done at the instance of a third party or without the desire of the promisor, it will not be good consideration. For example, "A" saves "B"'s goods from fire without being ask him to do so. "A" cannot demand payment for his service.
- Consideration **may move from the promisee or any other person**. Under Indian law, consideration may be from the promisee of any other person i.e., even a stranger. This means that as long as there is consideration for the promisee, it is immaterial who has furnished it.
- Consideration must be **an act, abstinence or forbearance or a returned promise**.
- Consideration may be **past, present or future**. Past consideration is not consideration according to English law. However it is a consideration as per Indian law. Example of past consideration is, "A" renders some service to "B" at latter's desire. After a month "B" promises to compensate "A" for service rendered to him earlier. When consideration is given simultaneously with promise, it is said to be present consideration .. For example, "A" receives Rs. 50/- in return for which he promises to deliver certain goods to "B". The money "A" receives is the **present consideration.** When consideration to one party to other is to pass subsequently to the maker of the contract, is said to be future consideration. For example. "A" promises to deliver certain goods to "B" after a week. "B" promises to pay the price after a fortnight, such consideration is future.

- Consideration must be **real**. Consideration must be real, competent and having some value in the eyes of law. For example, "A" promises to put life to "B"'s dead wife, if "B" pay him Rs. 1000/-. "A"'s promise is physically impossible of performance hence there is no real consideration.
- Consideration must be **something which the promisor is not already bound to do**. A promise to do something what one is already bound to do, either by law, is not a good consideration., since it adds nothing to the previous existing legal consideration.
- Consideration **need not be adequate**. Consideration need not be necessarily be equal to value to something given. So long as consideration exists, the courts are not concerned as to adequacy, provided it is for some value.

Unlawful Consideration

The consideration or object of an agreement is lawful, unless and until it is:

1. **Forbidden by law:** If the object or the consideration of an agreement is for doing an act forbidden by law, such agreement are void. for example, "A" promises "B" to obtain an employment in public service and "B" promises to pay Rs one lakh to "A". The agreement is void as the procuring government job through unlawful means is prohibited.
2. If it **involves injury to a person or property of another**: For example, "A" borrowed rs.100/- from "B" and executed a bond to work for "B" without pay for a period of 2 years. In case of default, "A" owes to pay the principal sum at once and huge amount of interest. This contract was held void as it involved injury to the person.
3. If courts regards it as **immoral**: An agreement in which consideration or object of which is immoral is void. For example, An agreement between husband and wife for future separation is void.
4. Is of such nature that, if permitted, it would **defeat the provisions of any law**:
5. Is **fraudulent**, or
6. Is **opposed to public policy**. An agreement which tends to be injurious to the public or against the public good is void. For example, agreements of trading with foreign enemy, agreement to commit crime, agreements which interfere with the administration of justice, agreements which interfere with the course of justice, stifling prosecution, maintenance and champerty.
7. Agreements in **restrained of legal proceedings**: This deals with two category. One is, agreements restraining enforcement of rights and the other deals with agreements curtailing period of limitation.
8. **Trafficking in public offices and titles**: agreements for sale or transfer of public offices and title or for procurement of a public recognition like Padma Vibhushan or Padma Shri etc. for monetary consideration is unlawful, being opposed to public policy.

9. Agreements **restricting personal liberty**: agreements which unduly restricts the personal liberty of parties to it are void as being opposed by public policy.
10. **Marriage brokerage agreements**: Agreements to procure marriages for rewards are void under the ground that marriage ought to proceed with free and voluntary decisions of parties.
11. **Agreements interfering marital duties**: Any agreement which interfere with performance of marital duty is void being opposed to public policy. An agreement between husband and wife that the wife will never leave her parental house.
12. Consideration may take in any form-money, goods, services, a promise to marry, a promise to forbear etc.

Contract Opposed to Public Policy can be Repudiated by the Court of law even if that contract is beneficial for all of the parties to the contract- What considerations and objects are lawful and what not- Newar Marble Industries Pvt. Ltd. Vs. Rajasthan State Electricity Board, Jaipur, 1993 Cr. L.J. 1191 at 1197, 1198 [Raj.]-

Agreement of which object or consideration was opposed to public policy, unlawful and void – What better and what more can be an admission of the fact that the consideration or object of the compounding agreement was abstention by the board from criminally prosecuting the petitioner-company from offense under Section 39 of the act and that the Board has converted the crime into a source of profit or benefit to itself. This consideration or object is clearly opposed to public policy and hence the compounding agreement is unlawful and void under Section 23 of the Act. It is unenforceable as against the Petitioner-Company.

Competent to contract

Section 11 of The Indian Contract Act specifies that every person is competent to contract provided:

1. He should not be a minor i.e. an individual who has not attained the age of majority i.e. 18 years in normal case and 21 years if guardian is appointed by the Court.[2]
2. He should be of sound mind while making a contract. A person cannot who is usually of unsound mind, but occasionally of sound mind, can make a contract when he is of sound mind. Similarly if a person is usually of sound mind, but occasionally of unsound mind, may not make a valid contract when he is of unsound mind.
3. He is not disqualified from contracting by any other law to which he is subject

There are other laws of the land that disqualify certain persons from contracting. They are:-

- Alien enemy
- Foreign sovereigns, diplomatic staff etc.
- Artificial persons i.e. corporation, companies etc.
- Insolvents

- Convicts
- Pardanashi Women

Free consents

According to Section 13, "Two or more persons are said to be in consent when they agree upon the same thing in the same sense (consensus-ad-idem)".

According to Section 14, "Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake".

Elements vitiating free Consent:

1. **Coercion** (Section 15): "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under(45,1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. For example, "A" threatens to shoot "B" if he doesn't release him from a debt which he owes to "B". "B" releases "A" under threat. Since the release has been brought about by coercion, such release is not valid.

2. **Undue influence** (Section 16): "Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other".

(Section 16(2)) States that "A person is deemed to be in a position to dominate the will of another;

- Where he holds a real or apparent authority over the other. For example, an employer may be deemed to be having authority over his employee. an income tax authority over to the assessee.
- Where he stands in a fiduciary relationship to other, For example, the relationship of Solicitor with his client, spiritual advisor and devotee.
- Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of age, illness or mental or bodily distress"

3. **Fraud** (Section 17): "Fraud" means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract. Mere silence is not fraud. a contracting party is not obliged to disclose each and everything to the other party. There are two exceptions where even mere silence may be fraud, one is where there is a duty to speak, then keeping silence is fraud. or when silence is in itself equivalent to speech, such silence is fraud.

4. **Misrepresentation** (Section 18): "Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

5. **Mistake of fact** (Section 20): "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void". A party cannot be allowed to get any relief on the ground that he had done some particular act in ignorance of law. Mistake may be bilateral mistake where both parties to an agreement are under mistake as to the matter of fact. The mistake must relate to a matter of fact essential to the agreement.

Agency

In law, the relationship that exists when one person or party (the principal) engages another (the agent) to act for him, e.g. to do his work, to sell his goods, to manage his business. The law of agency thus governs the legal relationship in which the agent deals with a third party on behalf of the principal. The competent agent is legally capable of acting for this principal vis-à-vis the third party. Hence, the process of concluding a contract through an agent involves a twofold relationship. On the one hand, the law of agency is concerned with the external business relations of an economic unit and with the powers of the various representatives to affect the legal position of the principal. On the other hand, it rules the internal relationship between principal and agent as well, thereby imposing certain duties on the representative (diligence, accounting, good faith, etc.).

Under section 201 to 210 an agency may come to an end in a variety of ways:

(i) By the principal revoking the agency – However, principal cannot revoke an agency coupled with interest to the prejudice of such interest. Such Agency is coupled with interest. An agency is coupled with interest when the agent himself has an interest in the subject-matter of the agency, e.g., where the goods are consigned by an upcountry constituent to a commission agent for sale, with poor to recoup himself from the sale proceeds, the advances made by him to the principal against the security of the goods; in such a case, the principal cannot revoke the agent's authority till the goods are actually sold, nor is the agency terminated by death or insanity. (Illustrations to section 201)

(ii) By the agent renouncing the business of agency;

(iii) By the business of agency being completed;

(iv) By the principal being adjudicated insolvent (Section 201 of The Indian Contract Act. 1872)

The principal also cannot revoke the agent's authority after it has been partly exercised, so as to bind the principal (Section 204), though he can always do so, before such authority has been so exercised (Section 203).

Further, as per section 205, if the agency is for a fixed period, the principal cannot terminate the agency before the time expired, except for sufficient cause. If he does, he is liable to compensate the agent for the loss caused to him thereby. The same rules apply where the agent, renounces an agency for a fixed period. Notice in this connection that want of skill continuous disobedience of lawful orders, and rude or insulting behavior has been held to be sufficient cause for dismissal of an agent. Further, reasonable notice has to be given by one party to the other; otherwise, damage resulting from want of such notice, will have to be paid (Section 206). As per section 207, the revocation or renunciation of an agency may be made expressly or impliedly by conduct. The termination does not take effect as regards the agent, until it becomes known to him and as regards third party, until the termination is known to them (Section 208). Sub-agent who is appointed by an agent for participate on behalf of his work.

When an agent's authority is terminated, it operates as a termination of sub-agent also (Section 210).

Enforcement of contracts

Enforcement of contracts is a big problem in India as legal system can be slow and litigious. India is ranked 163rd out of 191 countries surveyed by world bank in terms of ease of enforcing a contract.

UNIT-II

CONTRACT RELATING TO INDEMNITY AND GUARANTEE

Indemnity:

Indemnity refers to a contractual agreement where one party (the indemnifier) agrees to compensate or protect another party (the indemnified) against any loss, liability, or damage that the indemnified party may suffer as a result of a specific event or circumstance. Indemnity contracts are commonly used in various contexts, such as employment contracts, commercial agreements, and insurance policies.

Guarantee:

A guarantee is a promise made by a third party (the guarantor) to a cr or (the beneficiary) to fulfill the obligations of a debtor (the principal) if the debtor fails to do so. The guarantor essentially takes responsibility for the debtor's performance or payment under the contract. Guarantees are often used in loan agreements, leases, and other commercial transactions where the cr or wants additional security for the performance of the contract.

Contracts of Indemnity and Guarantee

Introduction

- The **contract of indemnity** and the **contract guarantee** are the **special contracts** under the **Indian Contract Act, 1872.** The contract of **indemnity** is the contract where one person **compensates** for the loss of the other.
- **Contract of guarantee** is a contract between **three people** where the third person **intervenes to pay the debt** if the **debtor** is at **default in paying back.**
- The **contract of guarantee** and **contract of indemnity** perform similar commercial functions in providing **compensation** to the cr or for the failure of a third party to perform their obligation.
- **Chapter VIII of the Indian Contract Act, 1872** contains the legal provisions governing a **contract of indemnity** and a **contract of guarantee** in India.

Contract of Indemnity

- The term **indemnity** is derived from the Latin word "**indemnis**" which denotes **uninjured or suffering no damage or loss**. It is a sort of security or protection against loss.
- **Indemnity** is to indemnify one person by bearing his **losses incurred** to him by the **conduct of promissory** or by **any other party.**

- **Section 124 of the Indian Contract Act, 1872** defines a contract of **indemnity** as a contract wherein **one party promises** to save the **other from loss** caused to him by the **conduct of the promisor himself,** or by the conduct of **any other person.**
- In an indemnity contract, there are only two parties i.e.,
  - **The Indemnifier**: The promisor, who agrees to make up the damage caused to the other group.
  - **The Indemnified**: The person who is assured of compensation for the damage incurred (if any) is referred to as the indemnity holder or the indemnified.

Essentials in the Contract of Indemnity

- **Valid contract**: An **indemnity contract** must have all parts of a **valid contract**. The **Indian Contract Act of, 1872** applies to indemnity contracts.
- **Loss protection**: The indemnity contract is for **loss protection**. The indemnifier is bound to recover the losses.
- **Parties**: The indemnity contract shall have **two parties**. The indemnifier and the holder.
- **Contracts**: There is one contract only between the **holder and the indemnifier**.
- **Express or implied:** The indemnity contract can either be **spoken or written.** The parties can also imply it.

Types of Indemnity

- **Express Indemnity**:
  - This is also known as **written indemnity**. Under this, all the **terms and conditions of** the **indemnity** are mentioned specifically in the contract.
  - The **rights and the liabilities of both parties** are clearly set out in the agreement.
  - This type of agreement includes **insurance indemnity contracts, construction contracts, agency contracts, etc.**
- **Implied Indemnity**:
  - It refers to that **indemnity** wherein the **obligation arises** from the **facts and the conduct of the parties** involved. This is not a written contract.
  - The core example of this type of indemnity is the **master-servant relationship**.
  - The master is liable to indemnify his servant for the losses that he incurred while working as per his instruction.

Rights of an Indemnity Holder

Section 125 of Indian contract Act, 1872 deals with **rights of an indemnity holder**. The **promisee** in a contract of **indemnity**, acting within the scope of his authority, is entitled to **recover from the promisor:**

- All **damages** which he may be **compelled to pay** in any suit in respect of any matter to which the **promise to indemnify** applies.

- All **costs** which he may be **compelled to pay** in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any **contract of indemnity,** or if the promisor authorized him to bring or defend the suit;
- All **sums** which he may have paid under the **terms of any compromise** of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any **contract of indemnity**, or if the promisor authorized him to compromise the suit.

Rights of the Indemnifier

- After the **indemnity holder** is **paid for the damage** incurred, the compensator shall have all the rights to all the methods and services which can save the compensator from the damage.
- **Indemnification** can only be done if the **loss to the other party** is incurred, or if it is certain that the loss will be incurred.
- The **Indian Contract Act of, 1872** does not provide for the time to commence the **liability** of the **indemnifier** under the contract.
- In **Gajanan Moreshwar vs. Moreshwar Madan, (1942)**, the **Bombay High Court** held that if the **indemnified** has incurred liability and the liability is **absolute**, he is entitled to call upon the indemnifier to save him from the liability and pay it off.
- In **Lala Shanti Swarup vs Munshi Singh & Others, (1967)**, the **Supreme Court** held that a conveyance which contains a covenant whereby the purchaser **promises to pay off encumbrances** on the sold property is nothing but an **implied contract of indemnity,** whose cause of action arises when actually **indemnified**. (Mortgage decree being passed does not amount to actual indemnification).

Contract of Guarantee

- **Guarantee** means to give **surety or assume responsibility**. It is an agreement to answer for the **debt of another** in case he makes default.
- **Section 126 of the Indian Contract Act, 1872** provides that a **"contract of guarantee**" is a contract to perform the **promise, or discharge the liability**, of a **third person** in case of his default.
- Three parties are involved in the contract of guarantee.
  - **Surety:** The person **who gives the guarantee** is called the surety. The liability of the surety is secondary, i.e., he has to pay only if the principal debtor fails to discharge his obligation to pay.
  - **Principal debtor**: The person in respect of **whose default** the guarantee is given is the **principal debtor.**
  - **Cr or**: The person to whom the **guarantee is given** called the **cr or.**
- A **guarantee** is either in the format of **writing or of oral.**

- This contract lets the **principal debtor to avail employment, loan or goods on cr** and the **surety** would **ensure repayment** in case of any default in the part of the debtor.
- **Example**
  - Mohan takes loan of Rs. 5 lakhs from the UCO Bank of Lucknow University Branch. Sohan promises to UCO Bank that if Mohan fails to rupee the loan timely then, Mohan will pay. This is a contract of guarantee and Mohan is Principal debtor UCO Bank is creditor and Sohan is surety.

Essentials of Contract of Guarantee

1. The **contract** can be either **oral or in writing**. Nevertheless, the assurance contract can only be in writing in English law.
2. The **guarantee contract** presumes a **principal liability** or a **discharge duty** on the part of the **principal debtor.** Even if there is no such principal liability, one party agrees to pay another under such situations, and the enforcement of this obligation is not contingent on anyone else's default, it is an indemnity contract.
3. **Sufficient consideration** is to support the **principal debtor.** It is not necessary to have clear consideration between the **cr or and the assurance** that it is appropriate that the cr or has done anything for the good of the **principal debtor.**
4. **Assurance consent** cannot be obtained by **misrepresentation** or cover of any material information relating to the transaction.

Liability of Surety

- **Section 128 of the Indian Contracts Act, 1872** states the **liability of the surety is co-extensive** with that of principal debtor, unless it is otherwise provided by the contract.
- **Surety's liability** is the **same** as that of the **principal debtor.** A cr or can move directly against the **surety.** Without suing the principal debtor, a cr or may sue the surety directly. **Surety is liable to make payment** immediately after the default of any payment by the principal debtor.
- **Primary responsibility** for making payment, however, is from the principal debtor, and the responsibility of the surety is secondary. In fact, if the principal debtor cannot be held liable for any payment due to any document error, then surety is not responsible for such payment as well.

Rights of Surety

A. ***Rights against the principal debtor***

-
  - Right to give **notice.**
  - Rights of **sub-rogation.**

- Right of **indemnity.**
- Right to **get securities**.
- Right to ask for **relief.**

B. Rights against the cr   or

- Right to get **securities.**
- Right to ask for **set-off.**
- Rights of **sub-rogation.**
- Right to advice to **sue principal debtor.**
- Right to insist on **termination of services.**

C. Rights against co-sureties

- **Right to Ask for Contribution:** Surety can ask its co surety to add the sum when the principal debtor defaults. If they have issued commitments for equal quantities, they would have to make equivalent contributions.
- Right to **claim** share in **securities.**

Continuing Guarantee

- One form of **guarantee** that extends to a **series of transactions** is a **continuing guarantee**. **A continuing guarantee** extends to all transactions that the **principal debtor** enters into before the **surety revokes it.**
- A continuing guarantee for future transactions may be withdrawn at any time by notice to the creditors. However, the responsibility of **a surety** for transactions completed prior to such **revocation of guarantee** is not diminished.

Conclusion

Both the contract of indemnity and contract of guarantee are similar in the sense that they provide protection against loss. However, as mentioned above, there is an important distinction between the two. Whether a contract is a contract of indemnity or a contract of guarantee is a question of construction in each case.

UNIT-III

NEGOTIABLE INSTRUMENT ACT 1881- GENERAL INTRODUCTION

NEGOTIABLE INSTRUMENT (AMENDMENT) ACT 2002

Negotiable Instrument act 1881- General Introduction

The Negotiable Instruments Act, 1881 is a law in India that governs the use of negotiable instruments such as promissory notes, bills of exchange, and cheques. It provides a legal framework for the issuance, transfer, and enforcement of these instruments.

Here's a general introduction to the Negotiable Instruments Act, 1881:

1. **Purpose:** The Act aims to define and regulate the use of negotiable instruments in India. It establishes the legal rights and obligations of parties involved in negotiable instrument transactions.

2. **Scope:** The Act covers various types of negotiable instruments, including promissory notes, bills of exchange, and cheques. It defines the characteristics, requirements, and procedures for these instruments.

3. **Key Provisions:**

    - Definition and characteristics of negotiable instruments
    - Parties involved in a negotiable instrument transaction (drawer, drawee, payee, endorser, etc.)
    - Rights and obligations of parties
    - Acceptance, negotiation, and endorsement of negotiable instruments
    - Dishonor of negotiable instruments and related legal proceedings
    - Penalties for certain offenses related to negotiable instruments

4. **Amendment and Updates:** The Negotiable Instruments Act has been amended several times over the years to adapt to changing business practices and legal requirements.

Negotiable Instrument (amendment) Act 2002

The Negotiable Instruments (Amendment) Act, 2002 is an amendment to the Negotiable Instruments Act, 1881 in India. The key aspects of this amendment are:

1. **Presumption as to Negotiable Instruments**: The amendment introduced a new provision (section 139) that created a presumption in favor of the holder of a cheque that the cheque had been issued for the discharge of a debt or liability.

2. **Presumption as to Date:** Another new provision (section 138) was introduced to create a presumption that the date mentioned on the cheque is the date of its issue.

3. **Dishonor of Cheque for Insufficiency of Funds**: The amendment included a new section (section 138) that made the dishonor of a cheque for insufficiency of funds in the drawer's account a criminal offense, punishable with imprisonment and/or fine.

4. **Compounding of Offenses:** The amendment allowed the court to compound the offense under section 138 with the permission of the complainant.

5. **Jurisdiction:** The amendment specified that the offense under section 138 would be tried by a judicial magistrate of the first class or by a metropolitan magistrate, as the case may be.

According to Section 13 of the Negotiable Instruments Act,

"A *negotiable instrument* means a promissory note, bill of exchange or cheque payable either to order or to bearer."

But in Section 1, it is also described the **Local extent, Saving of usage relating to hundis, etc. and Commencement.** It extends to the whole of India but nothing herein contained affects the Indian Paper Currency Act, 1871,

Section 21, or affects any local usage relating to any instrument in an oriental language. Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come.

Main Types of Negotiable Instruments are:

1. Inland Instruments
2. Foreign Instruments
3. Bank
4. Finance Companies (listed) Draft[4]

Types of negotiable instruments recognized and governed by the Act

- Promissory note

- Bill of exchange
- Cheque

Characteristics

Some of the essential characteristics provide a distinctive identity. These are:

- Movable- The negotiable instrument is a convenient method of transferring money that is easily and portable. There are no hectic and lengthy procedures as simple steps are needed for transferring the ownership of the instrument by simple delivery or by a valid endorsement.
- Written- The negotiable instrument transactions should be in the written form. The documentation works can be handwritten notes, printed, or typed.
- Definite time- The period for the order of payment must be certain. If the date is not specified then also it must be within a reasonable time. If the payment order depends upon convenience and choice then it cannot be considered as a negotiable instrument.
- Specified persons- Like the time, the payee must also be certain or determined. There can be more than one drawee in the negotiable instruments and the person may include artificial persons like company, any separate legal entity, or the authorized persons.

Types

Most of the negotiable instruments transactions can be categorized into three parts. However, there are no explicit statements that it is limited or it must be specified into only three parts. The railway receipts or the delivery orders are also common examples of negotiable instruments.

- Promissory notes-This transaction generally takes place between the debtor and the creditor. The debtor creates the instrument promising the amount of money on a specified date.
- Bills of Exchange- This is just the opposite of the promissory notes as this is an order from the creditor to the debtor. Here, the creditor makes the instrument that instructs the debtor to pay the payee a certain amount of money. The bill is created by the creditor.
- Cheque- This is just one of the forms of bill of exchange. In this case, the drawee is a bank and such cheques are payable on demand. The bank is instructed by the debtor to pay a certain amount of money to the assigned payee.

Let us have a look at the purpose of the Negotiable Instrument Act.

- The Act aims to create the legal provisions for the negotiable instruments system that is currently in operation throughout the country. The regulatory laws would systematically organize the system and the Act would define a decisive authority to decide any issues relating to negotiable instruments.
- The Act defines every subject related to the negotiable instruments for better clarity and understanding. For example, who is the drawer, drawee, acceptor, etc. are mentioned in the various sections.
- The Act provides the penal provisions for effective implementation of the negotiable instruments process among the parties. If any party breaches its obligation or there is nonfulfillment of the said duty then they may be charged with offenses leading to imprisonment.
- The Act protects the right of the parties when they discharge their obligations diligently.
- The Act mentions different conditions about the transaction systems and laid down its specific provisions.
- The Act eliminates all kinds of discrepancies or hurdles that may arise between the parties. In case of any dispute, the parties would have to undergo the established provisions, and such would legally resolve the matter.
- The Act regulates the different negotiable instruments like promissory notes, Bills of Exchanges, and cheques.

Salient features

In order to regulate the negotiable instruments under the Act, it should fulfill some of the essential features that would be mandatorily fulfilled to consider the Negotiable instrument.

- Writing- Every negotiable instruments transaction would be in writing as the parties would have relevant documents of negotiable instruments. This may vary as per the rules depending upon the type of negotiable instruments such as promissory notes, bills of exchanges, cheques, etc. There is no scope of any verbal dealings among the parties as per the law and it would not be considered in case of any disputes. A written document serves as a prima facie document or evidence in a court of law explaining the factual matters in case of any disputes between the parties.
- Signature- The instrument has no value unless it gets validated by the parties. The sign acts as an authentication of the valid consent for the settlement transactions between the parties. Thus, instruments must be duly signed by the parties.

- Monetary value- The negotiable instruments should be exclusively dealt with in terms of money that are recognized by the government as well as the laws of the country. The transactions in legal tender money would be the sole intention to have this under the negotiable instruments. The products or any other transactions would be invalid and so it must be strictly in terms of monetary terms.
- Demand- Nowadays, “this system is very popular in business as well as other commercial transactions”. This is a safe and convenient mode of payment and settlement between the parties. There is no need for any cash as the amount would get directly transferred to the payee as per the rules of the banking transactions.
- Reliable System- The convenient mode of transactions and the efficient mode of the system both are simultaneously required for the development and growth. The safe system and the credibility of the banks would ensure that the money gets transferred easily and to the right people.

2002 Amendment to the Negotiable Instruments Act

The Negotiable Instrument Act has been amended on a timely basis to eliminate the discrepancies or any such hurdles that would reduce the efficiency of the Negotiable Instruments Act. There was the need of the hour when the system and people had widely accepted the exhaustive use of instruments for any business or personal transaction. The development of electronic data exchange and technology has limited the scope of the laws formulated earlier. Earlier, agriculture was a prime occupation, and most of the transactions were dealt in cash but after the diversity of occupation and services, the general public has explored the scope of banking transactions which resulted in heavy transactions of amounts through banks.

The Act was mainly formulated to create legislation regarding cheques, bills of exchanges, and promissory notes. The statute was passed to deal with the particular form of contract and to lay down special provisions. Since the negotiable instruments have been widely used in commercial and banking transactions over a long period of time as one of the best suited for transferring money. Some of the obsolete legislation has defeated the purpose of negotiable instruments.

The need for such amendments was to reduce the cases of dishonoring cheques by introducing penal provisions by the stringent implementation of laws. In the recent article of the Hindu, there are around 35 lakh cheque bounces till date that are pending before various courts mentioned by the Supreme Court recently. The increasing number of dishonoring cheques has stated the need for amendments to eliminate the loopholes. The amendments of 2002 have introduced new sections from Section 143 to Section 147 that has widened the scope and diminished the limitation of the parent Act. The introduction of five new sections and the Amendment Act was brought into force on Feb 6,

2002. The Sections come under Chapter XVII that was primarily for penal provisions as the person can be charged with offenses for dishonoring the cheques in case of deficiency of funds. If we observe the past then there was no timely disposal of cases as it would become burdensome since the procedure of court was time taking and inefficient. Some of the provisions are

Section 143 states the court authority to deal with the cases that would come under Judicial Magistrate of the first class or Metropolitan Magistrate and the provisions from Section 262 to Section 265 of Code of Criminal Procedure shall be applied as per the facts of the case. It further states that when the case is filed, the hearing should be done on a day-to-day basis until its final disposal of cases and in exceptional circumstances, the court shall state the reasons for not conducting a trial on the following day. The case filed under this Section should be disposed of within six months from the date of filing the complaint. This practice would be consistent with the interest of justice.

Section 144 of the NI Act defines the different modes of summoning. When the Magistrate issues summons to an accused, he may direct a copy of the summons at the place where the accused originally resides or carries business or personally works for the gain by the method of speed post or other courier services which can be authorized by the court of session. The same applies in the case of witnesses also. The acknowledgment of the receipt should be signed by the accused or witness in front of that person who has been assigned by the Postal department. If the accused or witness refuses to accept the delivery of the summons, then the court may implicitly consider that the summons has been duly received.

Section 145 defines the evidence on affidavit as the evidence of the complainant may be given by him on affidavit and it may be subject to all just exceptions that to be read in evidence in any inquiry, trial, or proceedings under the said code. The court, if finds such situations, t can summon any person giving evidence on the affidavit as to the facts.

UNIT-IV

GENERAL INTRODUCTION OF CONSUMER PROTECTION ACT 1986 AND 2018,

FEMA (FOREIGN EXCHANGE MANAGEMENT ACT).

General Introduction of Consumer Protection Act 1986 and 2018,

The Consumer Protection Act (CPA) is a key legislation in India that aims to protect the rights and interests of consumers. The Act was originally enacted in 1986 and has been amended over the years, with the latest amendment being the Consumer Protection Act, 2019.

Here's a general introduction to the Consumer Protection Act, 1986 and 2018:

Consumer Protection Act, 1986:

- The Consumer Protection Act, 1986 was enacted to provide for the protection of the interests of consumers and to establish consumer councils and other authorities for the settlement of consumers' disputes.
- The Act defined the rights of consumers and provided a mechanism for redressal of their grievances.
- It established a three-tier quasi-judicial consumer dispute redressal mechanism at the national, state, and district levels.
- The Act covered a wide range of consumer goods and services, including banking, insurance, telecommunications, and real estate.

Consumer Protection Act, 2019 (2018 amendment):

- The Consumer Protection Act, 2019 replaced the earlier Act of 1986 and came into effect from July 20, 2020.
- The 2019 Act aimed to strengthen the rights of consumers and provide a more effective grievance redressal mechanism.
- Key features of the 2019 Act include:
    - Establishment of Central Consumer Protection Authority (CCPA) to promote, protects, and enforces consumer rights.

- Provision for product liability action for any harm caused to a consumer due to a defective product.
- Provision for e-commerce and direct selling guidelines to protect consumer interests.
- Increased penalties for misleading advertisements and unfair trade practices.
- Simplified grievance redressal process with no fee for filing complaints.

Consumer Protection Act, 2019

The new Consumer Protection Act was passed by Parliament in 2019. It came into force in July 2020 and replaced the Consumer Protection Act, 1986.

Need for the new act:

- The Digital Age has ushered in a new era of commerce and digital branding, as well as a new set of customer expectations. Digitisation has provided easy access, a large variety of choices, convenient payment mechanisms, improved services and shopping as per convenience. However, there are also associated challenges related to consumer protection.
- To help address the new set of challenges faced by consumers in the digital age, the Indian Parliament passed the landmark Consumer Protection Bill, 2019 which aims to provide timely and effective administration and settlement of consumer disputes.

Consumer Protection Act 2019 Details:

- Consumer Protection Act, 2019 is a law to protect the interests of the consumers. This Act provides safety to consumers regarding defective products, dissatisfactory services, and unfair trade practices.
- The basic aim of the Consumer Protection Act, 2019 is to save the rights of the consumers by establishing authorities for timely and effective administration and settlement of consumers' disputes.

Rights of the consumers:

- Consumers have the right to information on various aspects of goods and services. This could be information about the quantity, quality, purity, potency, price, and standard of goods or services.

- To be protected from hazardous goods and services. Right to protection against goods and services that can be dangerous to life and property.
- To be protected from unfair or restrictive trade practices.
- Consumers have the right to access a variety of goods and services at competitive prices.
- Consumers should have the right to redressal.

Salient Provisions of the Consumer Protection Act 2019

New definition of consumer:

- The new Act has widened the definition of 'consumer'.

Definition of consumer:

- As per the Act, a person is called a consumer who avails the services and buys any good for self-use. Worth to mention that if a person buys any good or avails any service for resale or commercial purposes, he/she is not considered a consumer. This definition covers all types of transactions i.e. offline and online through teleshopping, direct selling or multi-level marketing.

Central Consumer Protection Authority:

- The Act proposes the establishment of the Central Consumer Protection Authority (CCPA) as a regulatory authority.
- The CCPA will protect, promote and enforce the rights of consumers and regulate cases related to unfair trade practices, misleading advertisements, and violation of consumer rights.
- CCPA would be given wide-ranging powers.
    - The CCPA will have the right to take suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses, impose penalties and file class-action suits.
    - The CCPA will have an investigation wing to conduct independent inquiry or investigation into consumer law violations.

To get the List of important Acts that Transformed India for the upcoming UPSC exam preparation, candidates can visit the linked article.

Consumer Disputes Redressal Commission:

- The Act has the provision of the establishment of Consumer Disputes Redressal Commissions (CDRCs) at the national, state and district levels to entertain consumer complaints.
- As per the notified rules, the State Commissions will furnish information to the Central Government on a quarterly basis on vacancies, disposal, the pendency of cases and other matters.
- The CDRCs will entertain complaints related to:
    - Overcharging or deceptive charging
    - Unfair or restrictive trade practices
    - Sale of hazardous goods and services which may be hazardous to life.
    - Sale of defective goods or services
- As per the Consumer Disputes Redressal Commission Rules, there will be no fee for filing cases up to Rs. 5 lakh.

E-Filing of Complaints:

- The new Act provides flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer. This is unlike the earlier condition where the consumer had to file a complaint at the place of purchase or where the seller has its registered office address.
- The new Act also contains enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing.
- Consumers will also not need to hire a lawyer to represent their cases.

Product Liability & Penal Consequences:

- The Act has introduced the concept of product liability.
    - A manufacturer or product service provider or product seller will now be responsible for compensating for injury or damage caused by defective products or deficiency in services.

- This provision brings within its scope, the product manufacturer, product service provider and product seller, for any claim for compensation. The term ‘product seller’ would also include e-commerce platforms.

Penalties for Misleading Advertisement:

- The CCPA may impose a penalty on a manufacturer or an endorser, for a false or misleading advertisement. The CCPA may also sentence them to imprisonment.

Provision for Alternate Dispute Resolution:

- The new Act provides for mediation as an Alternate Dispute Resolution mechanism. For mediation, there will be a strict timeline fixed in the rules.
- As per the recently notified rules, a complaint will be referred by a Consumer Commission for mediation, wherever scope for early settlement exists and parties agree to it. The mediation will be held in the Mediation Cells to be established under the aegis of the Consumer Commissions. There will be no appeal against settlement through mediation.

Unfair Trade Practices:

- The new Act has armed the authorities to take action against unfair trade practices too.
- The Act introduces a broad definition of Unfair Trade Practices, which also includes the sharing of personal information given by the consumer in confidence unless such disclosure is made in accordance with the provisions of any other law.

The Central Consumer Protection Council:

- The Consumer Protection Act empowers the Central Government to establish a Central Consumer Protection Council. It will act as an advisory body on consumer issues.
    - As per the notified Central Consumer Protection Council Rules, the Central Consumer Protection Council would be headed by the Union Minister of Consumer Affairs, Food and Public Distribution with the Minister of State as Vice Chairperson and 34 other members from different fields.

    - The Council, which has a three-year tenure, will have a Minister-in-charge of consumer affairs from two States from each region – North, South, East, West, and NER. There is also a provision for having working groups from amongst the members for specific tasks.

Applicability:

- This Act is applicable to all the products and services, until or unless any product or service is especially debarred out of the scope of this Act by the Central Government.

Consumer Protection Act 2019 Significance:

Empowering consumers:

- The new Act will empower consumers and help them in protecting their rights through its various rules and provisions. The new Act will help in safeguarding consumer interests and rights.
    - Consumer-driven businesses such as retail, e-commerce would need to have robust policies dealing with consumer redressal in place.
    - The new Act will also push consumer-driven businesses to take extra precautions against unfair trade practices and unethical business practices.

Inclusion of the e-commerce sector:

- The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by the new Act.
    - E-commerce has been witnessing tremendous growth in recent times. The Indian e-commerce market is expected to grow to US$ 200 billion by 2026.
- The Act also enables regulations to be notified on e-commerce and direct selling with a focus on the protection of interests of consumers. This would involve rules for the prevention of unfair trade practices by e-commerce platforms.
    - As per the notified rules, every e-commerce entity is required to provide information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism, payment methods, the security of payment methods, charge-back options, etc.

including country of origin which are necessary for enabling the consumer to make an informed decision at the pre-purchase stage on its platform.

- The e-commerce platforms will have to acknowledge the receipt of any consumer complaint within forty-eight hours and redress the complaint within one month from the date of receipt under this Act. This will bring e-commerce companies under the ambit of a structured consumer redressal mechanism.
- E-commerce entities that do not comply will face penal action.

Time-bound redressal:

- A large number of pending consumer complaints in consumer courts have been common across the country. The new Act by simplifying the resolution process can help solve consumer grievances speedily.
- A main feature of the Act is that under this, the cases are decided in a limited time period.

Responsible endorsement:

- The new Act fixes liability on endorsers considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors.
- This will make all stakeholders – brands, agencies, celebrities, influencers and e-commerce players – a lot more responsible. The new Act would force the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.

Upholding consumer interests:

- For the first time, there will be an exclusive law dealing with Product Liability.
- Product liability provisions will deter manufacturers and service providers from delivering defective products or deficient services.
- The new legislation empowers the National Consumers Dispute Redressal Committee as well as the State Commission to declare null and void any terms of a contract while purchasing a product. This will go a long way in protecting consumers, who are often subject to contract conditions that favour a seller or manufacturer.

Alternate dispute redressal mechanism:

- The provision of Mediation will make the process of dispute adjudication simpler and quicker.
- This will provide a better mechanism to dispose of consumer complaints in a speedy manner and will help in the disposal of a large number of pending cases in consumer courts across the nation.

Simplified process for grievance redressal:

- The new Act would ease the overall process of consumer grievance redressal and dispute resolution process. This will help reduce inconvenience and harassment for the consumers.
- The enhanced pecuniary jurisdiction and provisions providing statutory recognition to mediation processes, enabling filing of complaints from any jurisdiction and for hearing parties through video-conferencing will increase accessibility to judicial forums and afford crucial protection in times when international e-commerce giants are expanding their base.

Read more about the Consumer Confidence Index (CCI) at the linked article.

Consumer Protection Act 2019 Concerns:

State regulation:

- As part of the Consumer Protection Act, 2019, the Ministry of Consumer Affairs will compile a code of conduct for advertisers and agencies, a move designed to curb unfair practices and misleading claims. The planned code will detail penalties for advertisers and their agencies and publishers if misleading advertising and false claims are found.
- There have been concerns that this approach would mark a move from self-regulation to a more federated oversight.

Implementational challenges:

- The existing vacancies at the district commission level would undermine the effective implementation of the new Act.

Lack of differentiated approach:

- As per the proposed rules for the e-commerce businesses, companies are not allowed to "manipulate the price" of goods and services offered on their platforms to gain unreasonable profit or discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the Act.
- The clause on the manipulation of price by e-commerce companies appears irrelevant as sometimes, the e-commerce companies would want to reduce the price to enhance sales volume. For a country with market size of around $25 billion, the guidelines should have taken a deeper view of the e-commerce ecosystem, covering all prevailing business models between consumers, marketplaces and sellers.

FEMA (Foreign Exchange Management Act)

The Foreign Exchange Management Act (FEMA) is an Indian law that regulates foreign exchange transactions in India. It was introduced in 1999, replacing the earlier Foreign Exchange Regulation Act (FERA).

Some key points about FEMA:

1. **Objective:** The primary objective of FEMA is to facilitate external trade and payments, and to promote the orderly development and maintenance of the foreign exchange market in India.

2. **Scope:** FEMA governs all foreign exchange transactions, including current account transactions (like exports and imports) and capital account transactions (like foreign direct investment, portfolio investment, borrowing/lending in foreign currency).

3. **Regulations:** FEMA empowers the Reserve Bank of India (RBI) to frame regulations and issue notifications, circulars, and directions to implement the provisions of the Act.

4. **Contraventions:** FEMA prescribes civil penalties for contraventions, unlike the criminal penalties under the earlier FERA.

Main Features of Foreign Exchange Management Act, 1999 (FEMA Act)

1. It gives powers to the Central Government to regulate the flow of payments to and from a person situated outside the country.

2. All financial transactions concerning foreign securities or exchange cannot be carried out without the approval of FEMA. All transactions must be carried out through "Authorised Persons."
3. In the general interest of the public, the Government of India can restrict an authorized individual from carrying out foreign exchange deals within the current account.
4. Empowers RBI to place restrictions on transactions from capital Account even if it is carried out via an authorized individual.
5. As per this act, Indians residing in India, have the permission to conduct a foreign exchange, foreign security transactions or the right to hold or own immovable property in a foreign country in case security, property, or currency was acquired, or owned when the individual was based outside of the country, or when they inherit the property from individual staying outside the country.

Structure of FEMA

1. The Head Office of FEMA, also known as the Enforcement Directorate, headed by the Director is located in New Delhi.
2. There are 5 zonal offices in Delhi, Mumbai, Kolkata, Chennai, and Jalandhar, each office is headed by a Deputy Director.
3. Every 5 zones are further divided into 7 sub-zonal offices headed by Assistant Directors and 5 field units headed by Chief Enforcement Officers.

Objectives of FEMA

The main objective for which FEMA was introduced in India was to facilitate external trade and payments. In addition to this, FEMA was also formulated to assist orderly development and maintenance of the Indian forex market.

FEMA outlines the formalities and procedures for the dealings of all foreign exchange transactions in India. These foreign exchange transactions have been classified into two categories — Capital Account Transactions and Current Account Transactions.

Under the FEMA Act, the balance of payment is the record of dealings between the citizen of different countries in goods, services and assets. It is mainly divided into two categories, i.e. Capital Account and Current Account.

Capital Account comprises all capital transactions whereas Current Account comprises trade of merchandise. Current Account transactions are those transactions that involve inflow and outflow of money to and from the country/countries during a year, due to the trading/rendering of commodity, service, and income.

The current account is an indicator of an economy's status. As mentioned above the balance of payment comprises current and capital accounts, the remainder of the Balance of Payment is Capital Account, which consists the movement of capital in the economy due to capital receipts and expenditure. Capital account recognises domestic investment in foreign assets and foreign investment in domestic.

Applicability of FEMA Act

FEMA (Foreign Exchange Management Act) is applicable to the whole of India and equally applicable to the agencies and offices located outside India (which are owned or managed by an Indian Citizen). The head office of FEMA is situated in New Delhi and known as Enforcement Directorate. FEMA is applicable to:

- Foreign exchange.
- Foreign security.
- Exportation of any commodity and/or service from India to a country outside India.
- Importation of any commodity and/or services from outside India.
- Securities as defined under Public Debt Act 1994.
- Purchase, sale and exchange of any kind (i.e. Transfer).
- Banking, financial and insurance services.
- Any overseas company owned by an NRI (Non-Resident Indian) and the owner is 60% or more.
- Any citizen of India, residing in the country or outside (NRI).

The Current Account transactions under the FEMA Act has been categorized into three parts which, namely-

- Transactions prohibited by FEMA,
- The transaction requires Central Government's permission,

- The transaction requires RBI’s permission.

Prohibition on Drawal of Foreign Exchange

- Any kind of remittance out of winning the lottery.
- Any kind of remittance from the income on racing/riding etc,
- Any remittance for buying of a lottery ticket, football pools, sweepstakes, banned/prescribed magazines etc.,
- Commission payment on exports towards equity investment of Indian Companies in Joint ventures/wholly owned subsidiaries abroad.
- Remittance of dividend by any company. However, this clause is applicable only if the requirement of dividend balancing is applicable.
- Commission payment on exportation under Rupees State Credit Routes except commission up to 10% of invoice value of export of tea and tobacco.
- Payment regarding “ Call back Services” of telephones.
- A travel to Bhutan and/or Nepal.
- Remittance of interest income on funds held in NRSR Account i.e. Non-resident Special Rupees Scheme account.
- A transaction with a resident of Bhutan or Nepal.

Penalties Under FEMA

If any person contravenes the provisions of FEMA or any rule, direction, regulation, order or notification issued under FEMA, he shall be liable to pay a penalty up to thrice the sum involved in such contravention or up to Rs.2 lakh. Where such contravention is a continuing one, he shall be liable to pay a further penalty which may extend to Rs.5,000 for every day during which the contravention continues.

UNIT-V

INDIAN PARTNERSHIP ACT 1932- GENERAL INTRODUCTION.

LIMITED LIABILITY PARTNERSHIP ACT 2008.

Indian Partnership Act 1932- General Introduction.

Definition of Partnership:

"Partnership is the relation existing between person competent to make contracts who have agreed to carry on a lawful business in common, with a review of private gain"

The Indian Partnership Act 1932 defines "Partnership" as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting you all"

Characteristics of Partnership:

1. Formation (two more person)
2. Agreements- among partners
3. Legal business as per the registration under partnership Act.
4. Profit Motive
5. Unlimited liability
6. Non transferability of share
7. Full management and control
8. Mutual agency
9. Utmost good faith
10. Individuality of the partner
11. No Separate entry

Advantages of Partnership

1. Easy formation
2. Benefit of greater resources
3. Sharing of risks
4. Protection of minority interests

5. Flexibility
6. Balanced judgment
7. Personal supervision
8. More scope for expansion
9. Free from various expenses
10. Benefit of personal contracts of partners

Disadvantages of Partnership

1. Unlimited liability
2. Limited resources
3. Non-Transferability of shares
4. Instability
5. Lack of quick decisions
6. Lack of public confidence
7. Conflicts
8. Lack of secrecy and privacy
9. Absence of separate legal status

Partnership Deed

Meaning

The partnership Deed is a document which embodies the terms and conditions of the partnership agreement laying down the mutual rights, duties and obligations of partners. The deed is stamped in accordance with the stamp Act.

Contents: The common contents of Partnership Deed are

1. Name of the firm
2. Name and address of the partners
3. Nature of the business
4. Capital contributed by each partner
5. Proportion of division of profit and losses
6. The duties, powers and obligations of the partners
7. The mode of maintaining accounts

8. Management of business
9. Provision regarding retirement and dissolution
10. Arbitration in case of dispute among partners
11. Whether loans will be accepted form a partner
12. The amount salary payable to partners
13. The rate of interest payable to partners on their capital
14. The amount to be allowed as drawings and the rate of interest on amount withdrawn by them

Different types of Partnership

1. **Partnership at will:** The partnership formed to carry on business without specifying and period of time is known as partnership at will
2. **Particular partnership:** When a partnership is formed for a fixed period or for a completion of a definite venture.
3. **Joint venture:** it is organized for a specific enture is a specified period. Member of joint venture do not enjoy general agency rights are defined. No member can withdraw from joint venture before the completion of specific venture.
4. **Limited Partnership:** In this liability of partners is limited except that of one or more partners

Different kinds of partners:

1. **Active Partner:** a partner who is activity engaged in the conduct and management of the business.
2. **Sleeping or dormant partner:** The partner who does not participate in the management of the firm. They contribute capital ad get share in the profit or loss of the firm.
3. **Nominal Partner:** Nominal partner is a partner who lends his name to the firm without having any interest in the management and profit of the business.
4. **Partner in profit only:** Such partner is a partner who shares the profits of the business without making himself responsible for the losses.
5. **Limited partner:** Limited partner is a partner whose liability is limite to the amount he has invested in the firm as capital.
6. **Sub Partner:** When a partner enters into a new agreement to share his

profits with an outsides such an outsider is known as partner.

Partner by estoppels of holding out: It a person represents to the outside world by words spoken or written or by his conduct or by lending his name, that he is a partner in a certain partnership fir, such person by estoppels or holding out.

Requisites of an ideal partnership:

1. Mutual faith and understanding
2. Common approach
3. Minimum number and mutual confidence
4. Skills and talents of partners
5. Adequate long term capital
6. Long duration
7. Written agreement
8. Registration

REGISTRATION OF PARTNERSHIP

Under the Partnership Act, it is not compulsory for a firm to be registers, but there are certain disabilities to an unregistered from which it desirable, even virtually compulsory, that the firm be registered.

Procedure of Registration

The statement should contain information relating to the following particulars:

(i) The name of the firm
(ii) The principle place of business
(iii) Name of other places where the firm varies on business
(iv) The dates on which various partners joined the firm
(v) The names in the full and addresses of the partners and
(vi) The duration of the firm.

DISSOLUTION OF PARTNERSHIP

According to section 39 of the Indian Partnership Act. 1932, the dissolution of partnership between all the partners of a firm is called the dissolution the firm.

Section 48 of the partnership act, 1932 lays down the following procedure for the settlement of accounts between partners after the dissolution of the firm:

1. Losses including deficiencies of capital should be made good
(a) First of profits
(b) Then out of capital
(c) If need be out o personal contributed of partner in their profit sharing rations.
2. The assets of the firm including any sum contributed by partners to make up deficiencies of capital will be applied for setting the debts of the firm, in the following order, subject to any agreement to the contrary.
a) First, in paying of the debts of the firm due to third parties.
b) Then in paying to each partner ratably any advance or loans given by him in addition to or apartfrom his capital contribution.
c) If any surplus is available after discharging the above liabilities, the capital contributed by the partner may be returned, if possible, in full or otherwise ratably.
d) The surplus, if any, shall be divided among the partner in their profit sharing rations.

MODES OF DISSOLUTION

(A) DISSOLUTION WITHOUT INTERVENTION OF COURT

1. Dissolution by agreement.
2. Dissolution by notice.
3. Dissolution or the happening of certain contingencies.

i. By the expiry of the term of duration of the firm.
ii. By the completion of the adventure or task of which the firm was contributed.
iii. By the death of a partner.
iv. By the adjudication of a partner as insolvent.

1. Compulsory dissolution:
   a) When all the partner except one become insolvent.
   b) When all the partners become insolvent.
   c) When the business becomes illegal.

d) When the number of partners exceeds twenty in case of ordinary business and ten in case ofbanking business.

(B) DISSOLUTION BY COURT

1. When a partners becomes of unsound mind.
2. When a partner suffer from permanent incapacity and become permanently incapable ofperforming his duties as a partner.
3. When a partner is guilty of misconduct affecting the business of the rm.
4. When a partner commits willful or persistent breaches of agreement.
5. When a partner has transferred the whole of the interest in the firm to third party.
6. When the business of the firm cannot be carried on except al a loss.

Limited Liability Partnership act 2008

The Limited Liability Partnership Act, 2008 (LLP Act) is a law in India that governs the formation and operation of Limited Liability Partnerships (LLPs). Here are some key points about the LLP Act 2008:

1. **Definition of LLP:** The LLP Act defines a Limited Liability Partnership as a partnership formed and registered under the Act. It is a separate legal entity, distinct from its partners.

2. **Formation:** The LLP Act provides the procedure for the formation of an LLP, including the requirement to register the LLP with the Registrar of Companies.

3. **Governance:** The LLP Act sets out the rules for the governance of an LLP, including the roles and responsibilities of partners, decision-making, and the maintenance of accounts and records.

4. **Liability:** One of the key features of an LLP is the limited liability of its partners. The LLP Act specifies that the liability of partners is limited to their agreed contribution to the LLP.

5. **Conversion:** The LLP Act allows for the conversion of existing business entities, such as partnerships or private limited companies, into an LLP.

6. **Taxation:** LLPs are generally taxed as a partnership entity, with the partners being taxed on their share of the LLP's profits.

The Limited Liability Partnership Act, 2008 of India, was passed by the Indian Parliament on December 2, 2008. It provides a new legal framework for forming limited liability partnerships (LLPs). The LLP is an association of two or more persons who have agreed to be jointly and severally liable for the obligations incurred by the LLP. The LLP has no legal personality and does not own any property. It is governed by a contract that sets out its members' rights, duties, and liabilities.

These partnerships are formed to mitigate risks associated with high capital requirements and provide flexibility in business structure.

Procedure of Registration of the Act

The Limited Liability Partnership Act, 2008 of India, which came into force on April 1, 2008, is the law that governs the registration of limited liability partnerships in India.

The Limited Liability Partnership Act, 2008 of India is the law that governs the registration of limited liability partnerships in India. The primary purpose was to protect the partners from being held liable for any debts and obligations incurred by the association.

As per this Act, all partners are treated as mere passive investors and not as active partners in a limited liability partnership. The Act also provides for a procedure for registering a limited liability partnership.

Procedure for Incorporating Limited Liability Partnership Act

The LLP Act provides a framework for regulating the business affairs of limited liability partnerships. It also defines what constitutes a partnership, how it can be formed, dissolved, and other important terms related to this type of entity.

Incorporating a limited liability partnership is a procedure to create the legal entity known as a limited liability partnership.

The articles of incorporation for a limited liability partnership must include the following:

- The name, address, and registered agent of the LLP
- The name, address, and registered agent of each general partner
- The name and address of each member
- The date when formed the LLP was formed
- A brief statement about what type of business or profession is being conducted by the LLP

Agreement Procedure

In a Limited Liability Partnership Agreement, the agreement has to be in writing and must have the following:

- The parties' names and addresses
- The type of limited liability partnership and its state of formation
- The date on which the limited liability partnership is formed and its duration,
- The name of the limited liability partnership's official agent for service of process (if applicable)
- A list of all general partner members of the limited liability partnership

Designated Partner

The LLP Partnership Act India legislation makes it mandatory for all partnerships to have a number. By LLP PARTNERSHIP (Amendment) rules which are enacted in 2015 were passed to ensure that the partnership has a unique number and that no two associations have the same number. This law ensures no confusion and that any partner can identify their partnership with ease.

The LLP Partnership (Amendment) Act was passed in March 2018 and it came into force on April 1, 2018. This Act results from the amendments introduced by the Finance Act 2017 and applies to all limited liability partnerships registered on or after April 1, 2018.

The LLP Partnership Act India provides for the following:

- Termination of partnership by agreement
- Partner's liability for wrongful acts
- Transfer of partnership property
- Partnership dissolution by agreement
- Partners' liability for wrongful acts committed before dissolution

- Transfer of partnership property before dissolution

LLP is an acronym for Limited Liability Partnership. LLP is a form of business entity that allows partners to share the risks and benefits of the business without having to transfer ownership.

The Amendment Act was introduced in 2017 to change the laws surrounding partnerships in India. It has replaced some provisions of the earlier Act, which was enacted in 1856. This new law will help Indian companies grow and expand their businesses by lowering their entry barriers and making it easier to raise capital from investors.

It has a provision that states that the designated partners will be punished if they contravene any Act's requirements or regulations. The punishment can be imprisonment for up to six months and an amount of Rs. 50,000/- or both.

Many designated partners have been trying to comply with all the conditions to avoid any risk of punishment leading to changes in their behaviour. They are now more careful about compliance with LLP's rules and regulations, following all their procedures.

Conclusion

The Limited Liability Partnership Act, 2008 of India, is a law that governs the affairs of limited liability partnerships. This Act regulates the formation and dissolution of LLP concerning its partners, its business and experiences, and the rules governing its internal functioning. The LLP Partnership Act India aims to reduce litigation, simplify partnership agreements, and increase transparency, among other things. In March of this year, India passed the LLP Partnership (Amendment) Act. It has taken effect from April 1, 2018. This Act is the consequence of the Finance Act 2017 changes and applies to all limited liability partnerships formed on or after April 1, 2018.