

## **Module II**

### **Company Law**

#### **Provisions of the Company's Act relating to Annual General Meeting: (Sec. 96 of the Companies Act, 2013)**

As the term denotes, annual general meeting is the meeting under section 96 which has to be held annually. It is the meeting of the members through which they get the opportunity to express their views on the management of the company. Through this meeting, the shareholders can exercise control over the affairs of the company. The 'Annual General Meeting' is sometimes called "Ordinary General Meeting" as it usually deals with the so-called 'Ordinary Business'.

#### **Purpose (Objectives) to hold these meetings are:**

1. To submit the annual account, balance sheet, director's report and auditor's report.
2. To declare the dividend.
3. Special business- any other business to be transacted will be deemed special business likes:
4. To increase share capital
5. To alter Article of Association
6. To appoint auditors and fix their remuneration.
7. To elect directors are that liable to retire by rotation.

#### **Legal Provisions Relating to Annual General Meeting**

Every company is required to hold this meeting. But, there are certain legal provisions which have to be followed, relating to the annual general meeting as contained in sections 96 and 97. There are:

1. **First Annual general meeting:** A company may hold its first annual general meeting within a period of 9 months from the date of incorporation. However this should not be more than 9 months from close of financial years.
2. **Subsequent meeting:** There must be one meeting held in each year. The gap between two annual general meetings must not be more than 15 months. Meeting must be held not later than 6 months from close of financial year.
3. **Extension of time:** the registrar has the power to extend the time of 15 months by 3 more months in special cases.
4. **Day, hour and place of meeting:** The meeting can be held at any working place, on any working day and working hours. If the day scheduled for meeting is declared by the Central Government to be a public holiday after the issue of the notice, it shall not be deemed as a holiday.
5. **Notice of the meeting:** 21 clear days notice or any shorter notice if agreed by all shareholders must be given.
6. **Business to be transacted:** At every AGM, the following matters must be discussed and decided. Since such matters are discussed at every AGM, they are known as ordinary business. All other matters and business to be discussed at the AGM are special business.

The following matters constitute ordinary business at an AGM :

- i. Consideration of annual accounts, director's report and the auditor's report
- ii. Declaration of dividend
- iii. Appointment of directors in the place of those retiring
- iv. Appointment of and the fixing of the remuneration of the statutory auditors.

- Ordinary business is transacted by passing ordinary resolution.

**Special Business:** All matters other than ordinary business are treated as special business at an annual general meeting. For transacting special business at a meeting, there shall be annexed to the notice of meeting an explanatory statement setting out:

(a) All material facts concerning each item of such business, and

(b) In particular, nature of the concern or interest, if any, of every director or manager in each item.

(c) Statement must also state time and place where document, if any, proposed for approval at the meeting can be inspected by members.

(d) The items constituting special business are transacted either by an ordinary resolution or by a special resolution depending on the requirements of the Companies Act 2013 or articles of the company in respect of each particular item.

**7. Default in holding Annual general meeting:** As mentioned earlier, every company is required to hold this meeting according to the provision of the Companies Act. If any company fails to hold the annual general meeting the consequences are as follows:

**A.** As mentioned above, the annual general meeting provides the opportunity to the members to express views on the management of the company. Any member can apply to the Central Government for the failure of the company to call the meeting. The Central Government may give direction to the company for calling the meeting.

**B.** The company as well as every officer will become liable if they fail to held the meeting and shall be punishable with fine upto Rs. 50,000, and if the default continues , with a further fine of Rs. 2,500 for every day after the first day of default during which the default continues.

### **Board Meeting:**

The directors are to act collectively in the form of a board, and the decisions are taken at the meetings of the Board of directors. These meetings may again be of two types:

a) Meetings of the Board of directors; and (Sec. 173 of the Companies Act, 2013)

b) Meetings of the committee of directors.

**A. Meeting of the Board of Directors:** As the affairs of a company are managed by the board of directors, therefore it is necessary that the directors should often meet to discuss various matters regarding management and administration of affairs of the companies in the best interest of shareholders.

**B. Meeting of a Committee of the Board:** As per sec. 179(3), the board may, by a resolution passed at a meeting, delegate various powers to a committee of directors, managing directors, manager or any other principle officer of the company.

### **Provisions of the Companies Act, 2013 for Board Meeting**

#### **1. Frequency of Meeting:**

**a) First Meeting:** First Meeting of Board of Directors within 30 (Thirty) days from the date of Incorporation of company.

#### **b) Subsequent Meetings:**

One person Company, Small company and Dormant company: At least one meeting of Board of directors in each half of calendar year and minimum gap between two meetings should be at least 90 days.

**Other than Companies mentioned above:** Minimum No. of 4 meetings of Board of Director in a calendar year and maximum gap between two meetings should not be more the 120 days.

**2. Calling of Meeting:** Meeting of Board of Director should be called by giving 7 days notice to Directors at his registered address through:

- a) By hand delivery
- b) By post
- c) By Electronic means

**Meeting at shorter Notice:** A meeting of Board of Directors can be called by shorter notice subject to the conditions:

If the company is require to have independent director:

- a) Presence of at least one Independent director is required.
- b) In case of absence, decision taken at such meeting shall be circulated to all the directors, and
- c) shall be final only on ratification thereof by at least one Independent Director

If the company doesn't require to have independent director: The meeting can be called at a shorter notice without any conditions to be complied with.

**3. Quorum of Board Meeting:** 1/3 rd of total strength OR 2 (Two) Directors, whichever is higher. Where meeting of Board could not be held for want of quorum, the meeting shall automatically adjourn to same time, same place at next week (Not being national holiday).

If number of directors reduced below quorum, then the remaining directors may hold the meeting for the following purposes:

- a) To call a General meeting
- b) Increase the number of directors.
- c) Quorum in case of Interested Directors:
- d) If interested director exceed or equal to 2/3 of total strength the remaining directors not being less than 2 (two) shall be the quorum.

**4. Participation of Directors in Board Meetings:** directors may, apart from attending the meeting physically, participate in the meeting by way of video conferencing & other audio visual means. Matter which can't be dealt at a meeting held though Video conferencing:

- a) Approval of the annual financial statements;
- b) Approval of the Board's report;
- c) Approval of the prospectus;
- d) Audit Committee Meetings for consideration of accounts; and
- e) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Every general meeting (i.e. meeting of members of the company) other than the statutory meeting and the annual general meeting or any adjournment thereof, is an extraordinary general meeting. Such meeting is usually called by the Board of Directors for some urgent business which cannot wait to be decided till the next AGM. Every business transacted at such a meeting is special business. An explanatory statement of the special business must also accompany the notice calling the meeting. The Articles of Association of a Company may contain provisions for convening an extraordinary general meeting.

#### **Objectives (Purposes) of Extraordinary General Meeting:**

The main purpose (Objectives) to hold these meetings are:

- a) Change in memorandum of association.
- b) Change in articles of association.
- c) Reduction or reorganization of share capital.
- d) Issue of debentures.
- e) Removal of directors.
- f) Removal of auditors.

The business transacted at an extraordinary general meeting, being special business, every notice of such meeting must be accompanied by an explanatory statement.

## **Legal Provisions Relating to Extraordinary General Meeting (EGM):**

### **1. By Whom EGM is called:**

**a) By the Board of directors:** EGM may be called by the board whenever it deems fit by depositing a valid requisition at the registered office. On receipt of a valid requisition, the board shall within 21 days proceed to call an EGM to be held not later than 45 days from the date of deposit of requisition. The notice shall be given to those members whose names appear in the register of members within 3 days of receipt of a valid requisition.

**b) On the Requisition of shareholders:** EGM may be called on requisition of members holding 1/10th or more of the paid up equity share capital if company have share capital. If company do not have share capital, on requisition of members holding 1/10th or more of total voting power. The requisition shall specify the matters for the consideration of which EGM is to be called and it is signed by all the requisitionists or a requisitionist duly authorised.

**c) By the requisitionists themselves:** If the board fails to call an EGM, it may be called by the requisitionists themselves as follows:

- The EGM shall be held within 3 months from the date of deposit of the requisition.
- The EGM shall be called in the same manner in which a meeting is called by the board of directors.
- The requisitionists shall be entitled to receive a list of members from the company.
- The EGM should be convened on a working day at the registered office or in the same city or town in which the registered office is situated.
- The notice of EGM shall be given by speed post or registered post or electronic mode.
- The notice of EGM shall disclose the place, date, day, hours and business to be transacted at the meeting.

**d) By the tribunal:** If for any reason it is impracticable to call a meeting of a company, other than annual general meeting, in any manner in which meeting of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this act or the articles, the tribunal may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting order a meeting of the company to be called, held and conducted in such manner as the tribunal thinks fit and give such ancillary directions as the tribunals thinks necessary.

### **Types of Directors**

Following are the categories of directors who constitute 'Board' of a Company:

**1. Ordinary directors:** Ordinary directors are also referred to as simple director who attend board meeting of a company and participate in the matters put before the board. These directors are neither whole time directors nor managing directors.

**2. Managing Director:** According to Sec.2 (54) of the Indian Companies Act "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

**3. Whole-time directors:** A whole-time executive director includes a director in the whole-time employment of the company.

**4. Alternate director:** The Board Meeting may be held at a time when a director is, absent for a period of more than three months from the state and in such a situation, an 'alternate director' is appointed. The Board of Directors can appoint the additional director in the absence of a director if so authorized by articles or by a resolution passed by the company in general meeting. The alternate director shall work until the original director return or up to the period permitted to the original director.

**5. Professional Directors:** Any director possessing professional qualifications and do not have any pecuniary interest in the company are called as “professional directors”.

**6. Independent directors:** Sec. 2(47) defines independent directors to mean an independent director referred to in Sec. 149(5).

**7. Nominee Directors:** The banks and financial institutions which grants loans to a company generally impose a condition as to appointment of their representative on the board of the concerned company. These nominated persons are called as nominee directors.

#### **Qualifications of a Director:**

As regards to the qualification of directors, there is no direct provision in the Companies Act, 2013. But, according to the different provisions relating to the directors; the following qualifications may be mentioned:

1. A director must be a person of sound mind.
2. A director must hold share qualification, if the article of association provides such.
3. A director must be an individual.
4. A director should be a solvent person.
5. A director should not be convicted by the Court for any offence, etc.

#### **Disqualifications of a director:**

Section 164 of Companies Act, 2013, has mentioned the disqualification as mentioned below:

- 1) A person shall not be capable of being appointed director of a company, if the director is
- (a) Of unsound mind by a court of competent jurisdiction and the finding is in force;
  - (b) An undischarged insolvent;
  - (c) Has applied to be adjudicated as an insolvent and his application is pending;
  - (d) Has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;
  - (e) Has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or
  - (f) An order disqualifying him for appointment as director has been passed by a court in pursuance of section 203 and is in force, unless the leave of the court has been obtained for his appointment in pursuance of that section;

2) Such person is already a director of a public company which:

- (a) Has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or
- (b) Has failed to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director, failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or paid dividend referred to in clause (B).

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### **Appointment of Directors**

Section 149 of the Companies Act, 2013, makes it obligatory on every public company to have at least three directors and on every other company to have at least two directors. The directors may be appointed in the following ways:

**1. Appointment of First Directors (Sec. 152):** First directors mean the director of the company who assumes office from the date of incorporation of the company. The first directors of a company may be named in its articles of association and if it is not mentioned, then the subscribers of the memorandum of association who are individual, shall be deemed to be the first directors of the company, until the directors are not appointed in accordance with Section 152.

In case of public company, if the article provides any share qualification, only such subscribers as possess the necessary share qualification shall be deemed to be directors. The articles at the time of registration may contain the names of the first directors until directors are appointed in the first general meeting.

**2. Appointment of Directors by Members in the General Meeting (Sec. 152(2):** Except for the first director, the subsequent directors are appointed by the company in the general meeting. Sec. 152(2) provides that not less than 2/3 of the total number of directors of a public company, or of a private company which is subsidiary of a public company must be appointed by the company in general meeting. These directors must be subject to retirement by rotation. The remaining directors of such a company and a purely private company are appointed by the company in general meeting

**3. Appointment by Board of Directors:** The directors are appointed in the general meeting by the members. But, the Board of Directors may also appoint the directors, in the following way:

**a. Additional Directors:** Section 161, of the Act, lays down that the Board may appoint additional directors if the article of association of a company empower the Board of Directors to do so. Such additional directors shall hold office only up to the date of the next annual general meeting. If the annual general meeting is not held, then such additional director vacates his office on the last day on which the annual general meeting should have been held in terms of Section 166. The additional directors are exempted from the requirement of filing consent to act as directors.

**b. Casual Vacancies:** Section 161 empowers the Board of Directors to appoint the directors in the casual vacancy which may occur due to any reasons like, death, resignation, insanity, insolvency etc of the directors. Such casual vacancy may be filled according to the regulations and procedure prescribed by the articles of association. A person appointed to fill a casual vacancy will hold office only till the date up to which the directors in whose place, he is appointed would have held office.

**c. Alternate Directors:** The Board Meeting may be held at a time when a director is, absent for a period of more than three months from the state and in such a situation, an 'alternate director' is appointed. The Board of Directors can appoint the additional director in the absence of a director if so authorized by articles or by a resolution passed by the company in general meeting. The alternate director shall work until the original director return or up to the period permitted to the original director. The provision of the Act not applicable to the alternate director is as:

**A.** The appointment of an alternate director is not considered as an increase in the strength of the Board of Directors.

**B.** Alternate Directorship held by a person cannot be counted for the maximum number of directorship, which a person can hold.

**C.** An alternate director is not required to hold any qualification shares.

**4. Appointment of Directors by Central Government:** At least 100 members of the company or the members of the company who hold at least one-tenth of the total voting power, approach the Central Government for appointing a director to safeguard the interest of the company or its members or the public or to curb the oppressive and mismanagement of company's affairs.

The term of appointment of the directors by the Central Government should not exceed 3 years and he may be removed by the Central Government for appointing another person to hold the office.

**5. Appointment of Directors by Third-Parties if the Article provides (Sec. 152):** A company may have 'nominee directors' which is permissible in a company if the articles of association gives power to such third parties to appoint their nominee on company's board. Here the third party may be debenture holders, financial corporation, banking companies who have advanced loan to the company to safeguard their interests that the money is only used for the purpose for which it was borrowed.

**6. Appointment of Directors By small shareholders if the article provides:** The Small Shareholders, in case of a public company having:

**i.** A paid-up capital of five cores rupees or more, and

**ii.** one thousand or more small shareholders.

may have a director elected by such small shareholders in the manner as may be prescribed.

The directors are appointed by ordinary resolution i.e. through the majority of the shareholders. The minority of the shareholders does not get the opportunity to send representative in the Board of Directors. But, through proportional representative voting, the shareholders can get that opportunity.

**7. Appointment of directors by professional representation (Sec. 163):** The Directors of a company are generally appointed by simple majority. As a result majority shareholders controlling 51% or more votes may elect all directors and a substantial minority of 49% may not find any representation on the board. This section give power to the minority shareholders to elect directors through single transferable vote and cumulative voting.

### **Position of Directors**

It is very difficult to define precisely the position of directors in a company. The Companies Act, 2013, is also silent on this issue. Directors have been described sometimes as trustees, sometimes as agents or sometimes as managing partners. They have some attributes of all of them, but they are neither trustees nor managing partner in full sense of the term. The legal position can be discussed as under:

**1. Directors as Agent:** Directors are, in the eyes of law, agents of the company for which they act. The company itself cannot act, it can act only through directors and by the reason of which a relation of principal and agent is established between the company and the directors. Wherever as agent is liable those directors would be liable; where the liability would attach to the principal and principal only, the liability is the liability of the company.

Where the directors make contracts on behalf of the company, they incur no personal liability provided they act within the scope of their authority. In such a case, the company alone would be liable. Directors incur a personal liability in the following circumstances:

- a) Where the contract in their own names.
- b) Where they use the company's name incorrectly.
- c) Where director's exceeds their powers.

But the position of directors differ from that of the agents because an agent can enter into a contract in his own name but a director cannot. Again an agent may not disclose the name of his principal but a director must disclose the name of his principal. Hence, the directors are not agents in the true sense.

**2) Directors as trustees:** The directors have also been described as trustees of the company. They are trustees of the company's money or property which comes into their hands or which is actually under their control and of the powers entrusted to them. But in real sense, the position of directors is differ from that of the trustees because a trustee can't be an employee of the trust but a director can be an employee of the company. Again, an artificial person can become a trustee but an artificial person cannot become a director. As, only individual can be a director. Hence, directors may better be considered as quasi trustee.

**3) Directors as officers:** Under sec. 2(59) of the Companies Act, they are liable to certain penalties if the provisions of the Companies Act are not complied with. Moreover whether or not a director is in the employment of the company, he shall be treated as an officer of the company.

**4) Directors as employees:** Although directors are agents of the company, they are not employees or servants of the company. Hence they cannot claim their remuneration as a preferential creditor in the event of winding up of a company under sec. 327 of the Companies Act, 2013. But where any director, besides being a director, is also in the service or employment of the company, such as secretary, manager, accountant or otherwise, he will be treated as an employee. As such he will be entitled to the remuneration and other benefits admissible to his as an employee in addition to his rights as a director to sitting fee, etc.

**5) Directors as managing partners:** The directors are also sometimes described as managing partners because like a partner of a firm, they manage the affairs of the company and they are also usually important shareholders of the company. They do all proprietorial functions like allotting shares, making calls, forfeiting shares etc.

However, all the partners of a firm act on the principal of mutual agency. But it is not so in the case of directors. A director has no authority to bind the other directors and shareholders. Moreover, directors are subject to retirement by rotation whereas partners of a firm are not. Hence, the directors are not managing partners in the full sense.

Thus, directors are described as trustees, agents or managing partners. The board of directors are the brain and the only brain of the company which is the body and the company can act only through them.

## **MODULE IV PARTNERSHIP LAW INDIAN PARTNERSHIP ACT 1932**

### **Sec 4. Definition of "partnership", "partner", "firm" and "firm name"**

"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.



Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm", and the name under which their business is carried on is called the "firm name".

### **ESSENTIAL ELEMENTS OF PARTNERSHIP**

From the above definition of partnership, the essential elements of partnership can be understood as "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.

#### **• persons**

There should be at least two persons to form a partnership or partnership firm.

#### **» Restrictions on the number of persons**

The maximum number of members that can exist in partnership is 10 in case of a firm carrying on banking business and 20 in case of any other business.

This restriction is placed by the companies act and not the partnership act.

#### **• who have agreed**

There should be an agreement between those persons who are forming the partnership. The agreement is the foundation for the partnership. Partnerships can arise only from a contract and not status.

#### **• the profits of a business**

There should be a business carried on by the partnership and that too with an intention to make and share profits of that business.

Therefore we can say "No Business ⇒ No Partnership" as well as "No intention to share profits ⇒ No Partnership"

Though, no specific mention of sharing of losses is made, we consider that Sharing profits implies Sharing Losses also.

#### **• carried on by all or any of them acting for all**

The business may be carried on by any one or more of the partners.

### **Acting for all**

This implies that a partner conducting the business should be understood as conducting the business on behalf of all the partners. Each partner would be responsible for the acts of the other partners in relation to the firm.

As far as the outsiders are concerned, the partners and the firm are one and the same.

### **Mutual Agency [Principal Agent Relationship]**

In his/her role as a partner, a person acts both as a principal as well as an agent.

A partner is an agent for the acts that he/she does on behalf of the firm, whereby he/she can bind the other partners for such acts. The other partners would be the principals for such acts.

With regard to the acts of the other partners, he/she will act as the principal (since he as a partner is bound by the acts of the other partners on behalf of the firm)

Where a partner cannot be made responsible for the acts of one or more other partners we cannot say they together form a partnership. This mutual agency is what really decides whether there is a partnership or not.

Thus it is said the "Mutual Agency" is the real test of partnership.

### **TYPES OF PARTNERS**

There are various types of partners in a partnership firm. They are as follows:

#### **Active Partner:**

Partner who takes an active part in the management of the business is called active partner. He may also be called 'actual' or 'ostensible' partner. He is an agent of the other partners in the ordinary course of business of the firm and considered a full fledged partner in the real sense of the term.

#### **Sleeping or Dormant Partner:**

A sleeping or dormant partner is one who does not take any active part in the management of the business. He contributes capital and shares the profits which is usually less than that of the active partners. He is liable for all the debts of the firm but his relationship with the firm is not disclosed to the general public.

#### **Nominal Partner:**

A partner who simply lends his name to the firm is called nominal partner. He neither contributes any capital nor shares in the profits or take part the management of the business. But he is liable to third parties like other partners. A nominal partner must be distinguished from the sleeping partner. While the nominal partner is

known to the outsiders and does not share in the profits, the sleeping partner shares in the profit a his relationship is kept secret.

**Partner in Profits:**

A partner who shares in the profits only without being liable of the losses is known as partner in profits. He does not take part in the management of the business but he is liable to third parties for all the debts of the firm.

**Sub-partner:**

When a stranger shares the profits derived from the firm by a partner he is regarded as a sub-partner. A sub-partner is in no way connected with the firm or he not a partner of the firm. He is simply a partners' partner. Therefore, he has no rights again the firm nor he is liable for the debts of the firm. He only shares profits from a partner.

**Partner by Estoppel or Holding out:**

When a partner is not a partner but represent to the outside world that he is a partner in a firm, he is stopped or prevented from denying the truth. He is considered as a partner in the eyes of law. Similarly, if a person is declared i be a partner by a partner of a firm and such person remained silent without denying it, he also considered a partner by holding out. Thus, such persons are liable to outsiders i partners on the principle of estoppel or holding out because on faith of their representation action outsiders have granted credit to the firm.

### **Minor Partner:**

Partnership arises from contract and a minor is not competent to enter into contract. Therefore, strictly speaking, a minor cannot be a full-fledged partner. But with the consent of all the partners he can be admitted into partnership for benefits only. He is not personally liable to third parties for the debts of the firm, on attaining majority, if he continues as a partner, his liability will become unlimited with effect from the date of his original admission into the firm. When a stranger shares the profits derived from the firm by a partner he is regarded as a sub-partner. A sub-partner is in no way connected with the firm or he is not a partner of the firm. He is simply a partner's partner. Therefore, he has no rights against the firm nor he is liable for the debts of the firm. He only shares profits from a partner.

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### **Types of partnership**

**Particular partnership.** When a partnership is formed for the object of conducting a particular business, it is called particular partnership. The particular undertaking cannot be extended to any other enterprise and this would last only so long as the business is not completed. But if the partnership firm goes to carry on other business then in the absence of an agreement to the contrary, the rights and duties of the member in the new undertaking will continue to be the same as in the earliest enterprises.

**2. Partnership at will.** This type of partnership is defined by the Partnership Act 1932: "Where no provision is made by contract between the partners for the duration of their partnership or for the termination of partnership. Partnership at will can be dissolved by any partner serving notice in writing to other partners of his intention to do so."<sup>3</sup>

### **3. Partnership of fixed term.**

The organization, which is formed for a definite period of time, is called partnership for a fixed term. At the expiry of this period, the partnership comes to an end unless the partners have made a contract to the contrary. If the business is continued after the expiry period, the new partnership will become a partnership at will. So the mutual rights and duties of the partners may be deemed as the same in partnership at will in the absence of an agreement.

### **Rights, duties and liabilities of partners**

The Partnership Deed contains the mutual rights, duties and obligations of the partners, in certain cases, the Partnership Act also makes a mandatory provision as regards to the rights and obligations of partners. When there is no Deed or the Deed is silent on any point, the rights and obligations as provided in the Partnership Act shall apply.

### **Rights of a Partner:**

The rights of a partner are as follows:

- i. Right of the partner to take part in the day-to-day management of the firm.
- ii. Right to be consulted and heard while taking any decision regarding the business.
- iii. Right of access to books of accounts and call for the copy of the same.
- iv. Right to share the profits equally or as agreed upon by the partners.
- v. Right to get interest on capital contributed by the partners to the firm.
- vi. Right to avail interest on advances paid by the partners for business purpose.
- vii. Right to be indemnified in respect of payment made or liabilities incurred or for protecting the firm from losses.
- viii. Right to the use of partnership property exclusively for partnership business only not himself.

- ix. Right as agent of the firm and implied authority to bind the firm for any act done in carrying the business.
- x. Right to prevent admission of new partners/expulsion of existing partners.
- xi. Right to continue unless and otherwise he himself cease to become partner.
- xii. Right to retire with the consent of other partners and according to the terms-and conditions of deed.
- xiii. Right of outgoing partner/legal heirs of deceased partner.

## 2. Duties of a Partner :

The duties of a partner are as follows:

### **i. To carry on the business to the greatest common advantage:**

Every partner is bound to carry on the business of the firm to the greatest common advantage. In other words, the partner must use his knowledge and skill in the conduct of business to secure maximum benefits for the firm.

### **ii. To be just and faithful to each other:**

Every partner must be just and faithful to other partners of the firm. Every partner must observe utmost good faith and fairness towards other partners in business activity.

### **iii. To render true accounts:**

Every partner must render true and proper accounts to his co-partners. Each and every entry in the books must be supported by vouchers and explanations if demanded by other partners.

### **iv. To provide full information:**

Every partner must provide full information of all activities affecting the firm to the other co-partners. No information should be concealed, kept secret.

### **v. To attend diligently to his duties:**

Every partner is bound to attend diligently to duties in the conduct of the business of the firm.

### **vi. To work without remuneration:**

A partner is not entitled to receive any kind remuneration for taking part in the conduct of the business. But in practice, the working partners are generally paid remuneration as per agreement, so also commission in some case.

### **vii. To indemnify for loss caused by fraud or willful neglect:**

If any loss is caused to the firm because of a partner's willful neglect in the conduct of the business or fraud committed by him against a third party then such partner must indemnify the firm for the loss.

### **viii. To hold and use partnership property exclusively for the firm:**

The partners must hold and use the partnership property exclusively for the purpose of business of the firm not for their personal benefit.

### **ix. To account for personal profits:**

If a partner derives any personal profit from partnership transactions or from the use of the property of the firm or business connection the firm or the firm's name, he must account for such profit and pay it to the firm.

### **x. Not to carry on any competing business:**

A partner must not carry on competing business to that of the firm. If he carries on and earns any profit then he must account for the profit made and pay it to the firm.

### **xi. To share losses:**

It is the duty of the partners to bear the losses of the firm. ' partners share the losses equally when there is no agreement or as per their profit share ratio.

### **xii. To act within authority:**

Every partner is bound to act within the scope of authority. If he exceeds his authority and the firm suffers from any loss, he shall have compensate the firm for such loss.

### **xiii. Duty to be liable jointly and severally:**

Every partner is jointly and individual liable to the third parties for all acts of the firm done while he is a partner.

### **xiv. Duty not to assign his interest:**

A partner cannot assign or transfer his partner interest to an outsider so as to make him the partner of the firm without the consent of other partners. However, he can assign his share of the profit and his share in the assets the firm where the assignee shall not be entitled to interfere in the conduct of the business

### **Section 30 - MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP.**

(1) A person who is a minor can not become full fledged partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor is not personally liable for any act of the firm.

(4) After attaining majority, minor has two options with him.

At any time within six months of his attaining majority,

or of his obtaining knowledge that he had been admitted to the benefits of partnership,

whichever date is later,

such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm.

(7) Where such person becomes a partner -

(a) his rights and liabilities as a minor continue upto the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner, -

(9) (a) his rights and liabilities shall continue to be those of a minor under the section upto the date on which he gives public notice;

(b) his share shall not be liable for any acts for the firm done after the date of the notice.

### **DISSOLUTION OF FIRM**

What is dissolution?

Dissolution of a firm means the end of a firm by the break up o the relation of partnership between all the partners. Dissolution is to be distinguished from reconstitution of a firm. In the latter case, the partnership continues but there is a change in the number of partners. In the former case there is complete severance of jural relation between all the partners.

The Grounds of Dissolution

A firm by dissolved on any of the following ground:

#### **1. By Agreement**

**(1) A firm may be dissolved any time with the consent of all the partners of the firm. Partnership is cared by contract; it can also be terminated by contact.**

#### **2. Compulsory Dissolution**

A firm is dissolved –

- By the adjudication of all the partners or of all the partners but one as insolvent, or
- By the happening of any event which makes the business of the firm unlawful.

#### **3. On the happening of Certain Contingencies**

Subject to contract between the partners, a firm is dissolved –

1. If constituted for a fixed term, by the expiry of that term;
2. If constituted to carry out one or more adventures or undertakings, by the completion thereof;
3. By the death of a partner; and
4. By the adjudication of a partners as an insolvent.

The partnership agreement may provide that the firm will not be dissolved in any of the aforementioned cases. Such a provision is valid.

#### 4. By notice

Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all other partners of his intension to dissolve the firm. The firm is dissolved as form the date mentioned in the notice as the date of dissolution, or, if no date is mentioned, as from the date of communication of the notice.

#### 5. Dissolution by the Court.

At the suite of a partner, the court may dissolve a firm on any one of the following ground:

- **(A) Insanity:** If a partner *has become of unsound mind*. The suit for dissolution in this case can be filed by the next friend of the insane partner or by any other partner.
- **(B) Permanent Incapacity:** If a partner becomes permanently incapable of performing his duties as a partner. *Permanent incapacity* may arise from an incurable illness like paralysis. A partner was attacked with paralysis which on medical evidence was found to be curable. Dissolution was not granted. The suit for dissolution in this case must be brought by a partner other than the person who has become incapable.
- **(C) Guilty Conduct:** If a partner is *guilty of conduct* which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business. To justify dissolution under this clause the misconduct must be of such a nature as to affect adversely the particular business concerned. Misconduct which affects one business may not affect another business. Therefore the court must take into account the nature of business that the partnership carries on. The test generally applied is whether the act complained of is likely to affect the credit and custom of the particular business. The suit for dissolution on the ground mentioned in this clause must be brought by a partner other than the partner who is guilty of misconduct.

#### Examples:

- The partner of a firm of solicitors was convinced of traveling on the railway without a ticket and with intent to defraud. It was held that since the conviction was for dishonesty, it was likely to be detrimental to the partnership business and dissolution was granted.
- In English cases dissolution has been grated for the following acts- conviction for an offence involving moral turpitude; misapplication of monies of a client by a solicitor; adultery by a doctor; speculation in shares by the partners of a regular mercantile business.
- **(D) Persistent Break of Agreement:** If a partner willfully and persistently commits *breach of the partnership agreement* regarding management or otherwise conducts him in such a way that is not reasonably practicable for the other partners to carry on business in partnership with him. The suit for dissolution in cases coming under this clause is to be brought by a partner other than the partner guilty of the acts.
- **(E) Transfer of whole Interest:** If a partner has transferred the *whole of his interest* in the firm to an outsider or has allowed his interest to be sold in execution of a decree. Transfer of a partner's interest does not by itself dissolve the firm. But the other partners may ask the court to dissolve the firm if such a transfer occurs. Only the transfer of the entire interest of the partner gives ground for action. The transfer of a part of the partner's interest does not provide any ground for dissolution. The formation of a sub-partnership is, therefore, not a ground for dissolution. The suit for dissolution on the ground mentioned in this clause must be brought by a partner other than the partner whose interest has been transferred or sold.

- **(F) Loss:** if the business of the firm cannot be carried on except at a loss. Since the motive, with which partnership are formed, is acquisition of gain, the courts have been give discretion to dissolve a firm in cases where it is impossible to make profits.
- **(G) Just and Equitable clause:** If the court considers it *just and equitable* to dissolve the firm. This clause gives a discretionary power to the court to dissolve a firm in cases which do not come within any of the foregoing clauses but which are considered to be fit and proper cases for dissolution.

## II. LIMLITED LIABILITY PARTNERSHIP ACT 1932

The Limited Liability Partnership Act 2008 was published in the official Gazette of India on January 9, 2009 and has been notified with effect from 31 March 2009. However, the Act, has been notified with limited sections only. The rules have been notified in the official gazette on April 1, 2009. The first LLP was incorporated in the first week of April 2009.

### IMPORTANT DEFINITIONS

Limited Liability Partnership Agreement [S. 2 (1) (o)]: ‘means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership’

Business [S. 2 (1) (e)]: ‘includes every trade, profession, service and occupation’ • Financial Year [S. 2 (1) (l)]: ‘in relation to limited liability partnerships, means the period from the 1st day of April of a year to the 31st day of March of the following year: Provided that in case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of march of the year next following that year’

Body Corporate [S. 2 (1) (d)]: ‘means a company defined in section 3 of the Companies Act, 1956 and includes- (i) a limited liability partnership registered under this Act; (ii) a limited liability partnership incorporated outside India; and (iii) a company incorporated outside India, but does not include- (i) a corporation sole; (ii) a co-operative society registered under any law for the time being in force; and (iii) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf’

### Nature of Limited Liability Partnership

- LLP is body corporate formed & incorporated under LLP Act
- LLP is legal entity separate from its partners
- LLP has perpetual succession
- Existence, Rights & Liabilities of LLP not affected by change in partners
- Indian Partnership Act, 1932 does not apply to LLPs
- Partners - Individuals / Body Corporate can be partners - Minimum two partners

### CHARACTERISTICS/ESSENTIALS

1. In India, for all purposes of taxation, an LLP is treated like any other partnership firm.
2. liability of partners is limited to their agreed contribution in the LLP.
3. Further, no partner would be liable on account of the independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.
4. LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession. Indian Partnership Act, 1932 shall not be applicable to LLPs and there shall not be any upper limit on number of partners in an LLP unlike an ordinary partnership firm where the maximum number of partners can not exceed 20, LLP Act makes a mandatory statement where one of the partner to the LLP should be an Indian.
5. Provisions have been made for corporate actions like mergers, amalgamations etc.
6. While enabling provisions in respect of winding up and dissolutions of LLPs have been made, detailed provisions in this regard would be provided by way of rules under the Act.

7. The Act also provides for conversion of existing partnership firm, private limited company and unlisted public company into a LLP by registering the same with the Registrar of Companies (ROC)
8. Nothing Contained in the Partnership Act 1932 shall effect an LLP.

9. The Registrar of Companies (Roc) shall register and control LLPs also.

#### 10. Advantages

11. LLPs have been successfully used for rendering professional services in countries like US, UK, Germany, Australia and Singapore for following advantages:
12. •As a hybrid structure for running business, LLP offers the twin benefits of internal governance flexibility of partnership firms and limited liability of companies. As a separate legal entity LLP has the liability to the full extent of its assets, but the liability of its partners is limited to their agreed contributions in the LLP.
13. •LLP will give a boost to professionals by bridging the gap between partnership and company. For example in a rapidly globalizing world, multidisciplinary professional firms cannot restrict themselves to the 20 members. LLP enables Indian professionals to meet the challenges of global market and seize emerging opportunities.
14. •LLP's will facilitate pooling of resources for multidisciplinary professionals. Partners can trust each other and start business without being accountable for the other partner's conduct.
15. •LLP will enable existing unincorporated business entities to convert themselves to LLP's or become partners in LLP's. Moreover, persons with innovative and creative ideas, but who are capital-scarce, can form LLP by teaming up with companies or venture capitalists. The intellectual contribution of partners can be quantified at the stage of signing of the LLP agreement.
16. •Legal compliance requirements in respect of LLP are much simpler and easier than that of companies

#### Disadvantages of a Limited Liability Partnership

- Inclusion of Indian Citizen as a Partner – An NRI/Foreign national who wants to incorporate an LLP in India shall have at least one partner who is an Indian citizen. Two foreign partners cannot form an LLP without having one resident Indian partner along with them.
- Transfer of Ownership -If a partner wants to transfer his/her ownership rights then he/she has to obtain the consent of all the partners.
- Filing of various returns - Public disclosure is the main disadvantage of an LLP. An LLP must file Annual Statement of Accounts & Solvency and Annual Return with the Registrar each year. Income Tax Return must also be filed to the Income tax department for the LLP.
- Number of partners –A limited liability partnership must have at least two members. If one member chooses to leave the partnership, the LLP may have to be dissolved.
- Non- recognition - LLPs are limited by state regulations due to which they are not given due recognition in every state as a business structure.
- Huge penalties –The cost of non-compliance of procedural matters such as late filing of e-forms is very high which would lead to huge sum of penalties owing to Rs.100 for every day till the time the offence of late filing continues.

#### Elements Essential for the Incorporation of an LLP

According to the LLP Act, 2008, the following elements are essential for the incorporation of an LLP in India:

- Complete and submit the Incorporation document in the prescribed form, with the Registrar electronically.
- Have at least two partners, either individual or body corporate
- Have a registered office in India for sending and receiving communication



- Appoint at least two individuals as designated partners. They will be responsible for doing all acts, matters, and things as required to be done by the LLP. Also, the designated partners should be resident in India.
- Each designated partner should hold a Designated Partner Identification Number (DPIN) allotted by the Ministry of Corporate Affairs (MCA).
- Execute the agreement between the partners or between the LLP and its partners. Further, if an agreement is not present, the provisions in the First Schedule of the LLP Act, 2008 are applied.
- Name of the LLP. It is important to note that the name should be distinct. The LLP cannot have a name which another LLP or Partnership firm or Company is currently using.

#### Process for the Incorporation of an LLP

The following things need to be ensured for the incorporation of LLP:

- Appoint/nominate partners and designated partners.
- Obtain the DPINs and Digital Signature Certificates (DSCs)
- Register a unique LLP name (applicant can indicate up to 6 choices)
- Draft the LLP Agreement
- File the required documents, electronically
- Apply for the Certificate of Incorporation along with LLPIN (Limited Liability Partnership Identification Number)

#### The contents of an LLP agreement

- Name of the LLP
- Names and addresses of the partners and designated partners
- The form of contribution and interest on contribution
- Profit sharing ratio
- Remuneration of partners
- Rights and duties of partners
- The proposed business
- Rules for governing the LLP

#### Steps for the Incorporation of an LLP

- Reserve the name of the LLP. Applicant files e-Form 1 to ascertain the availability and register the name of the LLP. Once the Ministry approves the name, it reserves it for the applicant for a period of 90 days. Also, if the LLP is not incorporated within that time frame, the reservation is removed and the name is made available to other applicants.
- Incorporation of a new LLP. Applicant files e-Form 2 which contains the details of the proposed LLP along with details of the partners and designated partners
- Consent of the partners and designated partners to act in the said role.
- File the LLP Agreement with the Registrar within 30 days of incorporation of the LLP. Applicant files e-Form 3. According to Section 23 of the LLP Act, 2008, execution of LLP Agreement is mandatory.

On obtaining an approval of the LLP Agreement, the process of Incorporation of LLP is complete.

#### Rights of Partners in a LLP

Subject to the LLP Agreement between the Partners, a Partner in a LLP typically has the following rights:

- Every Partner has a right to take part in the conduct of the business of the LLP.
- Every Partner is bound to attend diligently to his/her duties in the conduct of the business of the LLP.
- Any difference arising due to ordinary matters connected with the business may be decided by a majority of the Partners, and every Partner shall have the right to express his/her opinion before the matter is decided.

- Every Partner has a right to have access and to inspect and copy the book of accounts of the LLP.
- In the event of death of a Partner, his/her heirs or legal representatives shall have the right to access, inspect and copy any of the book of accounts of the LLP.
- The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this Schedule.
- 2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.
- 3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him--
  - a. in the ordinary and proper conduct of the business of the limited liability partnership; or
  - b. in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
- 4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
- 5. Every partner may take part in the management of the limited liability partnership.
- 6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
- 7. No person may be introduced as a partner without the consent of all the existing partners.
- 8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
- 9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
- 10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
- 11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
- 12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.
- 13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
- 14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

### **Designated Partners (DP) [S. 7 (1)]**

At least two DPs

Only Individuals can be DPs

At least one resident in India

Every DP to obtain a Designated Partner Identification No. (DPIN)

- Responsibilities & Liabilities of DPs [S. 8]

Responsible for doing all acts, matters & things required to be done by LLP w.r.t compliance of LLP Act including filing of any document, return, statement & like report under LLP Act & as specified in LLP Agreement

Liable to all penalties imposed on LLP for any contravention of above.

- Changes in DPs [S. 9]

LLP to appoint DP within 30 days of vacancy

If no DP is appointed or if, at any time, there is only 1 DP, each partner shall be deemed to be a DP

- Disqualifications of DPs

: No person can be DP of LLP, if-

He is adjudged as insolvent within preceding 5 years

He has suspended payment to his creditors & not made any composition with them within preceding 5 years

He is convicted by Court for any offence including moral turpitude & sentenced to imprisonment not less than 6 months

He is convicted by Court for offence under Section 30 of LLP Act

### **Extent and limitation of liability of LLP**

#### Liability of LLP & Partners

Unlike partnership, every partner is an agent; not of other partners but of LLP

LP not bound by unauthorized acts of partners in dealing with person if that person knows that the partner had no authority or did not know him to be partner of LLP

LP liable in respect of wrongful acts or omissions of partners in course of its business or with its authority

Obligation of LLP is solely an obligation of LLP & shall be met out of property of LLP

#### Partners not personally liable

Unlimited Liability in case of fraud - If fraud done with knowledge / authority of LLP, LLP's & partner's liability will be unlimited.

### **Winding Up and Dissolution**

The winding up of a LLP may be either voluntary or by the Tribunal or LLP so wound up may be dissolved

Circumstances of Winding Up [S. 64]

LLP may be wound up by the Tribunal;

i. If LLP decides to be wound up by Tribunal

ii. If, for a period of more than 6 months, the number of partners of the LLP is reduced below 2

iii. If the LLP is unable to pay its debts

iv. If the LLP has acted against the interests of the sovereignty & integrity of India

v. If the LLP has made a default in filing with the Registrar the statement of Accounting, Annual Return for any five consecutive financial years,

vi. If the Tribunal is of the opinion that it is just & equitable that the LLP would be wound up.

The Central Government may make rules for the provisions in relation to Winding Up & Dissolution of LLPs[S. 65]

## **MODULE V**

### **CONSUMER PROTECTION ACT 1986**

The industrial revolution and the development in the international trade and commerce has led to the vast expansion of business and trade, as a result of which a variety of consumer goods have appeared in the market to cater to the needs of the consumers and a host of services have been made available to

the consumers like insurance, transport, electricity, housing, entertainment, finance and banking. A well organised sector of manufacturers and traders with better knowledge of markets has come into existence, thereby affecting the relationship between the traders and the consumers making the principle of consumer sovereignty almost inapplicable. The advertisements of goods and services in television, newspapers and magazines influence the demand for the same by the consumers though there may be manufacturing defects or imperfections or shortcomings in the quality, quantity and the purity of the goods or there may be deficiency in the services rendered. In addition, the production of the same item by many firms has led the consumers, who have little time to make a selection, to think before they can purchase the best. For the welfare of the public, the glut of adulterated and sub-standard articles in the market have to be checked. In spite of various provisions providing protection to the consumer and providing for stringent action against adulterated and sub-standard articles in the different enactments like Code of Civil Procedure, 1908, the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Indian Penal Code, 1860, the Standards of Weights and Measures Act, 1976 and the Motor Vehicles Act, 1988, very little could be achieved in the field of Consumer Protection. Though the Monopolies and Restrictive Trade Practices Act, 1969 and the Prevention of Food Adulteration Act, 1954 have provided relief to the consumers yet it became necessary to protect the consumers from the exploitation and to save them from adulterated and sub-standard goods and services and to safeguard the interests of the consumers. So Consumer Protection Act 1986 was passed in the year 1986.

#### OBJECTS OF THE ACT / RIGHTS OF CONSUMER

The Consumer Protection Act, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

2. It seeks, inter alia, to promote and protect the rights of consumers such as -

**The right to be informed** about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices; It is right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, with a view to protect the consumer against unfair trade practices. Adequate information is very important in order to make a right choice. In our country, however, consumers do not get adequate comparative information about the quality, quantity, potency, purity, standard and price of different kinds of goods or services which are available. As a result buying decisions become difficult. Therefore consumers need to be given maximum information about the wide variety of competing goods available in the market.

**Right to safety** - It is right to be protected against the marketing of goods and services which are hazardous to life and property. The right to be protected against marketing of goods which are hazardous to life and property; Unsafe goods may cause death or serious injury to the user due to defective ingredients, defective design, poor workmanship, or any other reason. At times safety hazards are found due to absence of proper instructions to use the product. Thus it is to be ensured that—Manufacturers and traders ensure that the goods are safe for the users, in case of hazardous goods, they give clear instructions as to mode of use, consumer is informed of the risk involved in improper use of goods, vital safety information is conveyed to consumers.

**Right to choose** - The right to choose can be made meaningful by ensuring access to a variety of goods and services at competitive prices. Fair and effective competition must be encouraged so as to provide consumers with the widest range of products and services at the lowest cost. The right to consumer education is a right which ensures that consumers are informed about the practices prevalent in the market and the remedies available to them.

**The right to be heard** and to be assured that consumers interests will receive due consideration at appropriate forums;

**Right to redressal** - It is a right to seek redressal against unfair trade practices or restrictive trade practices. Consumer Forums have been established to enable consumer to file a complaint.

**Right to consumer education** – ex Jago Grahak Jago

For spreading this education, media, or school curriculum, or cultural activities, etc. may be used as a medium

The Consumer Protection Act, 1986 has well taken care of this right by making available the instrumentality of Redressal Forums. Every consumer has a right to file complaint and be heard in that context.

3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be setup at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.

### **CONSUMER DEFINED**

as per section 2(d) of the Act, "consumer" means any person who-

(i) buys any goods for a consideration and includes any user of such goods with the approval of buyer, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration and includes any beneficiary of such services with the approval of the hirer; (but does not include a person who avails of such services of any commercial purpose;)

#### **Explanation**

- For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]

(I) Persons buying goods either for re-sale or for use in large scale profit making activity will not be 'consumers' entitled to protection under the Act; *Raj Kumar v. S.C. Verma*,

**(ii) ANY PERSON WHO OBTAINS THE GOODS FOR 'COMMERCIAL PURPOSES' IS NOT A CONSUMER** - The term 'for resale' implies that the goods are brought for the purpose of selling them, and the expression 'for commercial purpose' is intended to cover cases other than those of resale of goods.

**(iii) PERSON BUYING GOODS FOR SELF EMPLOYMENT IS A CONSUMER** - When goods are bought for commercial purposes and such purchase satisfy the following criteria :

- the goods are used by the buyer himself;
- exclusively for the purpose of earning his livelihood;
- by means of self-employment,

then such use would not be termed as use for commercial purposes under the Act, and the user is recognised as a consumer.

Examples:

held as consumers

- 1) A purchased a scooter which was in B's possession from the date of purchase. B was using it and taking it to the seller for repairs and service from time to time. Later on B had a complaint regarding the scooter. He sued the seller. The seller pleaded that since B did not buy the scooter, he was not a consumer under the Act. The Delhi State Commission held that B, the complainant was using it with the approval of A, the buyer, and therefore he was consumer under the Act. [*Dinesh Bhagat v. Bajaj Auto Ltd.* (1992) III CPJ 272]
- 2) A buys a truck for plying it as a public carrier by himself, A is a consumer.

- 3) Medical services are covered under the definition of "service". Service includes rendering of con, diagnosis and treatment, both medical and surgical; Indian Medical Association v. VP. Shantha, 1995 SC 273.
- 4) The student is a consumer of service of educational institute; Sushant Yuvaraj Rode v; Shri Ramde Engineering College, 1993 (III) CPR 624.
- 5) A goes to a doctor to get himself treated for a fracture. Here A is hiring the services of the doctor. Thus he is a consumer.
- 6) A passenger getting railway reservation after payment is hiring service for consideration

1) Examples:

held not as consumers

- 2) A buys a truck and hires a driver to ply it, A is not a consumer.
- 3) A has one cloth shop. He starts another business of a photocopier and buys a photocopier machine therefor. He hasn't bought this machine exclusively for the purpose of earning livelihood. He is not a consumer under the Act.
- 4) A jeep was purchased to run it as a taxi. The question was whether the buyer of the jeep was a consumer under the Act. The Rajasthan State Commission held that to use the jeep as a taxi with the object to earn profits was a commercial purpose, and therefore, the buyer/user was not a consumer within the meaning of the Act. [*Smt. Pushpa Meena v. Shah Enterprises (Rajasthan) Ltd.* (1991) 1 CPR 229].
- 5) L Ltd. purchased a computer system from Z. The computer system was giving constant trouble and Z was not attending it properly. L Ltd. filed a complaint against Z with the National Commission. Z contended that L Ltd. was not a consumer under the Act because computer system was used for commercial purposes. L Ltd. argued that computer system was not directly used of commercial purposes rather it was used to facilitate the work of the company. The Commission rejected the argument on the grounds that the system made part of the assets of the company, and its expenses were met by it out of business income. Thus the said purchase was a purchase for commercial purposes and L Ltd. was held not to be a consumer under the Act.
- 6) A person who receives medical treatment in a Government hospital is not a consumer under the Act; Consumer Unity & Trust Society v. State of Rajasthan, (1991)
- 7) A landlord neglected and refused to provide the agreed amenities to his tenant. He filed a complaint against the landlord under the Consumer Protection Act. The National Commission dismissed the complaint saying that it was a case of lease of immovable property and not of hiring services of the landlord. [*Smt. Laxmiben Laxmichand Shah v. Smt. Sakerben Kanji Chandan* [1992]]

## Complaint

**1.3** An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.

**1.3-1 What constitutes a complaint [Section 2(1)(c)]** - Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief provided under the Act

**1.3-2 Who can file a complaint [Sections 2(b) & 12]** - At the outset it is clear that a person who can be termed as a consumer under the Act can make a complaint. To be specific on this account, following are the persons who can file a complaint under the Act :

(a) a consumer; or

(b) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or

(c) the Central Government or any State Government,

(d) one or more consumers, where there are numerous consumers having the same interest.

**What a complaint must contain [Section 2(1)(c)]** - A complaint must contain any of the following allegations :

(a) An unfair trade practice or a restrictive trade practice has been adopted by any trader;

*Example* : A sold a six months old car to B representing it to be a new one. Here B can make a complaint against A for following an unfair trade practice.

(b) The goods bought by him or agreed to be bought by him suffer from one or more defects;

*Example* : A bought a computer from B. It was not working properly since day one. A can make a complaint against B for supplying him a defective computer.

(c) The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.

*Example* : A hired services of an advocate to defend himself against his landlord. The advocate did not appear every time the case was scheduled. A can make a complaint against the advocate.

(d) A trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

*Example* : A bought a sack of cement from B who charged him Rs. 100 over and above the reserve price of the cement declared by the Government. Here A can make a complaint against B.

(e) Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

*Example* : A bought a tin of disinfectant powder. It had lid which was to be opened in a specific manner. Trader did not inform. A about this. While opening the lid in ordinary way, some powder flew in the eyes of A which affected his vision. Here A can make a complaint against the trader.

### **Consumer Protection Councils.**

Ram, an engineer by profession shifted to Delhi. He bought a computer from Shyam, a dealer who gave him all guarantees and warranties. The moment he plugged in the computer, some noise came and the computer was shut down. He called up Shyam, but got no response from him. After making many calls to him, he understood that he was cheated of his money.

Ram could have gone to courts, but knowing the lengthy and expensive procedures involved, he preferred not to initiate any action against Shyam. One day while watching television he came across a programme on consumer protection. Ram got interested in it and noted the address of consumer council which was sponsoring the programme. Thereafter he contacted the Council and talked about his computer affair. The Council made him aware that there is a speedy and inexpensive way to assert his right as a consumer, and that where and how a complaint can be filed for that, and that he need not hire an advocate for the suit, and assured him of any assistance he may need for the same.

The Consumer Councils are created to advise and assist the consumers in seeking and enforcing their rights. We have Consumer Protection Councils both at Centre level and State level, that is one Central Council and many State Councils.

These councils work towards the promotion and protection of consumers. They make investigations and give publicity to the matters concerning consumer interests, take steps towards furthering consumer education and protecting consumer from exploitation, advice the Government in the matter of policy formulation keeping consumer interest as pivotal concern, etc. Although their suggestions are recommendatory in nature, but they have significant impact in policy making.

While deciding about the composition of these councils, the State keeps in mind that it should have proper representation from all the possible areas affecting consumer interests. Again the rules as to when should these councils meet, what should they aim at, how they conduct their business are framed by the Government with a view to balance the efficacy and practicability of its business.

### **Objects of the Councils [Sections 6 and 8]**

There is one basic thought that ‘consumer need to be protected’. Another thought is - how he can be protected ? Definitely, there has to be some agency to work towards this protection. The Act has provided for constitution of Consumer Councils for this purpose.

Now, when we say that these councils are there to protect the consumers, a question arises - consumers are protected against what ? Thus the Act has detailed some rights of consumers which need to be protected by the councils. These are :

### **Central Council**

**Composition [Section 2 and rule 3]** Members of the councils are selected from various areas of consumer interest, who are, when possible, leading members of statewide organisations representing segments of the consumer public so as to establish a broadly based and representative consumer council.

The Consumer Protection Act has authorised the Central Government to make rules as to the composition of the Central Council. Accordingly, the Central Government has provided that the Central Council shall consist of the following members not exceeding 150, namely :—

1. the Minister in-charge of Consumer Affairs in the Central Government who shall be the Chairman of the Central Council;
2. the Minister of State (where he is not holding independent charge) or Deputy Minister in-charge of Consumer Affairs in the Central Government who shall be the Vice-Chairman of the Central Council;
3. the Secretary in-charge of Consumer Affairs in the Central Government who shall be the member-secretary of the Central Council;
4. the Minister in-charge of Consumer Affairs in States;
5. eight Members of Parliament—five from the Lok Sabha and three from the Rajya Sabha;
6. the Secretary of the National Commission for Scheduled Castes and Scheduled Tribes;
7. representatives of the Central Government Departments and autonomous organisations concerned with consumer interests—not exceeding twenty;
8. representatives of the Consumer Organisations or consumers—not less than thirty-five;
9. representatives of women—not less than ten;
10. representatives of farmers, trade and industries—not exceeding twenty;
11. persons capable of representing consumer interest not specified above — not exceeding fifteen;

**Meetings of the Central Council [Section 5 and rule 4]** - Central Council is required to organise at least one meeting every year. In addition, it may meet as and when necessary. Time and place of the meeting is decided by the Chairman of the council.

Each meeting of the Central Council shall be called by giving, not less than ten days from the date of issue, notice in writing to every member.

Every notice of a meeting of the Central Council shall specify the place and the day and hour of the meeting and shall contain statement of business to be transacted thereat.

The meeting of the Central Council shall be presided over by the Chairman. In the absence of the Chairman, the Vice-Chairman shall preside over the meeting of the Central Council. In the absence of the Chairman and the Vice-Chairman, the Central Council shall elect a member to preside over that meeting of the Council.

The resolutions passed by the Central Council are recommendatory in nature. No proceedings of the Central Council shall be invalid merely by reasons of existence of any vacancy in or any defect in the constitution of the Council.

### **State Consumer Protection Councils (State Councils) [Section 7]**

**Composition** - The power to establish State Councils is with the States. The Act provides that the Minister incharge of consumer affairs in the State Government shall be the Chairman of the State Council. About the number and qualifications of the rest of the members, State is the deciding authority.

**Meetings** - The State Council meet at least twice a year. In addition, it may meet as and when necessary. The council may meet at such time and place as the Chairman may think fit.



Procedure in regard to the transaction of its business is prescribed by the State Government.

### **District council**

District Consumer Protection Council is the council constituted under Consumer Protection Act, 1986 for each district. District Collector acts as its Chairman, District Supply and Consumer Protection Officer as Member-Secretary, and all the M.P.s, M.L.A.s and officials of all Government Departments having Consumer interface of the Concerned District as members along with the VCOs functioning in the District. This Council shall meet twice in a year as per Consumer Protection Act, 1986.

### **Consumer Forums.**

Ram, a resident of Panipat district, took his son Shyam to a doctor for eye treatment. Due to negligence of the doctor, Shyam lost sight of his right eye. Ram filed a suit against the doctor in District Forum claiming Rs. 4 lakh as compensation. The District Forum dismissed his complaint on the ground that negligence of the doctor could not be proved.

Ram appealed to Haryana State Commission against this order. State Commission also upheld the decision of District Forum. Now Ram approached the National Commission and made an appeal therein. Ram knew that after National Commission also, he is still right with an option to approach the Supreme Court against the order of the Commission. However, the National Commission decided in favour of Ram. The Consumer Protection Act provides for a 3 tier approach in resolving consumer disputes. There are three levels of consumer courts — First, there is the district court, called District Consumer Disputes Redressal Forum (*District Forum*),

Next comes the State Consumer Disputes Redressal Commission (*State Commission*),

At the national level, there is National Consumer Disputes Redressal Commission (National Commission).

District Forum and State Commission are formed by States with the permission of the Central Government while the National Commission is formed by the Central Government. These forums have not taken away the jurisdiction of the civil courts but have provided an alternative remedy.

### ***District Forum [Section 10]***

**COMPOSITION** - District Forum consist of one president and two other members (one of whom is to be a woman).

The president of the Forum is a person who is, or has been qualified to be a District Judge, and other members are persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

**APPOINTING AUTHORITY** - Every appointment of the president and members of the District Forum is made by the State Government on the recommendation of a selection committee consisting of the following, namely—

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

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

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

**TERM OF OFFICE [SECTION 10(2)]** - Every member of the District Forum is to hold office for a term of five years or up to the age of 65 years, whichever is earlier. However, he/she shall not be eligible for re-appointment.

**VACANCY** - A vacancy in the office of president or a member may occur after the expiry of his term, or by his death, resignation, or removal.

The Consumer Protection Act does not have any specific provision for removal of the president and members of the District Forum. But the consumer protection rules made by various States provide for such removal. Accordingly, a president or member of a District Forum may be removed by the State Government, who —

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence involving moral turpitude, or

(c) has become physically or mentally incapable of performing his duties, or

(d) has acquired such financial interest in the matter as would prejudicially affect his functions as president or member, or

(e) has abused his position so as to render his continuance to office prejudicial to public interest.

**TERMS AND CONDITIONS OF SERVICE [SECTION 10(3)]** - The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government. Different States have made different rules in this regard.

**Jurisdiction.**

The term jurisdiction may be defined as authority or legal power to hear and decide the cases. Thus a court may adjudicate only those matters which fall under its jurisdiction. The question of jurisdiction has to be considered with reference to the value, place, and nature of the subject matter.

*Example* : A and B reside in Bombay. They have some dispute. Here the dispute may be subjected to the jurisdiction of the Bombay courts (except matters pertaining to Supreme Court). Courts of Delhi, or Chennai, or any other place for that matter cannot adjudicate the issue.

The general rule is that if the court rendering the judgment suffers from want of jurisdiction, its judgment is nullity and may be ignored.

Jurisdiction of Consumer Forums (*i.e.*, consumer courts) differ in terms of monetary value of claims, geographical area, and appellate powers.

**PECUNIARY JURISDICTION** - District Forum entertains the cases where the value of claim is upto Rs. 20 Lakh. Where a claim exceed this limit, the matter is beyond the jurisdiction of the Forum.

*Example* : A filed a complaint with a District Forum claiming Rs. 6,00,000 as against a supplier of machinery. The complaint was rejected on the ground that it was beyond the jurisdiction of the District Forum.

**TERRITORIAL JURISDICTION** - Every District Forum has definite geographical limits within which it can exercise its jurisdiction. A case is supposed to fall within such territory when at the time of the institution of the complaint—

(a) The party against whom the claim is made actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, or

(b) Where there are more than one opposite party, each such party actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, or

(c) Where there are more than one opposite party, and any such party actually and voluntarily resides or carries on business or has a branch office or personally works for gain in that area, provided the other parties not so residing or working agrees, or the District Forum gives permission in this regard,

(d) The cause of action, wholly or in part, arises in that area.

**State Commission [Section 16] -**

After the District Forum, State Commission is next in the hierarchy of Consumer Redressal Forums under the Act.

**COMPOSITION** - State Commission consists of a president and two members one of whom is to be a woman. President is a person who is or has been a Judge of a High Court, and the members, are persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

**APPOINTING AUTHORITY** - President of a State Commission is appointed by the State Government after consultation with the Chief Justice of the High Court.

Other members of the Commission are made by the State Government on the recommendation of a selection committee consisting of the following, namely—

(i) President of the State Commission — Chairman.

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

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

**TERM OF OFFICE [SECTION 16(3)]** - Every member of the State Commission shall hold office for five years or upto the age of 67 years whichever is earlier and he shall not be eligible for re-appointment.

**VACANCY** - Rules as to the vacancy related in the office of the president or any member are similar to those discussed in context of the members of the District Forum.

***jurisdiction***

**PECUNIARY JURISDICTION** - State Commission entertains the cases where the value of claim exceeds Rs.20 lakh. But where value of a claim exceed Rs. 20 lakh, the matter is beyond the jurisdiction of the Commission.

**TERRITORIAL JURISDICTION**

a suit can be instituted in the State Commission *within whose local limits*—

(a) the party against whom the claim is made actually and voluntarily resides or carries on business or personally works for gain, or

(b) where there are more than one opposite party, each such party actually and voluntarily resides or carries on business or personally works for gain, or

(c) where there are more than one opposite party, and any such party actually and voluntarily resides or carries on business or has a branch office or personally works for gain, provided the other parties not so residing or working agrees, or the State Commission gives permission in this regard, or

(d) the cause of action, wholly or in part, arises.

**APPELLATE JURISDICTION [SECTION 17(a)(ii)]** - State Commission has power to adjudicate upon the appeals made against the order of the District Forums. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order within 30 days from the date of order. However, the State Commission may entertain an appeal after the expiry of 30 days if it is satisfied that there was sufficient cause for delay.

***National Commission [Section 20]*** -

The National Commission is the top most layer in the three level hierarchy of the Consumer Forums.

**COMPOSITION** - The National Commission consists of a president, and four other members (one of whom is to be a woman).

The president should be the one who is or has been a Judge of the Supreme Court, and the members should be the persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

**APPOINTING AUTHORITY** - The President is appointed by the Central Government after consultation with the Chief Justice of India;

The appointment of other members of the Commission is made by the Central Government on the recommendation of a *selection committee*.

This selection committee consists of, namely:—

(a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India—Chairman.

(b) the Secretary in the Department of Legal Affairs in the Government of India—Member.

(c) Secretary of the Department dealing with consumer affairs in the Government of India — Member.

Note that before appointment, the president and member(s) of the National Commission have to take an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

**TERM OF OFFICE [SECTION 20(3)]** - Every member of the National Commission is to hold office for a term of five years or upto the age of seventy years, whichever is earlier and is not eligible for re-appointment. **VACANCY** - A vacancy in the office of president or a member may occur after the expiry of his term, or by his death, resignation, or removal.

In terms of proviso to rule 12(3), the president or a member may resign his office in writing under his hand addressed to the Central Government, or he can be removed from his office in accordance with the provisions of rule 13.

***jurisdiction***

**PECUNIARY JURISDICTION** - Since National Commission is the highest level of Consumer Forums, it may entertain all the matters where the value of claim exceeds Rs. 1 caror

**TERRITORIAL JURISDICTION** - The territorial jurisdiction of the National Commission is whole of India except the State of Jammu & Kashmir.

However, the Consumer Protection Act is applicable only if the cause of action arise in India. If the cause of action arises out of India, National Commission has no jurisdiction over the matter as it cannot be tried in India under the Act.

*Example:* The complainant alleged that they were not properly treated by the Egyptian Airlines authorities at Barcelona. It was held that the cause of action arose at Barcelona, so the complaint under the Act is not maintainable in India - *Gulab Hotchand Bhagchandaney v. Egyptian Airlines III* 1994 CPJ 172 (NC).

**APPELLATE JURISDICTION** - The National Commission has jurisdiction to entertain appeals against the order of any State Commission. The appeal may be made within 30 days from the date of the order of the State Commission. However the National Commission may entertain an appeal filed after the expiry of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within the given time.

To be made within 30 days from the date of the order of the State Commission.

## NATURE OF IPR (Intellectual Property Rights)

These rights are given to a person for creation by his mind. It gives a right to creator to make a monetary gain of his creation for a limited period of time. The object of IPR is to encourage new inventions which ultimately result in economic development by country.

IPRs can be divided into two categories:

- 1) **Copy right** : It is a right given to author of any literary work or to the creator of artistic work such as painting, musical composition, sound recording, animation etc. Aim of copy right is to encourage of reward creative work.
- 2) **Industrial property** : It can be divided into following areas:
  - a) These right protect distinctive sign or logos such as trade marks and geographical indications.
  - b) This right are related to a creation of technology or invention examples are patents, plant varieties, designs etc.

## Characteristics of IPR

- 1) It is given for creation of mind.
- 2) It is intangible in nature.
- 3) It is given exclusively to the inventor.
- 4) It is not similar in every country.
- 5) It is given for limited period of time.

## Patent

It is a legal right granted by Govt. to the owner of invention who is called as patentee. It is nothing but an official document giving ownership of invention patentee. Patentee can sell this right further. It should be noted that patent is given for invention and not discovery.

For an invention to be patentee following condition should be satisfied:

- 1) The invention must be the novel.
- 2) It should be obvious to a person who is a skilled that in area.
- 3) It should have industrial applicability i.e. possible to use in practice in industrial field.

Following things are not patentable:

- 1) An invention which is frivolous or obvious.
- 2) An invention which is contrary to law morality or public health.

- 3) A mere discovery of any scientific principle or abstract theory.
- 4) A mere discovery of new property of non substance.
- 5) A substance obtained by mere mixture.
- 6) A method of agriculture or horticulture
- 7) Inventions related to atomic energy.

### \*Procedure for obtaining patent:

Patent can be given only to original and true inventor. Following procedure has to be followed:

**1) Application:** Inventor has to file an application for getting a patent in his name. Application has to be made at any of the four patent offices situated at Delhi, Mumbai, Kolkata, Chennai. After filing the application applicant get priority date. Application has to submit following documents:

Form II : Specifications of inventions

Form III : Statement and undertaking by applicant.

Form IV : Declaration as to invention.

**2) Publication:** Application will be published at patent office on expiry of 18<sup>th</sup> months from priority date. It can be withdrawn by the applicant before 3 month of publication date.

**3) Examination:** A request for examination can be made within 36 months from priority date. Examination shall be done by examiner appointed by controller of patent.

**4) Opposition:** They are of 2 types:

a) **Pre-grant opposition:** It's opposition filed before granting of patent after application is published.

b) **Post grant opposition:** Any person can challenge the grant by patent within 12 months from granting.

**5) Grant:** After dealing with opposition or examination as the case may be patent shall be granted to applicant is all requirements of patent Act 2005 are satisfied. A patent granted shall be published in official gazette and shall be open for public inspection. Such patent shall be valid through out India for the period of 20 years from the date of application.

### Copyright

Copyright is right given to the author or creator of original literally dramatically, musical or artistic work and to the producers of films and sound recordings. Copy rights include the rights of production common and translation.

## Following persons can apply for copy right:

- 1) For literally and dramatic work, author i.e. creator of the work.
- 2) In case of musical work, the composer.
- 3) In case of films, producers.
- 4) In case of sound recording, producer.
- 5) In case of photography the photographer.
- 6) In case of computer programme, the programmer.

## Rights of copy right holders:

- 1) He can publish his work and can also refrain others from distorting his work.
- 2) Copy right holder has exclusive right to get monetary benefits of his work.
- 3) He can reproduce the work in any other form and can store it in any medium.
- 4) He can issue copies of his work to public.
- 5) He can make translation of his work or any person can translate it only with his permission.
- 6) Like other IPRs copy right holders can assign his right to any other person. He can also grant license to others regarding his copy right.
- 7) Copy right can be exercise by the author for his life span and 60 years from his death in case of post humus publication the term is 60 years for broadcasting, the term is 25 years.

### **Procedure for registration of copyright**

The procedure for registration is as follows:

- Application for registration is to be made as prescribed in the first schedule to the Rules
- Separate applications should be made for registration of each work
- Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules
- The applications should be signed by the applicant or the advocate in whose favour a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.
- Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.
- Three copies of published work may be sent along with the application. If the work to be registered is unpublished, a copy of the manuscript has to be sent along with the application for affixing the stamp of the Copyright Office in proof of the work having been registered.

- In case two copies of the manuscript are sent, one copy of the same duly stamped will be returned, while the other will be retained, as far as possible, in the Copyright Office for record and will be kept confidential. It would also be open to the applicant to send only extracts from the unpublished work instead of the whole manuscript and ask for the return of the extracts after being stamped with the seal of the Copyright Office

## Trade Mark

Trade mark which is popularly known as brand name is a visual symbol. It may be in the form of label, symbol, word, signature, slogan, shape etc. It is given for goods or services to distinguish it from similar goods or services originated by different undertaking following are the characteristics of good trade mark.

- 1) It is easy to pronounce right and remembers
- 2) It is distinctive in nature.
- 3) It is brief and not descriptive.
- 4) It should satisfy requirements of registration.
- 5) It must not belong to marks which are prohibited for registration.

### \* Functions of trade mark:

- 1) Consumer can identify the products and its origin with trade mark.
- 2) It guarantees unchangeable quality.
- 3) It advertises the product.
- 4) It protects consumers from inferior quality products.

### \* Types of trade mark:

- 1) Service mark:** It identifies some service which is given which is different from goods. Service mark enables consumer to distinguish between different services such as hospitals, insurance, travel etc.
- 2) Collective mark:** It is owned by some association or group of persons having some special criteria for ex-Dr, Adv, CA etc.
- 3) Certification mark:** This mark indicates goods of certain quality which are manufactured in a particular way and which possess a particular quality for ex-Agmark, ISI mark, hall mark etc.



**4)Registered trade mark:** Any owner or proprietor of business can apply for a unique trade mark to be registered for him. If the registration is given he can exclusively use that trade mark on the goods produced by him. It is written as ®

### Procedure for registration of Trademark

- With requisite details and fees, at any of the trademark offices, application for obtaining trademark can be made. Head office for trade mark registration is at Mumbai and branch offices are at Ahmedabad, Delhi, Chennai and Kolkata.
- Upon filing of the application, the registry will issue us with an official receipt with the filing date and number allotted to the application.
- The application is then formally examined by the Indian Trade Marks Office, as to its similarity with existing marks. If an objection to registration is raised, an official examination report will issue. To overcome the objection, it is necessary to file a written response or presenting evidence of acquired distinctiveness and in most cases, an interview/hearing with the examiner is posted. The Registrar may require the applicant to file an affidavit testifying to such user with exhibits showing the mark as used.
- If, following examination, the trade mark application is considered allowable, a Letter of Acceptance (TLA order) will issue, after which the trademark will be published in the Trade Marks Journal. If there are no oppositions within 4 months from the date of advertisement in the Trade Marks Journal, then the trademark registration certificate will issue.
- Trademark Registration is a tedious process and it takes around 18-24 months to obtain registration in a straight-forward case, without any objections or oppositions. However, once the trademark application is filed, an application number is allotted immediately and the priority starts from the date of application.
- Once the trademark is registered, it is valid for a period of 10 years from the date of application. The registration can then be renewed indefinitely as long as the renewal fees are paid every 10 years.

### Trademark Infringement And Remedies

Trademark infringement is a violation of the exclusive rights attaching to a registered trademark without the authorization of the trademark owner or any licensees. Infringement may occur when

- the infringer uses a trademark which is identical or confusingly similar to a registered trademark owned by another person for products or services which are similar to the products or services which the registration covers.

- When trademark is used even only in advertisements.
- When unauthorised oral use of Trademark is made.
- When trademark is used for import or export of

goods.REMEDIES

The owner of such registered trademark may commence legal proceedings against the infringer.

### Civil remedies

- Injunction/ stay against the use of the trademark
- Damages can be claimed
- Appointment of local commissioner by the court for sealing of infringing material

### Criminal remedies

- person making unauthorized use of trademark is punishable with imprisonment between 6 months to 3 years and fine from Rs. 50,000/- to Rs. 2,00,000/-.