

Unit-I

The Indian Contract Act 1872

The law of contract in India contained in Indian Contract Act 1872, which is based on English common Law. It extends to whole of India .It came into force on the first Sep.1872. The Act lays down general principles governing all contracts, but not the rights and duties of the parties. The rights and duties are decided by the parties themselves.

Meaning and Definition of an Agreement:

An Agreement consists of an offer by one party and its acceptance by other. In other words, an agreement comes into existence only when one party makes a proposal to the other party and that other party gives acceptance.

Agreement = Proposal + Acceptance of proposal

According to Section 2(e) of Indian Contract Act 1872 “Every promise and every set of promises, forming the consideration for each other is an agreement.”

Meaning and Definition of a Contract:

A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognize as duty.

In other words, a contract is an agreement the object of which is to create a legal obligation. The contract consists of two elements :

- 1 .An agreement
2. Legal Obligation i.e. enforceability by law

Contract = an Agreement + enforceability by law.

According to Section 2(h) of the Indian Contract Act 1872 “An agreement enforceable by law is a contract.”

Essential Elements of a valid Contract:

1. Offer and Acceptance:

There must be a “lawful offer” and a “lawful acceptance” of the offer, thus resulting in an agreement.

2. Intention to create legal relation:

There must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. Social agreements do not contemplate legal relations, and so they do not give rise to a contract

3. Lawful Considerations:

An agreement is legally enforceable only when each of the parties to it, give something and get something. This something is the price for the promise and is called “Consideration”. Only those considerations are valid which ‘Lawful’

4. Capacity of parties:

The parties to an agreement must be competent to contract, otherwise it cannot be enforced by a court. To be competent, the parties must be on majority age and of sound mind and must not be disqualified from contracting by any law to which they are subject.

5. Free Consent:

“Consent “means that the parties must have agreed upon the same thing in the same sense. Consent is not enough for making a contract. That too must be free. It is said to be free when it is not caused by 1. Coercion, or (i) undue influence, or (iii) fraud, or (IV) misrepresentation, or (v) mistake.

6. Lawful object:

For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object. The object must not be fraud or illegal or immoral or must not imply injury to the person or property of other.

7. Writing and Registration:

Generally the contracts may be oral or written. But in special cases, it lays down that the agreement must be in writing or registered to be valid.

8. Certainty:

Any agreement can be enforced if its meaning is certain or capable of being made certain agreements the meaning of which is not certain, are void.

9. Possibility of performance:

The terms of the agreement must also be capable of performance physically as well as legally.

10. Not expressly declared void:

The agreement must not have been expressly declared void under the act. There are some types of agreements which have been expressly declared to be void.

Kinds or classification of Contracts:-

1. On the basis of Enforceability
2. On the basis of Creation
3. On the basis of Execution
4. On the basis of performance in relation to parties

1. On the basis of Enforceability

- Valid Contract
- Voidable Contract
- Void Contract

Valid Contract:

A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law when all the essential elements of a valid contract (as per section 10 of the act) are present.

Voidable Contract:

“An agreement which is enforceable by law at the option of one or more of the parties, but not at the option of one or more of the other, is a voidable contract.”

Void Contract:

Void means not binding in law. It is valid at the time of making it but becomes void subsequently due to change in circumstances. Void Agreement:” An agreement not enforceable by law is said to be void” Thus a void agreement does not give rise to any legal consequences and is void ab initio.

2. On the basis of Creation

Express Contract: It is one in which parties make oral written declaration of the terms and conditions of the contract.

Implied Contract: It is one in which evidence of contract is gathered from acts and conduct of the parties and not from written or spoken words of parties.

Constructive or Quasi Contract: It is not a contract made intentionally by the parties by exchange of promises. It is a contract imposed by the law. The basis of this contract is that no one can be allowed to enrich himself at the cost of the other.

3. On the basis of Execution

Executed Contract:

When both the parties to a contract have completely performed their share of obligations and nothing remains to be done by either party under the contract.

Executory Contract:

When either parties have still to perform their share of obligation in to or there remains something to be done under the contract on both sides.

4. On the basis of performance in relation to parties

Unilateral Contract:

When one party has to perform his obligation, and the other party has performed his obligation at the time of formation of the contract or before it .This is why it is also called one-sided contract.

Bilateral Contract:

When the obligations of both the parties are outstanding at the time of formation of contract, it is similar to Executory contract.

Definition of Consideration

Consideration is one of the essential elements of a valid contract.

The term “Consideration” means something in return i.e. quid –pro-quo. Consideration must result in a benefit to the promiser, & a detriment or loss to the promisee or a detriment to both. Without consideration a contract is void or nude i.e. nudum pactum

Section 2(d) of the Indian Contract act, 1872 defines Consideration as follows: “ When, at the desire of the promiser ,the promisee or any other person has done or abstained from doing, or does or abstains from doing ,or promises to do or abstain from doing something, such act or abstinence or promise is called a consideration for the promise.”

Quasi-contracts

Quasi-contracts represent a significant concept in legal theory, focusing on situations where obligations are imposed by law rather than by mutual agreement. Rooted in the principles of equity, justice, and good conscience, quasi-contracts aim to prevent unjust enrichment by ensuring fairness in relationships where formal contractual obligations do not exist. Though not contracts in the conventional sense, these legal constructs are integral to resolving disputes where one party benefits at another’s expense without any formal agreement.

Features of Quasi-Contracts

A quasi-contract is a legal construct designed to prevent unjust enrichment, ensuring fairness when one party benefits at the expense of another without a formal agreement. Despite the absence of mutual consent, quasi-contracts impose obligations that resemble those of an actual contract. Below are the key features of quasi-contracts:

Absence of Agreement:

Quasi-contracts arise in situations where there is no prior agreement or understanding between the parties. Unlike traditional contracts, they do not depend on offer, acceptance, or consideration. The obligations are imposed by law to address specific circumstances.

Imposed by Law:

Quasi-contracts are created by the courts to ensure fairness. These obligations are not based on the parties' intention but are imposed by law to rectify instances of unjust enrichment ensuring that no individual gains at another's expense.

Remedy of Restitution:

The primary objective of a quasi-contract is to restore the aggrieved party to the position they were in before the unjust enrichment occurred. This is achieved through restitution, which requires the benefiting party to compensate the aggrieved party for the value of the benefit received.

Prevention of Unjust Enrichment:

The essence of a quasi-contract is to prevent unjust enrichment. It ensures that no party unfairly benefits from a situation while the other incurs a loss or is deprived of their rightful dues.

Involuntary Nature

Quasi-contractual obligations are involuntary, meaning they are imposed by the court regardless of the consent or intention of the benefiting party. The focus is solely on achieving equity and justice.

Non-Gratuitous Nature:

The benefits conferred under a quasi-contract must not be gratuitous. The court intervenes only when goods or services are provided with an expectation of compensation, even if not explicitly agreed upon.

Unit-2

The contract of indemnity and Guarantee

Introduction

The contract of indemnity and the contract guarantee are the special contracts under the Indian Contract Act, 1872. The contract of indemnity is the contract where one person compensates for the loss of the other. Contract of guarantee is a contract between three people where the third person intervenes to pay the debt if the debtor is at default in paying back.

The contract of guarantee and contract of indemnity perform similar commercial functions in providing compensation to the creditor for the failure of a third party to perform their obligation. Chapter VIII of the Indian Contract Act, 1872 contains the legal provisions governing a contract of indemnity and a contract of guarantee in India.

Contract of Indemnity

The term indemnity is derived from the Latin word “indemnis” which denotes uninjured or suffering no damage or loss. It is a sort of security or protection against loss.

Indemnity is to indemnify one person by bearing his losses incurred to him by the conduct of promissory or by any other party.

Section 124 of the Indian Contract Act, 1872 defines a contract of indemnity as a contract wherein one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

In an indemnity contract, there are only two parties i.e.,

The Indemnifier: The promisor, who agrees to make up the damage caused to the other group.

The Indemnified: The person who is assured of compensation for the damage incurred (if any) is referred to as the indemnity holder or the indemnified.

Essentials in the Contract of Indemnity

1. **Valid contract:** An indemnity contract must have all parts of a valid contract. The Indian Contract Act of, 1872 applies to indemnity contracts.

2. **Loss protection:** The indemnity contract is for loss protection. The indemnifier is bound to recover the losses.

3. **Parties:** The indemnity contract shall have two parties. The indemnifier and the holder.

Contracts: There is one contract only between the holder and the indemnifier.

4 .Express or implied: The indemnity contract can either be spoken or written. The parties can also imply it.

Rights of an Indemnity Holder

Section 125 of Indian contract Act, 1872 deals with rights of an indemnity holder. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor: All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.

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

Rights of the Indemnifier

After the indemnity holder is paid for the damage incurred, the compensator shall have all the rights to all the methods and services which can save the compensator from the damage.

Indemnification can only be done if the loss to the other party is incurred, or if it is certain that the loss will be incurred.

Contract of Guarantee

Guarantee means to give surety or assume responsibility. It is an agreement to answer for the debt of another in case he makes default .Section 126 of the Indian Contract Act, 1872 provides that a "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

Three parties are involved in the contract of guarantee.

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

Principal debtor: The person in respect of whose default the guarantee is given is the principal debtor.

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

A guarantee is either in the format of writing or of oral.

This contract lets the principal debtor to avail employment, loan or goods on credit and the surety would ensure repayment in case of any default in the part of the debtor.

Example

Mohan takes loan of Rs. 5 lakhs from the UCO Bank of Lucknow University Branch. Sohan promises to UCO Bank that if Mohan fails to rupee the loan timely then, Mohan will pay. This is a contract of guarantee and Mohan is Principal debtor UCO Bank is creditor and Sohan is surety.

Essentials of Contract of Guarantee

The contract can be either oral or in writing. Nevertheless, the assurance contract can only be in writing in English law. The guarantee contract presumes a principal liability or a discharge duty on the part of the principal debtor. Even if there is no such principal liability, one party agrees to pay another under such situations, and the enforcement of this obligation is not contingent on anyone else's default, it is an indemnity contract. Sufficient consideration is to support the principal debtor. It is not necessary to have clear consideration between the creditor and the assurance that it is appropriate that the creditor has done anything for the good of the principal debtor.

Assurance consent cannot be obtained by misrepresentation or cover of any material information relating to the transaction.

Liability of Surety

Section 128 of the Indian Contracts Act, 1872 states the liability of the surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract.

Surety's liability is the same as that of the principal debtor. A creditor can move directly against the surety. Without suing the principal debtor, a creditor may sue the surety directly. Surety is liable to make payment immediately after the default of any payment by the principal debtor.

Primary responsibility for making payment, however, is from the principal debtor, and the responsibility of the surety is secondary. In fact, if the principal debtor cannot be held liable for any payment due to any document error, then surety is not responsible for such payment as well.

Rights of Surety

Rights against the principal debtor

Right to give notice.

Rights of sub-rogation.

Right of indemnity.

Right to get securities.

Right to ask for relief.

Rights against the creditor

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

Rights against co-sureties

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

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

Conclusion

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

Unit-3

The Negotiable Instruments Act,1882

The three main types of negotiable instruments recognized by the Negotiable Instruments Act, 1881, are promissory notes, bills of exchange, and cheques. These instruments are all defined as documents that promise or order the payment of a sum of money and are capable of being transferred from one person to another.

The negotiable instrument definition simply refers to any signed document promising a payment sum to the assignee. It's essentially a formal IOU note, putting the promise of payment in writing. This document is transferable to another party and must be signed to be valid. It can specify a specific date that the sum of money will be available, or it can be used on-demand. In most cases, the payee must be named on the document. Once the instrument is transferred, the payee assumes full legal ownership of the funds and can either take them as cash or use them in another manner.

Negotiable Instruments are the documents meant for making payments, ownership of which are transferable from one individual to another several times before the final payment is done. In the modern business world, a large number of transactions take place involving huge sums of money. It is quite inconvenient and hassling for both the parties to make and receive payments in cash.

Hence, it has become a common practice for the businessmen to make use of certain documents to enable paying and receiving huge amounts of money and types. Few of these documents are called negotiable instruments.

According to the Section 13 of the Negotiable Instruments Act of 1881, a negotiable instrument means “a promissory note, bill of exchange or cheque, payable either to order or to the bearer”.

However, many other instruments are also recognized as negotiable instruments on the basis of custom and usage like share warrants, treasury bills, hundis, etc., given they possess the feature of negotiability.

Promissory Note:

A promissory note is a legally binding IOU: a formal, written promise in which one party agrees to repay the money they borrowed from another party.

A **promissory note** is a financial document that formally outlines a borrower's promise to repay a specified loan amount to a lender. It serves as a legal contract that details the loan's terms and conditions, including the interest rate, payment schedule, and deadline for repayment.

Promissory notes are widely used across personal, corporate, and real estate financial dealings. They ensure lenders have legal recourse in case of non-payment while offering borrowers a transparent breakdown of their repayment obligations.

Section 4 of the Act defines, “A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments.”

Promissory Note

Amount Date

Stamp

Term months after date, I promise to pay _____ or order, The sum of _____, for value received.

Singe
Name of Maker
Address of Maker

Parties of Promissory Note

All promissory notes constitute three primary parties. These include the drawee, drawer and payee.

- **Drawer:** A drawer is a person who agrees to pay the drawee a certain amount of money on the maturity of the promissory note. He/she is also known as maker.
- **Drawee:** She/He is an individual, in whose favour the note is prepared. In usual cases the drawee is also the payee until and unless the promissory note is transferred specifically in favour of the payee.
- **Payee:** A payee is someone to whom the payment is made.

Most of the times, the payee and drawee are the same people to whom the cash is paid. The party who has loaned the money keeps the promissory note, and when the due is cleared, the payee or drawee cancels the note and gives it to the drawer/payee.

Features of Promissory Note

- **Printed/Written Agreement** – A promissory should be in writing, and an oral promise to pay money is not accepted.
- **Pay Defined Amount** – It is a promise to pay the money on a particular time or when demanded. The mentioned amount can neither be added or subtracted.
- **Signed Documents** – The document is duly signed and drawn by the drawer and stamped.
- **Unconditional Promise** – The promise to pay a certain amount of money must be absolute in all cases. In such notes, a conditional guarantee is not accepted.
- **Legal Composition** – All the payment should be made in the nation's legal currency.
- **Detailed Information** – The note has all the required information including the name of the drawer and payee, date of maturity, terms of repayment, issue date, name of the drawee, name, and signature of the drawer, principal amount, and the rate of interest, etc.

Bill of exchange

Under the Negotiable Instruments 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 to a specified person or the bearer. It's a type of negotiable instrument, meaning it can be transferred from one party to another.

<div style="background-color: #e0e0e0; padding: 5px; margin-bottom: 10px;">STAMP</div> <p>Rs 20,00,000</p>	 Sample Bill of Exchange	<p>Bangalore 15 August, 2023</p>
<p>Three months after date, pay to me or my order, the sum of Rupees Twenty Lakhs only for value received.</p>		
<p><i>Accepted</i> (Sign) Drawee Name Drawee Address</p>		<p>(Sign) Drawer Name Drawer Address</p>

Key Elements of a Bill of Exchange:

Written Instrument: The bill must be in writing.

Unconditional Order: The order to pay must be unconditional.

Signed by the Maker: The drawer (maker) must sign the instrument.

Direction to Pay: The bill directs a person (the drawee) to pay a sum of money.

Specified Amount: The amount payable must be certain.

Payable to a Specific Person or Bearer: The money must be payable to a named person, to that person's order, or to the bearer of the instrument.

Cheque: Section 6 of the N.I. Act defines a Cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in electronic form.

Format of cheque

भारतीय स्टेट बैंक
State Bank Of India

New Delhi
Kapil Bazar NH, 65 Ram Ghat
Mahadev Road - 110025
IFC CODE - SBIN0011256

बैंक 3 माहों के लिए वैध / VALID FOR 3 MONTHS ONLY
0 1 0 1 2 0 2 0
D D M M Y Y Y Y


PAY **Teach Lane** को या उनके आदेश पर OR ORDER

रुपये RUPEES **Five Thousand Only**

अदा करें ₹ **5000/-**

खात नं./ A/c No. **8563261452630** VALID FOR Rs. 1000000/- & UNDER

Prefix : 1515900002

Here Signature 

Dipak Das
Please sign above

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI

⑈950020⑈ 695002032⑈ 002860⑈ 3⑈

Cheque No **MICR Code** **RBI A/C NO** **Transation Code**

Unit-4

The Consumer Protection Act,1882

The Consumer Protection Act is a law enacted to safeguard consumer interests in India. It was originally the Consumer Protection Act, 1986, but it has been replaced by the Consumer Protection Act, 2019. The Act aims to provide consumers with a simpler and quicker way to address their grievances related to defective goods, deficient services, and unfair trade practices.

Consumer Protection Act 1986



Right to Consumers

Right to Safety:

Means having the legal right to be shielded from the products and services that endanger life and property. The products and services obtained should serve their long-term interests as well as their present requirements. Customers should demand both the product quality and the warranty of the goods and services before making a purchase. They should preferably buy high-quality and purity of the products should be maintained with labels like ISI or AGMARK or Hallmark.

Right to Choose:

Consumers have the right to choose and purchase a variety of goods, services, or both at reasonable costs because of the right to their choice. They cannot be coerced into purchasing a good or a service nor they can be forced to select a particular brand. Consumers can choose any brand that best suits their interests.

Right to Information:

Under the Consumer Protection Act, 2019 (“Act”), Indian Consumers have ‘Right to Know’ or “Right to be Informed” about the Products/services they want to buy with the help of ‘accurate and transparent’ information. Which the consumer has the right to; to informed choice; to be protected against unfair trade practices; and to hold trading entities to account for their behaviors.

Right to Consumer Education:

To prevent being taken advantage of, consumers should be aware about their rights. They may pay even more as a result of their ignorance. Consumers have the right to acquire the necessary knowledge and abilities required to become a lifelong informed consumer. The main cause of their exploitation is ignorance of the laws, the remedies, prevailing rates etc. especially among rural people.

Right to be heard:

The consumer redressal system is what preserves the rights of customers to make their demands heard, share their perspectives, and demand satisfaction from injustice or dissatisfaction. The Right to be heard enables customers to voice their opinions about the products/services used, they can express their concerns, lodge complaints and request appropriate remedial action if any grievance is faced.

Right to seek compensation:

It's a crucial right which enables buyers to get their money back in case of getting bad products or bad quality services. The seller/manufacturer/service providers must indemnify the consumer for any injury, damages and financial loss caused due to their act or negligence.

An individual who buys products or services for personal use and not for manufacture or resale. A consumer is someone who can make the decision whether or not to purchase an item at the store, and someone who can be influenced by marketing and advertisements. Any time someone goes to a store and purchases a toy, shirt, beverage, or anything else, they are making that decision as a consumer.

Definitions. - (1) In this Act, unless the context otherwise requires,—

- (a) "appropriate laboratory" means a laboratory or organisation—
 - (i) recognised by the Central Government;
 - (ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or
 - (iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;
- (aa) "branch office" means—
 - (i) any establishment described as a branch by the opposite party; or
 - (ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;
- (b) "complainant" means—
 - (i) a consumer; or
 - (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or
 - (iii) the Central Government or any State Government,
 - (iv) one or more consumers, where there are numerous consumers having the same interest;
 - (v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

- (c) "complaint" means any allegation in writing made by a complainant that—
- (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader **or** service provider;
 - (ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;
 - (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
 - (iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint a price in excess of the price –
 - (a) fixed by or under any law for the time being in force
 - (b) displayed on the goods or any package containing such goods ;
 - (c) displayed on the price list exhibited by him by or under any law for the time being in force;
 - (d) agreed between the parties;
 - (v) goods which will be hazardous to life and safety when used or being offered for sale to the public,--
 - (A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
 - (B) if the trader could have known with due diligence that the goods so offered are unsafe to the public;
 - (vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;”;
- (d)"consumer" means any person who—
- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
 - (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly

paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person **but does** not include a person who avails of such services for any commercial purposes;

Explanation.— For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

- (e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.
- (f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;
- (g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;
- (h) "District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of section 9;
- (i) "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);
- (j) “manufacturer” means a person who—
 - (i) makes or manufactures any goods or part thereof; or
 - (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
 - (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;

Explanation. — Where a manufacturer dispatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so dispatched to it are assembled at such branch office and are sold or distributed from such branch office;

- (jj) "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;
- (k) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;
- (l) "notification" means a notification published in the Official Gazette;

- (m) "person" includes,—
- (i) a firm whether registered or not;
 - (ii) a Hindu undivided family;
 - (iii) a co-operative society;
 - (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;
- (n) "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;
- (nn) "regulation" means the regulations made by the National Commission under this Act;
- (nnn) "restrictive trade practice" means a trade practice which tends to bring about manipulation of price or conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—
- (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
 - (b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;
- (o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;
- (oo) "spurious goods and services" mean such goods and services which are claimed to be genuine but they are actually not so;
- (p) "State Commission" means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;
- (q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;
- (r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

- (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (ii) falsely represents that the services are of a particular standard, quality or grade;
- (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods.

Forums under Consumer Protection Act of 1986

The Consumer Protection Act of 1986 provides a framework for settling consumer disputes. It establishes a three-tier system (District, State, and National Commissions) for handling complaints, with jurisdiction determined by the value of the goods or services in question and the compensation sought. The Act also recognizes six fundamental consumer rights, including the right to safety, to be informed, to choose, to representation, to redressal, and to consumer education.

Establishment of Consumer Disputes Redressal Agencies. - There shall be established for the purposes of this Act, the following agencies, namely:—

(a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the State by notification:

Provided that the State Government may, if it deems fit, establish more than one District Forum in a district.

(b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification; and

(c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.

Composition of the District Forum. — (1) Each District Forum shall consist of,—

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognised university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disqualified for appointment as a member if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the State Government;

(1A) Every appointment under sub-section (I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

(i) the President of the State Commission — Chairman.

(ii) Secretary, Law Department of the State — Member.

(iii) Secretary incharge of the Department dealing with consumer affairs in the State — Member.

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

- (3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.

11. Jurisdiction of the District Forum.—(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed "does not exceed rupees twenty lakhs.

- (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

Jurisdiction of State Commission

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

- a) to entertain :
 - i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore but does not exceed rupees ten crore; and
 - ii) appeals against the orders of any District Forum within the State; and
- b) to call for the records and pass appropriate orders in any consumer dispute

Jurisdiction of National Commission

(a)to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees ten crore; and

(ii) appeals against the orders of any State mayor; and

(b)to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission. However, the Supreme Court of India has held that the jurisdiction of National Commission under Revision Jurisdiction is very limited and can only be exercised when State Commission exceeds its jurisdiction, fails to exercise its jurisdiction or there is material illegality in the order passed by State Commission.

Unit-5

Partnership Act

Introduction :

It is a comprehensive law that defines a partnership, its formation, its rights, and its dissolution. The Act is based on the English Partnership Act, 1890. It is applicable to the whole of India. This Act is applicable to all types of partnerships, except for those formed for charitable purposes. The Act defines partnership as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. It provides for the mutual rights and duties of partners, registration of firms, dissolution of the firm, and settlement of disputes among partners. The partnership deed is the most crucial document which is used to determine the rights and obligations of partners in the firm. The Act also lays down provisions for the rights of minor partners and their liabilities.

Important Sections :

Section 4 - Definition of "Partnership": This section defines a partnership as the relation between persons who have agreed to share profits of a business carried on by all or any of them acting for all.

Section 5 - Partnership at Will: Section 5 specifies that in the absence of a specific agreement, a partnership is considered a partnership at will, which can be dissolved by any partner giving notice to the other partners.

Section 6 - Mode of Determining Existence of Partnership: Section 6 provides criteria for determining whether a group of persons is a partnership, considering factors like sharing profits, ownership of property, and involvement in business management.

Section 8 - Rights and Duties of Partners: This section outlines the rights and duties of partners, including the right to take part in the business, the duty to act in good faith, and the duty to indemnify for losses.

Section 12 - Partners Bound by Acts on Behalf of the Firm: Section 12 states that any act done by a partner in the ordinary course of business binds the firm.

Section 16 - Continuing Authority of Partners for Purposes of Winding Up: This section addresses the authority of partners to bind the firm even after dissolution to wind up the partnership affairs.

Section 30 - Registration of Firms: Section 30 mandates the registration of firms and outlines the advantages and consequences of registration.

Section 37 - Rights of Unregistered Firm: This section discusses the rights and liabilities of unregistered firms in legal proceedings.

Section 40 - Dissolution of a Firm: Section 40 outlines the various modes of dissolution of a partnership firm, including dissolution by agreement, compulsory dissolution by the court, and dissolution due to insolvency or death of a partner.

Section 46 - Mode of Settlement of Accounts Between Partners: This section specifies the rules for settling accounts between partners upon dissolution, including the order of payment of debts and distribution of surplus.

Section 58-Agreements in Restraint of Trade: Section 58 deals with agreements among partners that restrict a partner from carrying on competing businesses after the dissolution of the firm.

Section 69 - Rights of Outgoing Partner to Carry on Competing Business: This section outlines the rights of an outgoing partner to carry on a competing business after retirement, subject to certain conditions.

Section 72 - Sale of Goodwill After Dissolution: Section 72 allows the sale of the goodwill of the firm after dissolution, with the consent of all the partners.

Section 76 - Right of Incoming Partner to Share Profits or Losses: This section discusses the rights of an incoming partner to share profits or losses from the date of joining the firm.

Section 4 of the Indian Partnership Act, of 1932, is a fundamental provision that defines the term "partnership." This section lays down the essential elements that constitute a partnership under Indian law. Here is a note on Section 4:

- **Definition of Partnership:** Section 4 of the Indian Partnership Act defines a partnership as "the relation between persons who have agreed to share profits of a business carried on by all or any of them acting for all." This definition highlights several key aspects:
 1. **Relational Aspect:** Partnership is fundamentally a relationship. It exists not only between the partners and the business but also between the partners themselves.

It emphasizes the importance of mutual consent and agreement among individuals.

2. **Sharing of Profits:** The sharing of profits is a distinguishing feature of a partnership. This sharing can be in the form of a predetermined ratio or based on an agreement among the partners.
 3. **Collective Business Activity:** Partnership involves the conduct of a business. This means that the individuals involved must engage in some form of economic activity with the common goal of generating profits.
 4. **Mutual Agency:** One of the significant implications of a partnership is that each partner can act on behalf of the partnership and bind it in transactions related to the ordinary course of business.
- **Requirement of Agreement:** The definition underscores the importance of an agreement between individuals as the foundation of a partnership. This agreement can be oral or written but must clearly specify the intention to form a partnership and share profits from the business.
 - **Legal Entity:** A partnership is not a separate legal entity distinct from its members, unlike a corporation. Instead, it is a group of individuals who come together for a common business purpose. Therefore, the partnership itself cannot sue or be sued; the partners are personally liable for the partnership's obligations.
 - **Flexibility:** Partnership is a flexible form of business organization. It allows for easy formation and dissolution, making it suitable for small and medium-sized enterprises where partners can contribute their skills, capital, and resources.
 - **Implications for Partners:** Partners in a partnership have certain rights and responsibilities, including the duty to act in good faith and in the best interests of the partnership. They are also jointly and severally liable for the debts and obligations of the partnership.
 - **Registration:** While registration is not mandatory for the existence of a partnership, it is advisable. Registered partnerships enjoy certain legal advantages, such as the ability to sue and be sued in the firm's name, and they provide clarity regarding the rights and liabilities of the partners.

Meaning of Limited Liability Partnership

Limited Liability Partnership has emerged as a preferred business structure for entrepreneurs in India, offering a unique blend of flexibility, limited liability and simplified compliance. Introduced under the Limited Liability Partnership Act, 2008, the limited liability partnership structure combines the benefits of both partnership firms and companies. A Limited Liability Partnership (LLP) is a corporate business vehicle that provides the benefits of limited liability to its partners,

similar to a company, while allowing them the flexibility of organising their internal structure as a partnership based on a mutually agreed limited liability partnership agreement. Unlike traditional partnerships where partners have unlimited liability, a limited liability partnership limits the liability of each partner to their agreed contribution, protecting personal assets from business liabilities.

Key Features of Limited Liability Partnership

Separate Legal Entity: A limited liability partnership is a separate legal entity from its partners. This means that the limited liability partnership can own assets, enter contracts, sue and be sued in its name, thereby providing greater credibility and continuity to the business.

Limited Liability: The liability of the partners in a limited liability partnership is limited to the extent of their capital contribution. This protects the personal assets of partners from the business's debts and obligations, similar to shareholders in a company.

Perpetual Succession: The existence of a limited liability partnership is not affected by changes in the partnership, such as the death or insolvency of a partner. This ensures the continuity of the business.

No Minimum Capital Requirement: Unlike private or public limited companies, there is no minimum capital requirement for forming an LLP. It can be established with any amount of capital agreed upon by the partners.

Ease of Transfer of Ownership: Ownership in a limited liability partnership can be easily transferred by introducing new partners or by transferring the rights and obligations of existing partners.

Lower Compliance Requirements: LLPs are subject to fewer regulatory compliances compared to companies, making it a cost-effective business structure, especially for small and medium-sized enterprises (SMEs).

Advantages of Limited Liability Partnership

Flexibility in Management: LLPs offer flexibility in terms of management and decision-making processes. The internal structure and governance of the limited liability partnership can be designed as per the agreement between the partners, allowing them to operate in a manner that best suits their business needs.

Limited Liability: One of the most significant advantages of a limited liability partnership is the limited liability protection it offers to its partners. Unlike traditional partnerships where partners are personally liable for the firm's obligations, limited liability partnership partners are only liable to the extent of their capital contribution.

No Audit Requirement: LLPs are not required to undergo an audit if their annual turnover is less than ₹40 lakh or their capital contribution does not exceed ₹25 lakh. This reduces the administrative burden and associated costs.

Tax Benefits: LLPs are taxed as a partnership firm, which means the income of the limited liability partnership is taxed at the corporate tax rate, but the distribution of profits to partners is exempt from further tax, unlike dividends in a company.

Separate Legal Entity: The separate legal entity status of a limited liability partnership allows it to own property, incur debt and enter into contracts independently of its partners. This enhances the credibility of the limited liability partnership and provides greater protection to the partners' personal assets.

Disadvantages of Limited Liability Partnership

Limited Access to Capital: LLPs cannot raise equity capital from the public or issue shares like a company. This makes it challenging for LLPs to attract investors and raise large amounts of capital.

Heavy Penalties for Non-Compliance: Despite having fewer compliance requirements, LLPs are subject to significant penalties if they fail to comply with statutory requirements, such as filing annual returns or financial statements.

Limited Recognition Globally: While LLPs are recognised and accepted in India, they may not be as widely recognised in other countries, which could pose challenges for businesses looking to expand internationally.

Complexity in Dissolution: Dissolving a limited liability partnership can be more complex and time-consuming compared to a traditional partnership, as it involves various legal procedures and formalities.

Inability to Go Public: LLPs do not have the option to go public or list their shares on a stock exchange. This limits their ability to raise funds from the public and achieve significant growth through public investment.