

# Business Law – II

## Semester – IV

### Module 1

## THE COMPANIES ACT 2013

A company is defined as a voluntary association of persons for any common object such as trade, business, manufacturing, sports, research etc.

Under section 2(20) a company is defined as a company formed and registered under this act or a under any of the previous company law.

### Nature ,Features or hallmarks of Company

#### **REGISTRATION:-**

A company comes into existence with the incorporation or registration. Registration of company is compulsory under the law. Sec. 464 of the Companies Act a company or any association unless registered if the association or partnership of persons exceeds the maximum limit as provided under those laws.

#### **ARTIFICIAL LEGAL PERSON:-**

A company is a distinct artificial legal person created by law and can be dissolved by law alone. It is invisible and exists only in the eyes of law. Company acts through the agency of natural persons. Company enjoys rights and performs duties at law.

#### **CORPORATE PERSONALITY:-**

A company after registration is a legal person in law, a single person with a distinct legal personality which is independent and different from the member who forms it. There is a famous English case, Salomon v/s Salomon Co. Ltd. Mr. Salomon was a shoe manufacturer. He formed a company Salomon & Co. Ltd. There were 7 subscribers Mr. Salomon, his wife, their daughter & 4 sons, each holding 1 share in the company. The company purchased the personal shoe making business of Mr. Salomon for \$ 40,000 which was paid by allotting Mr. Salomon 20,050 shares of \$ 1 each and debenture worth \$ 10,000 having a charge on assets of the company. One share was given to the remaining 6 members. The company went into liquidation, The assets of the company were realised for \$ 6000 & the company had liability of paying, Mr. Salomon as a debenture creditor \$ 10,000 & other unsecured creditors \$ 7000. In this situation if the debenture holder is paid nothing would remain with the company to pay other creditors. The other creditors therefore approached the court & contended that Mr. Salomon and the Salomon & Co. Ltd are one and same and it was Mr. Salomon himself doing

the business under the name of the Salomon & Company which never had independent existence separate and from Mr. Salomon. The court rejected this argument and held that the Salomon & Co. Ltd has its own separate legal existence and was independent body distinct from Mr. Salomon.

**CITIZEN:-**

Company may have a domicile and nationality but a company is not a citizen, therefore certain rights which are available exclusively to the citizens are not enjoyed by the company.

**LIMITED LIABILITY:-**

A member is liable to pay the nominal value of the shares held by him. The member is not liable or responsible for the debts of the company.

**PERPETUAL SUCCESSION -**

A registered company never dies. The insolvency or death of member does not affect the continued existence of the company. Once a company is born it never dies. The creation and cessation of company are made as per the law.

**TRANSFERABLE SHARES:-**

Shares are a moveable property and are transferrable in accordance with the provisions of the articles of the company. Hence they are freely traded in the open share market.

**COMMON SEAL:-**

Company is an artificial person incapable of signing the document for itself therefore law provides for the use of a common seal as a substitute for its signature.

**Can Sue or Be Sued:-**

Company being a separate person has right to sue in its own name and is also liable to be sued.

**Distinction between Private and Public company**

Private company	Public company
<b>1.Number of members</b>	
A private company cannot have less than 2 member and more than 200 members.	A minimum of seven members are required and for maximum there is no limit.
<b>2. Transfers of share</b>	
There is restriction on the member to transfer the share.	In public company there is no such restriction.
<b>3. Invitation to public</b>	
A private company cannot invite the public to buy its shares and debentures.	A public company may invite the public to buy its share and debenture.
<b>4. Name</b>	
Private company must have the words	There is no such condition.

(Private limited) at the end of its name.	
<b>5. Prospectus</b>	
A private company is not required to file a prospectus with the registrar.	A public company must file a prospectus or a statement in lieu of prospectus with the registrar.
<b>6. Directors</b>	
There must be a minimum two directors.	There must be three directors.
<b>7. Borrowing of loans</b>	
Director can borrows from private company. But rate of interest as per bank rate and prior permission from central government must be taken.	Director can borrow from public company. But rate of interest as per bank rate and prior permission from central government must be taken.
<b>8. Privilege</b>	
There is more restriction to a private company more privilege.	There is less restriction to a public company no privilege.

### **Memorandum of Association sec. 2(56)**

Memorandum of Association of a company act defined as the memorandum as originally framed or as altered from time to time under this or any of the previous company law. It is a document of great importance. It is treated as the constitution of the company. it contains the fundamental rules & regulation of the company which defines the scope of activities of the company. If any act or transaction is beyond the scope or limit of the memorandum of association of the company such acts or transaction would be void and ultra vires. A memorandum of association contains the following clauses

1. Name
2. Registered office
3. Objects
4. Liabilities
5. Capital
6. Subscriptions.

#### ***Alteration of memorandum***

**Name Clause sec. 13:** Name of the company can be changed by passing a special resolution and approval by the central government. If the company is registered with undesirable name it can be changed by passing an ordinary resolution and approval of central government. Change of name does not affect the identity of the company.

**Address Clause sec. 13:** The change in the address of the company within the same city or town can be made by passing ordinary resolution. If the change of address is from one city to another in the same state special resolution is required. However if the

address is changed from one state to other state then special resolution and intimation to the registrar of company where it is registered and also to the registrar of the company of the state where it is shifted . The record of the company is transferred to the registrar of company where it is shifted and a new certificate of registration/incorporation is issued.

**Object Clause sec. 17:** Object clause of the company can be altered by passing a special resolution of shareholder and to the satisfaction of the registrar that sufficient notice has been given to the shareholder, debenture holder, and creditor for recording their objection if any. A petition is required to be filed with the National company law tribunal for confirmation of alteration.

Object clause can be altered for some essential reasons such as:

- a) To carry on business more economically.
- b) To attain main purpose by new or improved means.
- c) To enlarge or change the local area of companies area of operation.
- d) To restrict or abandon any of the objects.
- e) To sell or dispose of the whole or any part of the undertaking.
- f) To amalgamate with any other company.

### **Articles of Association**

The article of association is a written document of a company. It consist of set of rules , regulation and bye laws made for internal management of the company for bringing out the objects of the company. The memorandum of association and articles of association are the basic document needed for registration of a company. The articles of association of company are the rules related to the Shares, Capital, General Meeting, Account & Audit and Winding up of company etc.

#### **Contents of Article of Association**

1. Regulations as to adoption of preliminary contracts.
2. Regulations as to share capital, share certificate, calls on share, transfer and transmission of share, forfeiture of shares, conversion of share in to stock.
3. Regulations as to alteration of capital.
4. Regulations as to voting, poll, proxies.
5. Regulations as to General meeting.
6. Regulations as to Directors Appointment, Remuneration, Qualification, Powers, Removal etc.
7. Regulations as to account, audit and borrowing powers.
8. Regulations as to winding up company.

### **Alteration of article of association**

Articles of association can be altered by passing a special resolution and filing the same with the registrar of the company. The alteration of article of association must not be done to increase the existing liability of the member. Conversion of private company into public company can only be done with the approval of National Company Law Tribunal. The court has no powers to amend or rectify articles of association, it can only declare it as ultra vires.

### **Doctrine of Constructive Notice**

When a company is formed, it is required by law to be registered. The formalities for registration of a company is dealt by the office of registrar of companies, for registration of company number of formalities are required to be followed. The important requirement is to prepare and submit memorandum of association and articles of association. Therefore these two important documents become the public document and are always available with the registrar of companies. Any person can inspect these documents at the office of registrar of company. A person intending to deal with or enter into any contract or transaction with company should inspect the memorandum of association and articles of association of the said company. When these documents are inspected such person knows that his contract or transaction with the company is within the scope and power of the company. The doctrine of a constructive notice means the presumption under the law that the person intending to enter into a contract or transaction with a company has read the memorandum of association and article of association and is aware of the contents of these important documents even if he has not actually read the same. The effect of this doctrine is that the person cannot claim afterwards that he did not know the contents of memorandum of association and articles of association & that it is not his mistake in event of any dispute arising with the company.

#### ***Effects of Constructive Notice***

A person dealing with a company is presumed and deemed to have the knowledge of the contents of memorandum of association and article of association of the company irrespective of whether he has actually read the same or not. The doctrine of constructive notice stops a person from contending that he had no knowledge about the contents of memorandum of association and article of association.

### **Prospectus sec. 2 (70)**

It means any document described or issued as prospectus and include any notice, circular, advertisement or other document inviting deposit from the public or inviting offers from the public for the subscription or purchase of any shares or debenture of a company.

## **Kinds of Prospectus**

### **Red Herring**

Red herring prospectus is defined under Section 32 of the CA, 2013. A red herring prospectus does not provide detailed information about the quantum, or quantity, and price of the securities offered. It is used for the book-building process. A company that intends to offer securities to the public can issue a red herring prospectus before issuing the original prospectus. It must be filed with the Registrar at least three days prior to the opening of the subscription list and offers.

### **Shelf**

The shelf prospectus is outlined under Section 31 of the CA, 2013. A shelf prospectus offers securities for subscription in one or more issues over a specific period of time without the need for a fresh prospectus to be issued. This is done especially in projects where the issue size is substantial, and large sums of money are required to be raised in order to save on the expense of filing a new prospectus every time.

Any company may file a shelf prospectus with the Registrar at the stage of the first offer of securities, and the validity period of such prospectus shall not exceed one year.

### **Abridged**

Section 2(1) of the CA, 2013 outlines an abridged prospectus. It means a memorandum containing the salient features of a prospectus as per the regulations specified by the Securities and Exchange Board. Section 33 mandates the issuance of application forms for securities along with an abridged prospectus.

### **Deemed**

Section 25 of the CA, 2013 discusses deemed prospectuses. A deemed prospectus is a document that is assumed to represent a company's prospectus. A deemed prospectus is a document that contains an offer for sale made by the intermediary or issuing house on behalf of a company that allots or agrees to allot its shares or securities through an intermediary, such as a merchant bank, another business, or an issuing house. A company usually opts for a deemed prospectus to avoid complying with regulations issued by the SEBI.

## **Module 2**

# **THE COMPANIES ACT 2013**

## **Membership**

### **Who is the Member of the company**

1. A subscriber of the memorandum of association is deemed to have agreed to become a member of the company.
2. A person to be appointed as a director of the company needs to take qualification shares.
3. A person who subscribes to the public offer of shares and is subsequently allotted the share becomes the member.
4. A person who buys a share in open market becomes a member on registration of the share in his name.
5. Where the shares are transmitted in the names of legal representatives of the deceased member of the company.
6. A person is deemed to be a member, if he allows his name to be put on the register of member even if there is no agreement to become a member, this is the result of acquiescence or estoppels.

### **Rules regarding minor member Minor Shareholder during Incorporation**

As per Companies Act, 2013, all subscribers to the Memorandum of a company are deemed to become members of the company on its registration and is entered in the register of members. The MOA subscriber sheet is also considered a contract to subscribe to the shares of the company on incorporation. However, as per law, a Minor has no ability to consent to a contract and thus cannot enter into an enforceable contract. Hence, a minor cannot subscribe to the shares of a company during incorporation by agreeing to become a subscriber.

#### **Minor Shareholder post Incorporation**

Another way to become a shareholder of a company is post incorporation by purchasing shares of a company. Again, any person who is a Minor has no ability to consent to a contract. Hence, minors cannot enter into any share agreement for purchase of shares or contract to purchase shares.

#### **Minor as a Shareholder**

A minor cannot contract to become a shareholder of a company. However, a minor can be gifted shares of a private limited company by an adult, thus making him/her a shareholder of a company. In such cases, the shares of a company are transferred to the Guardian of the Minor, which will be held by the Guardian as a Trustee until the Minor reaches an age wherein he/she can enter into legal contracts.

### **Modes of acquiring membership**

#### **➤ By Subscribing to the Memorandum of Association**

A subscriber of memorandum of association of a company automatically becomes a member of the company.

#### **➤ By taking Qualification shares**

In case of public company no person can become a director unless he takes the qualification shares. However this principal is not applicable in the following companies

- a) Private company
  - b) Companies which don't have share capital
  - c) Private companies before they become public company
  - d) Companies which had issued prospectus after the expiry of one year from the commencement of the business.
- **By allotment of shares**  
A person becomes the shareholder if he agrees to take shares in the company by allotment.
  - **By transfer of shares**  
If a person buys shares in open market and then applies to the company to register him as a member he becomes a member on registration.
  - **By transmission of shares**  
If the shares are transferred in the name of the legal heir of the deceased member, the legal heir becomes the member of the company.
  - **By acquisition and estoppels**  
If a person allows his name to be put on the register of the members even after the shares are disposed of or hold himself as member by making others to believe he is a member. Such a person is deemed to be a member as per the rule of Acquiescence or Estoppel.

### **Cessation or Termination of membership**

A person ceases to be a member in any one of the following ways:

- a. If he transfers his shares to other person
- b. If the shares are forfeited
- c. If the company sells his shares
- d. If he surrenders his shares to the company
- e. Where the share are sold in execution of decree of court
- f. If he rescinds the contract to take shares on the ground of irregular allotment
- g. If he the member becomes insolvent
- h. In case of death of member
- i. In case of winding of the company

### **Director**

In Section 2(34) of the Companies Act 2013, a director is a "person appointed to the Board of Directors.". Under the companies act, operations are carried out by the chief agents constituted by the Board of directors. Therefore, the powers and duties of Directors of a company are challenging and require right-minded people to take up the position of responsibility.

### **The Minimum number of directors for:**

- 1. A public limited company: 3 directors
- 2. A private limited company: 2 directors
- 3. A one-person company: 1 director



A company is allowed to have a maximum of 15 directors. However, it can exceed the maximum number by passing a special resolution in a general meeting with the shareholders. Section 157 of the companies act 2013 mentions that Director/ Whole-time director or manager's age is a minimum of 21 years and a maximum of 70 years. Therefore, any individual younger than 21 years (minor) cannot be appointed company director. A special resolution needs to be passed to appoint a director who has attained the age of 70.

Every person appointed should have a Director Identification Number (DIN) or Corporate Identification Number (CIN) prescribed under section 153 of the act. Moreover, the person acting as Director should be:-

- Of a sound mind
- Capable of entering into a contract
- Debt-free.

## **Powers of Directors**

The power of a Director is vast since they are the highest authoritative person in the organisation. Sections 179 and 166 of the Companies Act 2013, prescribes the powers and duties of Directors of a company as Exercising power over which the company has the legal authority.

Taking action on events, the company has legal authority.

Some specific powers of the Board of directors can be exercised using a resolution passed at a Board meeting such as

- To make calls
- To issue debentures.
- To borrow money by means or to make loans.
- To invest the funds of the company

In some cases, consent of the Government is required by the Board for certain activities:

As per section 268, provisions for the Board's appointment or reappointment of managing directors must first be approved by the Government.

As per section 295, the Board has to take the Government's consent to choose a managing director for the first time.

Subject to the Government's consent, the Board has the option to invest in shares of other companies curtaining to the limits specified in section 372 of the Companies Act, 2013.

## **Meeting**

**a . Annual General Meeting** – This is defined u/s 96 of CA'13, wherein every company, whether public or private, except One Person Company, is required to convene first AGM within 9

months from the end of first Financial Year to decide the overall progress of the company as well as to plan future courses of action. Place: Such meeting is called at Registered Office of the Company or any other such place in the city where such Reg. Office is situated.

Time Hours: Between 9.00 am – 6:00 pm., and not on any public holiday as so declared by Central or State Government.

Quorum: In case of Public Company–

5 if members are less than 1000

15 if between 1000-5000

30 if more than 5000 members

In case of Private Company, then only 2 that are present will be the quorum.

Time Gap: Gap between two meetings not more than 15 months, and after conducting first AGM, the subsequent AGMs need to be conducted within 6 months from the end of Financial Year, and if there any urgent circumstances or emergency situations arises, when company wasn't able to conduct the AGM, then the Tribunal may grant the extension of 3 months, but said extension not available in first AGM, and therefore first AGM must be conducted within 9 months from end of F.Y. Power of

NCLT: May call or direct to conduct such meeting u/s 97 of CA'13, when an application is filed by a member if meeting not conducted in due time.

Punishment on default: u/s 99 – For Company and every such defaulting Officer – Rs. 1 Lakh, and if default continues then Rs. 1000 per day.

**b. Extraordinary General Meeting:** Certain matters are so much important that they require an immediate attention of the members, and that's where the Board has been granted to call for such EGM u/s 100 of CA'13. It can be called through the following ways:

By Board, on suo-moto basis, and the same can be held at any parts of the country.

By requisition of eligible members, wherein the company if having Share Capital, then members holding at least 1/10th of such Share Capital, and if not having Share Capital, then members holding at least 10% of the total voting powers in that company can request to call for such meeting. Such notice has to be well written and specify the nature of business, and duly signed by all the members or any one authorized person acting on behalf of all. And Board need to call meeting within 21 days of getting such request or maximum of 45 days, by giving such notice to such members prior to 3 days of conducting such meeting.

By Requisitionist (provided if Board fails to do so), if Board failing to conduct meeting within 45 days, then the members can call for meeting within 3 months of from the original request made to Board at first instance, and here the members have all the rights to have their name on the main list of members and Board can't deny this, and also need to accept such changes that might have occurred between 21st to 45th day of date of notice provided to Board at first instance.

By Tribunal u/s 98, whereby it can conduct meeting on its own or on any request received by the member of such company

Place: At Reg. Office or any such place in the city where such Reg. Office is situated

Notice: To all the members in writing or through an electronic mode of at least 21 Clear Days before convening such meeting, and one important thing here is that if meeting is called up by the requisitionists, then there's no formality of attesting explanatory statement to it

**c. Class Meeting:** Such meeting is convened by a particular class of shareholders only and only if they think that their rights are being altered or if they want to vary their attached rights, as mentioned u/s 48 of CA'13, and u/s 232 also, if under Mergers and Amalgamation scheme, meetings of particular shareholders and creditors can be convened if their rights/privileges are being varied to their interests in such company.

## Module 3

# Indian Partnership Act – 1932

### Partnership

The Indian Partnership Act, 1932 governs partnership forms of business in India. Section 4 of this Act defines a partnership as the relationship between partners who have agreed to share the firm's profits carried on by all or any one of them acting for all.

### Elements/Features of Partnership

It must be an association of two or more persons.

There must exist an agreement between the partners.

There must be a business undertaking or a commercial activity that is lawful.

The motive must be to earn the profit and share between the partners.

The agreement must be to carry out the business jointly or by any of them acting on the behalf of all i.e., there must be mutual agency.

## **Types of Partnership**

### *Partnership at will*

When no fixed period is prescribed for the expiration of partnership then it is a partnership at will. According to Section 7 two conditions need to be fulfilled:

No agreement about the determination of the fixed period of partnership

No clause with respect to the determination of partnership.

### *Partnership for a fixed period*

When the partners fixed the duration of the partnership firm then after the expiration of the fixed period the partnership comes to an end. When the partners decided to continue with the partnership even after the expiry of the fixed period then it becomes a partnership at will.

### *Particular Partnership (Section 8)*

When the partnership is created for completing any particular or specific project or undertaking and when such an undertaking or project have been completed then such partnership comes to an end. The partners have a choice to continue with the firm.

## **Rights of the Partners**

*Right to take part in the conduct of the firm's business:* Section 12(a) provides that every partner has the right to be involved in the conduct of the firm's business. All partners have the right to manage the firm's business.

*Right to express opinion:* Section 12(c) provides that all partners can freely express their opinion in matters concerning the firm's business. However, before a decision is made based on an opinion of a partner, the consent of other partners must be obtained.

*Right to have access to books of the firm:* Section 12(d) of the Act provides that every partner has the right to look into the books of the firm, whether the books concern the accounts of the firm or not.

*Right to profit:* As per Section 13(b), all partners must equally share profits earned through the business.

*Right to interest on capital:* Section 13(c) provides that on an agreement, the partners of a firm have the right to claim interest on the firm's profits from the capital.

*Right to interest on advances made by partner:* In some cases the firm may need extra money apart from the capital. In such cases, a partner may make advances to the firm and he may also claim interest on such advances.

*Right to indemnity:* Section 13(e) of the Act provides that a partner may make some payments and incur liabilities while acting on behalf of the firm. The firm shall indemnify a partner in respect of such payments and liabilities, whether it was made in ordinary course of business or in emergency.

*Right to dissolve the partnership:* Section 44 provides that a partner has the right to file a suit to dissolve the partnership. The court may dissolve firm on any just and equitable grounds.

### **Duties of partners**

*Duty of greatest common advantage:* As per Section 9 of the Act, it is incumbent upon the partners to carry on their business for the greatest common advantage of the firm. The partners must act so that all the partners benefit and secure the maximum profits. No partner should act for their personal gain.

*Duty of good faith:* As per Section 9, the partners must act just to each other. The relationship of partnership is on mutual trust and hence, there must be good faith between them

*Duty to render true accounts:* Partners of a firm have a duty to render true accounts as per Section 9. A partner of a firm must keep and render true and complete accounts of the partnership firm's business

*Duty to render full information:* As per Section 9, partners of a firm have a duty to provide true and full information regarding the business. Partners are agents of each other and hence, partners must communicate all information regarding the running of the business in a complete and truthful manner to each other.

*Duty to not carry another business:* As per Section 11(2) of the Act, a partner must not conduct a business other than that of the firm. Partners can restrain one another from carrying on another business, provided that such restraint is reasonable.

*Duty to act diligently:* As per Section 12(b), a firm's partner must act diligently in the business.

*Duty to share losses:* As per Section 13(b) of the Act, partners must share losses in the proportions as provided by the partnership agreement. If the agreement does not provide it, it must be shared in the proportion that they share the profits.

*Duty to indemnify for wilful neglect:* As per Section 13(f), a partner shall indemnify his firm for any of the losses caused to it due to his wilful neglect during the course of the business.

*Duty to not assign his rights:* No partner can assign his rights in a partnership firm to a third person in order to make him a partner.

*Duty to act within authority:* Every person has to act within the authority that he has conferred upon him as per the partnership agreement.

*Duty to account private profits:* Section 16(a) provides that no partner can use the partnership firm's property for private use, or use any profits derived from the partnership business for his own advantage. If the property of profits of a firm is ever used for personal advantage, it must be accounted for.

*Duty not to compete:* Section 16(b) states that no partner of a firm can carry on another business simultaneously, except with the consent of other partners.

*Duty to properly use the firm's property:* Sections 14 and 15 of the Act provide that the property of the firm must be used solely for the purpose of the firm's business and not for private purposes.

### **Dissolution of a firm**

*By Agreement (section 40):* The partnership can be dissolved when all the partners give their consent to it.

*Compulsory dissolution (section 41):* Sometimes an event makes the partnership unlawful to carry out his business. In such a case the partner has no option except to dissolve.

*By the happening of certain events (section 42):* The partnership is dissolved on the happening of certain contingencies which includes:-

On the expiration of fixed term; when the partnership is created for the fixed term,

On the death of partner,

On the completion of project or undertaking; when the partnership was created for the purpose of completing undertaking or project,

By notice in case of partnership at will

*By the partnership at will (section 43):* When any partner desires to dissolve the partnership he serves a notice to all other partners expressing his intention to dissolve the partnership. If all the partners agree then the partnership is dissolved.

*By the court (section 44):* The Court may dissolve the partnership on any of the following grounds:-

1) Unsound mind/insanity:-when any partner becomes unsound or insane then a suit is brought by a next friend of a partner who has become unsound or insane or any other partner.

2) Incapability:- When the partner other than a suing partner becomes permanently incapable to perform his duties as a partner.

3) Misconduct:-when the partner other than a suing partner is guilty of any act which affects the carrying on of a business with respect to the nature of business

## **Module 4**

# Consumer Protection Act

## Objectives of the Consumer Protection Act

- To provide better and all-around protection to consumers
- To provide machinery for the speedy redressal of the grievances
- To create a framework for consumers to seek redressal
- To provide rights to consumers
- To safeguard the rights of Consumers

## Who is a Consumer?

Any individual who purchases products or services for his personal use and not for manufacturing or resale is called a consumer. Consumer refers to any person who purchases some goods for a consideration that has been either paid or promised to pay or partly paid and partly promised. According to the Act, a consumer’s definition is who:

- buys goods or hires any service
- uses the goods or hires any service with the approval of any buyer or service provider
- uses goods and services to earn a livelihood by self-employment.

### Three tier Consumer Redressal System (District Commission, State Commission & National Commission)

Basis	District Commission	State Commission	National Commission
<b>Composition</b>	A district commission includes a president and two other members, and one of the members has to be a woman.	A state commission includes a president and at least two other members, and one of the members has to be a woman.	A national commission includes a president and four other members one of whom shall be a woman.
<b>Who can be a President</b>	A working or retired judge of the District Court can be a president of the District Commission.	A working or retired judge of the High Court can be a president of the State Commission.	A working or retired judge of the Supreme Court can be a president of the National Commission.
<b>Appointment</b>	By taking the	After consulting with	After consulting with the

<b>Basis</b>	<b>District Commission</b>	<b>State Commission</b>	<b>National Commission</b>
<b>of President</b>	recommendation of the selection committee, the state government appoints the president of the District Commission.	the Chief Justice of the High Court, the state government appoints the president of the State Commission.	Chief Justice of India, the central government appoints the president of the National Commission.
<b>Jurisdiction</b>	One can file a complaint for goods and services of ₹1 crore or less	One can file a complaint of goods and services worth less than ₹10 crores and more than ₹1 crore	One can file a complaint of goods and services worth more than ₹10 crores
<b>Appeal against orders</b>	If the aggrieved party is not happy with the jurisdiction of the district commission, then they can appeal against its judgment in the State Commission within 45 days.	If the aggrieved party is not happy with the jurisdiction of the state commission, then they can appeal against its judgment in the National Commission within 30 days by depositing 50% of the fine money.	If the aggrieved party is not happy with the jurisdiction of the national commission, then they can appeal against its judgment in the Supreme Court within 30 days by depositing 50% of the fine money. However, one can file the complaint only when the value of goods and services exceeds ₹10 crores.

## **Competition Act 2002**

### **Objective and Scope of Competition Act 2002**

The Competition Act is legislation that seeks to ensure that the interests of consumers are protected against anti-competitive practices, promote and sustain market competition, protect consumers' interests, and ensure the freedom of trade is carried out by other participants in



markets in India. The act applies throughout India and has replaced the Monopolies and Restrictive Trade Practices Act (MRTP Act), 1969.

The main objective behind enacting this act is to ensure that market competition works effectively and that consumers get access to a wider range of products at competitive prices. It also aims to safeguard and promote consumers' economic interests in MERS by curbing anti-competitive business practices.

### **Advantages of Competition**

Competition is beneficial to the country's economy

By competing with each other, companies become more competitive, innovative, and efficient, based on merit. This market dynamic makes the economy grow, creating jobs and well-being for society.

Competition ensures better prices

The competitive dynamics promote competitiveness and the efficiency of companies ensuring better prices. When companies create cartels or get involved in other anticompetitive practices, the exact opposite happens — costs rise and consumers are harmed.

Competition favours consumers

Competition between companies translates into a greater quantity of products and services, a better quality of goods, and lower prices. In the end, this is what the consumer is looking for — the best quality at the best possible price.

Competition is beneficial for companies

Competition policy promotes equitable conditions in the market, and as such, business success is based on merit. To win, companies become more competitive and solid.

Competition favours the creation of companies

In a market governed by openness and equity, everyone has the same opportunities. Competition promotes freedom of initiative, the right of anyone to create a business and enter the market. Therefore, the Competition Law prohibits and the Competition Authority sanctions the abuse of a dominant position.

Competition promotes innovation

To provide the best product or service available to consumers, companies bet on differentiation. They invest in design, improve production techniques, and are committed to worker training. And see innovation as a way to distinguish themselves in a competitive market.

Competition promotes exports

Internal competition stimulates and increases the capacity of a company to position itself in the international market.

## **Features of Competition Act 2002**

The Act mainly covers these aspects;

- Prohibition of anti competitive agreements.
- Prohibition of abuse of dominance.
- Regulation of combination (acquisition, mergers, and amalgamation of certain size)
- Establishment of the competition commission of India.
- Power and functions of the competition commission of India.

## **ANTI-COMPETITIVE AGREEMENT**

Anti Competitive Agreement Prohibition: Section 3 (1) of the Act states that:

“No enterprise shall enter into any agreement with respect of production, supply, distribution, storage, acquisition or control of goods/provision of services, which causes or is likely to cause appreciable adverse effect on competition within India”

Thus, there are two essential requirements of Anti-Competitive Agreements:

- i. There should be an agreement.
- ii. Such agreement must cause or is likely to cause an appreciable adverse effect on competition in a relevant market in India. The relevant market may be a geographical or the market of a product.

### **TYPES OF ANTI-COMPETITIVE AGREEMENTS**

There are two kinds of anti-competitive agreements viz.

1. Horizontal Anti Competitive Agreements [Section 3(3)]
2. Vertical Anti Competitive Agreements [Section 3(4)]

### **HORIZONTAL ANTI-COMPETITIVE AGREEMENTS [SECTION 3(3)]**

They are agreements between parties in the same line of production. Example of horizontal anti competitive agreements could be- An Agreement between Manufactures, Agreement

between Distributors. Horizontal agreements are presumed to have appreciable adverse effect on competition if they:

1. directly or indirectly determine purchase or sale prices;
2. limit or control output, technical development, services etc.;
3. share or divide markets
4. indulge in bid-rigging or collusive bidding

**Types of Horizontal Anti-Competitive Agreements:**

1. Price-Fixing Agreements [Section 3(3)(a)]
2. Limiting Or Controlling Production And Investment [Section 3(3)(b)]
3. Market Allocation And Sharing [Section 3(3)(c)]
4. Bid Rigging Or Collusive Bidding [Section 3(3)(d)]

**VERTICAL ANTI-COMPETITIVE AGREEMENTS**

Vertical anti competitive agreements are entered between two or more companies each of which operates, at a different level of production or distribution chain, and relating to conditions under which the parties may purchase, sale or resell certain goods or services.

Example of vertical anti competitive agreement could be ‘An agreement between manufacturer and supplier’ or between ‘Producers and Whole-Sellers’ or between ‘Producers, Wholesalers and Retailers’.

**Types of Vertical Anti Competitive Agreements:**

1. Tie-In Arrangement- Imposing a condition on the purchaser of goods, to purchase some other goods and thus selling goods which is not of purchaser’s choice. For Example: Requiring a person to keep FD with the Bank while offering him a locker, Requiring a stabilizer to be bought along with the refrigerator.
2. Exclusive Supply Arrangement-An agreement restricting the purchase in course of trade from acquiring the goods of any other seller (e.g. restricting a purchaser in the course of his trade from dealing in any goods other than those of the seller).
3. Exclusive Distribution Arrangement- Agreement to limit or restrict the output or supply of any goods to any market or area (e.g. limiting/restricting supply of goods or allocate any area or market for the sale of goods).
4. Refusal To Deal- Restricting by any method any person/classes of persons to whom goods are sold.
5. Resale Price Maintenance- Selling goods with the condition to resale at stipulated prices.

**Module 5**

# THE PATENTS ACT 1970

What is a Patent?

A patent is an exclusive right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. It consists of an exclusive right to manufacture the new article invented or manufacture an article according to the invented process for a limited period. After the expiry of the duration of patent, anybody can make use of the invention.

The owner of the patent that is "Patentee" is entitled to deal with his such property in the same manner as owner of any other movable deals with his property. The patentee can sell the whole or part of his property that is patent. He can also grant license to others to use the patented property. He can also assign such property to any others.

Principles of Patent Law in India

1. it must be new.
2. it must involve an inventive step.
3. it must be capable of industrial application.
4. it must not fall within any of categories of subject matter specifically excluded.

## Rights of patentee

### 1. Right to Exploit the Patent

The authority to use, market, produce, and distribute the protected goods is granted to the patent holder in India. If the innovation involves a manufacturing method, the patent holder retains the right to impart the method to a third party. Additionally, the patent holder's attorney has the authority to enforce this claim.

If a new innovation is a commodity, the patent holder is granted the only right to manufacture, market, and utilise the innovation in India for designated uses. On the other side, if the innovation relates to the production of a substance or an object, the right to exploit encompasses the exclusive right to use the production method or system within the boundaries of India.

The exclusive right of a patentee to pursue commercial gains from the innovation is taken into account by Indian patent law. It motivates creators to engage in their creative endeavours because they know that their ideas will be legally protected and that no one else will be able to copy them within a set length of time (mostly 20 years).

## 2. Right to Grant or Assign Licenses

The owner of a patent has the authority to delegate or give licences to third parties for the purpose of producing and distributing the protected goods. When there are several patent owners for a patented product, all patent owners must agree to issue the licence to a third party as a group. Only after the administrator has properly approved the request, the licence is deemed to be issued. The assignment or licence must thus be in written and filed with the Patent Authority in order to be valid and legitimate.

## 3. Right to Surrender the Patent

After properly requesting authorization from the controllers, the patent holder has the authority to abandon the patent. The Controller then publishes this surrendering in accordance with the Indian Patent Act's regulations. The parties looking to acquire patent ownership can speak with the Controller directly. The Controller then reviews the party's claims and assigns the ownership. Only if the holder is prepared to give up the patent does the transfer take place.

By submitting notification in a certain way, the patentee has the ability to surrender a patent at any time and at their own discretion. This involves placing advertising in the publication with a request to give up the patent.

## 4. Right before Selling

A patent is protected from the date of the notification for approval to the date of the notification's adoption, in accordance with Section 24 of the Indian Patents Act. Following the presentation of the notice for acceptance, the patentee's entitlement is applicable.

## 5. Right to Apply for the Patent of Addition

This provision is included in the Patents Act of 1970, sections 54 to 56. The clause permits alterations to the current invention. In these situations, as soon as the notification of approval is made public, the patent holder is given the right to the improved innovation. The owner is given the same rights as that of the prior patent upon the presentation of the notification.

## 6. Right to Sue in Case of Infringement

Patent infringement is the word used to describe any violation of a patent holder's privileges. A patentee may file a complaint with either a lower court or a high court to have any rights violations addressed. In the event that the defendant is convicted of infringing, the court may decide to give compensation or a long-term order.

## **Remedies for patent infringement**

Section 108 of Patent Act,1970 deals with the “Reliefs in suit for infringement”. The remedies for a suit filed in the infringement of a patent can be classified into three types, they are:

*Injunction:* Injunction for infringement of is a court order that requires the infringing party to stop making, using, selling, or importing the infringing product. It is a preventative measure that aims to preserve the value of the patent and prevent further harm to the patent holder.

Injunction is of three kinds:

*Temporary Injunction:* It is a kind of temporary remedy that is provided before the final verdict of the case. It is used to preserve the status quo of the patent holder. Moreover, they are likely to succeed in their lawsuit and will suffer irreparable harm if the infringing activity is allowed to continue.

*Permanent injunction:* It is a kind of permanent remedy that is granted when the case is finally decided by the court. It requires the infringing party to stop the infringing activity permanently. The court may also award monetary damages, such as compensation for any profits that the infringing party has made as a result of the infringing activity.

*Ex-parte injunction:* An ex-parte injunction is a provisional remedy that is used in urgent situations and is granted without a hearing. It is typically used in urgent situations where the plaintiff needs immediate relief and there is not enough time for a full hearing.

*Damages:* Damages is a remedy for patent infringement that compensates the patent holder for any harm that they have suffered as a result of the infringing activity. Damages may be awarded in the form of monetary compensation, such as compensation for any lost profits or other financial losses that the patent holder has suffered.

*Seizure, forfeiture or destruction:* Courts may decree that the items determined to be infringing should be taken into custody, forfeited, or disposed of as deemed appropriate.

## **THE TRADE MARKS ACT, 1999**

A trademark includes a name, word, or sign that differentiates goods from the goods of other enterprises. Marketing of goods or services by the procedure becomes much easier with a trademark because recognition of product with the trademark is assured and easier. The owner can prevent the use of his mark or sign by another competitor.

### **Grounds for Refusal Of trademark**

Section 9 of the Act lists down the absolute grounds for refusal of registration. If any trademark comes under the grounds listed in this section, it cannot be registered. The absolute grounds for refusing registration are –

- Trademarks which do not possess any distinctive character. Distinctive character means trademarks which are not capable of distinguishing the goods or services of one person from those of another.
- Trademarks which exclusively contain marks or indications which serve in trade to define the kind, quality, quantity, intended purpose, values or geographical origin of goods or services rendered.
- Trademarks which exclusively contain marks or indications which have become customary in the current language or the established practices of the trade
- Trademarks are of such a nature which deceives or cause confusion to the public
- Trademarks which contain or comprise matter likely to hurt the religious susceptibilities of any class or sections of citizens of India.
- Trademarks which contain or comprise scandalous or obscene matter
- If the usage of the trademark is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950
- Trademarks which consist of marks of the shape of goods which result from the nature of goods themselves
- Trademarks which consist of marks of the shape of goods which is necessary to obtain a technical result
- Trademarks which consist of marks of the shape which gives substantial value to the goods

### **Infringement of Trade Mark and Action against Infringement**

Infringement of trade mark occurs if a person other than the registered proprietor in the course of trade, in relation to the same goods or services for which the mark is registered, uses the same mark or a deceptively similar mark.

Remedies Against Infringement of Trade Mark :-

To protect the trade mark following remedies can be restored to :-

- Civil remedies
- Criminal proceedings
- Administrative remedies

(1) Civil remedies: - When instances of infringement and passing off occur, the court of competent jurisdiction (court not lower than District court) can be moved for grant of interlocutory injunction, Anton Pillar Order, damages and account of profits.

(2) Criminal Proceedings: - Both the actions, under the civil and criminal law can be initiated simultaneously. Under the civil law proceedings, the plaintiff seeks relief for

himself while under criminal law proceedings the complainant seeks award of punishment to the infringer.

(3) Administrative Remedies: - Opposing the registration of a deceptively similar trade mark when the trade mark registry is in the process of considering the grant of a trademark can protect the trade mark. The Registry can also be moved for removal of a deceptively similar trade mark if registered.

## THE COPYRIGHT ACT 1957

What is Copyright?

Copyright means the exclusive right to do or authorise others to do certain acts in relation to

1. Literary, dramatic, musical and artistic works,
2. Cinematograph film and
3. Sound recordings

### **Difference between authorship and ownership of copyright**

The Copyright Act, 1957 has set a general rule under the definition of the author of various works laid down under Section 2(d), which states that the author is the first owner of the Copyright. The section reads as follows:

*In literary or dramatic works, the author of such work shall be the author.*

*In musical works, the music composer shall be the author.*

*In artistic works, the artist shall be the author.*

*For a photograph, the person clicking such photograph shall be the author.*

*In cinematographic films, the producer of such a film shall be the author.*

*For a sound recording, the producer of such sound recording shall be the author.*

*When a literary, dramatic, artistic or musical work is a computer generated then the person who causes such work to be created is the author.*

The concept of ownership is very different under the Copyright Act. The general rule is that the author is the first owner of the copyright. However, the Copyright Act, 1957 specifies certain exceptions to this general rule. Therefore, it becomes very important to understand the difference between authorship and ownership of copyright.



Section 17 talks about literary, dramatic and artistic works. It says that whenever such a work is made by an author during the course of his employment or service to the owner of a newspaper, magazine, book etc. under a contract for publishing such work, then subject to an agreement in contrary, the owner of such newspaper or magazine shall become the first owner of the copyright.

Section 17 (b) This clause talks about the cases when an artist is hired for creating a painting, or when a photographer is hired for clicking images, or a cinematographer is hired to shoot a cinematographic film then the person causing such work to be created shall become the first owner of the copyright. However, this rule shall apply only if there's no agreement to the contrary between the parties.

Section 17 (c) this section provides that, when a work is made by a person in the course of his employment under a contract of service or traineeship, then the employer shall become the first owner of all the work created during such employment unless there's an agreement in contrary between the parties.

Section 17 (cc) As per this clause, if a person is delivering a speech on behalf of another then, the person on behalf of whom the lecture is given in the public is the first owner of such copyright. However, if a person gives a lecture in public by himself and not representing anyone else then, he becomes the author and first owner of such copyright.

Section 17 (d) a copyrightable work is created on being tendered by the government, then such government shall be the first owner of the copyright arising and accruing from such works unless there's an agreement to the contrary between the parties.

Section 17 (dd) When a copyrightable work is created as per the direction of the public undertaking, then such public undertaking shall be the first owner of the copyright.

Section 17 (dd) if an international organisation assigns a person to create a copyrightable work for them then, that international organization shall become the first owner of such copyrightable work.

### **Rules regarding original work and fair use**

Under Indian regime legal framework being the Copyright Act, 1957, section 52 lays down certain acts or works that cannot be considered as an infringement of copyright namely fair dealing with a literary, dramatic, musical or artistic work not being a computer program for the purposes of-

fair dealing with any work, not being a computer programme, for the purposes of—

- (i) "private or personal use, including research;
- (ii) criticism or review, whether of that work or of any other work;
- (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.

the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;

transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy:

the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;