PREFACE

In the curricular structure introduced by this University for students of Post-Graduate degree programme, the opportunity to pursue Post-Graduate course in Subject introduced by this University is equally available to all learners. Instead of being guided by any presumption about ability level, it would perhaps stand to reason if receptivity of a learner is judged in the course of the learning process. That would be entirely in keeping with the objectives of open education which does not believe in artificial differentiation.

Keeping this in view, study materials of the Post-Graduate level in different subjects are being prepared on the basis of a well laid-out syllabus. The course structure combines the best elements in the approved syllabi of Central and State Universities in respective subjects. It has been so designed as to be upgradable with the addition of new information as well as results of fresh thinking and analysis.

The accepted methodology of distance education has been followed in the preparation of these study materials. Co-operation in every form of experienced scholars is indispensable for a work of this kind. We, therefore, owe an enormous debt of gratitude to everyone whose tireless efforts went into the writing, editing and devising of proper layout of the meterials. Practically speaking, their role amounts to an involvement in invisible teaching. For, whoever makes use of these study materials would virtually derive the benefit of learning under their collective care without each being seen by the other.

The more a learner would seriously pursue these study materials the easier it will be for him or her to reach out to larger horizons of a subject. Care has also been taken to make the language lucid and presentation attractive so that it may be rated as quality self-learning materials. If anything remains still obscure or difficult to follow, arrangements are there to come to terms with them through the counselling sessions regularly available at the network of study centres set up by the University.

Needless to add, a great part of these efforts is still experimental–in fact, pioneering in certain areas. Naturally, there is every possibility of some lapse or deficiency here and there. However, these to admit of rectification and further improvement in due course. On the whole, therefore, these study materials are expected to evoke wider appreciation the more they receive serious attention of all concerned.

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Netaji Subhas Open University
Post Graduate Degree Programme
Master of Business Administration (MBA)
Course Code : CP-206
Course : Business Legislation

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Unit 1 □ The Law of Contract Act, 1872

Structure

1.1 Definition of Contract

Under Section 2(h) of the Indian Contract Act an agreement enforecable by law is a contract. ‘‘An agreement comes into existence whenever one or more persons promise to one or others to do or not to do something. Every promise and every set of promises, forming the consideration for each other, is an agreement’’ [Sec 2(e)]. An agreement to play cards or go to cinema cannot be enforced in a court of law and hence is not a contract.

1.2 Essential Elements

(i) There must be lawful offer by one party and lawful acceptance of the offer by the other party.

(ii) The agreement should result or create legal relationship e.g. an agreement to marry, buy & sell goods.

(iii) An agreement is enforceable when each of the parties to it gives something and gets something. The something given or obtained is cal led consideration.

(iv) Parties to an agreement must be legally capable of entering into an agreement. Minors, lunatics, idiots, drunkards cannot enter into an agreement which can be enforced in a court of law.

(v) An agreement must be based on free consent of all parties. If an agreement is vitiated by coercion, undue influence, mistake, misrepresentation, fraud it cannot be enforced by the party guilty of such acts.

(vi) The object for which agreement is entered into must not be illegal, immoral or opposed to public policy.

(vii) The agreement must not be vague.

(viii) The agreement must be capable of being performed.

(ix) The agreement must be in writing in case of sale, lease, gift, mortgage of immovable property, negotiable instruments, Memo/Articles of a company. Registration is necessary for documents uls 17 of Registration Act.

1.3 Offer and Acceptance

Proposal – When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. Sec, 2(a).

Offer – A proposal is also called an offer. The promisor or person making the offer is called the offeror. The person to whom the offer is made is called the offeree.

Acceptance – When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted. A proposal when accepted becomes a promise. Sec. 2(b). The person making the proposal is called the promisor and the person accepting the proposal is called the promisee. Sec. 2(c).

1.3.1 Rules regarding Offer

(1) An offer may be expressed i.e. by words, spoken or written or implied i.e. by conduct depending upon the circumstances.

(2) An offer may be to a definite person, definite class of persons or the world at large.

(3) The terms of the offer must be certain.

(4) Mere statement of intention is not offer e.g. an advertisement in the newspapers inviting applications for job is not an offer. It is an invitation to make offers.

(5) The offer may be subject to certain conditions, which must be communicated to the offeree clearly.

(6) The offer must be communicated to the offeree e.g. in Gauri Dutt &Lal Mohan, G sent his servant L to search his missing nephew. Meanwhile G offered a reward to any person who could give information regarding the concerned boy. L found the missing boy but did not have any knowledge regarding the reward. Held that there was no contract between G and Land as such L could not claim the reward.

1.3.2 Rules regarding Acceptance

(1) Acceptance must be absolute and unqualified e.g. X offered to sell his house for Rs. 2,00,000/- to Y. Y accepted for Rs. 1,80,000/-. This is not an acceptance but a counter offer.

(2) Acceptance must be expressed in usual and reasonable manner i.e. by words spoken, or written or by conduct.

(3) Mental acceptance or uncommunicated assent does not result in a contract e.g. P received an offer by post. He wrote on the letter ''Accepted'' and kept it inside the drawer, forgetting all about it. Held there was no contract between him and other patty, as the letter had not been communicated.

(4) The acceptance must be made while the offer is in force i.e. before the offer has been revoked or before the offer has lapsed.

(5) If a particular mode of acceptance has been proposed by the offer or must follow that particular mode of acceptance.

(6) Communication of acceptance is complete as against the proposer if it is put in course of transmission so as to be out of power of the acceptor and against the acceptor if it comes to knowledge of the proposer.

1.3.3 Examples of Offer and Acceptance

General Offer- A river transport company operates ferry services from Ariadaha to Kheya Ghat (Uttarpara) acorss the river Hooghly. There is an offer to carry passengers at scheduled fares. The offer is accepted when a passenger boards ferry with the intention of reaching his destination.

Specific Offer-An advertisement is given in the Sunday Statesman for sale of a Maruti Esteem car for Rs. 1,50,000. This is a proposal. The advertiser is the promisor or offerer, while the person accepting the proposal to buy the car at the stated price is the offeree or promisee or acceptor. A contract has been established as, Offer+ Acceptance= Agreement or Contract.

"Offer and Acceptance are powerless. They cannot individually lead to a contract. But Offer and Acceptance together leads to a contract enforceable in a Court of Law provided the other essential elements of contract exist. The ingredients in gunpowder viz. sulphur, iron filings by themselves are inactive but when a light is applied they explode. Similarly Offer and Acceptance both must be present to make a valid contract. However no contract will be formed if there are disqualifications of either offer or acceptance. The following maxim aptly describes the situation; "Acceptance is to Offer" what a lighted match is to a train of gunpowder". Once a contract is formed, it cannot be

undone. The powder may have remained till it became damp or the person who laid the train on the tracks removed it before the matchstick is lighted."

1.3.4 Off er and Acceptance by Post & Telephone

An offer may be made by post. An offer may also be accepted by post provided no other mode of acceptance has been prescribed by the proposer. When a proposal has been made by post, the post office acts as the agent of the proposer. Therefore a letter duly addressed and posted is sufficient acceptance even though the letter might not reach the proposer as notice to an agent is regarded as a notice to the principal.

Offer and acceptance may be communicated through telephone. But there are certain conditions regarding oral communication. Both offer and acceptance must be audible, heard and understood. If the conditions are satisfied and the other essential elements of contract exist, the patties are bound through telephonic conversation.

1.3.5 Revocation of Offer and Acceptance

An offer comes to an end and is no longer open to acceptance under the following circumstances :

(i) If the offerer gives notice of revocation to the other party i.e. expressly withdraws the offer. An offer may be revoked at any time before acceptance but not afterwards.

(ii) When the proposer prescribes the time within which the proposal must be accepted, the proposal lapses as soon as the time expires.

(iii) If no ti me Ii mit has been prescribed, the proposal lapses after the expiry of reasonable time. What is reasonable time depends upon the circumstances.

(iv) A proposal once refused is dead and cannot be revived by subsequent acceptance.

(v) An offer lapses by the death, insanity of the proposer, if the fact of his death or insanity comes to the knowledge of acceptor before acceptance.

(vi) An offer lapses by the failure of the acceptor to fulfi I a condition precedent to acceptance where such a condition has been prescribed.

U/s 5 of the Indian Contract Act, an acceptance can be revoked any time when acceptance comes to the knowledge of the proposer but not afterwards e.g. P proposes by letter sent by post to sell his house to Q. Q accepts the proposal by letter sent by post. Q may revoke the acceptance any time before the letter communicating it reaches P but not afterwards.

1.4 Consideration

Consideration means something in return. It is one of essential elements in a valid contract. As per the Indian Contract Act, Sec 2(d), consideration is defined as "when at the desire of the promisor, thepromisee 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 consideration for the promise."

1.4.1 Types of Consideration

There are three types of consideration.

(1) **Past Consideration** - When consideration of one party was obtained before the date of the promise.

(2) **Present Consideration**- It moves simultaneously with the promise and is also known as Executed Consideration e.g. cash sales.

(3) **Future Consideration** - It moves at a future date and is called Executory Consideration.

1.4.2 Rules regarding Consideration

(i) **Desire of the promisor is essential** - Act done or loss suffered by the pro mi see must be done or suffered at the desire of the promisor e.g. A sees B's house on fire and helps in dowsing the flames. B did not ask for his help. A cannot demand payment for the services rendered.

(ii) **Consideration must be real and not illusory** - It must not consist of impossible act or promise e.g. to discover treasure by magic.

(iii) **Consideration need not be adequate** - An agreement to which the consent of the party is freely given is not void even if the consideration is inadequate but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisorwas freely given. I tis not possible for the court to determine adequate consideration. But if the consent was freely given the court wi II enforce the quantum of consideration agreed between the two parties e.g. D promises to B to sell land in Calcutta at Rs. 1,000 per cottah. The agreements is valid if the consent of D was freely obtained.

(iv) Consideration must not be illegal, immoral or opposed to public policy-If the consideration or object of the agreement is illegal, the agreement is unenforceable. The same rule applies if the consideration is immoral or opposed to public policy.

(v) Consideration may be present, past or future.

(vi) **Consideration may move from the promisee or from any other person even a stranger-** It is immaterial who has furnished it. A stranger to the consideration can sue to enforce the contract but a stranger to the contract cannot e.g. A person gave some properties to his wife directing her to pay an annual allowance to his brother. The wife entered into an agreement with the brother promising him to pay the allowance. The agreement is unforceable by the brother even through no consideration received by the wife moved from the brother.

1.4.3 Exceptions to the maxim "No Consideration, no contract"

For a valid contract, consideration is an essential element. A consideration is void. Under Roman law, an agreement without consideration was called nudum pactum meaning no contract. This rule is however applicable to Indian law as well. But there are certain exceptions to this rule.

(1) An agreement made on account of natural love and affection provided the following conditions exist (a) it is expressed in writing (b) it is registered (c) there exists a clear relationship between the parties e.g. husband making a gift to his wife.

(2) A promise.to compensate wholly or in part a person who has voluntarily done something for the promisor or something which the promisor was legally compellable to do e.g. A spends money for the maintenance of B's infant son. B promises to meet A's expenses for the same. It is a contract.

(3) A promise to pay wholly or in part a debt barred by limitation provided such promise is in writing and signed by the debtor or his authorised agent e.g. A owes B Rs. 1,000/- but the debt is barred by limitation. However, A promises in writing to repay Rs. 500/- on account of debt. This is a contract.

(4) UIs 185, a contract to create an agency requires no consideration.

1.4.4 Stranger to a Contract

A person who is not a party to a contract cannot sue or be sued upon it. In an English Case, Tweedle Vs. Atkinson, X & Y entered into an agreement to pay a certain sum of money to their children C &D upon their marriage. The marriage took place. Xdied. C sued the Executor of X for recovery. Held C could not sue. The rule is that a stranger to a contract cannot file a suit to enforce it. The right to sue or liability to be sued upon it arises only ifthere is a privity of contract between the parties. But there are certain exceptions to the above rule.

(1) A beneficiary under a trust can sue for enforcement of the trust agreement.

(2) A transferee or an assignee of a bill of exchange can sue upon it although not a party toit.

(3) A family settlement arrived at mutually in a settlement of fami I y disputes can be enforced by the family members who were originally not parties to the contract.

1.5 Void, Voidable and Illegal Agreements

An agreement not satisfying the essential elements of a contract may be either void or voidable. (Sen & Mitra, Commercial Law, World Press, Calcutta 2004, Page 46)

Under section 2(g), an agreement not enforceable by law is said to be void. A void. agreement has no legal effect and does not confer any right to a person thereby creating

no obligations. e.g. agreements made by a minor, agreements opposed to public policy, agreements without consideration etc. Such agreements are void ab initio i.e. void from the very beginning.

An agreement which is legal and enforceable when it was made may subsequently become void due to non-performance, legal changes or other reasons.

A voidable agreement, on the other hand, is one which can be avoided i.e. set aside by some of the parties to it. (Ibid Page 47). If not avoided, it is a valid contract. An agreement, which is enforceable by law at the option of one or more of the parties thereto but not at the option of the other or others is a voidable contract e.g. contracts based on coercion, undue influence, misrepresentation etc. A threatens B to enter into a contract for the sale of B's house to him. The contract can be avoided by RA cannot enforce the contract. But B, if he so desires, can enforce it against A.

An illegal agreement is one which is against the law in force in India e.g. agreement to commit cheating, stealing, murder or robbery.

Distinction amongst them :

"An illegal agreement is also void. But a void agreement is not necessarily illegal." (Sen & Mitra, Suyra Page 47). Agreement not contrary to law may still be void. If the terms of an agreement are uncertain it is void though such a contract is not illegal." 5 Ibid PP47-48.

"When an agreement is illegal, other agreements incidental or collateral to it are void. Courts shall not enforce any agreement entered into with the purpose of aiding an illegal transaction."

"Even if the main agreement is void but not illegai, agreements which are incidental or collateral to it may be valid." 7 Ibid PP47-48.

1.6. Agreement in Restraint of Trade - Exceptions

Every agreement by which any person is restricted from exercising a lawful profession, trade or business of any kind is to that extent void.

E.g., In Mahadev Vs. Raj Kumar, both of them were carrying on the same business in the same locality. Mahadev agreed to close his business if Raj Kumar was willing to pay him Rs. 900/-, which he had paid to his employees as advance. Accordingly, Mahadev closed his business on the assurance given by Raj Kumar that he would pay the agreed sum. Subsequently, Raj Kumar failed to fulfil his obligation. Held that Mahadev could not recover the sum of money from Raj Kumar as it had been an agreement in restraint of trade.

However, there are certain exceptions to this rule under the Indian Law : .

(1) Sale of Goodwill - Any one who sells the goodwill of his business may be restricted by the buyernot to do similar business within specified local limits. Such limits should be reasonable in the eye of law and is dependent on the nature of business.

E.g: In Goldsall Vs. Goldsman, a dealer in imitation jewellery sold the goodwi II of his business to another and restricted him from doing business of imitation and real jewellery in the same locality. While restrictions could be imposed on imitation jewellery, the same will not be valid in case of real jewellery.

(2) Partner's Agreement- A partner or an outgoing partner may agree that he shall not carry on a business similar to that of the firm of which he is or was a partner within a specified period or within specified local limits.

(3) Service Contracts - An employee may bind himself not to compete with his employers. This will not be in restraint of trade (Charlesworth Vs. Macdonald).

l.7 Wagering Contracts

A wager is an agreement by which money is payable by one person to another on the happening or non happening of future uncertain event. e.g. P agrees with Q that if it rains on a certain day P will pay Rs. 50 to Q. If it does not rain, Q will pay P Rs. 50. An agreement by way of wager is void and hence not enforceable in a court of law. There are however certain exceptions:

(1) Stock Exchange transactions in which there is clear intention to give and take deli very of shares.

(2) Prizes and competitions which are games of skill viz. picture puzzles, athletic competitions etc.

(3) Contracts oflnsurance whereby payment of money by the insurer may depend upon future uncertain everrt.

1.8 Free Consent

Two or more parties are said to consent if they agree upon the same thing in the same sense i.e. there is consensus ab idem.

The consent shall not be free if it has been caused by coercion, fraud, misrepresentation, undue influence and mistake.

1.9 Coercion

Coercion means (i) the committing or threatening to commit an act forbidden by Indian

Penal Code (ii) unlawful detention or threatening to detain any property. Such an act is done with the intention to cause the other party to enter into an agreement. ·

E.g. P threatens to shoot Q if he does not let him have his house. Q agrees to do so. The consent was not free, as it had been secured by coercion.

1.10 Undue Influence

As per Sec 16, undue influence is exercised where:

(1) One of the patties is in a position to dominate the will of the other.

(2) He uses his position so as to obtain unfair advantage over the other.

A contract induced by undue influence is voidable at the option of the party with whom it is exercised.

Undue influence is presumed in the following cases (i) Where one party stands in a fiduciary relationship to the other party i.e. relationship of mutual trust and confidence e.g. lawyer and client, father and son (ii) Where one party makes a contract with a person whose mental capacity is affected by age or illness.

However, undue influence cannot be presumed to exist in cases of landlord and tenant, debtor and creditor.

1.10.l Difference between Coercion and Undue Influence

In case of both corecion and undue influence, one party is under the influence of another.

In coercion, influence is caused by an act of committing or threatening to commit an offence punishable under Indian Penal Code or unlawful detention or threatening to detain any property.

In undue influence, it is caused by the domination of the will of one person over another. Coercion is caused by the use of physical force whereas undue influence is brought about by mental pressure.

1.11 Fraud and Misrepresentation

Fraud includes all acts adopted by one party with a view to deceive the other party. U/s 17, fraud includes the following acts :

(1) The suggestion as a fact that which is not true by one who' does not believe it to be true.

(2) The active concealment of a fact by one having knowledge or belief of the fact. Mere silence does not amount to fraud unless it is obligatory on the part of the person having knowledge or belief to disclose all facts.

e.g. B sells his horse which he knows to be unsound to A. At the time of sale, B kept mum regarding the soundness of the horse. Here mere non-disclosure does not

amount to fraud. But if a fiduciary relationship exists between the two parties, it is the duty ofB to inform A of the unsoundness of the horse otherwise B will be guilty of fraud.

(3) A promise made without having the intention of perform.

(4) Any other act or acts intended to deceive. The options left to the aggrieved party are:

(i) To avoid the contract.

(ii) To insist on the contract being performed.

(iii) To sue for damages. Fraud being a civil wrong, compensation is payable.

On the other hand, misrepresentation arises when, representation made has been inaccu-rate but the inaccuracy is not due to any desire to defraud the other party i.e. there is no intention to deceive. U/s 18, misrepresentation has been classified into three groups.

(1) Innocent mis-statement.

(2) Any breach of duty which without the intention to deceive gains and advantage on the person committing it.

(3) Positive assertion of that which is not true though the party making it believes it to be true.

The options left to the aggrieved party are: (1) · To avoid the contract.

(2) To insist that the contract be peiformed.

U/s 19, when consent had been obtained from the party who had the means to discover the truth with ordinary diligence he has no remedy.

E.g.-X has a factory which produces 500 Kgs. of indigo. Y who intends to buy the factory examines the books of account and discovers that 400 kgs of indigo are produced. Y buys the factory. The contract is not avoided by X's misrepresentation.

1.11.1 Distinction between Fraud & Misrepresentation

(1) In misrepresentation, there is no intention to deceive whereas in fraud there is a clear intention to deceive.

(2) Incase of fraud, aggrieved party can sue for damages. In case of misrepresentation, no suit for damages is allowable.

(3) In misrepresentation, if the circumstances were such that the aggrieved party had the means to discover the truth with ordinary diligence, the contract cannot be avoided. This applies to fraudulent silence as well. But in fraud there is no defence. Even if there were independent sources to discover the truth, which was not availed of, the aggrieved party may rescind the contract and file a suit for damages.

1.12 Mistake

Mistake is an erroneous belief regarding some matter. Consent shall not be free if an agreement is vitiated by mistake. Mistakes are of two types: (1) Mistake of law & (2) Mistake of fact. Furthermore, mistake on a point of law is divided into: (a) one in force in India (b) the other not in force in India.

Mistake of law, in the context oflndia, does not affect the contract while in the case of a foreign country it is treated as a mistake of fact. A and B make a contract based on the erroneous belief that a particular debt is barred by the Indian law of limitation, the contract is not voidable. The effect of mistake of law is dependent on the maxim that ignorance of law is no excuse. On the other hand, if the mistake relates to the law of a foreign country then the contract is void:

An agreement induced by mistake of fact is void provided:

(1) Both patties to the agreement are mistaken.

(2) The mistake is as to a fact essential to the agreement. e.g. A agrees to buy from B a certain horse which was dead at the time of the bargain though neither party was aware of the fact. The agreement is void.

An erroneous opinion with regard to the value of a thing forming the subject matter of the agreement shall not be deemed to be a mistake as to matter of fact e.g. X buys an item of worth Rs. 500/-for Rs. 1,000/-thinking it to be of that price. The agreement cannot be avoided on the plea of mistake.

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact e.g. Hcontracted with N corporation to build a number of houses. While calculating the cost of the houses. H by mistake deducted a sum twice and submitted his estimates accordingly. Held the agreement was binding as it stood when the Corporation affixed its seal to it even though the estimates were based upon en-or. (Higgins Ltd. Vs.Northampton Corporation).

When one or more of the parties to an agreement suffer from a fundamental error and the consent though obtained is not there, the agreement shall be void.

There are cases of mistake which cause an agreement to be invalid.

(a) Mistake as to the identity of the person contracted with e.g. Blenkam ordered by letter goods from Lindsay and signed it on behalf of the firm Belnkiren & Co., which Lindsay believed it to be so. Held that there was no contract between Lindsay and Blenkam since lindsay had no intention to deal with Blenkam (Cundy Vs. Lindsay). On the other hand, where the identity of the person contracted with is immaterial mistake as to identity will not avoid the contract e.g. If A goes to a shop introducing himself as Band purchases some items for cash, the contract is valid unless the

shopkeeper made it a point to sell goods to A and not to B.

(b) Mistake as to the subject matter of the contract or the nature of the transaction - if the contract is very much different from the contract the parties intended to make, the contract could be avoidable e.g. M, an old man with poor view, endorsed a bill of exchange assuming it to be a guarantee, though there was no negligence on his behalf. Held there was no contract (Foster Vs. Mackinnon).

1.13 Contingent Contracts

A Contingent Contract is a contract, which is conditional (i) on the happening or (ii) on the non-happening of some future event. Contracts oflnsurance, Indemnity belong to this class. Such contracts are enforceable when the event or loss occurs.

E.g: Insurance money payable by a Fire Insurance Company when a fire occurs.

1.13.1 Rules Regarding Contingent Contracts

(i) If it is contingent on the happening of some future event, it is enforceable when the event happens (Sec. 32). The contract becomes void when the event becomes impossible (Sec. 32).

E.g : A agrees to pay a sum of money to B when he marries C. C dies unmarried. The contract becomes void.

If a time is fixed for the happening of an event, the contract becomes void when the event does not happen at the expiry of that time or before the expiry of that time the event becomes impossible (Sec. 35)

E.g: Aagrees to pay a sum of money to B if his ship returns within a year. The contract becomes void if the ship sinks within the year.

(2) Ifitis contingent on the non-happening of some future event it is enforceable when the event becomes impossible (Sec.33).

E.g: A agrees to pay a sum of money to B if his ship does not return. The contract is enforceable if the ship is wrecked.

If a time is fixed for the non-happening of an event, the contract is enforceable when the event does not happen at the expiry of that time or before the expiry of that time it is certain that the event wi 11 not happen (Sec. 35)

E.g: A agrees to pay a sum of money toB if his ship does not return within a year. The contract is enforceable if the ship does not return within the year or if the ship is wrecked within the year.

If the future event is impossible at the time the contract is made, the contract becomes void whether the impossibility was known to the parties or not.

1.13.2 Difference between Contingent Contract and Wagering Contract

Contingent Contract :

i) Valid Contract

ii) Does not contain Reciprocal Promise

iii) Either party or both have an interest in the subject matter of the contract.

iv) Future Event is collateral and valid.

v) Depends on the happening or non-happening of event and is valid.

Wagering Contract :

i) Void Contract.

ii) Contained Reciprocal Promise.

iii) Parties have no interest except getting or paying money.

iv) Void by itself.

v) Void by itself.

1.14 Performance of Contracts

Performance of a contract means the carrying out of legal obligations. Each party must perform or offer to perform the promise which he has made unless such performance is dispensed with or excused under the law.

1.14.1 Effect of Refusal of Party to perform promise wholly

When a patty to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promise may put an end to the contract, unless he has signified by word or conduct, his acquiesence in its continuance.

P,a singer, enters into a contract with B, the manager of a threatre to sing at his theatre two nights in every week during the next two months and B engages to pay her at the rate of Rs. 1,000/-for each night. On the sixth night P willfully absents herself. With the assent of B, P sings on the seventh night. B has signified his acquiescence in the continuance of the contract and cannot now put an end to it but is entitled to compensation for the damage sustained by him through P's failure to sing on the sixth night.

1.14.2 Contracts need not be performed

l) If by mutual agreement, if the parties to the contract, substitute a new contract for it or rescind or alter it, the original contract need not be performed.

2) Every promise may dispense with or remit wholly or in part; the performance of the promise made to him or may accept instead of it any satisfaction, which he thinks fit.

3) When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, to the person from whom it was received.

(4) If the promisee neglected or refuses to afford the promisorreasonablefacilities for the perfonnance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

1.14.3 Time as the Essence of the Contract

In contracts where time is the essence of the contract, if there is failure to perform within fixed time, the contract or so much of it as remains unperformed become voidable at the option of the promisee. The promisee may accept performance after the fixed time but if he does so he cannot claim compensation unless he gives notice of his intention to claim compensation unless he gives notice of his intention to claim compensation at the time of accepting the delayed performance. For contracts where time does not fonn the essence of the contract, failure to performs within the fixed time does not make the contract voidable, but the promisee is entitled to get compensation for any loss caused to him by such failure.

1.15 When can Contracts be terminated

A contract may be terminated in the following ways:

1) By Performance of the Promise
2) By operation of Law e.g. death, insolvency, merger.
3) By Mutual Consent cancelling the agreement or substituting a new agreement in place of the old. This can take place through Novation (new agreement substituted in place of the existing one either between same parties or different parties), Alteration (change in one or more of the terms of the agreement), Remission (acceptance of less than what was contracted for), Rescission (cancellation of all or some of the terms of the agreement), Waiver (abandonment of right by a party to the agreement), Merger (Inferior right vanishes into superior right if they coincide and meet in one and same person)
4) By Subsequent Impossibility of Performance due to destruction of object necessary for performance, personal incapacity, outbreak of war, change of law, non-existence of a state of things, continued existence of which formed the basis of the contract.
5) By Material Alteration without consent of the parties e.g. change in the amount of

money to be paid, place & time of payment, name of the parties.

6) By Breach made by one party. This can happen through (i) actual breach when one party fails or refuses to perform his obligations for which the aggrieved party can take recourse to rescission of the contract, Sue for damages and quantum Meruit, specific performance, injunction (ii) anticipatory breach whereby a party repudiates his liability under the contract before the time of performance or when he disables himself from performing the contract. The aggrieved party can take recourse to treat the contract as discharged or adopt legal remedies available for the breach, sues for damages, specific performance, injunction.

1.15.1 Anticipatory Breach of Contract

An anticipatory breach of contract occurs when a party repudiates his liability under the contract before the time for performance is due or when a party by his own act disables himself from performing the contract e.g. X agrees to marry Y. Before the agreed date of the marriage, X marries Z. The options left to the aggrieved party are :

i) To treat the contract as discharged.

ii) To adopt legal remedies, which are available to him for breach i.e. file a suit for damages, specific performance, injunction etc.

If the contract is not accepted as discharged, the contract continues to exist and may be performed by the other party if possible. Again if the discharge has not been accepted and an event occurs which discharges the contract legally, the aggrieved party loses his right to sue for damages.

1.15.2 Rules Regarding Amount of Damages

l) The aggrieved party is entitled to recovery by way of compensation the actual loss sustained by him.

2) Court will take into account fair and reasonable Joss which is natural and usual in case of breach (Hadley Vs. Baxendale).

3) Remote damages can be claimed if the parties had reasonably apprehended it at the time of the contract (Pinnock Bros Vs. Lewis and Peat Ltd.)

4) When a contract is broken, the court shall take necessary steps to place the injured patty in the position in which he would have been if the contract had been performed.

5) The aggrieved party is entitled to get costs of the decree for damages.

6) The injured party must take reasonable steps to minimise the loss consequent on breach otherwise he will not be entitled to get that part of damages which results from his failure to take necessary steps (Jamal Vs. Molla Dawood Sons & Co.)

7) The aggrieved party is entitled to get reasonable amount of damages not exceeding the sum specified.

1.15.3 Liquidated Damages and Penalty

Liquidated Damages represent a sum fixed by the parties on the basis of a reasonable estimate of probable actual loss likely to result in case of breach.

Penalty represent a sum named in the contract which is disproportionate to the damages likely to result in case of breach. The courts will never allow any sum more than that specified even though the actual loss is different from it. Reasonable compensation by way of damages is allowable. Penalty is treated as invalid.

U/s 74, if the parties fix the amount of damages to be paid in case of breach, the Courts will allow compensation, which is reasonable and never more. This does away with the distinction made between liquidated damages and penalty in English Law. The same rule applies to ordinary contracts with Government but in case of bai I bonds or recognizances given to Government for public purpose, the whole sum fixed is recoverable.

1.15.4 Quantum Meruit

The doctrine of Quantum Meruit means 'as much as is merited.' When a person does some work under a contract and the other party repudiates the contracts or makes the performance of the contract impossible then the person who had done some work is entitled to receive remuneration for part performance.

A claim upon Quantum Meruit may arise :

a) When the contract is discovered to be void (Sec. 65). The person who has done something under the contract is entitled to reasonable compensation.
b) When something is done or goods or goods are supplied by a person without any intention to do so gratuitously, the other party who reaps the benefit is bound to compensate or restore things so done or delivered (Sec. 70).
c) In case of indivisible contract performed badly, the performer can claim payment on Quantum Meruit less deduction for bad work.

1.16 Meaning and Cases of Quasi Contracts

Some obligations which are not the outcome of any agreement but which are treated as such by law and are enforceable as contracts. Such relations resembling those created by contracts are called "Quasi Contracts".

1) Necessaries supplied to a person incapable of contracting or to any one whom he is legally bound to support, the person furnishing such supplies is entitled to be reimbursed from the property of such incapable person.
2) A person who is interested in the payment of money which another is bound by law to pay and who therefore pays it is entitled to be reimbursed by the other.

E.g: A tenant who pays arrears of rent which the Landlord is bound by law to pay and who pays it to avoid the forfeiture of his holding is entitled to recover it from the Landlord.

3) When something is done or goods supplied by a person without any intention to do so gratuitously, the other party who reaps benefit is bound to compensate or restore things so done or delivered.

E.g: If a tradesman leaves goods not ordered at the house of the customer, the customer is bound to pay for the goods if he takes them.

4) A person who finds lost property may retain it subject to the responsibility of the bailee.

5) If money is paid or goods delivered by mistake or under coercion the payee or the recipient must repay or return it.

1.17 Question

1. Define Contract. State the essential elements of Contract.
2. "All agreements are not contracts, but all contracts are agreements." Ellucidate the statement explaining essential elements of a valid contract.
3. Define Proposal, Offer and Acceptance. How is an offer communicated? What are the essentials of a valid acceptance?
4. What are the rules when offer is made through post office and over the telephone?
5. How and when may an offer and accptance be revoked?
6. Explain with suitable illustrations the following statements:
   a) An offer is made when and not until it is communicated to the Offeree.
   b) A mere mental acceptance not evidenced by words or conduct is in the eye of law no acceptance.
   c) Acceptance must be absolute and must correspond with the terms of the offer.
7. Examine the following situations:
   a) P offers to sel I his goods to Q by a letter posted on March 1. Q receives the letter on March 3. Can P revoke the offer?
   b) N posts his letter of acceptance on March 4, M receives N's acceptance on March 6. Can N revoke his acceptance?
   c) Coffers a reward to whosoever shall do a certain act. D does the act not knowing of the advertised reward. Is C bound to pay the reward to D ?

d) A duly posts a letter of acceptance to B. But the letter gets lost in transit. What is the effect?

e) X proposed by a letter through post to sell his house to Y. Y accepts the proposal by a letter sent by post. When can Y revoke his acceptance?

8. Define consideration. What are the essential elements of consideration?
9. Explain the maxim "No consideration no contract". Are there any exceptions to the rule?
10. "A stranger to a contract cannot sue to enforce the contract" Explain.
11. Distinguish between void, voidable and unenforceable contract with examples.
12. State that law in restraint of trade. Are there exceptions to the rule?
13. Define Wagering Contract. Is there any exceptions?
14. What is consent said to be free? Distinguish between coercion and undue influence.
15. Define and distinguish between fraud and misrepresentation. What remedies are available to the aggrieved party?
16. Explain the following statements:

    (a) "Mere silence as to facts is not fraud."

    (b) "A contract caused by mistake is void."
17. Examine the following cases:-

    (a) X agrees to buy from Y a certain dog. It turned out that the dog was dead at the time of the deal though neither party was aware of the matter. What are the options avai I able to X and Y?

    (b) P sells Q his house for Rs. 50,000. The horse is blind in one eye but Q does not know of this defect until the sale is completed. Is Pliable to Q on the ground of fraud?

    (c) M informs N that M's house is free from encumbrance although the house is subject to a mortgage. N thereupon buys the house what options have N got?
18. Explain what is meant by Contingent Contracts. Discuss the rules relating to Contingent Contracts.
19. Distinguish between Contingent Contract and Wagering Contract.
20. What is understood by performance of a contract? Under what circumstances a contract need not be performed?
21. Explain the effect of refusal of a party to perform his promise wholly.

22. When is time the essence of a contract?
23. Discuss the circumstance under which a contract can be discharged or terminated by the consent of the parties.
24. What are the rules for determination of compensation payable in case of breach of contract?
25. Explain the terms 'Penalty' and 'Liquidated Damages' clearly indicating the difference between them.
26. What is meant by 'Anticipatory Breach of Contract'? State the consequences of such breach.
27. What is meant by quasi contract? Cite examples of such contracts in detai Is.

Unit 2 □ The Sale of Goods Act, 1930

Structure

2.1 Meaning of Goods

The term "Goods" includes every kind of movable property except (i) Actionable Claims and (ii) Money. Sec 2(7).

An actionable claim means a debt or a claim for money which a person may have against another and which he may recover by suit. Money means legal tender money. These two types of movable property are not included in the definition of goods under the Sale of Goods Act. All other types of movable property are regarded as 'goods' under the Act.

Goods may be classified into three types: Existing Goods, Future Goods and Contingent Goods.

Existing Goods : Existing goods are goods which are already in existence and which are physically present in some person's possession and ownership. Sec 6(1).

Existing goods may be either (i) Specific and Ascertained or (ii) Generic and Unascertained. Specific Goods ai·e goods which can be identified and recognized as separate things e.g., a rare picture of a painter; a Jing having distinctive features; goods identified and agreed upon at the time of contract of sale etc. ascertained Goods are used in the same sense as Specific Goods.

Generic Goods or Unascertained Goods are goods indicated by description and cannot be separately indentified. If a grocer agrees to supply a bag of lice from his godown to a buyer, it is a sale of unascertainedgoods because it is not known which bag will be delivered. As soon as a bag is separated out from the lot and marked or identified for deli very it becomes specific goods.

Future Goods : Future Goods are goods, which will be manufactured or produced or acquired by the seller after the making of the contract of sale. Se 2(6).

Example: A agrees to sell to Ball the appeals, which will be produced in his orchard following year. This is regarded as an agreement for sale of future goods.

Contingent Goods : There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency, which may or may not happen. Sec. 62). In these cases, the goods sold are known as Contingent Goods. They fall within the class offuture goods. [Sen & Mitral]

Example : M agree to sell to N a certain ring provided he is able to purchase it from its current owner. This is case of agreement for sale of contingent goods. [Sen & Mitra]

2.2 Sale and Agreement to Sell - Distinction

When the property in the goods is transferred from the seller to the buyer, the transaction is one of sale. If the transfer in the property of the goods is to take place at a future date or subject to the fulfilment to certain conditions, the transaction is of an agreement to sell. The conditions have to be fulfiled by the buyer or the seller. Thus an agreement to sell becomes a sale on the fulfilment of the conditions or when the time lapses.

Distinction :

l. Particular and General Property: A sale is a contract plus conveyance and creates a jus in rem i.e. it gives a right to the buyer to enjoy the goods as against the world at large including the seller. An agreement to sell is a contract pure and simple and creates ajus in person am i.e. it gives a tight to the buyer or the seller against other parties for default in the fulfilment of the contract.
2. Nature of the Contract : A sale is an executed contract while an agreement to sell is executory.
3. Risk of Loss: In case of an agreement to sell, if the goods are destroyed the risk falls on the seller while in case of sale, the risk falls on the buyer even though the goods may not be in his possession.

4. Failure to pay Price : In sale if the buyer fails to pay the price the seller can sue for price while in an agreement to sell, the seller can sue for non-acceptance.
5. Consequences of Breach: In an agreement to sell, if the seller has committed a breach, the buyer has a personal remedy i.e. a claim for damages. In sale, if the seller commits a breach, the buyer has a personal remedy as well as a remedy of the owner i.e. suit for detention. He may follow the goods into the hands of a third party.

2.3 Condition and Warranty - Distinction

A stipulation in a contract of sale of goods may be a condition or a Warranty.
A condition is a stipulation essential to the main purpose of the contract, the breach of which gives the aggrieved party a right to treat the contract as repudiated.
A Warranty, on theother hand, is a stipulation collateral to the main purpose of the contract, the breach of which gives the aggrieved party aright to claim for damages and not aright to reject the goods and treat the contract as repudiated.
Whether the stipulation in a contract of a sale of goods is a condition or a warranty depends in each case upon the intention of the parties and the construction of the contract.
A stipulation may· be a condition though it is called a warranty in the contract of sale.
A condition may be treated to be a warranty if the aggrieved waives the condition as a breach of warranty. If the contract of sale is not severable and the buyer has accepted the goods or any part thereof, the breach of condition must be treated as a breach of warranty.
A breach of warranty, however, cannot be treated as a breach of condition.

2.4 Implied Conditions in a Contract of Sale

1) **Conditions as to Title :** There is an implied condition on the part of the seller that :
   i) In case of sale, he has a right to sell the goods.
   ii) In case of an agreement to sell, he has a right to sell the goods at the time when the property is to pass.
2) **Sale of Description :** When there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description. When the goods are sold by sample as well as by description the goods shall correspond both with the sample and with the description.
3) **Sale of Sample :** When there is a contract for the sale of goods by sample, the following conditions are implied.
   i) The bulk shall correspond with the sample.

ii) The buyer shall have reasonable opportunity of comparing the bulk with the sample.

iii) The goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable elimination of the sample.

4) **Conditions as to Fitness or Quality :** There is an implied condition as to fitness or quality for the purpose of the buyer under the following circumstances:

i) When the buyer relies upon the skill and judgement of the seller.

ii) Where by custom or usage of trade an implied condition of fitness is annexed to a contract of sale.

iii) When the goods are sold by description, there is an implied condition that the goods are fit for sale.

2.5 Implied Warranties in a Contract of Sale

1) The buyer shall have and enjoy quiet possession of the goods.
2) There is an implied warranty that the goods shall be free from any charge or encumbrance in favour of the third party not known to the buyer before or at the time when the contract is made.
3) The implied warranty as to fitness for a particular purpose may be annexed to a contract of sale by custom or usage of trade.

2.6 Caveat Emptor

Means ‘‘Buyers Beware’’. Ordinarily, a buyer must buy goods after satisfying himself about quality and fitness. He cannot put the blame on the seller or recover damages from him. U/s. 16, there shall be no implied conditions as to quality or fitness except under the following circumstances :

1) **Condition as to title :** There is an implied condition on the part of the seller that :

i) In case of sale, he has a right to sel I the goods.

ii) In case of an agreement to sell, he has a right to sell the goods at the time when the property is to pass.

2) **Sale by Description :** When there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description. When the goods are sold by sample as well as by description the goods shall correspond both with the sample and with the description.
3) **Sale by Sample :** When there is a contract for the sale of goods by sample,. the following conditions are implied :

i) The bulk shall correspond with the sample.
ii) The buyer shall have reasonable opportunity of comparing the bulk with the sample.
iii) The goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

4) When the seller is guilty of fraud- In cases not falling under the above category the seller is not liable for any damages, if the goods are found to be unfit by the buyer.

2.7 Passing of Property

In case of sale of goods, property in the goods passes as and when it is intended by the parties concerned. The intention may be gathered from the conduct of the parties, the terms of the contract and the surrounding circumstances of the case. But is cases where the parties fail to express or form their intention as to when the property is to pass the following rules are applicable.

Specific Goods :

1) When there is an unconditional contract for the sale of specific goods in a deliverable state the property passes to the buyer as soon as the contract is made.

Ex.: A purchases on credit some books from a book shop. He makes an agreement with the shop owner that he will take delivery of the books after 7 days. But before the expiry of the stipulated day the books were burnt on account of a fire having broken out on the sixth day. A will have to bear the loss as the property in the goods had already passed into the buyer as soon as the contract was made.

2) When there is a contract for the sale of goods not in deliverable state the property will not pass to the buyer until the goods are made ready for delivery.

Ex.: X wishes to buy 500 litres of Kerosene from an Oil Co. An agreement to that effect was made that X would take delivery of the Kerosene after it had been filled and sealed in cans. When 200 cans had been filled and sealed the remaining part of kerosene suddenly caught fire. The Oil Co., will have to bear the loss for the remaining 300 litres.

3) When the seller is bound to weigh or measure for determining price in case of sale of . specific goods the property does not pass until the seller does the incomplete work.

Ex.: X agreed to buy barks of different trees the delivery, of which would be taken at a latter date. The price was settled and measurement was in progress. Suddenly, the remaining barks caught fire. The seller in this case will have to bear the loss for the remaining part as work on this part was yet to be performed.

4) When the buyer intimates his acceptance to the seller or retains without giving notice of retention the property naturally passes to the buyer.

Ex.: A jeweller offered gold ornaments in sale or return basis to X. X pawned them to a third person. The action of X clearly justifies his intention of retention and so the property in gold ornaments belongs to X.

Unascertained Goods :

1) In case of sale of unascertained goods by description if the goods are unconditionally appropriated to the contract property passes to the buyer.
2) In according to the contract the goods are delivered to the buyer without the reservation of the right of disposal the property passes to the buyer.

2.8 Exceptions to the maxim "Nemo dat quod non habet"

When goods are sold by a person who is not the owner or who does not sell them under the authority or with the consent of the owner the buyer acquires no better title to the goods than the seller had. There are however certain exceptions to the rule.

1) Sale by mercantile Agent : When a mercantile agent is with the consent of the Owner in possession of the goods any sale by him is valid. A bonafide buyer for value without notice gets a good title to the goods.

2) Sale by Co-owner : When one of the several joint owners of the goods is in possession of the goods by permission of the Co-owners the property in the goods may be transferred to any bonafide buyer for value without notice that the seller had no authority to sell.

3) Sale obtained under voidable Contract : When the seller obtains possession of the goods under voidable contract he can give a good title to a bonafied for value without· notice.

4) Sale by seller in possession after Sale : In case a seller is in possession of the goods after sale and resells it to another buyer who acts in good faith and without notice of the defective title in the goods, the buyer acquires a goods title.

5) Sale by buyer in possession : When the person having bought or agreed to buy goods obtains possession of the goods with the consent of the owner, he can give a good title to the goods to a bonafied buyer for value without notice.

2.9 Rights of an Unpaid Seller of Goods (Vendors Lien)

An unpaid seller is a seller of goods who has not received the whole price of the goods sold or has received a negotiable instrument as conditional payment and which has been dishonoured on due date. The rights of an unpaid seller are (a) a lien on the goods while

they are still in possession (b) a right of stoppage in transit in case of insolvency of the buyer (c) might of resale. The unpaid seller of goods in possession of the goods is entitled to retain possession of the goods until payment of price in the following cases.

i) Where the goods have been sold without stipulations as to credit.
ii) Where the goods have been sold on credit but the term of credit has expired.
iii) Where the buyer becomes insolvent. If the unpaid seller has delivered a portion of the goods he has sti II a lien on the remaining goods.

An unpaid seller loses his lien in the following circumstances :

1) When the goods have been delivered to the buyer or canier without reserving the right of disposal.
2) When the buyer or his agent has lawfully obtained possession of the goods.
3) By waiver.

The unpaid sellerretains his lien even if he obtain a decree for the price of the goods.

2.10 Stoppage in Transit

In case of insolvency of the buyer, the unpaid seller who has parted with the goods has a right of stoppage in transit unti I payment of price. The validity of stoppage in transit depends on the following factors.

i) The goods must be in transit.
ii) The buyer must be in sol vent.
iii) The seller is not prevented by the provisions of this act from exercising the right.
iv) When price has been unpaid either wholly or in part.

The right of stoppage in transit is an equitable right which arises wholly from the insolvency of the buyer and is based on justice and equity that one person's goods should not be-applied for the payment of another as has been decided in Narain Dass Vs. Official Assignee.

The transit is at an end in the following cases :

1) When the buyer has taken delivery of the goods before reaching the destination.
2) When after reaching the destination the carrier intimates to the buyer about keeping the goods on his behalf even if they have been redirected to another placed.
3) Wheri thecanierwrongfully refuses to deliver the goods to the buyer.
4) When the buyer has sent a ship chartered by him and the seller delivers the goods thereon this will be deemed to be a delivery.
5) When part delivery has been made by the seller he has a right of stoppage in transit over the remaining goods.

Distinction between Right of stoppage in transit and Right of Vendors Lien :

Right of stoppage in Transit	Right of Vendor's Lien
1. Application to a buyer when he becomes insolvent.	1. Applicable to all whether solvent or not.
2. Canier in possession of goods.	2. Seller in possession of goods.
3. Right to regain the goods by the seller.	3. Right of retain the goods by the seller.

2.11 Right of Resale

Right of Resale arises :

i) When the goods are of a perishable nature.

ii) When the price has not been paid within a reasonable time after a notice of intention to resell has been served.

iii) When the right of resale is expressly reserved in the contract.

2.12 Consequences of Breach of Contract

1) Suit for non Acceptance: When the buyer wrongfully refuses or neglects to accept the goods the seller may sue him for non acceptance of the goods.

2) Suit for non Deli very : When the seller wrongfully refuses or neglects to accept the goods the seller may sue him for non acceptance of the goods.

3) Specific Performance : The court may grant specific performance of the contract at its discretion at the suit of the buyer.

4) Remedies for Breach of Warranty : In case of breach of warranty by the seller the buyer may.

   a) Set up against the seller the breach of warranty in diminution of the price.

   b) Set up the breach in extinction of the price.

   c) Sue the seller for damages for breach of warranty.

5) Repudiation of the Contract: When either party repudiates the contract before the date of deli very the other party may either treat the contract as resounded and sue for breach or wait till the date of delivery and then sue for breach.

2.13 Rules Relating of Delivery

Delivery means voluntary transferor possession of goods from the seller to the buyer. It may be (i) actual (ii) symbolic and (iii) constructive. The delivery of the goods has to be made in accordance with the rules mentioned below :

a) **Payment and Delivery are Concurrent Conditions :** Unless otherwise agreed, deli very of the goods and payment of the price are concurrent conditions. The seller must be willing to deliver the goods to the buyer while the buyer in turn must be willing to pay the price for the goods to the seller.

b) **Effect of Part Delivery :** Delivery of the part may be delivery of the whole if itis so intended and agreed but not otherwise.

c) **Buyer to apply for Delivery :** Apart from any express contract the seller is not bound to deliver the goods until the buyer applies for deli very.

d) **Place of Delivery :** In the absence of any agreement goods sold are to be delivered at the place at which they are at the time of the contract and if the contract is for future goods the delivery should be at the place when they are produced.

e) **Goods in possession of Third Party :** If the goods are in possession of a thrid party there is no delivery until such party acknowledges that he holds the goods on behalf of the buyer.

f) **Time of delivery :** If no time limit is mentioned in the contract, the seller is under an obligation to send the goods to the buyer within a reasonable time.

g) **Cost of Delivery :** Expenses of making delivery are borne by the seller and expenses of obtaining delivery by the buyer.

h) **Tender of Delivery :** It is the duty of the seller to place the goods under the disposal of the buyer. If the buyer is unwilling to take delivery the seller is excused from the performance and maintain a suit against the purchases.

i) **Delivery of wrong Quantity :**

(i) If the seller sends to the buyer a larger or smaller quantity of goods than he ordered the buyer may (a) reject them (b) accept them or (c) accept the quantity he ordered and reject the rest. [Section 37(2)]

(ii) If the seller mixes with goods ordered goods of wrong description and delivers them to the buyer, the buyer has the option to accept the goods ordered and reject the rest or reject the whole. [Section 37(3)].

j) **Delivery by Installment :** Unless otherwise agreed, the contract must be treated as a whole and cannot be divided by either the seller or the buyer. However deli very by instalment may be agreed upon by the parties.

k) **Deli very to a Wharfinger or Carrier :** If the goods are delivered to a carrier the seller is bound to enter into a reasonable contract on behalf of the buyer with the carrier for safe transmission of the goods. Goods delivered to a carrier or a wharfinger is prima facie deemed to be delivery to the buyer.

2.14 Question

1. Define goods. What are the different types of goods?
2. What is meant by 'Caveat Emptor'? Are there any exceptions to its application in Sale of goods?
3. Distinguish between :
   a) Condition and Warranty
   b) Sale and Agreement to sell.
4. Explain the difference between condition and warranty. When can a condition be treated as a warranty? State the implied conditions and warranties in a contract of sale of goods.
5. What are the rules of ascertaining the intention of the parties as to the time when the property in specific and unascertained goods is to pass to the buyer.
6. "No seller of goods can give the buyer of goods a better title to those goods than he himself has." Explain.
7. State the rules relating to delivery of goods.
8. What is meant by Vendor's Lien? How does it arise and how is it lost? Does a vendor have any power over the goods, which have passed from his possession? If so, why?
9. Distinguish between Vendor's right of lien and right of stoppage in transit.
10. When and under what circumstances can the seller exercise right of re-sale?
11. What remedies are available in the event of a breach of contract?

Unit 3 □ The Negotiable Instruments Act, 1881

Structure

3.1 Definition and essential features of Negotiable Instument

"Negotiable" means transferable by delivery while "Instrument" means a written document by which a right is created in favour of a certain person." *(Sen, Mitra P-289)* Thus Negotiable Instrument means a document transferable by delivery. Under the N.I. Act 1881, negotiable instrument means a promisory note, bi II of exchange or cheque payable either to bearer or to order. Hundis, Dividend Warrents, Bill of Lading and similar documents are, however, not cov-ered by this Act.

The essential features of a Negotiable Instrument Are :

1) It must be in writing.
2) I must be unconditional.
3) It must be payable after a certain future date or to order.
4) The Money must be paid to a specified person according to his order.
5) I must contain a promise to pay.
6) The sum to be paid must be certain.
7) It must be signed by the maker.
8) The maker must be definite and certain.
9) The payment must be in legal tender money of India.
10) Ownership passes on deli very or on endorsement and deli very.
11) Holder in due course can sue upon it in name.
12) If holder has defect in title, holder in due course is exempted from defect.

3.2 Distinction between Promisory Note, Bill of Exchange and Cheques

U/s of the N.I. Act 1881, a promisory note is a written instrument containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to order of a certain person, or to the bearer of the instrument. The person who makes the promise to pay is called the maker while the person who makes the promise to pay is called the maker while the person who received the money is called the payee. e.g. A Promises to pay Rs. 500 and all other sums which shall be due to Bis not a promisory note as the amount payable is uncertain.

U/s 5 of the N.I Act 1881, a bill of exchange is a written instrument containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to order of a certain person or to the bearer of the instrument. The maker of the Bi II of Exchange is called the Drawer. The person directed to pay is called the Drawee. The person who receives the money is called the Payee.

U/s 6 of the N.I. Act 1881,a cheque is a bill of exchange drawn upon a specified banker and payable on demand.

Promisory Note	Bill of Exchange
1. Involvement of 2 parties Maker & Payee	1. Involvement of 3 parties - Drawer, Drawee & Payee
2. It must contain a promise to pay	2. It must contain an order to pay
3. The maker is liable on the instrument	3. The drawer is liable only when the drawee fails to make payment on due date
4. It is signed by the person liable to pay. No acceptance is necessary.	4. Acceptance of the drawee is necessary be fore it become binding on him.
5. Notice of dishonour is not necessary to the maker.	5. Notice of dishonour to be given to all persons liable to pay.

Cheques	Bill of Exchange
1. Bill of Exchange drawn on a specified bank	1. Bill of Exchange drawn on any person including bank.
2. Payable on demand.	2. Payable after 3 days from maturity.
3. Payment countermanded by drawer	3. Not so.
4. No stamps are required to be affixed.	4. Stamps to be affixed.
5. May be crossed.	5. Crossing not necessary.
6. Notice of dishonour to the drawer by the banker not necessary.	6. Notice of dishonour to be given.
7. No acceptance is necessary.	7. Acceptance required under special cases.
8. Not so.	8. Payable by installments.
9. Drawer discharged if he suffers damage due to delay in presentment.	9. Drawer discharge if not presented to the drawer for payment on due date.

3.3 Different ways of crossing a Cheque

A Cheque is a Bill of Exchange drawn upon a specified banker payable on demand. There are two types of cheques - (1) Open Cheques (2) Crossed Cheques. An open

cheque is one which is payable in cash across the counter of the bank while a crossed cheque is one in which two parallel lines are marked across the face of the cheque. Such a cheque may be payable to another banker. The danger of unauthorised persons getting hold of such cheques and cashing it is restricted in the sense that such a cheque can be cashed through the bank in which the payee is a customer.

There are two modes of crossing a cheque : (1) General Crossing (2) Special Crossing. General Crossing involves marking of two parallel lines across the face of the cheque. Such a cheque is payable through any bank where it is presented. Special Crossing invloves specifying the name of the bank in between the two parallel lines marked across the face of the cheques. Such a cheque is payable through the bank named if it is presented for payment. There are, however, other ways in which payment can be restricted. This can be done by writing *'Ale* Payee' or 'Not Negotiable' in between those line.' *Ale* Payee' means that the proceeds of the cheque must be credited to the account of the payee in a bank where he has an account. 'Not Negotiable' on the other hand, represents transference or assignment by the payee. The transferee has the same rights as the transfer of in case of payment although his rights are quite different from the rights of a holder in due course.

3.4 Holder and Holder in due Course

U/s 8 of the N.I. Act, a holder is a person entitled to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Every person legally enti tied to the amount due on the instrument is termed as a Holder.

U/s 9 of the N.I. Act, a Holder in due course is particular type of Holder if he satisfies the following conditions :

1) He became the holder of the instrument before maturity.
2) He has no reason to believe that any defect existed in the title of the person from whom he derived his title.
3) He obtained the instrument for valuable consideration (Sen & Mitra, P-299).

3.5 Inchoate Instruments (Sec. 20)

An Inchoate Instrument is a paper signed and stamped according to the Law of Negotiable Instruments either wholly blank or containing an incomplete negotiable instrument.

When one person gives to another such a document, the latter is entitled to complete the document and make it into a proper negotiable instrument upto proper value.

The person who has signed the instrument is liable on it in the capacity in which he had signed to any holder in due course for such amount.

3.6 Inland and Foreign Instruments

A negotiable instrument made or drawn in India, and made payable in a drawn upon any person resident in India is called an Inland Instrument. Inland Instruments are those which are (i) made or drawn in India (ii) payable in India or payable by any person resident in India.

Foreign lnstruments are those which are (i) made or drawn in India but are payable by a person resident outside India (ii) made or drawn outside India but are payable in India.

It may be noted that Inland Instruments need not be protested for dishonour but Foreign Instruments may be protested for dishonour if the law of the country so provides.

3.7 Negotiation and Assignment

When a note, bill or cheque is transferred by mere delivery it is said to be negotiated. Such an instrument if payable to bearer is negotiated by mere delivery while on the other hand, if it is payable to order it is negotiated by delivery as well as by endorsement. The holder has the same rights as the transferor.

Assignment means the transfer of a right or an actionable claim by deed or otherwise. The assignee has the same right as the assigner.

Negotiation	Assignment
1. Consideration to be presumed.	1. Consideration to be provided.
2. Title of holder in due course bonafied and for value) not affected by any defect in the title of the transferor.	2. Title of assignee subject to defects if any in title of assignor.
3. Notice of transfer to debtor is not necessary.	3. Notice of assignment to debtor by assignee is essential.
4. Instruments payable to bearer negotiated by mere delivery while instruments payable to order negotiated by deli very and endorsement.	4. Assignment made by writing on instrument or transferring the transferor's rights to the assignee on it.

3.8 Endorsement

An Endorsement of a Negotiable Instrument means writing of a perosn's name on it for the purpose of negotiation. The person who indorses the instrument is called the indorser and the person to whom is it endorsed is called the endorsee. (Section 15)

The essential of valid endorsements are :

1) It must be on the instrument. It there is no space on the instrument, the endorsement may be made on an attached slip of paper. Such a slip is known as Allonge.
2) It must be signed by the endorser for the purpose of negotiation.
3) It must be made by the endorser either by signing his name on the instrument directing to pay the amount to a specified person.
4) It must be completed by delivery of the instrument.

The following are the types of endorsement :

1. Blank or General : A blank endoresment is effected by the signature of the endorser on the face or back of the instrument. It specified no endorsee and consequently become payable to bearer.
2. Special or Ful I : When the endorser signs his name and directs to pay the amount mentioned therein to or to the order of a specified persons the endorsement is said to be full. (E.g. Pay to Co-order Sci/ A)
3. Restrictive : The endorsement is said to be restriction when it prohibits further negotiation of the instrument.

E.g. 1. Pay C for my use.

2. Pay C or order *for* the account of B.
3. Pay contents to Conly.
4. The within must be credited.
5. Conditional or Qualified - The endorsement is said to be conditional or qualified when it limits ornegatives the liability of the endorser.
6. Partial - The endorsement is said to be partial when it purports to transfer a part of the amount to the endorser.

E.g A holder of a bill for Rs. 1000. He endorses it as pay B or order Rs. 500/-

Note : The following endorsements do not exclude the right of furthernegotiation by C and hence do not fall under the category of Restrictive endorsements.

1. Pay C value in account with Oriental Bank.
2. Pay the contents to C being part of the consideration in a certain deed of assignment exempted by C to the endorser and others.

3.9 "Once a Bearer Instrument always a Bearer Instrument" Discuss

"If a Negotiable Instrument is endorsed in blank or is payable to bearer, it is a bearer instrument. The holder of such an instrument may negotiate it by delivery only. But suppose that the holder endorses it specially to a person and makes it payable to the order or such person. In such a case the endorser in fuJI can not be sued by any person except the person in whose favour he indorsed it, but as regards all parties prior to the endorser in full, the instrument remains transferable by delivery. (Sec.55)" [Sen & Mitra, P-321].

E.g X, the payee of a bill, endorses it in blank and delivers it to Y.Y endorses it to Z or order. Z without any endorsement transfers it to P. Pas the bearer is entitled to receive payment. In case of dishonour, Pis entitled to sue the drawer and the acceptor of the bill and also X, the endorser in blank and all endorsers prior to X. He cannot, however, sue Y or Z.

Where a cheque is originally expressed to be payable to bearer, the draweee is discharged by payment in due course to the bearer thereof notwithstanding any endorsement whether in full or in, blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude furthernegotiation [Sec. 85(2)]. (Sen & Mitra, Page-321).

3.10 Discharge of parties from Liability

i) By payment in due course - The instrument is discharged by payment in due course by the party who is primarily liable to pay. The payment of the amount due on the instrument must be made at or after the maturity to the holder of the instrument. (Section 85).

ii) By party primarily liable becoming holder- The instrument is discharged if the maker of a note or accept or of a bill becomes its holder at or after maturity(Section 61)

iii) By cancellation or release - When the holder of Negotiable Instrument cancels the name of or releases any party to the instrument, the other party is discharged from the liability. [Section 82(b)].

iv) By allowing drawer more than 48 hours-when the holder of a bill allows drawee more than 48 hours exclusive of public holdings to consider whether he shall accept it, all parties not consenting to such allowance are discharged from liability to him.

v) By non-presentment of cheque -If a cheque is not presented by the holder for payment within reasonable and as a result the drawer suffers damage through delay, he is discharged from liability.

vi) By parties not consenting discharged by qualified or limited acceptance - If the holder agrees to qualified acceptance all prior parties not consenting to such acceptance are discharged from liability to him.

vii) By Material Alteration - Material Alteration of an instrument renders it void against persons who were parties thereto. (Section 87)

3.11 When presentment is not necessary

Presentment for acceptance is not necessary in the following cases :

i) When the drawee cannot be found out even after due search.

ii) When the drawee is a fictitious person or one incompetent to contract.

iii) When although presentment is irregular, acceptance is refused on some other ground.

Presentment for payment is not necessary in the following cases :

i) When the maker, acceptor or drawee does something so as to intentionally prevent the presentment of the instrument.

ii) When the business place is closed on due date before the usual business hours.

iii) When there is no person to make payment at the place specified.

iv) When he cannot be found after due search.

v) When there is a promise to pay not withstanding non-presentment.

3.12 Maturity of a Bill

The maturity of a bill is the date on which it falls due. A bill which is payable on demand becomes due immediately on presentation for payment. A bill which is not payable on demand becomes mature on the third day after the day on which it is expressed to be payable. The three days are known as Days of Grace. The date of maturity of a bill is calculated in the following way. (Sec. 23 to 25).

a) If it is payable a stated number of months after date or after sight it becomes payable three days after corresponding data of the month after the stated number of months.

b) If the month in which the stated number of months will terminate has no corresponding date, it becomes mature on the last day of the month.

c) In calculating the maturity of a bill payable a certain number of days after date or sight, the day on which it was drawn or presented for acceptance shall be excluded.

d) When the day on which a bill is at maturity is a holder the instrument shall be deemed to be due on the next preceding business day.

E.g. A Negotiable Instrument dated 29th January 1981 is made payable at one month after date. The instrument is at maturity on the 3rd day after 28th February 1981.

3.13 Material Alteration

A material alteration is one which

i) alters the character or identity of the instrument.

ii) alters the operation of the instrument.

iii) alters the rights & liabilities of the parties to the instrument.

It is immaterial whether the alteration is beneficial or prejudicial instances of material alteration are (i) alteration of the date (ii) alteration of the sum payable (iii) alteration of time and place of delivery (iv) alteration of the rate of interest (v) addition of another place of delivery. However the following alterations do not vitiate the instrument.

1) Alteration made for the purpose of correcting a mistake.

2) Alteration, which is immaterial.

3) Alteration made to carry out the common intention of the parties.

4) Alteration made with the consent of the parties.

5) Alteration made before the instrument is issued or has become available against any party thereto.

Alterations although authorised by the Act are not material alteration e.g.

a) Conversion of blank endorsement into a full endorsement.

b) Filling blanks of inchoate instruments.

c) Crossing of cheques.

d) Qualified acceptance.

Material alteration of the instrument renders it void against the person who is a party thereto before the alteration.

3.14 Presumptions as to Negotiable Instruments

The following presumptions as to Negotiable Instruments can be made (Sec. 118).

1. Consideration : That every Negotiable Instrument was made, drawn, accepted, endorsed, negotiated or transferred for consideration. This enables the holder to get a decree from the Court without any difficulty.
2. Date : That every Negotiable Instrument hearing a date was made or drawn on such date.
3. Time of acceptance : That every accepted Bill of Exchange was accepted within area-sonable time of its date and before its maturity.
4. Time of Transfer : That every transfer of a Negotiable Instrument was made before its maturity.
5. Holder in Due Course : That every holder of a Negotiable Instrument is a holder in due course.
6. Stamp : That lost Negotiable Instrument was duly stamped.
7. Order of Endorsements : That endorsements appearing on the Negotiable Instrument was made in the order in which they appear thereon.
8. Proof of Protest : In a suit upon an instrument, which has been dishonoured, the court on proof of protest presume the fact of dishonour until and unless such fact is disproved. (Sec. 119)

3.15 Dishonour of Negotiable Instruments

A Negotiable Instrument is dishonoured by non-acceptance.

1) When it is not accepted by the drawer on presentment or where presentment is excused the bill is not accepted.
2) Where the drawee is incompetent to contract.
3) When the acceptance is a qualified one.

A Negotiable Instrument is dishonoured by non-payment when the maker of the note, the acceptor of the bill, the drawee of the cheque makes default in payment when required to pay the same.

Where an instrument is dishonoured by non-acceptance or non-payment the holder or party thereto liable thereon must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make liable.

3.16 Notice of dishonour is not necessary

i) When it is dispensed with by the party entitled there to.
ii) In case of a promisory note which is not negotiable.
iii) When the party charged could not suffer damages for want of notice.
iv) When the party entitled to notice cannot be found after due search.
v) When the party entitled to notice, knowing the fact promises unconditionally to pay the amount due on the instrument.
vi) To charge the drawer when the acceptor is a drawer.
vii) To charge the drawer when he has countermanded payment.

3.17 Noting and Protest

When a bill of exchange or a promisory note has been dishonoured by non-acceptance or. non-payment the holder may cause such dishonour to be noted by the Notary Public upon the instruments.

Noting is a preliminary step to protest. The Notary Public call upon the drawee or the acceptor to pay the bill and on refusal notes the bill.

Noting must contain (i) the fact of dishonour (ii) the date of dishonour (iii) the reasons for dishonour (iv) noting charges.

Although noting has no legal effect, it has the following advantages.

3.18 Circumstances in which a banker may refuse to honour cheques

1) When the bank has a claim for a set off or lien on the funds of the customer.
2) When there are insufficient funds in the customer's account to honour a cheque.
3) When the cheque has not been presented within the usual banking hours.
4) When a post dated cheque has been presented for encashment.
5) When the cheque is irregularor materially i.e. contains makers of erasers or is overwritten or otherwise does not conform to the rules of the bank.

3.19 Circumstances in which a banker must refuse to honour cheque

1) When the customer informs the banker to stop payment.
2) When the customer becomes insolvent.
3) When the banker receives notice of customer's insanity or death.
4) When the court serves a garnishee order or attaching funds of the customers in exception of the customers in exception of
5) When the customer informs the banker that the cheque is lost.

3.20 Questions

1. Define Negotiable Instruments with examples. What are the essential features of a Negotiable Instrument?
2. Distinguish between :
   a) Promisory Note and Bill of Exchange
   b) Bill of Exchange and Cheque
   c) General and Special Crossing of Cheques
   d) Inland and Foreign Instruments
   e) Holder and Holder in due course
3. Is the following a promisory Note? "I promise to pay X Rs. 5,000/-and all other sums which shall be due to him."
4. What is the difference between Negotiation and Assignment?
5. Discuss the rules regarding Endorsement.
6. 'Once a bearer instrument always a bearer instrument' Elucidate.
7. Examine the different modes of discharge of liability of parties to a negotiable instrument.
8. What are the cases when a Negotiable Instrument need not be presented for payment? When is a negotiable instrument said to be dishonoured.
9. Discuss the rules relating to the maturity of negotiable instruments.
10. Write notes on : Presentment for payment, Material Alteration.
11. Enumerate the presumption, which shall be made with reference to negotiable instruments.
12. a) A promisory note, executed on January 31, 2002 is made payable one month after date. When does the note become payable?

    b) A negotiable instrument dated 29th January 2005 in made payable at one month afterdate. When will the instrument mature?

    c) Xgets hold of Y's cheque book, forges Y's name on a cheque. X obtains money from Y's bankers by presenting the forged cheque and then disappears. Who bears the loss, Y or the banker? Explain.
13. When a bill of exchange is said to be dishonoured? When is notice of dishonour unnecessary? Distinguish between:
14. a) Noting and Protest

    b) Dishonour by Non Acceptance and Non Payment.

Unit 4 □ The Companies Act, 1956

Structure

4.16 Minimum Subscription

4.17 Restrictions as to Allotment

4.17.1 Return of Allotment

4.18 Commencement of Business

4.19 Kinds of Share Capital

4.20 Voting Rights

4.21 Variation of Shareholders' Rights

4.22 Alteration of Share Capital

4.23 Reduction of Share Capital

4.24 Further Issue of Capital i.e. Rights Issue

4.25 Issue of Shares at a Premium

4.25.1 Issue of Shares at a Discount

4.26 Purchase of the Company's Own Share

4.27 Redeemable Preference Shares

4.28 Call on Shares

4.29 Forfeiture of Shares

4.30 Lien on Shares

4.31 Surrender of Shares

4.32 Stock Vs. Shares

4.33 Share Certificate and Share Warrant

4.34 Member

4.34.1 Member Vs. Shareholder

4.34.2 Cessation of Membership

4.34.3 Register of Members

4.35 Transfer & Transmission of Shares

4.36 Statutory Meetings and Statutory Report

4.37 Annual General Meeting

4.38 Extra Ordinary General Meeting

4.39 Company Law Board

4.40 Rules Regarding Meetings

4.41 Ordinary / Special Resolution

4.42 Resolution Requising Special Notice

4.43 Minutes

4.44 Annual Return

4.45 Who is a Director?

- **4.45.1 Appointment of Director**
- **4.45.2 Share Qualification of Directors**
- **4.45.3 Disqualification of Directors**
- **4.45.4 Vacation of Office of Director**

4.46 Removal of Directors

4.47 Powers of the Board of Directors

4.48 Remuneration of Directors

4.49 Loans to Directors

4.50 Contracts in which a Director is interested

4.51 Office of Profit of Director

4.52 Sole Selling Agent

4.53 Managing Director - Appointment, Disqualification and Time Limit

4.54 Who is a Manager?

4.55 Prevention of Management by Undesirable Persons

4.56 Books of Account

- **4.56.1 Annual Accounts and Balance Sheet**

4.57 Board's Report

4.58 Appointment of Auditors

- **4.58.1 Qualification/ Disqualifications of an Auditor**
- **4.58.2 Rights and Powers of Auditors**
- **4.58.3 Duties of Auditors**
- **4.58.4 Special Audit**
- **4.58.5 Cost Audit**

4.59 Remedies of Debenture Holders

4.60 Fixed & Floating Charges

- **4.60.1 Registration of Charges (Sec. 125)**

4.61 Loan to Companies (Sec. 370)

4.1 Essential features of a Company

1) **Existence :** Registration essential under Companies Act.
2) **Minimum Requirement for Formation :** 2 (Private), 7 (Public).
3) **Maximum Requirement :** Any number (Public), 50 (Private).
4) **Legality :** Single person by law, legal personality.
5) **Contract :** Shareholder permitted to enter into contracts with Company and can also be an employee.
6) **Management :** Managed by Board of Directors wholetime Directors, Managing Director or Managers. Shareholder not allowed to participate.
7) **Succession :** Perpetual succession not affected by death or insolvency of member. Terminated when liquidated.

8) **Liability of Members :** Limited.

9) **Creditors :** Not creditors of individual shareholders. Decree obtained is executed against assets but not against any shareholder,

10) **Transfer :** Shareholder entitled to transfer share. Transferee becomes a member of the company.

11) **Obligation :** Compliance with statutory obligations e.g. filing balance sheets, maintaining proper books of accounts and registers.

12) **Common Seal :** A must for a company.

13) **Registered Office :** A must for a company.

14) **Capital :** A must for a company.

15) **Residing :** Though a company has residential status for taxation purposes it does not possess any fundamental right.

16) **Not a Citizen :** Though a company is an artificial person, it is not a citizen. It may have a Domicile Status.

17) **Social Objectives :** A company is not the property of the shareholders. The company is a social institution having duties and responsibilities towards the community its workers the national economy and progress.

4.2 Types of Company

4.2.1 One Man Company

This is a company in which one man holds the whole of the share capital and in order to meet the statutory requirement of minimum number of members some dummy members who are mostly relatives or friends hold one or two shares each. The dummy members are nominees of the principal shareholder who is the virtual owner of the business and who carries it on with limited liability.

e.g: A private company is registered with a share capital of Rs. 5,00,000/-(5,000 shares of Rs. 100 each) of these shares 4,999 are held by A while the remaining one share is held by As wife B. This is a one-man company.

4.2.2 Holding & Subsidiary Company

Holding Company

A Company controlling the policies of another company (i) through ownership of the latters' shares or (ii) through control over the composition of Board of Directors is called a Holding Company.

Subsidiary Company

A Company is considered to be a subsidiary of another if (i) control over the composition of Board of Directors is exercised by that other; (ii) more than half the nominal value of equity capital of the company is held by that other; (iii) it is an existing company where the preference share holders have the same voting rights as equity shareholders (iv) it is a subsidiary of a company which is subsidiary of another.

e.g: If Company A has a subsidiary B and B has a subsidiary C then C is the subsidiary of A. Similarly if Company Dis a subsidiary of Company C, then Company D will be a subsidiary of Company B and consequently of Company A.

4.2.3 Private Company & Public Company

Private Company	Public Company
1. Membership : Minimum - 2, Maximum- 50	**1. Membership :** Minimum-7, Maximum any number.
2. Transfer : Share transfer restricted if such provisions are contained in the regulations.	**2. Transfer :** No such restrictions.
3. Purchase of Shares : Invitation to the public for purchase of shares and debentures cannot be made.	**3. Purchase of Shares :** Can be made.
4. Words : Addition of words "Private Limited" at the end of its name.	**4. Words :** No such question.
5. Privileges : Enjoyed only by private companies.	**5. Privileges :** Not so in case of public companies.

4.2.4 Government Company

A Government Company means any company in which not less than 51 % of the paid up share capital is held by the Central Govt. or by both (Sec. 617).

The following rules are applicable to Government Companies:

1) The auditor of a Government Company is appointed or reappointed by the Central Govt. on the advise of the Comptroller & Auditor General of India [Sec. 6192)].
2) The auditor of a Government Company is required to submit a copy of the audit report to the Comptroller & Auditor General oflndia who has the right to comment

upon or supplement the audit report [Sec 619(4)). Any such comments upon or supplement to the audit report must be placed before the annual general meeting of the company [Sec 6195)].

3) Where the Central Govt. is a member of a Government Company, an annual report on the working and offers of the company must be prepared within 3 months of its annual general meeting before which the audit report is placed. The annual general meeting before which the audit report is placed. The annual report must also be placed before both Houses of Parliament together with a copy of the audit report and any comments upon or supplement to the audit report made by the Comptroller & Auditor General oflndia (Sec. 619A).

   Likewise where a State Govt. is a member of a Government Company, a copy of the annual report must be placed before the I-louse or both Houses of the State Legislature together with a copy of the audit report and any comments upon or supplement to.

4.2.5 Foreign Company

U/s 5912) of the Act, where not less than 50% of the paid up share capital (whether equity or preference or partly equity and partly preference) of a foreign company (Company incorporated outside India) having an established place of business in India is held by one or more citizens oflndia and/or by one or more Indian companies singly or jointly, such company shall be treated as an Indian company.

The following rules are applicable to foreign companies :

U/s 592, every foreign company must within 30 days of the establishment of place of business file with the Registrar of Companies :

i) A certified copy of the charter, stature, Memorandum and Articles of the Company and if the instrument is not in English a certified translation thereof.

ii) Full address of the registered or principal office of the Company.

iii) A list of the directors and secretary of the company.

iv) Names, address of any person or persons resident in India, authorised to accept on behalf of the company service of process and notices required to be served on the company.

v) Full address of the principal place of business in India.

If any alteration is made or occurs in any of the particulars aforesaid, the company is required to file with the Registrar a return of such alterations within the prescribed time (Sec 593).

4.3 Privileges of Private Companies

1) **Prospectus or Statement in lieu of prospectus :** Filing not compulsory.
2) **Allotment of Shares :** Before subscribing minimum amount of share capital, shares may be alloted.
3) **Number of Directors :** Required by private companies 2 (min.).
4) **Rules relating to Directors :** Less stringent. Share qualification of Directors not applicable. Loan to Directors can be given. Consent of Di rector not required to be filed with Registrar. Restrictions with regard to Managing Directors - appointment does not arise. Directors may participate in Board meeting inspite of being personally interested in contracts etc.
5) **Statutory Meeting and Statutory Report :** Not necessary to hold Statutory Meeting or file Statutory Reports.
6) **Managerial Remuneration :** Overall maximum Managerial Remuneration inapplicable.
7) **Commencement of Business :** Immediately on incorporation. Not to wait for Certificate of Commencement of Business.
8) **Number of Members :** 2 only.
9) **Issue of new shares :** No such provision to offer new shares to existing equity shareholders on pro-rata basis.
10) **Purchasing Company's own Share :** Possible by a person availing of financial assistance.
11) **Procedure at Meetings :** Relaxed.
12) **Appeal against Transfer :** Shareholder possesses no right of appeal against refusal to transfer shares by the Board of Directors.

4.4 Circumstances when a Private Company becomes a Company

1. Where default is made by a private company in complying with the essential requirements of a private company, the company ceases to enjoy the privileges of a Private Company (Sec.43).
2. Where not less than 25% of the paid up share capital is held by one or more bodies corporate, the private company becomes by virtue of Sec 43A a Public Company on and from the date on which the aforesaid percentage is held by such body or bodies corporate [Sec 43A(l)].

The Articles of Association of a Private Company which has become public company may continue to have the essential requirements (restriction on transfer of shares, limitation of the number of members to 50, prohibition of the invitation to the public to buy shares or debentures)

which make it a private company. Such a company may continue to have two directors and less than seven members [Proviso 1 to Sec 43A(i)].

In computing the aforesaid percentage, no account is taken of the shares of the company held by a banking company on trust or as executors [Proviso 2 to Sec 43A(i)].

The following Private Companies do not become Public Companies :

a) A Private Company of which the entire paid up share capital is held by another private company or by one or more bodies corporate incorporated outside India.

b) A Private Company in which shares are held by one or more bodies corporate incorporated outside India if the Central Govt. so directs by order.

c) Any other private company if but only if the following conditions are satisfied :

(i) That the body corporate or each of the bodies corporate holding shares in the private company is itself a private company.

(ii) That no share of a shareholding company is held by a body corporate.

(iii) That the total number of share holders of the shareholding company or companies does not exceed 50 [Sec 43A(6)].

Within 3 months from the date on which a private company becomes a public company it must inform the Registrar that it has become a public company. Thereupon the Registrar shall delete the word "Private" before the word "Limited" in the name of the Company upon the Register. He shall also make the necessary alterations in the certificate of incorporation and its Memorandum. If a company makes default in comply with this provision, the company and every officer of the compariy who is in default is punishable with fine which may extend upto Rs. 500/- for every day during which the default continues [Sec 43A(2)].

A private company, which has become a public company by virtue of Sec 43A continues to be a public company until it has the approval of the Central Govt. and in accordance with the Companies Act again become a private company [Sec 43A(4)].

If a private company alters its Articles so that they do not contain the provisions, which make it, a private company ceases to be a private company form the date of the alteration. It must file with the Registrar within 30 days either a prospectus or a statement in lieu of prospectus. When this is done, the company becomes a public company (Sec.44).

3) Where the average annual turnover of a private company, is not, during the relevant period, less than such amount as prescribed, the private company shall, irrespective of its paid - up share capital, become, on and from the expiry of three months from the last day of the relevent period during which the private company had the aforesaid average annual turnover, a public company by virtue of Section 43 A(I A).

A private company also accepting public deposits will become a public company and thereupon all the provisions of this section shall apply.

4.5 Circumstances when a Public Company becomes a Private Company

1) There must be a special resolution altering the articles which (a) restricts the right of the members of transfer their shares (b) limits the number of its members to 50 (c) prohibits any invitation to the public to subscribe for any shares in or debentures of the company [Sec.316)].
2) After the resolution is passed by the company, it must be approved by the Central Govt.
3) The company must file a copy of the altered articles to the Registrar within one month of the Central Govt.'s approval.

4.6 Reduction in Legal Minimum (Sec 45)

If the number of members of a Public Co. is reduced below 7 and that of a private Co. below 2and the company carries on business for more than 6 months while the number is so reduced, every person who remains a member after 6 months and is aware of the fact of shortage of members shall be personally liable for all the debts of the company contracted during that time.

4.7 Non-profitable Concern (Sec 25)

Under a licence granted by the Central Govt., registration of associations is permitted not for profit with limited liabilities without using the word "limited" or words "private limited" to their names. An association not for profit is a company formed for promoting commerce, art, science, religion, charity or any other useful object and which does not intend to pay any dividend to its members but to apply its profits or other income in promoting its objects. On registration, the association enjoys all the privileges of a limited company and is subject to all its obligations except in respect of those of which

exemption is granted by the Central Govt. The Central Govt. may at any time revoke the licence whereupon the company loses all exemptions and privi leges and must publish its name with 'Limited' or'Private Limited'.

4.8 Illegal Association (Sec 11)

An association of more than 10 persons carrying on business in banking or an association of more than 20 persons carrying on any other type of business must be registered under the Companies Act. If not registered, it is deemed to be an illegal association. It has no legal existence. It cannot enter into contracts and cannot sue its members or outsiders for money. Every member is personally responsible for all debts incurred by the association and liable to be prosecuted in the criminal courts and fined upto Rs. 1,000/. These rules do not apply to a Joint Hindu Family Firm.

4.9 Definition of Memorandum

The Memorandum of Association is a basic document, which contains the fundmental rules regarding the constitution and activities of a company.

4.9.1 Contents of the Memorandum

The Memorandum of every company must state :

i) The name of the company with "limited" or "private limited" as the last word depending whether the company is a public or private limited one.

ii) The State in which the registered office of the company is to be situated.

iii) The objects of the company classified as :

   a) The main objects of the company.

   b) Objects incidental to the attainment of the main object.

   c) Any other objects of the company.

iv) In case of a company limited by shares or gurantee that the liability of its members is limited.

v) The amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount.

The Memorandum concludes with an Association Clause, which states that the subscribers desire to form a company and agree to take shares in it.

Name Clause

A company cannot be registered by name, which in the opinion of the Central Govt. is undesirable i.e. if it is either.

i) Two similar to the name of another company or.

ii) Misleading [Sec. 20(1)].

Every Company must paint or affix its name and address of its registered office and keep the same affix or affixed on the outside of every office or place in which the business is canied on in a conspicuous position in letters easily legible [Sec. 147(1)].

Registered Office Clause (Sec. 146)

Notice of the situation of its registered office and of every change must be given to the Registrar within 30 days after the date of incorporation of the Company or after the date of change.

Objects Clause

Every company must state :

a) Main objects of the company to be pursued after incorporation and objects incidental or anci I lary to the attainment of the main objects.

b) Any other objects of the Company not included in the above clause.

4.9.2 Alteration of Conditions

i) Change of Name (Sec 22) :

If through inadvertence or otherwise a company is registered by a name which in the opinion of the Central Govt. is identical with or very nearly simi Jar to the name of another company, the company may by ordinary resolution and with the previous approval of the Central Govt. change its name. It is obligatory on the company to change the name within 12 months of its registration if the Central Govt. so directs. The Company must by ordi-nary resolution change its name within 3 months of the date of such direction. If default is made by the company, then the company and every officer of the company who is in default shall be · punishable with fine which may extend to Rs. 100 for every day during which the default continues.

ii) Change of Registered Office from One State to another and objects (Secs, 17-19) :

A company may alter the provisions of the memorandum so as to change the place of its registered office from one state to another or its object clause in order that it may:

i) Carry on its business more economically.

ii) Attain its main purpose by new or imporved means.

iii) Enlarge its local area of operation.

iv) Can-yon some business, which may be advantageously combined with the business of the company.

v) Restrict or abandon any of the objects mentioned in the memorandum.

vi) Sell the whole or any part of the business.

vii) Amalgamate with some other company.

The following formalities have to be completed so as to make the change of the memorandum effective :

1) Notice to be given to the Registrar and others concerned.
2) Consent of Creditors taken.
3) Special Resolution passed.
4) Sanction of the Company Law Board obtained.
5) Certified copy of the Company Law Board order together with a printed copy of the altered memorandum to be filed with the Registrar within 3 months. The Registrar is required to register them and issue a certificate.

It should however, be noted that under section 17(A) of the companies (Amendment) Act, 2000 (w.e.f. 1.3.2001)

1) No company shall change the place of its registered office from one place to another within a state unless such change is confirmed by the Regional Director.
2) The company shall make an application in the prescribed form to the Regional Director for confirmation under sub-section(I).
3) The confirmation referred to in sub Sec(I), shall be communicated to the company within four weeks from the date of receipt of application for such change.

4.10 Definition and Contents of Articles

The Articles of Association is a document containing rules regarding the internal management of the company. Articles must not violate any provision of the memorandum or Companies Act. The rules laid down in the articles must always be read subject to the rules contained in the memorandum.

Articles usually contain the following matters:

1) Share Capital, Shareholders' rights and their variations, payment of commissions, share certificates & share warrants.
2) Lien on Shares.
3) Calls on Shares.

4) Transfer of Shares.
5) Transmission of Shares.
6) Conversion of Shares into stock.
7) Alteration of Capital.
8) General meetings and proceedings threat.
9) Voting rights of members, voting and poll, proxies.
10) Directors, their appointment, remuneration, qualifications, powers and proceedings of the Board.
11) Manager/Secretary.
12) Dividends and Reserves.
13) Accounts and Audit.
14) Capitalization of Profits.
15) Borrowing powers.
16) Winding up.

4.10.1 Alteration of Articles of Association

Articles of Association may be altered by a Special Resolution. Although alteration is permis-sible, there are certain restrictions imposed on its nature and extent.

1) No alteration will be permitted if it violates the provisions laid down in the Companies Act.
2) No alteration will be permitted if it contravenes the provisions contained in the memoran-dum.
3) The alteration should not contain anything illegal.
4) The liability of the members or any class of members cannot be increased without their consent.
5) Alteration of certain provisions of articles requires the previous sanction of the Central Govt.
6) The alteration must not constitute a fraud on the minority. The majority must not do anything, which affects the interest of the minority.
7) Any alteration made bonafied, in the interests of the Company shall be valid and binding even though it affects the private interests of the members (Sidebottom Vs. Kershaw).

8) Alteration comes into force with retrospective effect (Allen Vs. Gold Reefs).

9) The Count cannot order rectification of articles on the ground of mistake but it can declare a particular clause ultra vires (Scott Vs. Frank Scott Ltd.)

10) Any alteration, which has the effect of converting a public company into aprivate one, shall not have the effect unless it is approved by the Central Govt.

4.10.2 Effect of the Articles

The memorandum and articles shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and each member and contained covenants on their part to observe them. The effect is as follows :

a) **Members to Company :** As between the members and the company each member is bound to the company by statutory covenant. The company can enforce the articles against any· member.

b) **Company to Member :** The memorandum and articles bind the company to its members in the sense that the company is bound to individual members in respect of their rights as members. Thus any member can sue the company to prevent any breach of articles, which would affect his rights as a member.

c) **Members to Members :** As between members inter se the memorandum and the articles bind each member to the other or others on the assumption of an implied couenant bound by them. When a member complains of a breach by another member the suit can be brought by the company and not by the individual member whose rights are infringed. But when the person or persons against whom relief is sought, control the majority of shares and will not allow an action to be brought in the name of the company, an aggrieved member may sue in his name.

d) **Effect on Outsiders :** Since the memorandum and articles are registered, any person dealing with the company is deemed to have constructive notice of their contents. But this does not mean that outsiders are deemed to have notice of the internal affairs of the company.

4.11 Memorandum Vs. Articles of Association

Memorandum	Articles
l. It is the fundamental charter of the company determining its constitution and objectives.	l. They are rules regarding internal management.

Memorandum	Articles
2. Every company must have its memorandum.	2. A company limited by shares need not have its Articles for in such a case Table A applies.
3. There are strict restrictions on the alteration of the memorandum. Sanction of Central Govt. and Court are required for object and Liability Clauses.	3. Articles may be altered by a special resolution to any extent for the benefit of the company.
4. It is the supreme document.	4. They are subordinate to the memorandum. If there is a conflict between Articles and the Memorandum, the latter shal I prevail.
5. Any act of the company, which is ultra vires the Memorandum, is wholly void and cannot be ratified even by the shareholders.	5. Any act of the company, which is ultra vires the Articles, can be confirmed by the Shareholders.

4.12 Doctrine of Indoor Management

When the Articles of Association prescribes a particular method for doing a thing, the duty of carrying it out lies on the person in charge of the management. Outsiders may assume the rules to have been complied with. This is known as the Doctrine oflndoor Management.

The Articles of the Company provided that the Director could give bonds if authorised by the resolution of a company. For example, the Directors gave a bond to T although no resolution was passed. Held Twas entitled to assume that the resolution was passed and the company was not bound by the bond (Royal British Bank Vs. Turquand).

Exceptions :

1) Where the act is void ab initio, the company is not bound e.g. an act ultra vi res the memo or articles.
2) Where a person dealing with the company could discover the irregularity if he had made proper inquiries, the company is not bound.
3) If an agent of the company enters into a contract with a third party and if the act of

an agent is beyond the scope of his authority the company is not bound. Held in Kredit Bank Cassel Vs. Schenkers Ltd. that the company was not bound, as the branch manager had no authority to draw and endorse bills of exchange on behalf of the company.

4.13 Procedure for Registration of a Company (Secs. 33, 35)

The following documents along with the requisite fees have to be filed before the Registrar of Companies of the State in which the registered office of the company seeks to be situated.

i) Memorandum of Association duly signed by the subscribers (at least 7 in case of Public Companis and 2 in case of Private Companies).

ii) Articles of Association duly signed by subscribers to the Memorandum.

iii) Statement of nominal capital and a certificate from the controller of Capital Issues have to be filed with the Registrar.

iv) Names of directors who have consented to act as directors.

v) Written consent from the directors to act in that capacity.

vi) Declaration from any of the following persons stating that all requirements relating to registration have been complied with - Advocate, Attorney, Pleader, Chartered Accountant, Person named in the Articles as Director, Manager or Secretary.

When the Registrar is satisfied that all requirements of registration have been complied with, he wi II register the company and issue a Certificate oflncorporation. The Company thus comes into existence from the date of incorporation borne by the Certificate.

Registration has however the following effects :

i) It has a district legal entity.

ii) It acquires perpetual succession.

iii) Its property is not the property of the shareholders.

Promoters

A company cannot come into existence of itself. A lot of preliminary is needed before a company is formed. The person who does such work is called a promoter who may be (i) an individual (ii) a firm or (iii) a company. A person may become a promoter even after the corripany has been incorporated (@) by issuing a prospectus (ii) by procuring capital to enable the company to carry out its preliminary contracts.

A promoter is not a trustee or agent of the company because it is non-existent at the date of its exertions. But he is in a position of active confidence towards it. As a consequence, he :

1) Must not make secret profit out of the transactions he enters into.
2) Must give the company the benefit of all contracts made by him for it.
3) Must not make an unfair use of his position.

In-case a promoter fails to make a full disclosure or abuses his position, the company may :

i) Rescind the contract and recover the purchase money paid.
ii) Recover from him secret profits made.
iii) Sue him for misappropriation of the company's funds if he is a director.

In addition, he must see that if any prospectus is issued, the prospectus :

1) Contains necessary particulars.
2) Does not contain any untrue statements or does not omit any material fact.

4.13.1 Preliminary or Pre-Incorporation Contracts

The promoters of a company usually enter into contracts to acquire property or right for the company which is yet to be incorporated. Such contracts are called preliminary or preincorporation contracts. The promoters cannot therefore act as an agent for the company, which has not yet come into existence. As such the company is not liable for the acts of the promoters. done before its incorporation.

The company when it comes into existence is not bound by the preliminary contracts even where it takes the benefit of work done on its behalf.

The company cannot after incorporation enforce the contracts made before its incorporation.

This means a company when it comes into existence cannot sue the other party to a contract if that other party fails to carry out the contract. The promoters remain personally liable on the contract.

U/s 15 & 19 of the Specific Relief Act 1963, when the promoters of a company before its incorporation entered into a contract for the company and such contract is warranted by the terms of the incorporation specific performance may be obtained by or enforced against the company provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

4.14 Defiition of Prospectus

A prospectus is any document in the form of any notice circular, advertisement etc. inviting offers from the public for the subscription or purchase of any share in or debentures of a body corporate Sec 2(36).

4.14.1 Contents of the Prospectus (Sec. 56)

The prospectus must state the matters specified in Part-I of Schedule-II.

i) Whether the prospectus has been issued at the time of the formation of the company or subsequently.

ii) Amount of minimum subscription and amount payable on application.

iii) Time of opening of subscription list.

iv) Preliminary expenses incurred.

v) Names and addresses of auditors of the company.

vi) Particulars of reserves including reserves capitalised.

vii) Particulars regarding directors, etc. and of the contracts and fixing remuneration of them.

viii) Nature and cxtcnt of intcrcst of directors and promotcrs.

ix) Particulars of premium and underwriting commission paid, nature and extent of restrictions upon members at company meetings.

x) In case of existing companies, a report by the auditors showing the profit and loss and assets and liabilities of the company, rates of dividend paid for five years preceding issue of prospectus particulars regarding its subsidiaries.

xi) Principal objects of the company and particulars of signatories to the memorandum and · shares subscribed by them.

xii) Number and classes of shares, extent of interest of holders and particulars of dividends and redeemable preference shares.

xiii) Rights in respect of capital and dividends attached to different classes of shares.

xiv) Restriction upon the power of directors.

xv) Annexation of the auditors and accountant's report to the prospectus.

xvi) Inspection of balance sheet and profit/loss account.

xvii) Voting rights, capitalization of reserves and surplus on revaluation.

4.14.2 Mis-statements in Prospectus and their consequences

I) Civil Liabilities :

A person who has been induced to subscribe for shares on the faith of an untrue statement in the prospectus has remedies against (i) the company and (ii) directors, promoters and experts.

(i) Remedies against the Company : If there is a misrepresentation or non-disclosure of the fact in the prospectus, any person who has been induced to purchase shares can a) Rescind the contract b) claim damages from the company for fraudulent representation.

(a) Rescission of the Contract : The subscriber to the share must apply to the court for rescission of the contract if the following conditions are fulfilled :

1) The Statement must be a material misrepresentation of fact.
2) It must have induced the shareholders to take the shares.
3) It must be untrue.
4) The shareholder must have relied on the statement.
5) The omission of a material fact must be misleading.
6) The proceedings for rescission must be started as soon as the allottee comes to know of the misleading statement.

(b) Claim Damages : The subscriber to the shares may sue the company for damages provided he sun-enders the shares to the company.

(ii) Remedies against Directors, Promoters and Experts : The following persons are liable to pay compensation for loss or damage to the subscriber for shares on the faith of untrue statements.

(1) Directors at the time of issue of prospectus.

(2) Persons authorised to act as directors in the prospectus.

(3) Promoters.

(4) Persons authorised to issue prospectus.

(I) Defences available to directors, promoters - [Sec. 62(2)] :

(i) He had withdrawn his consent to become a director before the issue of the prospectus and it was issued without his authority or consent.

(ii) The issue was made without his knowledge or consent.

(iii) His consent was withdrawn after the issue of the prospectus and before allotment and public notice was given.

(iv) He had reasonable ground to believe that the statements were true and he believed them to be true.

(v) The statement was correct and fair summary or copy of an expert's report or a statement made by an official orin an official document.

(II) Criminal Liabilities (Sec 63) :

Every person who has authorised the issue of a prospectus containing untrue statement shall be punishable with imprisonment which may extend to two years or with fine extending to Rs. 50,000/-(with effect from 13.12.2000 by Amendment Act 2000) or both. He will be acquitted if he proves that (I) the statement was immaterial (2) he had reasonable ground to believe, upto the time of issue of prospectus that the statement was true.

4.15 Statement in lieu of Prospectus (Sec 70)

A public company having a share capital and which has not issued any prospectus must at least 3 days before the first allotment of shares or debenture deliver to the Registrar for registration a statement in lieu of prospectus. The statement must be in the form prescribed in Schedule -II to the Act. The prescribed form provides for the disclosure of all material facts relating to the company.

It the statement in lieu of prospectus contains untrue statements all persons responsible for the issue shall be punished by imprisonment which may extend to 2 years or with fine which may extend to Rs. 50,000 (By Amendment Act 2000) or with both.

4.16 Minimum Subscription [Sec. 69 (1), Sec. 11(5)]

When shares are offered to the public, the prospectus must state the minimum amount to be raised from the issue of shares before the company can commence its business. Such an amount is fixed by the Directors or persons who have signed the memorandum of the company. The amount will take into account the following expenses.

(i) Purchase of property.

(ii) Preliminary expenses including commission payable on sale of shares.

(iii) Repayment of loans for the above purposes.

(iv) Working capital.

(v) Any other items.

The amount of minimum subscription must be reckoned exclusive of any amount payable otherwise than in money.

Until the amount of minimum subscription has been received by the company, it cannot make any further allotment of shares. The Registrar cannot grant a certificate of Commencement of Business unless minimum subscription is received.

4.17 Restrictions as to Allotment

(i) **Minimum Subscription [Sec. 69(1)] :** No allotment can be made until the amount fixed as minimum subscription has been received.

(ii) **Application money [Sec 69] :** The amount payable on each share must not be less than 5% of the nominal value of the share. All moneys received from applicants must be kept deposited in a scheduled bank until the certificate for commencement of business has been obtained or until the full amount of minimum subscription has been received (where certificate has already been received). If such amount has not been received within 120 days after the first issue of the prospectus, all moneys so received must be refunded to the applicants. If not refunded within the specified period, the directors shall be jointly and severally liable to repay it with interest @6% p.a. from the expiry of the 130th day.

(iii) **Statement in lieu of prospectus (Sec. 70) :** A public company, which has not issued any prospectus, must at least 3 days before the first allotment of shares deliver to the Registrar for a registration a statement in lieu of prospectus.

(iv) **Effects of irregular allotment (Sec. 71) :** Any allotment which contravenes Secs 69 to 70 i.e. (i) without receipt of minimum subscription (ii) without filing a statement in lieu of prospectus is called an irregular allotment.

If any irregular allotment is made it is voidable at the instance of the applicant :

(a) Within 2 months of the date of holding a statutory meeting.

(b) (i) If the company is not required to hold a statutory meeting.

(ii) Where the allotment is made after the holding of the statutory meeting within 2 months of the date of allotment.

The allotment is voidable in the event of liquidation of the company. Any director willing! y responsible for irregular allotment is liable to compensate the company and the allottee for the loss provided a suit for recovery is filed within 2 years from the date of allotment.

(v) **Opening of subscription lists (Sec. 72) :** No allotment can be made until the beginning of the 5th day after the publication of the prospectus or such time as may be specified in the prospectus.

(vi) **Stock Exchange recognition (Sec. 73) :** Where the prospectus states that application

will be made for permission for shares or debentures to be dealt in on a Stock Exchange, any allotment made would be void if.

(a) The permission has not been applied for before 10th day after the issue of the prospectus.
(b) The permission has not been granted before the expiry of 10 weeks from the date of closing of subscription lists.

In either case i.e. where permission has not been applied for or has not been granted, the company must forthwith repay all moneys without interest to the applicants within 8 days. Thereafter interest is payable at 12%.

4.17.1 Return of Allotment (Sec. 75)

Within 30 days of allotment of shares, the company must file with the Registrar a statement known as "return as to alotment". The return must contain (a) Particulars about the number and nominal amount of the shares, the names, addresses and occupation's of the allottees and the amount paid on each share; (b) Particulars about the shares (not being bonus shares) allotted as fully or partly paid up for consideration other than cash; (c) Particulars about the number and nominal amount of bonus shares and their allottees; (d) A copy of the resolution passed by the company authorizing issue of shares at a discount and a copy of Court's order sanctioning the issue.

4.18 Commencement of Business (Sec. 149)

Where a public company has a share capital and has issued a prospectus it cannot commence business until the Registrar issues a "Certificate of Commencement of Business". The certificate is issued subject to the following conditions :

(i) Minimum Subscription has been raised.

(ii) Every director who has taken up shares has paid the money payable on application and allotment.

(iii) No money is repayable for failure to obtain stock exchange recognition for the shares.

(iv) A duly verified declaration by a director or secretary has been filed with the Registrar stating that the aforesaid conditions have been complied with.

Where a public company has a share capital and has not issued a prospectus it cannot commcncc business until thc Rcgistrar issues a "Certificate of Commencement of Business". The certificate is issued subject to the following conditions :

(i) Statement in lieu of prospectus has been filed with the Registrar.

(ii) Every director who has taken up shares has paid the money payable on application and allotment.

(iii) A duly verified declaration by a director or secretary has been filed with the Registrar stating that the aforesaid conditions have been complied with.

A company may enter into contracts before the date of commencement of business but such contract remain provisional up to the commencement date and become binding on that date.

Sec. 149(2A) prohibits a public company from commencing any business other than that covered by the main objects of the company unless it has by a special resolution approved the commencement of such business and a duly verified declaration by a director or secretary in the prescribed form that such a resolution, which has been passed has been filed with the Registrar.

An ordinary resolution would be sufficient if the Central Govt. on an application by the Board of Directors allows the company to commence such business [Sec. 149(2B)].

4.19 Kinds of Share Capital

There are only 2 types of share capital viz.

(1) **Preference Share Capital :** That part of capital which carries (i) Preferential right as to payment of dividend during lifetime of company (ii) Preferential right as to the return of capital in the event of winding-up.

(2) **Equity Share Capital :** All share capital other than preference share capital.

4.20 Voting Rights

An equity shareholder shall have votes in proportion to his share of the paid-up equity capital of the Company. Preference shareholders will vote only on matters relating to preference capital and resolutions for winding up of the company or reduction of share capital. If dividends due on such capital remain unpaid, preference shareholder shall have the right to vote on all resolutions. The voting rights of preference shareholders must be in the same proportion as the capital paid up in respect of preference shares bears to the total paid-up equity capital of the company.

4.21 Variation of Shareholder's Rights

U/s 106 of the Act, rights attached to shares of any class may be varied with the consent in writing of the holders of not less than 3/4ths of the issued shares or with the sanction

of a special re-solution passed at a separate meeting of the holders of issued shares. If such variation is prohibited by the terms of issue of shares, variation will not be possible.

U/s 107 of the Act, holders of 10% of issued shares who are opposed to the variation may within 21 days of the passing of the resolution apply to the court to get the variation cancelled.

Where such an application has been made, the variation will be effective only when confirmed by the Court and the order communicated to the Registrar within 30 days.

4.22 Alteration of Share Capital

A company may alter its share capital if authorized by the Articles in any one of the following ways :

i) Increase its share capital by issuing fresh shares.

ii) Consolidate and divide all or any part of its share capital into shares of larger amount.

iii) Convert fully paid up shares into stock or vice versa.

iv) Subdivide all its shares or any of them into shares of smaller amount.

v) Cancel shares, which have not been taken and diminish the amount of its share capital by the amount of shares so taken.

Such alteration has to be passed by a special resolution in the general meeting of the company. The notice of alteration must be given to the Registrar within 30 days of the alteration.

4.23 Reduction of Share Capital

Reduction of Share Capital may be allowed for any of the following reasons : i) Extinguish or reduce the liability of shareholders regarding uncalled shares. ii) Cancel paid up share capital lost or un-represented by available assets. iii) Pay off any paid-up share capital in excess of the wants of the company. iv) Any other methods approved by Tribunal (As Amended in 2002). The following is the procedure for reduction of share capital (Sec. 100-150)

1) The reduction must be authorised by the Articles. If the Articles do not give that power they have to be amended.

2) A Special Resolution must be passed.

3) Sanction of the court must be obtained. The Tribunal (As Amended in 2002) before giving sanction to the reduction may direct issue of notices to the creditors of the

company whose claims are provable upon winding up. The company has to settle the list of creditors for the purpose. After hearing the objections of the creditors, the Tribunal (Amendment Act 2002) may direct before reduction of capital takes place, the claims of the creditors either to be secured or to be fully paid-up. The court may order that for a specified period after reduction use of the words "and reduced" at the end of its name. It may also order publication of the reasons leading to the reduction.

4) A certified copy of the Tribunal's (Second Amendment 2002) approved by the Tri burial (Second Amendment 2002) must be placed before the Registrar for registration. The reduction takes place from the date of registration.

4.24 Further Issue of Capital i.e. Rights Issue (Sec. 81)

When it is proposed to increased the subscribed capital by the allotment of further shares after the expiry of 2 years from the formation of the company or after the expiry of 1 year from the first allotment of shares whichever is earlier, the following procedure must be adopted :

1) Such new shares must be offered to the existing equity shareholders of the company in proportion to the capital paid up on those shares at that date as circumstances admit.
2) The offer must be made by notice specifying the number of shares offered. The notice must give at least 15 days from the date of the offer within which the offer may be accepted.
3) The notice must also inform the shareholders that they have the right to renounce all or any of the shares offered to them in favour of their nominees.
4) After expiry of the time specified in the notice or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose them in the manner they think to be most beneficial.

The new shares may be offered to any person if

(a) A special resolution to that effect is passed by the company in the general meeting.
(b) An ordinary resolution to that effect is passed and the Central Govt. is satisfied that such a proposal of the Board is most beneficial to the Company [Sec. 81 (lA)].

4.25 Issue of Shares at a Premium (Sec. 78)

A company may issue shares at a premium. When a company issues shares at a premium for cash or otherwise, a sum equal to the value of the premium on those shares must be

transferred to an account called Share Premium Account. The Share Premium Account may be utilized by the Company :

i) In issuing fully paid-up bonus shares to the members of the company.

ii) In writing off preliminary expenses.

iii) In writing off expenses or commission paid or discount allowed on the issue of shares or debentures of the company.

iv) In providing for the premium payable on the redemption of redeemable preference shares or debentures.

4.25.1 Issue of Shares at a Discount (Sec. 79)

Shares may be issued at a discount if the following conditions are fulfilled :

i) The shares to be issued at a discount must belong to a class, which has already issued such shares.

ii) The shares to be issued at a discount must be authorized by a resolution passed at the general meeting of the company and sanctioned by the Central Government (Second Amendment 2002).

iii) The maximum rate of discount must be specified by the resolution and in no case must it exceed 10%. A higher rate requires approval of the Central Government.

iv) The Company must-be working for at least one year from the date of commencement of business before it can issue shares at a discount.

v) The shares to be issued at a discount must be issued within 2 months from the date of sanction of the Central Govt.

The prospectus must contain particulars relating to the issue of shares at a discount and so much of the discount has not been written off.

Commission (Sec. 76)

A company may pay commission to a person subscribing to the shares or debentures or procuring subscriptions for them if the following conditions are fulfilled :

1) The payment must be authorized by the articles.

2) The commission must not exceed 5% of the issue price of the shares and 2.5% of the issue price of the debentures or the amount authorized by the articles.

3) The amount or rate of commission payable and the number of shares and debentures, which have been agreed to be subscribed at a commission, must be disclosed in the prospectus or statement in lieu of prospectus.

4) A copy of the contract for the payment of the commission must be delivered to the Registrar at the time of delivery of the prospectus or statement in lieu of it for registration.

No commission is payable to any person on shares or debentures which are not offered to the public for subscription.

In case of default, the company and its officers shall be punishable with fine which may extend to Rupees five thousand (Amendment Act 2002 with effect from 13.12.2000).

4.26 Purchase of the Company's Own Share (Sec. 77)

A company limited by shares or by guarantee cannot purchase its own shares because it amounts to a reduction of capital.

No public company and no private company being a subsidiary of a public company can provide whether directly or indirectly any financial assistance to any person for the purpose of purchase of any shares in the company.

There are however some exceptions :

1) Purchase of own shares permitted if reduction of capital is sanctioned.
2) For protection of interest of minority shareholders the court may direct purchase of own shares.
3) Redemption of preference shares by a company lawfully permitted.
4) Forfeiture or surrender of shares lawfully made is not prevented

The following kinds of transactions are howevernot prohibited :

1) The landing of money by a banking company in the ordinary course of business.
2) The provision of money by a company for the purchase of fully paid shares in the company by trustees for and on behalf of the company's employees.
3) The lending of money by a company to its employees (not exceeding 6 months wages) for the purpose of purchasing shares in it. Employees does not include Directors or Managers.

A Company may purchase its own shares from :

1) Out of its free reserves.
2) Out of share premium account.
3) Out of proceeds of earlier issue other than fresh issue made specifically for buy back purpose.

No Company shall purchase its own shares unless :

a) Buy back is authorized by its Articles.

b) Special resolution passed authorizing buy-back.

c) Buy back not to exceed 25% of total paid-up capital and free reserves of the company purchasing its own shares.

d) AI shares are fully paid up.

e) Ratio of debt owed by the Company not more than twice capital and free reserves after the buy back.

4.27 Redeemable Preference Shares (Sec. 80)

A company limited by shares may if so authorized by its Articles issue preference shares, which are to be redeemed subject to the following conditions :

a) The shares are to be redeemed only out of profits of the company, which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the prupose of redemption.

b) The shares to be redeemed must be fully paid up.

c) Any premium paid on redemption must be paid-out of the profits or out of the company's share premium account.

Where redemption is made out of profits, a sum equivalent to the nominal value of the shares redeemed must be transferred to capital redemption reserve account which may be applied by the company paid-up un-issued shares to be issued to members as fully paid bonus shares.

Failure to comply with the above provisions will cause the company and every officer in default to be punishable with fine extending to Rupees Ten Thousand (By Company Amendment Act 2002).

No company limited by shares shall issue any preference share which is irredeemable or is redeemable after a period of ten years from the date of issue Sec 80(5A).

4.28 Call on Shares

A call is a demand made by the Company to its shareholders to pay in part or in full the balance remaining unpaid on each share.

The Companies Act lays down the following legal provisions relating to calls.

1) The Board of Directors is empowered to make calls during the existence of the Companies (Sec. 292).

2) Calls shall be made on uniform basis on all shares falling under the same class (Sec. 91).

3) A company if authorized by the articles may accept from any member an advance payment of any part of the money due on shares held by him before any call has been made (Sec. 92).

4.29 Forfeiture of Shares

Shareholder's failure to pay call money may result in shares being forfeited by the Company. As such, the company shall have two remedies :

1) Sue the shareholder for the amount due.

2) Forfeit his shares as per Articles.

Before forfeiting the shares, the company shall serve a notice on the defaulting member requiring payment of call money together with the interest accrued within 14 days of the serving of the notice. If the requirements of the notice are not complied with, the shares for which cal I money has not been received shall be forfeited by a resolution of the Board.

After forfeiture, the name of the member is struck off from the register. He remains liable as a debtor even after forfeiture. The forfeited shares may be re-issued by the Baord. The purchaser is liable to pay all unpaid calls due on the share. The company must specify the number of shares forfeited in every annual return submitted to the Registrar.

4.30 Lien on Shares (Article 9, Table A)

A Company has a lien on all shares for amounts payable on them or for amounts due from the member or his estate to it. The right of lien also extends to all dividends payable by the company. It must be clearly provided for in the Articles.

A company loses lien :

1) If it registers a transfer of shares subject to the lien.

2) If a member pledges his shares to a third party as security for a loan and the company has notice thereof and then incurs liability to the company.

4.31 Surrender of Shares

Surrender of shares means abandonment of shares by the holder thereof in favour of the company. There is no provision in the Act or in Table A for surrender of shares. But the

articles may provide for the acceptance of surrender under circumstances justifying forfeiture. Surrender amounts to reduction of capital.

4.32 Stock vs. Shares

A share may be defined as an interest in the company enabling the owner to receive a proportionate part of the assets and liabilities of the company upon liquidation. So it is an interest measured in sum of money.

A stock is defined as the conversion of fully paid up shares of the company authorized by its Articles [Sec. 94 (l)(c)].

Stock	Shares
1. It has no nominal value.	1. It has a nominal value
2. Only fully paid-up shares are convertible to stock.	2. Shares may be partly paid-up.
3. They may be of unequal amounts.	3. They are of equal denomination.
4. Parts of it do not bear distinct numbers.	4. They always bear distinctive numbers.
5. They cannot be directly issued.	5. They can be directly issued to the public.

4.33 Share Certificate and Share Warrant

A share certificate is a certificate issued under the common seal of the company specifying the number of shares held by any member. The company must have it ready for delivery within 3 months of the allotment of shares or within 2 months after the application for registration of the transfer of shares. The Company Law Board may however extend the above periods to nine months. Default makes the company and its officers liable to fine upto Rs. 500/- for every day of default (Sec. 113).

The share certificate is a prima facie evidence of the title of the member to such shares [Sec. 84 (1). It may be renewed or a duplicate issued if it (a) is proved to have been lost or destroyed (b) having been defaced or multi lated or tom is surrendered to the company [Sec 84 (2)].

A share warrant is a document issued by a company stating that its bearer is entitled to the shares specified therein. It is a substitute for the share certificate. Share warrants may be issued · (1) for fully paid up shares (2) If articles so provide (3) if approval of

the Central Govt. has been obtained. A share warrant may have attached coupons on whose submission dividends due on shares will be paid. Shares may be transferred by delivery of the warrant (Sec. 114)

When a share warrant is issued, the name of the holder of share certificate is removed from the register of members and the number and date of the share warrant noted therein. Any holder of the warrant may surrender it whereupon his name shall be recorded in the register. He shall not possess the right to vote and exercise other rights of membership but the articles may give him that right also (Sec. 115).

4.34 Member

"Member" of a company means U/s 41 :

1. Subscribers of the memorandum of the company.
2. Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members.

A person may become member of a company in one of the following ways :

1. By singing memorandum of association becore presenting it forregistration.
2. By getting allotment of shares and having his name included in the register of members.
3. By getting a transfer of shares from existing member and having transfer recognised by the company.
4. By obtaining shares by inheritance from a deceased member and getting his name in-cluded in the register of members.
5. By allowing his name to remain in the register of members under circumstances that he cannot plead later on that he is not a member.

4.34.1 Member Vs. Shareholder

In companies only having a share capital, a shareholder is also a member of the company. The terms "Member" and "Shareholder" are synonymous apart from the exceptional cases that the bearer of a share warrant or the legal representative of a deceased member who is a shareholder is not a member because he is not registered in the register of members.

4.34.2 Cessaion of Membership

1. By transfer of shares.
2. By forfeiture of shares.
3. By surrender of shares.

4. By death.
5. By being adjudicated an insolvent.
6. By rescission of the contract to purchase shares on the ground of misrepresentation in the prospectus.
7. By winding up.
8. By sale of shares in execution of a decree of the Court.

Shareholder & Debenture Holder :

Shareholder	Debenture Holder
1. Member of the Company.	1. Creditor of the Company.
2. Has voting rights.	2. No voting rights.
3. No such priority.	3. Gets priority over shareholder when assets are distributed upon winding up.
4. Entitled to dividends depending upon profits.	4. Entitled to fixed interest.
5. Shares are not redeemable.	5. Debentures are redeemable.

4.34.3 Register of Members

Uls 150, every company is bound to keep a Register of Members in which particulars are entered regarding the name, address and occupation of members, the number of shares held by each, date of commencement and cessation of membership, and particulars regarding ownership of stock where shares have been converted into stock.

U/s 153, no notice of any trust (express, impiled or constructive) shall be entered in the Register of members.

U/s 154, a company may after giving not less than 7 days notice by advertisement in local newspaper close the Register of members for a period of not more than 45 days in the year and not more than 30 days at a time. In case of default the company and its officers shall be liable to a fine, which may extend to Rs, 5000/- (By Companies Amendment Act, 2000 with meet from 13.12.2000) for every day during which the register is so closed.

4.35 Transfer & Transmission of Shares

When shares pass from one person to another by a voluntary act e.g. sale, gift or otherwise it is called a transfer. When shares pass by operation of law from one person to another e.g. by inheritance it is called transmission.

On the death of a member, his shares vest in his executors, administratiors or other legal representatives and such shares are liable for calls if the shares remain partly paid.

4.36 Statutory Meetings and Report (Sec. 165)

A statutory Meeting can be called within a period not less than 1 month or not more than 6 months from the date of commencement of business. The Board of Directors shall forward a Statutory Report, 21 days before the date of such meeting to every member of the company the report should be certified by at least two directors one of whom must be a Managing Director.

The report shall include :

(i) Total number of shares alloted as fully paid and partly paid.

(ii) Total cash received in respect of such shares.

(iii) An abstract of receipt & payments of the company prepared upto a date within 7 days of the date of report.

(iv) Names, addresses, occupation of directors of the company and of its auditors; and also, if there be any, of its manager and secretary, since the date of incorporation of the company [Company (Amendment) Act, 2000].

(v) Particulars of contract to be submitted to members for approval.

(vi) Extent to which underwriting contract has not been carried out.

(vii) Arrears due on calls from directors, managers etc.

(viii) Particulars of commission/brokerage paid orto be paid to directors, managers in respect of sale or issue of shares/debentures.

In case of default, every director of officer of the company is punishable with fine which may extend to Rupees five thousand (Amendment, 2000).

4.37 Annual General Meeting

U/s 166, the First Annual General Meeting of the Company is to be held within a period of not more than 18 months from the date of its incorporation. Not more than 15 months shall elapse between the date of one annual general meeting and the next. The Registrar may extend the time of holding by a period not exceeding 3 months. Every annual general meeting shall be called during business hours at the registered office of the company or some other place within the town where the registered office is situated. The Central Govt. may exempt any class of companies from the above provisions. The time of holding annual general meeting may be fixed by the articles of the company or by a resolution passed in one general meeting.

U/s 167, if default is made in holding annual general meeting, the Regional Director of the Company Law Board may direct the calling of such meeting on the application of any member. · He shall give directions regarding the calling, holding and conducting of such meeting.

U/s 168, if provisions relating to Secs 166 & 167 are not complied with, then the company and its officers in default shall be fined (Maximum fine-Rs. 50,000. For continuing default-furtherfine ofRs. 2,500 per day). (Amendment Act 2000)

4.38 Extra Ordinary General Meeting

UIs 169, the Board of Directors shall hold a general meeting upon request orrequisition made for it if the following conditions are fulfilled :

1. The requisition must be signed by members holding at least I/I0 of either the paid up capital or the total voting power.
2. The requisition must set the matters to be considered at the meeting.
3. The requisition must be deposited at the Registered Office of the Company.

The Board must within 21 days of receipts of requisition issue a notice for the holding of the meeting on a date fixed within 45 days of receipt. If the Board does not hold the meeting, the requisition can call a meeting within 3 months of the date ofrequisition. Resolutions passed at such a meeting shall be binding to the company.

4.39 Power of Tribunal tp order meeting to be called

U/s 186, the company Law Board an call a meeting of the company either of its own motion or on the application of any director or of any member entitled to vote thereat. Tribune! shall decide when the meeting is to be called and how it is t be conducted.

4.40 Rules Regarding Meetings

(a) Notice : Notice must be given to :

1. All members entitled to vote upon matters prepared to be dealt within the meeting.
2. Legal representatives of deceased or insolvent members.
3. Auditors of the company.

Notice must be given at least 21 days before the meeting. Meetings may be called with a shorter notice under the following circumstances :

(i) In case of annual general meeting if agreed to by all members entitled to vote thereat.

(ii) In case of other meetings if it is agreed to by members holding not less than 95% of such part of paid up share capital as gives a right to vote. Ft r a company without share capital holders ofnot less than 95% of otal voting power agree to it.

(b) Agenda :

The notice must specif; the business to be transacted in the meeting. The business transacted is divided into two classes- ordinary and special.

Ordinary business means consideration of accounts and balance sheet; declaration of dividend; appointment of directors and appointment and fixation of the remunerations of auditors.

In case of an annual general meeting, any business other than general business and in case of any other meeting, all business is deemed special.

If any special business is to be transacted at the meeting, the notice must specify its nature and must have annexed to it an explanatory statement containing the following information :

1. All material facts concerning each item of special business including in particular the nature of every director/manager's concern or interest.
2. Where any item of special business relates or affects any other company, the extent of shareholding interest in that company of every director/manager if such interest is not less than 20% of paid up share capital of that company.
3. Where any item of special business consists of according approval to any document by the meeting, time & place at which document can be inspected.

(c) Quorum (Sec 174, 287-288) :

Quorum means the minimum number of members required to be present in order to constitute a meeting and to transact business thereat. In case of public companies other than a public company, which has become such by virtue of Sec 43 A, 5 members must be personally present to constitute a quorum while in case of other companies 2 members must be personally present for the quorum.

If there is no quorum half an hour before the commencement of the meeting, the meeting stands dissolved. It is adjourned till the same day next week at the same hour and place or such day, hour and place as the Board may fix. No quorum shall be required in this case.

The quorum for a meeting of the Board is 1/3'of its total strength (any fraction contained

in that I/3rd being rounded off as one) or 2 directors whichever is higher. If at any time the number of interested directors exceeds or is equal to 2/3rds of the total strength, the number of remaining directors (not interested ones) being not less than 2 present at the meeting shall form the quorum. If a meeting of the Board cannot be held for want of quorum it stands adjourned till the same day in the next week at the same time and place.

(d) Proxy (Sec 176) :

Every member who is entitled to attend and vote at a meeting may appoint another person who shall have the right to attend and vote only on poll. He cannot however speak at the meeting. The appointment of such a person is called a Proxy. A written instrument signed by the appointer must be deposited with the company 48 hours before the meeting.

Every member entitled to vote at the meeting of a company is entitled to inspect the proxies beginning 24 hours before the meeting till the conclusion of the meeting provided at least 3 days notice in writing is given to the company.

A body corporate, which is a member of the company can appoint a proxy by a resolution of the Board of Directors.

(e) Poll (Sec 177- 185) :

A poll is to be taken (i) if the Chairman so directs (ii) if it is demanded by members holding at least 1/10" of the voting power or paid up capital (iii) in case of public company if it is demanded by at least 5 members present and entitled to vote (iv) in case of private company if it is demanded by any one member if not more than seven members are present and by two members if more than seven members are present.

A poll on a resolution for adjournment or for the appointment of a Chairman is to be taken immediately. In other cases, it is to be taken when the Chairman decides but it must be within 48 hours of the demand for poll.

A poll is to be taken in the manner decided by the Chairman. Each member has record his decision on ballot papers. The Chairman shall appoint two scrutineers to scrutinize and ballot papers. At least one of them shall be a member present in the meeting. The Chairman has a casting vote in addition to his ordinary vote.

4.41 Ordinary / Special Resolution

All matters, not required to be decided by a special resolution, may be decided by ordinary resolution. An ordinary resolution wi II be passed when the number of voter cast in its . favour exceeds those cast against it.

U/s 189, A resolution shall be a Special Resolution if the following conditions are satisfied :

(i) The notice calling the meeting must specify that a Special Resolution will be moved.

(ii) The number of votes cast in favour of the resolution whether by show of hands or by poll must be at least 3 times the member cast against it.

Special resolutions are necessary for the following :

1. Alteration of Memorandum with leave of Court (Sec. 17).
2. Change of name of the company with the consent of the Central Govt. (Sect. 21).
3. Alteration of Articles of the company (Sec. 31).
4. Reduction of Share Capital (Sec. 100).
5. Variation of Shareholders' tights (Sec. 106).
6. Payment of Interest out of Capital (Sec. 208).
7. Director holding office of Profit (Sec. 314).
8. Winding up of the company voluntarily (Sec. 484).
9. Conversion of any portion of uncalled capital into reserve capital (Sec. 99).
10. Alteration of memorandum to render the liability of Directors unlimited (Sec. 323).

4.42 Resolution Requising Special Notice (Sec. 190)

A Special Notice of the intention to move the resolution must be given to the company not less than I4 days before the meeting at which the resolution is to be moved exclusive of the day on which the notice issued or deemed to be served and the day of the meeting.

The co apany must immediately after the receipt of the notice give its members notice of the resolution in the same manner as it gives notice of the meeting. If this is not practi-cable, the company must give notice to its members by advertisement in the newspaper having an appropriate circulation or in any mode permitted by the Articles.

Special Notices are required for the following :

1. Appointment of an auditor other than retiring auditor (Sec. 225).
2. Provision that a retiring auditor shall not be re-appointed (Sec. 225).
3. Removal of aDirector(Sec. 284).
4. Appointment of a Director in place of one who is removed (Sec. 284).

4.43 Minutes (Sec. 193)

Minutes are written record of proceedings.

1. Every company shall keep minutes of proct:.edings of every general meeting, of every meeting of the Board of Directors, of every meeting of the Committee of the Board. The minutes must be written up within 30 days of the conclusion of the meeting. The pages of the minute book must be serially numbered. Each page must be initiated while the last page recording the proceedings of the meeting shall be dated & stamped by :
   (i) In case of Board meetings and meetings of the Committee of the Board by the Chairman of the meeting or the succeeding meeting.
   (ii) In case of general meeting by the Chairman or in his absence by a Director duly authorised by the Board.
2. The minutes shall contain a true and fair summary of the proceedings.
3. All appointment of offices made at the meeting shall be included in the minutes.
4. In case of Board meetings and of meetings of the Committee of the Board, the minutes shall contain.
   (i) Names of directors present.
   (ii) Names of directors who dissented from or did not concur with a resolution passed.
5. The minutes shall not contain anything which in the opinion of the Chairman is
   (i) Defamatory of a person.
   (ii) Irrelevant to the proceedings.
   (iii) Det' mental to the interests of the company.

   The decision of the chairman shall be final. The minute books shall be kept at the registered office of the company and can be inspected by the members. A copy of the minutes may be furnished on receipt of requisite fees.

4.44 Annual Return

The Annual Return is a statement required to be filed by a Company after every annual general meeting. U/s 159, every company having a share capital shall within 60 days from the day on which each annual meeting is held, prepare and file with the Register a return containing the following particulars :

(a) Its registered office.

(b) The register of its members.

(c) The register of its debenture holders.

(d) Its shares and debentures.

(e) Its indebtedness.

(f) Its members and debenture holders, past and present.

(g) Its directors, managing directors, omitted by Amendment Act 2000 managers and secretaries past and present.

Where full particulars as to past or present members were given in any of the two immediately preceding Returns, a Return may mention only the changes that have occurred in shareholding.

The Return must be in the form set out in Part II of Schedule V or as circumstances admit.

U/s 160, similar return is to be filed by companies not having a share capital.

U/s 161, the copy of the annual return filed with theRegistermust be signed by a director and by manageror secretary or by 2 directors one of whom shall be the managing director. The return must be accompanied with a certificate signed likewise stating that the return states facts as they stood on the day of the annual general meeting. In case of private companies the directors must certify that there has been no violation of the rules in respect of the number of members and invitation to the public for purchase of shares. Failure to comply with the above provisions will cause the company and its offices to be punishable with fine which may extend to Rs. 500/- for every day of default, as per Amendment Act 2000.

4.45 Who is a Director

A Director is a person occupying the position of Director by whatever name cal led. So, he is an individual having control over the direction, conduct, management or superintendence of the affairs of the company.

Number of Directors

A public company (other than a public company which has become such by virtue of Sec.43A) must have at least 3 directors while every other company at least 2 directors (Sec. 252).

The Articles may prescribe the maximum and minimum number of directors subject to the statutory mininum. The number so fixed may be increased or reduced by ordinary resolution at the general meeting of the company (Sec. 258).

Any increase beyond the maximum prescribed by the Articles requires approval of a Central Government. No approval of the Central Government is however required if the increase in number does not make the total number of directors more than 12(Sec. 259).

4.45.1 Appointment of Director

Only individuals can be directors and no body corporate association or firm can be appointed director of a company (Sec. 253). The Articles of a company usually name the first directors (Sec. 254). Their appointment will be valid only if the conditions prescribed U/s 266 have been complied with viz. (i) that the director has given his consent in writing and the same has been filed with the Register (ii) that he has subscribed to the memorandum undertaking to purchase the qualification shares or has acquired the number of shares prescribed as the qualification for a director or has filed an affidavit with the Register to the effect that he shall take or pay for his qualification shares or that shares of the value not less than that of qualification shares are registered in his name. These restrictions do not apply in case of a private company.

Sec. 254 provides that subject to any provisions in the articles, subscribers to the memorandum who are individuals shall be deemed to be the directors of the company till directors are appointed by the company U/s 255.

U/s 255, directors are appointed by the company in its first annual general meeting. In case of a public company and a private company which is a subsidiary of a public company unless the Articles otherwise provide, two thirds of the total numberof directors must be appointed by the company in general meeting and they shall be liable to retire by rotation. The remaining one third directors in the case of any such company and all the directors in the case of private company not being a subsidiary of any public company subject to any regulations in the Articles are also to be appointed in general meeting. Directors appointed in same day to retire by lot (Sec. 256).

U/s 265, the articles of a company may provide for the appointment of not less than 2/3rds of the total number of directors of a public company or of a private company which is a subsidiary of a public company according to the principle of proportional representation whether by single transferable vote or by a system of cumulative voting or otherwise. The appointments must be made once in 3 years and interim casual vacancies must be filled in as per articles.

U/s 260, additional directors hold office only upto the date of the next annual meeting of the company. The number of directors and additional directors must not exceed the maximum strength fixed for the Board by the Articles.

U/s 262, in the case of a public company or a private company which is subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may subject to any provisions in the Articles be filled by the Board of Directors at its meeting. A person appointed in the casual vacancy will hold office upto the date upto which the director in whose place he is appointed would have held office and if it had not been vacated aforesaid.

U/s. 313, the Board of Directors may if so authorised by its Articles or by a resolution passed by the Company in general meeting appoint an alternate director. He is to act for the director called original director during his absence for a period of not less than3 months from the state in which meetings of the Board are ordinarily held.

U/s 408, the Central Government may appoint such number of persons as the Tri bun el may, by order in writing specify as effectively safeguard the interest of the company or its shareholders or public interest of the company or its shareholders or public interest for a maximum period of 3 years at a stretch with a view to preventing oppression of members or mismanagement of the affairs of the company.

4.45.2 Share Qualification of Directors (Sec. 270)

The Articles of the company may require the Directors to possess a certain amount of shares. Such shares are called Qualification Shares. When director accepts his appointment of office he is deemed to have contracted with the company that he shall possess the requisite amount of shares within 2 months of the date of his appointment. This he can do either by transfer of share from the shareholders or by purchasing from the company directly. The nominal values of qualification shares shall not exceed Rs. 5,000/-.

If after the expiry of the aforesaid period, he does not hold qualification shares, he shall be punishable with fine extending to Rs. 500/- (as per Companies Amendment Act 2002) for every day between such expiry and the last day on which he acted as director. He must also vacate his office of director (Sec. 272).

Number of Directorships

A person cannot at the same time hold office as director in more than 15 (as per Amendment Act 2000) companies (Sec. 275).

lf a person who is already a director of 15 companies is appointed a director in any other company or companies the appointment will not be effective unless within 15 days thereafter the director has vacated his office in some other company or companies (Sec. 277).

While calculating the number of directorships, the following companies are excluded :

1. Private company neither a subsidiary or holding company of a public company,
2. Unlimited company.
3. Association not carrying on business for profit or which prohibits payment of dividend.
4. Company in which he is appointed as alternate director (Sec. 278).

Any person who holds office as director of more than 20public companies is liable to be fined upto Rs. 50,000/-(as per Amended Act, 2000) in respect of each of those companies after the first 15 (as per Amended Act, 2000).

4.45.3 Disqualification of Directors (Sec. 274)

The following persons cannot be appointed as directors :

l. A person of unsound mind.
2. An undischarged insolvent.
3. A person who has applied to be adjudged an insolvent.
4. A person who has been convicted of an offence involving moral turpitude and sentenced to 6 months imprisonment and a period of 5 years has not passed from the date of expiry of sentence.
5. A person who fails to pay calls for 6 months.
6. A person who has been disqualified by the Court on the ground of fraud or misfeasance in relation to the company.

A private company may by its articles provide additional disqualifications.

4.45.4 Vacation of Office of Director (Sec. 283)

The office of a director becomes vacant if :

(a) He fails to qualify within 2 months of his appointment or ceases to hold the qualification shares.
(b) He is adjudged to be of unsound mind.
(c) He applies to be adjuged insolvent.
(d) He is adjudged an insolvent.
(e) He is convicted by Court of any offence involving moral turpitude and is sentenced to imprisonment for 6 months or more.
(f) Hefails to pay any call within 6 months from the last date fixed for payment unless the Central Government by notification in the official gazette has removed the disqualification.

(g) He absents himself from three consecutive meetings of the Board of Directors or from all meetings of the Board for continuous period of3 month whichever is longer without leave of absence from the Board.

(h) He receives a loan from the company.

(i) He fails to disclose to the Board his interest in any contract or arrangement of the company.

(j) He is debarred by a Court from being a director.

(k) He is removed before expiry of his period of office by ordinary resolution.

(1) Having been appointed a director by virtue of his holding any office or other employment in the company he ceases to hold them.

4.46 Removal of Directors (Sec. 284)

The shareholders may by passing an ordinary resolution at their general meeting remove a director (not appointed by Central Government) before the expiry of his period of office. A special notice is required of any proposed resolution to remove a director. On receipt of notice, the company must.inform the memoers of the proposed resolution. It must also forthwith send a copy thereof to the director concerned.

Where notice is given of a resolution to remove a director, the director concerned has a right to make representations in writing (not exceeding reasonable length) to the company, which must send a copy of them to every member. If a copy of the representations is not scnt because they are received too late or because of company's default, the director may (without prejudice to his right to be heard orally) require that the epresentations shall be read out at the meeting.

The vacancy created by the removal of a director may be filled up in the same meeting provided special notice of the proposed appointment was also given. The successor can hold office until the date upto which his predecessor would have held office if he had not been removed.

4.47 Powers of the Board of Directors

U/s 292 of the Act, the Board of Directors may exercise any of the fol lowing powers on behalf of the company and may do so only by means of a resolution passed at the meeting of the Board (a) make calls on shareholders (b) issue debentures (c) borrow moneys otherwise than on debentures (d) invest funds of the company (e) make loans.

Sec. 293 lays down the following restrictions on the Board of Directors. The Board of

Directors cannot exercise these powers except with the consent of the company at its general meeting :

(a) Sell, lease or dispose of the whole or substantially the whole of the companies' undertakings.

(b) Remit or give time for repayment of any debt due by a Director.

(c) Invest the compensation received by it upon compulsory acquisition of any of the companies undertakings or properties otherwise than in trust securities.

(d) Borrow in excess of the aggregate of paid up capital and free reserves.

(e) Contribute to charitable or other funds not relating to the business of the company or welfare of its employees in excess of Rs. 25,000/-or 5% of the average net profits during the three preceding financial years.

4.48 Remuneration of Directors

The remuneration payable to Directors is governed by the Articles or by a resolution· passed at the general meeting of the company.

The rules relating to managerial remuneration are as follows :

1. U/s 198 of the Act, managerial remuneration shall not exceed 11% of the Net Profits of the company or minimum remuneration for inadequate profit or loss. The minimum remuneration will be Rs. 40,000/-upto effective capital of Rs. 1 Crore, Rs. 57,000/ -between Rs. I and Rs. 5 crores effective capital, Rs. 72.000 between and Rs. 5 and Rs. 10 crores arid maximum remuneration will be Rs. 87,000/- when effective capital is more than Rs. 15 Crores.
2. A Director is entitled to receive remuneration either by way of monthly fees or by way of a fee for each meeting of the Board attended by him or partly by one way and partly by the other Sec. 309 (2).
3. A Director either in whole time employment or a Managing Director may be paid remuneration either by way of monthly fees or at a specified% of the Net Profits of the company or partly by one way and partly by other except with the approval of the Central Government. But such remuneration shall not exceed 5% of the Net Profits of the company has two or more directors 10% of the Net Profits of the company for all of them taken together Sec. 309 (3).
4. A Doctor not in whole time employment or a Managing Di rector may be allowed a monthly, quarterly or annual sum with the approval of the Central Government or a commission on Net Profits if sanctioned by a special resolution. Such commission

shall not exceed for all directors taken together (a) l % of the Net Profits of the company if it has a whole time director or managing directorof (b) 3% of the Net Profits of the company in other cases. Commission in excess of the above rates requires approval of the Central Government and also passed by a resolution at the general meeting of the company Sec. 309(4).

5. A whole time Director or Managing Director who receives commission on Net Profits shall not receive any remuneration from a subsidiary company Sec. 309(6).
6. A Director who receives remuneration in excess of the above limits is liable to return the same to the company Government's consents. The above provisions do not apply to a private company other than a subsidiary of a Public company Sec. 309 (5).
7. Any provisions relating to the alteration of managerial remuneration may be amended by a public company of its subsidiaries will be ineffective unless otherwise approved by Central Government Secs. 310-11. A Director's fee for attending a meeting of the Board or Committee can be increased upto Rs. 250 without Government sanction. For paid up capital upto Rs. 50 lakhs -Rs. 500, between Rs. 50 lakhs and Rs. 5 crores - Rs. 750 and between Rs. 5 crores and Rs. 10 crores - Rs. 1000.
8. A Company cannot pay to any officer or employee remuneration free of Tax Sec.200.
9. The Central Government is empowered to fix a ceiling on managerial remuneration (Sec. 637AA).

4.49 Loans to Directors (Sec. 295)

Without the previous sanction of the Central Government a company, cannot directly or indirectly make any loan, give any guarantee or provide any security for any loan to :

(a) Any director of the company or to the directors of its holding company or to any partner or relative of any director.

(b) Any firm in which any such directororrelative is a partner.

(c) Any private company of which any such director is a director or member.

(d) Any body corporate at whose meeting any director or directors control 25% of the total voting power.

(e) Any body corporate whose Board of Director or manager is required to act in accordance with the di rec ti ons of the Board of Di rectors or of any di rector or di rectors of the lending company.

The above provisions do not apply to a private company, which is not a subsidiary of a public company or a banking company or a Holding Company to its subsidiary.

A director to whom loan is given shall be punishable with simple imprisonment up 6 months or fine upto Rupees fifty thousand as per Amended Act 2000 effective 13.12.2000.

4.50 Contracts in which a Director is interested (Secs. 297, 299, 300)

A Di rector or his relative or a firm in which he is a partner or a private company in which he is a member or director cannot enter into a contract with the company for the sale, purchase or supply of goods, materials and services and for underwriting the subscription of its shares or debentures except with the consent of the Board of Director. Where the paid up capital of a company is not less than 1 crore of rupees the aforesaid contract shall not be entered into except with the previous approval of the Central Government.

The above rule does not apply to :

(a) Contracts for the sale, purchase or supply of goods and material for cash at prevailing market prices.

(b) Contracts for the sale, purchase or supply of goods, materials and services in which either of the parties regularly transact or dies business provided that the value of goods does not exceed Rs. 5.000/- in any year.

(c) Any transaction of banking or insurance company in the ordinary course of business.

Only in urgent cases can contracts be entered into without prior consent of the Board of Directors. Such consent must be ratified within 3 months of the date on which the contract was entered into. The consent of the Board must be given by a resolution passed at the meeting. If consent is not given, anything done in pursuance of the contract sh al I be voidable at the option of the Board of Directors.

Every Director who is in any way interested in a contract by or on behalf of the company must intimate the Board of the nature of his concern or interest at the meeting of the Board of the nature of his concern or interest at the meeting of the Board. If he fails to disclose his interest he is punishable with fine which may extend to Rs. 5,000/-. He must not vote on any contract or arrangement in which he is interested unless authorised by the Articles. If he votes, his vote would not be counted. His presence would not count towards a quorum.

Register of Director's Shareholdings (Sec. 307)

Every company shall keep a Register of Director's Shareholdings showing in respect of each director the number. Description and amount of the shares or debentures in the company or its subsidiaries or its holding company or subsidiary of a holding company held by or in trust for each director or of which each director has the right to become the holder. The register must also show the date of and the price or other consideration for the transaction. The register must be kept at the registered office of the company and must be open to inspection for a period begining 14 days and ending 3 days after the annual general meeting. The register must be open to inspection of members before the annual general meeting.

Register of Contracts (Sec. 301)

Every company shall keep an register in which particulars of all contracts entered into by the company shall be included. The particulars shall include : (1) Date of the contract or arrangement (2) Names of the parties thereto (3) Principal Terms & Conditions thereof (4) Names of Directors voting for and against the contract and those remaining neutral.

If default is made, the company & every officer of the company who is in default is punishable with fine which may extend to Rupees five thousand as per Amended Act, 2000.

The register must be kept at the registered office of the company and must be open to inspection of members.

Compensation for Loss of Office of Director (Sec. 318)

No compensation for loss of office may be paid by a company to any director other than managing or whole time directors or directors who are managers. In the case of managing or whole time directors or managing director no such payment will be made where :

1. Director resigns his office on reconstruction or amalgamation of the company or for some other reason.
2. Office of Director has to be compulsorily vacated.
3. Company is being wound up due to the negligence or default of the Director.
4. Director is guilty of fraud or breach of trust or gross negligence or gross mismanagement in the conduct of the affairs of the company or any subsidiary or holding company thereof.
5. Director has instigated or taken part directly or indirectly in bringing about termination of office.

Where compensation is payable, it must not exceed the remuneration which would have been eared for the unexpired residue of the term or 3 years whichever is shorter calculated on the basis of the average remuneration actually earned by him during a period of 3 years immediately preceding the date on which he ceased to hold office or where he held office for a lesser period than 3 years during such period.

4.51 Office of Profit of Director (Sec. 314)

The following parties cannot hold any office or place of profit in a company carrying a total monthly remuneration of Rs. 500/- or more except with the consent of the company accorded by a special resolution either in general meeting or within 3 months from the date of appointment whichever is later.

(a) A director of the Company.

(b) A partner or relative of such director.

(c) A firm in which such director or relative of such director is a partner.

(d) A private company of which such director is a director or member.

(e) Any director or manager of such a private company.

These provisions do not apply to a managing director, manager, legal adviser, banker or trustee for the holders of debentures of the company.

The appointment of the following persons to a place of profit in the company which carries a remuneration of not less than Rs. 3,000/- shall be made only with the prior consent of the company by a special resolution and the approval of the Central Government :

(a) Partner or relative of a director or manager.

(b) Firm in which such director or manager or relative of either is a partner.

(c) Private company of which such a director or manager or relative of either is a di rector or member. If any office or place of profit is held in contravention of this provision, the director, partners, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office on and from the expiry of 6 months from the commencement of the Companies (Amendment) Act 1974 or the date next following the date of the general meeting of the company whichever is earlier and shall be liable to refund to the company remuneration received or monetary equivalent of any perquisite or advantage enjoyed.

If any office or place of profit is held without prior consent of the company by a special resolution and the approval of the Central Government, the partner, relative, firm or private company shall be liable to refund to the company any remuneration or other ·

benefit received. The company is precluded from waiving the recovery of any sum refundable to it.

The provisions of the section do not apply to a person who is appointed by the Central Government UIs 408 as a director of the Company.

If any party holds an office of profit under the company in contravention of the above provisions, he or it is deemed to have vacated his office and is also liable to refund to the company and remuneration received. The company shal I not waive the recovery of any sum refundable to it unless permitted by the Central Government.

4.52 Sole Selling Agent (Sec. 294)

The term 'Sole Selling Agent' means an individual firm or company who or which is given the exclusive lights to sell in a particular area the goods of the company concerned. The Board of Directors may appoint a sole selling agent for any area subject to the following conditions :

1. The appointment should not be for a term exceeding 5 years in the first instance. It may be extended by further periods not exceeding 5 years on each occasion.
2. The appointment is valid provided it is approved by the company at the first general meeting held after the date on which the appointment is made.
3. If the company disapproves the appointment at the general meeting, it shall cease to be valid with effect from the date of the general meeting.

The Central Government may if it thinks necessary require the company to furnish the terms & conditions on which-the appointment of sole selling agent was made. If the company refuses, the Government is empowered to appoint a suitable person to investigate and report on the terms & conditions of such appointment. If the terms & conditions are found prejudicial, the Central Government shall modify then so that they are no longer prejudicial to company's interests.

The Central Government has the power to declare a selling agent as the sole selling agent for any area with effect from such date as specified in the order.

No compensation for loss of office shall be paid by the company to its sole selling agent where :

1. Appointment of sole selling agent is not approved by the company at its general meeting.
2. He resigns his office on reconstruction or amalgamation of the company or on his own will.

3. He is guilty of fraud or breach of trust or gross negligence in the conduct of his duty.
4. Hehas instigated or taken part directly or indirectly in bringing about termination of sole selling agency.

The appointment of sole selling agent has been prohibited in certain cases :

1. Sole selling agent in respect of goods of any kind specified by the Central Government by a notification, the demand for which is substantially in excess of production or supply of such good and which have an easy market, for such period as may be specified.
2. Any individual, firm or body corporate who or which has substantial interest in the company as sole selling agent unless such appointment has been previously approved by the Central Government.

Appointment of sole selling agent in Companies with paid up capital of Rs. 50 lakhs requires approval of the shareholders by a special resolution and also of the Central Government. In case of appointment of sole selling agent before the commencement of the companies (Amendment) Act 1974, the company, is required to obtain its approval by a special resolution and from the Central Government within 6 months. Otherwise the appointment shall terminate on the expiry of 6 months from such commencement.

4.53 Managing Director-Appointment, Disqualification and Time Limit

U/S 2(26), Managing Director means a director who by virtue of an agreement with the Company orof a resolution passed by the company in general meeting or y its Board of Directors or by virtue of its memorandum or articles of association is entrusted with substantial powers of management which would not otherwise exercisable by him and includes a director occupying the position of a managing director by whatever name is called.

U/s 267, no person can be appointed a managing or whole tin.e director who :

(a) Is an undischarged insolvent or has at any time been adjudged an insolvent.

(b) Suspends or has at any time suspended, payment to his creditors or makes or has at any time, made a composition with them.

(c) Is or has at any time been convicted by a Court ofan offence involving moral turpitude.

In case of a public company or a private company which is a subsidiary of a public company, the appointment of a person for the first time as a managing or whole time director or of a director not liable to retire by rotation can be made only with the approval

of the Central Government (Sec. 268). Such an appointment can be made without the approval of the Central Government if the company is incorporated after the commencement of the Companies Act. The appointment has to be approved by the Central Government within 3 months of the incorporation in order to be effective (Sec. 269).

No person can be managing director of more than one public company or private company which is a subsidiary of a public company. He can be managing director of two such companies if the second appointment is approved by a resolution of the Board of Directors. The Central Government may however allow a person to be managing director of more than two such companies if it is satisfied that the companies for their proper working should function as a single unit and have a common managing director (Sec. 316).

A managing director can be appointed for a term of not more than 5 years at a time. Re-appointment or extension is possible on the basis of 5 years tenure on each occaion (Sec. 317).

4.54 Manager

U/s 2(24), Manager means an individual who subject to the superintendence, control and directions of the Board of Directors has the management of the whole or substantially the whole of the affairs of the company and includes a director or any other person occupying the position of manager by whatever name called and whether under contract of service or not.

4.55 Prevention of Management by Undesirable Persons

If an un-discharged in sol vent acts as director or discharges the functions of manager or directly/indirectly takes part in the promotion, formation or management of any company he may be sentenced to imprisonment for 2 years or fined upto Rs. 50,000/-(Amended Act, 2000) or with both (Sec. 202).

The Court may prohibit persons (a) convicted of any offence in connection with promotion or management of a company (b) in course of winding up has been (i) guilty of any offence for which he is punishable U/s 542 (ii) otherwise guilty while an officer of the company or of any breach of his duty to the company (Sec. 203).

4.56 Books of Account (Sec. 209)

Every company shall keep at its registered office, proper books of account with respect to :

(a) All sums of money refunded and expended by the company and the matters in respect of which receipt and expenditure take place.

(b) All sales and purchasers of goods by the company.

(c) The assets and liabilities of the company.

(d) Particulars relating to utilization of material, labour and other items of cost, if so required by the Central Government.

Where a company has a branch office whether in India or outsi.de, proper summarised returns of such branch office made upto date at intervals of not more than 3 months are to be sent by the branch to the registered office.

The books of account must give a true and fair view of the state of affairs of the company or branch office as the case may be and explain its transactions.

The Board of Directors may keep the books at some other place in India but the address of such place must be notified to the Registrar within 7 days of the decision to do so.

Books of account upto 8 years previous to the current year must be kept in order together with the relevant vouchers.

The books of account are open to inspection by any director during business hours as also by the Registrar or any officer authorised by Central Government.

If the books of account are not properly kept, every person responsible may be fined upto Rs. 10,000/-and imprisoned upto 6 months (Amended Act, 2000). Also, if proper books of account have not been kept by the company throughout the period of 2 years ‘or a shorter period before winding up, every officer who is in default is punishable with imprisonment for a term extending l year (Sec. 541).

4.56.1 Annual Accounts and Balance Sheet

Under section 20 l, The Board of Directors shall lay before the company at every annual general meeting the balance sheet and the profit and loss account. In case of companies not carrying on business for profit there shall be an income and expenditure account instead of profit and loss account. The profit and loss account relate.

l. In the case of first annual general meeting to the period beginning with the incorporation of the company and ending with a day, the interval between which and the date of the meeting does not exceed 9 months.

2. In the case of any subsequent annual general meeting to the period beginning with the day immediately after the period for which the preceding accounts was made and ending with a day, the interval between which and the date of the meeting does not exceed 6 months.

The period to which the profit and loss account relates (known as the financial year) must not exceed 15 months although it may be extended to 18 months with the special permission of the Registrar.

Failure to comply with the above provisions will cause every person in default to be punishable with imprisonment for a term extending to 6 months or with fine upto Rs. 10,000/- or with both (Sec. 210). (Amended Act, 2000)

Every balance sheet of a company must give a true and fair view of the state of affairs of the company as at the end of the financial year. It shall be in the form set out in Part-I of Schedule-VI to the Act or in such other form as the Central Government may approve (Sec. 211)

Every balance sheet and profit and loss account of a company must be duly signed on behalf of the Board of Directors by the manager/secretary and not less than 2 directors one of whom shall be a managing director (Sec. 215).

The profit and loss account and the auditor's report must be annexed to.the balance sheet. (Sec. 216).

A copy of the balance sheet together with the profit and loss account and the auditor's report must be sent to every member, debenture holder, trustee for debenture holders, person so entitled 2I days before the meeting. In case of default, the company and its officers shall be punishable with fine extending the Rs. 5,000/- (Sec. 219) (Amended Act, 2000).

Three copies of the balance sheet and profit and loss account together with other reports and documents are required to be filed with the Registrar within 30 days from the date on which the accounts were laid before the company at the annual general meeting (Sec. 220).

4.57 Board's Report (Sec. 217)

A report by the Board of Directors must be attached to every balance sheet laid before the company in general meeting. The report must deal with :

(a) State of company's affairs.

(b) Amounts, which it proposes to carry to reserves.

(c) Amounts recommended by way of dividend.

(d) Material changes, affecting financial position of the company, which have occurred between the date of the balance sheet and date of report.

(e) Conservation of energy, technology absorption, foreign exchange earnings and outgo in a prescribed form.

The Board's report must also deal with any changes which have occurred during the financial year :

(a) In the nature of company's business

(b) In the company's subsidiaries orin the nature of business carried on by them.

(c) In classes of business in which the company has an interest.

The Board is also bound to give fullest information and explanations in its report on every reservation, qualification or adverse remark contained in the auditor's report. The Board's report is to be signed by its chairman if he is so authorised. If not, the report is to be signed by such number of directors as are required to sign the balance sheet and profit and loss account of the company. Companies are required to indicate the names of employees getting remuneration of Rs. 24,00,000/- p.a. inclusive of perquisite, their relationship with any of the directors in the Board's repoit to be attached with the Balance Sheet and Profit & Loss Account.

4.58 Appointment of Auditors

Every company must at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting. The company must within 7 days of the appointment intimate every auditor so appointed [Sec. 244 (1)]. The auditor must within 30 days of the receipt of the intimation inform the Registrar in writing that he has accepted or refused to accept the appointment [Sec. 224 (1 A)].

U/s 224(IB), no company shall appoint or re-appoint any person or firm as its auditor until a written certificate has been received from them that they have kept themselves within the specified limits viz. :

1. 20 companies with paid up capital less than Rs. 25 lakhs.
2. 20 companies of which not more than 10 are companies with paid up capital of Rs. 25 lakhs or more.

At any annual general meeting, a retiring auditor shall be re-appointed unless :

(a) He is not qualified for re-appointment.

(b) He has given to the company notice in writing of his unwillingness to be re-appointed.

(c) A resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed.

(d) Where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor and by reason of death, incapacity or disqualification of that person or persons the resolution cannot be proceeded with [Sec. 224(2)].

If no auditors are appointed/re-appointed at an annual general meeting, the Central Government may appoint a person to fill the vacancy. The company must within 7 days of the Central Government's power becoming exercisable give notice of the fact to the Government. Failure to do so will cause the company and its officers to be punishable with fine extending to Rs. 5.000/-[Sec. 224(3) & (4)]. as per Amended Act, 2000.

The first auditors of the company are appointed by the Board of Directors within one month of its incorporation. The auditors so appointed shall hold office till the conclusion of the first annual general meeting. The company may at the meeting remove such Suditors and appoint any other persons in their place. The new auditor to be appointed must have been nominated by any member of the company for which a notice has to be given to the members at least I4 days before the date of the meeting. If the Board fails to appoint first auditors, the company shall have the power to appoint them [Sec. 224 (5)].

Where vacancy is caused by the resignation of and auditor, the company shall fill up the vacancy in general meeting. Any auditor thus appointed holds office until the conclusion of the next annual general meeting [Sec. 224 (6)).

Any auditor may be removed from office before the expiry of his term by the company in general meeting after obtaining previous approval of the Central Government [Sec. 224 (7)).

In case of a company in which not less than 25% of the subscribed capital is held whether singly or in combination with a public financial institution or a Government or any financial or other institutions formed by any State Act in which the State Government holds 51% of the subscribed share capital or a nationalized bank or insurance company carrying on general insurance business, the appointment or re-appointment of the auditor at each annual general meeting shall be made by a special resolution. The Central Government shall appoint the auditor if the company fails to pass the special resolution at the general meeting [Sec. 224A].

Special notice is required for a resolution at a general meeting appointing as auditor a person other than the retiring auditor or providing expressly that the retiring auditor shall not be re-appointed, such notice must be given to the auditor concerned who is entitled to make a written representation of reasonable length which the company should bring to the notice of the members otherwise the auditor is entitled to have his representation

read out at the meeting. If the auditor abuses this right to secure needless publicity for defamatory matter, the Court may on application prohibit circulation of the representation (Sec. 225).

4.58.1 Qualification/Disqualification's of an Auditor (Sec. 226)

A person is not qualified for appointment as auditor of a company unless he is a Chartered Accountant within the meaning of the Chartered Accounts Act 1949. A firm of auditors of which all the partners practising in India are qualified for appointment may be appointed by its firm name to be the auditor of the company.

None of the following persons shall be qualified for a appointment as auditor of the company :

(a) A body corporate.

(b) An officer or employee of the Company.

(c) A person who is a partner or who is in the employment of an officer or employee of the company.

(d) A person who is indebted to the company for an amount exceeding Rs. 1,0O0/- or who has given any guarantee of any third person to the company for an amount exceeding Rs. 1,000/-

(e) A person disqualified for appointment as auditor of any other body corporate, which is that company's subsidiary or holding company or subsidiary of the company's holding company.

4.58.2 Rights and Powers of Auditors [Sec. 227 (1)]

Every auditor of the Company shall have the right of access at all times to the books of account and vouchers whether kept at the head officer or elsewhere and shall be-entitled to require from the officers of the company such information and explanation as the auditor may think necessary for the performance of his duties.

4.58.3 Duties of Auditors

The auditor shall make a report to the members of the company on the accounts examined by him and on every balance sheet arid profit and loss account and on every document declared to be part of or annexed to the balance sheet or profit and loss account which are laid before the company in general meeting during his tenure of office. The report shall state (a) whether in his opinion and to the best of his information and according to the explanations given to him the said accounts give the information required by the Act in the manner so required (b) whether the b_alance sheet gives a true and fair view of

the company's affairs as at the end of the financial year and the profit and loss account of the profit and loss for its financial year (c) whether has obtained all the infonnation and explanations required by him for purposes of audit (d) whether in his opinion proper returns for the purposes of his audit has been received from the branches not visited by him (e) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns [Sec. 227(2)].

The auditor shall further enquire into the following matters :

(a) Whether loans and advances made by the company have been properly secured and whether the terms of the loans are not prejudicial to the interests of the company or its members.

(b) Whether transactions represented by book entries are not prejudicial to the.interest of the company.

(c) Where the company is not an investment or banking company, whether any of its assets - shares, debentures and other securities have been sold at a price less than its purchase price.

(d) Whether loans and advances made by the company have been shown as deposits.

(e) Whether personal expenses have been charged to revenue account.

(f) Whether cash has been received for shares shown as allotted for cash and if not whether the position as shown in the books of account and balance sheet is correct [Sec. 227 (IA)].

The Central Government may direct the inclusion in the auditor's report, of statements on certain matters to be specified by notification [Sec. 227 (4A)].

Where any of the matters on which the auditor is required to report are answered in the negative or with a qualification, the auditor's report must state the reason for the answer.

4.58.4 Special Audit (Sec, 233A)

Where the Central Government is of the opinion that :

(a) The affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices.

(b) The company is being managed in a manner likely to cause serious damage to the trade/industry/business to which it pertains.

(c) The financial position of the company is such as to endanger its solvency.

The Central Government may appoint a Chattered Accountant or the Company's Auditor to conduct the special audit of the comapny's accounts. The special auditor hase the

same powers and duties as an auditor of the company. But he has to make the report to. the Central Government.

4.58.5 Cost Audit (Sec. 233 B)

Where a company engaged in production, processing, manufacturing or mining activities has been directed to include particulars relating to utilization of materials, labour or other items of cost in its books of account, the Central Government may by order direct that the audit of cost accounts of such a company must be conducted by an auditor who must be either a cost accountant within the meaning of Cost & Works accountants Act 1959 or a Chartered Account within the meaning of the Chartered Accountants Act 1949. He shall have the same powers and duties as an auditor of the company. He shall make his report to the Central Government and forward a copy of the report to the company.

4.59 Remedies of Debenture Holders

The remedies of debenture holder vary according to whether he is secured or unsecured. An unsecured creditor is in the same position as an ordinary trade creditor. He has two remedies :

1. He can sue for his principal and interest.
2. He can petition UIs 439 for the winding up of the company by the court on the ground that the company is unable to pay its debts.

A secured creditor has both the above remedies in addition to the following courses open to him :

1. When the company makes default in making payment, any debenture holder may sue but he normally brings an action on behalf of himself and the other debenture holders of the same class.
2. He may appoint aReceiveriftheconditions give him the power to do so.
3. He may apply to the Court for foreclosure of the company's right to redeem the debentures.
4. He may sell the property through trustees if such power is given in the debenture deed.
5. If the company is insolve_nt and his security is insufficient he may value his security and prove for the balance.

4.60 Fixed and Floating Charges

A Fixed Charge is one which is created on some ascertained and definite property of the company i.e. charge on land and building. It precludes the company from dealing with that property without the consent of the holder of the charge. The company can if it wants to deal with that property do so subject to the charge.

A floating charge is an equitable charge, which is created on some class of property, which is constantly changing. The company can deal with such property in the normal course of business until the charge becomes fixed on the happening of an event. Debentures create a floating charge on the assets of the company.

A floating charge crystallizes or gets fixed when :

1. Company goes into liquidation.
2. Company ceases to carry on business.
3. Receiver is appointed.
4. Default is made in paying principal or interest and the holder of the charge brings an action to enforce his security.

In re: Yorkshire Woolcombers Association Ltd., where the company created a charge over its book debts, present and future, the characteristics of a floating charge was :

1. It is a charge on a class of assets of the company present & future.
2. That class is one, which in the normal course of business would be changing from time to time.
3. Until some steps are taken by or on behalf of those interested in the charge, the company may carry on its business in the usual way.

4.60.1 Registration of Charges (Sec. 125)

The following charges must be registered with the Registrar :

1. A charge to secure any issue of debentures.
2. A charge on uncalled share capital.
3. A charge on any immovable property whereever situate or any interest therein.
4. A charge on book bebt.
5. A charge not being a pledge on any movable property.
6. A floating charge on any property including stock in trade.
7. A charge on cal ls made but not paid.

8. A charge on a ship or any share in a ship.
9. A charge on goodwill, patent, trademark or copyright.

Particulars of the charge together with the instrument by which the charge is created must be filed with the Registrar within 30 days after the date of creation of the charge. The Registrar may extend the period by another 7 days on sufficient grounds being shown. If the charge is not registered then :

(a) It is void against liquidators & creditors in case of winding-up.

(b) Debt becomes immediately payable.

(c) Officers of the company are liable for punishment.

4.61 Loan to Companies (Sec. 370)

A company shall not :

(a) Make any loan.

(b) Give any guarantee or provide any security in connection with a loan make by any other person to or to any other person by any body corporate unless it is authorised by a special resolution of the lending company. No special resolution shall be necessary where the borrowing company is not under the same management as the lending company and the loan does not exceed 10% of the aggregate of the subscribed capital of the lending company and its free reserves. The aggregate of the loans made to all companies shall not exceed 30% of the aggregate of the subscribed capital of the lending company and its free reserves where all other companies are not under the same management as the lending company and 20% where all other companies are under the same management as the lending company.

Every lending company shall keep a register showing the names of all companies under the same management as the lending company as also every loan made, guarantee given or security provided by the lending company in relation to any such company.

The above restrictions do not apply to any loan made, guarantee given or security provided by a :

1. Holding company to or in respect of any loan made to its subsidiary.
2. Banking or insurance company in the ordinary course of business.
3. Private company unless it is a subsidiary of a public company.
4. Company established with the object of financing industrial enterprises:

4.62 Investment in other Companies (Sec. 372)

A company can invest in any other company within the same group upto 10% of the subscribed capital of the other company provided such investment is sanctioned at a meeting of the Board of Directors of the investing company with the consent of all directors present and entitled to vote. Notice of such resolution must be given to all directors. The aggregate investment of a company in other companies in the same group shall not exceed 20% of the subscribed capital of the investing company. The aggregate investment of a company in all other bodies corporate shall not exceed 30% of the subscribed capital of the investing company.

A company can invest more than the amounts mentioned if it is sanctioned by a resolution of the members of the investing company and approved by the Central Govt.

The above restrictions do not apply to banking or insurance companies, private company unless it is a subsidiary of a public company investments by a holding company in its subsidiary, investments in right shares U/s 81, any company established with the object of financing industrial enterprises.

Every investing company shall keep a register of all investments made by it in shares of other companies showing in respect of each investment :

1. Name of the company in which investment has been made.
2. Date on which investment has been made.
3. Date on which the company came in the same group as the investing company.
4. Names of all companies in the same group as the investing company.

Such particulars shall be entered in the register within 7 days of the making thereof.

4.63 Compromise or Arrangements

A Compromise may be proposed (a) between company & its creditors or any class of them (b) between company & its members or any class of them.

Upon such a proposal, company or any creditor or any member or liquidator may apply to the Tribunal (Amended Act, 2000) for compromise the Tribunal sanctions the compromise if approved by majority of 3/4ths of creditors or members at the meeting. The Tribunal shall not sanction the compromise unless it is satisfied that all material facts relating to the company has been disclosed to Tribunal. A Certified copy of Tribunal's order is to be filed with the Registrar and annexed to every copy of the memorandum issued subsequently (Sec. 391).

When a scheme is sanctioned by the Tribunal, it shall have the power to supervise the carrying out of the arrangement and issue directions. TheTribunal may order for compulsory winding up if it is of the opinion that the compromise or arrangement cannot be carried out satisfactorily (Sec. 392).

4.63.1 Reconstruction (Sec. 394)

Where the scheme of arrangement involves amalgamation of one company with another by transfer of the whole or part of any company to another, the Tribune) may.sanction the arrangement by passing orders for any of the following matters :

1. Transfer of the undertaking, property & liabilities of the transferor company to the transferee company.
2. Allotment or appropriation by the transferee company of any shares, debentures, policies or like interests in that company.
3. Continuation by or against transferee company of any pending proceedings.
4. Dissolution without winding up of any transferor company.
5. Provisions for dissenting member.
6. Any other incidental or consequential matters.

No scheme of amalgamation of a company which is being wound up will be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or public interest. No order of dissolution of the company will be passed by Tribune! unless a similar report has been received from the official Liquidator. Within 30 days of the Tribunal's order, the company shall file a certified copy thereof to the Registrar forregistration.

4.63.2 Acquisition of Shares of Dissenting Shareholders (Sec. 395)

Where the Scheme of reconstruction or amalgamation involving transfer of shares from one company to another has been approved within 4 months by the holders of not less than 9/10ths in value of shares of the transferor company, the transferee company; may within 2 months after the expiry of the above 4 months give notice to the dissenting shareholders that it desires to acquire their shares. Within one month of the notice, any dissenting shareholder may apply to the Tribune I. If no application is made to the Tribunel orif the Tri bunel refuses it, the transferor company becomes entitled and bound to acquire the shares. The transferee company must within I month of the acquisition give notice to the dissenting shareholders. Such shareholders may require the transferee

company to acquire their shares within 3 months and the company should do so. The transferee company shall pay the share value to the transferor company whereupon the latter shall register the former as the holder of those shares. The transferor company shall within· 1 month of the registration inform the dissenting shareholders of the fact of such registration and amount received as price from the transferee company the money so received shall be kept in a separate bank account and held in trust for its shareholders.

4.63.3 Amalgamation in National Interest (Sec. 396)

Where the Central Government is satisfied that it is essential in public interest that two or more companies should amalgamate it may by order notified in the official gazette provide for the amalgamation of those companies into a single company with such constitution, property, power, rights, interests, authorities and privileges and shall be subject to such liabilities, duties and obligations as may be specified in the order.

Every member or creditor (including a debenture holder) or each of the companies before amalgamation must have the same interest in or rights against the amalgamated company are in any manner less he is entitled to compensation for the loss.

Before issuing the order of amalgamation, the Central Government will send a copy of the proposed order in draft to each of the companies concerned and will consider their suggestions and objections if any. Copies of the order of amalgamation must be laid before both houses of Parliament.

4.64 Prevention of Oppression and Management

In cases of oppression, the Tribunel (Amended Act,2002) may give relief if it is of the opinion that :

(a) The company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members.

(b) To windup the company would unfairly prejudice such member or members but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up (Sec. 397).

In cases of mismanagement, the Tribunal may give relief if it is of the opinion that :

(a) The company's affairs are being conducted in a manner prejudical to public interest or interests of the Company.

(b) A material change has taken place in the management and control of the company and that by reason of such a change the affairs-of the company are likely to be

conducted in a manner prejudicial to public interest or interests of the company (Sec. 398).

In the case of a company having a share capital an application may be made to the Tribunel by :

(a) Not less than 100 members or not less than 1/ 101h of the total number of members whichever is less.

(b) A member or members holding not less than I/10 of the issued share capital of the company on which all calls and other sums due have been paid.

In the case of a company not having a share capital, the application may be made to the Tribunel by not less than I/5 of the total number of members.

The Central Govt. may if it in its opinion circumstances exists which make it just and equitable, so to do authorise any member or members to apply (Sec. 399).

U/s 397 & 398 the court may pass such orders as it thinks fit e.g. orders for regulating the future conduct of company's affairs, orders directing the purchase of shares of any members by other members or by the company, reduction of capital, termination of any agreement between the company and its management, orders for the termination orrevision of any agreement between the company and any third person, orders for setting aside any fraudulent preference made within 3 months before the date of application (Sec. 402).

On the application of 100 members or members holding not less than I/I0 of the voting power, the Central Govt. may (1) appoint such number of directors for a specified period not exceeding 3 years at a time and such directors shall not be subject to a retirement by rotation nor need they hold any qualification shares (2) direct the compariy to alter its articles so as so arrange for the election of its directors by proportional representation (Sec. 408).

4.65 Grounds of Compulsory Winding-up by the Tribunal (Amended Act, 2002) (Sec. 433)

(a) If the company has by special resolution resolved that the company is wound by the Tribunal.

(b) If default is made in delivering statutory report to the Registrar or in holding the statutory meeting.

(c) If the company does not commence business within a year from its incorporation or suspends its business for the whole year.

(d) If the number of members is reduced i.e. below 7 in case of public company and below 2 in case of private company.

(e) If the company is unable to pay its debts. A company is deemed to be unable to pay its debts in the following cases U/s 434 :

1. If a creditor for a sum of Rupees One Lakh has served on the company a demand for payment and the company for three weeks thereafter has neglected to pay or satisfy him.
2. If execution or other process issued on a decree or order of the court in favour of a creditor of the company is returned unsatisfied in whole or in part.
3. If it is proved to the satisfaction of the Tribune} that the company is unable to pay its debts.

(f) If the Tribunal is of the opinion that it is just and equitable that the company be wound up e.g. when the substratum of the company is gone, when there is a deadlock in the management of the company, when the objects of the management of the company, when the objects of the company-were fraudulent, when the company is carrying on its business at a continuous loss.

4.66 Who may Petition (Sec. 439)

(a) If a special resolution has been passed by the company for presenting a petition to the Tribunal (by Amended Act, 2002) for winding up.

(b) If the leave of the Tribunal (Amended Act, 2002) Court has been obtained by the creditor (including any contingent or prospective creditor) for admitting a petition to the Court for winding-up.

(c) If a petition to the Tribunal (Amended Act, 2002) for winding-up has been presented by the contributory on the following grounds viz. when membership is reduced below the statutory minimum, when he is an original allottee of shares, when he has held his shares for any 6 out of the previous 18 months, when the shares have developed on him through the death of a former holder.

(d) If a petition to the Tribunal for (Amended Act, 2002) for winding up has been presented by any of the aforesaid parties together.

(e) If a petition to the Tribunal (Amended Act, 2002)for winding-up has been presented by the Registrar on the following grounds viz. when default is made in delivering the statutory report to the Registrar or in holding the statutory meeting, when the company does not commence its business within a year from its incorporation or

suspends its business for the whole year, when the company is unable to pay its debts.

(f) If a petition to the Tribunal (Amended Act, 2002) for winding-up has been presented by any person authorised by the Central Govt., Uls 243 upon a report from the inspector.

(g) If a petition to the Tribunal (Amended Act, 2002) for winding-up has not been made, the workers of company are entitled to appear and be heard. They may prefer an appeal and contend that no winding-up order be made. Also winding-up can be ordered by the BiFR (Board of Industrial Finance and Reconstruction).

The Tribunal (by Amended Act, 2002) shall not make the winding-up order unless it is satisfied that the voluntary winding-up or winding up subject to supervision of the Court presented by any of the above persons or the official Liquidator cannot be continued in the interests of the creditors or contributories or both (Sec. 440).

4.67 Powers of the Tribunal on hearing Petition (Sec. 443)

On Hearing a winding up petition, the Tribunel may :

1. Dismiss it with or without costs.
2. Adjourn the hearing conditionally or unconditionally.
3. Make any interim order as it thinks fit.
4. Make an order for winding up of the company with or without cost or any other order as it thinks fit.

Where the petition is presented on the ground that it is just & equitable that the company should be wound up, the court may refuse to make a winding-up order if the petitioners are acting unreason ab I yin seeking winding-up instead of pursuing some other remedy.

Where the petition is presented on the ground of default in delivering statutory report to the Registrar or in holding the statutory meeting, the Tribunal may instead of making winding-up order direct that the statutory report be delivered or that a meeting be held. The Tribunal may also order the costs to be paid by persons responsible for default.

4.68 Powers of the Liquidator (Sec. 457)

1. With the sanction of the Tribunal the Liquidator shall have the power to :

(a) Institute or defend any suit, prosecution or legal proceeding in the name of the company.

(b) Carry on business of the company for its beneficial winding-up.

(c) Sell company's property.

(d) Sell whole of the undertaking of the company as a going concern.

(e) Raise money on the security of company's assets.

(f) Do all other things necessary for winding-up.

(g) Appoint advocate, attorney or pleader to appear before Tribunel so as to assist him in his duties.

2. Without the sanction of the Tribunal :

(a) Do all acts and execute in the name of the company all deeds, receipts & other documents.

(b) Inspect the records & returns of the company on the files of the Registrar.

(c) Prove, rank & claim in the insolvency ofany contributory and the receive dividends therefrom.

(d) Draw, accept, make, endorse any negotiable inst:ru rnent in the name of the company.

(e) Take out in his official name, letters of administration to any deceased contributory and do other things necessary to obtain payment.

(f) Appoint an agent for business, which he is unable to carry out.

4.68.1 Duties of the Liquidator

After the winding up order is made, the Liquidator shall take into his custody and control all properties of company effects and actionable claims. His principal duty is to collect the assets of the company, make a list of creditors, pay the claims of the creditors prorata and distribute the balance among the shareholders. The Liquidator must pay all moneys received by him into the public account of-India in the Reserve Bank of India. He must submit the prescribed returns & reports to the Tribunal. He must keep prescribed books of account and they must audited at least twice a year.

4.69 Contributories

Contributory means every person liable to conttibute to the assets of the company in the event of winding-up. It includes holder of fully paid shares (Sec. 428).

In the event of the company being wound-up, every present and past member is liable to contribute to the assets of the company so far as it is necessary for payment of its debts & liabilities; costs, charges & expenses of winding-up; for adjustment of the rights of the contributors among themselves.

The liability of the present members is limited :

1. In case of company limited by shares, to the amount remaining unpaid on the shares in respect of which he is liable.
2. In case of company limited by guarantee to the amount undertaken to be contributed by him to the assets of the company in the event of winding up.

The liability of a past member (person who ceased to be a member within a year before the commencement of winding-up) is not liable to contribute :

(1) If he ceased to be a member for one year or upwards before the commencement of the winding-up.

(2) In respect of any debt or liability of the company contracted after he ceased to be a member.

(3) Unless it appears to the court that the present members are unable to make the contributions required of them (Sec. 426).

Upon the death of a contti butory, his legal representative becomes a contributory (Sec. 430).

If the contributory is a company which is being wound up its liquidator represents it (Sec. 432).

4.70 Voluntary Winding-Up

Voluntary winding-up means winding up by the members themselves or creditors of the company without the intervention of the court.

A company may be wound up voluntarily :

1. By passing an ordinary resolution in the following cases :

(a) Where the duration of the company was fixed by the articles and the period has expired.

(b) Where the articles provided for winding-up on the occurrence of an event and the specified event has occurred.

2. By passing a special resolution in all other cases (Sec. 484).

Within 14 days of the passing of the resolution for voluntary winding-up, it must be notified to the public by an advertisement in the official gazette and in a local newspaper (Sec. 485).]

A voluntary winding up is deemed to commence at the time when the resolution for winding-up is passed (Sec. 486).

4.71 Declaration of Solvency (Sec. 488)

In a voluntary winding-up if a declaration of Solvency is made, it is members voluntary winding-up. If not it is creditors voluntary winding-up.

The Declaration of Solvency must be made by a majority of the directors at a meeting of the Board that the company has no debts or that it will be able to pay its debts in full within 3 years from the commencement of the winding-up. The declaration must be sup-ported by an affidavit of the above directors and must be made within 5 weeks immedi-ately preceding the date of the resolution for winding-up and must be delivered to the Registrar for Registration before that date. The declaration must be accompanied by a copy of the auditor's report on the profit &.loss account, the balance sheet and a state-ment on the company's assets & liabilities as on the latest practicable date before making the declaration.

4.72 Procedure of a Voluntary Winding-up

In a Members' Voluntary Winding up :

1. Declaration of Solvency.
2. Statutory Declaration to the Registrar.
3. A resolution in a general meeting of the company within 5 weeks of Declaration of Solvency.
4. Appointment of Liquidator.
5. Collection the company's assets, pay the liabilities of the company and pay the balance of the proceeds to the contributories.

In a Creditors' Voluntary Winding-up :

1. A resolution for the winding-up of the company in a general meeting of the company.
2. On the same day/following day there must be creditors' meeting where the directors shall state the position of the company and the list of creditors.
3. Appointment of Liquidators at the meeting of members and creditors. Creditors' nominees are preferred.
4. A Committee of Inspection.
5. Winding-up procedure as per Statute.

4.72.1 Consequences of Winding-up

(i) As to Shareholders-A shareholder is liable to pay the full amount upto the face value of the shares held by him.

The liability of the shareholder continues even after the company goes into liquidation as he is then described as a contributory. The liability of the present contributory is the amount remaining unpaid on shares held by him. A past contributory will be called upon to pay if .the present contributory is unable to pay.

(ii) As to Creditors -A company may be wound-up (i) when it is unable to pay its debts (ii) when it is solvent. When a solvent company is wound up all claims of the creditors when proved are fully met. When an insolvent company is wound up the law of insolvency applies. The creditors may be secured or unsecured. A secured creditor has 3 alternatives before him.

(1) He may rely on security and ignore liquidation.

(2) He may value his security and prove for the deficit.

(3) He may surrender his security and prove for the whole debt.

An unsecured creditorof an insolvent company is paid in the following order (1) Preferential payments U/s 530 (2) other debts pari passu.

(iii) As to servants & officers-A winding up order serves as a notice of discharge to the employees and officers of the company except when business of the company is being continued (Sec. 444). A voluntary winding-up also operates as notice of discharge.

4.73 Preferential Payments (Sec. 530)

They are as follows :

(a) All revenues, taxes, cesses and rates are payable by the company within 12 months next before the commencement of winding-up.

(b) All wages or salary of any employee for a period not exceeding 4 months within the 12 months next before the commencement of winding-up provided the amount payable to one claimant will not exceed Rs. 1,000/-.

(c) All accrued holiday remuneration becoming payable to any employee on account of winding-up.

(d) Unless the company is being wound up voluntarily for the purpose of reconstruction all contributions payable during I2 months next before winding up the company as the employer of any persons under E.S.I. Act 1948 or any other law for the time being in force.

(e) All sums due as compensation under Workmen's Compensation Act 1923.

(f) All sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of employees maintained by the company.

(g) Expenses of enquires and investigations payable by companies.

4.74 Defunct Companies (Sec. 560)

A defunct company is one, which is not carrying on business or is not in operation.

When the Registrar has reasonable cause to believe that a company has become defunct, he shall send a letter to the company asking whether it is so. If no reply is received within one month, the Registrar shall within another 14 days send a registered letter referring to the first letter. If no answer is received to the second letter within one month a notice is to be published in the official gazette and letter is to be sent to the company informing it that its name shall be struck off the register within 3 months, the Registrar shall strike off the name of the company from the register. The same procedure is also followed in case of winding up of a company.

If the company or any member or creditor feels aggrieved by the company having been struck off the register he may within 20 years apply to the court. The court may order the name of the company to be restored to the register if it is satisfied that the company was at the time of the striking off, carrying on business or was in operetion. Upon a certified copy of the Court's order being delivered to the Registrar for registration, the company is deemed to have continued in existence as if its name had not been struck off.

4.75 Questions

1. Enumerate the characteristics of a company.
2. Distinguish between a private company and a public company. When does a private company become a public company?
3. What are the privileges of a private company?
4. Writes notes on :
   a) One man Company
   b) Illegal Association
   c) Associations not for profit
5. What is a Government Company? State its special features. How far it is governed by the Companies' Act 1956?
6. What is a Government Company? What are the provisions of the Companies' Act relating to foreign companies?
7. What is a Memorandum of Association? State its contents.
8. Set out the restrictions imposed on the choice of a name for a company. How can a company change its name?

9. Why is it necessary for a company to have a registered office? Can the registered office of the company be changed?
10. Explain the necessity of setting out clearly the objects in the memorandum. How may the objects clause of a company be altered?
11. What are Articles of Association? List its contents.
12. What is the legal effect of the Articles of a Company between (a) members and the company (b) members inter sec. (c) company and outsiders?
13. What are the main point of distinction between Memorandum of Association and Articles of Association of the Company?
14. Discuss the scope of the Doctrine of Indoor Management. To what extent has the Doctrine been incorporated in the Companies' Act 1956?
15. Briefly describe the documents to be filled with the Registrar of Companies prior to incorporation.
16. "A certificate of incorporation is the conclusive evidence that all the requirements of the Companies Act have been complied with" - Explain.
17. From what date is a registered company incorporated? What is the Legal effect of the certificate of incorporation? What are the consequences of incorporation of a company?
18. Who is a promoter? Discuss his legal position in relation to the company, which he promotes.
19. Can a company ratify the contracts of promoters who acted on behalf of the company before its incorporation?
20. What is a prospectus? What are its contents? Is it obligatory for a company to file a prospectus or statement in lieu of prospectus with the Registrar of Companies.
21. Who are liable for mis-statements in a prospectus? Explain the extent of civil and criminal liability for such mis-statements.
22. What are the remedies open to an allottee of shares who had applied for them on the faith of a false and misleading prospectus and what are the defences available to the directors of the company who have issued such a prospectus?
23. What statutory requirements must a company comply with in order to commence business or exercise its borrowing powers (a) when it has issued a prospectus and (b) when it has not issued a prospectus'?
24. Define minimum subscription what are the consequences if a company is not able to raise minimum subscription?

25. Write short notes on (a) Preliminary expenses (b) Minimum Subscription (c) Statement in lieu of prospsectus.
26. What restrictions have been imposed by the Companies Act on the allotment of shares? What are the effects of an irregular allotment?
27. What is the legal effect of an allotment which is irregular either because the minimum subscription has not been subscribed or because a statement in lieu of prospectus has not been filed when required?
28. State the kinds of share capital. How can the share capital of a company be altered?
29. In what circumstances can a company reduce its share capital?Describe the formalities to be complied with and the procedure to be followed.
30. What are the voting rights of members in a public company limited by shares? Enumerate how allotment of further shares through the increase in subscribed capital of a company take place?
31. Distinguish between a) Stock and Shares b) Share Certificates and Share Warrants.
32. Write short notes on: Lien on shares, calls on shares, sun-ender of shares, forfeiture of shares.
33. Can a company buy its own shares? If so, under what circumstances?
34. Can a company issue shares at a premium and at a discount? When can a company redeem preference shares?
35. Discuss the law regarding payment of underwriting commission.
36. Who are members of a company? Distinguish between a member and a shareholder. How is membership terminated?
37. How many a person (i) become and (ii) cease to be member of a company.
38. "Every shareholder of a company is also known as a member while every member may not be known as a shareholder." Comment.
39. Distinguish between Transfer and Transmission of shares.
40. What is a statutory meeting? What is a statutory report and what are its contents"?
41. What are the provisions regarding the holding of an annual general meeting? What business is transacted at such a meeting?
42. Specify the rules which related to the convening and holding of a general meeting of a company on a requisition.
43. Give in a nutshell the requisites of a valid meeting.
44. What do you understand by quorum? Must a quorum be present throughout a meeting? What is the procedure if a quorum is never formed?

45. What is meant by proxy? State the provisions regarding proxies?
46. Set out the difference between a special resolution and a resolution requiring special notice. For what purpose is a special resolution required?
47. What is an Annual Return? What are its contents? When must it be filed with the Registar?
48. Discuss, in brief, the provisions relating to (a) Voting by Poll (b) Minutes of the meeting.
49. What is an Annual Return? State the particulars to be filed with Register for company having share capital.
50. Must a limited company under the companies Act have directors? What are the qualifications of a director? When is a person disqualified for appointment as a director of a company?
51. State the provisions of the Companies act regarding the mode of appointment of directors of a company?
52. When is the office of a director of a public company deemed to be vacated? Can the directors of a company be removed during their terrri of office?
53. Discuss the powers of the Board of Directors under the Companies Act.
54. What are the provisions regarding (a) disclosures in the company's accounts of loans made to its directors (b) payment to a director of compensation for loss of office (c) disclosure by directors of their interest in contracts (d) remuneration of the directors of a public company.
55. How are sole selling agents appointed? When does company need not pay compensation for loss of office of sole selling agent?
56. Is there any limit imposed upon the borrowing powers of the directors of a public company?
57. Describe the provisions of the Companies Act restraining a company from making loans to its directors.
58. How is the managing director of a public limited company appointed? What is the time limit for such appointments? When can a person be disqualified from being appointed a managing director?
59. Write short notes on :
    (a) Share qualification of directors
    (b) Register of directors' shareholdings

(c) Number of directorships held by and individual

(d) Prevention of Management by undesirable persons

(e) Office of Profit of Director

(f) Register of Contracts

(g) Additional Director

(h) Alternate Director

60. State the requirements under the Companies Act with respect to contracts in which directors of a company have personal interests. What are the remedies available to a company where it is discovered that a director had an interest which he did not disclose?
61. What books of account must a company registered under the Companies Act bound to maintain?
62. Discuss the provisions of the Companies Act relating to the preparation, authentication, circulation, adoption and filing of the annual accounts of a company.
63. Write a note on the rights, powers and duties of an auditor.
64. State the provisions relating to qualifications, appointment of an auditor.
65. "An auditor is a watch dog and not a blood hound". Discuss with reference to an auditor's duties, powers and liabilities.
66. Who appoints (a) the first auditors of a company (b) auditors to fill casual vacancies (c) auditors at each annual general meeting.
67. Specify the provisions with respect to (a) special audit of a company (b) the audit of cost accounts of a company.
68. What remedies are available to debenture holders for realization of their security'?
69. What is the nature of a floating charge? Distinguish it from a fixed charge. When does a floating charge crystallise?
70. What charges must be registered with the Registrar? State the effect of their non-registration.
71. Explain how investment are made by a company in the same group of companies.
72. How can loans to companies under the same management be made?
73. Distinguish between a Shareholder and Debenture Holder.
74. How can a company make compromise or arrangement with its members and/or creditors without going into liquidation?

75. State the process of the Central Government to provide for the amalgamation of companies in the public interest?
76. How can the shares of dissenting shareholders be acquired?
77. Explain-the ways and means by which reconstruction of a company is carried out?
78. What are the provisions of the Companies Act 156 for the prevention of oppression of the minority shareholders and mismanagement of a company?
79. What remedies are available to the minority shareholders of a company against oppression or mismanagement?
80. What are the powers given to the Central Government for the prevention of the oppression and mismanagement in a company?
81. When can a company be wound up by the Court? Who are the persons entitled to present a petition for the winding up of a company by the Court and what are the circumstances in which each may present the present?
82. What are the consequences of a winding up order?
83. Who are contributories in the winding up of a company? Discuss their right to claim set-off againstthe company. What is the nature and extent of a contributory's liability?
84. When can a company be voluntarily wound up? What are the consequences of such a winding up? What procedure is followed in case of such winding up? When does it commence?
85. When may the Court order that a winding up shall be subject to the supervision of the Court?
86. What is the importance of the Declaration of Solvency in a voluntary winding up? By whom is it made and to whom is it submitted? If in a member's voluntary winding up, the liquidator suddenly realizes that the company is not solvent, what should he do?
87. Enumerate the powers and duties of the liquidator.
88. Discuss the powers of the Court on hearing petition.
89. List out the procedure for voluntary winding up.
90. Write short notes on :
    (a) Preferential Payments
    (b) Defunct Companies.

CONSUMER PROTECTION ACT, 1986

1. The Consumer Protection Act, 1986 seeks to provide better protection of interests of the consumers and for that purpose to make provisions for establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.
2. It seeks to promote and protect the rights of consumers, such as :

(a) The right to be protected against marketing of goods, which are hazardous to life and property.

(b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices.

(c) The right to be assured, wherever possible, access of variety of goods at competitive pnces.

(d) The right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forums.

(e) The right to seek redressal against unfair trade practices cir unscrupulous exploitation of consumers and

(f) The right to consumer education.

3. To provide steady and simple redressal to consumers' disputes, quasi-judicial machinery is sought to be set up at the district, state and central levels. The quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award whatever appropriate compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.

Salient Features of The Consumer Protection Act, 1986

The salient features of the Act are as follows :

1. The Act provides speedy redressal to the consumer complainants. It provides for setting up of a Consumer Redressal Forum in every district, a commission at the state level and the National Commission at the Centre. The Forums in the District have original jurisdiction to redress complaints up to claim of Rs. 10 Lakhs. The State Commissions have original jurisdiction to settle claims up to the amount of Rs. 20 Lakhs. The National Commission can entertain any claim for damages above Rs. 20 Lakhs. The State Commissions are vested with appropriate Appellate and Revisional powers.

2. To promote voluntary consumer movements and ensure involvements of consumers. The Act provides for the establishment of Consumer Protection Councils in centre and the States. These councils have both non-official and official members. The objects of the Councils are to promote and protect the rights of the consumers.
3. It shall apply to all goods and classes of goods or all services or class of services except those, which are specially exempted by notification by the Central Government.
4. The provisions of the Act shall be in addition to and not in derogation of any other law for the time being in force.
5. Necessary penal and punitive provisions have been incorporated to ensure that the Act is effective in protecting consumers.
6. The complaint can be filed by a consumer or an organization being a society registered under the Societies Registration Act, or a company registered under the Companies Act, representing consumers or by the Central or State Government.
7. The complaint can be filed on account of any unfair trade practice resulting in loss or damage, defect in the goods, deficiency in the services, prices charged in excess of the prices fixed by or under any law or displayed on the goods/packets.

Cyber Laws

The word "Cyber" relates to machines. The Concise Oxford Dictionary defines "Cybernetics" as "the science of communications and automatic control systems in both machines and living things". Thus Cyber law is the Jaw relating to communications and automatic control systems. In this sense, cyber law covers : (i) Information Technology Law, which regulates transactions relating to computers and the Internet, (ii) Communication law, which regulates telecommunications and broadcasting, including radio, television, telephone and cable.

The Information Technology, Act, 2000

The Information Thchnology Act, 2000 (the Act) was passed by the Indian Parliament in mid May, 2000. The main object of the Act is to provide legal recognition for transactions carried out by means of electric data interchange and other means of electronic communication, commonly referred to as e-commerce, which involve the use of alternatives to paper-based methods of communication and storage of information to facilitate electronic filling of documents with the Government agencies.

Exemptions / Exclusions :

Act shall not apply to the following categories of transactions:

(a) Any Negotiable Instrument; (b) A Powerof Attorney; (c) The Trust; (d) A will including any other testamentary disposition; (e) Any contract for the sale or conveyance of immovable property and (f) Any other documents or transactions as may be decided by the Central Government.

Digital Signature :

With the passing of the Act, any subscriber (i.e. a person in whose name the Digital Signature Certificate is issued) may authenticate electronic record by affixing his Digital Signature.

Electronic record means data record or data generated image or sound stored, received or sent in an electronic form or micro film or computer generated micro-fiche.

Electronic Governance :

Where any law provides submission of information in writing or in the type written or printed forms, it will be sufficient compliance of law, if the same is sent in an electronic form. Further, if any statue provides for affixation of signature in any document, the same can be done by means of Digital Signature. Similarly, the filing of any form, application or any other documents with the Government Authorities and issue or grant of any license, permit, sanction or approval and any receipt acknowledging payment can be done by the Government offices by means of electronic form. Retention of documents, records or information as provided in any law, can be done by mai-ntaining electronic records. Any rule, regulation, order, byelaw or notification can be published in the Official Gazette or Electronic Gazette.

The Act, however, provides that no Ministry or Department of Central Government or the State Government or any Authority established under any law can insist upon acceptance of documents only in the form of electronic records.

Acknowledgement and Despatch of Electronic Records :

An electronic record can be sent by the addresser himself or by a peson acting under his authority.

An acknowledgement may be given by any communication by the addressee, automatic or otherwise. Even any conduct of the addressee, automatic or indicate to the addresser that the electronic record has been received which shall be treated as sufficient acknowledgement.

The despatch of electronic records occur when it enters a computer resource outside the control of the originator (i.e. addresser).

Time of receipt of electronic record shall be determined when electronic record enters the digital computer resource or the time when the electronic record-is retrieved by the addressee.

An electronic record is deemed to be despatched at the place where the addresser has his place of business and is deemed to be received at the place where the addressee has his place of business.

Secured Electronic Records and Digital Signature :

Under the Act, the Central Government has the power to prescribe the security procedure in relation to electronic records and digital signatures, considering the nature of the transaction, the level of sophistication of the Parties with reference to their technological capacity, the volume of transactions and the procedures, in general, used for si mi Jar types of transactions or communications.

Regulation of Certifying Authorities :

The Central Government may appoint a Controller of Certifying Authority who shall exercise supervision over the activities of Certifying Authorities.

Certifying Authority means a person who has been granted a license to issue a Digital Signature Certificate. The Controller of Certifying Authority shall have the powers to lay down rules, regulations, duties, responsibilities and functions of Certifying authority issuing Digital Signature Certificates.

The Certifying Authority empowered to issue a Digital Signature Certificate shall have to procure a license from the Controller of Certifying Authority to issue Digital Signature Certificate. Detailed rules and regulations have been prescribed in the Act, as to the application for license, suspension of license and procedure for grant or rejection of license by the Controller of Certifying Authority.

Digital Signature Certificate :

Any person may make an application to the Certifying Authority for issue of Digital Signature Certificate.

The Certifying Authority while issuing such certificate shall certify that it has complied with the provisions of the Act.

The Certifying Authority has to ensure that the subscriber (i.e. a person in whose name the Digital Signature Certificate is issued) holds the private key corresponding to the public key listed in the Digital Signature Certificate and such public and private keys constitute a functioning key pair.

The Certifying Authority has the power to suspend or revoke Digital Signature Certificate.

Duties of Subscribers :

A subscriber can publish or authorize the publication of Digital Signature Certificate. Similarly, he can accept such certificate.

It is the responsibility of a subscriber to exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certificate and to take all steps to prevent its disclosure to any unauthorized person.

Conclusion :

The Act does not cover various other Cyber Crimes. It is reported that the Government will bring in more specific legislation to combat such crimes once intemati on ally (especial ly in the U.S.) specific legislation to this effect are evolved.