

## **BUSINESS LAW**

### **UNIT - I**

Law of Contract, classification, offer acceptance, consideration, capacity of parties, free consent, coercion, undue influence, mistake, misrepresentation, fraud legalization of contract, performance of contract, discharge of contract, remedies for the breach of contract, quasi contract, contingent and wagering contract.

### **UNIT - II**

Law of indemnity and guarantee – sale of goods, Bailment and pledge, Law of agency, partnership.

### **UNIT - III**

The factories Act 1948.

The workman compensation Act 1923.

The Industrial Disputes Act 1947.

The Industrial Employment (standing order) Act 1946.

### **UNIT - IV**

The Employees State Insurance Act 1948.

The Employee Provident Fund and Miscellaneous Provision Act 1952.

Trade Unions Act 1926.

### **UNIT - V**

The payment of wages Act 1936.

The Minimum wages Act 1948.

The Payment of Gratuity Act 1972.

The Payment of Bonus Act 1966.

### **Reference Books:**

1. "Mercantile Law" - N.D. Kapoor.
2. "Mercantile Law" - S.Venkatesan.
3. "Industrial Law" - S.K. Puri.
4. "Manual of Mercantile Law" - M.C. Shukla.

## **INTRODUCTORY**

### **What is law?**

The state regulates the conduct of its people by a set of rules, such rules of Conduct, if recognized by the state and enforced by it on people, are termed as law.

In the words of salmond, ' law is the body of principles recognized and applied by the state in the administration of justice".

**Need for the knowledge of law;** 'ignorantia juris non excusat" is a familiar maxim. This means ignorance of law is no excuse.

### **THE INDIAN CONTRACT ACT, 1872**

The law relating to contract is contained in the Indian contract Act 1872. The Act deals with

- The general principles of the law of contract (secs,1 to75),and
- Some special Contract only (secs, 124 to238).

### **DEFINITION OF CONTRACT**

Sec2(h) defines contract as 'an agreement enforceable by law'.

According to salmond a contract is "an agreement creating and defining obligation between the parties".

### **AGREEMENT AND ITS ENFORCEABILITY**

A contract essentially consists of two elements.viz.,

- Agreement
- Its enforceability
- (sec. 2(e)) an agreements defined as "every set of promises ,forming consideration for each other".

(sec 2(b)) A proposal, when accepted, becomes a promise

Agreement = Offer + Acceptance

Contract = Agreement + Enforceability at law

### **ESSENTIAL ELEMENTS OF VALID CONTRACT**

(SEC 10)"ALL agreement are contract if they are made by the free consent of parties competent to contract for a lawful consideration and for a lawful object and are not here by expressly declared to be void.

In order to become a valid contract an agreement must have the following essential element.

**MINIMUM TWO PARTIES:**

There must be two parties to make a valid contract one party making the offer and is called an offer or, the other party accepting the offer and is called an offeree or acceptor.

**OFFER AND ACCEPTANCE:**

The terms of the offer must be definite, the terms of the acceptance must be absolute and unconditional.

Agreement = offer + acceptance

**CONSENSUS AD IDEM:**

The parties to the contract must understand the subject matter in the same sense and at the same times.(example) A has two cars X and Y of the same make. A offers to sell car X to B for RS.2,00,000 and B accepts the offer having in mind that the cars Y is offered. Here there is no identity of mind and so there is no contract.

**INTENTION TO CREATE LEGAL RELATIONSHIP:**

When two parties enter into an agreement their intention must be to create legal relationship between them if there is no intention to create legal relationship, there can be no contract between the parties. Agreement may be of social, or moral nature are not enforceable by law. Therefore, they cannot forms a contract.

**CASE LAW: BALFOUR VS BALFOUR (1919)**

A husband promised to pay his wife a household allowance of 30 dollars every month. Later the parties separated and the husband failed to pay the amount .the wife sued for the allowance. It was held that such contract were outside the realm of contract altogether, because the intention of the parties was not to create legal obligations. All agreements, which do not result in legal relations are not contracts.

**LAWFUL CONSIDERATION:**

Every agreement must be supported by lawful consideration. Consideration means “something in return”. Consideration is the price paid by one for the promise other. Both the parties must get something in return .For the promise consideration need not necessary be in cash (or) kind. It may be past, present on future. But it must be real and lawful. It need not be adequate.

**COMPETENCY OF PARTIES (OR) CAPACITY TO CONTRACT:**

According to sec 11 of the contract act every person is competent to contract who is

- Major

- Sound mind
- Not disqualified by law to enter into a contract .If the party is incompetent the agreement is void. Minors, lunatics, idiots, drunkards, foreign sovereigns, alien enemies, convicts and insolvents are incompetent to contract.

#### **FREE AND GENUINE CONSENT:**

It is essential to the creation of every contract that there must be free and genuine consent of the parties to the agreements. A consent is said to be free when it is not caused by anyone (or) more of the following

- Coercion
- Fraud
- Misrepresentation
- Undue influence
- Mistake .If they consent of the parties is not free no valid contract comes into existence. If the consent of the parties is not free then the contract is voidable at the option of the party whose consent is not free.

#### **LAWFUL OBJECT:**

The object of the agreement must be lawful. It must not be

- Illegal
- Immoral
- Fraudulent
- Opposed to public policy.

If the object is unlawful then the agreement is void and cannot be enforceable by law.

**EXAMPLE: UPHILL VS WRIGHT.** A let his house to B whom A knew to be prostitute through letting out a house for rent is perfectly normal. The agreement was held unlawful as the object of this agreement was the commission of unlawful activities.

#### **CERTAINTY AND POSSIBILITY OF PERFORMANCE:**

The terms of a agreement must be capable of being performed .both physically and legally. The terms of the agreement must be definite and certain. **Example: A** agrees with B to find treasure by magic this is physically incapable of being performed and hence it is void.

#### **AGREEMENT NOT DECLARED VOID:**

The terms of the agreement should not be declared void by the law of country. Examples:

- Agreement restrained the marriage of one person void.
- An agreement by way of wager is void according to sec 30.

#### **LEGAL FORMALITIES:**

A contract may be made by words spoken (or) written as regards legally effects there is no difference between a contract in writing and the contract made by oral. It is however the interest of the parties that the contract should be writing .There are some other formality also which have to be complete .In some other cases a contract besides being a written one has to be registered.

#### **CLASSIFICATION OF CONTRACT**

Contract may be classified according to their

- **Validity**
- **Formation**
- **Performance**

#### **CLASSIFICATION ACCORDING TO VALIDITY:**

A contract is based on an agreement. An agreement becomes a contract when all the essential elements are present .In case of the contract is a valid contract .If one or more of these elements are missing .the contract is either voidable, void, illegal or unenforceable.

**VOIDABLE CONTRACT:** when the consent of a party to a contract is not free, ie., it is caused , by coercion ,undue influence. Misrepresentation or fraud, the contract is voidable. A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

**Void agreement** An agreement not enforceable by law is said to be void. A void agreement does not create any legal rights or obligation. It is void ab initio i.e, from the very beginning as for example, an agreement with a minor or an agreement without consideration.

**Illegal agreement:** An illegal agreement is one which transgresses some rule of basic public policy or which is criminal in nature or which is immoral. An illegal agreements is not only void as between the immediate parties but has this further effect that even the collateral transaction to it become tainted with illegality.

**UNENFORCEABLE CONTRACT:** An unenforceable contract is one which cannot be enforced in a court of law because of some technical defect such as absence of writing or where the remedy has been barred by lapse of time.

## **2. CLASSIFICATION ACCORDING TO FORMATION:**

Contract may be classified according to the mode of their formation as follows;

**EXPRESS CONTRACT:** If the terms of a contract are expressly agreed upon (where by words spoken or written at the time of formation of the contract, the contract is said to be an express contract.

**IMPLIED CONTRACT:** An implied is one which is inferred from the acts or contract of the parties or course of dealings between them.(EXAMPLE) (A)there is an implied contract when A i)gets into a public bus or ii) takes a cup old tea in restaurant.

**QUASI CONTRACT:** Strictly speaking a quasi contract is not a contract at all. A contract is intentionally entered into by the parties .A quasi contract, on the other hand, is created by law. It rests on the ground of equity that “a person shall not be allowed to enrich himself unjustly at the expense of another”

**EXAMPLE:** A tradesman, leaves goods at C’s house by mistake. C treats the goods as his own .C is bound to pay for the goods.

**E-COMMERCE CONTRACT:** An e commerce contract is one which is entered into between two parties via internet.

## **3. CLASSIFICATION ACCORDING TO PERFORMANCE:**

To the extent to which the contract have been performed these may be classified as-

**1. EXECUTED CONTRACT:** “executed “means that which is done .An executed contract is one in which both the parties have performed their respective obligations. EXAMPLE: A agrees to paint a picture for B for RS.100.when A paint the picture and B pays the price, i.e., when the parties perform their obligations, the contract is said to be executed.

**2. EXECUTORY CONTRACT:** ‘Executory ‘An executor contract is one in which both the parties have yet to perform their obligations. Thus in the above example, the contract is executor if A has not yet painted the picture and B has paid the price.

**UNILATERAL OR ONE-SIDED CONTRACT:** A unilateral or one sided contract is one in which only one party has to fulfil his obligation at the time of the formation of the contract, the other party having fulfilled his obligation before the contract comes into existence. Such contracts are also known as contract with executed consideration.

**EXAMPLE;** A bilateral contract is one in which the obligations on the part of both the parties to the contract are outstanding at the time of the formation of the contract. In this sense

bilateral contracts are similar to executory contracts and are also known as contract with executory consideration.

### **OFFER AND ACCEPTANCE**

A person is said to have made a proposal when he “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”(sec.2(a)).for example A says to B, “Will you purchase my car for Rs 50,000?”. A, in this case is making an offer to B as he signifies to B his willingness to sell his car to B for Rs.50,000 with a view to obtaining B’s assent to purchase the car. The person making the offer is known as the offeror, proposer or promisor and the person to whom it is made is called the offeree or proposee. When the offeree accepts the offer, he is called the acceptor.

### **TYPES OF OFFER (OR) KINDS OF OFFER:**

There are four kinds of offer;

**1. EXPRESS OFFER:** An offer which is expressed by words spoken (or) written is called express offer.

**2. IMPLIED OFFER:** An offer which is not expressed by words spoken (or) written is called implied offer.(ie.,) it can be inferred by the act of the parties ,conduct of the parties course of dealings between the parties are these circumstances of the case

**3. SPECIFIC /PARTICULAR OFFER:** An offer which is made to the particular/specific person is called specific /particular offer.

**4. GENERAL OFFER:** An offer which is made to the world at large is called a general offer.(EX)CARLIL VS CARBOLIC SMOKE BALL CO(1893) A company advertises in several newspaper that a reward of 100 pounds would be given to any person who contracted influenza after using the smoke balls of the company according to its printed directions. One Mr.carlil used the smoke ball according to the directions of the company, contracted influenza.

It was held that they offer was a general offer and can be accepted by any one and she could recover the amount as she had accepted the offer. There are some other kinds also; they are as follows.

**5. CROSS OFFER:** Two identical offers are made at the same time in ignorance of each others offer is called a cross offer.

**6. POSITIVE OFFER:** Where the terms of the offer are positive in nature, such offer is called a positive offer.

**7. CONTINUING /STANDING OFFER:** Where the terms of the offer are continuing in nature is called continuing/standing offer. (EX) Tender may be a defined offer (or) a standing offer.

**8. COUNTER OFFER:** In spite of accepting/rejecting one's offer, a person makes another offer is called a counter offer.

**LEGAL RULES AS TO OFFER:**

1. Offer must be such as in law is capable of being accepted and giving rise to legal relationship. A social invitation, even if it is accepted does not create legal relations because it is not so intended.

2. Terms of offer must be definite certain and not loose and vague. If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship. (EX) A offered to take a house on lease for three years at 285 per annum if he house was "put into through repair and drawing rooms handsomely decorated according to the present style". Held the offer was too vague to result into a contractual relationship (TAYLOR V. PORTINGTON, (1855))

3. An offer may be distinguished from: i) a declaration of intention and an announcement. A declaration by a person to do something is not an offer. Likewise an announcement of a beauty competition by a beauty parlour or a scholarship examination by some college is not an offer.

ii) An invitation to make an offer or do business. Display of goods by a shopkeeper in his window, with prices marked on them is not an offer but merely an invitation to the public to make an offer to buy the goods at the marked prices. Likewise, quotations, catalogues, advertisements in a newspaper for sale of an articles or circulars sent to potential customers do not constitute an offer.

4. Newspaper advertisements are not offers.

5. Offer must be communicated.

**Example:** S sent his servant L, to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L traced the boy in ignorance of the announcement. Subsequently when he came to know of the rewards he claimed it. Held, he was not entitled to the rewards (Lalman vs Gauri dutt, (1913) 11 all L.J. 489)



6. Offer must be made with a view to obtaining the assent: The offer to do or not to do something must be made with a view to obtaining the assent of the other party addressed.

7. Offer should not contain a term the non compliance of which may be assumed to amount to acceptance. for example ,where A writes to B,"I will sell you my house for Rs.50,000 and if you do not reply, I shall assume you have accepted the offer. There is no contract, if B does not reply

9. A statement of price is not an offer. a mere statement of price is not construed as an offer to sell

**EXAMPLE** (HARVEY .V.FACEY(1893). Three telegrams were exchanged between Harvey and Facey.

1, Will you sell us your bumper hall pen? Telegraph lowest cash price –answer paid".(Harvey to Facey)

2."lowest price for bumper hall pen is RS.900".(Facey to Harvey).

3. We agree to buy, bumper hall pen for the sum of RS.900 asked by you".(Harvey to Facey )

HELD, there was no concluded contract between Harvey and face (harvey v facey, (1893)

The first telegram asked two question (i) the willingness of facey to sell, and (ii) the lowest price. FACEY Replied only to the second question gave his lowest price , i.e., he supplied mere information and no offer had been made by him to sell. There could be a contract only if he had accepted Harvey's last telegram.

## **ACCEPTANCE**

### **LEGAL RULES AS TO ACCEPTANCE:**

1. **An acceptance, in order to be binding, must be absolute and unqualified.**(ex) A says to B,"I offer to sell my car for RS.50,000."B replies, I will purchase it for RS.45,000. This is no acceptance and amounts to a counter-offer.

2. **IT MUST BE COMMUNICATED TO THE OFFEROR:** To conclude a contract between the parties, the acceptance must be communicated.

A draft agreement relating to the supply of coal was sent to the manager of a railway company for his acceptance. The manager wrote the word "approved" and put the draft in the drawer of a table intending to send it to the company solicitor for a formal contract to be drawn up. By some oversight the document remained in the drawer. Held, there was no contract (Brogden v metropolitan rail.co.,(1877)

3. **It must be according to the mode prescribed or usual and reasonable mode.** If the acceptance is not according to the mode prescribed , or some usual and reasonable mode (where no mode is prescribed)the offeror may intimate to the offeree within a reasonable time that the acceptance is not according to the mode prescribed and may insist that the offer must be accepted in the prescribed mode only.

4. **It must be given within a reasonable time:** If any time limit is specified , the acceptance must be given within that time. If no time limit is specified, it must be given within a reasonable time.

5. **It cannot precede an offer.** If the acceptance precedes an offer, it is not a valid acceptance.

6. It must show an intention on the part of the acceptor to fulfill all the terms of the promise.

7. It must be given by the party or parties to whom the offer is made.

8 It must be given before the offer lapses or before the offer is withdrawn.

9. It cannot be implied from silence.

**When does an offer come to an end?** An offer may come to an end by revocation or lapse or rejection.sec.6 deals with modes of various revocation of offer. According to it, an offer is revoked.

**By notices of revocation** by the offeror at any time before its acceptance is complete as against him.(sec.6(1))

**By lapse of time** ; If it is not accepted within the prescribed time ,offer lapses . If however, no time is prescribed, it lapses by the expiry of a reasonable time.(sec.6(2))

**By non-fulfillment of a condition precedent to acceptance.(sec.6(3)1)**

**By death or insanity of the offeror;** where the offeror dies or becomes insane, the offer lapses

**Offer lapses; where an offer is accepted with some modification** in the terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amount to a counter-offer.. The counter-offer to a proposal amount to its rejection (HYDE V.WRENCH,)

**If an offer is not accepted according to the prescribed or usual mode,** then an offer lapses.

**If any law is changed,** an offer comes to an end.

**Rejection of offer;** An offeree may reject the offer then the offer lapses .Once he does that, he cannot subsequently accept it. Rejection of the offer may be express or implied.

## **CONSIDERATION**

### **LEGAL RULES AS TO CONSIDERATION:**

1. It must move at the desire of the promisor
2. It may move from the promisor or any other person.
3. It may be an act or abstinence or forbearance or a return promise.
4. It may be past, present or future.
5. It need not be adequate.
6. It must be real and not illusory. There is no real consideration in the following cases

**Physical impossibility:** A promises to put life into B's dead wife should B pay him RS.500.

**Legal impossibility:** A owes RS.100 to B. He promises to pay RS.510 to C, the servant of B, who in return promises to discharge A from the debt. This is legally impossible because C cannot give discharge for a debt due to B, his master (HARUEY V.GIBBONS,(1675).

**Uncertain consideration:** A engages B for doing a certain work and promises to pay a "reasonable" sum. There is no recognised method of ascertaining the "reasonable" remuneration. The promise is unenforceable as consideration is uncertain.

**Illusory consideration:** Two crews of a ship deserted it half way through a voyage. The captain thereby promised to divide the salary of the deserters among the rest of the crew if they worked the vessel home. Held, they could not recover the amount as the consideration was illusory. They were already under an obligation to bring the vessel home (Stilk v. Myrick,(1809)

7. It must be something which the promisor is already bound to do. A promise to perform a public duty by a public servant is not a consideration. (ex) Collins v Godefroy, (1831).

## **STRANGER TO CONTRACT**

It is a general rule of law that only parties to a contract may sue and be sued on that contract. This rule is known as the doctrine of privity of contract. "privity of contract" means relationship subsisting between the parties who have entered into contractual obligations.

**(example)** S bought tyres from the Dunlop rubber co. and sold them to D, a sub-dealer.who agreed with S not to sell these tyres below dunlop's, list price and to pay the Dunlop co.RS.5 as damages on every tyres D undersold. D sold two tyres at less than the list price and there upon the Dunlop co., sued him for the breach. Held, the Dunlop co, could not maintain the

suit as he was a stranger to the contract (**Dunlop pneumatic tyre co.ltd v Selfridge &co. ltd**).

**EXCEPTIONS.** The following are the exception to the rule that “a stranger to a contract cannot sue”.

**1. A trust or charge;** A person (called beneficiary) in whose favour a trust or other interest in some specific immovable property has been created, can enforce it even though he is not a party to the contract.

A husband who was separated from his wife executed a separation deed by which he promised to pay to the trustees all expenses for the maintenance of his wife. Held, the agreement created a trust in favour of the wife and could be enforced (*Gandy v Gandy*. (1884).

**2) Marriage settlement, partition or other family arrangements;** when an arrangement is made in connection with marriage, partition or other family arrangement and a provision is made for the benefit of a person, he may sue although he is not a party to the agreement.(ex)two brothers, on a partition of joint properties, agreed to invest in equal shares a certain sum of money for the maintenance of their mother. Held, she was entitled to require her sons to make the investment (*Shuppu Ammal v. Subramaniyam*, (1910)

**3) Acknowledgement or estoppel.;** where the promisor by his conduct, acknowledges or otherwise constitutes himself as an agent of a third party, a binding obligation is thereby incurred by him towards the third party. (example) A receives some money from T to be paid over to P.A admits of this receipt to P. P can recover the amount from A who shall be regarded as the agent of P.

**4) Assignment of a contract ;** The holder in due course of a negotiable instrument can realize the amount on it even though there is no contract between him and the person liable to pay.

**5) Contract entered into though an agent;** The principal can enforce the contracts entered into by his agent, provided the agent acts within the scope of his authority and in the name of the old principal

**6) Covenants running with the land.;** In cases of transfer of immovable property, the purchaser of land with notice that the owner of the land is bound by certain conditions or covenants created by an agreement affecting the land shall be bound by them although he was not party to the original agreement which contained the conditions or covenants.

## **CONTRACTS WITHOUT CONSIDERATION IS VOID –EXCEPTIONS**

The general rule is *ex nudo pacto non oritur actio*, i.e., an agreement made without consideration is void. secs,25 and 185 dealt with the exceptions to this rule. In such cases the agreements are enforceable even though they are made without consideration. These cases are;

**1. Love and affection(sec.25(1));** where an agreement is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other. It is enforceable even if there is no consideration.

**Example:** A Hindu husband after referring to quarrels and disagreement between him and his wife, executed a registered document in favour of his wife agreeing to pay her for maintenance, but no consideration moved from the wife. Held, the agreement was void for want of consideration [ *Rajlukhy v Bhoothnath*, (1900

**2. Compensation for voluntary services (sec.25(2));** A promise, to compensate, wholly or in part, a person who has already voluntarily done something for the promisor is enforceable, even though without consideration. In simple words, a promise to pay for the past voluntary services is binding.

**3. Promise to pay a time-barred debt (sec.25(3));** A promise by a debtor to pay a time-barred debt is enforceable provided it is made in writing and is signed by the debtor or by his agent generally or specially authorized in that behalf. The promise may be to pay the whole or any part of the debt. (ex) D owes C Rs.1000 but the debt is barred by the limitation Act. D signs a written promise to pay C Rs.500 on account of the debt. This is a contract.

**4. Completed gift (expl.1 to sec.25);** The rule "No consideration, no contract" does not apply to completed gifts. According to expl.1 to sec.25, nothing in sec.25 shall affect the validity, as between the donor and donee, of any gift actually made.

**5. Agency (sec.185);** No consideration is necessary to create an agency.

**6. Charitable subscription;** Where the promisee on the strength of the promise makes commitments, i.e., changes his position to his detriment.

## **CAPACITY TO CONTRACT**

According to sec.11, every person is competent to contract who (a) is of the age of majority according to the law to which he is subject, (b) is of sound mind, and (c) is not disqualified

from contracting by any law to which he is subject. Thus sec.11 declares the following persons to be incompetent to contract:

1. Minors
2. Persons of unsound mind, and
3. Persons disqualified by any law to which they are subject.

### **1. MINORS**

**Minor's agreements.** The position of a minor as regards his agreement may be summed up as under:

**1) An agreement with or by a minor is void and inoperative ab initio.(ex) Mohiri bibi, v Dharmodas ghose, (1903)** In this case, a minor mortgaged his house in favour of a money-lender to secure a loan of Rs.20,000 out of which the mortgagee(the money-lender) paid the minor a sum of Rs.8,000.Subsequently the minor sued for setting aside the mortgage stating that he was underage when he executed the mortgage. Held, the mortgage was void and, therefore, it was cancelled. Further the moneylender's request for the repayment of the amount advanced to the minor as part of the consideration for the mortgage was also not accepted.

**2) He can be a promisee or a beneficiary;** Incapacity of a minor to enter into a contract means incapacity to bind himself by a contract. Example. (a) M, aged 17, agreed to purchase a second-hand scooter for Rs.5000 from S. He paid Rs.200 as advance and agreed to pay the balance the next day and collect the scooter. When he came with the money on the next day. S told him that he had changed his mind and offered to return the advance. S cannot avoid the contract, though M may, if he likes.

**3. His agreement cannot be ratified by him on attaining the age of majority;** consideration given during minority is no consideration. If it is necessary a fresh contract may be entered into by the minor on attaining majority provided it is supported by fresh consideration.

**Example;** (a) M, a minor, borrows Rs.5000 from L and executes a promissory note in favour of L .After attaining majority, he executes another promissory note in settlement of the first note. The second promissory note is void for want of consideration ( Indran Ramaswamy v Anthiappa Chettiar, (1906)

4) If he has received any benefit under a void agreement, he cannot be asked to compensate or pay for it.

**5) He can always plead minority; example; .S** a minor, by fraudulently representing himself to be of full age, induced to lend him \$ 400. He refused to repay it and L sued him for the

money. Held, the contract was void and S was not liable to repay the amount (Leslie v Shiell, (1914)

**6) There can be no specific performance of the agreements entered into by him as they are void ab initio**

**7) He cannot enter into a contract of partnership.**

**8) He cannot be adjudged as an insolvent.**

**9) He is liable for 'necessaries' supplied or necessary services rendered to him or anyone whom he is legally bound to support.**

**10) He can be an agent.** An agent is merely a connecting link between his principal and a third party. A minor binds the principal by his acts without incurring any personal liability.

**11) His parents /guardian, are/is not liable** for the contract entered into by him, even though the contract is for the supply of necessaries to the minor.

**12) A minor is liable in tort (a civil wrong),** but where a tort arises out of a contract a minor is not liable.

**Minor's liability for necessaries:** A minor is liable to pay out of his property if 'necessaries' is supplied to him or to anyone whom he is legally bound to support (sec.68)

Necessaries include-

**(a) Necessary goods;** .Necessary goods are not restricted to articles which are required to maintain .a bare existence, such as bread and clothes ,but includes articles which are reasonably necessary to the minor having regard to his station in life. A watch and a bicycle may well be considered to be necessaries. A engagement ring may be a necessary, but not a vanity bag bought for the minor's finance. example. I a minor, bought eleven fancy waistcoats from N. He was at that time adequately provided with clothes. Held, the waistcoats were not necessaries, and I was not liable to pay for any of them ( Nash v.Inman,1908)

**(b) Services rendered.;** Certain services rendered to a minor have been held to be necessaries. These include: education, training for a trade, medical advice (Chapel v Cooper,(1844)),Legal advice and a house given to a minor on rent for the purpose of living and continuing his studies. example. A loan taken by a minor to obtain necessaries also bring him and is recoverable by the lender as if he himself had supplied the necessaries .But the minor is not personally liable. It is only his estate which in liable for such loans.

## **2. PERSONS OF UNSOUND MIND**

One of the essential conditions of competency of parties to a contract is that they should be of sound mind. 'A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interests. A person, who is usually of unsound mind but occasionally of sound mind, may make a contract

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

### **Contracts of persons of unsound mind:**

**Lunatics;** A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He can enter into contracts during the period when he is of sound mind.

**Idiots.;** An idiot is a person who has completely lost his mental powers. An agreement of an idiot, like that of a minor is void.

**Drunken or intoxicated persons.;** A drunken or intoxicated person suffers from temporary incapacity to contract, i.e., at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment. The position of a drunken or intoxicated person is similar to that of a lunatic.

Agreements entered into by persons of unsound mind are void

## **3. OTHER PERSONS**

- (i) Alien enemies
- (ii) Foreign sovereigns, their diplomatic staff and accredited representatives of foreign states.
- (iii) Insolvents.
- (iv) A convicts; when undergoing imprisonment is incapable of entering into a contract.

## **FREE CONSENT**

**Meaning of Consent.;** It means acquiescence or act of assenting to an offer."Two or more persons are said to consent when they agree upon the same thing in the same sense". (sec.13).

**Free consent.;** Consent is said to be free when it is not caused by-

(1) Coercion as defined in sec.15,or



- (2) Undue influence as defined in sec.16,or
- (3) Fraud as defined in sec.17,or
- (4) Misrepresentation as defined in sec.18,or
- (5) Mistake, subject to the provisions of Secs 20, 21 and 22. When there is no consent, there is no contract.

**COERCION** Coercion is the committing, or threatening to commit, any act forbidden by the Indian penal code, 1860, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into a agreement.(sec.15).coercion includes fear, physical compulsion and menace to goods

**UNDUE INFLUENCE** Sometimes a party is compelled to enter into an agreement against his will as a result of unfair persuasion by the other party This happens when a special kinds of relationship exists between the parties such that one party is in a position to exercise undue influence over the other.sec.16(1)defines ‘undue influence’ as follows:

A contract is said to be induced by ‘undue influence’ where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.” Undue influence is also sometimes called moral coercion.

**EFFECT OF UNDUE INFLUENCE:** When consent to an agreement is obtained by undue influence, the agreement is a contract voidable at the option of the party whose consent was so obtained.

**DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE**

<b>COERCION</b>	<b>UNDUE INFLUENCE</b>
The consent is given under the threat of an offence	The consent is given under moral influence.
Coercion is mainly of a physical character	Undue influence is of moral character
There must be intention of causing any person to enter into an agreement	Here the influencing party uses its position to obtain an unfair advantage over the other party.
It involves a criminal act	No criminal act is involved

## **MISREPRESENTATION**

Sec.18 defines 'misrepresentation'. According to it, there is representation-

- 1) When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
- 2) When there is any breach of duty by a person which brings an advantages to the person committing it by misleading another to his prejudice.
- 3) When a party causes, however innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

### **REQUIREMENTS OF MISREPRESENTATION:**

A misrepresentation is relevant if it satisfies the following requirements:

- (1) It must be a representation of a material fact. Mere expression of opinion does not amount to misrepresentation even if it turns out to be wrong.
- (2) It must be made before the conclusion of the contract with a view to inducing the other party to enter into the contract.
- (3) It must be made with the intention that it should be acted upon by the person to whom it is addressed.
- (4) It must actually have been acted upon and must have induced the contract.
- (5) It must be wrong but the person who made it honestly believed it to be true.
- (6) It must be made without any intention to deceive the other party.
- (7) It need not be made directly to the plaintiff.

### **CONSEQUENCES OF MIS-REPRESENTATION:**

The aggrieved party, in case of misrepresentation by the other party, can-

- (1) avoid or rescind the contract; or
- (2) accept the contract but insist that he shall be placed in the position in which he would have been if the representation made had been true(sec.19).

## **FRAUD**

According to sec.17,"fraud"means and includes any of the following acts committed by a party to a contract.

- (1) The suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true;
- (2) The active concealment of a fact by a person having knowledge or belief of the fact

- (3) A promise made without any intention of performing it;
- (4) Any other act fitted to deceive;
- (5) Any such act or omission as the law specially declares to be fraudulent.

### **ESSENTIAL ELEMENTS OF FRAUD**

1. There must be a representation or assertion and it must be false.
2. The representation must relate to a material fact which exists now or existed in the \ past.
3. The representation must have been made before the conclusion of the contract with the intention of inducing the other party to act upon it.
4. The representation or statement must have been made with a knowledge of its falsity or without belief in its truth or recklessly, not caring whether it is true or false
5. The other party must have been induced to act upon the representation or assertion.
6. The other party must have relied upon the representation and must have been deceived.
7. The other party, acting on the representation or assertion, must have subsequently suffered some loss. It is a common rule of law “that there is no fraud without damage”.

### **CONSEQUENCES OF FRAUD:**

The party defrauded has, however, the following remedies: 1.He can rescind the contract (sec.19,para 1)

**EXAMPLE:** A purchases certain goods from B by making a misrepresentation. A sells the goods to X before B avoids the contract. B loses the right to avoid the contract. He can insist on the performance of representation made had been true(sec.19,para 2).He can sue for damages.

### **SILENCE AS TO FACTS:**

The general rule is that a person before entering into a contract need not disclose to the other party the material facts which he knows, but he must refrain from making active concealment (like concealing a crack on the surface of a table by filling it and repolishing it) this means mere silence is not fraud.

**Statutory exceptions;** There are two statutory exceptions to the above rule;

1. Where the circumstances of the case are such that, it is the duty of the person keeping silence to speak.

**EXAMPLE;** F sells by auction to D his daughter, who has just come of age, a horse which F knows to be unsound. Here, the “relation between the parties would make it f’s duty to tell that the horse is unsound. If F does not do so, it will amount to fraud.

2. Where silence is in itself equivalent to speech EXAMPLE A says to B,” if you do not deny it, I shall assume that the horse that you are selling me is sound.” If B says nothing his silence is equivalent to speech.

**3. OTHER EXCEPTIONS.**

1. If a representation becomes false due to change of circumstances at the time when the contract is entered into, although it was true at the time when it was made, it is the duty of the person who made the representation to communicate the change of circumstances.

2. If a seller fails to inform the buyer as to latent defect (i.e., a defect known to the seller and not apparent on an ordinary inspection), his silence amounts to fraud.

3. If a trustee does not make full disclosure of facts to the beneficiary while entering into a contract with him as to the property of which he is a trustee, his silence as to any material facts amounts to fraud.

**DIFFERENCE BETWEEN FRAUD AND MISREPRESENTATION**

<b>FRAUD</b>	<b>MISREPRESENTATION</b>
In fraud, the intention is to deceive the other party	In misrepresentation there is a mis-statement essential to the contract without any intention to deceive the other party
Fraud is deliberate or willful	Misrepresentation is innocent
In fraud, the person making suggestion does not believes it to be true	The person making suggestion believes to be true
The remedy available to the aggrieved party is not limited to rescission alone. He can also claim damages.	The aggrieved party can rescind the contract or sue for restitution
The contract is voidable even though the aggrieved party had the means of discovering the truth	The contract is not voidable even though the aggrieved party had the means of discovering the truth

## **MISTAKE**

Mistake may be defined as an erroneous belief about something. It may be a mistake of law or a mistake of facts.

1. **Mistake of law of the country;** Ignorantia juris non excusat, i.e., ignorance of law is no excuse, is a well-settled rule of law. A party cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law. A mistake of law is, therefore, no excuse, and the contract cannot be avoided.

2. **Mistake of law of foreign country;** such a mistake is treated as mistake of facts and the agreement in such a case is void (sec.21).

**MISTAKE OF FACTS;** Mistake of facts may be (1) a bilateral mistake, or (2) a unilateral mistake.

1. **Bilateral mistake;** the mistake must be mutual, i.e., both the parties should misunderstand each other and should be at cross-purposes.

2. The mistake must relate to a matter of fact essential to the agreements.

The various cases which fall under bilateral mistake are as follows;

**(1) Mistake as to the subject-matter.** Where both the parties to an agreement are working under a mistake relating to the subject-matter, the agreement is void. Mistake, as to the subject-matter covers the following cases;

**(i) Mistake as to the existence of the subject –matter.** If both the parties believe the subject-matter of the contract to be in existence, which in fact at the time of the contract is non-existence, the contract is void

**(ii) Mistake as to the identity of the subject-matter.** It usually arises where one party intends to deal in one thing and the other intends to deal in another

**(iii) Mistake as to the quality of the subject matter.** If both the parties are under a mistake as to the quality of the subject matter, the agreement is void.

**(iv) Mistake as to the quantity of the subject matter.** If both the parties are working under a mistake as to the quantity of the subject-matter, the agreement is void

**(v) Mistake as to the title of the subject matter.** If the seller is selling a thing which he is not entitled to sell, the title is defective, the agreement is void.

2. **Mistake as to the possibility of performing the contract,** the agreement in such a case is void on the ground of impossibility.

Impossibility may be-

**(i) Physical impossibility.(ex)** A contract for the hire of a room for witnessing the coronation procession of Edward VII was held to be void because unknown to the parties, the procession had already been cancelled( Griffith v Brymer, (1903)

**(ii) Legal impossibility.** A contract is void if it provides that something shall be done which cannot as a matter of law be done.

## **2. UNILATERAL MISTAKE;**

According to sec.22 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. A unilateral mistake is not allowed as a defence in avoiding a contract unless the mistake is brought about by the other party's fraud or misrepresentation.(i) J was the highest bidder at an auction sale of a public plot. At the time when he made his bid, he believed that a certain field was a part of the plot offered for sale. The field was, however held under a separate lease from a third party. There was no misdescription or ambiguity in the particulars as to what was included in the plot. Held ,J was bound to the contract (Tamplin v James,(1879)15 ch.3,215).

### **EXCEPTIONS;**

A unilateral mistake is generally not allowed as a defence in avoiding a contract. But in certain cases, the consent is given by a party under an error or mistake which is so fundamental as goes to the root of the agreement. In such cases the agreement is void. Thus in the following cases, even though there is a unilateral mistake, the agreement is void.

**Mistake as to the identity of the person contracted with;** If one of the parties represents himself to be some person other than he is there is a mistake as to the identity of the person contracted with.

Where however, the seller is prepared to enter into contract with anyone who enters the shop, so that the identity of the purchaser is immaterial , a mistake as to the purchaser's identity will not make the contract void.

**EXAMPLE;** A man ,called North, entered a jeweller's shop and selected some articles of jewellery .He wrote a cheque for 3,000 saying that he was sir George Bullough and gave the latter's address. The jeweller accepted the cheque from north in good faith believing that the person was sir George Bullough. North later pledged the jewellery with a pawnbroker. The jeweller alleged that there was never any contract between him and north. Held, the jeweller had contracted to sell and deliver the jewellery to the person who came to his shop

even though he believed he was sir George Bullough (Phillips v Brooks,(1919)2 k.b.243).the mistake in this case was not about identity but only about the attributes of the buyers.

**Mistake as to the nature of contract.** If a person enters into a contract in title mistaken belief that he is signing a document of a different class and character altogether ,there is a mistake as to the nature of contract and the contract is void. He can successfully plead non est factum(it is not his deed ,i. ,e document). The very basis of the contract ,i., e consent is missing in this case thus, where in signing document the mind of the signer does not go with signature, there is mistake which would vitiate the contract.

**EXAMPLE.** M, an old man of poor sight, indorsed a bill of exchange thinking that it was a guarantee. Held, there was no contract on the ground that the mind of the signer did not accompany with the signature.

## **LEGALITY OF OBJECT**

### **When consideration or object is lawful (sec.23)**

The consideration or object of an agreement is unlawful-

**1. If it is forbidden by law:** If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void.

**EXAMPLE;** A promises to obtain for B an employment in the public services and B promises to pay Rs.1000 to A. The agreement is void, as the consideration for it is unlawful.

**2. If it is of such a nature that, if permitted, it would defeat the provisions of any law** If the object or the consideration of an agreement is such that though not directly forbidden by law, it would defeat the provisions of any law, the agreement is void.

**Example;** N agreed to enter a company's services in consideration of a weekly wages of 13 pounds and a weekly expense allowance of 6pounds. Both the parties knew that the expenses allowance was a device to evade tax. Held, the agreement was unlawful (Napier v National business agency ltd.(1951).

**3. If it is fraudulent.** An agreement which is made for a fraudulent purpose is void.

**EXAMPLE;** (a) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

**4. If it involves or implied injury to the person or property of another.** Injury means any 'wrong', 'harm', or 'damage'. Person' means one's body. Property' includes both movable and immovable property.

**EXAMPLE;** (a) B borrowed Rs100 from L and executed a bond promising to work for L without pay for a period of two years. In case of default, B was to pay interest (at a very exorbitant rate) and the principal sum at once. Held the contract was void as it involved injury to the person of B (Ram Saroop v Bansi Mandar).

An agreement between a husband and wife for future separation, is unlawful. **EXAMPLE;** A married woman was given money to enable her to obtain divorce from her husband and then to marry the lender. Held the agreement was immoral and the lender could not recover the money.

An agreement is unlawful for immorality in the following cases;

- (1) Where the consideration is an act of sexual immorality eg illicit cohabitation or prostitution. For example, where A agrees to let her daughter on hire to B for concubinage, the agreement is unlawful, being immoral.
- (2) Where the object of the agreement is the furtherance of sexual immorality, e. g, lending money to a prostitute to help her in her trade.

#### **AGREEMENTS OPPOSED TO PUBLIC POLICY**

An agreement is said to be opposed to public policy when it is harmful to the public welfare. It is not possible to give an exact definition of the term 'public policy'. In the words of Burroughs J., "public policy was a very unruly horse and when once you get astride it you never know where it will carry you". Lord Denning, however, was not a man to shy away from unruly horses. With a good man in the saddle the unruly horse can be kept in control. Some of the agreements which are, or which have been held to be, opposed to public policy and are unlawful are as follows;

1. Agreements of trading with alien enemy.
1. Agreement to commit a crime
2. Agreements which interfere with administration of justice.
3. Agreements in restraint of legal proceedings
4. Trafficking in public offices and titles.
5. Agreements tending to create interest opposed to duty.
6. Agreements in restraint of parental rights.
7. Agreements restricting personal liberty
8. Agreements in restraint of marriage. Marriage brokerage or brocage agreements.
9. Agreements interfering with marital duties



10. Agreements to defraud creditors or revenue authorities

11. Agreements in restraint of trade.

### **VOID AGREEMENTS**

An agreement, though it might possess all the essential elements of a valid contract must not have been expressly declared as void by any law in force in the country. The Contract Act specifically declares certain agreement to be void

### **WAGERING AGREEMENTS OR WAGER (SEC.30)**

A wager is an agreement between two parties, by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen. Thus if A and B enter into an agreement that A shall pay B Rs100 if it rains Monday, and B shall pay A the same amount if it does not rain, it is a wagering agreement

### **ESSENTIALS OF A WAGERING AGREEMENT;**

1. Promise to pay money or money's worth.
2. Uncertain event
3. Each party must stand to win or lose.
4. No control over the event.
5. No other interest in the event.

### **CONTINGENT CONTRACTS**

A contract may be-(i) an absolute contract, or  
(ii) a contingent contract.

An 'absolute contract' is one in which the promisor binds himself to perform in any event without any conditions. Contingent' means that which is dependent on something else.

A contingent contract is a contract to do or not to do something. If some event , collateral to such contract, does or does not happen(sec.31).where for example ,goods are sent on approval the contract is contingent contract depending on the act of the buyer to accept or reject the goods.

**Example** (a) A contract to pay Rs 10,000 if B's house is burnt. This is a contingent contract.

There are three essential characteristics of a contingent contract;

1. Its performance depends upon the happening or non-happening in future of some event.
2. The events must be uncertain.

3. The event must be collateral, i.e., incidental to the contract.

#### **RULES REGARDING CONTINGENT CONTRACTS;**

1. Contingent contracts dependent on the happening of an uncertain future event cannot be enforced until the event has happened. If the event becomes impossible, such contract becomes void (sec.32)

(a) A contracts B to pay a sum of money when B marries C. C dies without being married to B. The contract becomes void.

2. Where a contingent contract is to be performed if a particular event does not happen its performance can be enforced when the happening of that event becomes impossible (sec.33)

**EXAMPLE;** A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks. (a) A agrees to sell his car to B if C dies. The contract cannot be enforced so long as C is alive.

3. If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies (sec.34). **example** (a) A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

4. Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if the event does not happen or its happening becomes impossible before the expiry of that time.

**Example;** (a) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether or not the fact is known to the parties (sec.36). **example;** A agrees to pay B Rs1000 if two straight lines should enclose a space. The agreement is void.

#### **DIFFERENCE BETWEEN A WAGERING AGREEMENT AND A CONTINGENT CONTRACT;**

1. A wagering agreement consists of reciprocal promises whereas a contingent contract may not contain reciprocal promises.

2. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature.
3. A wagering agreement is void whereas a contingent contract is valid.
4. In a wagering agreement, the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager. In other words, a wagering agreement is a game of chance. This is not so in case of a contingent contract.
5. In a wagering agreement the future event is the sole determining factor while in a contingent contract the future event is only collateral.

### **PERFORMANCE OF CONTRACT**

Performance of a contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. sec.37 ( para 1)

### **OFFER TO PERFORM (SEC.38)**

Sometimes it so happens that the promisor offers to perform his obligation under the contract at the proper time and place but the promisee does not accept the performance. This is known as 'attempted performance' or 'tender'.

### **REQUISITES OF A VALID TENDER;**

- (i) It must be of the whole quantity contracted for or of the whole obligations.
- (ii) It must be by a person who is in a position and willing to perform the promise.
- (iii) It must be made at the proper time and place
- (iv) It must be made to the proper person. i.e.' the promisee or his duly authorized agent.
- (v) It must also be in proper form.
- (vi) It may be made to one of the several joint promises
- (vii) In case of tender of goods, it must give a reasonable opportunity to the promisor for inspection of the goods.
- (viii) In case of tender of money the debtor must make a valid tender in the legal tender money. If the creditor refuses to accept it, the debtor is not discharged from making the payment. Tender, in this case, does not discharge the debt.

### **CONTRACTS WHICH NEED NOT BE PERFORMED**

A contract need not be performed-

1. When its performance becomes impossible (sec.56)
2. When the parties to it agree to substitute a new contract for it or to rescind or alter it (sec.62)
3. When the promise dispenses with or remits, wholly or in part the performance of the promise made to him or extends the time for such performance or accepts any satisfaction for it (sec.63)
4. When the person at whose option it is voidable, rescinds it(sec.64)
5. When the promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise (sec.67).EXAMPLE; A contracts with b to repairs B's house. B neglects or refuses to point out to A the places in which his house requires repairs B is excused for the non-performance of the contract, if it is caused by such neglect or refusal.,
6. When it is illegal.

### **RECIPROCAL PROMISES**

Promises which form the consideration or part of the consideration for each other are called 'reciprocal promises' (sec.2(f)). Where, for example, A promises to do or not to do something in consideration of B's promise to do or not to do something, the promises are reciprocal. These promises have been classified by Lord Mansfield in Jones v Barkley as follows:

- 1) **Mutual and independent.** Where each party must perform his promise independently and irrespective of the fact whether the other party has performed, or is willing to perform, his promise or not, the promises are mutual and independent,
- 2) **Conditional and dependent.** Where the performance of the promise by one party depends on the prior performance of the promise by the other party, the promises are conditional and dependent.
- 3) **Mutual and concurrent.** Where the promise of both the parties are to be performed simultaneously, they are said to be mutual and concurrent. The example of such promises may be sale of goods for cash.

### **APPROPRIATION OF PAYMENTS**

When a debtor owes several distinct debts to a creditor and makes a payment insufficient to satisfy the whole indebtedness, a question arises; to which debt should the payment be appropriated? secs. 59 to 61 lay down the following three rules in this regard;

1. **Where the debtor intimates.** (sec.59) If the debtor expressly intimates at the time of actual payment that the payment should be applied towards the discharges of a particular debt, the creditor must do so, if there is no express intimation by the debtor, the law will look to the circumstances attending on the payment for appropriation.

2. **Where the debtor does not intimate and the circumstances are not indicative.**(sec.60) Where the debtor does not expressly intimate or where the circumstances attending on the payment do not indicate any intention, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor.

3. **Where the debtor does not intimate and the creditor fails to appropriate;** (sec.61) where the debtor does not expressly intimate and where the creditor fails to make any appropriation, the payment shall be applied in discharge of the debts in chronological order, i.e., in order of time. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately. **Rule in clayton's case(1816)** this rule is applicable where the parties have a current account, i.e., a running account between them. In such a case appropriation impliedly takes place in the order in which the receipts and payments take place and are carried into the account.

**To conclude;** (1) the debtor has at the time of payment the right of appropriating the payment;(2) in default of debtor the creditor has the option of election; and (3) in default of either, the law will allow appropriation of debts in order of time.

### **DISCHARGE OF CONTRACT**

Discharge of contract means termination of the contractual relationship between the parties. A contract may be discharged on the following;

1. By Performance
2. By agreement or consent
3. By impossibility of performance.
4. By lapse of time.
5. By operation of law.
6. By breach of contract.

The various modes of discharge of a contract are discussed below.

**1. Discharge by performance;** Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the

manner prescribed. But if only one party performs the promise, he alone is discharged. Such a party gets a right of action against the other party who is guilty of breach.

(1) **Actual performance;** when both the parties perform their promises the contract is discharged.

(2) **Attempted performance or tender.** Where the promisor offers to perform his obligation but the promisee refuses to accept the performance, it is called tender. Tender is equivalent to actual performance except in case of tender of money.

**DISCHARGE BY AGREEMENT OR CONSENT** The various cases of discharge of a contract by mutual agreement are dealt with in sec.62 and 63 and are discussed below;

**Novation;** Novation takes place when (i) a new contract is substituted for an existing one between the same parties, the consideration for the new contract is the discharge of the old contract. Novation should take place before expiry of the time of the performance of the original contract.

(b) **Rescission;** (sec.62) Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur- (i) By mutual consent of the parties, or (ii) Where one party fails in the performance of his obligation.

**Rescission may be total or partial.** Total rescission is the discharge of the entire contract; partial rescission is the variation of the original contract by (a) rescinding some of the terms of the contract, or (b) substituting new terms for the ones which are rescinded, or (c) adding new terms without rescinding any of the terms of the original contract.

(c) **Alteration;** (sec.62). Alteration of a contract may take place when one or more of the terms of the contract is/are altered by the mutual consent of the parties to the contract, in such a case the old contract is discharged.

(d) **Remission** (sec.63) Remission means acceptance of a lesser fulfillment of the promise made,

(e) **Waiver.** Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract.

(f) **Merger;** Merger takes place when an inferior right accruing to a party under contract merges into a superior right accruing to the same party under the same or some other contract. EXAMPLE; P holds a property under a lease. He later buys the property. His right as a lessee merges into his right as an owner.

**According to sec.56, impossibility of [performance may fall into either of the following categories;**

**1. Impossibility existing at the time of agreement.;** The first paragraph of sec.56 lays down that an agreement to do an act impossible in itself is void. This is known as pre-contractual or initial impossibility.

**2. Impossibility arising subsequent to the formation of contract;** Impossibility which arises subsequent to the formation of a contract is called post-contractual or supervening impossibility. In case of the contract becomes void. as a general rule, is no excuse for the non-performance of the contract but where this impossibility is caused by the circumstances beyond the control of the parties the parties are discharged from further performance.

#### **4. DISCHARGE BY LAPSE OF TIME**

The Limitation Act , 1963 lays down that a contract should be performed within a specified period, called of limitation. If it is not performed, and if no action is taken by the promisee within the period of limitation, he is deprived of his remedy at law.

#### **5. DISCHARGE BY OPERATION OF LAW**

A contract may be discharged independently of the wishes of the parties, by operation of law. This includes a contract may discharge-

(a) **By death.** If a contract involving personal skill or ability the contract is terminated on death of the promisor.

(b) **By merger.** Merger takes place when an inferior right accruing to a party under contract merger into a superior right accruing to the same party under the same or some other contract.

**EXAMPLE; P** holds a property under a lease. He later buys the property. His rights as a lessee merge into his right as an owner.

(c) **By insolvency;** when a person is adjudged insolvent, he is discharged.

(d) **By unauthorized alteration of the terms of a written agreement.** Where a party to a contract makes any material alteration in the contract without the consent of the other party the other party can avoid the contract.

(e) **By right and liabilities becoming vested in the same person.** Where the right and liabilities under a contract vest in the same person, the other parties are discharged.

#### **6. DISCHARGE BY BREACH OF CONTRACT**

Actual breach of contract may be-

1. Actual breach of contract, or
2. Anticipatory or constructive breach of contract.

**1. Actual breach of contract; (i) At the time when the performance is due;** Actual breach of contract occurs at the time when the performance is due, one party fails or refuses to perform his obligation under the contract.

**EXAMPLE ;** A agrees to deliver to B 5 bags of wheat on 1<sup>st</sup> January, he does not deliver the wheat on that day there is a breach of contract.

**(ii) During the performance of the contract ;** This refusal to perform may be by-(a) express repudiation and by implied repudiation.

**2. Anticipatory breach of contract.** It occurs when a party to an executory contract declares his intention of not performing the contract before the performance is due. He may do so-

**1. By expressly renouncing his obligation under the contract.**

**EXAMPLE;** A undertakes to supply certain goods to B on 1<sup>st</sup> January. Before this date, he informs B that he is not going to supply the goods. This is anticipatory breach of contract by express repudiation, by doing some act so that the performance of his promise becomes impossible.

## **REMEDIES FOR BREACH OF CONTRACT**

### **WHERE THERE IS A RIGHT, THERE IS A REMEDY**

A contract gives rise to correlative rights and obligations. A remedy is the means given by law for the enforcement of a right. When a contract is broken the injured party (ie., the party who is not in breach) has one or more of the following remedies;

1. Suit for rescission of the contract.
2. Suit for damages
3. Suit upon quantum meruit.
4. Suit for specific performance of the contract.
5. Suit for injunction.

### **1. SUIT FOR RESCISSION**

When a contract is broken by one party the other party may sue to treat the contract as rescinded and refuses further performance. The court may grant rescission-

- (a) Where the contract is voidable by the plaintiff; or
- (b) Where the contract is unlawful.

The court may however refuses to rescind the contract-



- (a) Where the plaintiff has expressly or impliedly ratified the contract; or
- (b) Where owing to the change of circumstances the parties cannot be restored to their original positions; or
- (c) Where third parties have, acquired rights in good faith and for value ; or
- (d) Where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

## **2. SUIT FOR DAMAGES**

Damages are a monetary compensation allowed to the injured party by the court for the losses or injury suffered by him by the breach of a contract. The object of awarding damages for the breach of a contract is to put the injured party in the same position, so far as money can do it, as if he had not been injured. This is called the doctrine of restitution.

**THERE ARE VARIOUS TYPES OF DAMAGES. THEY ARE AS FOLLOWS;-**

**Ordinary damages;** Damages arising naturally and usually in the course of dealings is called ordinary damages. .

**Special damages;** Under a special circumstances where a party expected to earn a special profit and due to breach if he suffered some loss, it is called special damages.

**Vindictive or exemplary damages;** Damages involves punishment. Hence it has no place in the law of contract. However, in two cases the party can claim for vindictive damage. i. e dishonour of a cheque and breach to marry as per contract

**Nominal damages;** Even though there is no damage, in the injured party claim for damages. Hence the court may award nominal damages.

**Damages for loss of reputation;** Generally only the tradesmen has the right to claim for this damage in the case of dishonour of a cheque.

**Damages for physical inconvenience and discomfort;** In the case of breach of contract, the injured party has the right to claim for this damage also.

**Mitigation of damages;** The injured party has to take all reasonable steps to mitigate the damages.

**Difficulty of assessment;** Even though it is difficult to assess the damage, the court has to estimate the loss and award damages.

**Cost of decree;** The injured party has the right to claim not only the damage and also the cost for instituting a suit

**DAMAGES agreed upon in advance in case of breach;** If any amount is specified in the contract itself by the parties, that amount shall be payable as damages, in the case of breach.

**Liquidated damages and penalty;** Liquidated damage is the fair and genuine one, and which is a pre- estimated one, that shall be payable as damages in the case of breach. Penalty is a sum which is fixed by the parties only to coerce, it is the larger amount than the damages in the case of breach.

### **3. Suit for quantum meruit**

The phrase quantum meruit literally means 'as much as earned', a right to sue on a quantum meruit arises where a contract, partly performed by one party has become discharged by the breach of the contract by the other party.

### **4. Suit for specific performance**

In certain cases of breach of a contract, damages are not an adequate remedy. The court may, in such cases, direct the party in breach to carry out his promise according to the terms of the contract. This is a direction by the court for specific performance of the contract at the suit of the party not in breach.

**6. Suit for Injunction;** The court may, by issuing an order restrain a person from doing what he promised not to do. Such an order of the court is known as an 'injunction'.

## **QUASI CONTRACT**

A quasi contract rests on the ground of equity, that a person shall not be allowed to enrich himself unjustly at the expense of another.

### **Kinds of quasi contracts;**

Secs.68 to 72 deals with five kinds of quasi contractual obligations .These are discussed below;

**1. Sec 68- Supply of necessaries.** Where a person has supplied certain necessaries to a incompetent person, he is bound to reimburse from the other.

### **Sec 69- Payment by an interested person;**

A person who is interested in the payment of money which another is bound by law to pay, and therefore who pays it, is said to be reimbursed by the other.

### **3. Obligation to pay for non-gratuitous acts.**

A person who has done anything without any intention to do so, anyone who has received any advantage from the other, is said to be reimbursed by the other.

#### **4. Finder of lost goods;**

Where a person takes any goods belonging to another, has the same responsibility as a bailee. He has a duty to take care of the goods as a man of ordinary prudence. And he has the responsibility to trace out the true owner of the goods. The following are the rights of the finder of lost goods;

[a] He has the right to sell the goods if the true owner has not been found out.

[b] He has the right to sell, if the goods are in a perishable nature.

[c] He has the right to sell, if he does not receive any lawful charges.

[d] The lawful charges shall be 2/3 rd of the value of the goods.

**5. Mistake or coercion;** If a person has delivered anything to another by mistake, or under coercion, a person who has received any benefit thereof, is bound to return it.

#### **QUANTUM MERUIT**

Quantum meruit means as much as earned' or merited. Where a person has done something under a contract, the other party repudiates the contract, or some event happens which fails for further performance, then the party who has partly performed has the right to claim for remuneration for the work he has done.

The claim for quantum meruit arises in the following cases;

1. Where an agreement is discovered to be void; Where a party has performed as per the terms of the contract, even though the agreement is discovered to be void, he has the right to claim for remuneration for the work he has done.

2. When something is done without any intention to do so gratuitously; When a lawful thing is done without any intention to do so gratuitously, to another person and such another person enjoys the benefit thereof, he is bound to make a compensation.

3. When there is an express or implied contract to render services but there is no agreement as to remuneration. In such a case reasonable sum shall be payable.

4. When the completion of the contract has been prevented by the act of the other party to the contract.

5. When a contract is divisible and the party not in default has enjoyed the benefit of the part performance, the party in default may sue on quantum meruit.

6. When an indivisible contract is completely performed but badly, the person who has performed the contract can claim the lump sum; but the other party can make a deduction for bad work.

## **CONTRACT OF INDEMNITY**

### **(Section 124)- Definition of contract of indemnity**

A contract of indemnity is a contract whereby 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.

**Example;** A contracts to indemnify B against the consequences of any proceeding which C may take against B in respect of A, the promisor himself or by the conduct of any other person.

The person who promises to make good the loss is called the indemnifier (promisor) and the person whose loss is to be made good is called the indemnified or indemnity –holder (promisee).

### **(Section 126)-Definition of contract of guarantee**

A contract of guarantee is defined by the Indian contract Act, as “a contract to perform the promise or discharge the liability of a third person in case of his default.

**Example** when A requests B to lend Rs.10,000 to C and guarantees that C will repay the amount within the agreed time and that on C failing to do so, he will himself pay to B there is a contract of guarantee.

The person who gives the guarantee is called the ‘**surety**’, the person for whom the guarantee is given is called the ‘**Principal Debtor**’, and the person to whom the guarantee is given is called ‘**creditor**’.

### **Kinds of guarantee**

**Specific guarantee-** when the guarantee extends to a single transaction or debt it is called a specific or simple guarantee.

**Example** A guarantees the repayment of a loan of RS.10,000 to B by C (a banker). The guarantee in this case is a specific guarantee.

**Continuing guarantee** (section 129)-A guarantee which extends to a series of transaction is called a “continuing guarantee”.

**Example** S in consideration that C will employ P in collecting the rents of C’s zamindari, promises C to be responsible to the amount of RS.5000 for the due collection and payment by P of these rents. This is a continuing guarantee.

**Retrospective guarantee-** A guarantee may be given for an existing debt or obligation.

**Prospective guarantee-** A Guarantee may be given for a future debt or obligation.

**Fidelity guarantee-** A guarantee may be given for the good conduct or honesty of a person employed in a particular office.

**Distinction between a contract of indemnity and a contract of guarantee**

<b>Contract of indemnity</b>	<b>contract of guarantee</b>
There are two parties to the contract, viz., the Indemnifier ( Promisor) and the indemnified	There are three parties to the contract viz., the creditor, the principal debtor and the surety
The liability of the indemnifier to the indemnified is primary and independent	The liability of the surety to the creditor is collateral or secondary, the primary liability is being that of the principal debtor
There is only one contract in the case of contract of indemnity i.e between the indemnifier and indemnified	In a contract of guarantee there are three contracts ; one is between the principal debtor and creditor ; second is between the surety and the creditor and third is between the principal debtor and surety
It is not necessary for the indemnifier to act at the request of the indemnified	It is necessary that the surety should act at the request of the principal debtor
The liability of the indemnifier arises only on the happening of a certain contingency	There is usually an existing debt or duty, the performance of which is guaranteed by the surety
An indemnifier cannot sue the third party for loss in his own name, as there is no privity of contract.	A surety, on discharging the debt due by the principal debtor steps into the shoes of the creditor and filed a suite against the principal debtor in his own right

**Rights of Surety**

A surety has rights against-

1. The creditor
2. The principal debtor, and
3. The co-sureties.

### **Rights against creditor**

- Before payment of the guaranteed debt – A surety may, after the guaranteed debt has become due and before he is called upon to pay require the creditor to sue the principal debtor.
- In case of fidelity guarantee, the surety can ask the employer to dismiss the employee in the event of his proven dishonesty.
- Right of set off- On being sued by the creditor, the surety can rely on any set off or counter claim which the debtor has against the creditor.
- On payment of the guaranteed debt, the surety is subrogated to all the rights of the creditor and gets the right to demand from the creditor all the securities whether they had been received before, at or after the creation of the guarantee.
- Right of subrogation-On payment of the guaranteed debt, the surety steps into the shoes of the creditor.

### **Right against principal debtor**

A surety has the following two rights against the principal debtor;

- Right to be relieved of liability- Before the payment has been made, the surety can compel the principal debtor to relieve him from liability by paying off the debt.
- Right to indemnity-In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety and the surety is entitled to recover from the principal debtor all payment properly made (sec.145).

**Right against co-sureties-** When the debt is guaranteed by two and more sureties, they are called co-sureties.

- co-sureties liable to contribute equally (sec 146)- where there are two or more co sureties for the same debt or duty and the principal debtor makes a default, the co-sureties, in absence of any contract to the contrary, are liable to contribute equally to the extent of the default.
- Liability of co sureties bound in different sums(sec 147)-Where the co sureties have agreed to guarantee different sums, they have to contribute equally subject to the maximum amount guaranteed by each one.

**Release of a co surety-**When there are co -sureties, a release by the creditor of one of them does not discharge the others.

## **RIGHTS AND OBLIGATIONS OF CREDITOR**

### **The rights of the creditor are as follows;**

1. The creditor is entitled to demand payment from the surety as soon as the principal debtor refuses to pay or makes default in payment. The creditor also has a right of general lien on the securities of the Surety in his possession. This right, however, arises only when the principal debtor has made default and not before that.
2. Where surety is insolvent, the creditor is entitled to proceed in the surety's insolvency and claim the pro rata dividend.

### **Obligations**

The Indian contract Act, 1872 imposes the following obligations on a creditor in a contract of guarantee:

1. Not to change any terms of the original contract-The creditor should not change any term of the original contract without seeking the consent of the surety.
2. Not to release or discharge the principal debtor-The creditor is under an obligation not to release or discharge the principal debtor.
3. Not to compound, or give time to, or agree not to sue the principal debtor.
4. Not to do any act inconsistent with the rights of the surety.

## **DISCHARGE OF SURETY**

A surety is said to be discharged when his liability comes to an end. The various modes of his discharge are given below;

### **Discharge of surety by revocation;**

- **Revocation by death:** The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transaction (sec 131).
- **Revocation by novation** (sec 62): Novation means substitution of a new contract of guarantee for an old one either between the same parties or between one of the old parties and a new party, the consideration for the new contract being the mutual discharge of the old contract. The original contract of guarantee in such a case comes to an end.

### **Discharge of surety by the conduct of the creditor**

- **Variance in terms of contract.** When the terms of the contract between the principal debtor and the creditor are varied without the surety's consent, the surety is discharged as to the transaction subsequent to the variance (sec 133).
- **Release or discharge of principal debtor.** The surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is released. The surety is also discharged by any act or omission of the creditor, the legal consequence of which is discharge of the principal debtor(sec 134).But the surety is not discharged by operation of law.
- **Compounding by creditor with principal debtor.** A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract (sec 135).
- **Creditor's act or omission impairing surety's eventual remedy.** If the creditor does any act which is inconsistent with the rights of the surety, or omits to do some act which his duty to the surety requires him to do , and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged (sec 139)
- **loss of security.** If the creditor loses or, without the consent of the surety, parties with any security given to him at the time of the contract of guarantee, the surety is discharged from liability to the extent of the value of security(sec 141).

### **Discharge of surety by invalidation of contract**

- **Guarantee obtained by misrepresentation.** Any guarantee which has been obtained by means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction, is invalid(sec 142).
- **Guarantee obtained by concealment.** Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid(sec 143).
- **Guarantee on contract that creditor shall not act on it until a co-surety joins.** Where a person gives a guarantee upon a contract that a creditor shall not act upon



it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join (sec 144).

- **Failure of consideration.** Where in a contract of guarantee there is a failure of consideration as between the creditor and the principal debtor, the surety is discharged.

## **SALE OF GOODS ACT 1930**

### **Introduction**

Originally, the law relating to sale of goods was contained in chapter 7 of the Indian contract Act, 1872. The same was repealed and re-enacted by the sale of goods Act, 3 of 1930. The Act came into force on 1<sup>st</sup> July, 1930.

### **FORMATION OF THE CONTRACT OF SALE**

#### **Definition and essentials of contract of sale (sec 4).**

Section 4 defines 'sale' as follows:

"A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for price".

#### **Conditions and Warranties**

A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty (sec 12(1)).

**Condition (sec 12 (2)):** A condition is a stipulation which is essential to the main purpose of the contract.

**Warranty (sec 12(3)):** A warranty is a stipulation which is collateral to the main purpose of the contract.

### **DISTINCTION BETWEEN A CONDITION AND A WARRANTY**

1. **Difference as to value:** A condition is a stipulation which is essential to the main purpose of the contract. A warranty is a stipulation which is collateral to the main purpose of the contract.

2. **Difference as to breach:** If there is a breach of a condition, the aggrieved party can repudiate the contract of sale; in case of a breach of a warranty, the aggrieved party can claim damages only.

3. **Difference as to treatment:** A breach of a condition may be treated as a breach of a warranty. A breach of a warranty, however, cannot be treated as a breach of a condition.

## **EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES**

In a contract of sale of goods conditions and warranties may be express or implied. Express conditions and warranties are those which are expressly provided in the contract. Implied conditions and warranties (contained in sec 14 to 17) are those which the law implies into the contract unless the parties stipulate to the contrary.

### **Implied conditions**

**Condition as to title(sec 14(a)).**In a contract of sale, there is an implied condition on the part of the seller that-

A .**In a case of a sale**, he has a right to sell the goods, and

B .**In the case of the agreement to sell**, he will have a right to sell the goods at the time when the property is to pass.

**Example-R** bought a car from D and used it for four months.D had no title to the car and consequently R had to hand it over to the true owner. Held, R could recover the price paid (ROWLAND v Dival(1923)).

**Sale by description(sec 15).**Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description

**Sale of goods by description' may include the following situations:**

**Where the buyer has not seen the goods and relies on their description given by the seller.**

**Example-** W bought a reaping machine which he had never seen and which, V the seller, described "to have been new the previous year and used to cut only 50 or 60 acres". W found the machine to be extremely old. Held, W could return the machine as it did not correspond with the description ( Varley v Whipp,(1900))

**Where the buyer has seen the goods but he relies not on what he has seen but what was stated to him and the deviation of the goods from the description is not apparent.**

**Example-**A car was advertised for sale as a "Herald convertible, 1961 model". The buyer saw the car before buying it. After buying the car , he discovered that while the rear part of the car was part of a 1961 model, the front half was part of an earlier model. Held , he could return the car(Beale v.Taylor,(1967)).

**Packing of goods may sometimes be a part of the description.**

**Example-** M sold to L 300 tins of Australian fruits packed in cases each containing 30 tins. M tendered a substantial portion in cases containing 24 tins. Held L could reject all the tins as the goods were not packed according to the description given in the contract as the method

in which the fruit was packed was an essential part of the description (Moore &co.v. Landaver&co,(1921)).

**Condition as to quality or fitness (sec 16(1)).**

Normally, in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose. The buyer must examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for the purpose for which he is buying them.

**Condition as to merchantability (sec 16 (2)).**

Where goods are bought by description from a seller who deals in goods of that description , there is an implied condition that the goods are of merchantable quality. This means goods should be such as are commercially saleable under the description by which they are known in the market at their full value.

**Condition implied by custom**

An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade(sec 16 (3)).

**Sale by sample (sec 17).**In the case of a contract for a sale by sample, there is an implied condition-

- (a) that the bulk shall correspond with the sample in quality;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (c) that the goods shall be free from any defect,

**Condition as to wholesomeness** In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

**Example-** C bought a bun containing a stone which broken one of C's teeth. Held, he could recover damages ( Chaproniere v. Mason, (1905)).

**Implied warranties**

**The implied warranties in a contract of sale are as follows;**

**Warranty of quiet possession (sec 14 (b)).**

In a contract of a sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quite possession of the goods.

**Warranty of freedom from encumbrances (sec 14(c)).**

In addition to the previous warranty, the buyer is entitled to a further warranty that the goods are not subject to any charge or right in favour of a third party.

**Warranty as to quality or fitness by usage of trade (sec 16 (4)).**

An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.

**Warranty to disclose dangerous nature of goods.**

Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

**Example-**A sold a tin of disinfectant powder to C. He knew that it was likely to be dangerous to C if it was opened without special care being taken. C opened the tin whereupon the disinfectant powder flew into her eyes, causing injury .Held ,A was liable in damages to C, as he should have warned C of the probable danger (Clarke v.Army& Navy co-operative society ltd.,(1963)).

**CAVEAT EMPTOR**

This means 'let the buyer beware'. Where a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose or if he depends upon his own skill or judgment and makes a bad selection. He cannot blame anybody excepting himself.

**Exceptions**

The doctrine of caveat emptor has certain important exceptions.

**The exceptions are however briefly referred to –**

**Fitness for buyer's purpose** Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment, the principle of caveat emptor does not apply.

**Sale under a patent or trade name.**

In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose.

### **Merchantable quality.**

Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods there is no implied condition as regards defects which such examination ought to have revealed (sec 16(2)).

### **Usage of trade.**

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade(sec 16(3)).

### **Consent by fraud.**

Here the consent of the buyer, in a contract of sale, is obtained by the seller by fraud where the seller knowingly conceals a defect which could not be discovered on a reasonable examination(i.e., where there is a latent defect in the goods), the doctrine of caveat emptor does not apply.

### **SALE BY NON-OWNERS**

The general rule of law is that “no one can give that which one has not got”. This is expressed in Latin maxim “nemo dat qui non habet”. For example, If A steals an article and sells it to B,B does not become the owner of the article. It is only the owner of the goods, or a person authorised by him, who can sell the goods. This is, however, subject to certain exceptions.

### **Exceptions**

#### **1. Sale by a person not the owner or title by estoppels (sec 27).**

Where the owner by his conduct, or by an act or omission, leads the buyer to believe that the seller has the authority to sell and induces the buyer to buy the goods, he shall be estopped from denying the fact of want of authority of the seller. The buyer in such a case gets a better title than that of the seller.

**Example** A tells B within the hearing of C that he (A) is the owner of certain goods which in fact belong to C. C does not contradict A’s statement. After sometime B buys those goods from A. The title of B will be better than that A, and C will be precluded from disputing B’s title to the goods.

## **2. Sale by a mercantile agent(proviso to sec 27)**

A mercantile agent is a one who , in the customary course of his business, has , as such agent, authority either to sell goods, or to consign goods for the purposes of sale,or to buy goods, or to raise money on the security of goods(sec 2(9)).

## **3. Sale by one of several joint owners (sec 28).**

If one of the several joint owners, who is in sole possession of the goods by permission of the other co-owners, sells the goods, a buyer in good faith of those goods gets a good title to the goods.

## **4. Sale by a person in possession under a voidable contract (sec 29).**

When the seller of goods has obtained their possession under a voidable contract, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

## **5. Sale by seller in possession after sale (sec 30(1)).**

Where a seller, having sold goods, continues to be in possession of the goods or of the document of title to the goods and sell them either himself or through a mercantile agent to a person who buys them in good faith and without notice of the previous sale, the buyer gets a good title.

## **6. Sale by buyer in possession after having bought or agreed to buy goods(sec 30(2)).**

Where a person, having bought or agreed to buy goods ,obtains, with the consent of the seller, possession of the goods or documents of title to the goods and sells them either himself or through an agent, the buyer who acts in good faith and without notice of any lien or other right of the original seller in respect of the goods, gets a god title.

## **7. Sale by an unpaid seller (sec 54(3)).**

Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods the buyer acquires a good title to the goods as against the original buyer.

## **8. Exceptions in other Acts:**

- Sale by a finder of lost goods under certain circumstances(sec 169 of the Indian Contract Act,1872).
- Sale by a pawnee or pledgee under certain circumstance (sec 176 Of the Indian contract Act , 1872).

- Sale by an Official Receiver or Official Assignee or Liquidator of a company.
- In all the above cases, if the seller, even though he is not the owner of the goods, sells the goods, the buyer gets a good title.

## **RIGHTS AND DUTIES OF THE BUYER**

### **Rights of the buyer**

#### **1. Right to have delivery as per the contract (sec 31 and 32).**

The first right of the buyer is to have delivery of the goods as per contract.

#### **2. Right to reject the goods (sec 37).**

If the seller sends to the buyer a larger or smaller quantity of goods than the ordered, the buyer may (a) reject the whole, (b) accept the whole or (c) accept the quantity he ordered and reject the rest.

#### **3. Right to repudiate (sec 38(1)).**

Unless otherwise agreed the buyer of goods has a right not to accept delivery thereof by instalments.

#### **4. Right of notice of insurance (sec 39(3)).**

Unless otherwise agreed, where goods are sent by the seller to the buyer by a sea route, the buyer has a right to be informed by the seller so that he may get the goods insured.

#### **5. Right of examine (sec 41).**

The buyer has a right to examine the goods which he has not previously examined before he accept them (sec 41(1)). The seller is bound to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract sec 41 (2).

#### **6. Right against the seller for breach of contract.**

##### **(a) Suit for damages (sec 57).**

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

##### **(b) Suit for price.**

If the buyer has paid the price and the goods are not delivered, he can recover the amount paid.

**(c) Suit for specific performance (sec.58).**

The buyer may sue the seller for specific performance of the contract to sell. If the goods are specific or ascertained, the court may, if it thinks fit, order for the specific performance of the contract.

**(d) Suit for breach of warranty (sec 59).**

Where there is a breach of warranty by the seller, he may sue the seller for damages for breach of warranty.

**(e) Repudiation of contract before due date(sec 60),**

Where the seller repudiates the contract before the date of delivery, the buyer may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach. This rule is known as the 'rule of anticipatory breach of contract'.

**(f) Suit for interest (sec61(2(b))).**

Where there is a breach of contract on the part of the seller and as a result the price has to be refunded to the buyer, the buyer has the right to claim the interest on the amount of the price refunded to him from the date on which the payment was made.

**Duties of the buyer**

**Duty to accept the goods and pay for them in exchange for possession (sec 31 and 32).**

It is the duty of the buyer to accept the goods and pay for them, in accordance with the terms of the contract of sale (sec31).

**Duty to apply for delivery (sec 35).**

Apart from any express contract, it is the duty of the buyer to apply for delivery.

**Duty to demand delivery at a reasonable hour(sec 36(4)).**

It is the duty of the buyer to demand delivery at a reasonable hour.

**Duty to accept instalment delivery and pay for it(sec 38(2)).**

When there is a contract for a sale of goods to be delivered by instalments, the delivery should be in instalments as stipulated in the contract. Such a contract may be express or may be inferred from the circumstances of the case, or from the nature of the contract.

**Duty to take risk of deterioration in the course of transit (sec 40)**

Where the seller of goods agrees to deliver them at his own risk at a place other than where they are sold, the buyer shall take any risk of deterioration in the goods necessarily incident



to the course of transit. The buyer and seller may, however, agree to the contrary in this regard.

**Duty to intimate the seller where he reject the goods (sec 43).**

Unless otherwise agreed, it is the duty of the buyer to inform the seller in case he refuses to accept the goods.

**Duty to take delivery (sec 44).**

It is the duty of the buyer to take delivery of the goods within a reasonable time after the tender of delivery.

**Duty to pay price (sec55).**

Where property in goods has passed to the buyer , it is his duty to pay the price according to the terms of the contract.

**Duty to pay damages for non-acceptance(sec 56).**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods , he will have to compensate the seller, in a suit by him, for damages for non-acceptance.

**RIGHTS OF AN UNPAID SELLER**

Who is an unpaid seller?

A seller of the goods is deemed to be an unpaid seller when;

1. A whole of the price has not been paid or tendered;
2. A bill of exchange or other negotiable instrument has been received as a conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise (sec 45(1)).

The following conditions must be fulfilled before a seller of goods can be deemed to be an unpaid seller;

1. He must be unpaid and the price must be due
2. He must have a immediate right of action for the price
3. A bill of exchange or other negotiable instrument was received but the same has been dishonoured.

**Right of the unpaid seller against the goods**

Where the property in the goods has passed to the buyer, an unpaid seller has the following rights against the goods (sec 46(1)).

### **Right of lien(sec 46(1)a and 47 to 49)**

A lien is a right to retain possession of goods until payment of the price[sec 46(1)(a)].It is available to the unpaid seller of the goods who is in possession of them where-

- a) The goods have been sold without any stipulation as to credit;
- b) The goods have been sold on credit , but the term of credit has expired;
- c) The buyer becomes insolvent (sec 47(1)).

### **Right of stoppage in transit (sec 46(1)b and 50 to 52)**

The right of stoppage in transit is a right of stopping the goods in transit after the unpaid seller has parted with the possession of the goods. He has the further right of resuming possession of the goods as long as they are in the course of transit, and retaining possession until payment or tender of the price. It is available to the unpaid seller-

- a) When the buyer become insolvent; and
- b) When the goods are in transit (sec 50)

### **Right of re-sale (sec 46(1)(c)and 54)**

The unpaid seller can re-sell the goods-

- a) Where the goods are of a perishable nature; or
- b) Where he gives notice to the buyer of his intention to re-sell the goods and the buyer does not within a reasonable time pay or tender the price.

### **Rights of an unpaid seller against the buyer personally**

These are the rights which an unpaid seller may enforce against the buyer personally. The right in personam are as follows:

#### **Suit for price (sec 55)**

- a) **Where property has passed.** Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [sec 55(1)].
- b) **Where property has not passed.** Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price.

**Suit for damages for non-acceptance (sec 56).**Where the buyer wrongfully neglects or refuses to accept and pay for the goods the seller may sue him for non-acceptance.

**Repudiation of contract before due date (sec 60).** Where the buyer repudiates the contract before the date of delivery, the seller may either-

- a) Treat the contract as subsisting and wait till the date of delivery, or
- b) He may treat the contract as rescinded and sue for damage for the breach. This rule is known as the 'rule of anticipatory breach of contract'.

**Suit for interest (sec 61 2(a)).** Where there is a specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer.

## **INDIAN PARTNERSHIP ACT 1932**

### **Definition of Partnership**

Partnership is 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 (sec 4 para 1), persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm' (sec 4 para 2).

If we analyse the definition of partnership. The following essential characteristics stand out:

1. **Association of two or more persons.** There should be at least two competent persons to form a partnership. (sec 11 of the companies Act, 1956 provides that the number of partners in a firm carrying on banking business should not exceed ten and in any other business twenty).
2. **Agreement** It arise from contract and not from status (sec 5 para 1), as agreement between the partners is the basis of this contract. The agreement may be express (i.e., oral or written) or implied. Implied agreement may be inferred from the course of dealing or the conduct of the parties. The agreement may be for a fixed period, or for the execution of a particular adventure. Partnership agreement, like any other contract, must have all the essential element of a valid contract.
3. **Business.** A partnership can be formed only for the purpose of carrying on some business, 'business' includes every trade, occupation and profession (sec 2(b)).
4. **Sharing of profits.** The object of partnership must be to make profit. Profit must be distributed among the partners in an agreed ratio. A person may share in the profit of partnership, but still he may not be a partner. The sharing of profit also involves

sharing of loss which in fact is negative profit. But as between the partner, it may be agreed that one or more of the partners shall not be liable for losses.

**5. Mutual agency.** The business of partnership may be carried on by all the partners or any of them acting for all. A partner is both an agent and the principal.

### **FORMATION OF PARTNERSHIP**

A partnership is based on an agreement. The partnership agreement may be made orally or in writing or may be implied from the course of dealing among partners. However, all the essential elements of a valid contract must be present. There must be free and genuine consent of the parties who must be competent to contract. The object of the partnership should be lawful and other legal formalities should be complied with. But the following two points should be noted in this connection:

1. **Minor partner:** A minor may be admitted to the benefit of partnership with the consent of all the other partners.
2. **Consideration:** As no consideration is required to create an agency (sec 185 of the Indian contract Act, 1872), no consideration is required to create partnership which is an extension of the law of agency.

### **REGISTRSTION OF FIRM**

The partnership Act does not provide for the compulsory registration of firm. It has left it to the option of the firms to get themselves registered. But indirectly, by creating certain disabilities from which an unregistered firm suffers, it has made the registration of firm compulsory. However, registration does not create partnership; it is only a reliable evidence of the existence of partnership. It also affords protection to outsiders dealing with the firm.

#### **Procedure for registration (sec 58 and 59)**

The registration of a firm may be effected at any time by filling an application in the form of a statement, giving the necessary information, with the registrar of firms of the area. Sec 57 empowers a state government to a appoint registrars of firms for the purposes of the partnership Act and define the areas within which they shall exercise their powers and performs of their duties.

The application for registration of a firm shall be accompanied by the prescribed fee. It shall state;

- The name of the firm

- The place or principal place of business of the firm;
- The name of other place where the firm carries on business;
- The date when each partner joined the firm;
- The names in full and permanent addresses of the partner;
- The duration of the firm.
- The statement shall be signed by all the partners or by their agents specially authorised in this behalf (sec 58 (1)).It shall also be verified by them in the prescribed manner (sec 58 (2)).

When the registrar is satisfied that the above provisions have been duly complied with, he shall record an entry of the statement in the register of firms. He shall then issue his hand a certificate of registration. Registration is effective from the date when the registrar files the statement and makes entries in the register of firms and not from the date of presentation of the statement to him.

## **RIGHTS OF THE PARTNER**

### **1. Right to take part in business.**

The partnership agreement usually provides the mode of the conduct of the business. Subject to any such agreement between the partners, every partner has a right to take part in the conduct of the business (sec 12(a)).

### **2. Right to be consulted**

Every partner has an inherent right to be consulted in all matters affecting the business of the partnership and express his views before any decision is taken by the partners.

### **3. Right of access to accounts**

Subject to contract between the partners, every partner has a right to have access to and inspect and copy any of the book of the firm (sec 12 (d)).A minor partner may have access to and inspect any of the accounts of the firm (sec 30(2)) but not 'books'.

### **4. Right to share in profits**

In the absence of any agreement , the partners are entitled to share equally in the profits earned and are liable to contribute equally to the losses sustained by the firm (sec 13 (b)).

### **5. Right to interest on capital**

The partnership agreement may contain a clause as to the right of the partners to claim interest on capital at a certain rate. such interest, subject to contract between the partners, is payable only out of profits, if any, earned by the firm (sec 13 (c)).

### **6. Right to interest on advances**

Where a partner makes, for the purpose of the business of the firm, any advance beyond the amount of capital, he is entitled to interest on such advance at the rate of six per cent per annum (sec 13 (d)).such interest is not only payable out of the profits of the business but also out of the assets of the firm.

**7. Right to be indemnified** A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence. such acts of the partner bind the firm (sec 21).If as a consequence of any such act, the partner incurs any liability or makes any payment, he has a right to be indemnified (sec 13 (e)).

### **8. Right to the use of partnership property**

Subject to contract between the partners, the property of the firm must be held and used by the partners exclusively for the purpose of the business of the firm. No partner has a right to treat it as his individual property (sec 15).

### **9. Right of partner as agent of the firm**

Every partner for the purpose of the business of the firm is the agent of the firm(sec 18).

### **10. No new partner to be introduced**

Every partner has a right to prevent the introduction of a new partner unless he consents to that or, unless there is an express term in the contract permitting such introduction (sec 31 (1)).This is because partnership is founded on mutual trust and confidence.

### **11. No liability before joining**

A person who is introduced as a partner into a firm is not liable for any act of the firm done, before he become a partner (sec 31 (2)).

### **12. Right to retire**

A partner has a right to retire (a) with the consent of all the other partners, or (b) in accordance with an express agreement between the partners, or c) where the partnership is at will, by giving notice to' all the other partners of his intention to retire (sec 32 (1)).

### **13. Right not to be expelled**

A partner has a right not to be expelled from the firm by any majority of the partners, save in the exercise in good faith of powers conferred by the contract between the partners (sec 33(1)).

**14. Right of outgoing partner to share in the subsequent profit** Where a partner has died, or has ceased to be a partner by retirement, expulsion, insolvency, or any other case, the legal representative of the deceased partner or the outgoing partner, in the absence of a contract to the contrary, is entitled, at his option, to-

(a) Such share of the profit as is proportionate to his share in the property of the firm,

Or

(b) Interest at the rate of 6 per cent per amount on the amount of his share in the property of the firm (sec 37)

### **Duties of a partner**

According to sec 9, which deals with the general duties, of partners, partners are bound-

(a) To carry on the business of the firm to the greatest common advantage,

(b) To be just and faithful to each other, and

(c) To render true accounts and full information of all things affecting the firm to any partner or his legal representative.

The other duties are spread over the partnership Act. These duties are summed up as under:

**1. To carry on business to the greatest common advantage:** Every partner is bound to carry on the business of the firm to the greatest common advantage.

**2. To observe faith:** Partnership is a fiduciary relation. Every partner must be just and faithful and observe utmost good faith towards every other partner of the firm.

**3. To indemnify for fraud:** Every partner is bound to indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm. This is an absolute duty of a partner and no partner can contract himself out of it (sec 10). The innocent partners of the firm are, however, liable to third parties for the fraud of any of the partners, but they can proceed to claim damages against the partner who has committed the fraud.

**4. To attend diligently:** Subject to contract between the partners, it is the duty of every partner to attend diligently to his duties in the conduct of the business of the firm (sec 12(b)), and to use his knowledge and skill to the common advantage of all the partners.

5. **Not to claim remuneration:** A partner is not entitled to receive any remuneration in any form for taking part in the conduct of the business of the firm. It is, however, usual to allow some remuneration of the working partners provided there is a specific agreement to the effect (sec 13 (a)).
6. **To share losses:** It is a duty of every partner to contribute to the losses of the firm. In the absence of an agreement to the contrary, the partners are bound to contribute equally to the losses sustained by the firm (sec 13 (b)). An agreement to share profit implies an agreement to share losses also.
7. **To indemnify for willful neglect:** Every partner is, subject to contract between the partners, bound to indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm (sec 13 (b)). The firm is, liable to the third persons for the willful neglect or fraud of any of the partners.
8. **To hold and use property of the firm exclusively for the firm:** It is duty of every partner of the firm to hold and use the property of the firm exclusively for the purpose of the business of the firm.
9. **To account for personal profits :** If a partner derives any benefit, without the consent of the other partners, from partnership transaction, he must account for it and pay it to the firm.
10. **To account for profit in competing business:** A partner must not carry on any business of the same nature as competing with that of the firm. if he does that , he is bound to account for any pay to the firm all profit made by him in that business. This is, however, subject to contract between the partners (sec 16(b)).
11. **To act within authority:** Every partner is bound to act within the scope of his actual or implied authority (sec 19 (1)). Where he exceeds the authority conferred on him and the firm suffers a loss, he shall to compensate the firm for any such loss.
12. **To be liable jointly and severally:** Every partner is liable, jointly with all the other partners and also severally, for all the acts of the firm done while he ia s partner 9sec 25).
13. **Not to assign his rights:** A partner cannot assign his rights and interest in the firm to an outsider so as to make him the partner of the firm. He can, however, assign his share of the profit and share in the assets of the firm (sec 29).



### **Agreement between partners in restraint of trade**

According to sec 27 of the Indian Contract Act, every agreement by which anyone is restrained from exercising; a lawful profession, trade or business of any kind as to that extent, void.

### **Exception to the general rule that an agreement in restraint of trade is void under the partnership Act:**

1. A partner shall not carry on any business other than that of the firm while he is a partner (sec 11(2)).
2. An outgoing partner may agree with his partners not to carry on a business similar to that of the firm within a specified period or within specified local limits (sec 36 (2)).
3. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits (sec 54)
4. Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business. But, subject to agreement between him and the buyer, he may not (a) use the firm name,(b) represent himself as carrying on the business of the firm, or (c) solicit custom of persons who were dealing with the firm before its dissolution (sec 55 (2)).
5. Any partner may, upon the sale of goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits (sec 55 (3)).

### **TYPES OF PARTNERS**

**Actual or ostensible partner:** A person who become a partner by an agreement and is actively engaged in the business of the partnership is known as an actual partner. He is the agent of the other partners in the ordinary course of the business of the firm.

**Sleeping or dormant partner:** A sleeping partner is one who does not take an action part in the conduct of the business of the firm .He , like other partners, invests capital and shares in

the profits of the business. He is equally liable along with other partners for all the debts of the firm, even though his existence is kept a secret from the outsiders dealing with the firm.

**Nominal partner:** A partner who lends his name to the firm, without having any real interest in it, is called a normal partner. He does not invest in the business of the firm, nor does he share in the profits or take part in the management of the business of the firm. But he, along with other partners, liable to the outsiders for all the debts of the firm.

**Partner in profits only:** Sometimes partners may agree that a partner shall get a share of the profits only and that he shall not be liable to contribute towards the losses. Such a partner is known as a partner in profits only.

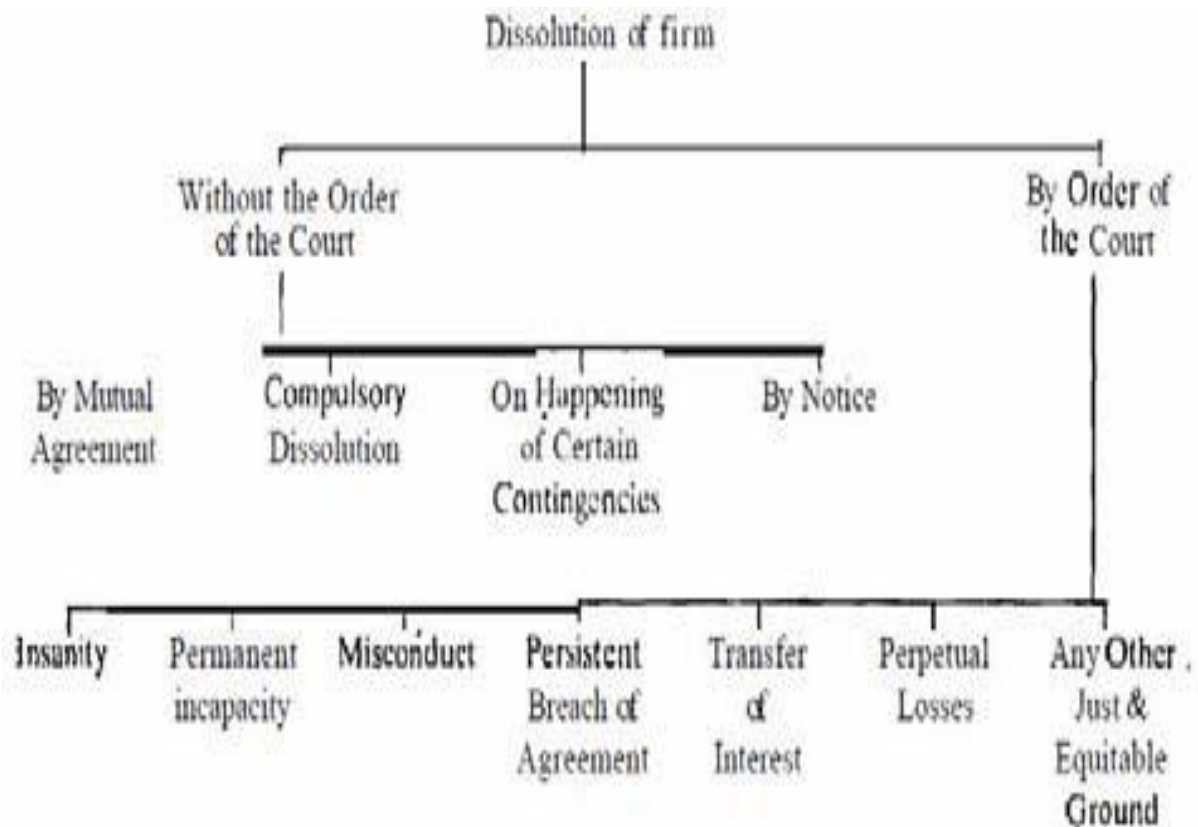
**Sub partner:** When a partner is agree to share profit derived from the firm with a third person, that third person is known as a sub-partner. A sub-partner is in no way connected with in firm and cannot represent himself as a partner of the firm. He has no right against the firm nor is he liable for the acts of the firm.

**Partner by estoppel or holding out:** Sometimes a person who is not a partner in a firm may, under certain circumstances, be liable for its debts as if were a partner, such a partner is called a partner by estoppel or holding out.

**Minor partner:** According to sec 11 of the Indian Contract Act, an agreement by or with a minor is void. As such, he is incapable of entering into a contract of partnership. But with the consent of all the partners for the time being, a minor may be admitted to the benefits of partnership (sec 30 (1)).

## DISSOLUTION OF PARTNERSHIP FIRMS

The dissolution of firm may take place either without the order of the court or through an order of the court. The circumstances under which such dissolutions take place are shown in Figure



### Dissolution without the Order of Court

Dissolution of firm without the order of the court may take place in the following methods:

- **Dissolution through mutual agreement:** It can also be dissolved through mutual agreement in the middle of the existing partners.
- **Compulsory dissolution:** A firm is automatically dissolved.
- If all the partners, or all but one partner, of the firm are declared insolvent, or
- If some event takes place which creates it unlawful for the business of the firm
- Dissolution on the happening of sure contingencies: a firm will be dissolved on the happening of the following contingencies :

- Where the firm is constituted for a fixed term, it is dissolved after the expiry of the fixed term,
- Where the firm is constituted for completion of one or more adventures or undertakings, the firm is dissolved when those adventures or undertakings have been completed.
- On the death of a partner, and
- On the adjudication of a partner as insolvent.
- **Dissolution through notice** : When a partnership is at will, the firm may be dissolved through any partner through giving notice in writing to all the other partners of his intention to dissolve the firm.

### **Dissolution through an Order of Court**

Section 44 of the Partnership Act deals with those situations where the court may, on receipt of a petition through a partner, order for the dissolution of the firm, provided it is satisfied that in the interest of justice, it is necessary to order for the dissolution of the firm. The grounds on which a petition can be presented before the court for obtaining a dissolution order are:

- **Insanity**: When a partner becomes insane, he is incapable of forming a rational judgment. Hence, it is treated as a valid ground for the dissolution of the firm.
- **Permanent incapacity**: When a partner has become permanently incapable of performing his duties as a partner, any other partner can file a petition for the dissolution of firm.
- **Misconduct**: When a partner, other than the partner suing, is guilty of misconduct which is likely to adversely affect the carrying on of the business, the court may dissolve the firm.
- **Persistent breach of agreement**: When a partner, other than the partner suing, willfully or persistently commits breach of agreement relating to the management of the affairs of the firm or fraudulent breach of trust may be enough ground for the court to order dissolution of the firm.
- **Transfer of interest** : The court, at the instance of any other partner, may dissolve the firm when a partner transferred the whole of his interest in a firm to a third party

- **Any other presently and equitable ground:** If on any other ground, it can be proved to the satisfaction of the court that it is presently and equitable to dissolve the firm.

## **BAILMENT AND PLEDGE**

### **Meaning of bailment:**

Section 148 of the Indian Contract Act reads: A bailment is the delivery of goods through one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned, or otherwise disposed of just as to the directions of the person delivering them. The person delivering the goods is described the "bailor". The person to whom they are delivered is described the "bailee".

For instance, you deliver some gold to a jeweler B to create bangles for your sister. In this case you are bailor and B is bailee and through delivering gold to B, a connection of bailment is created flanked by you and the jeweler.

### **Types of Bailment**

Bailment may be classified on two bases, i.e., reward and benefit.

#### **On the Foundation of Reward**

Bailment can be classified as gratuitous and non-gratuitous .When there is no consideration involved in the contract of bailment it is described a gratuitous bailment. A contract of bailment which involves consideration passing by bailor and bailee is described a non-gratuitous bailment.

#### **On the Foundation of Benefit**

On the foundation of the benefits accruing to the parties, the contract of bailment may be divided into the following kinds:

- Bailment for the exclusive benefit of the bailor
- Bailment for the exclusive benefit of the bailee
- Bailment for the mutual benefit of bailor and bailee

#### **DUTIES OF BAILOR** A bailor has the following duties

- **Duty to disclose defects:** The law of bailment imposes a duty on bailor to disclose the defects in the goods bailed. Bailment of goods may be either gratuitous or non-gratuitous or non-gratuitous. In case of gratuitous bailment, the law imposes a duty on the bailor to reveal all the defects recognized to him, which would interfere with the use of goods bailed. For instance, A the owner of a scooter allows B, his friend, to

take his scooter for a joy ride. A knows that the brakes of the scooter were not working well. A does not disclose this information to B. Consequently, B meets with an accident. A is liable to compensate B for damages. In case of Non-gratuitous bailment the bailor is responsible for all defects in the goods whether he knows the defects or not is immaterial.

- **Duty to bear expenses:** The bailor should bear the usual expenses in keeping the goods. The bailor should repay to the bailee all the necessary expenses which the bailee has already incurred for the purpose of bailment.
- **Duty to indemnify the bailee:** It is the duty of the bailor to indemnify the bailee, for any loss which the bailee may suffer because of the bailor's title being defective.
- **Duty to bear risks:** It is the duty of bailor to bear the risk of loss of the things bailed, provided the bailee has taken reasonable care to protect the goods from loss.
- **Duty to receive back the goods:** It is the duty that when the bailee returns the goods, the bailor should receive them.

#### **DUTIES OF BAILEE:**

- **Duty to take Reasonable Care of the Goods Bailed:** The bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence.
- **Not to Create Any Unauthorized Use of Goods:** The bailee is under a duty to use the bailed goods in accordance with the conditions of bailment. If bailee does any act with regard to the goods bailed, which is not in accordance with the conditions of bailment, the contract is voidable at the option of the bailor.
- **Duty not to Mix Bailor's Goods with his Own Goods:** If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture therefore produced (Section 155.).

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his goods, and the goods can be separated or divided, but the bailee is bound to bear the expense of separation or division, and any damages arising from the mixture (Section 156).

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated through the bailee for the loss of the goods (Section 157).

- **Duty not to Set up Adverse Title:** The bailee is duty bound not to do any act which is inconsistent with the title of the bailor. He should not set up his own title or the title of a third party on the goods bailed to him.
- **Duty to Return the Goods:** It is the duty of the bailee to return or to deliver the goods just as to the directions of bailor, without demand, on the expiry of the time fixed or when the purpose is accomplished.
- **Duty to Return Accretions to the Goods:** In the absence of any contract to the contrary, the bailee need to deliver the bailor, any profit which have accrued from the goods bailed. For instance, A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

## **RIGHTS OF BAILOR**

A bailor has the following rights :

- **Enforcement of bailee's duties:** The bailor can enforce by suit all the duties of the bailee as his rights .
- **Right to avoid the contract:** If the bailee does any act, which is inconsistent with the conditions of bailment, the bailor has a right to avoid the contract.
- **Right to claim compensation:** If any damage is 'caused to the goods bailed because of the unauthorized use of the goods, the bailor has a right to claim compensation from the bailee.
- **Right to demand return of goods:** It is a right of the bailor to compel the bailee, to return the goods bailed, when the time of bailment has expired or when that purpose for which the goods were bailed has been accomplished.

## **TERMINATION OF BAILMENT**

A contract of bailment comes to an end under the following cases:

- **On the expiry of fixed era:** If the goods are bailed for a fixed time, the bailment is terminated at the end of that era.
- **On the fulfillment of the substance:** If the goods are bailed for some specific purpose or purposes, the bailment is terminated on fulfilling the substance.
- **Inconsistent use of goods bailed:** If the bailee uses the goods in contravention of the conditions of bailment, the bailor may terminate the bailment even before the term of bailment.
- **Destruction of the subject matter:** A bailment is terminated if the subject matter of the bailment is destroyed or because of some change in the nature of goods bailed if the goods become incapable of being used for bailment.
- **Termination of gratuitous bailment:** A gratuitous bailment can be terminated through the bailor at any time even though the bailment was for a fixed era or purpose.
- **Death:** A gratuitous bailment is terminated through the death of either the bailor or the bailee.

## **PAWN OR PLEDGE**

**Meaning of pawn or pledge :** Pawn or Pledge is a special type of bailment where a movable thing is bailed as security for the repayment of a debt or for the performance of a promise. The person taking the loan is described the pledger or pawnor and the person with whom goods are pledged is described the pawnee.

### **Difference between pawn and bailment:**

- Pawn differs from bailment in the sense that pawn is bailment of goods for a specific purpose i.e., repayment of a debt or performance of a duty. Whereas, the bailment is for a purpose of any type.
- The pawnee cannot use the goods pawned, but in bailment the bailee use the goods bailed if the conditions of bailment so give.

Pawnee has a right to sell the goods, pledged with him after giving notice to pawnor, in case of default through the pawnor to repay the debt, whereas bailee may either retain the goods or sue bailor for his dues.



## **RIGHTS OF PAWNEE:**

### **Right of Retainer:**

The pawnee has right to retain the pledged goods till his payments are made (Sections 173 and 174). He can retain the goods for the following payments:

- For the payment of the debt or performance of the promise, Interest on the debt, and
- For all necessary expenses incurred through him in respect of the possession or for the preservation of the pledged goods.

### **Right to Extraordinary Expenses (Sec. 175)**

The pawnee is entitled to receive from the pawnor extraordinary expenses incurred through him for the preservation of the goods pledged.

### **Right to against the True Owner of Goods (Sec. 178 A)**

When the pawnor has acquired, possession of pledged goods, under avoidable contract, but the contract has not been rescinded, at the time of pledge, the pawnee acquires a good title to the goods, even against the true.

### **Right to Sale (Sec. 176)**

The pawnee may bring a suit against the pawnor for the recovery of the due amount and in addition to it he may retain the goods as a collateral security. He may sell the goods pledged but only after giving reasonable notice of the sale, to the pawnor. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance, If the proceeds of the sale are greater than the amount so due, the pawnee shall pay in excess of the surplus, to the pawnor.

## **RIGHTS OF PAWNOR:**

- Right to get back goods
- Right to redeem debt
- Preservation and maintenance of the goods.

## **DUTIES OF PAWNEE:**

A pawnee has the following duties:

- Duty to take reasonable care of the pledged goods.

- Duty not to create unauthorized use of goods pledged.
- Duty to return the goods when the debt has been repaid or the promise has been performed.
- Duty not to mix his own goods with the goods pledged.
- Duty not to do any act which is inconsistent with the conditions of pledge.
- Duty to deliver augment (if any), to the goods pledged

#### **Duties of Pawnor**

- It is the duty of pawnor to comply with the conditions of pledge and repay the debt on the stipulated date or to perform the promise at the stipulated time.
- It is the duty of pawnor to compensate the pawnee for any extraordinary expenses incurred through him for preserving the goods pawned.

#### **PLEDGE THROUGH NON-OWNERS**

As you know that normally only the owner of goods can pledge them and that no one can pass a better title to the goods than what he himself has. But in order. to facilitate mercantile transactions, the law has recognized sure exceptions. These exceptions are for bonafide pledges made through those persons who are not the actual owners of the goods, but in whose possession the goods have been left.

#### **Pledge through a Mercantile Agent**

Where a mercantile agent is, with the consent of the owner, in possession of goods or, the documents of title to goods, any pledge made through him, when acting in the ordinary course of business of a mercantile agent, shall be valid, provided that the pawnee acts in good faith and has, at the time of pledge, no notice of the information that the agent has no power to pledge.

#### **Pledge through Person in Possession under Voidable Contract**

Section 178 A of the Contract Act gives that where goods are pledged through a person who has obtained their possession under a voidable contract, the pledge is valid, provided that the contract has not been rescinded at the time of the pledge and the pledgee has acted in good faith and without notice of the pledger's defect of title.

### **Pledge where Pledger has only a Limited Interest**

Where the pawnor is not the absolute owner of the goods, but has only a limited interest and he pawns it, the pledge is valid to the extent of that interest.

### **Pledge through a Co-owner in Possession**

Where the goods are owned through several persons and with the consent of other owners, the goods are left in the possession of one of the co owners. Such a co-owner may create a valid pledge of the goods in his possession.

### **Pledge through Seller or Buyer in Possession**

A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can create a valid pledge, provided the pawnee acts in good faith and he has no knowledge of the defect in title of the pawnor.

For instance, A buys a cycle from B. But leaves the cycle with the seller. B then pledges the cycle with C, who does not know of sale to B, and acted in good faith. This is valid pledge.

## **AGENCY**

### **What is contract of agency?**

Just as to Section 182 of the Contract Act An 'agent' is a person employed to do any act for another or to symbolize another in dealings with third persons.

The person for whom such act is done, or who is so represented, is described the 'principal'. Therefore, it is clear from the definition, that an agent is a connecting link flanked by his principal and third parties. A person employed through another to invest money on his behalf and to symbolize him with debtors is an agent within the meaning of Section 182.

### **Who can appoint an Agent?**

Section 183 gives as follows: Any person who is of the age of majority and who is of sound mind, may employ an agent. Therefore a minor, or a person of unsound mind cannot act as a principal.

### **Who may be an Agent?**

According to Section 184 of the Act any person may become an agent. Therefore even a minor or a person of unsound mind can act as an agent .

### **Consideration for Agency**

According to Section 185, no consideration is necessary to make an agency.

## Classification of agents:

Agents may be classified into many as follows:

- **Broker:** Broker is an agent who is employed to buy or sell goods on behalf of another. He is employed primarily to bring about a contractual relations between the principal and the third parties. He is not entrusted with the possession of the goods in which he deals. He cannot act or sue in his own name. And as he has no possession, he has no right of lien.
- **Factor:** A factor, usually, sells goods in his own name, he has a common lien on the goods as he has entrusted with the possession of goods.
- **Auctioneer:** An auctioneer is an agent who is entrusted with the possession of goods for sale to the highest bidder at a public auction. He has the power to deliver the goods on receipt of the price. He can sue for the price in his own name, Though, unlike a factor, he has only a scrupulous on the goods for his charges.
- **Del Credere Agent:** A del credere agent is one, who in consideration of an extra remuneration described the Del Credere Commission, guarantees to his principal that the third person with whom he enters into contracts shall perform their obligations. Therefore such an agent guarantees to his principal the payment of the price.
- **Commission Agent:** A mercantile agent who buys and sells goods on behalf of his principal and receives commission for his services. Actually, it is not a dissimilar category agent because brokers, factors may also act as commission, agent.
- **Banker:** Usually, the connection flanked by a banker and customer is that of a creditor anti debtor, Though, when he collects cheques or buys or sells securities on behalf of his client, he acts as an agent of the customer. A banker has the right of common lien in respect of the common balance of explanation.

## Sub-agency

Where an agent having power expressly or impliedly to delegate his power appoints another person to act in the matter of the agency, such other person is described a 'sub-agent', provided he acts under the control of the original agent; and a 'substituted agent, if the original agent drops out of the transaction and the newly appointed person carries on the business of the agency

### **Sub agent and substituted agent**

**A sub-agent** has been defined through Section 191 of the Indian Contract Act : "A sub-agent is a person employed through and acting under the control of the original agent in the business of the agency".

**A substituted agent** is defined through Section 194 therefore "Where an agent, holding an express or implied power to name another person to act for the principal in the business of agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him".

### **Rights of an agent:**

- **Right to Receive Remuneration:** An agent is a person employed to do any act for another, and for his services, he is entitled to receive remuneration. The amount of remuneration shall be such as may be fixed through the conditions of agency. In case the remuneration has not been fixed, the agent is entitled to receive a reasonable remuneration. In the absence of a contract to the contrary, agent's right to receive remuneration would accrue only on the completion of the work. An agent is entitled for his remuneration when he has done what he had undertaken to do, even though the contract is not completed.
- **Right of Retainer:** Section 217 of the Contract Act empowers the agent to retain, out of any sums received on explanation of the principal in the business of the agency for the following payments:
  - o all moneys due to himself in respect of advance made,
  - o in respect of expenses properly incurred through him conducting such business,
  - and o such remuneration as may be payable to him For acting as agent.
- **Right of Lien:** Agent may retain principal's money until his proper payments have been made. Agent has another right i.e., right to retain his principal's goods, papers and other movable or immovable properties received through him until he is paid or accounted for his commission, disbursements and service charges.
- **Right to be Indemnified: Sections 222 and 223** grant right to indemnify to an agent against his principal for the consequences of all lawful acts done through the agent in performing his obligations. Section 222 gives, the employer of an agent is bound,

to indemnify him against the consequences of all lawful acts done through such agent in exercise of the power conferred upon him

- **Right to Compensation:** The agent has the right to receive compensation for the injuries or losses suffered due to the principal's neglect or want of ability (Section 225).

### **Duties of an agent**

Following are the statutory duties of the agent:

- **Duty to Act Just as to the Instructions or Custom of Deal:** Section 211 lays down that it is the duty of an agent to conduct the business of the agency strictly just as to the directions given through the principal
- **Duty to Act with Reasonable Care and Ability:** It is the duty of an agent to conduct the business of the agency with reasonable care and ability. The degree of care and ability required from the agent depends upon the nature of business and circumstances of each case.
- **Duty to Render Accounts:** An agent is bound to render proper accounts to his principal on demand and to pay overall sums received on principal's behalf subject to any lawful deduction for remuneration or expenses properly incurred through him.
- **Duty to Communicate with the Principal:** Section 214 enjoins an agent, in case of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.
- **Not to Deal on His Own Account:** An agent is not to deal on his own account in the business of agency, as no agent is permitted to put himself in the location where his interest conflicts with his duty.
- **Not to Use Information Obtained in the Course of the Agency against the Principal:** Where an agent has obtained information throughout the course of the agency, it is the duty of the agent not to use the similar prejudicially to the interests of the principal.
- **Not to Set Up Adverse Title:** Where an agent has obtained goods or property from the principal as an agent, it is his duty not to set up his own title or the title of a third person. In other words, the agent should not dispute the ownership of the principal.

- **Not to Create Secret Profits:** It is the agent's duty not to create any secret profits in the business of agency.
- **Duty on the Death or Insanity of the Principal:** Section 209 requires that when an agency is terminated through the principal dying or becoming of unsound mind. An agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

### **Personal liability of an agent:**

The following are circumstances when the agent becomes personally liable:

- **When the Agent Expressly Agrees:** Sometimes the third party when contracting with an agent may specifically stipulate that the agent will be personally liable if the contract is not performed, in such a situation the agent will be personally liable.
- **When Acting for a Foreign Principal:** Where an agent enters into a contract for a foreign principal, the presumption is that the agent is personally liable for such contracts.
- **When Acting for an Undisclosed Principal:** When a contract is made through an agent for an undisclosed principal, the agent is personally liable.
- When the promoters of a company enter into any contract on behalf of a company not yet incorporated, the promoters are personally liable for the obligation they make through any contract with anyone.
- Where an agent has a special interest in the subject-matter of the contract, his power is said to be coupled with interest, he is personally liable.
- An agent may be held personally liable on contract entered through him, if there is some deal usage or custom, provided there is no contract to the contrary.
- If an agent enters into contract with the third party in his own name i.e., without disclosing that he is contracting as an agent, , he is personally liable

## **THE INDUSTRIAL EMPLOYMENT(STANDING ORDER ACT 1946)**

**Object of the Act;** This Act was passed “to require the employers of the industrial establishments- [1] to define with sufficient precision the conditions of employment under them and (ii) to make the said conditions known to workmen employed by them.

**Conditions of employment** include the condition of recruitment , discharge ,disciplinary action, holidays of the workmen employed in industrial establishment etc., the object of defining the condition of employment is to avoid disputes arising from uncertainty and vagueness in the terms of employment. The rules made in this ground are known as “standing orders” of employment in respect of workmen belonging to the same category.

### **PROCEDURE FOR SUBMISSION OF DRAFT STANDING ORDERS(SEC.3)**

According to sec 3,Where any industrial establishment applies this act, after the application of this industrial employment (standing order) Act,1946, and within 6months the employer shall submit to the certifying officer 5 copies of the draft standing orders ,which is proposed by him for adoption in his industrial establishment and such standing orders shall cover every matter set out in the schedule to the Act, and ,this standing orders shall be accompanied by a statement giving prescribed particulars of the workmen employed in that industrial establishment for convenience, the employers in similar industrial establishment, submit a joint draft of standing orders.

### **PROCEDURE FOR CERTIFICATION OF STANDING ORDERS**

After the receipt of the copy of the draft standing orders, the certifying officer shall forward a copy of the draft standing orders to the trade union. If there is no trade union, then he shall forward such copy to the workmen. along with that copy of the draft, a notice in the prescribed form, requiring objections, shall be submitted to him within 15 days from the receipt of the notice. If any modification or addition to standing orders is to be made, the certifying officer shall give an opportunity of being heard to the employer the trade union or such other representatives of the workmen. The certifying officer if it is necessary, to make some modification or addition to standing orders and he shall make an order in writing accordingly.

The certifying officer shall there upon certifying the draft standing orders and send the certified draft standing orders within 7 days to the employer, to the trade union or other representatives of the workmen.



The function of the certifying officer or appellate authority is to adjudicate upon the fairness or reasonableness of the provision of any standing order.

**Appeals;** According to sec 6, an aggrieved person by the order of the certifying officer may within 30 days from the date on which the certifying copies are sent, may file an appeal to the appellate authority. The appellate authority either confirm, vary or reverse the order and shall send copies .The appellate authority shall send copies thereof to the certifying officer and also to the employer.

### **THE FACTORIES ACT, 1948**

The factories Act 1948, came into force on the 1<sup>st</sup> day of April, 1949. The object is to regulate the condition of work in manufacturing establishments which come within the definition of the term “FACTORY” as used in the Act.

**What is factory?** SEC. 2[m]. According to Sec. 2[m], “FACTORY” means any premises including the precincts thereof-

- i) Whereon 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- ii) Whereon 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, or

The term “FACTORY” does not include a mine subject to the operation of the Indian Mines Act, 1952 or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

**Worker;** [ Sec.2[1]].A worker means a person employed, directly or by or through any agency[including a contractor] with or without the knowledge of the principal employer. He may be employed for or without remuneration. But he must be employed in a manufacturing process, or in cleaning some part of the machinery or premises used for the manufacturing process, or in some other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process. A worker does not include any member of the armed forces of the union.

**Obligation of workers** [SEC.111]. A worker in a factory shall not-

- a) Willfully interfere with or misuse any appliance, convenience or other thing provided in the factory for the purposes of securing the health, safety or welfare of the within provided in the factory workers therein;
- b) Willfully and without reasonable cause do anything likely to endanger himself or others; and
- c) Willfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein

**Right of workers** [Sec.111-A as introduced by the Amendment Act of 1987]. Every worker shall have the right to-

- (i) Obtain, from the occupier, information relating to worker's health and safety at work;
- (ii) Get trained within the factory wherever possible, or to get himself sponsored by the occupier for getting trained in a training centre or institute, duly approved by the Chief Inspector,
- (iii) Represent to the inspector directly or through his representative in the matter of inadequate provision for protection of his health or safety in the work.

**Occupier** [ SEC.2[n]]. 'Occupier' of a factory means the person who has ultimate control over the affairs of the factory.

**Notice by occupier** The Occupier shall, at least 15 days before he begins to occupy or use any premises as a factory, send to the Chief inspector a written notice containing-

- a. The name and situation of the factory;
- b. The name and address of the occupier;
- c. The name and address of the owner of the premises or building.
- d. The address to which communications relating to the factory may be sent;
- e. The nature of the manufacturing process to be carried on in the factory during the next 12 months;
- f. The total rated horse power installed or to be installed in the factory
- g. Name of the manager of the factory for the purposes of this act;
- h. The number of workers likely to be employed in the factory; and
- i. Such other particulars as may be prescribed [Sec 7[1]]

## **THE INSPECTING STAFF**

**Sec 8[1]** :The state government may also appoint, by notification in the “official gazette”, such person has possess the prescribed qualifications to be inspectors .

**Powers of inspector** Sec 9 An inspector may, within the local limits for which he is appointed ;

- a. Enter, with assistants, the premises of a factory;
- b. Make examination of the premises, plant, machinery, article or substance;
- c. Inquire into any accident or dangerous occurrence
- d. Require the production of any register or any other document relating to the factory
- e. Seize, or take copies of, any register, record or other document, as he may consider necessary
- f. Take measurements and photographs and make such recordings as he consider necessary for the purposes of any examination
- g. Exercise such other powers as may be prescribed

**Additional powers:** An inspector has also the power-

- a. To require medical examination of a” young person” working in a factory [Sec 75], and also
- b. To take sample of any substance used or intended to be used, in a factory for examination .

**CERTIFYING SURGEONS [Sec 10] Appointment** The state government may appoint qualified medical practitioners to be certifying surgeons for specified local limits or factories

**Duties of certifying surgeon:** The certifying surgeon shall carryout such duties as may be prescribed in connection with

- a. The examination and certification of young persons
- b. The examination of persons engaged in factories in dangerous occupations or processes; and
- c. The exercising of such medical supervision as may be prescribed

## **HEALTH**

Chapter 3 [Secs 11 to 20] of the act deals with the provisions ensuring the health of the workers. These provisions are as follows.

**Cleanliness [Sec.11[1]] Factory to be kept clean and free from effluvia and dirt:** Every factory shall be kept clean and free from effluvia arising from any drain, privy, or other nuisance. Accumulation of dirt and refuse shall be removed daily by some effective method. The floor of every work-room shall be cleaned at least once in every week by washing, using disinfectants, where necessary, or by some effective method.

**Disposal of wastes and effluents [Sec 12[1]]:** Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

**Ventilation and temperature [Sec 13[1]]:** Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom-

Adequate ventilation by the circulation of fresh air, and

Such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health

**Dust and Fume [Sec 14 [1]]:** Where dust or fume or impurity of such a nature as likely to be injurious or offensive to the workers is given off as a result of the manufacturing process being carried on in a factory, effective measures shall be taken in a factory for prevention of inhalation or accumulation of dust and fumes in workrooms. If for such a purpose any exhaust appliance necessary, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity and such point shall be enclosed so far as possible

**Artificial humidification(sec 15):**In respect of all factories in which the humidity of the air is artificially increased, the state government may make rules prescribing standards of humidification .It may further make rules prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the work rooms . water used for artificial humidification to be clean .

**Overcrowding (sec 16):** There shall not be overcrowding in any room of the factory so as to be injurious to the health of the workers employed therein .There shall be at least 9.9 cubic metres or 14.2 cubic metres of space for every worker .

**Lighting(sec 17):** In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting , natural or artificial or both

**Drinking water (sec 18):**

In every factory, effective arrangements shall be made to provide and maintained at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

All points for supply of drinking water shall be legibly marked 'drinking water' in a language understood by the majority of the workers employed in the factory .Such points shall be situated beyond 6 metres of any washing place, urinal, latrine and spittoons. Wherein more than 250 workers are employed in any factory, cooling water shall be provided during hot weather .

**Latrines and urinals (sec 19)** In every factory, separate enclosed latrines and urinals of prescribed types for male and female workers shall be provided .Such latrines and urinals shall be adequately lighted and ventilated and maintained in a clean and sanitary condition . Where in more than 250 workers are employed, all latrines and urinals shall be of prescribed sanitary types and the floors and internal walls up to height of 90 cm shall be laid in glazed tiles.

**Spittoons (sec 20):** In every factory ,sufficient number of spittoons shall be provided and maintained in a clean and hygienic condition .

**SAFETY**

Sec 21 -41 of the factories Act, 1948 deals with safety provisions. They are as follows:

**Fencing of machinery (sec 21):** In every factory, every dangerous part of every machinery shall be securely fenced.

The following machineries are securely fenced:

Every moving part of a prime mover and every fly-wheel connected to a prime mover.

The headrace and tailrace of every water-wheel and water turbine

Any part of a stock bar which projects beyond the headstock of a lathe

Every part of a electric generator , a motor or rotary convertor.

Every part of a transmission machinery and

Every dangerous part of any other machinery.

**Work on or near machinery in motion (sec 22):** To examine any part of a machinery while the machinery is in motion, such examinations shall be made only by a specially trained adult male worker wearing tight fitting clothing. No women or young person shall be allowed to clean, lubricate, adjust any part of the machinery in motion.

**Employment of young person on dangerous machines (sec-23)** No young person shall be allowed to work on any machine unless he has been fully instructed as to the dangers and he has received sufficient training to work on the machine.

**Striking gear and devices for cutting off power (sec 24)** Suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belt to and from fast and loose pulleys which form part of transmission machinery.

**Self – acting machines (sec 25)** No traversing part of a self acting machine in any factory and no material carried thereon shall be allowed to run on its outward or inward traverse within a distance of 45 cm from any fixed structure which is not part of the machine.

**Casing of new machinery (sec 26)** Every set of screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk or encased as to prevent danger.

**Prohibition of employment of women and children near cotton-openers (sec 27)** No women or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work .

**Hoists and lifts (sec 28)** In every factory, every hoist and lift shall be of good mechanical construction, sound material and adequate strength. Further it shall be sufficiently protected by enclosures fitted with gates. It shall also be properly maintained and thoroughly examined by a competent person at least once in every six months.

The maximum safe working load shall also be plainly marked on every hoist or lift. Every hoist or lift used for carrying persons shall be fitted with a gate on each side The gate shall be fitted with interlocking device to secure that the cage cannot be moved unless the gate is closed.

**Lifting machines, chains, ropes and lifting tackles (sec29)**

In every factory, cranes and lifting machines, etc... to be of good construction and to be examined once in every 12 months.

**Revolving machinery (sec 30)** In every factory, in which the process of grinding is carried on, there shall be permanently kept near each machine a notice indicating the maximum safe working peripheral speed of every grindstone.

**Pressure plant (sec 31)** In every factory, any plant or any machinery or part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure is not exceeded.

**Floors, stairs, and means of access (sec 32 )** In every factory, all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained. Further they shall be kept free from obstructions and substances likely to cause persons to slip.

**Pits, sumps, openings in floors, etc.-** In every factory fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reasons of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

**Excessive weights.** No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury

**Protection of eyes.** In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves-

- risk of injury to the eyes from particles or fragments thrown off in the course of the process,
- risk to the eyes by reason of exposure to excessive light,

**Precautions against dangerous fumes, gases, etc.** No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present, unless such person is wearing suitable breathing apparatus.

**Precautions regarding the use of portable electric light:** In any factory-

- a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted

**Explosive or inflammable dust, gas, etc.** Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion

**Precautions in case of fire.** In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain- safe means of escape for all persons in the event of a fire, the necessary equipment and facilities for extinguishing fire.

**Safety of buildings and machinery.** If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety, he may serve on the occupier an order in writing prohibiting its use until it has been properly repaired or altered.

**Safety Officers.** In every factory, wherein one thousand or more workers are ordinarily employed the occupier shall employ such number of Safety Officers as may be specified in that notification.

**The state government has the power to make rule to supplement**

**WELFARE (sec 42-50)**

**Washing facilities.:** In every factory-

- adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein
- separate and adequately screened facilities shall be provided for the use of male and female workers;
- such facilities shall be conveniently accessible and shall be kept clean.

**Facilities for storing and drying of wet clothing.** In every factory, suitable places for keeping clothing not worn during working hours and for the drying of wet clothing shall be provided.

**Facilities for sitting.** In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position

**First aid appliances.** There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents.

**Canteens.** The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

**Shelters, rest rooms and lunch rooms.** In every factory, wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers

**Crèches.** In every factory wherein more than [thirty women workers] are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women. Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.



**Welfare officers.** In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

**The State Government has Power to make rules to supplement**

#### **EMPLOYMENT OF YOUNG PERSONS**

**Prohibition of employment of young children (Sec.67)** No child who has not completed his 14<sup>th</sup> year shall be required or allowed to work in a factory.

**Non –adult workers to carry tokens (Sec. 68).** A child who has completed his 14<sup>th</sup> year or an adolescent may be allowed to work in a factory if --

- (a) a certificate of fitness for such work is in the custody of the manager of the factory and
- (b) Such child or adolescent carries, while he is at work, a token giving a reference to such certificate.

**Certificate of fitness (Sec. 69).** It is a certificate granted to a young person by a certifying surgeon after examining him and ascertaining his fitness for work in a factory. An application for such examination may be made by the young person himself or by his guardian. It shall, however, be accompanied by a document signed by the manager of the factory that such person will be employed therein if certified to be fit for work in a factory. The certifying surgeon shall examine the place of work and the manufacturing process before granting a certificate unless he has the personal knowledge of it.

**Certificate valid for 12 months.** A certificate of fitness granted or renewed is valid for 12 months from the date of issue but it can be renewed.

**Revocation of Certificate of fitness:** A certificate of fitness can be revoked any time by the certifying surgeon if the holder of it no longer fit to work in the capacity stated therein in a factory (Sec. 69(4)).

#### **EMPLOYMENT OF WOMEN**

All the provisions of the Factories Act regarding employment and work of adult male workers apply to adult female workers except the following provisions which apply to adult female workers only.

**Work on or near machinery in motion (Sec. 22 (2)).** Where in any factory it becomes necessary to examine any part of machinery, while the machinery is in motion such examination shall be made only by a specially trained adult male worker wearing tight fitting clothing.

**Prohibition of employment near cotton-openers (Sec. 27)** No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work.

**Crèches (Sec. 48)** In every factory wherein more than 30 woman workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for use of children under the age of 6 years of such women.

**Working hours (Sec. 51 and 54).** A woman shall not be required or allowed to work in a factory for more than 48 hours in any week or 9 hours in any day. A woman shall be required or allowed to work in a factory only between the hours of 6 A.M. and 7 P.M.

**Dangerous operation (Sec. 87(b)).** Where the State Government is of opinion that any operation carried on in a factory exposes any person employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules prohibiting or restricting the employment of women in that operation.

### **THE WORKMEN'S COMPENSATION ACT, 1923**

The main object of the Act is to provide for the payment of compensation by certain classes of employers to their workmen for injury by accident. The theory of workmen compensation is "that the cost of product should bear the blood of the workmen" The Act came into force on the first day of July, 1924.

**DEFINITION OF DISABLEMENT;** Disablement means loss of capacity to work or to move. Disablement of a workmen may result in loss or reduction of his earning capacity. Disablement may be (i) partial or (ii) total. Further it may be (1) permanent, or (2) Temporary.

**Partial disablement** Sec 2(1)(g). This means any disablement as reduces the earning capacity of a workman as a result of some accident. Partial disablement may be temporary or permanent.

**Temporary partial disablement** means any disablement, which reduces the earning capacity of a workmen in **any employment** in which he was engaged at the time of accident which resulted in such disablement.

**Permanent partial disablement** is one which reduces the earning capacity of a workman in **every employment** which he was capable of undertaking at the time of injury.

## **SCHEDULE I (SECS.2(G) AND(I) AND 4)**

### **PART-I**

#### **List of injuries deemed to result in permanent total disablement**

Loss of both hands or amputation at higher sites	-	100%
Loss of hand and a foot	-	100%

### **PART –II**

#### **List of injuries deemed to result in permanent partial disablement**

Amputation through shoulder joint	-	90%
Loss of thumb	-	50%

**Total disablement (sec.2(1)(I))** It means such disablement, whether temporary or permanent nature, as incapacitate a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. Total disablement is deemed to result from every injury specified in part I of schedule I or from any combination of injuries specified in part II there of where the aggregate percentage of the loss of earning capacity, as specified in part II against those injuries, amounts to 100 per cent or more.

## **RULES REGARDING WORKMEN’S COMPENSATION**

### **Employer’s liability for compensation (SEC.3)**

An employer is liable to pay compensation to a workmen for-(1)Personal injury caused to him by accident and occupational disease contracted by him.

**1.personal injury by accident;** An employer is liable to pay compensation to a workmen if personal injury is caused to him by accident arising out of and in the course of his employment (sec.3(1))

**Personal injury.** The word ‘injury’ means damage done to a workmen by some accident. It is not necessarily confined to physical or mental injury, it includes psychological and physiological injury as well.

### **Example; Indian news chronicle ltd.v.mrs.lazarus (1951-52)**

A workmen in the course of his duties, had frequently to go into a heating room and from there to a cooling room. One night when he went into the cooling room, he got pneumonia of which he died. Held, the death was due to personal injury.

**Accident.** The word 'accident' means some unlooked-for mishap or untoward event which is not expected or designed. If a person becomes insane as a result of an accident and then commits suicide, the death is the result of the accident, and the compensation is awarded.

**Arising out of and in the course of employment.** The employment is liable to pay compensation only if personal injury is caused to a workman by an accident arising out of and in the course of his employment. An accident arising out of an employment necessarily occurs in the course of the employment but an accident in the course of employment may not necessarily arise out of employment.

**Out of employment.** An accident arising out of employment implies a causal connection between the injury and the accident and the work done in the course of employment. In order to prove that injury arose out of employment, two conditions must be fulfilled;

- (1) Injury must have resulted from some risk incidental to the duties of the services.
- (2) At the time of injury, worker must have been engaged in the business of the employer and must not be doing something for his personal advantage or benefit.

**In the course of employment.** It refers to the time during which employment continues. Normally, if the factory hours are from 9 A.M. to 6 P.M. the employment commences at 9 A.M. and ceases at 6 P.M. But to this general rule there are certain exceptions which are as follows;

(1) when a means of transport is provided by the employer for the purpose of going to and from the place of work and workmen use that transport, the time during which that transport is used by the workmen is also included in the course of employment.

(2) when a workman is in the premises of the employer, even though he may not be actually working at that time, that time is included in the course of employment.

**Ranibala V. East Indian Rail., (1951)** A railway employee was knocked down and killed by a train while returning from duty by crossing the platform area. Held, the accident arose out of and in the course of employment.

(3) When a period of rest is granted to a workman the course of employment includes the period of rest.

(4) When a workman reaches the place of employment well in time to equip himself for the work, he is in the course of employment.

**Theory of notional extension.** The theory of notional extension was laid down by Supreme Court in *Saurashtra Salt Mg.co.v.Bai valu raja, A.I.R.(1958)* However, it is now well settled

that there may be some reasonable extension in both time and place of work. The facts and circumstances of each case will have to be examined carefully in order to determine whether the accident arose out of and in the course of employment of a workman. Some of the important cases of accidents arising out of and in the course of employment are given below:

(i) A workman whose business was to repair railway clocks at various stations was stabbed in a railway compartment while he was in transit. Held the death was due to an accident arising in the course of and out of his employment (Bhayabhai v. Central Rail., (1955))

(ii) A boy returning to the factory canteen after having served tea in his usual round to certain persons in the factory premises was struck by a bullet and he died the following day. Held, the death of the boy was due to an accident arising out of and in the course of his employment (National Iron & Steel co. v. Manorama Dassi (1953))

**Occupational diseases.** Workers employed in certain occupations are exposed to certain diseases which are inherent in those occupations. For example, a person engaged in any process involving use of lead tetra-ethyl is liable to contract poisoning by lead tetra-ethyl. All such diseases are known as occupational diseases. The employer is liable to pay compensation if the disease can be directly attributable to a specific injury by accident arising out of and in the course of employment.

A detailed list of occupational diseases is given in schedule III of the Act.

Schedule III is divided into 3 parts.

### **SCHEDULE III (SEC.3)**

#### **Part-A**

This part includes:

- (i) Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination,
- (ii) diseases caused by work in compressed air and by lead or its toxic compounds, and
- (iv) poisoning by nitrous fumes and by organic phosphorous compounds.

#### **Part-B**

This part includes:

- (a) Diseases caused by (1) Phosphorous, mercury, chromium, manganese, beryllium, cadmium, fluorine or their toxic compounds, (ii) Benzene or its toxic homologues, (iii) radioactive substances and ionising radiations, (iv) carbon disulphide.
- (b) Occupational cataract due to infra-red radiations,
- (c) Skin diseases caused by physical, chemical or biological agents not included in other items,
- (d) Hearing impairment caused by noise,
- (e) Occupational asthma caused by recognised sensitising agents inherent to the work process,
- (f) Lung cancer and mesotheliomas caused by asbestos.

The employer is liable if a workman contracts any of the diseases specified in part B while in his service for a continuous period of 6 months.

#### **PART-C**

This part includes:

- (i) Pneumoconiosis caused by sclerogenic mineral dust.
- (ii) bagassosis,
- (iii) bronchopulmonary diseases caused by cotton,
- (iv) bronchopulmonary disease caused by hard metals.

In case of occupational disease referred to in part c the workman is entitled to compensation if he has been in the service of one or more employers for such continuous period as the central government may specify (sec.3(2))

#### **AMOUNT OF COMPENSATION**

The amount of compensation payable to a workman depends on-

- (i) the nature of the injury caused by accident,
- (ii) the monthly wages of the workman concerned, and
- (iii) the relevant factor specified in schedule IV

There is no distinction between an adult and a minor worker with respect to the amount of compensation

New sec.4 provides for compensation for -

- (1) Death
- (2) Permanent total disablement

- (3) Permanent partial disablement, and
- (4) Temporary disablement, whether total or partial.

**1.compensation for death** (sec.4(1)(a)).Where death results from an injury, the amount of compensation shall be equal to 50%per cent of the monthly wages of the deceased workman multiplied by the relevant factor or Rs. 1,20,000 whichever is more. The formula for calculating the amount of compensation in case of death resulting from an injury will be as follows;

50x monthly wages x relevant factor or RS.1,20,000 whichever is more.

100

**2.compensation for permanent total disablement.**(sec.4(1)(b)).where permanent total disablement results from an injury, the amount of compensation payable shall be equal to 60% per cent of the monthly wages of the injured workman multiplied by the relevant factor, or RS.1,40,000, whichever is more.

The formula for calculating the amount of compensation in case of permanent total disablement resulting from an injury will be as follows;

60 x monthly wages x relevant factor or RS.1,40,000 whichever is more.

100

**3. Compensation for permanent partial disablement.**(sec.4(1)(c))

**(i) In the case of an injury specified in part II of schedule I,** The amount compensation shall be such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified there in as being the percentages of the lossof earning capacity caused by that injury.

**(ii) in the case of an injury not specified in schedule I,** The amount of compensation shall be such percentage of the compensation payable in the case of permanent total disablement, as is proportionate to the loss of earning capacity permanently caused by the injury. The loss of earning capacity shall be assessed by a qualified medical practitioner.

Where more injuries than one are caused by the same accident, the amount of compensation shall be aggregated. But in no case shall the amount of compensation exceed the amount payable if permanent total disablement had resulted.

**(4) compensation for temporary disablement-total or partial**(sec.4(1)(d),(2))

Where temporary disablement, whether total or partial, results from the injury, the amount of compensation shall be a half-monthly payment of the sum equivalent to 25 per cent of

monthly wages of the workman.i.e.,25 per cent of monthly wages of the workmen shall be payable every half month. The half-monthly payment shall be payable on the 16<sup>th</sup> day- (i) from the date of disablement where such disablement lasts for a period of 28days or more, or the compensation shall be payable half-monthly during the disablement or during a period of 5 years, whichever period is shorter.

**Compensation to be paid when due** (sec.4-A) compensation payable to a workman under sec.4 shall be paid as soon as it falls due.

**Penalty for default.** If he defaults, the commissioner may direct him to pay the amount of arrears, with simple interest at the rate of 12% percent per annum on the amount due. Further, if in the opinion of the commissioner there is no justification for the delay, a further sum up to 50 per cent of the amount due shall be recovered from the employer by way of penalty

**Method of calculating monthly wages** (sec.5)

(1) Where the workman has, during a continuous period of not less than 12 months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be 1/12<sup>th</sup> of the total wages which have fallen due for payment to him by the employer in the last 12 months of that period (sec.5(a)).

(2) The workman who was in the service of the employer, works less than 1 month, the monthly wages of the workman shall be the average monthly amount which, the 12 months immediately preceding the accident.

(3) In other case including cases in which it is not possible for want of necessary information to calculate the monthly wages, the monthly wages shall be 30 times the total wages divided by the number of days comprising such period.

**Review of half-monthly payment (Sec 6)**

Any half monthly payment payable under the Act may be reviewed by the Commissioner on the application of either the employer or the workman. On review, the half-monthly payment may be continued, or increased or decreased or ended or converted into a lump-sum.

**Commutation of half-monthly payments (Sec-7)**

By agreement between the parties the half monthly payments be redeemed by the payment of a lump-sum.



## NOTICE AND CLAIM

**(Sec. 10) Notice-** No claim for compensation shall be entertained by the commissioner unless the notice of accident has been given by the workman in writing [sec.10(1)] in the following manner.

1. The notice of the accident shall be given as soon as practicable after the happening of the accident.
2. The notice shall give the name and address of the person injured and state the cause of injury and the date of accident
3. The notice shall be served on the employer or upon any one of several employers or upon any person responsible to the employer for the management of any branch of the trade or business.
4. The notices may be served by delivering it at, or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served or by entry in a notice book if such a book is maintained by the employer
5. The state government may require any prescribed class of employers to maintain at the place of employment a notice book in the prescribed form for keeping the record of accidents. The notice- book shall be readily accessible at all reasonable times. In any injured work man employed on the premises and to any person acting bonafide on his behalf .
  - a. An omission to give a notice or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim if ---.
    - i. The claim is preferred in respect of the death of a workman resulting from an accident which occur on the premises of the employer , or at any place where the work man at the time of the accident was working under the control of the employer and work man died on such premises or at place , or died without having left the vicinity of the premises or place where the accident occurred:
      - ii. The employer had knowledge of the accident from any other source at or about the time when it occurred : and
      - iii. The commissioner is satisfied that the failure to give notice was due to sufficient cause

**Claim:** Claim for compensation shall be preferred before the commissioner with in 2 years of occurrence of the accident, or incase of death within 2 years from the date of death.

## **DISTRIBUTION OF COMPENSATION**

**Sec 8 provides for the following rules regarding the distribution of compensation;**

- 1) In respect of a workman whose injury has resulted in death, the payment of compensation shall be made by deposit with the commissioner.
- 2) In case of a deceased workman, the employer may make to any dependent advances on an account of compensation equal to 3 month's wages of such workman.
- 3) In other cases, the employer may deposit the compensation amount not less than Rs.10 with the commissioner.
- 4) The receipt of the amount by the commissioner shall be the sufficient discharge in respect of any compensation.
- 5) (a) On deposit, the commissioner shall deduct there from the actual cost of the funeral expenses of the workman and pay the same to the person by whom the expenses actually incurred.  
(b) The commissioner shall, if he thinks necessary, issue a notice to all the dependents calling upon them to appear before him for determining and distribution of the compensation.  
(c) The commissioner shall on application by the employer furnish all disbursements made from the compensation.
- 6) Compensation amount deposited with the commissioner, shall be pay to any one of the dependants or it shall pay in the proportion as he thinks fit.
- (7) Where any lump-sum is deposited with the commissioner, such sum shall be applied or invested for the benefit of the woman, or a person disabled, in such a manner as he may direct.
- (8) The commissioner may vary his earlier orders at any time, but no such order shall be made without giving a opportunity of showing cause against the order.
- (9) Where any half-monthly payment is payable to a person under legal disability, the commissioner may pay it to any dependent of the workman or to any other person whom the commissioner thinks fitted best to provide for the welfare of the workman.

10) If any person received the amount of compensation by fraud or impersonation, or other improper means, any amount so paid shall be recovered as arrear of land revenue.

## **THE INDUSTRIAL DISPUTES ACT, 1947**

### **WHAT IS AN INDUSTRIAL DISPUTE?**

**Sec2(k)** Industrial dispute' means any dispute or difference between –

- (i) employers and employers,
- (ii) employers and workmen, or
- (iii) workmen and workmen, which is connected with (a) the employment or non-employment, (b) the terms of employment, or (c) the conditions of labour of any person.

In the Ordinary language an industrial dispute is implied to mean a dispute between the workmen and the management. The definition of 'industrial dispute' in Sec. 2(k) of the Industrial Disputes Act, 1947 has three ingredients, they are -

- (a) there should be real and substantial dispute or difference;
- (b) the dispute or difference should be between employer and his workmen; and
- (c) the dispute or difference must be connected with the employment or non-employment or terms of employment, or with the conditions of labour of any person.

The real test whether a dispute is an industrial dispute or not is whether the majority or a large number of workmen are involved in the dispute. An individual dispute between an employer and one of his workmen is by itself not an industrial dispute which can be referred to under sec. 10. But such dispute may become an industrial dispute, provided that the cause of the particular workman concerned is taken up by a majority of workmen in the particular industrial establishment, or by any union of such workmen.

### **Individual and collection disputes**

The industrial dispute may be (1) individual disputes, or (2) collective disputes.

Sec. 2-A provides that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute even if no other workman nor any union of workmen is a party to the dispute.

A collective dispute may relate to any of the following matter:

- a) Wages, bonus, profit-sharing, gratuity, compensatory and other allowances.
- b) Hours of work, leave with wages, holidays.
- c) Rules of discipline, retrenchment of workmen, closure of a establishment, rationalisation.

All collective disputes are industrial disputes.

**Definitions: Average a Pay – Sec 2 (aaa)**

It means the average of the wages payable to a workman

- (i) in the case of a monthly paid workmen, in the 3 complete calendar months,
- (ii) in the case of a weekly paid workman, in the 4 complete weeks, and
- (iii) in the case of a daily paid workman, in the 12 full working days.

This period of 3 months, 4 weeks and 12 working days must precede the date on which the average pay becomes payable to the workman.

**Sec 2 (b) Award** It means an interim or a final determination of any industrial dispute or of any question relation thereto by any Labour Court Industrial Tribunal or National Tribunal. It also includes an arbitration award made under Sec.10-A.

**Lay-off**(Sec.2(kkk), 'Lay-off' means the failure, refusal or inability of an employer to give employment to a workman (a) whose name is borne on the muster-rolls of his industrial establishment, and (b) who has not been retrenched. The failure, refusal, or inability to give employment may be due to –

- 1) shortage of coal, power or raw materials, or
- 2) the accumulation of stocks, or
- 3) the breakdown of machinery, or
- 4) natural calamity or for any other connected reasons.

**Lock-out (Sec-2(l))**. It means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

**Retrenchment** (Sec.2(oo)). It means 'to end' conclude, or cease'. The term as used in the industrial Disputes Act means the termination by the employer of the service of a workman for, any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action.

'Retrenchment' however does not include:

- a) voluntary retirement of the workman; or
- b) Retirement of the workman on reaching the age of superannuation.
- c) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman.
- d) Termination of the service of a workman on the ground of continued ill-health.

### **Prohibition of strikes and Lock-outs Sec 22 and 23**

#### **1. Strike or lock-out in a public-utility service Sec 22(1)**

- 1) Before 6 weeks of Strike or lock-out, a notice should be given to the employer.
- 2) Within 14 days of such notice, a strike or lock-out shall not be conducted.
- 3) If a date is specified in the notice, before the expiry of such date, a strike or lock-out shall not be conducted.
- 4) During the pendency of the conciliation proceedings and 7 days after the conclusion of such proceedings, a strike or lock-out shall not be conducted.
- 5) A strike or lock-out notice is valid for 6 weeks.

#### **2. Strike or lock-out in an industrial establishment. Sec (23)**

During the pendency of conciliation proceedings before a Board of conciliation and 7 days after the conclusion of such proceedings, a strike or lock-out shall not be conducted.

During the pendency of the labour Court, Industrial Tribunal, or National Tribunal and 2 months after the conclusion of such proceedings, a strike or lock-out shall not be conducted.

During the pendency of Arbitration proceedings before the Arbitrator and 2 months after the conclusion of such proceedings, a Strike or lock-out shall not be conducted.

During any period in which a settlement or Award is in operation, a Strike or Lock-out shall not be conducted.

### **ILLEGAL STRIKE OR LOCK-OUT**

A Strike or lock-out shall be illegal if—

- 1) It is commenced in contravention of Sec 22 and 23
- 2) It is continued in contravention of an order made under Sec 10(3)

## **Procedure for settlement of Industrial Disputes and authorities under the Act:**

The various authorities which constitute the machinery for the prevention and settlement of industrial disputes are -

1. Conciliation machinery,
2. Adjudication machinery and
3. Arbitration

### **I. Conciliation machinery:**

Works committees, conciliation officers, Board of conciliation and courts of Inquiry constitute the conciliation machinery for the settlement of industrial disputes. They can only promote settlement of Industrial dispute but cannot make any awards.

#### **a) Sec – 3 Works committee:-**

Wherein any industry 100 or more workmen are employed or have been employed on any day of the proceeding 12 months, the app. Govt, may, by general or special order require the employer to appoint a works committee. It shall consist of representatives of employers and workmen and they are equal in number.

#### **Power and duties of the works committee:**

1. It shall be the duty to promote measures for securing good relations between the employers and workmen.
2. It shall be the duty to comment upon matters of their common interest and
3. It shall be the duty to take steps to compromise if any material difference of opinion, arises in respect of certain matters.

#### **b) Sec – 4 – Conciliation Officers**

The appropriate Government may by notification in the official Gazette, appoint such number of persons to be conciliation officers. He may be appointed for a specified area or for specified industries. He may be appointed Permanent or for a limited periods.

#### **Duties of the conciliation officers:**

- i) They shall mediate and promote the settlement of Industrial dispute.
- ii) They have the duty to hold conciliation proceedings, when any industrial dispute exists or is apprehended.
- iii) They have investigate the dispute for the purpose of bringing about a settlement of the dispute.

- iv) They have to submit a report to the app. Government, if any settlement is arrived in the course of conciliation proceedings.
- v) They shall also send a memorandum of settlement signed by the parties to the dispute to the app. Govt.
- vi) They have to send a failure report along with the stay taken by them for the settlement if no settlement is arrived at in the course of conciliation proceedings. And that failure report shall also be accompanied with full facts and circumstances of the dispute.

The report shall be sent to the app. Govt. within 14 days of the commencement of conciliation proceedings.

**Powers of the conciliation officers; Power to enter premises.** 1) A Conciliation officer has the power to enter any premises, where industrial dispute exists, after giving a reasonable notice for the purpose of enquiry.

- i) He may call for any documents, registers and records for the purpose of investigation.
- ii) For these purposes, he shall have same powers as are vested in Civil Court.

**c) Sec-5-Board of Conciliation:-**

The appropriate Govt. may by notification in the official gazette may constitute a Board of conciliation for promoting the settlement of an industrial dispute.

A Board shall consist of a chairman and 2 or 4 members. The chairman shall be an independent person. The other members shall be equal in number to represent the parties to the dispute. A Board having a prescribed quorum may act.

**Reference of dispute:-**

The app. Govt. may at any time by order in writing refer the dispute to a Board of Conciliation for promoting a settlement.

**Prohibition of strike or Lock out:-**

Where an industrial dispute has been referred to a Board the app. Govt. may Prohibit the continuance of strike or Lock-out in connection with such dispute.

**Duties of the Board of conciliation:-**

- i) It shall be the duty of the Board to work hard to bring about a settlement of the dispute.

- ii) It shall without delay investigate the dispute.
- iii) It shall be the duty to send a report to the app. Govt. if any settlement is arrived.
- iv) It shall also send a memorandum of settlement signed by the parties to the dispute.
- v) If no settlement is arrived, it shall send a failure report along with the steps taken by the Board for the settlement.
- vi) And the failure report shall also be accompanied with facts and circumstances of the dispute.

The report shall be sent to the app. Govt. within 2 months of the commencement of conciliation proceedings.

**Powers of the board of Conciliation;**

1. A member of a Board may for the purpose of inquiry, after giving a reasonable notice, enter the premises

2. **Powers of Civil Court:-** A Board shall have the same power as are vested in a civil court in respect of the following matters namely.

- a) Issuing summons and enforcing the attendance of any person
- b) Examining the witnesses on oath;
- c) Compelling the production of documents, registers, record and material objects.
- d) Issuing commissions for the examination of witnesses; and
- e) in respect of such other matters as may be Prescribed.

**c) Courts of Inquiry – sec 6**

The appropriate Government may by notification in the official gazette, constitute a court of Inquiry, for inquiring into any matter connected with an industrial dispute.

A Court shall consist of 2 or more members. One of them shall be appointed as chairman. A court having the prescribed quorum may act.

**Reference of dispute:**

The application Government may at any time by order in writing refer the dispute to a court of inquiry for the settlement of the dispute.



### **Prohibition of Strike or Lock – Out:**

Where an industrial dispute has been referred to a Court of Inquiry, the application Government may prohibit the continuance of strike or Lock-out in connection with such dispute.

### **Duties of the court of enquiry;**

The report shall be send to the app. Govt. within 6 months of the commencement of conciliation proceedings.

### **Powers of the court of enquiry;-**

1. A member of a Court may for the purpose of inquiry, after giving a reasonable notice, enter the premises.
2. **Powers of Civil Court:** A Court shall have the same power as are vested in a civil court in respect of the following matters namely.
  - a) Issuing summons and enforcing the attendance of any person
  - b) Examining the witnesses on oath;
  - c) Compelling the production of documents, registers, record and material objects.
  - d) Issuing commissions for the examination of witnesses, and
  - e) in respect of such other matter as may be person prescribed
3. **Powers to appoint assessors.** A court may appoint one or more persons having the special knowledge of the matters under consideration as assessors to advise the court.

### **ADJUDICATION MACHINERY**

The authorities of adjudication are appointed under sec 7 to 9 of the I .D .Act. These authorities are:

#### **1) Sec 7 – LABOUR COURT:-**

The appropriate Government may, by notification in the official Gazette, appoint one or more Labour courts for adjudication of industrial disputes relating to any matter specified in the second schedule,

#### **The Second schedule**

#### **Matters within the jurisdiction of Labour courts are as follows:**

- 1) The legality of an order passed by an employer under standing orders.
- 2) The application and interpretation of standing orders.

- 3) Discharge or dismissal of workman including reinstatement of such dismissal workman.
- 4) Withdrawal of any customary concessions or Privileges.
- 5) Illegality of a strike or lock-out and
- 6) All matters other than those specified in the Third schedule.

A Labour court consists of only one person to be appointed as the presiding officer by the app. Government.

**Qualifications of the presiding officer of a Labour Court:**

- 1) He should be a acting Judge of a High Court or he has been acted as a Judge of a High Court.
- 2) He should be acted as a Judge of District Court or a additional district court for a period of not less than 3 years.
- 3) He has hold any judicial office in India for not less than 7 years.

**Disqualification of the presiding officer of a Labour Court**

- a) If he is not independent person or
- b) If he has attained the age of 65 years, then such person is disqualified to act as a presiding officer of a Labour Court.

**Reference of dispute:** The appropriate Government may, at anytime by order in writing refer the dispute to a Labour Court in respect of any matter specified in the second schedule, if any industrial dispute exists or is apprehended.

**Duties of a Labour Court:**

- 1) It is the duty of a Labour court to adjudicate upon the industrial dispute relating to any matter specified in the second schedule.
- 2) It has the duty to give award within the specified period.

Award must be in writing and signed by the its presiding officer. The award should be submitted before the **app.** Government. And the **app.** Government within 30 days of its receipt, publish the award by notification in the official Gazette.

**Powers of the Labour Court:**

- 1) The presiding officer of a labour court, may at any time, after giving a reasonable notice, enter the premises, where an industrial dispute exists, for the purpose of iniquity.

## **2) Powers of Civil Court:-**

A Labour Court shall have the same power as are vested in a civil court in respect of the following matters namely.

- a) Issuing summons and enforcing the attendance of any person.
- b) Examining the witnesses on oath;
- c) Compelling the production of documents, registers, record and material objects.
- d) Issuing commissions for the examination of witnesses; and
- e) in respect of such other matter as may be Prescribed.

**Prohibition of Strike or Lock-out;** Where an industrial dispute has been referred to a labour court, the app. Govt. may prohibit the continuance of strike or Lock-out in connection with such dispute.

## **2. Sec – 7 – A- Industrial Tribunal:**

The app Govt may, by notification in the official Gazette, appoint one or more Industrial Tribunal for the adjudication of industrial dispute relating to any matter specified in the Third schedule or second schedule.

### **THE THIRD SCHEDULE**

Matters within the jurisdiction of Industrial Tribunal are as follows:

- 1) Wages, including the period of payment and mode of payment
- 2) Compensatory and other allowance.
- 3) Hours of work and rest intervals.
- 4) Leave with wages and Holidays
- 5) Bonus, Profit sharing, provident fund and gratuity and such other matters.

The Tribunal shall consist of only one person to be appointed by the app Govt. as the presiding officer of a Industrial Tribunal.

### **Qualifications of the Presiding Officer of a Industrial Tribunal:**

- 1) He should be acting as a Judge of a High Court or he has been acted as a Judge of a High Court.
- 2) He should be acted as a Judge of District Court or a additional district court for a period of not less than 3 years.

**Disqualification:**

- a) If he is not an independent person or
- b) If he has attained the age of 65 years, then such person is disqualified to act as a presiding officer of a Industrial Tribunal.

**Prohibition of Strike or Lock-out;** Where an industrial dispute has been referred to a Industrial Tribunal, the app. Govt. may prohibit the continuance of strike or Lock-out in connection with such dispute.

**Duties of a Industrial Tribunal:**

- 1) It has the duty to refer the Industrial Tribunal relating to any matter specified in the second or third schedule.
- 2) It has the duty the pass an award and submitt the award before the app. Government within a specified period.

Award must be in writing and signed by its presiding officer.

**Powers of a Industrial Tribunal:**

**1. A member of a Tribunal** may for the purpose of inquiry, after giving a reasonable notice, enter the premises.

**2. Powers of Civil Court:-**

A Tribunal shall have the same power as are vested in a civil court in respect of the following matters namely.

- a) Issuing summons and enforcing the attendance of any person.
- b) Examining the witnesses on oath;
- c) Compelling the production of documents, registers, record and material objects.
- d) Issuing commissions for the examination of witnesses; and
- e) in respect of such other matter as may be prescribed.

**3. Powers to appoint assessors.** A court may appoint one or more persons having the special knowledge of the matters under consideration as assessors to advise the court.

**4. Power to award costs:**

It has the power to determine by and to whom and to what extent such costs are to paid.

### **3. Sec 7-B National Tribunal:**

The central Government may by notification in the official gazette, constitute one or more National Tribunal for the adjudication of industrial dispute which involve question of national importance or an industrial dispute, which affects more than one state.

The National Tribunal shall consist of one person only to be appointed by the central Government as the presiding officer of a National Tribunal.

#### **Qualification of the Presiding Officer of a National Tribunal**

- 1) He is, or has been, a Judge of a High Court.

#### **Disqualifications:**

- a) If he is not an independent person.
- b) If he has attained the age of 65 years, then such person is disqualified to act as a presiding officer of a National Tribunal.

**Reference of dispute:** The Central Government may, at anytime by order in writing refer the dispute to a National Tribunal in respect of any matter of National Importance

#### **Prohibition of strike or Lock-out:-**

Where an industrial dispute has been referred to a Board the **app. Govt.** may by order prohibit the continuence of strike or Lock-out in connection with such dispute.

#### **Duties of a National Tribunal:**

- 1) It has the duty to refer the industrial dispute which involves of national importance.
- 2) It has the duty to hold its proceedings expeditiously.
- 3) It has the duty to pass an award and submit its award before the central Government within a specified period.

#### **Powers of the National Tribunal;**

**1. A member of a National Tribunal** may for the purpose of inquiry, after giving a reasonable notice, enter the premises,

#### **2. Powers of Civil Court:-**

A National Tribunal shall have the same power as are vested in a civil court in respect of the following matters namely.;

- a) Issuing summons and enforcing the attendance of any person.
- b) Examining the witnesses on oath;
- c) Compelling the production of documents, registers, record and material objects.

d) Issuing commissions for the examination of witnesses; and

e) in respect of such other matter as may be Prescribed.

**3. Powers to appoint assessors.** A National Tribunal may appoint one or more persons having the special knowledge of the matters under consideration as assessors to advise the court.

**4. Power to award costs:**

It has the power to determine by and to whom and to what extent such costs are to paid.

**Sec (10-A) VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION**

Where an industrial dispute exists or is apprehended, the Employer and the Workman, agree to refer the dispute to arbitration. They may by a written agreement refer the dispute to arbitration. In that arbitration agreement, they may specify the name or names of the arbitrator or arbitrators who refer the dispute. Where the arbitration agreement provides even number of arbitrators, then another person a Umpire shall be appointed. The Umpire decision shall be a final one with regard to reference of the dispute. The award of the Umpire shall be deemed to be the Arbitration Award.

**An Arbitration agreement** shall be in such form and shall be signed by the parties to a dispute. A copy of the arbitration agreement shall be send to the appropriate government and the conciliation officer. The appropriate government shall within one month from the date of the receipt of such copy publish the same by notification in the Official Gazette. On the reference of the dispute, by the arbitrators, they shall give an opportunity of presenting the case before the arbitrators, to the person who has been concerned with the dispute, but they are parties to the agreement.

**Award;** The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate government the arbitration award signed by the arbitrator or arbitrators as the case may be.

**Prohibition of Strike or Lock-out;** Where an industrial dispute has been referred to arbitration, the appropriate government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

## **AWARD**

**Sec 16**--The award of a Labour Court, or Industrial Tribunal or National Tribunal shall be in writing and signed by its Presiding Officer.

**Sec 17**— Every arbitration award and every award of a labour court, Industrial Tribunal, or National Tribunal shall within a period of 30 days of its receipt publish the same by notification in the Official Gazette.

**Sec (17-A)**—On the expiry of 30 days from its publication award shall become enforceable.

**Sec (17-A(1))**—If the appropriate government or the central government is of opinion, it is expedient on public grounds affecting the national economy or social justice to give effect the whole or any part of the award. The appropriate government or the central government may pass an order to reject or modify the award within 90 days of its publication.

**Sec (17-A(2))**—In such a case, on the first available opportunity the award shall be laid before the State Legislature or the Parliament. The award shall become enforceable on the expiry of 15 days from the date on which it is so laid.

If any date is specified in the award, for its enforceability, it shall come into operation on the expiry of 30 days from the date of its publication.

**Period of operation of award;** An award shall remain in operation for a period of 1 year from the date on which the award becomes enforceable.

## **THE EMPLOYEES' STATE INSURANCE ACT, 1948**

Under this Act, Employees, State Insurance Scheme has been constituted by the central Government And the administer the scheme various bodies has been appointed. They are E.S.I. Corporation, Standing committee and medical Benefit Council.

The Employees' State Insurance Scheme is being administered by the Employees' State Insurance Corporation (E.S.I. Corpn.) Which has been set up by the Central Government under the Act (Sec. 3).

### **EMPLOYEES' STATE INSURANCE CORPORATION**

The E.S.I Corporation is a body corporate having perpetual succession and a common seal (Sec 3(2)).

**Constitution of the E.S.I. Corporation** (Sec. 4). The E.S.I. Corporation shall consist of the following members, namely:

(a) a Chairman a Vice-Chairman and not more than 5 persons to be appointed by the Central Government;

(b) 1 person each representing each of the States.

(c) 1 person to be appointed by the Central Government to represent the Union Territories;

(d) 10 person representing employers to be appointed by the Central Government.

(e) 10 person Persons representing employees to be appointed by the Central Government.

(f) 2 persons representing the medical profession to be appointed by the Central Government.

(g) 3 members of Parliament of whom 2 shall be members of the Lok Sabha and 1 shall be a member of the Rajya Sabha

(h) the Director – General of the E.S.I. Corporation, ex-officio.

The term of office of the members of the E.S.I. Corporation and shall be 4 years.

**Term of Office:**

An outgoing member of the E.S.I. Corporation shall be eligible for re-appointment or re-election (sec. 6)

**Powers of the E.S.I Corporation**

1. It may employ the necessary staff for the efficient transaction of its business (Sec.7).
2. It can acquire, hold and sell or otherwise transfer any movable and immovable property (Sec. 1).
3. It can, from time to time, Invest any moneys which are not immediately required (Sec.29(2)).
4. It may, with the previous sanction of the Central Government, raise loans.
5. It may constitute for the benefit of its staff provident or other benefit fund (Sec.29(4)).
6. It may appoint such persons as Inspectors, as it thinks fit, for the purposes of the Act.
7. It may determine the amount of contribution payable in respect of employees of a factory or establishment in respect of which no particulars, register or records are submitted, furnished or maintained.

**Duties of the E.S.I. Corporation**

1. It shall in each year frame a budget.



2. It shall submit a copy of the budget for the approval of the Central Government before a specified date.
3. It shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.
4. Such accounts shall be duly audited by auditors appointed by the Central Government.
5. It shall submit to the Central Government an annual report of its work and activities.
6. It shall, at intervals of 5 years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government.
7. The annual report, the audited accounts, the auditor report and the budget shall be placed before Parliament and published in the official Gazette.

#### **Standing Committee (Sec. 8)**

Subject to the general superintendence and control of the E.S.I. Corporation, the Standing Committee act as its executive body, The standing Committee Shall consist of

- a) a chairman, appointed by the Central Government;
- b) 3 members of the E.S.I. Corporation, appointed by the Central Government;
- c) 3 members of the E.S.I Corporation representing such 3 state Governments.
- d) 8 members elected by the E.S.I. Corporation as follows:
  - e) 3 members from among the members of the E.S.I. Corporation representing employer;
  - f) 3 members from among the members of the E.S.I Corporation representing employees;
  - g) 1 members from among the members of the E.S.I. Corporation representing the medical profession; and
  - h) 1 members from among the members of the E.S.I. Corporation elected by Parliament.
- i) The Director-General of the E.S.I. Corporation, ex-officio.

**Term of office:** The term of office of a member of the Standing Committee shall be 2 years. A member of the Standing Committee Shall be eligible for re-appointment or re-election (Sec. 6).

#### **Sec 18: Powers and duties of the Standing Committee:**

1. Subject to the general superintendence and control of the E.S.I. Corporation, the Standing committee shall administer the affairs of the E.S.I. Corporation.

2. It may exercise any of the powers and perform any of the function of the E.S.I. Corporation.
3. It shall submit for the consideration and decision of the E.S.I. Corporation all such cases and matters as may be specified in the regulations made in this behalf.
4. It may also, in its discretion, submit any other case or matter for the decision of the E.S.I. Corporation.

#### **Sec 10: Medical Benefit Council**

To advise the E.S.I. Corporation on the medical side a medical Benefit Council has been constituted. It consists of the following members, namely;

- a) the Director-General, Health Services, ex-officio, as Chairman;
- b) a Deputy Director-General, Health Services.
- c) the Medical Commissioner of the E.S.I. Corporation, ex-officio;
- d) 1 member each representing each of the states.
- e) 3 members representing employers to be appointed by the central Government in consultation with the recognized organizations of employers;
- f) 3 members representing employees to be appointed by the Central Government in consultation with the recognized organizations of employees;
- g) 3 members, of whom not less than 1 shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with the recognized organization of medical practitioners.

**Term of office:** The term of office of a member of the Medical Benefit Council shall be 4 years. An outgoing member of the medical benefit Council shall be eligible for re-appointment or re-election.

#### **Powers and duties of the medical Benefit Council:**

1. It shall advise the E.S.I. Corporation and the Standing Committee on matters relating to the medical grounds.
2. It shall have such powers and duties of investigation in relation to Complaints against medical practitioners in connection with medical treatment.
3. It shall perform such other duties in connection with medical treatment.

## **General Provisions regarding members of the E.S.I. Corporation, Standing committee and Medical Benefit Council**

**Sec-6;** An outgoing member of the E.S.I corporation, the Standing Committee, or the Medical Benefit Council shall be eligible for re-appointment or re-election, as the case may be.

**Sec-11;** A member of the E.S.I. Corporation, the Standing committee, or the Medical Benefit Council may resign his office by notice in writing to the Central Government.

**Sec 12:** A member of the E.S.I. Corporation, the standing committee, or the Medical Benefit Council shall cease to be a member of that body if he fails to attend 3 consecutive meetings thereof.

**Sec 13: Disqualification:** A person shall be disqualified for being chosen as or for being member of the E.S.I. Corporation, the Standing Committee or the Medical Benefit Council –

- a) if he is declared to be of unsound mind by a competent court; or
- b) if he is a discharged insolvent; or
- c) if he has been convicted of an offence involving moral turpitude.

**Sec 14:** Vacancies in the office shall be filled by appointment or election.

**Sec 15:** Members of the E.S.I. Corporation the Standing Committee and the Medical Benefit Council shall receive such fees and allowances.

**Sec 20:** The E.S.I. Corporation, the Standing Committee and the Medical council shall meet at such times and at such places and shall observe such rules or procedure in regard to transaction of business.

**Sec 21: Supersession of the ESI corporation, and standing committee;** If in the opinion of the Central Government, the E.S.I. Corporation or the Standing Committee makes default in performing the duties imposed on it or abuses its powers, the Government may, by the notification in the Official Gazette, supersede the E.S.I. Corporation or the Standing Committee, The Standing Committee shall however be superseded in consultation with the E.S.I. Corporation.

**Sec 8:** When the Standing Committee has been superseded, a new standing committee shall be immediately constituted.

When the E.S.I. Corporation has been superseded, the Central Government may-

- a) immediately appoint or elected new members to the E.S.I. Corporation or

b) in its discretion, appoint such agency, for such period as it may think fit, to exercise the powers and perform the functions of the E.S.I. Corporation.

The Central Government shall file a full report of any action taken under Sec.21, before Parliament at the earliest opportunity and in any case not later than 3 months from the date of the notification superseding the E.S.I Corporation or the Standing Committee, as the case may be

**Sec 25:**The E.S.I. Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such power and functions, as may be provided by the regulations.

**Sec 16:** The Central Government may, in consultation with the E.S.I. Corporation, appoint.

a) A Director General of the E.S.I. Corporation, and

b) A Financial Commissioner

**Sec 16(2):** The Director General shall be the Chief Executive Officer of the E.S.I. Corporation.

**Sec 16(4) :** They shall hold office for a period not exceeding 5 years but shall be eligible for re-appointment.

**Sec 16(6):** A person shall be disqualified to act as the Director General or the Financial Commissioner if he is declared to be of unsound mind, and insolvent.

**Sec 16(7)** The Central Government may at any time remove the Director General or the Financial Commissioner from office., by the votes of not less than 2/3rds of the total strength of the E.S.I. Corporation.

**Sec 23:** The Director General and the Financial Commissioner shall exercise such powers and discharge such duties as may be prescribed. They shall also perform such other functions as may be specified in the regulations.

**Sec 17:** The E.S.I. Corporation may employ such other staff of officers and servants as may be necessary for efficient transaction of its business.

**Sec 17(3)** Every appointment to posts (other than medical posts) corresponding to Group A and B posts under the Central Government shall be made in consultation with the Union Public Service Inspectors.

**Sec 45(1):POWERS OF THE INSPECTORS:** The E.S.I. Corporation may appoint such persons as Inspectors, as it thinks fit, for the purpose of the Act, It may, (i) for the purposes of enquiring into the correctness of any of the particulars stated in any return required to be submitted by a principal and immediate employer.

- a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of the Act; or
- b) require any person found in charge thereof to produce to such Inspector or other official to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary, or
- c) examine, his agent or servant, or any person found in such factory, establishment, office or other premises,
- d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment office or other premises;
- e) exercise such other powers as may be prescribed.

**Sec 45(3);** An Inspector shall exercise such functions and perform such duties as may be authorized by the ESI Corporation or as may be specified in the regulations.

#### **BENEFITS**

Chapter V Secs 46 to 73 deals with various types of benefits. The insured persons and their dependants are entitled to receive the benefits. These benefits are as follows:-

- 1) sickness benefit
- 2) maternity benefit
- 3) Disablement benefit
- 4) Dependants benefit
- 5) Medical Benefit and
- 6) Funeral expenses.

All these benefits except the medical benefits are monetary benefits.

#### **1. Sickness benefit:- Sec 46(1) (a)**

Sickness means a state of condition which requires a medical treatment and full rest. The sickness is to be certified by a duly appointed medical practitioner. Sickness benefit is payable to an insured person in the form of periodical payment. An insured person is entitled to claim a sickness benefit for sickness, only if he has paid contribution for not less than 78 days in any contribution period.

An insured person is not entitled to sickness benefit for the first 2 days of sickness. But if the sickness recurs within 15 days, he shall be entitled to recover the benefit even for that two days in the second spell.

An insured person is not entitled to claim sickness benefit for not more than 91 days in any two consecutive contribution period.

The daily rate of sickness benefit shall be the standard benefit rate corresponding to the average daily wages of that insured person.

**Following conditions should be fulfilled to claim sickness benefit:**

- 1) He should remain under a medical treatment in any dispensary, Hospital and strictly observe the medical instructions.
- 2) He should not leave the area without the medical officer's permission.
- 3) He must allow himself to be examined by a duly appointed medical officer.
- 4) He must not do anything which might retard the charges of his recovery.

**2. Sec 46 (1) (b) – Maternity benefit:**

An insured woman shall be entitled to get maternity benefit in cases of

- |                |                |             |
|----------------|----------------|-------------|
| a) Confinement | b) miscarriage | c) sickness |
|----------------|----------------|-------------|

arising out of pregnancy, confinement, premature birth of child or miscarriage. A woman shall be eligible for such benefit only if she produces a medical certificate.

The rate of maternity benefit shall be twice than that of the standard benefit rate. To claim maternity benefit contribution shall be payable for not less than 70 days in any two contribution period. The period of maternity benefit in the case of confinement shall be 12 weeks and in the case of miscarriage, it shall be 6 weeks after the date of her miscarriage.

In the case of sickness arising out of confinement, miscarriage or premature birth of child, maternity benefit period shall be 1 month.

**Following are the rules of maternity benefit:**

- a) An insured woman is entitled to maternity benefit for all days, on which she does not work for remuneration during the period of 12 weeks, of which not more than 6 weeks shall be before the expected date of delivery.
- b) If the insured women dies at the time of delivery, leaving behind the child, maternity benefit shall be paid for the whole of that period.

- c) If the child and the woman dies, maternity benefit shall be paid for the days upto and including the day of the death of the child.

In this case, maternity benefit shall be paid to the person nominated by the woman. If there is no nominee, it shall be paid to her legal heirs.

**3. Sec 46(1)(c) - Disablement benefit:**

When an insured person is suffering from disablement as a result of an employment injury, he is entitled to receive disablement benefit.

**Following are the rules, which governs the payment of disablement benefit:**

- a) For **temporary disablement**, the insured person is entitled to receive disablement benefit at the **full rate** during the **period of disablement**.
- b) For **permanent disablement**, the insured person is entitled to receive disablement benefit at the **full rate** for the **life time**.
- c) In the case of **permanent partial disablement**, he is entitled to receive disablement benefit according to the **loss of his earning capacity**.

No prior contribution is needed for claiming disablement benefit.

**4. Sec 46(1)(d) – Dependant’s benefit:-**

When an insured person dies due to employment injury, his dependents are entitled to receive certain benefit. It shall be paid in periodical.

**The benefit is distributed among the dependents in the following order:**

- a) The widow shall get  $3/5^{\text{th}}$  of the full rate during her life or until marriage. If there are two or more widows, the benefit is equally divided among them selves.
- b) Each adopted or legitimate son shall get  $2/5^{\text{th}}$  of the full rate until he attains 18 yrs of age.
- c) Each adopted or legitimate daughter shall get  $2/5^{\text{th}}$  of the full rate until she attains her 18 yrs., of age or marriage whichever is earlier.

If the total amount payable to all these dependents exceeds the full rate, it shall be proportionately reduced.

**5. Sec 46(1)(c) – Medical benefit:**

Medical benefit shall be given to the insured person and his family members. It may be given either in the form of an out patient treatment or in-patient treatment.

**Eligibility for Medical benefit:**

An insured person shall be entitled to medical benefit:

- a) during any contribution period payable in respect of him or
- b) during the period of receipt of sickness or maternity benefit or
- c) during the period of receipt of disablement benefit.

The insured person and his family members shall be entitled to receive the medical benefit in such kind and on such scale as may be provided by the state or the E.S.I. corporation. They shall get treatment only in the hospital, clinic, dispensary or other institution to which the Act is applicable.

**6. Sec 46(1)(f) – Funeral expenses:**

When an insured person dies, a funeral benefit not exceeding Rs. 5,500/- shall be payable to the eldest male member of the family. Where the deceased person did not have a family at the time of his death, the funeral benefit shall be payable to the person who actually incurs the expenditure. The benefit shall be made within 3 months from the date of death of the insured person.

**General provisions regarding benefits**

**1. Benefit not Assignable:** The right to receive payment of any benefit under this Act shall not be transferable to any other person.

**2. Benefit not Attachable:**

All cash benefits payable under this Act, shall not be attachable under any decree or order of any court.

**3. Bar of benefits under other Act:**

A person receiving benefit under this Act, shall not be entitled to any similar benefit available under any other Act.

**4. Cash benefit not commutable:**

Any periodical payment admissible under the Act, shall not be commuted for a lump sum.

**5. Benefit not receivable in certain cases:**

Where a workman works on any day and he receives wages, then he is not entitled to receive a sickness benefit, maternity benefit or disablement or benefit for that day.



**6. Observance of certain conditions:**

A person who is in receipt of sickness benefit or disablement benefit shall observe the following conditions

- a) he shall remain under medical treatment at a hospital, dispensary or clinic to which this Act is applicable, and carry out the instructions given by the medical officer.
- b) he shall not do anything which might retard the chances of his recovery.
- c) He shall not leave the area without the permission of the medical officer and
- d) He shall allow himself to be examined by any medical officer.

**7. Benefit not to be combined:**

An insured person is not entitled to receive more than one kind of benefit for the same period of time.

**8. Default by the Employer in paying contribution:**

Where the principal employer makes default in paying the contribution, the E.S.I. Corporation can recover the amount along with interest at the rate of 12% per annum or at any higher rate.

**9. Liability of Excessive Sickness benefit:**

Where the insured person suffers from sickness due to insanitary working conditions in the factory, and such insanitary conditions are due to default of the principal Employer, the E.S.I Corporation shall claim the Excessive sickness benefit from the principal Employer.

**10. Sec 70 – Repayment of benefit improperly received:**

Where any person has received any benefit improperly, he shall be liable to repay to the E.S.I Corporation.

**11. Sec 71 Benefit payable upto and including the day of death**

If any insured person dies, the benefit shall be received by the nominee or his legal heir, up to and including the day of death.

**12. Sec 72 – Employer not to reduce wages etc.,**

An employer by reason of his liability for any contribution payable under the Act, shall not reduce the wages of an employee.

**13. Sec 73 – Not to dismiss or punish employee:**

The employer should not dismiss or punish an employee who is in receipt of sickness or other benefit, during that period.

### **Rules regarding Contribution:**

- 1) Sec 39 – The** Contribution payable under the Act in respect of an employee shall comprise employer’s contribution and employee’s contribution The rate shall be prescribed by the central Govt.
- 2) Sec 39 (3) –** The wage period in respect of an employee shall be the unit, in respect of which all contributions are payable. The contribution payable in respect of the each wage period shall fall due on the last day of the wage period.
- 3) Sec 39 (5) –** Where the employer makes default in paying the amount of contribution, he shall be liable to pay simple interest at the rate 12% per annum or at such higher rate as may be specified in the regulations.
- 4) Sec 40 (2) –** Where the principal employer makes the payment of employees contribution, he can deduct that amount from the wages of an employee
- 5) Sec 40 (3) –** Where the principal employer makes the payment of employer’s contribution, in no way he has no right to deduct that amount from the wages of an employee.
- 6) Sec 40 (5) –** The Principal employer shall bear the expenses of remitting the contributions.
- 7) Sec 41 Recovery of contributions from Immediate employer:** Where the principal employer paid contribution, in respect of an employee employed by an immediate employer, shall be entitled to recover the contribution so paid from the immediate employer.
- 8) Sec 42 –** Employees whose average daily wages are less than that prescribed by the central Govt. are not required to pay any contribution, but they are entitled to all the benefits accruing under the Act.
- 9) Sec 43 –** Under this section, the E.S.I corporation may make regulation for the payment and collection of contribution, the manner and for the time of payment of contribution.
- 10) Sec 44 –** Returns and Registers: Every Principal employer and immediate employer has to submit returns to the E.S.I corporation when it directs to submit.
- 11) Sec 45-A –** E.S.I corporation may determine the amount of contribution payable in respect of an employee whose records or registers are not available.
- 12) Sec 45 – B –** Any contribution payable under the Act may be recovered as an arrear of land Revenue.

## **ADJUDICATION OF DISPUTES AND CLAIMS**

Secs. 74 and 75 of the Act lay down that where a dispute arises under the provisions of the Act, the matter in the dispute shall be decided by the Employees' Insurance court constituted under sec. 74 and not by a Civil Court.

### **Constitution of Employees' Insurance Court (Sec. 74)**

**Sec74(3)**-Any person who is or has been a judicial officer or is a legal practitioner of 5 years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

### **Matters to be decided by Employees' Insurance Court (Sec. 75)**

**Adjudication of questions or disputes.** The Employees' Insurance Court Shall decided the following questions or disputes:

- a) Whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
- b) the rate of wages or average daily wages of an employee for the purposes of this Act, or
- c) the rate of contribution payable by a principal employer in respect of any employee, or
- d) the person who is or was the principal employer in respect of any employee, or
- e) the right of any person to any benefit and as to be amount and duration thereof, or
- f) any direction issued by the E.S.I. Corporation under Sec. 55-A on a review of any payment of dependants' benefit, or
- g) any other matter which is in dispute –
  - (i) between a principal employer and the E.S.I. Corporation, or
  - (ii) between a principal employer and an immediate employer, or
  - (iii) between a person and the E.S.I. corporation, or
  - (iv) between an employee and a principal or immediate employer.

Subject to the provisions of Sec. 75(2-A), the following claims shall be decided by the Employees' Insurance Court, namely:

- a) claim for the recovery of contributions from the principal employer;
- b) claim by a principal employer to recover contributions from any immediate employer;
- c) claim against a principal employer under sec. 68;

- d) claim under Sec.70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and
- e) any claim for the recovery of any benefit admissible under the Act.

## **EMPLOYEE'S PROVIDENT AND MISCELLANEOUS PROVISIONS ACT, 1952**

**Under this Act, 3 schemes were established, they are as follows;**

**EMPLOYEES PROVIDENT SCHEMES;** Sec 5 empowers the central government to frame, by notification in the official gazette, a scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under the Act for the employees.

As soon as after framing of the scheme, there shall be established a fund. The fund shall vest in, and be administered by, the Central Board appointed under sec5-A

**Contributions;** Employer's contributions towards the members shall be originally 6-1/4% of basic wages, dearness allowance and retaining allowance. By the amendment Act it was raised to 8-1/3%. Now the rate of contribution shall be increased from 8.33% to 10%. In scheduled industries, the rate of contribution will be raised to 12%.

**EMPLOYEES PENSION SCHEME AND FUND;** Sec 6-A of the Act empowers the central government to frame a scheme, by notification in the official gazette, to be called the Employees' Pension Scheme. Soon after framing of this scheme, Pension Fund was established. The fund shall vest and administered by the Central Board.

**Contributions;** Employer's contribution shall not exceed 8 1/3% of the basic wages, dearness allowance and retaining allowance.

**EMPLOYEE'S DEPOSIT-LINKED INSURANCE SCHEME AND FUND;** Sec 6-c of the Act empowers the central government to frame a scheme to be called the Employee's Deposit insurance Scheme. After framing of this scheme an Insurance fund was established.

## **ADMINISTRATION OF THE SCHEMES**

To administer the above schemes various bodies have been constituted. They are the Central Board, Executive Committee, State Board, and Central Provident Fund Commissioner, Financial Adviser and Chief Accounts Officer.

### **Functions of the Central Board;**

- 1) The Central Board shall administer Employees' Provident Fund, Pension Fund and Deposit-Linked Insurance Fund vested in it, in such a manner as may be specified in the schemes.
- 2) The Central Board shall maintain proper accounts of its income and expenditure.
- 3) The accounts of the central board shall be audited annually by the Comptroller and Auditor General of India.

When a Board is constituted for any State, the Central Board shall transfer to it, as soon as possible, the amount standing to the credit of the Provident Fund of all the employees in the State.

Until a State Board is constituted for any State, the Regional Committee has been constituted. The Central Provident Fund Commissioner, shall act as the Chief Executive Officer of the Central Board. To assist the Central Provident Commissioner a Financial Adviser and Chief Accounts officer may also appointed in the discharge of his duties.

### **THE TRADE UNIONS ACT, 1926**

A trade Union Commonly, it means an association of workers in a particular craft or industry. In a legal sense it means an association formed primarily for the purpose of regulating the relations between employers and workmen or between employers and employers or between workmen and workmen.

According to L.J. Hanson, a trade union is essentially an organization of the workers.

**Trade dispute:** Sec 2(g) of the Act defines the term trade dispute According to this section, it means any dispute--

- (i) between employers and workmen; or
- (ii) between workmen and workmen; or
- (iii) between employers and employers, which is connected with (a) the employment; or (b) non-employment or (c) the terms of employment or (d) the conditions of labour of any person.

### **REGISTRATION OF TRADE UNIONS**

Registration of a trade union is not compulsory, but it is only optional. A regd. Trade union enjoys certain privileges and immunities. The same privileges and immunities are not available to an un-registered trade union, hence registration has become very common:

The Act prescribes the following procedures for the registration of a trade union:

- 1) A trade union can be registered only if it has minimum 7 members.
- 2) The application for registration must be made by the members of the trade union to the registrar of trade union.
- 3) The application for registration must be signed by at least 7 members, accompanied by a copy of its rules and statement of the following particulars viz.,
- 4) The names, occupations and addresses of the members, making the application.
- 5) The titles, names, ages, address and occupation of the office bearers of the trade union.
- 6) A general statement of its assets and liabilities of the trade union, if the trade union is in existence for at least one year before the application.
- 7) Along with the application a copy of the rules of the trade union must be attached.
- 8) **The rule shall contain the following matters;**
  - a) The name of the trade union and the address of its head office.
  - b) The objects for which the trade union has been established.
  - c) The procedure for admission of ordinary members, who shall be persons actually engaged or employed in an industry with which the trade union is connected.
  - d) the procedure for admission of honorary members, their number and their appointment as office bearer.
  - e) The maintenance of a list of members and adequate facilities for the inspection of such list by the office-bearers and other members.
  - f) The Payment of a subscription by the members of the trade union which shall not is less than 25 paise per month per member.
  - g) The purposes for which the general funds of the trade union shall be spent.
  - h) The conditions under, which any member shall be entitled to any benefit.
  - i) The conditions under which fines may imposed on the members.
  - j) The manner in which the rule shall be amend, varied or rescinded;
  - k) The manner in which the members of the executive and other office-bearers of the trade union shall be appointed and removed;
  - l) the safe custody of the funds of the union and annual, audit of the accounts and adequate facilities for the inspection of the account books by the office bearers and members of the trade union;

m) the manner in which the trade union may be dissolved.

8. Before seeking registration the executive committee of the trade union must be constituted in accordance with the provisions of the Act.

### **The power to call for further particulars**

The registrar may call for further information for the purpose of satisfying himself, that the application satisfies all the provisions of the Act and may refuse to register the trade union until such information is supplied. (Sec-7). Similarly, the Registrar may require a change of name of the trade union proposed to be registered, if the name is identical to an existing regd. Trade union. Until such change is effected, the registrar may refuse Registration. The primary function of the Registrar is to examine the application and to look at the objectives whether it is complied with the provisions of the Act; and the requirement of the Act has been complied with.

### **Registration:**

Sec-8 provides that the Registrar on being satisfied that the trade union had complied with all the requirements of this Act, with regard to registration, shall register the trade union by making the necessary entries in the Register maintained for that purpose.

### **Certificate of Registration:**

Sec-9 Provides that the 'Registrar, on registering a trade union, shall issue a certificate of registration in the prescribed form. Such certificate is the conclusive evidence that the trade union has been duly registered under the Act. If the registrar refuses to register, any person aggrieved by the refusal shall file an appeal before the High Court within 60 days of such refusal.

### **Characteristics of registered trade Union on incorporation (Sec-13)**

A trade union after registration acquires the following characteristics:

1. It becomes a body corporate by the name under which it is registered and becomes a legal entity distinct from its members of which it is composed.
2. It has perpetual succession and a Common seal
3. It has the power to acquire and hold both movable and immovable properties
4. It has the power to contract
5. It can by the name under which it is registered sue and be sued.

## **Rights and privileges of a Registered Trade Union**

### **Rights of a Registered Trade Union**

The Various rights available to a registered trade Union under the Act are as follows:

- a) Every regd. Trade union is a body corporate hence all rights and privileges available to a body corporate are available to a registered trade union.
- b) It has a right to have common seal in its own name
- c) It has a right to acquire, hold and dispose of both movable and immovable properties in its own name.
- d) It can enter into contract in its own name
- e) It has a right to spend its general funds for achieving its object.
- f) Its has a right to change its name
- g) It can constitute a separate political fund for the promotion of the civic and political interests of its members.
- h) It has a right to sue, in its name, for any infringement of its rights.
- i) It can include minors, who has attained the age of 15, as its members and they enjoy all the rights of a member.
- j) Members of a registered trade union has a right to inspect all the books of account and other related documents of the union.
- k) An agreement entered by a registered trade union with its members though the object of which is in restraint of trade it is valid and it can be enforceable by the trade union.

### **Privileges of the Trade Union:**

Privilege means a kind of advantage. The following are some of the important privileges.

- 1. Body corporate:** A registered trade union is considered as a body corporate, hence all privileges available to a body corporate are available to a regd trade Union.
- 2. Seperate Legal entity:** A registered trade union is a separate legal entity so it can sue or be sued in its own name.
- 3. Minor as a member:** A minor (employee) who has completed the age of 15 can become a regular member of a trade union However, he cannot become an office bearer of a trade union.



**4. Political fund:** A registered trade union can constitute and raise a separate political fund for the promotion of civic and political interests of its members

**5. Immunity from civil liability :** Sec 18 deals with immunity from civil suits in certain cases. No civil Suit will lie against any registered trade union or any office bearer, or its members, in respect of any act done in connection with a trade dispute in which the trade union member is a party only on the ground that-

- a) Such act induces some other persons to break a contract of employment, or
- b) It interferes with the trade, business or employment of some other person.

When the inducement is accompanied by illegal means, such as violence, intimidation etc., the trade union or its members cannot claim any immunity from entertaining an action to prevent the commission of such wrongs. Similarly the immunity from civil liability does not extend to acts of deliberate trespass.

**6. Immunity from Criminal Conspiracy :** S-17 Confers immunity from liability in cases of criminal conspiracy According to this section office-bearers and members of a registered trade union are not liable to punishment under Sec-120(B)(2) of the Indian penal code for criminal conspiracy; if

- a) It involves any agreement between the members for furthering any of the object for which the trade unions general funds may be expended, and
- b) The agreement itself is not one to commit an offence. The above said immunity may not be available to a trade union when it resorted to violent strikes

**7. Immunity from Tortious Acts;** A registered trade Union is not liable for any tortuous act done by its agents in furtherance of a trade dispute, if such agent acted,

- a) Without the knowledge of the executive committee of the trade union or
- b) Contrary to the express instructions of the executive.

**8. Immunity from agreement in Restraint of Trade:**

An agreement between the members of a trade Union, though it operates as restrains on trade, is not void or voidable, but it is valid and binding on the members (A similar agreement entered between to individuals is void) The above said immunities are not available to an unregd. Trade union.

## **DUTIES AND LIABILITIES OF A REGISTERED TRADE UNION**

The Trade Unions Act imposes the following duties and liabilities on a registered trade Union.

1. If the place and address of the head office of a registered trade union is changed, the notice of such change must be given in writing in the prescribed manner to the Registrar.
- 2. A registered trade union is under a duty to spend the general funds only for the following objects.**
  - a) The payment of salaries, allowances and expenses to office bearers of the trade union
  - b) The payment of expenses for the administration of the trade Union, including audit of the accounts of the general funds of the trade union.
  - c) Expenses relating to **legal matters**, in which the trade union or any members thereof is a party, undertaken for the purpose of securing or protecting any rights of the trade union.
  - d) Expenses in connection with the conduct of trade disputes on behalf of the trade union or any member thereof
  - e) The compensation to members for loss arising out of trade disputes.
  - f) The allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members.
  - g) To undertake the liability on policies of assurance on the lives of members or policies insuring members against sickness, accident or unemployment.
  - h) To make provision for educational, social or religious benefits for members of their dependants.
  - i) The upkeep of a periodical magazine published mainly for the purpose of discussing questions affecting employees or workmen as such.
  - j) The payment of contribution to any cause intended to benefit workmen in general. Such payments should not exceed  $1/4^{\text{th}}$  of the combined total of the gross income of that year and
  - k) for any other object notified by the appropriate govt. in the official gazette.

3. A registered trade union cannot spend general funds for political purposes. If a trade union is interested in the promotion of the civic and political interests of its members, it may constitute a separate political fund and that can be used for the political purposes of the trade union.
4. A registered trade union is under a duty to see that not less than  $\frac{1}{2}$  of the total number of the office-bearers of the trade union must be persons actually engaged or employed in an industry with which the trade union is connected. The app. Government may by general or special order exempt a trade union from the operation of this provision.
5. **Every regd. trade union must send annual reports to the registrar.**
6. **While** selecting or (electing) a person as a member of the executive committee or for any other office, it must be seen that such person has completed the age of 18 yrs and there was no conviction on him for any of device involving moral turpitude. If any conviction and a period of 5 yrs has elapsed since his release that will not be a disqualification.

### **AMALGAMATION OF TRADE UNIONS (SECS 24 TO 26)**

What are the rules regarding amalgamation of trade union.

Amalgamation means merger of two or more trade unions into one single trade union. The Act provides for different kinds of amalgamation. They are as follows.

- i) Amalgamation with dissolution of such trade unions which are joining in the amalgamation.
- ii) Amalgamation without dissolution of such trade unions.
- iii) Amalgamation with the division of funds of such trade union.
- iv) Amalgamation without the division the funds of such trade unions.

The Act prescribes two important conditions for a valid amalgamation. They are as follows:

- a) At least  $\frac{1}{2}$  of the members of the concerned trade union must participate in the vote for amalgamation and.
- b) At least 60% of the vote recorded are in favour of the amalgamation.

The notice of amalgamation must be given to the Registrar of trade unions. The notice must be signed by the secretary and 7 members of each of the trade unions that are going to be amalgamated. Where the head office of the amalgamated trade union is situated in a different state, notice shall be sent to the Registrar of Trade unions of that state also. The Registrar, after verification if he is satisfied shall register the amalgamation. The amalgamation will come into effect from the date of such registration. An amalgamation of two or more regd. Trade unions shall not prejudice any right of any such trade union joining together, or any right of its creditors.

### **DISSOLUTION OF TRADE UNION**

Sec 27, of the Act deals with the dissolution of a trade union. A regd. Trade union may be dissolved at any time as per its rules. Notice of such dissolution signed by the secretary and 7 members, must be sent to the Registrar within 14 days of dissolution. If the Registrar is satisfied that the dissolution has been effected in accordance with the rules of the trade union, the Registrar will register the fact of dissolution. The dissolution will take effect from the date of such registration.

Where the rules of a trade union do not provide for the distribution of funds of the trade union on dissolution, the Registrar shall divide the funds among its members in such manner as may be prescribed.

### **THE PAYMENT OF WAGES ACT, 1936**

#### **Rules for payment of wages [sec 3 to 6]**

#### **Responsibility for payment of wages [sec 3]**

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid.

**[sec 4]- Fixation of wage-period;** Every person shall be responsible for the payment of wages under sec-3 shall fix periods, known as wage-periods, in respect of which such wages shall be payable. A wage period shall not exceed one month.

**[sec5]-Time of payment of wages;** The rules relating to time of payment of wages are as follows;

**1] Wages to be paid before 7<sup>th</sup> or 10<sup>th</sup> day;** In any industry less than 1,000 persons are employed, wages shall be paid before the expiry of the 7<sup>th</sup> day of the wage-period. Where

the numbers of workers exceeds 1,000, then the wages shall be paid before the expiry of the 10<sup>th</sup> day of the wage-period.

**2] Wages in cases of termination of employment;** Where the employment of person is terminated, the wages earned by him shall be paid before the expiry of the 2<sup>nd</sup> working day from the day on which the employment is terminated

3] The state government shall give certain exemptions from the operation of the above mentioned provisions in certain cases.

4] All payment of wages shall be made on a working day.

**[sec-6] Medium of payment of wages;** All wages shall be paid in current coin or currency notes or both.

## **DEDUCTIONS FROM WAGES**

**Deductions for fines;** No fine shall be imposed on any employed person without giving a notice that for any acts or omissions to do any act, a fine has been imposed. And such notice shall be exhibited in the prescribed manner on the premises of employment .No fine shall be imposed until he has been given an opportunity of showing cause against the fine. The total amount of fine shall not exceed 3% of the wages. All fines shall be recorded in the register.

**Deductions for absence from duty;** A employer has the right to deduct from the wages, for absence from duty. But the amount of such deductions shall not be exceeding his wages for 8 days.

**Deductions for damages or loss;** If any employed person causes any damage or loss to the property of the employer, he has the right to make some deductions from wages

**Deductions for services;** Deductions for house accomadation and such amenities &services supplied by the employer shall not be made from the wages of any employed person unless such services have been accepted by him as a term of employment.

**Deductions for recovery of advances;**

**If any advance of money given before employment began,** then such advance shall be made from the first payment of wages.

**If any advance of money given after employment began,** such advance shall be recovered subject to certain conditions as the state government impose.

**Deductions for recovery of loans;** The employer has the right to deductions for loans granted to an employed person for house-building or for other purposes and the interest due in respect thereon.

**Deductions for payment to co-operative societies and insurance schemes;**

The employer has the right to deductions for payments to co-operative societies approved by the state govt. And that deductions, made with the written authorisation of the person employed.

**Other deductions;**

Deductions required to be made by order of a court.

Deductions for payments to co-operative societies of advances from any provident fund.

Deductions for recovery of losses sustained by a railway administration on account of any default by the employed person.

Deductions with the written authorisation of the employed person, for contributions to the Prime Minister's National Relief fund.

**Limit on deductions;**

1) In the case on payments to co-operative societies, the total amount of deductions shall not exceed 75% of his wages.

2) In any other case, they shall not exceed 50% of his wages.

**THE PAYMENT OF GRATUITY ACT, 1972**

Gratuity is a kind of retirement benefit, like provident fund or pension. It is a payment which is intended to help an employee after his retirement. The general principle underlying gratuity schemes is that by faithful service over a long period the employee is entitled to claim a certain amount as retirement benefit. Thus it is earned by an employee as a reward for a long service.

**Payment and forfeiture of Gratuity**

**(Secs 4 and 5)**

**I. Payment of Gratuity (sec – 4)**

Payment of Gratuity to an employee as defined under the Act is mandatory. The various provisions for payment of Gratuity are

**1. Gratuity payable on termination of employment:-**

Gratuity shall be payable to an employee on the termination of his employment, after he has rendered continuous service for not less than 5 years-

- a) On his superannuation, or
- b) On his retirement or resignation or
- c) On his death or disablement due to accident or disease.

But the completion of continuous service of 5 yrs shall not be necessary where the termination of employment of any employee is due to death or disablement.

## **2. Rate of gratuity:**

For every completed yr of service or part thereof in excess of 6 months, the employer shall pay gratuity to an employee at rate of 15 days wages based on the rate of wages last drawn by the employee, while calculating 15 days wages, rest days and holidays also included. In the case of a monthly rated employee 15 days wages shall be calculated by dividing the monthly rate of wages last drawn by him by 26 and multiplying the quotient by 15.

In the case of a **piece rated employee**, daily wages shall be computed on the average of the total wages received by him for a period of 3 months, immediately preceding the termination of his employment, and for this purpose, wages paid for any overtime work shall not be taken into account.

In the case of an employee, who is in a **seasonal establishment**, the employer shall pay the gratuity at the rate of 7 days wages for each season. (Sugar factory is a seasonal factory) A permanent employee in a sugar factory is entitled to gratuity at the rate of 15 days wages for each completed yr of service.

## **3. Maximum gratuity:-**

The amount of gratuity payable to an employee shall not exceed Rs.2,50,000/-. The amendment Act of 1998 has raised it to Rs.3,50,000/-

## **4. Better terms of gratuity:-**

An employee may sometimes be entitled to receive better terms of gratuity under any award or agreement or contract with the employer.

## **II. Exemption:**

Sec 5 empowers the appropriate govt. may by notification in the official Gazette, exempt any establishment from the operation of the provisions of this Act, if it is satisfied that the employers in any establishment are in receipt of gratuity and pensionary benefit it not less favourable than the benefits conferred under this Act.

### **III. Forfeiture of gratuity:**

Sec 4(6) deals with cases in which gratuity payable to an employee may be forfeited. According to it, the gratuity of an employee whose service have been terminated for any act willful omission or negligence causing any damage ear loss to or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for –

- i) his riotous or disorderly conduct or any other act of violence an his par or,
- ii) any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment

### **Nomination**

#### **(Sec 6)**

Each employee is required to make a nomination within a specified period and in the specified names. The rules relating to nomination are as follows:

#### **1) Nomination within 90/30 days:**

Each employee, who has completed 1 yr of service, after the commencement of the payment of Gratuity (Central) Rules 1972, shall nominate any person within 90/30 days.

#### **2) Distribution of amount of gratuity:**

An employee may in his nomination distribute the amount of gratuity payable to him amongst more than one nominee. If more than one person has been nominated by the employee, then the amount of gratuity payable to him shall be distributed among the nominees.

#### **3) Nomination in favour of family member:-**

If an employer has a family at the time of making a nomination, he shall nominate one or more member of his family. If he nominate any other person, who is not a member of his family, shall be void.

#### **4) Modification of Nomination:**

A nomination may be modified at any time by an employee, after giving a written notice to his employer, of his intention to do so.

#### **5) Death of Nominee:-**

If a Nominee predeceases the employee, then he shall make a fresh nomination.



## **6) Safe custody of Nomination:-**

Every nomination sent by the employee to his employer shall be kept in safe custody. And it shall take effect from the date of receipt of the same by the employer.

### **Recovery of gratuity (sec 8)**

The controlling authority shall, on the application made to it by the aggrieved person, issue a certificate to the collector, for that amount. The collector shall recover the amount together with compound interest, as arrears of land revenue and pay the same to the person entitled thereto.

## **THE PAYMENT OF BONUS ACT, 1965**

### **ELIGIBILITY AND DISQUALIFICATION FOR BONUS**

**Eligibility for bonus (Sec.8)** Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of the Act, provided he has worked in the establishment for not less than 30 working days in that year (Sec.8) where an employee has not worked for all the working days in any accounting year, the bonus payable to him under Sec.10 shall be proportionately reduced (Sec.13).

**Disqualification for bonus (Sec.9).** Notwithstanding anything contained in the Act, an employee shall be disqualified from receiving bonus under the Act, if he is dismissed from service for --

- (a) Fraud, or
- (b) Riotous or violent behaviour while on the premises of the establishment or
- (c) Theft, misappropriation or sabotage of any property of the establishment.

### **DETERMINATION OF BONUS**

Bonus, under the payment of Bonus Act, cannot be claimed by workers as a matter of right. The Bonus Formula under the Act rests on the calculation of the available surplus and it envisages the following steps:

#### **1. Computation of gross profit (Sec.4)**

The computation of gross profits for an accounting year for the purpose of the bonus formula is the first step. It is calculated according to Sec.4 of the Act.

## THE FIRST SCHEDULE

(See. Sec. 4 (a))

### Computation of gross profits of a banking company

The starting point in the computation of the gross profits in the case of a banking company is the net profit.

**Items to be added back to net profit.** To the net profit of a banking company, the following amounts shall be added:

1. Provision for bonus to employees, and bonus paid to employees in respect of previous accounting years.
2. Provision for depreciation
3. Provision for development rebate reserve
4. Provision for any other reserves, to the extent charged to profit and Loss Account
5. Donations in excess of the amount admissible for income-tax.
6. Any amount certified by the Reserve Bank of India
7. Losses of, or expenditure relating to, any business situated outside India.

**Items to be deducted.** The following items have to be deducted from gross profits under sec 6.

- a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax), to the extent credited to profit and Loss Account.
- b) Profits of, and receipts relating to any, business situated outside India, to the extent credited to Profit and Loss Account.
- c) Income of foreign banking companies from Investments outside India, to the extent credited to Profit and Loss Account.
- d) Expenditure of losses (if any) debited directly to published or disclosed reserves, other than
  - (i) Capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax) and
  - (ii) Losses of any business situated outside India.
- e) Refund of any excess direct tax paid for previous accounting years.

f) Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force.

The resultant figure is the gross profit for purposes of bonus.

## **II. Determination of available surplus (Sec.5)**

The next step, after the determination of gross profits in the manner discussed above, is the determination of available surplus. The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in Sec.6 (Sec. 5).

### **Sums deductible from gross profit (Sec. 6)**

Sec. 6 specifies the sums that are to be deducted from gross profits as prior charges. These sums are as follows:

- (a) Any amount by way of depreciation.
- (b) Any amount by way of development rebate.
- (c) Any direct tax which the employer is liable to pay for the accounting year in respect of his income.
- (d) Any other sum specified in respect of the employer in the Third Schedule.

### **Deductions mentioned in the Third Schedule**

The employers for this purpose have been divided into 5 categories, namely

- 1) Company other than a banking company.
- 2) Banking company.
- 3) Corporation.
- 4) Co-operative society, and
- 5) Any other employer not falling under any of the aforesaid categories.

## **THE THIRD SCHEDULE**

### **(See. Sec. 6(d))**

#### **1. In respect of a company other than a banking company**

- (i) The dividends payable on its preference share capital for the accounting year.
- (ii) 8.5 per cent of its paid-up equity share capital.
- (iii) 6 per cent of its reserves shown in its balance sheet.

## **2. In respect of a banking company**

- (i) The dividends payable on its preference share capital for the accounting year.
- (ii) 7.5 per cent of its paid-up equity share capital.
- (iii) 5 per cent of its reserves shown in its balance sheet.
- (iv) any sum which, in respect of the accounting year, is transferred by it to a reserve fund.

## **3. In respect of a corporation**

- i) 8.5 per cent of its paid-up capital.
- ii) 6 per cent of its reserves, if any, shown in its balance-sheet as at the commencement of the accounting year.

## **4. In respect of a co-operative society**

- i) 8.5 per cent of the capital invested by such society.
- ii) such sum has been carried forward in respect of the accounting year to a reserve fund.

## **5. Any other employer not falling under any of the aforesaid categories**

8.5 per cent of the capital Invested by him in his establishment. Where such employer is a firm, an amount equal to 25 per cent of the gross profits derived by it from the establishment in respect of the accounting years or Rs. 48,000 to each such partner, whichever is less, shall be deducted

### **Where such employer is an individual or a Hindu undivided family**

- i) An amount equal to 25 per cent of the gross profits derived by such employer from the establishment in respect of the accounting year or Rs. 48,000 whichever is less, shall also be deducted.

## **III. Allocable surplus**

After determining the 'available surplus', the employees' share known as 'allocable surplus' is to be determined. Allocable surplus is defined in Sec. 2(4).

The allocable surplus is the workers share in the available surplus. The rules to be followed for its distribution are as follows:

**1. Amount of bonus** The bonus formula as envisaged in the Act provides for the payment of minimum and maximum bonus to the employees in an accounting year so that they are not deprived of any bonus in the accounting year.

**(a) Minimum bonus (Sec.10)** Every employer shall be bound to pay to every employee in respect of the accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or Rs. 100 (Rs.60 in case of employee below 15 years of age whichever is higher.

**(b) Maximum bonus (Sec.11)** When the allocable surplus in a particular accounting year exceeds the amount of minimum bonus payable to the employees. Where in respect of any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees under sec. 10, the employer shall be bound to pay to every employee subject to a maximum of 20 per cent of such salary of wage

**2. Calculation of bonus with respect to certain employees (Sec. 12)** Where the salary or wage of an employee exceeds Rs. 1,600 per mensem, the bonus payable to such employee under sec. 10 or, as the case may be, under sec. 11 will be calculated as if his salary or wage were Rs. 3,500 per mensem.

**3. 'Set on' and 'set off' of allocable surplus (Sec. 15)**

**(1) Set on.** Where the allocable surplus for any accounting year exceeds the amount of maximum bonus payable to the employees in the establishment under sec. 11, then the excess of allocable surplus, subject to a limit of 20 per cent of the total salary or wage of the employees employed in the establishment in that accounting year, shall be carried forward for being set on to the succeeding accounting year and so on up to and inclusive of the 4<sup>th</sup> accounting year.

**(2) Set off.** Where for any accounting year, there is no allocable surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under sec. 10. then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year.

**(3) Proportionate reduction in bonus in certain cases (Sec. 13).**

**(4) Where an employee has not worked for all the working days** in any accounting year, the minimum bonus of Rs.100 or as the case may be, of Rs.60, if such bonus is higher than 8.33 Per cent of his salary or wage for the days he has worked in that accounting year shall be proportionately reduced.

**(5) Adjustment of customary or interim bonus against bonus payable under the Act Sec. 17** authorizes the employer to deduct the amount of any Puja bonus or other customary bonus

paid to an employee in an accounting year from the amount of bonus payable by him to the employee under the Act in respect of that accounting year.

**(6) Deduction of certain amounts from bonus (Sec.18).** Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under the Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

**(7) Time limit for payment of bonus (Sec. 19)** All amounts payable to an employee by way of bonus under the Act shall be paid in cash by his employer.

(a) Where there is a dispute regarding payment of bonus pending before any authority under Sec. 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) in any other case, within a period of 8 months from the close of the accounting year.

**(8) Recovery of bonus (Sec. 21).** Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, he may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same as an arrear of land revenue.

The application under Sec.21 for the recovery of any amount or bonus due from an employer to an employee may be made by

(1) The employee himself, or

(2) Any other person authorized by the employee in writing to act on his behalf, or

(3) In the case of the death of the employee, his assignees or heirs.

An application for the recovery of bonus shall be made within 1 year from the date on which the money became due to the employee from the employer.

## **THE MINIMUM WAGES ACT, 1948.**

### **FIXATION AND REVISION OF WAGES (SEC. 3 TO 5)**

#### **Fixing of minimum rates of wages (Sec.3)**

The responsibility for fixing the minimum rates of wages is that of the appropriate Government. Sec. 3 provides that the appropriate Government shall fix the minimum rates

of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule.

**Minimum rates.** The appropriate Government may fix-

- a) A minimum rate of wages for time work (referred to as a minimum time rate);
- b) A minimum rate of wages for piece work (referred to as a minimum place rate).
- c) Guaranteed five rate;
- d) Overtime rate.

**Different minimum rates.** In fixing or revising minimum rates of wages, different minimum, rates of wages may be fixed for –

- 1) Different scheduled employments;
- 2) different classes of work in the same scheduled employment;
- 3) adults, adolescents, children and apprentices;
- 4) different localities

Further in fixing or revisiting minimum rates of wages under Sec. 3, minimum rates of wages may be fixed by any one or more of the following wage-periods namely:

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other larger wage-period as may be prescribed.

#### **Procedure for fixing and revising minimum wages (Sec. 5)**

Sec. 5 provides 2 separate modes of procedure for fixing and revising minimum wages.

The provisions of Sec.5 are summed up as follows:

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

- (a) **Appointment of committees.** The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be or
- (b) **Publication of proposals in the official Gazette.** The appropriate Government shall, by notification in the official Gazette, publish its proposals. It shall also specify a date on which

the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification.

After considering the advice of the committee or committees the appropriate Government shall by notification in the official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification.

**Consultation with Advisory Board.** Where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in sec. 5(1)(b), it shall also consult the Advisory Board.

## **ADVISORY BOARD AND CENTRAL ADVISORY BOARD**

(Secs. 7 to 9 and 29)

### **Advisory Board (Sec. 7)**

For the purpose of co-ordinating the work of committees and sub-committees appointed under sec. 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.

**Composition of Committees and Advisory Board (Sec. 9).** Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding 1/3<sup>rd</sup> of its total number of members. One of the independent persons shall be appointed the chairman by the appropriate Government.

### **Central Advisory Board (Sec. 8)**

The Central Government shall appoint a central Advisory Board –

(a) for the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates or wages and other matters under the Act, and

(b) for co-ordinating the work of the Advisory Board

**Composition of the Central Advisory Board.** It shall consist of persons nominated by the central Advisory Board. It shall consist of persons nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding 1/3<sup>rd</sup> of its total number of members.



One of the independent persons shall be appointed the Chairman of this Board by the Central Government (Sec.8(2))

## **THE MATERNITY BENEFIT ACT, 1961**

### **Right to payment of maternity benefit**

Every woman shall be entitled to, and her employer shall be liable for the payment of maternity benefit. Maternity benefit is a payment to a woman at the rate of the average daily wage for the period of her actual absence.

**Average daily wage.** It means the average of the woman's wages payable to her for the days on which she has worked during the period of 3 calendar months immediately preceding the date from which she absents herself on account of maternity.

**Conditions for payment of maternity benefit.** The following conditions must be fulfilled before maternity benefit becomes payable to a woman worker in an establishment:

**(1) Work for not less than 80 days** to have been put in. The woman must have actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery.

**(2) Maternity benefit for a maximum period of 12 weeks.** The maximum period for which the woman shall be entitled to maternity benefit shall be 12 weeks of which not more than 6 weeks shall precede the date of her expected delivery.

**(3) Death.** If the woman dies during this period of 12 weeks. The maternity benefit shall be payable only for the days up to and including the day of her death. Where the woman having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for payment of maternity benefit for that entire period. If the child also dies during the said period, the employer shall be liable for the payment of maternity benefit for the days up to and including the date of the death of the child.

**Notice of Claim for maternity benefit and payment thereof (Sec.6)** Any woman employed in an establishment and entitled to maternity benefit under the provisions of the Act may give notice to her employer stating that her maternity benefit and any other amount to which she may be entitled may be paid to her or to such person as she may nominate in the notice. The notice shall be in writing and in the prescribed form. It shall also state that she

will not work in any establishment during the period for which she receives maternity benefit (Sec.6(1)). In the case woman who is pregnant, the notice shall state the date from which she will be absent from work. This date will not be earlier than 6 weeks from the date of her expected delivery (Sec. 6(2)). If she has not given the notice when she was pregnant. She way give such notice as soon as possible after the delivery.

**Mode of Payment.** The amount due for the subsequent period shall be paid by the employer to the woman within 48 hours of production of proof that the woman has delivered a child.

**Payment of maternity benefit in case of death of a woman (Sec.7).** If a woman entitled to maternity benefit or any other amount dies before receiving the maternity benefit of the amount, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under sec. 6. In case there is no such nominee, the maternity benefit will be paid to her legal representative.

**Forfeiture of maternity benefit (Sec. 18).** If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of sec. 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period.

**Dismissal during absence of pregnancy (Sec. 12)** When a woman absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence.

**Medical bonus (Sec. 8).** Every woman entitled to maternity benefit under the Act shall also be entitled to receive from her employer a medical bonus of Rs. 1,000/-

## **LEAVE AND NURSING BREAKS**

**Leave for miscarriage (Sec.9).** In case of miscarriage, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage.

**Other leave (Sec. 10).** A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a maximum period of 1 month.

**Nursing breaks (Sec.11).** Where a woman, after having delivered a child, returns to duty after such delivery, she shall be allowed in the course of her daily work 2 breaks of the prescribed duration for nursing the child until the child attains the age of 15 months.

**Powers and duties of Inspectors (Sec.15)** An Inspector may exercise all or any of the following powers:

- (1) He may enter at all reasonable times with assistants, if any, any premises or place where women are employed or work is given to them in an establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under the Act and require their production for inspection.
- (2) He may examine any person whom he finds in any premises.
- (3) He may require the employer to give information regarding the names and addresses of women employed. payments made to them, and applications or notices received from them under the Act.
- (4) He may take copies of any registers and records or notices or any portions thereof (Sec.15).

**Appeal.** Any person aggrieved by the decision of the Inspector may appeal to the prescribed authority within 30 days from the date of which the decision of the Inspector is communicated to such person (Sec. 17(3)). The decision of the prescribed authority shall be final.