ENTREPRENUERSHIP AND LAGAL ENVIRONMENT

(ENTREPRENUERSHIP)

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Introduction

Entrepreneurship refers to all those activities which are to be carried out by a person to establish and to run the business enterprises in accordance with the changing social, political and economic environments.

Entrepreneurship includes activities relating to the anticipation of the consumers likes and dislikes, feelings and behaviours, tastes and fashions and the introduction of business ventures to meet out allthese expectations of the consumers.

Entrepreneurship is considered as a 'new product' that would enable businessmen to develop new form of business organization and new business activities catering to the changing needs of the society. The liberalization of cultural rigidities are mainly due to this new product 'entrepreneurship'.

Entrepreneurship is the ability of entrepreneurs to assess the risks and establish businesses which are risky but at the same time suits perfectly to the changing scenarios of the economy.

The two major factors determine the entrepreneurship developments are:

1. Risk taking ability of entrepreneurs and
2. Power of achievement of entrepreneurs

The other factors are:

1. The performance of speculative functions to gain edge over others.
2. Considering new factors of production, time, technology and quality for success.
3. Availing new sources of capital
4. Performing functions of employer, master, merchant and undertaker.
5. Supply goods and services which are hitherto unknown to consumers.
6. Find a new market which is hitherto unexploited.
7. Seizing new opportunities for exploitation.
8. Developing the less developed countries and developing nations
9. Decision making under uncertain situations.

Definition of Entrepreneurship

In a changing environment, the entrepreneurship development activities are getting multiplied.Since the dawn of industrial revolution to till date, we encountered certain drastic changes in the economic activities. Thus, it is not an easy task to give a comprehensive definition for the word 'entrepreneurship'. Despite that, relevant definitions of entrepreneurship are listed here.

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"Entrepreneurship as the function of seeking investment and production opportunity, organising an enterprise to undertake a new production process, rising capital, hiring labour, arranging the supply of materials, finding site, introducing new techniques and commodities, discovering new sources of raw materials and selecting top managers of day to day operations of the enterprise".

Need and Scope of Entrepreneurship Development

The word 'Entrepreneurship' is very often confused with the word Entrepreneur'. They look alike but carry different meanings. Entrepreneurship is nothing but all those activities which are to be undertaken by an entrepreneur. The prevailing socio, political and economic activities act as a propelling force for the aspiring personalities to become entrepreneurs. Entrepreneurshipdevelopment is the outcome of the entrepreneurs. In other words, the entrepreneurs give birth to entrepreneurship. This statement is partially true because certain activities of the entrepreneurs are due to the existing policies and programmes of the Central as well as the state governments and not only by the entrepreneurs themselves. Under such circumstances, it is not the entrepreneurs who give birth to entrepreneurship. Instead, it is the existing entrepreneurship development programmes that give birth to entrepreneurs. The emergence of entrepreneurs and the level of entrepreneurship development are also the far reaching changes that are taking place in the social and political activities rather than changes taking place in the economic activities.

Entrepreneur cannot emerge from the vacuum. Entrepreneurship development depends upon the environment (both external and internal) within which the entrepreneurs have to do their business. Entrepreneurs are closely associated with the existing as well as the past entrepreneurial activities of the society. Business opportunities are identified from the social, political and economic crisis and in turn these crisis become the favourable climate for the entrepreneurs to innovate new business ventures. From this perspective, it is true that entrepreneurial activities are the resultant efforts of the prevailing entrepreneurship development programmes. On the other hand, entrepreneurs keenly observe the society and its economic activities and try to elicit innovative business opportunities.

They try to make use of the modern technology and manufacture new products which are hitherto unknown to the market and induce the consumers to buy them and thereby improving their standard of living. It is possible for entrepreneurs to find new market, new product and introduce a new form of organization. Therefore, the entrepreneurship development is due to the innovative thoughts and actions of the entrepreneurs. Thus the term entrepreneur and entrepreneurship are different and complementary with each other. Let us see the need and scope of entrepreneurship development in the forthcoming pages.

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Scope of Entrepreneurship Development

Entrepreneurship development could be made in all walks of the society and in all fields of activities. The scope of entrepreneurship development encompasses the following:

I. To Identify Entrepreneurial Activities

1. The entrepreneurial activities 'and opportunities could be identified by the planner of the Government. The Government through various economic policies and programmes like 'Globalisation', 'Privatisation', 'Liberalisation', 'Free Export and Import of Goods and Services' inviting NRI's capital introduction of innovation in the stock market activities, and the establishment of SSI identifies entrepreneurship opportunities. These programmes give ample opportunities for the entrepreneurship development.
2. To liberalise the existing licensing policies and offer incentives and thereby attract multinational companies of various countries to develop new industries in the backward regions.
3. To encourage the researchers of entrepreneurship development to find new opportunities for the business and industrial development.
4. To identify the existing and the emerging economic, social and political crisis and find out a suitable remedial measure to overcome the crisis.
5. To offer training to the first generation entrepreneurs and encourage them to enter into new business ventures.
6. To find out the entrepreneurial activities of the neighbouring countries and the international financial institutions and other associated activities like bilateral agreements, SAARC countries Agreement, Common Wealth Countries agreements and Non- Aligned Nations agreements and the like.
7. To encourage the institutions engaged in the industrial development to find avenues for entrepreneurship development. The institutions informing entrepreneurial opportunities are: The

   Government's sponsored institutes. University Departments and entrepreneurship developmentinstitutions.

II. Imparting Training to Develop Entrepreneurial Talents

Entrepreneurs can be made by means of allowing them to undergo rigorous training. The level of entrepreneurship development especially in all underdeveloped

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countries depends upon the extent with which the aspiring men are given training. Through training, they can be able to improve their power of achievement and power of affiliation. Training of this type shall be given to the young pupil even at the school level. The training enables entrepreneurs:

a. To know as how to search the innovative business ideas.

b. To know the various sources available for new business ideas.

c. How to process and find out the best ideas.

d. To know the various input requirements for the proposed business.

e. To find out the location for the proposed business.

f. To know as how to fulfil the various legal formalities.

g. To know as how best to make use of the existing infrastructural facilities.

h. To know the various sources of finance available for the new business venture.

i. To know as how best to overcome the resistance, and

j. To know as how to assess the market and future trend.

III. To Develop Infrastructural Facilities

Entrepreneurship development could be possible through the setting up of both social and economic infrastructural facilities for the aspiring entrepreneurs. The following infrastructural facilities are worth noting:

1. Impart entrepreneurship education to the pupils at the school level so as to enable them to develop the entrepreneurial talents.
2. Establish a separate Department of Entrepreneurship Development or School of Entrepreneurship Development at the College/ University level and allow the academics to' undertake researches on 'Entrepreneurship Development' and its allied activities.
3. Conduct the 'Entrepreneurship Development Programmer's through the setting up of Entrepreneurship Training Institutions at least at the taluk level in all parts of the country.
4. The State Governments shall give special attention to the entrepreneurship development programme. They can in collaboration with the neighbouring states, chalk out a programme of action for developing entrepreneurial activities in a phased manner.
5. The existing financial institutions especially the commercial banks situated in rural areas shall take utmost care in identifying the aspiring entrepreneurs and offer not only the required financial assistance but also the required managerial techniques so as to enable them to establish new business and withstand in the market.

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6. Institutions which are engaged in the development of small industries shall frame long range planning in developing entrepreneurial talents. They should monitor the changing industrial and business scenarios and determine the future course of actions to be taken to improve theentrepreneurship development.
7. The role of R & D institutions is not only to innovate but also to inform the entrepreneurs as how best to make use of the innovation and apply in the manufacturing process. These institutions should act as entrepreneur and all its activities constitute entrepreneurship.
8. Entrepreneurship development depends upon the existence of a stable Government so that industrialists and business magnets planning as how best to help the young entrepreneurs to availthese infrastructure facilities.

Definition of Entrepreneur

The word "entrepreneur" is derived from the French verb enterprendre. It means "to undertake". In the early 16th century, the men who organised and led military expeditions were referred to as "entrepreneurs". Around 1700 A.D., the term was used for architects and contractors of public works. Quesnay regarded the rich farmer as an entrepreneur who manages and makes his business profitable by his intelligence, skill and wealth. In many countries, the entrepreneur is often associated with a person who starts his own, new and small business. Business encompasses manufacturing, transport, trade and all other self-employed vocations in the service sector. But not every new small business is entrepreneurial or represents entrepreneurship.

An entrepreneur is one of the important segments of economic growth. Basically, an entrepreneur is a person who is responsible for setting up a business or an enterprise. In fact, he is one who has the initiative, skill for innovation and looks for high achievements. He is a catalytic agent of change and works for the welfare of people. The entrepreneur is a critical factor in the socio-economic change. He is the key man who envisages new opportunities, new techniques, new lines of production, new products and coordinates all other activities.

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The term ‘entrepreneur’ is defined in different manners by different experts. “Entrepreneur is one who innovates, raises money, assembles inputs, chooses managers and sets the organisation going with his ability to identify them and opportunities which others are not able to identify and is able tofulfil such economic opportunities. Innovation occurs through i) Introduction of a new quality in a product of ii) new product iii) discovery of fresh demand and fresh sources of supply and iv) by change in the organisation and management

.Sociologists consider him as a sensitive energiser - in the modernisation of societies. The psychologists look upon him as an "entrepreneurial man", his motivations and aspirations as conducive to development. Political scientists regard him as a leader of the system. To economists, he is a harbinger of economic growth. The entrepreneur is a critical factor in the socio-economic change. He is the key man who envisages new opportunities, new techniques, new lines of production, new products and co-ordinates all other activities.

According to J. B. Say, "an entrepreneur is the economic agent who unites all means of production, the labour force of the one and the capital or land of the others and who finds in the value of the products which results from their employment, the reconstitution of the entire capital that he utilises and the value of the wages, the interest and the rent which he pays as well as profit belonging tohimself. He emphasised the functions of co-ordination, organisation and supervision. Further, it can be said that the entrepreneur is an organiser and speculator of a business enterprise. The entrepreneur lifts economic resources out of an area of lower into an area of higher productivity and greater yield.

According to E.E. Haggen, an entrepreneur is an economic man who tries to\maximise his profits byinnovations. Innovations involve problem-solving and the entrepreneur gets satisfaction from using his capabilities in attacking problems.

The New Encyclopaedia Britannica considers an entrepreneur as "an individual who bears the risk of operating a business in the face of uncertainty about the future conditions." Leading economists of all schools, including Karl Marx, have emphasised the contribution of the entrepreneurs to the development of economies, but Joseph Schumpeter, who argues that the rate of growth in an economy depends to a great extent on the activities of entrepreneurs, has probably put greater emphasis on the entrepreneurial function than any other economist.

Joseph A. Schumpeter thus writes: "The entrepreneur in an advanced economy is an individual who introduces something new in the economy - a method of production not yet tested by experience in the branch of manufacture concerned, a product with which consumers are not yet familiar, a new source of raw material or of new markets and the like." Schumpeter further states that entrepreneur's function is to "reform or revolutionise the pattern of production by exploiting an invention or more generally, an untried technological possibility for producing a new commodity.

Mr. Peter Drucker has aptly observed that, "Innovation is the specific tool of entrepreneurs, the means by which they exploit changes as an opportunity for a different business or a different service. It is capable of being presented as a discipline, capable of being learned, capable of being practised. Entrepreneurs need to search purposefully for the sources of innovation, the changes and their symptoms

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that indicate opportunities for successful innovation. And they need to know and to apply the principles of successful innovation." Systematic innovation, according to him, consists in the purposeful and organised search for changes and in the systematic analysis of 'the opportunities such changes might offer scope for economic and social innovation.

According to Drucker, three conditions have to be fulfilled:
1. Innovation is work. It requires knowledge. It requires ingenuity. It makes great demands ondiligence, persistence and commitment.
2. To succeed, innovation must build on their strengths.
3. Innovation always has to be dose to the market, focused on the market, indeed market-driven. Specially, systematic innovation means monitoring six sources for innovative opportunity.

Functions of an Entrepreneur
An entrepreneur is expected to perform the following functions.

1. Risk Absorption
The entrepreneur assumes all possible risks of business. A business risk also involves the risk due to the possibility of changes in the tastes of consumers, techniques of consumers, techniques ofproduction and new inventions. Such risks are not insurable. If they materialise, the entrepreneur has to bear the loss himself. Thus, Risk-bearing or uncertainty-bearing still remains the most function of an entrepreneur. An entrepreneur tries to reduce the uncertainties by his initiative, skill and good judgment.

2. Formulate Strategic Business Decisions

The entrepreneur has to decide the nature and type of goods to be produced. He enters the particular industry which offers from he best prospects and produces whatever commodities he thinks will pay him the most employs those methods of production which seem to him the most profitable. He effects suitable changes in the size of the business, its location techniques of production and does everything that is needed for the development of his business.

3. Execute Managerial Functions

The entrepreneur performs the managerial functions though the managerial functions are different from entrepreneurial functions. He formulates production plans, arranges finance, purchased, raw material, provides, production facilities, organises sales an assumes the task of personnel management. In a large establishment these management functions are delegated to the paid managerial personnel.

4. Adopt Innovation Function
An important function of an entrepreneur is “Innovation”. He conceives the idea for

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the improvement in the quality of production line. He considers the economic inability and technological feasibility in bringing about improve quality. The introduction of different kinds of Electronic gadgets is an example of such an innovation of new products. Innovation is an ongoing function rather than once for all, or possibly intermittent activity.

Characteristics\Traits\ Skill of Entrepreneur

Entrepreneurs possess the following vital characteristics:

1. ***An especially skilful person:*** The entrepreneur is recognized as a person having a special skill and at the same time a person providing others for motivation. He may be either a single individual or an individual in a group. Whatever he may be, he possesses that special skill which is not generally found in common man.

2. ***An innovator:*** He is rightly known as an innovator who engages himself to innovate new varieties of products, explores new market horizons, and introduces new techniques of production and methods of reconstruction of industries. According to Schumpeter, the main characteristic of an entrepreneur is to innovate something. Through such innovation, the execution and effective use of a creative idea are ensured. Its success brings for commercial achievement and new horizon of economy emerges.

3. ***Providing completeness to the factors of production:*** An entrepreneur procures necessary resources from various sources for the purpose of production and by utilizing them he provides completeness to the factors of production. Moreover, he endeavours to make contact with various markets for his products. He is a risk-taker and functions as a coordinator.

4. ***Decision-making person:*** The entrepreneur is such a person who is endowed with a power to make a proper decision as regards the establishment of a business, its management, and procurement of different factors, methods of distribution and coordination of various scarce resources. Since he has a strong power of decision-making, he can take decisions on various maters rapidly. His achievement largely depends on the ability of his decision making.

5. ***Creative personality:*** As the term implies, he is known as an employer who makes optimum utilization of economic resources and thus carries on productive activities. He has a quality of creating something new and as such he is a person of creative personality. For this, he is known as a creative innovator. He creates new ideas, nurtures them in the light of his own experience, knowledge and intellect. Through all such activities, his creative personality and mentality are exposed.

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6. ***A basic plan-maker:*** An entrepreneur is the owner, employer, producer, market-creator, decision- maker, risk-taker, coordinator, and user of market information, creative individual and innovator. For this, he is regarded as a pioneer of economic development.

7. ***A pioneer of economic development:*** An entrepreneur is the owner, employer, producer, market- creator, decision-maker, risk-taker, coordinator, and user of market information, creative individualand innovator.

8. ***Dynamic leader:*** He provides proper motivation to his workers by means of leadership so that the workers can give their best efforts to the interest of the organisation.

9. ***Creator of wealth:*** The entrepreneur uses various resources for running his products or services are produced. Hence, the entrepreneur creates his personal wealth and at the same time he helps to increase social wealth, because new wealth is created due to increase in demand for product or services. As such, creation of wealth is one of the basic features of an entrepreneur.

10. ***Self-confident and ambitious:*** One of the important features of an entrepreneur is that he shouldbe self-confident as well as ambitious. Self-confidence is regarded as one of the remarkable characteristic features for his success. This self-confidence leads him to face any situation boldly. Self-confidence relates to harmonize between word and work. Similarly, he should always have in himself, high ambition.

11. ***Risk-bearer:*** It is needless to say that an entrepreneur has to bear the various risks concerning the enterprise. Without risk bearing, his enterprise activities cannot be conducted. The capacity ofan entrepreneur to bear the risks is his inherent feature. He has to bear always the risks in case of production of any new product or service. There are various types of risks to be borne by him.These are risks associated with procurement of raw materials and capital and marketing of goods, etc. this risk bearing is the prerequisite to his success. This is the part and parcel of his daily activities.

12. ***Adventurer:*** After thinking over various matters, an entrepreneur undertakes his venture and after evaluating pros and cons of all the matters, he selects the most suitable one. While making selection, he requires to be a bit adventurer. This quality is such an outlook, which leads him to accept the challenge in various adverse situations.

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Entrepreneur, Entrepreneurship and Enterprise

Entrepreneurship is the function of seeking investment and production opportunity organising an enterprise to undertake a new production process, raising capital, arranging labour and raw materials, finding a site introducing a new technique and commodities, discounting new sources for the enterprise. Entrepreneur is one who combines capital and labour for the purpose of production. The word entrepreneur literally came from French language meaning someone who undertakes an enterprise. The word enterprise is attached to self-propelled, usually self-made businessman who thinks about a venture, dreams it, starts it, works on it and grow with it.

Entrepreneurship could be defined as ability of an individual or a group of individual to introduce changes or innovate like introduction of a new product or service, opening of a new market and carrying out a new organisation. These are indeed the early American thoughts an Entrepreneurship. Entrepreneur is a man who invests and risks time, money and effort to start a business and make it successful.

The enterprise is the basic unit of an economic organisation. It produces goods and services worth more than the resources used. Thus, any development effort for it to bear fruit, must ultimately affect directly or indirectly individual enterprise. Enterprise is an undertaking, especially one which involves activity, courage, energy. It involves the willingness to assume risks in undertaking an economic activity. It also involves innovation. It always involves risk-taking and decision making. Thus, entrepreneur and enterprise are inter-linked, enterprise being the offshoot of an entrepreneur. Its success is dependent on the entrepreneur.

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Types of Entrepreneurs

Entrepreneurs are classified as under different heads as given below. This helps the potential entrepreneurs to choose his own nature and style of entrepreneurship.

a) According to the Type of Business

Entrepreneurs are found in various types of business occupations of varying size. We may broadly classify them as follows:

Business Entrepreneur

Business entrepreneurs are individuals who conceive an idea for a new product or service and then create a business to materialize their idea into reality. They tap both production and marketing resources in their search to develop a new business opportunity. They may set up a big establishment or a small business unit. Trading entrepreneur is one who undertakes trading activities and is not concerned with the manufacturing work. He identifies potential markets, stimulates demand for his product line and creates a desire and interest among buyers to go in for his product. He is engaged in both domestic and overseas trade.

Industrial Entrepreneur

Industrial entrepreneur is essentially a manufacturer who identifies the potential needs of customers and tailors product or service to meet the marketing needs. He is a product oriented man who starts in an industrial unit because of the possibility of making some new product.

Corporate Entrepreneur

Corporate entrepreneur is essentially a manufacturer who identifies the potential needs of customers and tailors product or service to meet the marketing needs. He is a product oriented man who starts in an industrial unit because of the possibility of making some new product.

Corporate entrepreneur is a person who demonstrates his innovative skill in organising and managing a corporate undertaking. A corporate undertaking is a form of business organisation which is registered under some statute or Act which gives it a separate legal entity.

Agricultural Entrepreneur

Agricultural entrepreneurs are those entrepreneurs who undertake such agricultural activities as raising and marketing of crops, fertilizers and other inputs of agriculture. According to the use of Technology.

Technical Entrepreneur

A technical entrepreneur is essentially an entrepreneur of “Craftsman type”. He develops a new and improved quality of goods because of his craftsmanship. He concentrates more on production than marketing. He does not care much to generate sales by applying various sales promotional techniques. He demonstrates his innovative capabilities in matters of production of goods and rendering services.

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Non-technical entrepreneurs

Non-technical entrepreneurs are those who are not concerned with the technical aspects of the product in which they deal. They are concerned only with developing alternative marketing and distribution strategies to promote their business Entrepreneu

Professional Entrepreneur

Professional entrepreneur is a person who is interested in establishing a business but does not having interest in managing or operating it once it is established.

b. According to Stages of Development

First-Generation Entrepreneur

A first generation entrepreneur is one who starts an industrial unit by means of an innovative skill. He is essentially an innovator, combining different technologies to produce a marketable product or service.

Modern Entrepreneur

A modern entrepreneur is one who undertakes those ventures which go well along with the changing demand in the market. They undertake those ventures which suit the current marketing needs.

Classical Entrepreneur

A classical entrepreneur is one who is concerned with the customers and marketing needs through the development of a self-supporting venture. He is a stereotype entrepreneur whose aim is to

maximize his economic returns at a level consistent with the survival of the firm with or without an element of growth.

Innovating Entrepreneurs

Innovating entrepreneurship is characterized by aggressive assemblage of information and analysis of results, deriving from a novel combination of factors. Men/women in this group are generally aggressive in experimentation who exhibit cleverness in putting attractive possibilities into practice. One need not invent but convert even old established products or services, by changing their utility, their value, their economic characteristics, into something new, attractive and utilitarian. Thereinlies the key to their phenomenal success. Such an entrepreneur is one who sees the opportunity for introducing a new technique of production process or a new commodity or a new market or a new service or even reorganization of an existing enterprise.

Imitative Entrepreneurs: Imitative entrepreneurship is characterized by readiness to adopt successful innovations by innovating entrepreneurs. They first imitate techniques and technology innovated by others.

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C. According to Motivation

Motivation is the force that influences the efforts of the entrepreneur to achieve his objectives. An entrepreneur is motivated to achieve or prove his excellence in job performance. He is also motivated to influence others by demonstrating his power thus satisfying his ego.

Pure Entrepreneur

A pure entrepreneur is an individual who is motivated by psychological and economic rewards. He undertakes an entrepreneurial activity for his personal satisfaction in work, ego or status.

Induced Entrepreneur

Induced entrepreneur is one who is being induced to take up an entrepreneurial task due to the policy measures of the government that provides assistance, incentives, concessions and necessary overhead facilities to start a venture. Most of the entrepreneurs are induced entrepreneurs who enter business due to financial, technical and several other several other provided to them by the state agencies to promote entrepreneurship.

Motivated Entrepreneur

New entrepreneurs are motivated by the desire for self-fulfilment. They come into being because of the possibility of making and marketing some new product for the use of consumers. If the productis developed to a saleable stage, the entrepreneur is further motivated by reward in terms of profit and enlarged customer network.

Spontaneous Entrepreneur

These entrepreneurs start their business out of their natural talents and instinct. They are persons with initiative, boldness and confidence in their ability which motivate them to undertake entrepreneurial activity.

Growth Entrepreneur

Growth entrepreneurs are those who necessarily take up a high growth industry. These entrepreneurs choose an industry which has substantial growth prospects.

Super-Growth Entrepreneur

Super-growth entrepreneur are those who have shown enormous growth of performance in their venture. The growth performance is identified by the liquidity of funds, profitability and gearing.

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Fabian Entrepreneurs

These categories of entrepreneurs are basically running their venture on the basis of conventions and customary practices. They don't want to introduce change and not interested in coping with changes in environment. They have all sorts of inhibitions, shyness and lethargic attitude. They are basically risk avoider and more cautious in their approach.

Drone Entrepreneurs

Entrepreneurs who are reluctant to introduce any changes in their production methods, processes and follow their own traditional style of operations. Though they incur losses and loses their market potential, will not take any effort to overcome the problem. Their products and the firm will get natural death and knockout.

Forced Entrepreneurs

Sometimes, circumstances made many persons to become entrepreneurs. They do not have any plan, forward looking and business aptitude. To mitigate the situational problem, they are forced to plunge into entrepreneurial venture. Most of the may not be successful in this category due to lackof training and exposure.

Intrapreneurship

The term 'intrapreneur' emerged in during the seventies. Several senior executives of big corporations left their jobs to start their own small businesses because the top bosses in these corporations were not receptive to innovative ideas. These executives-turned-entrepreneurs achieved phenomenal success in their new ventures, posing a threat to the corporations they had left.These types of entrepreneurs came to be known as 'intrapreneurs'. This kind of brain drain phenomena is not limited to the US, but has spread all over the world. Companies, as a result, have started devising ways and means to stop this outflow of talent, experience and innovation.

The notion of intrapreneurship requires that managers inside the company should be encouraged to be entrepreneurs within the firm rather than go outside. For an entrepreneur to survive in an organization he/she needs to be sponsored and given adequate freedom to implement his ideas. Otherwise, the entrepreneurial spark will die. The entrepreneur who starts his own business generally does so because he aspires to run his own show and does not like taking orders from others. What is needed in large bureaucratic companies is a strong and healthy risk-taking culture, where risk-taking managers are assured security and rewards. An entrepreneurial culture requires a constant generation of ideas. It needs managers who listen and respond to new ideas and are willing to risk their future, a system that rewards managers who may fail but who have generated and experimented with ideas. Intrapreneuring means the entrepreneurial activities that acquire organizational

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sanctions and commitments of resources for the sole objective of innovative results. Intrapreneuring aims at boosting the entrepreneurial spirit within the limits of organization, thus creating an environment to develop. Intrapreneur is a person within a large corporation who takes direct responsibility for turning an idea into a profitable finished product through assertive risk-taking and innovation. "Intrapreneurship is Entrepreneurship practiced by people within established organizations". Intrapreneurship revolves around the restructuring and re-emergence of the firm's capacity todevelop innovative skills and new ideas. Intrapreneurship is not just limited to the germination of new ideas, but includes even the implementation of those ideas.

Characteristics of Intrapreneurs

Following are the characteristics of intrapreneurs:

1. Intrapreneurs bridge the gap between inventors and managers. They take new ideas and turn theminto profitable realities.
2. They have a vision and the courage to realize it.
3. They can imagine what business prospects will follow from the way customers respond to theirinnovations.
4. They have the ability to plan necessary steps for actualization of the idea.
5. They have high need for achievement and they take moderate calculated risks.
6. They are dedicated to their work that they shut out other concerns, including their family life.

Reasons for Promoting Intrapreneurs in Organisation

Following could be the reasons for promoting intrapreneurs in organization:

Intrapreneurs thrive and vibrate in all organizations (big or small): Several executives with rich experience and expertise in corporations leave their jobs to own small business, because the top management in these corporations were not receptive of their innovative ideas. These executives termed as 'entrepreneurs' achieved phenomenal success in their new ventures, posing a threat to the corporations they had left. Companies, as a result, started devising ways and means to stop this outflow of talent, experience and innovation and therefore nested the development of intrapreneurs.

Through their expertise and rich experience in the organization: Intrapreneurs understand the needs and wants of the customers. They generate innovative ideas from these needs and wants. Intrapreneurs do not just limit their energies to the development of these innovative ideas as they have an insatiable desire to achieve and succeed. They are hungry to see their ideas materialize into business enterprise. Venture capitalists with their wide open eyes welcome them with open arms. And hence the organization not only loses rich experience and expertise but also creates competitorsfor itself.

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Intrapreneurs as Dreamers and Change Agents

Intrapreneurs are the "dreamers who do." In most organizations people are thought to be either dreamers or doers. Both talents are not generally required in one job. But the trouble with telling thedoers not to bother about their dreams is that they dream anyway. When they are blocked from implementing dreams of how to help your company they're dreaming dreams of revenge. A mind is meant to imagine and then act. It is a terrible thing to split apart the dreamer and the doer. Intrapreneurs ask questions such as: "Who would I need to help me with this? How much would it cost? What things have to happen first?" and so forth. They may ask "Could we release this technology – onto the marketplace in product form aimed at such-and-such a customer need?

Entrepreneur v/s Intrapreneur

Points of difference	Intrapreneurship	Entrepreneurship
Definition	Intrapreneurship is the entrepreneurship within an existing organization.	Entrepreneurship is the dynamic process of creating incremental wealth.
Core objective	To increase the competitive strength and market sustainability of the organization.	To innovate something new of socio-economic value.
Primary motives	Enhance the rewarding capacity of the organization and autonomy.	Innovation, financial gain tad independence.
Activity	Direct participation, which is more than a delegation of authority.	Direct and total participation in the process of innovation.
Risk	Bears moderate risk.	Bears all types of risk.
Status	Organizational employees expecting freedom at work.	The free and sovereign person doesn't bother with status.
Failure and mistakes	Keep risky projects secret unless it is prepared due to high concern for failure and mistakes.	Recognizes mistakes and failures to take new innovative efforts.
Decisions	Collaborative decisions to execute dreams.	Independent decisions to execute dreams.
Whom serves	Organization and intrapreneur himself.	Customers and entrepreneur himself.

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Family heritage	May not have or a little professional post.	Professional or small business family heritage.
Relationship with others	Authority structure delineates the relation.	A basic relationship based on interaction and negotiation.
Time orientation	Self-imposed or organizationally stipulated time limits.	There is no time-bound.
The focus of attention	On Technology and market.	Increasing sales and sustaining competition.
Attitude towards destiny	Follows self-style beyond the given structure.	Adaptive self-style considering Structure as inhabitants.
Attitude towards destiny	Strong self-confidence and hope for achieving goals.	Strong commitment to self-initiated efforts and goals.
Operation	Operates from inside the organization.	Operates from outside the organization.

Career in Entrepreneurship.

A Career in Entrepreneurship refers to the pursuit of starting and running one's own business venture instead of working for someone else. It involves taking risks, being innovative, and being willing to face the entrepreneurship challenges that come with starting and managing a business.

Career opportunities in entrepreneurship are not always seen as a traditional career path because they often start at different stages of life. Some people become entrepreneurs early on, while others may transition to entrepreneurship later in their lives. This can create a sense of unevenness and a lack of recognition for entrepreneurship as a legitimate career choice, particularly among students who may face challenges and consequences for choosing this path.

A life event, personal motivation, or inspiration usually drives the decision to become an entrepreneur. It can be likened to a lifelong commitment to a business venture where the individual may invest significant time and effort. An entrepreneur's work hours are not limited; if the business succeeds, it can be passed down through generations. However, if the venture fails, the entrepreneur may have to shut it down.

Many young people are turning to career opportunities in entrepreneurship due to a lack of opportunities in the formal job market. It is currently one of the fastest-growing fields offering potential long-term success and the ability to define one's own limits and strategies.
Careers opportunities in entrepreneurship require a willingness to initiate, experiment, and innovate regularly. Being decisive and innovative is crucial to adapt to changing demands and circumstances. Entrepreneurs are often self-employed individuals, and this is a key aspect of an entrepreneurial career.

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Choosing entrepreneurship as a career option means experiencing something different from traditional employment in an organization. It involves a deep commitment to the venture, taking risks, navigating volatility, and performing multiple roles simultaneously (such as being a worker, salesperson, accountant, and owner). Some entrepreneurs find these challenges to be both rewarding and demanding.
The main driving forces behind choosing self-employment include greater freedom, flexibility, the potential for higher income, and avoiding organizational politics and bureaucracies. However, there are also disadvantages of entrepreneurship, such as difficulties in maintaining a work-life balance, loss of social life, and the responsibility of handling various aspects of the business.

In summary, career opportunities in entrepreneurship involves starting and managing one's own business venture, and it requires a willingness to take risks, be innovative, and face challenges. It offers the advantages of entrepreneurship, such as freedom and flexibility, but also comes with the responsibilities and uncertainties of running a business.

Advantages of Entrepreneurship as a Career Option: Independence and Freedom:

Entrepreneurs can make decisions, set goals, and determine their own path. The constraints of traditional employment do not bind them and can create a work environment that aligns with their values and vision.

Financial Potential: Successful entrepreneurs have the potential to earn higher incomes and accumulate wealth. They can create value, build successful businesses, and reap the financial rewards that come with it.

Personal Fulfilment: Starting and running a business can be personally fulfilling. Entrepreneurs are satisfied with bringing their ideas to life, solving problems, and positively impacting their customers, employees, and communities.

Learning and Growth: Entrepreneurship is a constant learning journey. Entrepreneurs acquire a diverse set of skills from marketing and finance to leadership and negotiation. They are continuously challenged and exposed to new experiences, which promotes personal and professional growth.

Flexibility and Work-Life Balance: Entrepreneurs can design their own schedules and prioritize their work-life balance. They can create a lifestyle that suits their needs, spend more time with family, and pursue personal interests.

Disadvantages of Entrepreneurship: Risk and Uncertainty:

Entrepreneurship inherently involves risk. Starting a business comes with the risk of financial loss, failure, and uncertainty. Market conditions, competition, and unforeseen challenges can make the entrepreneurial journey highly unpredictable.

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Long and Demanding Hours: Entrepreneurs often work long hours, especially in the early stages of their ventures. They must juggle multiple responsibilities and wear different hats, which can lead to burnout and a lack of work-life balance.

Financial Insecurity: Unlike traditional employment, entrepreneurship does not guarantee a stable income. Entrepreneurs may experience financial instability, especially during the early stages of their businesses. Cash flow challenges, overhead costs, and economic fluctuations can impact their financial security.

Increased Responsibility and Stress: Entrepreneurs bear the ultimate responsibility for the success or failure of their businesses. They must handle various aspects such as operations, finance, marketing, and managing employees. The pressure and stress associated with these responsibilities can be overwhelming.

Lack of Support and Resources: Another disadvantage of entrepreneurship is that entrepreneurs often face entrepreneurship challenges in accessing resources such as funding, mentorship, and professional networks. They may need to navigate the business landscape on their own and overcome obstacles without the support and infrastructure available in larger organizations.

While entrepreneurship offers numerous career opportunities in entrepreneurship and rewards, it also requires resilience, adaptability, and a willingness to take on challenges.

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Identification of Business Opportunity

In general sense, the term opportunity implies a good chance or a favourable situation to do something offered by circumstances. In the same vein, business opportunity means a good or favourable change available to run a specific business in a given environment at a given point of time.
The term _opportunity‘ also covers a product or project. Hence, the identification of an opportunity or a product or project is identical and, therefore, all these three terms are used as synonyms. The Government of India‘s ―Look East Policy‖ through North East is an example of _opportunity‘ to do business in items like tea, handicrafts, herbals, turmeric, etc.

Opportunity identification and selection are like comer stones of business enterprise. Better the former, better is the latter. In a sense, identification and selection of a suitable business opportunity serves as the trite saying _well begun is half done.‘ But, it is like better said than done. Why? Because if we ask any intending entrepreneur what project or product he/she will select and start as an enterprise, the obvious answer he/she would give is one that having a good market and is profitable. But the question is how without knowing the product could one know its market?

Whose market will one find out without actually having the product? Whose profitability will one find out without actually selling the product? There are other problems, besides. While trying to identify the suitable product or project, the intending entrepreneur passes through certain processes.

The processes at times create a situation, or say, dilemma resembling _Hen or Egg' controversy. That is, at one point, the intending entrepreneur may find one product or project as an opportunity and may enchant and like it, but at the other moment may dislike and turn down it and may think for and find other product or project as an opportunity for him/her. This process of dilemma goes on for some intending entrepreneurs rendering them into the problem of what product or project to start. Then, how to overcome this problem of product identification and selection?

One way to overcome this dilemmatic situation is to know how the existing entrepreneurs identified the opportunity and set up their enterprises. An investigation into the historical experiences of Indian small enterprises in this regard reveals some interesting factors.

To mention the important ones, the entrepreneurs selected their products or projects based on:

a. Their own or partners' past experience in that business line;
b. The Government's promotional schemes and facilities offered to run some specific business enterprises;
c. The high profitability of products;
d. Which indicate increasing demand for them in the market?
e. The availability of inputs like raw materials, labour, etc. at cheaper rates;
f. The expansion or diversification plans of their own or any other ongoing business known to them;
g. The products reserved for small-scale units or certain locations.
Now, having gained some idea on how the existing entrepreneurs selected products/projects, the intending entrepreneur can find a way out of the tangle of which opportunity/product/project to select to finally pursue as one's business enterprise. One of the ways employed by most of the intending entrepreneurs to select a suitable product/project is to firstly generate ideas about a few products/ projects. Accordingly, what follows next is a discussion idea generation about products.

Sources of Ideas:
In a sense, opportunity identification and selection are akin to, what is termed in marketing terminology, _new product development.' Thus, product or opportunity identification and selection process starts with the generation of ideas, or say, ideas about some opportunities or products are generated in the first instance.
The ideas about opportunities or products that the entrepreneur can consider for selecting the most promising one to be pursued by him/her as an enterprise, can be generated or discovered from various sources- both internal and external.

These may include:

(i) Knowledge of potential customer needs,

(ii) Watching emerging trends in demands for certain products,

(iii) Scope for producing substitute product,

(iv) Going through certain professional magazines catering to specific interests like electronics, computers, etc.

(v) Success stories of known entrepreneurs or friends or relatives,

(vi) Making visits to trade fairs and exhibitions displaying new products and services,

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(vii) Meeting with the Government agencies,

(viii) Ideas given by the knowledgeable persons,

(ix) Knowledge about the Government policy, concessions and incentives, list of items reserved for exclusive manufacture in small-scale sector,

(x) A new product introduced by the competitor, and

(xi) One's market insights through observation. In nutshell, a prospective entrepreneur can get ideas for establishing his/ her enterprise from various sources. These may include consumers, existing products and services presently on offer, distribution channels, the government officials, and research and development.

A brief mention about each of these follows in turn:

Consumer Needs:
No business enterprise can be thought of without consumers. Consumers demand for products and services to satisfy their wants. Also, consumers' wants in terms of preferences, tastes and liking keep on changing. Hence, an entrepreneur needs to know what the consumers actually want so that he/she can offer the product or service accordingly. Consumers', wants can be known through their feedback about the products and services they have been using and would want to use in future.

Existing Products and Services:
One way to have an enterprise idea may be to monitor the existing products and services already available in the market and make a competitive analysis of them to identify their shortcomings and then, based on it, decide what and how a better product and service can be offered to the consumers. Many enterprises are established mainly to offer better products and services over the existing ones.

Distribution Channels:
Distribution channels called, market intermediaries, also serves as a very effective source for new ideas for entrepreneurs. The reason is that they ultimately deal with the ultimate consumers and, hence, better know the consumers' wants. As such, the channel members such as wholesalers and retailers can provide ideas for new product development and modification in the existing product. For example, an entrepreneur came to know from a salesman in a departmental store that the reason his hosiery was not selling was its dark shade while most of the young customers want hosiery with light shade. The entrepreneur paid heed to this feedback and accordingly changed the shade of his hosiery to light shade. Entrepreneur found his hosiery enjoying increasing demand just within a month.

Government:
At times, the Government can also be a source of new product ideas in various ways. For example, government from time to time issues regulations on product production and consumption. Many a times, these regulations become excellent sources for new ideas for enterprise formation. For example, government's regulations on ban on polythene bags have given new idea to manufacture jute bags for marketing convenience of the sellers and buyers. A prospective entrepreneur can also get enterprise idea from the publications of patents available for license or sale. Besides, there are some governmental agencies that assist entrepreneurs in obtaining specific product information. Such information can also become basis for enterprise formation.

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Research and Development:

The last but no means the least source of new ideas is research and development (R&D) activity. R&D can be carried out in-house or outside the organization. R&D activity suggests what and how a new or modified product can be produced to meet the customers' requirements. Available evidences indicate that many new product development, or say, new enterprise establishments have been the outcome of R&D activity. For example, one research scientist in a Fortune 500 company developed a new plastic resin that became the basis of a new product, a plastic moulded modular cup pallet. Most of the product diversifications have stemmed from the organization's R&D activity.

Methods of Generating Ideas:

As seen above, there could be variety of sources available to generate ideas for enterprise formation. But, even after generating ideas to convert these into enterprise is still a problem for the prospective entrepreneur. The reason is not difficult to seek.

This involves a process including first generating the ideas and then scrutinizing of the ideas generated to come up with an idea to serve as the basis for a new enterprise formation. The entrepreneur can use several methods to generate new ideas. However, the most commonly used methods of generating ideas are: focus groups, brainstorming, and problem inventory analysis.

These are discussed as follows:

Focus Groups:

A group called _focus group' consisting of 6-12 members belonging to various socio-economic backgrounds are formed to focus on some particular matter like new product idea. The focus group is facilitated by a moderator to have an open in-depth discussion. The mode of the discussion of the group can be in either a directive or a non-directive manner. The comment from other members is supplied with an objective to stimulate group discussion and conceptualize and develop new product idea to meet the market requirement. While focusing on particular matter, the focus group not only generates new ideas, but screens the ideas also to come up with the most excellent idea to be pursued as a venture.

Brainstorming:

Brainstorming technique was originally adopted by Alex Osborn in 1938 in an American Company for encouraging creative thinking in groups of six to eight people. According to Osborn, brainstorming means using the brain to storm the issue/problem. Brainstorming ultimately boils down to generate a number of ideas to be considered for the dealing with the issue/problem. There are two principles that underlie brainstorming. One is differed judgment, by which all ideas are encouraged without criticism and evaluation. The second principle is that quantity breeds quality. The brainstorming session to be effective needs to work like a fun, free from any type of compulsions and pressures.

Problem Inventory Analysis:

Problem Inventory analysis though seems similar to focus group method, yet it is somewhat different from the latter in the sense that it not only generates the ideas, but also identifies the problems the product faces. The procedure involves two steps: One, providing consumers a list of specific problems in a general product category. Two identifying and discussing the products in the category that, suffer from the specific problems. This method is found relatively more effective for the reason that it is easier to relate known products to a set of suggested problems and then arrive at a new

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product idea. However, experiences available suggest that problem inventory analysis method should better be used for generating and identifying new ideas for screening and evaluation. The results derived from product inventory analysis need to be carefully screened and evaluated as they may not actually reflect a genuine business opportunity. For example, General Foods‘ introduction of a compact cereal box in response to the problem that the available boxes did not fit well on the shelf was not successful, as the problem of package size had little effect on actual purchasing behaviour. Therefore, to ensure the better if not the best results, problem inventory analysis should be used primarily to generate product ideas for evaluation.

Opportunity/Product Identification:
After going through above process, one might have been able to generate some ideas that can be considered to be pursued as ones business enterprise.

Imagine that someone have generated the five ideas as opportunities as a result of above analysis:

1. Nut and bolt manufacturing (industry)
2. Lakhani Shoes (industry)
3. Photocopying unit (service-based industry)
4. Electro-type writer servicing (service-based industry).
4. Polythene bags for textile industry (ancillary industry)

An entrepreneur cannot start all above five types of enterprises due to small in size in terms of capital, capability, and other resources. Hence, he/she needs to finally select one idea which he/she thinks the most suitable to be pursued as an enterprise. How does the entrepreneur select the most suitable project out of the alternatives available? This is done through a selection process discussed subsequently. Having gone through idea generation, also expressed as _opportunity scanning‘ and opportunity identification, we can distinguish between an idea and opportunity. We are giving below the two situations that will help you understand and draw the line of difference between an _idea‘ and an _opportunity‘.

Situation I: Having completed their Master of Business Administration (MBA), Chinmoy and Chandan met after about six months. The two were conversing with each other about who is doing what. Chinmoy is running his business of travel agency and Chandan is still searching for a job. Chinmoy suggests Chandan to start some business. Observe and read the market scenario and produce what the consumers actually want.

Situation II: On completion of his engineering degree, Dillip got a job in Odisha State Transport Corporation. He was the in-charge of the purchase department. Having worked in the purchase department for over ten years, he had gained good idea about which components have more demand and who are the buyers of these parts in bulk. He, therefore, thought good prospects of manufacturing of some of the components having good demand in bulk.

Now, it is clear that, in the above mentioned two situations, situation I is at the *idea stage‘ and situation II at the *opportunity stage‘. At the idea stage, there is simply an idea about what to do. But at the opportunity stage, idea has actually been germinated about what to start/do. The understanding of such a difference between an *idea‘ and *opportunity‘ is very important for the intending entrepreneurs who are seriously trying to idntify an *opportunity‘ to be pursued as an enterprise.

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Role of Family and Society in Entrepreneurial Development (Socio-Cultural)

Entrepreneurial activity is a vital source of innovation, employment and economic growth. Researchers who study entrepreneurship have lent great value by continuing to explore the factors that explain how entrepreneur‘s best create new business and thus, how societies and economies grow and prosper. With the entrepreneurial turn of the 1990s, during which universities invested in building high-quality faculties to teach and research entrepreneurship and governments increasingly viewed entrepreneurship as a solution to many social and economic problems, there has been considerable growth in new research from psychological and economic points of view. In spite of this growth in the literature and the salience of entrepreneurship in public policy, the influence of social and cultural factors on enterprise development remains understudied.

Entrepreneurial variations cross regions are better understood by considering the social environment in which the firm is created, because, in addition to economic activity, entrepreneurship is a social phenomenon. While the economic conditions may explain some of the variation, any convincing explanation must take account of the social and cultural aspects of entrepreneurial activity. The idea that individuals and organizations affect and are affected by their social context is not new. It is a seminal argument in both classic and contemporary sociology, and the argument has been applied to the study of entrepreneurship

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Social factors and entrepreneurial activity: Embeddedness and relational networks

Understanding entrepreneurship as a social phenomenon allows us to draw on the well-developed more general literatures on **social capital and social networks**.

The concept of social capital is arguably one of the most successful _exports‘ from sociology to the other social sciences. Social capital is defined as the tangible and virtual resources that facilitate actors‘ attainment of goals and that accrue to actors through social structure.

In general terms, social networks are defined by a set of actors (individuals and organizations) and a set of linkages between those actors. Social networks are the relationships through which one receives opportunities to use financial and human capital – relationships in which ownership is not solely the property of an individual, but is jointly held among the members of a network.

Social networks are also a set of relationships that can define the perception of a community, whether a business community or a more general notion of community in society.

As distinct from rational choice perspectives, the social embeddedness perspective emphasizes that, in embedded contexts, entrepreneurial agency, that is the ability to garner entrepreneurial ideas and the resources to develop them, is shaped by implicit norms and social values. Thus, social capital is conceptualized as a set of resources embedded in relationships.

This idea raises interesting questions revolving around the entrepreneurial applications of social capital, in particular, in relation to some less desirable consequences. For instance, the exploitation of social capital by any one person or entrepreneur, even within contextual rules, if any, implies both winners and losers.

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This view of social capital is closely associated with the emphasis placed by Coleman on community structures as a mechanism of social control, which, in turn, is also linked with the predominant culture in a specific society.

The underlying idea is that, although entrepreneurs usually hold some of the resources necessary to create a business (e.g. ideas, knowledge and competence to run the business), generally they also need complementary resources which they obtain through their contacts (e.g. information, financial capital, labour) to produce and deliver their goods or services

In the entrepreneurship network, three elements of network relations stand out as critical to the entrepreneurial process i) the nature of the content that is exchanged between actors(e.g. social capital and intangible resources, such as emotional support) ii) the governance mechanisms in network relationships (e.g. trust between entrepreneurs and venturing partners) and iii) the network structure created by the crosscutting relationships between actors (e.g. the ability to use cohesion and structural holes to discover and develop entrepreneurial returns)

Cultural factors and entrepreneurial activity

Because societies are endowed by nature with different physical environments, members of society must adopt environmentally relevant patterns of behaviour to achieve success. These environmentally relevant patterns of behaviour lead to the formation of different cultural values in different societies, some of which influence the decision to create new businesses. Thus, culture, as distinct from political, social, technological or economic contexts, has relevance for economic behaviour and entrepreneurship. One of the difficulties in examining the cultural affects and effects in relation to entrepreneurial activity is the lack of a precise and commonly understood definition of culture. Anthropologists suggest that culture is related to the ways in which societies‘ organize social behaviour and knowledge. Cultural values are defined as the collective programming of the mind which distinguishes the members of one human group from another and their respective responses to their environments. Several studies have stressed the influence of cultural factors on entrepreneurship from different perspectives.

According to Hayton culture and entrepreneurship can be linked on three broad dimensions. The first focuses on the impact of **national culture** on aggregate measures of entrepreneurship such as national innovative output or new businesses created. The second stream addresses the association between national culture and the characteristics of individual entrepreneurs. The third explores the impact of national culture on corporate entrepreneurship.

According to Thornton when an individual creates a business in a specific **cultural environment**, this business reflects that cultural environment, for example characteristics such as strategic orientation and growth expectations for the business.

According to Hofstede, cultural differences across societies can be reduced to four quantifiable dimensions: **uncertainty avoidance, individualism, masculinity and power distance**. The dimension of uncertainty avoidance represents preference for certainty and discomfort with unstructured or ambiguous situations. Individualism stands for a preference for acting in the interest of one‘s self and immediate family, as distinct from the dimension of collectivism, which stands for acting in the interest of a larger group in exchange for their loyalty and support. Power distance represents the acceptance of inequality in position and authority between people. Masculinity stands for a belief in materialism and decisiveness rather than service and intuition. Entrepreneurship is

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facilitated by cultures that are high in individualism, low in uncertainty avoidance, low in power-distance and high in masculinity.

Cultural variables to have an influence on entrepreneurship, cultural variables in many cases have been theorized and modelled as moderating of entrepreneurial outcomes. This suggests that greater attention should be given to the **interactions among cultural dimensions** and the conception of culture that allows for greater complexity in relation to other characteristics of the environment.

According to other authors, the major domains of life and how they affect entrepreneurial behaviour are conceptualized and measured within the context of distinct **institutional orders** – for example the family, the religions, the market, the professions, the state and the corporation These institutional orders embody competing and conflicting sources of norms, values, legitimacy and justifications of worth that have consequences for supporting or discouraging entrepreneurial behaviour.

Organizations Facilitating Entrepreneurship Development

1. NIESBUD:

The National Institute for Entrepreneurship and Small Business Development is a premier organization of the Ministry of Skill Development and Entrepreneurship , engaged in training, consultancy, research, etc. in order to promote entrepreneurship and Skill Development. The major activities of the Institute include Training of Trainers, Management Development Programmes, Entrepreneurship-cum-Skill Development Programmes, Entrepreneurship Development Programmes and Cluster Intervention. NIESBUD has provided training to 11, 46,209 persons as of March 31, 2018 through 44,035 different training programmes since inception. This includes 4,384 international participants hailing from more than 141 countries throughout the globe.

Objectives

- To standardize and systemize the processes of selection, training, support and sustenance of potential and existing entrepreneurs.
- To support and motivate institutions/organizations in carrying out training and other entrepreneurship development related activities.
- To serve as an apex national level resource institute for accelerating as well as enhancing the process of entrepreneurship development, to measure the impact of the same within different strata of the society.
- To provide vital information and support to trainers, promoters and entrepreneurs by organizing research and documentation activities relevant to entrepreneurship and skill development.
- To create a holistic environment to train the trainers, promoters and consultants in diverse areas of entrepreneurship and skill Development.

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- To offer consultancy nationally/internationally for promotion of entrepreneurship and small business development at national and international level.

- To provide national/international forums for interaction and exchange of ideas for policy formulation and its refinement at various levels.

- To share experience and expertise in entrepreneurship development across national frontiers to create awareness on it at national level.

- To interchange international experience and expertise in the field of entrepreneurship development for mapping its development at international levels too.

2. EDII:

Entrepreneurship Development Institute of India (EDII), an autonomous and not-for-profit institute, set up in 1983, is sponsored by apex financial institutions - the IDBI Bank Ltd., IFCI Ltd., ICICI Bank Ltd. and the State Bank of India (SBI). The Government of Gujarat pledged 23 acres of land on which stands the majestic and sprawling EDII campus. To pursue its mission, EDII has helped set up 12 state-level exclusive Entrepreneurship Development Centres and Institutes. One of the satisfying achievements, however, was taking entrepreneurship to a large number of schools, colleges, science and technology institutions and management schools in several states by including entrepreneurship inputs in their curricula. In view of EDII's expertise in entrepreneurship, the University Grants Commission had also assigned EDII the task of developing curriculum on entrepreneurship and the Gujarat Textbook Board assigned to it the task of developing textbooks on entrepreneurship for 11th and 12th standards. In order to broaden the frontiers of Entrepreneurship Research, EDII has established a Centre for Research in Entrepreneurship Education and Development (CREED), to investigate into a range of issues surrounding small and medium enterprise sector, and establish a network of researchers and trainers by conducting a biennial seminar on entrepreneurship education and research.

Objectives

- Creating a multiplier effect on opportunities for self-employment
- Augmenting the supply of competent entrepreneurs through training
- Augmenting the supply of entrepreneur trainer-motivators
- Participating in institution building efforts
- Inculcating the spirit of 'Entrepreneurship' in youth
- Promoting micro enterprises at rural level
- Developing new knowledge and insights in entrepreneurial theory and practice through research
- Facilitating corporate excellence through creating intrapreneurs
- Improving managerial capabilities of small scale industries
- Sensitizing the support system to facilitate entrepreneurs establish and manage their enterprises
- Collaborating with organizations to accomplish the above objectives

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3. IED:

Institute of Entrepreneurship (IED) was set up in 2005 by a small group of visionaries in order to promote entrepreneurship as a key factor for the social and economic prosperity in societies. Since then, it is considered one of the most pioneers in the field. Its participation in numerous projects gave us the opportunity to produce and collect a large number of innovative tools and products in all aspects of entrepreneurship and lifelong learning, available to be further processed and utilized. Utilizing its experience gained from more than 150 large-scale international and national projects, IED is aiming to establish new collaborations in the field of EU funding programmes to raise innovation in the entrepreneurial sector. The organization‘s agenda is set all these years towards the development of targeted projects which will have a valuable impact on primary research and sustainable society.

Objectives

- To train the potential entrepreneurs for setting up tiny, rural, small and medium scale enterprises
- To conduct various types of training programme for potential and existing entrepreneurs, educated unemployed youth, low income group, science and technology graduates, village artisans and other persons.
- To conduct training programmes for employment generation.
- To carry out research studies, evaluations, assessments in the field of entrepreneurship and industrial development as well as social sector.
- To conduct workshops, conferences and seminars for MSME
- To assess training needs of different departments in industrial development sector and develop the capacities of their officials at different level.
- To disseminate information regarding promotion and development of entrepreneurship

5. CED:

The Centre for Entrepreneurship Development (CED) was set up in the year 2017 in Delhi, India, a pioneering institute in the field of Entrepreneurship Development, CED provides seamless service for promoting entrepreneurship movement with belief that entrepreneurs need not necessarily be born, but they can be trained and developed through well-conceived and well-directed intervention. CED is associated with State Level Entrepreneurship Development Organizations, NGOs Voluntary Organizations, Educational Institutions, Financial Institutions and Business Associations. CED acts as a liaison between Government and Entrepreneurs by providing necessary information and consultancy services.

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Objectives

- To Stimulate and augment the entrepreneurial spirits and skills among women and youth to create new small and medium enterprises in the private sector.
- To Enhance Entrepreneurial values among women and youth and facilitate their choosing Entrepreneurship as a preferred career.
- To facilitate introduction of entrepreneurship courses in academic system.
- To promote the development of competent entrepreneurship in strategic industries through research studies and consultancy services.
- To Network with national and international agencies, NGOs and Government organizations for developing & promoting entrepreneurship, facilitating technology transfer, product development, partnering and market accessibility.
- To be a centre of learning for trainers – motivators on entrepreneurship development.
- To impart training on Capacity building \ enhancement of entrepreneurship development to Organizations and NGOs.
- To create a conducive business environment for emergence, sustenance and growth of the enterprises in general and Micro, Small & Medium Enterprises (MSMEs) in particular.
- To Support through active research and consultancy the prospective and existing Businesses, enabling them strategic planning and managing growth.
- To provide support and facilitation services to prospective and existing entrepreneurs in business related activities.
- To become a resource centre to offer capacity building initiatives in developing countries and neighbouring countries in the area of Entrepreneurship Development, Women empowerment and micro finance development and small business management.
- To build capacities of country level agencies for institutionalization of Entrepreneurship.
- To Integrate/Converge and internalize various approaches in Entrepreneurship Development in different regions to facilitate a visible impact.

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6. NSIC:

National Small Industries Corporation (NSIC), an enterprise under the union ministry of industries was set up in 1955 in New Delhi to promote aid and facilitate the growth of small scale industries in the country. NSIC offers a package of assistance for the benefit of small–scale enterprises. National Small Industries Corporation (NSIC), is an ISO 9001-2015 certified Government of India Enterprise under Ministry of Micro, Small and Medium Enterprises (MSME). NSIC has been working to promote, aid and foster the growth of micro, small and medium enterprises in the country. NSIC operates through countrywide network of offices and Technical Centres in the Country. In addition, NSIC has set up Training cum Incubation Centre managed by professional manpower.

Functions

NSIC acts as a facilitator and has devised a number of schemes to support enterprises in their marketing efforts, both domestic and foreign markets.

NSIC applies the tenders on behalf of single MSE/Consortia of MSEs for securing orders for them. These orders are then distributed amongst MSEs in tune with their production capacity.

NSIC, realizing the needs of MSMEs, is offering Infomediary Services which is a one-stop, one-window bouquet of aids that will provide information on business & technology and also exhibit the core competence of Indian MSMEs.

Collect and disseminate both domestic as well as international marketing intelligence for the benefit of MSMEs. This cell, in addition to spreading awareness about various programmes / schemes for MSMEs, will specifically maintain database and disseminate information.

To showcase the competencies of Indian SSIs and to capture market opportunities, NSIC participates in select International and National Exhibitions and Trade Fairs every year.

Bulk and departmental buyers such as the Railways, Defence, Communication departments and large companies are invited to participate in buyer-seller meets to enrich small

enterprises knowledge regarding terms and conditions, quality standards, etc required by the buyer.
NSIC's Raw Material Assistance Scheme aims at helping Small Enterprises by way of financing the purchase of Raw Material (both indigenous & imported).

NSIC is entering into strategic alliances with commercial banks to facilitate long term / working capital financing of the small enterprises across the country.

NSIC offers small enterprises the following support services through its Technical Services Centres and Extension Centres:

NSIC has established Software Technology cum Business Parks at New Delhi and Chennai for providing the space to small and medium enterprises in software development

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6. SIDO

Small Industries Development Organization (SIDO) is created for development of various small scale units in different areas. SIDO is a subordinate office of department of SSI and ARI. It is a nodal agency for identifying the needs of SSI units coordinating and monitoring the policies and programmes for promotion of the small industries. It undertakes various programmes of training, consultancy, evaluation for needs of SSI and development of industrial estates. All these functions are taken care with 27 offices, 31 SISI (Small Industries Service Institute) 31 extension centres of SISI and 7 centres related to production and process development.

Activities

- To coordinate various programmes and policies of various state governments pertaining to industries.
- To maintain relation with central industry ministry, planning commission, state level industries ministry and financial institutions. Implement and coordinate in the development of industrial estates. Develop import substitutions for components and products based on the data available for various volumes-wise and value-wise imports.
- To give essential support and guidance for the development of ancillary units.
- To provide guidance to SSI units in terms of costing market competition and to encourage them to participate in the government stores and purchase tenders.
- To recommend the central government for reserving certain items to produce at SSI level only.
- To provide training, development and consultancy services to SSI to develop their competitive strength.
- To provide marketing assistance to various SSI units. To assist SSI units in selection of plant and machinery, location, layout design and appropriate process.
- To help them get updated in various information related to the small-scale industries activities

7. KVIC

The Khadi and Village Industries Commission (KVIC) is a statutory body formed in April 1957 (as per an RTI) by the Government of India , under the Act of Parliament, 'Khadi and Village Industries Commission Act of 1956'. It is an apex organisation under the Ministry of Micro, Small and Medium

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Enterprises , with regard to khadi and village industries within India, which seeks to - "plan, promote, facilitate, organise and assist in the establishment and development of khadi and village industries in the rural areas in coordination with other agencies engaged in rural development wherever necessary." In April 1957, it took over the work of former All India Khadi and Village Industries Board. Its head office is in Mumbai , whereas its six zonal offices in Delhi , Bhopal , Bangalore , Kolkata , Mumbai and Guwahati . Other than its zonal offices, it has offices in 28 states for the implementation of its various programmes

Functions

Building up of a reserve of raw materials and implementation for supply to producers
Formation of common service facilities for processing of raw materials that include semi-finished goods.

Promoting the sale and marketing of Khadi and Village Industries products, as well as handicrafts
Promoting research in the village industries sector related production techniques and equipment
Providing financial assistance to individuals and institutions for the development and operation of Khadi and Village industries.

Objectives

- To promote Khadi in rural areas
- To provide employment
- To produce saleable articles
- To create self-reliance amongst the poor
- To build up strong rural community

Sickness in Small Industries:

In accordance with the provision of Micro, Small & Medium Enterprises Development (MSMED) Act, 2006, MSME are classified in two Classes: i) Manufacturing Enterprises ii) Service Enterprises

Classification of MSME Enterprises (w.e.f. 01.07.2020):

As per revised definition, an enterprise that shall be classified as a Micro, Small or Medium Enterprise on the basis of the following criteria, namely:

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S No.	Enterprises	Investment in and Turnover	Limit
(i)	Micro Enterprises	Investment in plant and machinery or equipment	Does not exceed **One** Crore rupees(<Rs. 1 Crore)
		And	
		Turnover	Does not exceed **Five** Crore rupees(<Rs. 5 Crore)
(ii)	Small Enterprise	Investment in plant and machinery or equipment	Does not exceed **Ten** Crore rupees(<Rs. 10 Crore)
		And	
		Turnover	Does not exceed **Fifty** Crore rupees(<Rs. 50 Crore)
(iii)	Medium Enterprise	Investment in plant and machinery or equipment	Does not exceed **Fifty** Crore rupees(<Rs. 50 Crore)
		And	
		Turnover	Does not exceed **Two Hundred and Fifty** Crore rupees(<Rs. 250 Crore)

Sickness in SSI

According to RBI a small scale industrial unit is considered ―sick‖ when:
(a)If any of the borrowal accounts of the unit remains substandard for more than six months, i.e., principal or interest
(b)There is erosion in the net worth due to accumulated losses to the extent of 50 percent of its net worth during the previous accounting year
(c)The unit has been in commercial production for at least two years
(d)Continuous decline in gross output compared to the previous two financial years

Industrial Sickness in India: Meaning, Causes and Suggested Remedies

One of the adverse trends observable in the corporate private sector of India is the growing incidence of sickness. It is causing considerable concern to planners and policymakers. It is also putting a severe strain on the economic system, particularly on the banks.

There are various criteria of sickness. According to the criteria accepted by the Reserve Bank of India **―a sick unit is one which has reported cash loss for the year of its operation and in the judgment of the financing bank is likely to incur cash loss for the current year as also in the following year.‖ or**

Industrial sickness can be defined as a steady imbalance in the debt-equity ratio and distortion in the financial position of the unit. A sick unit is one which is unable to support itself through the operation of internal resources.

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Causes:

Industrial sickness has become a major problem of the India's corporate private sector. Of late, it has assumed serious proportions. A close look reveals that there are, at least, five major causes of industrial sickness, viz., promotional, managerial, technical, financial and political.

An industrial unit may become sick at its nascent stage or after working for quite some time. For instance, two major traditional industries of India, viz., cotton textiles and sugar, have fallen sick largely due to short-sighted financial and depreciation policies. Heavy capital cost escalation arising out of price inflation accentuates the problem. The historical method of cost depreciation is highly inadequate when assets are to be replaced at current cost during inflation.

Moreover, since the depreciation funds are often used to meet working capital needs, it does not become readily available for replacement of worn-out plant and equipment. The end result is that the industrial unit is constrained to operate with old and obsolete equipment, its profitability is eroded and, sooner or later, the unit is driven out of the market by the forces of competition.

The causes of industrial sickness may be divided into two broad categories:

1. External
2. Internal

1. External causes which have been identified so far include:

(a) Delay in land acquisition and building construction

(b) Delay in obtaining financial assistance from public financial institutions

(c) Delayed supply of machinery by the manufacturers

(d) Problems related to recruitment of technical and managerial staff

(e) Delay on the part of the Government in sanctioning licences, permits, etc.

(f) Shortages of basic inputs like power and coal. Other causes include

(g) Cost over-runs due to factors beyond the control of management

(h) Lack of demand for products or shift of demand to products of rival firms due to delays in project implementation

(i) Unsatisfactory performance by collaborators—financial and technical

(j) Changes in the policy of the Government relating to movement of goods from one place to another within the country

2. Internal causes which have been identified so far include:

a) Large changes in the scale of operation and optimum product mix in the long run and, last but not the least

b) Lack of experience of the promoters in a specific ―line of activity‖.

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c) Differences among various persons associated with the promotion and management of the enterprise

d) Mechanical defects and breakdown

e) Inability to purchase raw materials at an economic price and at the right time

f) Failure to make controls effective in time, in case of deficiencies in workings

g) Deteriorating labour-management relations and the consequent fall in capacity utilisation

h) Faulty financial planning and lack of balance in the financial (capital) structure.

Government Policy:
A number of measures have been taken to tackle the problem of industrial sickness. The importance of detection of sickness at the incipient stage has been emphasized by the RBI. The policy framework in respect of measures to deal with the problem of industrial sickness has been laid down in the guidelines issued on October 1981 (which were subsequently modified in February 1982) for guidance of administrative ministries of the Central Government, State Governments and financial institutions.

The salient features of these guidelines are the following:

(a) The administrative ministries in the Government will have specific responsibility for prevention and remedial action in relation to sickness in industrial sector within their respective charges. They will have a central role in monitoring sickness and coordinating action for revival and rehabilitation of sick units. In suitable cases, they will also establish standing committees for major industrial sectors where sickness is widespread;

(b)The financial institutions will strengthen the monitoring system so that it is possible to take timely corrective action to prevent incipient sickness. They will obtain periodical returns from the assisted units and from the Directors nominated by them on the Boards of such units. These will be analysed by the Industrial Development Bank of India and results of such analyses conveyed to the financial institutions concerned and the Government.

(c)The financial institutions and banks will initiate necessary corrective action for sick or incipient sick unit based on a diagnostic study. In case of growing sickness, the financial institutions will also consider taking of management responsibility where they are confident of restoring a unit to health. The Ministry of Finance will have to issue suitable guidelines for management;

(d) Where the banks and financial institutions are unable to prevent sickness or ensure revival of a sick unit, they will deal with their outstanding dues to the unit in accordance with the normal banking procedures. However, before doing so, they will report the matter to the Government which will decide whether the unit should be nationalised or whether any other alternative- including workers‘ participation in management— can revive the undertaking.

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(e) Where it is decided to nationalise the undertaking, its management may be taken over under the provisions of the Industries (Development and Regulation) Act, 1951, for a period of six months to enable the Government to take necessary steps for nationalisation.

(f) Finally the industrial undertakings presently being managed under the provisions of the Industries (Development and Regulation) Act, 1951, will also be dealt with in accordance with the above principles.

Concessions:
The Government has also provided certain concessions to assist revival of sick units without direct intervention. For example, the Government has amended the Income-tax Act in 1977 by addition of Section 72A by which tax benefit can be given to healthy units when they take over the sick units by amalgamation, with a view to reviving them.

The tax benefit is in the form of carry forward of the accumulated business losses and un-provided depreciation of the sick companies by the healthy companies after amalgamation. A scheme for provisions of margin money to sick units in the small-scale sector at soft terms to enable them to obtain necessary funds from banks and financial institutions to implement their revival scheme has been introduced from January 1, 1982.

Moreover, financial assistance in the form of long-term equity up to Rs. 15 lakh to units with a project cost not exceeding Rs. 10 lakhs at a nominal service charge of 1% is available to potentially viable sick SSI from the National Equity Fund.

Establishment of BIFR:
The Central Government has set up a Board for Industrial and Financial Re-construction (BIFR) with effect from 12 January 1987 in pursuance of enactment of the Sick Industrial Companies (Special

Provision) Act, 1985. This is a major step for intervening at an early stage and detecting, preventing, as well as taking ameliorative, remedial and such other measures which to be taken with respect to sick and potentially viable companies.
The role of the Board for Industrial and Financial Reconstruction (BIFR) needs a re-look in the face of a steep rise in the number of industries turning sick. BIFR was constituted to facilitate the revival of industries deemed sick. When an industry turns sick, BIFR acts as an operating agency (generally the lead financial institution having the largest loan exposure among the creditors) to devise a revival strategy proposal.

Progress in the right disposal of sick company cases registered with BIFR has been slow on account of the conflicting interests between the companies and the creditors (banks and financial institutions, government bodies/agencies) and certain lacunae in the SIC A Act. The rehabilitation schemes met with 40-45% failure, as a result of which many of the cases had to be reopened.

The rate of registration/sickness increased substantially during 1997-98 due to (a) the recessionary trends prevalent in industry, (b) poor financial market conditions, and (c) the tough stance taken by

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banks/financial institutions (FIs) towards defaulters/potentially sick companies under their non-performing assets (NPA) accounts for rescheduling of repayments, etc.
The problem appears even more acute if we take note of potentially sick BIFR companies, as also the NPAs of FIs and banks. In fact, the NPAs of banks and others have continued to rise.
Upto 1997-98 the outstanding bank credit against sick companies has reached an abnormal‘ proportion of over Rs. 23,658 crores, in March‘ 2000. Over 15 lakh workers have been affected by companies turning sick.

IRBI (IIBI):
The Industrial Reconstruction Bank of India (IRBI) set up in 1985 has initiated various steps for checking the growth of industrial sickness and helping in industrial revival. From April 1997 the name of IRBI has been changed to Industrial Investment Bank of India (IIBI). By March 2000, cumulative financial assistance sanctioned and disbursed by it stood at Rs. 10.090 crores and Rs. 7,353 crores, respectively.

A significant measure taken during 1986 was the setting up of Small Industries Development Fund (SIDF) in the IDBI. This is meant to provide special financial assistance to the small-scale sector. The Fund would be used for providing refinancing assistance not only for development, expansion and modernisation, but also for the rehabilitation of the small-scale sick industries.

Modernisation Fund:
The Government has set up two funds, namely the Textile Modernization Fund and the Jute Modernization Fund, for modernization of the textiles and jute sector. Under these two funds, assistance is provided not only to the healthy units for modernization at 11.5% rate of interest; but also‘ to sick but potentially viable units. Special loans are given to the weak units for meeting a part of the promoters‘ contribution.

Goswami Committee Report:
The Committee on Industrial Sickness and Corporate Restructuring under chairpersonship of Dr. Omkar Goswami submitted its report in July 1993.

The main recommendations of the Committee with respect to sick companies are:

(a) For early detection of sickness the definition of sickness should be changed to:-

(i) Default of 180 days or more on repayment to term lending institutions, and
(ii) Irregularities in cash credits or working capital for 180 days or more.

(b) Amendment of the Urban Land (Ceiling & Regulation) Act, 1976 to improve generation of internal resources of sick companies.

(c) Empower the BIFR for speedier restructuring, winding-up and sale of assets of companies; and

(d) A sick company‘s own reference of BIFR should be voluntary, not mandatory.

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SICA Amendment Act, 1994:

The modifications brought in the Sick Industrial Companies (Special Provisions) Act, 1985 by the 1994 Amendment Act pertain to the changes in the definition of SICA, expansion of the term operating agency, clarification that an enquiry as to sickness shall be deemed to have commenced on receipt of a reference by the BIFR complete in all respects, scope for reverse merger, **—deemed consent‖** after the lapse of 120 days**, —single window concept‖** for release of funds by banks/ financial institutions to the sick company, monitoring implementation of sanctioned revival schemes by BIFR, holding on operations by financial institutions/banks/State Governments, empowering the Central Government, State Government, banks, institutions, etc., to report cases of potential sickness, etc.

In the definition of sickness the period for the registration of an industrial company as sick has been reduced from seven to five years. Furthermore, the condition of incurring cash losses during the preceding two years has been waived. This means that an industrial company would be considered a sick industrial company once its net worth is completely eroded and has been registered for not less than five years.

Suggested Remedies:

Some of the effective measures which may be taken for revival of sick units are technical help, professional counselling and improved management. Also, the role of professionals and experienced management becomes more important in times of sickness.

In addition to technical and professional consultants, no sick industry will ever be able to recuperate without sufficient, timely and soft finance. Bankers are the key to the problem. The role of the bankers needs to be redefined and a new direction needs to be given to support aid and lift sick industrial units from the situations that befall them. It is also the level of service and support in terms of financial advice, assistance in related matters of insurance, release of hypothecated assets and timely finance.

The Sick Industrial Companies (Special Provisions) Bill, 1997, passed by Lok Sabha, introduced encouraging changes. It suggested that a time-bound procedure was to be adopted within which the scheme has to be sanctioned and BIFR would play the role of a mediator and not a court.

Technical obsolescence and financial mismanagement are also important factors that lead to industrial sickness. As per the new provisions, an opportunity will be given to get an unanimous consent to a scheme from all concerned, failing which secured creditors will attempt to form a scheme and, if all this fails, the undertaking would be sold off. Only if it is not possible to do that, the BIFR may order winding up of the company.

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Start-up - Introduction

As per the revised notification G.S.R. (General Statutory Rules) 364(E) published on 11th April 2018, an entity shall be considered as a Startup:

- If it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
- Up to ten years from the date of its incorporation/ registration; ten years from the date of its incorporation/registration.
- If it's turnover for any of the financial years since incorporation/ registration has not exceeded Rupees 100 crores.
- If it's working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.
- Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a _Startup‘.

The term startup refers to a company in the first stage of its operations. Startups are founded by one or more entrepreneurs who want to develop a product or service for which they believe there is a demand. These companies generally start with high costs and limited revenue which is why they look for capital from a variety of sources such as venture capitalists.

- A startup is a company that's in the initial business stage.
- Until the business gets off the ground, a startup is often financed by its founders and it also attracts outside investment.
- There are many different ways to fund startups including family and friends, venture capitalists, crowdfunding, and credit.
- Startups also have to consider where they'll do business and their legal structure.

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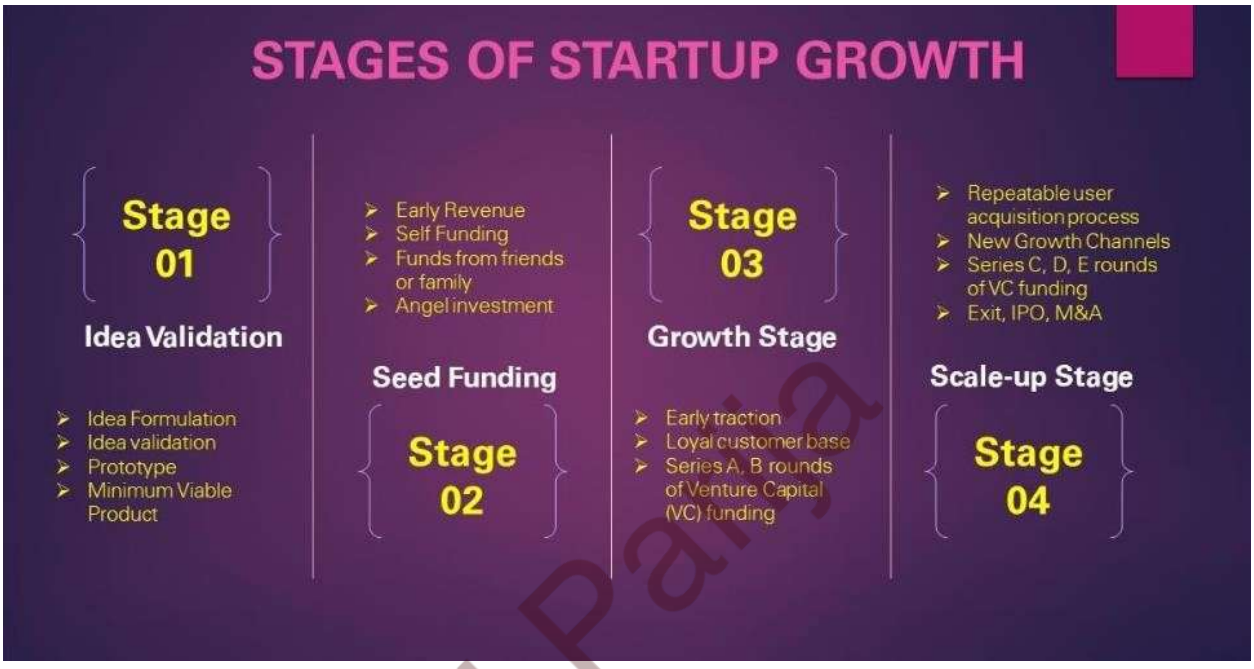
Lifecycle of a Startup

Globally, startups are seen as nation builders as they create positive contribution to the nation‘s economy and create jobs. Startups are normally identified as a newly emerged, fast-growing business that aims to meet a marketplace need by developing a viable business model around innovative product, service, process or a platform. With their success they also create a sense that indigenous

innovations and technologies can bring fruitful economic benefits in the long run. The Startup landscape is growing rapidly in our country. In order to sustain the growth and encourage Startups, it is important for enablers to understand the lifecycle of a Startup.

Startup Growth Stages: An entrepreneur treads multiple stages of business lifecycle of a Startup from birth (an idea) through its maturity. Each new phase brings forth new challenges that the entrepreneur must learn to navigate. The following section presents the Startup lifecycle along with the key requirements at each stage.



Concept or idea stage: The entrepreneur discovers a problem or identifies an opportunity that has a business potential. Mentorship support for entrepreneur is critical at this stage to ensure the business related activities are defined well and subsequent business plan is generated. At this stage, there is not much requirement of funding and typically founders tend to self-finance or bootstrap.

Pre-seed or validation stage: Entrepreneur builds a probable solution in the form of ―a proof of concept‖ or ―prototype‖ with relevant assumptions. These assumptions are then validated with initial small sample of target audience for the product or service related feedback and response. The funding requirements are generally met by self-financing (boot strapping), raising money from investors or Government grants for research or prototype development. Access to incubator and mentors at this stage helps in identifying and approaching early customers, building minimum viable product and identifying product-market fit.

Seed or early traction stage: Based on the feedback from early customers and mentors‘ insights, demand for product or service is identified. The customer retention rate confirms the early traction of the company and its product. Startup acquires more customers by actively seeking funds from crowd funding agencies, angel investors or networks, incubators and seed grants from Government. The

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financing support at this stage supports the Startup in escaping the ―valley of death ―for a period of time spanning from when a Startup firm receives an initial capital contribution to when it begins generating revenues.

Growth or scaling stage: In this stage, most of the processes are defined and the business is firmly established. Entrepreneurs build a repeatable user or customer acquisition process, identifies channels of market growth and look for opportunities to expand the business to different geographies or markets. The expansion is backed by scale up funding support from institutional investors such as Venture Capitalists (VCs) and acceleration programs.

Maturity or Exit, IPO, M&A stage: Many investors, promoters and founders look at opportunity to exit and realize profits either through partial or full sale of the business entity. The next set of investors may be identified as another entity in the same space looking to acquire the business and gain market share, or in some cases, Startup may issue a public offer or entirely sell the business. Bank funds, private equity funds and IPO investors play a major role in financing such large deals for Startups.

Startup Ecosystem

A startup ecosystem is formed by people, startups in their various stages and various types of organizations in a location (physical and/or virtual), interacting as a system to create new startup companies. These organizations can be further divided into categories: universities, funding organizations, support organizations (like incubators, accelerators, co-working spaces etc.), research organizations, service provider organizations (like legal, financial services etc.) and large corporations. Different\ organizations typically focus on specific parts of the ecosystem function and/or startups at their specific development stage(s).

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Composition of the Startup ecosystem

- Ideas, inventions and researching
- Startups at various stages
- Entrepreneurs
- Startup team members
- Angel investors
- Startup mentors
- Startup advisors
- Entrepreneurial minded people
- Third people from other organizations with startup activities

List of organizations and/or organized activities with startup activities

- Universities
- Advisory & mentoring organizations
- Startup incubators
- Startup accelerators
- Co-working spaces
- Service providers (consulting, accounting, legal, etc.)
- Event organizers
- Startup competitions
- Investor networks
- Venture capital companies
- Crowdfunding portals
- Other funding providers (loans, grants etc.)
- Startup blogs & other business media
- Other facilitators

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Benefits of Startup Ecosystems

Creating jobs and attracting a talent pool: Mature startups have the potential to create many jobs in the future as they grow. About 2 million jobs globally were created by startups alone in 2015. Any country investing in creating a thriving startup ecosystem is supporting the future employment of millions of people locally and even globally. Apart from startups creating jobs, there are other supporting businesses that are created by successful startup ecosystem, such as co- working spaces, accelerators, investment firms, and general service providers of all sorts who cater those startups and their employees. All this creates a spike of jobs and greatly benefits the local economy. Additionally, startups create a talent pool. Most startup employees are fresher‘s or younger than average. Working in startups, they get trained and become versatile in many skills. Essentially, startups are becoming training workshops, and local economies benefit from this creation of a talented work pool. Likewise,

to support a thriving community of startups and to create a local talent pool, educational institutions tend to develop locally. An example for this would be several highly ranked colleges boasted of by the United States.

Attracting Multinational Corporations (MNCs) and large companies: Having a thriving startup ecosystem benefits the local economy by attracting global companies and large conglomerates. This helps for 2 reasons: 1. Such corporations feel that a successful startup ecosystem is a profitable economy to invest in. This helps to create more jobs, more new services, and products and also generates healthy competition. 2. Corporations additionally feel that such flourishing ecosystems can be their next headquarters since they are aware local talent exists. A great example of this is Google setting up its headquarters in Tel Aviv since Israel is a bustling startup ecosystem.

Tech revolution and local development: Economies, where tech startups have developed in the past, have seen tech revolutions and advancements which benefit both the city and country. Cities that have pioneered in tech-driven startup economies have seen tremendous development in areas such as transportation, clean energy, and other innovative industries. Technology has a positive impact on the quality of life, and nearby startups can make sure that the first to receive their innovative initiatives will be the local population.

Talent retention and attracting global talent: With the globalization of the world, mobility has greatly increased, giving a talented workforce the opportunity to migrate to better economies elsewhere. This leads to brain drain, which can have a devastating impact on local economies. By setting up a healthy startup ecosystem, local economies have benefitted as they have been able to retain top talent in their countries. Furthermore, having a great startup ecosystem has also been beneficial in getting highly skilled global talent to these countries, boosting the local economy.

Tax revenue for the government: Initially, while developing and nurturing a growing startup ecosystem, a government may have to provide some tax benefits for developing startups and allocate a startup budget to help the ecosystem grow. However, with time and with an increasing number of successful startups turning out to become unicorns, local governments have been financially rewarded with tax revenue from such companies. Israel, for example,enjoys monthly exits of high-value startups, enriching its reserves and creating the opportunity of investing those funds in the growth of the economy as a whole.

Being noticeable as an innovative country: Countries like Chile, Israel, and Estonia have quickly become noticeable on the global level for their successful startup ecosystem. They are frequently quoted as leaders in successful startup ecosystems, helping to open up trade relations between countries and bring the country on par with other leading ecosystems, increasing the country‘s prestige and self-image.

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The role of funding organizations in the Startup ecosystem

The establishment and further development of a startups cannot be imagined without the support of funding organizations. Some of these organizations, which play a crucial role in vitalizing of startups, especially in financial segment are:

Banks - give a loan for Startup and create special programs of support which often include mentoring programs. These financial institutions are trying to give as much support as possible to the development of startups, and on the other hand to secure their investments.

Startup incubators and accelerators - The incubation concept seeks an effective means to link technology, capital and know-how in order to leverage entrepreneurial talent, accelerate the development of new companies, and thus speed the exploitation of technology.

Clusters - Clusters are geographic concentrations of interconnected companies and institutions in a particular field. In clusters, a balance is reached between cooperation and competition, which becomes evident in the higher productivity of the companies because of their increased access to inputs, information, technology and institutions; or in greater innovation and venture creation. The important role of the cluster is to provide incentives for the entry of new companies or startups.

Angel investors - are high net-worth, non-institutional, private equity investors who have the desire and sufficiently high net worth to enable them to invest part of their assets in high risk, high-return entrepreneurial ventures in return for a share of voting, income and ultimately, capital gain. Angels normally invest in early stage ventures where the founding team has exhausted their personal savings and sources of funding from family and friends. These ventures are not sufficiently developed to stand on their own, or sufficiently attractive to gain venture capital funding.

Venture capital funds - Venture capital (VC) is an equity investment aimed at supporting the pre-launch, launch and early stage development phases of a business. Although it is commonly assumed to be the main source of seed and early stage financing, in fact the majority of venture capital firms intervene at a later stage. The venture funds are the kind of investment funds that manage the money of investors who seek private equity in startups with predicted a high and strong growth potential.

Crowd funding - is the process of asking the general public for donations that provide Startup capital for new ventures. This concept includes using a small amounts of capital from a large number of individuals or organizations to finance some new Startup. Forms of crowd funding are: donation crowdfunding, reward crowdfunding, crowdfunded lending, and equity crowdfunding. Every of these models have different form of return and motivation of the funder.

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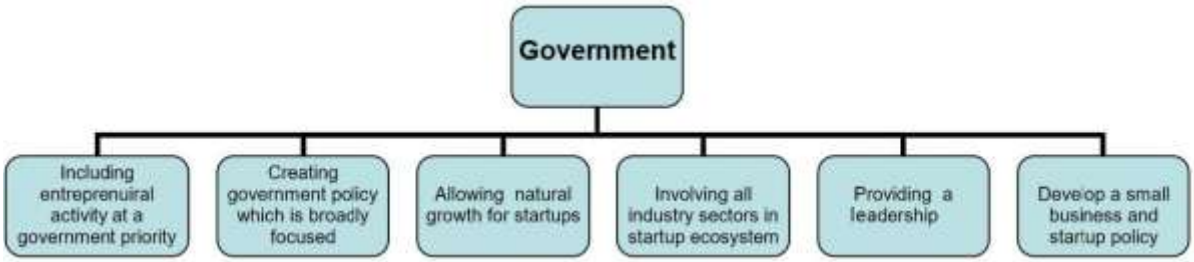
The role of government in the Startup ecosystem

Governments all around the world are interesting for entrepreneurship and startups such as potential solutions to flagging economic growth and increasing employment in their states. The primary goals for governments need to be removing obstacles for funding startups and their growth, especially in areas such as: developing a workable policy, competitive regulation on the market, unfair taxation on small companies, attracting investment capital and help them in the sensitive stages of their development. Some of the main activities of the government within the framework of Startup ecosystem are presented in the figure below:



Creating a sustainable environment for Startup companies is one of the biggest challenges the government is facing. The mechanisms used for this purpose must be well-designed and applicable to all startups, regardless of which activity they are related to. The main role of governments should be to facilitate the emergence of dynamic ecosystems by working closely with entrepreneurs, investors, companies, local champions, role models, and other interested players.

Some of the key recommendations for government policy of the fostering Startup ecosystem are:

Make the formation of entrepreneurial activity a government priority – The formulation of effective policy for entrepreneurial ecosystems requires the active involvement of Government Ministers working with senior public servants who act as _institutional entrepreneurs‘ to shape and empower policies and programs.

Ensure that government policy is broadly focused –Policy should be developed that is holistic and encompasses all components of the ecosystem rather than seeking to _cherry pick‘ areas of special interest.

Allow for natural growth not top-down solutions –Build from existing industries that have formed naturally within the region or country rather than seeking to generate new industries from green field sites.

Ensure all industry sectors are considered not just high-tech – Encourage growth across all industry sectors including low, mid and high-tech firms.

Provide leadership, but delegate responsibility and ownership –Adopt a _top-down‘ and _bottom-up‘ approach devolving responsibility to local and regional authorities.

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Develop policy that addresses the needs of both the business and its management team – Recognize that small business policy is _transactional' while entrepreneurship policy is _relational' in nature.

The role of research and educational institutions in the Startup ecosystem

Research and educational organizations have a huge impact on startups, especially in the early stages of development. Experts from different institutions such as: universities, faculties, institutes could provide a functioning and efficient platforms for startups operating. Most often, this type of platform is based on the establishment of spin of companies and creating a business environment for them. Institutions which involved in higher education and researching, represents a critical factor in innovation and human capital development and plays a central role in the success and sustainability of the knowledge economy. These educational and research institutions must showcase their ability to enhance the major scientific and technical competencies required by their students and employees to be competitive in the future in a very advanced environment.

Many institutions have started conducting audit courses on entrepreneurship, design thinking and they have created specialized programs to support aspiring entrepreneurs. For instance, Startup School India is one of the best programs for early stage entrepreneurs to build prototypes, launch their idea and get feedback from gurus in the program. It is a hands-on program to accelerate early stage startups. Many Incubation centres supported by government schemes run programs to support early stage startups. Some incubators also, provide tech support to startups and their programs usually support a cohort which is supported by industry.

In fact, many institutions offer, top-class mentors, experts across industries on a full-time basis, exposure to other startups in similar domains, and assistance in raising investments, all without any charges or a stake in the startups. They also have labs to foster creativity and imagination among entrepreneurs and Startup employees and to help them inculcate self-reliant skills such as Machine Learning AI, computational thinking, adaptive learning and so on.

Some of the incubators in institutions are accessible to the selected startups round the clock and through the week, and they also provide operational advice, banking support, and guidance for IPR laws and applications.

Major responsibilities revolve around the following points listed:

-Facilitate and extend government schemes / grants to startups.

-Provide prototyping and office facilities to entrepreneurs.

-Work with industries and an extensive network of institutional partners to help entrepreneurs launch and scale.

- Attract the best entrepreneurs from across the globe

- Help startups to get equipped with entrepreneurship skills required to succeed, using methodologies that transcend traditional learning

- Operating as a node to lead or support entrepreneurship efforts of the government.

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Role of Big Companies in the Startup ecosystem

Collaboration between technology start-ups and large corporates is key for fostering innovation in Europe. It can benefit both sides, helping corporates to enter and create new markets, and start-ups to develop their products, and to scale: chief executive officers of both corporates and start-ups share the common strategic goals of growing their company, improving its competitive positioning and generating revenue. Even partnerships with potential disruptors can be beneficial because of the difficulty for an established business to disrupt from within.

Scalable customer base: Large corporates can be an ideal target customer as they have enough people, budget and opportunity to scale. This is helpful for start-ups and providers of emerging technologies that are looking for their first customers.

Riskless internationalization: Working with corporate headquarters offers the possibility to expand into other countries by partnering with the corporate‘s local subsidiaries. Moreover, large user bases may also help start-ups to refine and optimize their products.

Attractive retail sales channel: The infrastructure of an established corporate, including its existing clients, allows faster scaling of the start-up business model than the start-up could achieve on its own.

Access to proprietary assets: Partnering with a corporate can enable a start-up to exploit underutilized corporate assets such as data that would otherwise not be accessible, and create new business opportunities.

Market knowledge and mentoring: An established business player can help start-ups enter the market with its resources. Start-ups can also tap into the knowledge and long-term experience of the corporate in the form of mentoring.

Revenues and independence from external capital: Revenue often is a key incentive for an early-stage company. As big corporates can invest considerable amounts of money for products, corporates can free start-ups from the need to seek outside investments.

Success story for future sales: Large corporate customers substantially enhance the reputation of start-ups and serve as reference cases for future sales. As corporate decision-makers look for references before engaging in a collaboration, this also triggers a network effect. In this context, the transformation of the sales process from an innovation pitch into reference selling may become a key success factor for a start-up.

Role of Support Service Providers in the Startup ecosystem

Successful Startup ecosystems need various different support services, programmes and/or institutions that help new startups to get access to networks, investors, customers, new employees, advisors and other service providers (e.g. business, legal, accounting consulting, etc.).

Entrepreneurship education initiatives and competitions: Entrepreneurship education should be embedded in all learning processes. However, the Business Support Ecosystem does not necessarily deal with FORMAL education, as it does not have influence over it. Input to formal education may not be possible in some countries. Competitions (e.g. calls for business ideas) are very useful and can

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stimulate interest in a fun environment. Competitions tend to be more motivational for the entrepreneur and receive a better response in term of audience.

Entrepreneurship dissemination activities: Dissemination needs to be focused. Focus could include specialisation in specific areas, such as regional strengths that may be promoted/built upon (e.g. thematic workshops rather than just general dissemination/awareness activities to provide direction).

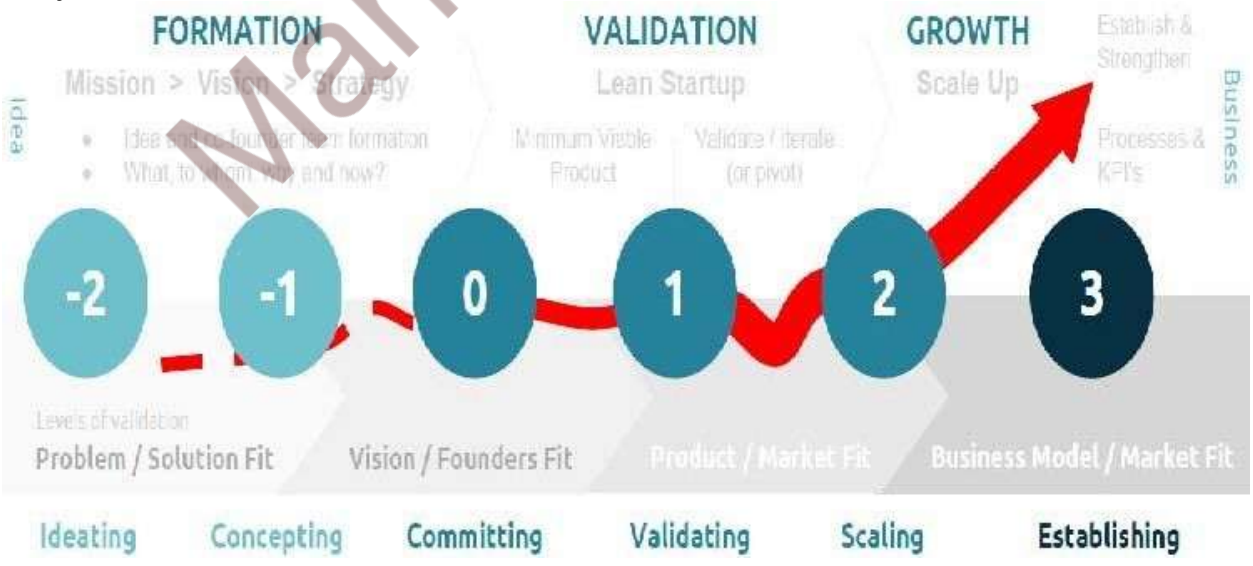
Integrated orientation services and training: The range of services that can be provided in this phase include consultation, mentoring and training for orientation (profiling, careers guidance, and skills assessment), business idea evaluation and business plan support.

Co-working spaces and innovation / technology Hubs: Physical spaces are important in this phase as they allow for human contact, exchange and a creative environment in which to focus on the business idea. Co-working spaces can be horizontal or sector specific. Innovation or technology hubs should focus on supporting specific ideas related to innovation/digital innovation.

Start-up Development Phases

First, startups need an idea and a clear vision of its implementation. This requires building a team, defining concepts for the new products and services, as well as setting up a viable strategy and committing to its implementation. Second, startups need to validate their products and services and get first customers and resources for further development. Third, once the product or service has been validated and the business model is in place, the startups need to scale up by attracting new customers and getting into broader markets.

As competition has become more intense and global, startups often need to compete against startups from all over the world. In order to be able to succeed in global competition, startups needs various different resources in the different phases of their development. Ideating and concepting new products and services require the right people and talent, and efficient collaboration between them. Developing and validating concepts requires (in addition) access to seed funding and potential customers and end-users. Finally, scaling up and establishing the company requires growth financing, access to networks and strong business competence (e.g. through mentors or advisors). In practice, all this calls for efficient and open knowledge transfer, trust, face-to-face discussions and connections to experts of various different branches. These resources are best available in thriving startup ecosystems.



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a) Ideating and Concepting

Entrepreneurial ambition and/or potential scalable product or service idea for a big enough target market. Initial idea on how it would create value. One person or a vague team; no confirmed commitment or no right balance of skills in the team structure yet. It seems everybody has (what they consider) a million-dollar idea, but making an idea into reality is very rare. Rarer still is the ―great idea‖ that not only gets off the ground, but finds its perfect audience. A huge factor in a start-up's success comes before the company itself ever launches. Before you do anything else, carefully research your target audience and your offering's potential product-market fit . Do people really need your product or service? What problem does your offering solve? Is your idea already out there, being sold by an existing company? Answering these questions entails a lot of research into your potential competition and industry, but it also takes talking to hypothetical customers about how your offering might help them. Research in hand, create a business plan and mission statement. Set goals for your development over the coming years. Defining mission and vision with initial strategy and key milestones for next few years on how to get there. Two or three entrepreneurial core co- founders with complementary skills and ownership plan. Maybe additional team members for specific roles also with ownership.

b) Committing

Committed, skills balanced co-founding team with shared vision, values and attitude. Able to develop the initial product or service version, with committed resources, or already have initial product or service in place. Co-founders shareholder agreement (SHA) signed, including milestones, with shareholders time & money commitments, for next three years with proper vesting terms. Team commitment is always an issue if some members of the team have other daily obligations and roles to be filled. Launching a startup company often requires 100% commitment form the key-founders. If the commitment level is under that, the progress takes longer and the startup is likely to run out of resources. It is recommended that the startup company should operate in sprints, where all the team-members commit their time fully to develop the company, but the time periods are shorter (e.g. one week, one month, three months). Working in sprints also helps to keep the progress, product or service development on track.

c) Validating

Iterating and testing assumptions for validated solution to demonstrate initial user growth and/or revenue. Initial Key Performance Indicators (KPI's) identified. Can start to attract additional resources (money or work equity) via investments or loans for equity, interest or revenue share from future revenues. Validation, is typically the first year of a start-up. This is the stage where you begin to get the word out about your product and gain your first customers. Here you find out whether or not your company is truly viable. Before the companies start to grow, most entrepreneurs mistake traction for growth. Both come at different stages in the lifecycle of the startup and play very different roles. At this stage, focus on growing your customer base and actually attaining the product-market fit you researched earlier.

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d) Scaling

Focus on KPI based measurable growth in users, customers and revenues and/or market traction & market share in a big or fast growing target market. Can and want to grow fast. Consider or have attracted significant funding or would be able to do so if wanted. Hiring, improving quality and implementing processes. As the product gains traction, the company grows rapidly. It is now out of startup mode and is well on its way to becoming a ―real‖ business. The customer base expands significantly, requiring additional customer relationship management (CRM) tools. Larger venture capital investors enter the picture and join the board. This is a good time to transition from an outsourced CFO or controller to full-time staff. The company‘s account-ing needs become more technical, requiring a more advanced adviser — especially when selling across state or international boundaries. Banks and VCs often request external audits, expanding your accounting firm relationship.

e) Establishing

Achieved great growth that can be expected to continue. Easily attract financial and people resources. Depending on vision, mission and commitments, will continue to grow and often tries to culturally continue ―like a startup". Founders and/or investors make exit(s) or continue with the company. By considering these phases from the beginning and throughout the growth process, companies can gradually build a strong foundation for success instead of wasting time and energy playing catch-up just as the business gains traction. It‘s important to have an expansive vision of where you‘re headed — and it‘s just as important to know how you plan to get there.

Startups and Business Partnering

Partnerships can be particularly important as mechanisms to help address market failures or failures in governance and weak public administrative or infrastructure capacity – where neither the market nor government is able, on its own, to deliver public goods or meet crucial social and environmental challenges. In such situations it is often necessary to mobilize both public and private resources, and this is often done through partnership. Yet, partnerships are only one tool. They are not always the most appropriate approach. Nor are they easy. They often have high transaction costs and are difficult to establish and sustain. Many of them fail, or at least fail to meet the high expectations that are created when they are first established. There is also the challenge of defining partnerships with much debate as to what actually constitutes a public-private or cross- sector partnership. Many types of cooperation between business and other sectors are contract- driven, transaction-based or one-off promotions, events, or dialogues – all of which make an important contribution, but tend to be limited in scale and scope. Others are fully-fledged partnerships, where the companies share risks, costs and benefits, and play an active role in governance of the relationship.

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We do not think being prescriptive is helpful, but definitions of business partnering usually include one or more of the following:

- Involvement in strategy formulation, implementation and communication
- Involvement in commercial decision making and negotiations
- Leading on business analysis
- Being a sounding board, trusted adviser, critical friend and facilitator of productive business discussions.

Success factors of effective partnership

There is no simple checklist or blueprint for successful partnership building. It is often an intuitive and constantly evolving ―voyage of discovery‖ based on organizational and individual learning, trust and experimentation. The success factors that underpin many effective partnerships include the following:

1. Openness, transparency and clear communication to build trust and mutual understanding
2. Clarity of roles, responsibilities, goals and ―ground rules‖
3. Commitment of core organizational competencies
4. Application of the same professional rigour and discipline focused on achieving targets and deliverables that would be applied to governing, managing and evaluating other types of business alliances.
5. Respect for differences in approach, competence, timeframes and objectives of different partners.
6. Focus on achieving mutual benefit in a manner that enables the partners to meet their own objectives as well as common goals.
7. Understanding the needs of local partners and beneficiaries, with a focus on building their own capacity and capability rather than creating dependence.

Laying the foundations of Finance business partnering

Having the right people with the right skills is an important foundation to provide an environment and culture where business partnering can succeed. From a finance business partner view, having the financial skills is a fundamental requirement but added to that are the necessary people skills outlined

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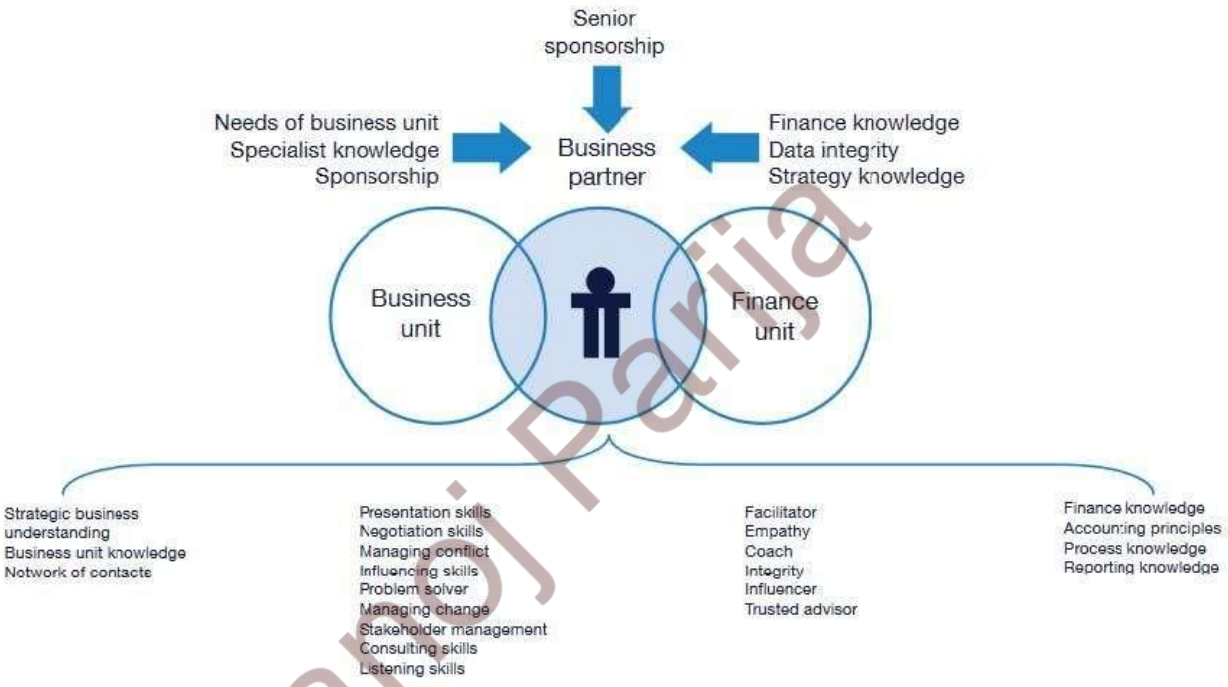
in the diagram below. Some organisations are defining their own business partnering recipes of success to give clarity to the skills and behaviours that people are expected to develop. Today's managers are also expecting finance business partners to demonstrate many new disciplines which are not typically found in existing finance functions. These include having the service delivery mindset of a shared service centre, strong relationship skills to manage outsource providers, robust team working and collaboration skills not just technical abilities, excellent relationship skills, and experience of managing change. Focused recruitment, skills development and senior commitment to build the right culture will be required where there are gaps.



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Certain areas of focus should be routine questions for finance business partners on a _business-as-usual' basis. These questions are based on 4 parameters:

a) Knowledge and focus

- Does your operational management have a detailed understanding of their cost base (what are fixed and semi-fixed costs; what are the cost drivers)?
- Does management know what activities employees spend their time on and how much it costs?

b)Performance management

- How robust is your working capital and cash flow forecasting? How good are your scenario planning capabilities?

c)Contract management
- Are major contracts delivering value for cost? Should areas be outsourced?
- Alternatively, has outsourcing gone too far?

d)Accountability
- Are operational management aware of their financial responsibilities (e.g. cost ownership)?
- Is a robust approach to governance in place?
- Is the organisational structure _fit for purpose'?
- How well connected is finance with the business to support strategic and tactical decision making?

Founders/Co-Founders and Startup Culture

In their pursuit to be unique and successful, startup founders often focus their attention primarily on building their products and gain market traction. In this single-minded pursuit, they may miss out on paying the required attention on building the company culture. They assume that once their employee strength reaches a reasonable number of 50 to 100 employees, then would be a more suitable for them to focus on developing company culture. Little do they realize that the moment they hire their first employee, the company culture has already begun taking shape. It is the onus and responsibility of the founders to proactively establish a strong and positive culture for the company, which will be driven by everyone, including the employees.

Today's startup environment is very competitive and tough. Therefore, startups constantly strive to be successful at any cost. Interestingly, this is where the company's culture makes all the difference for the employees to pursue the coveted market success. A startup may actually have a lot of qualities of its founders. For instance, if the startup founder is competitive, then the company also evolves a culture of being very competitive.

It is also important that how effectively the founder communicates to his team and employees about collaborating, adhering to rules and competing hard. If he walks the talk, the employees emulate the same ethics and values, which lays the foundation of a positive organizational culture. While it is the founders' role to define the culture, it is senior leadership's responsibility to amplify and accelerate the expectations of the company by demonstrating their visible actions. By articulating the culture to their team members, they permeate the cultural importance and values across the organization, so that the company culture becomes stronger and cohesive.

Why a Start up's culture is important?

It is important to remember that as the company grows, it is easy to grow or even change its product offerings, but once its culture is established, it is not something that can be altered often. Hence, it is important that certain aspects of culture need are at the core right from the beginning.

a) Culture attracts talent

-A startup's success depends on its ability to attract and retain good employees, and the right culture plays an important role in achieving that. While it also makes the work environment exciting and motivating for the employees, it also gives the employees a sense of purpose that resonates with their personal beliefs. The best part is that a great company culture is not even that hard to figure out.

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-To begin with, companies can offer autonomy to its employees, while giving them the confidence to contribute ideas freely. This lays foundation of a culture that is non-hierarchical and more welcoming.

-There is always a possibility for a gap to remain between the research and market reality, due to which an idea could fail. Rather than taking a backseat with failure and placing mistrust in employees, the decision makers in organizations must take failures in their stride to aim higher and smarter the next time around. They should appreciate the efforts their employees have put in, and motivate them for future.

-Such actions driven by the leadership of organizations strengthen the company's culture. It is these reasons that command respect from employees and keeps them motivated to stick with the company, even in the most difficult times and irrespective of financial lures and perks offered by other companies.

-Particularly in case of startups, when their brand name is not enough to attract good talent, it becomes extremely important that the early employees become the brand ambassadors, as it is them who amplify the company's culture. They also make this known outside the organization by talking about it in high regard, which in turn helps attract new talent.

b)Good culture future-proofs the Startup

- Organizations today are becoming less hierarchical, which helps in catering to customer demands by being quicker and more agile. So, if you want to build an organization for the future, which is non-hierarchical and is quick to react to customer demands, then your company culture becomes an important element to help people align themselves with your organization's strategies and bring agility and responsiveness.

- Knowing the importance of company culture, even stakeholders today are clearly interested in knowing more about it and how a startup has built the business around it. By demonstrating a strong sustainable culture, a start-up can give its investors the confidence that it will be able to face and wade through the market difficulties.

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Determinants of Startup culture

a)Core Values

The chosen values must embody the essence of the business. They should be action and results-oriented. Team members should be able to understand and use them as a guide for making daily business decisions.

Employees must know what the enterprise deems important, why it is valued and how their behaviour will model those values. Examples of strong startup principles are authenticity,building trust, clear communication, transparency, alignment with company goals, team building,

collaboration, commitment, conviction, inspiration, innovation, and competence. The earlier the Founders begin to define, shape and document the organization's guidelines the better.

b) Purpose

Every startup founder is a sum of their decisions both positive and negative. They have a strong sense of purpose that allows them to inspire others to follow them. They deeply believe in their strategies, plans, and objectives. As strong leaders, they say what they do and do what they say consistently and with conviction.

Extraordinary founders are persistent and resilient. They are comfortable executing their plans. Being trailblazers, they are willing to take a stand for what they believe is the correct thing to do.

c) People

The best employees to hire are those that are a good ―cultural fit.‖ Diversity in skills, education, and perceptions are paramount.

Maintaining excellent relationships with your employees is essential. Employees work much harder when they feel they are a vital part of the culture. We have found that a healthy work ecosystem is no longer optional; it is mandatory in order to compete for exceptional talent.

Successful Founders always surround themselves with people that exhibit the culture's characteristics and help to fulfil its business purpose. Outstanding leaders are quick to reward accomplishments and think carefully before admonishing for mistakes.

d) Evolution

The Founders personalities, beliefs, strengths and weaknesses form the DNA of the organization. The company literally evolves in the image of their founders.

Mark Zuckerberg, the founder of Facebook, shared a vision with his employees so powerful it became the foundation for the company. The firm went from four-hundred to thousands of employees worldwide in only a few years. He accomplished this by teaching his employees how to tell the story of Facebook to others.

Startup Founders use more verbs than adjectives to describe the company's story. The narrative is not only the backbone of their culture, it becomes a conversation people have about its success. Magnificent Founders talk about the organization's beginnings constantly in every internal and external communication regarding the enterprise.

Different Stages of Startup Financing/Funding

Regardless of where you are in that Startup life, you need money to keep the lights on, the team happy, and the momentum going. Raising money may not have been your dream when you began building the company, but your ability to do so will determine how far it will go. Understanding the different needs at each stage of funding will equip you with the confidence to engage investors with a clear pathway to what you each will get out of the exchange. The stages outlined below provide a foundation to get you started.

Early Business Stages Requiring Startup Financing

Seed Stage: Seed stage capital is required to finance the early development of a new product or service. These early funding's may be directed towards product development, proof-of concept, market research, or to cover the administrative costs of starting the enterprise. A true seed stage

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company has not yet established commercial operations. A Startup in this phase establishes proof-of-concept by demonstrating a prototype (product or service) to potential customers and entices them to become sources of capital. The company‘s goal in this stage is to test the market, establish the viability of the business idea, and measure interest and attractiveness to investors.

Startup Stage: Financing for startups entering this phase provides funds for product development, some initial marketing and some administrative overhead. This type of financing is usually offered to recently organized companies or to those that have been in business for a short time, but have not yet sold their product into the marketplace. Startup companies in this stage have, often times, assembled key management, prepared a proper business plan, and have conducted due diligence on the market viability of their product or service.

Early Stage: Startups requiring ―early‖ stage financing have usually been in business between 2-3 years and have launched the company. The management team has been established, commercial operations have begun and funding at this stage is often required to cover cash flow requirements. Financing in this stage also strengthens capabilities in the areas of manufacturing, sales, and marketing.

Traditional Business Expansion Stage Requirements

Expansion capital facilitates the expansion of companies that are already selling products or services.

Second Stage: Second stage capital financing facilitates the expansion of companies that are already selling products or services. At this stage a company raises additional equity capital to expand its engineering, technology platforms, sales, marketing, and manufacturing capabilities. Many companies in this stage are not yet profit-able and they often use the financing obtained in this stage to cover working capital requirements, and to support organizational overhead, and inventory costs.

Third Stage: Third Stage financing, if necessary, facilitates major expansion projects such as plant expansion, integrated marketing programs, the development of a large scale sales organization, and new product development. At this stage the company is usually at or near break even or profitable.

Traditional Late Stage Financing Requirements

Mezzanine Financing Phase: Mezzanine financing is a late stage form of financing for startups and is often used for major expansion of the company. This type of financing can also fund an emerging growth opportunity for the company. At this point the company may not wish to seek an additional round of equity diluting investment and may prefer the hybrid form of financing that mezzanine debt/equity financing offers. In addition, entrepreneurs may still be unable to obtain traditional bank loans at this point. Mezzanine loan investors are able to obtain a higher degree of security than an ordinary investment in equity since their rights, as debt holders, are senior to that of shareholders. Third Stage financing facilitates expansion projects such as plant expansion, integrated marketing programs, the development of a large scale sales organization, and advanced product development.

Bridge Financing Phase: Companies seeking bridge financing are mature, profitable, and are enjoying expansion. This type of short term debt financing is provided for a company expected to ―go public‖ within six months to a year. The funds are often used to finance various requirements

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prior to making a public offering or some other major restructuring event. Often, bridge financing is structured so that it can be repaid from the proceeds of an initial public offering (IPO). Bridge financing can also involve restructuring of major stockholder positions through secondary transactions. This is done if there are early investors who want to reduce or liquidate their positions. Bridge financing may also be conducted following a management change. This enables the founders to purchase back shares from former management and individuals (friends, relatives, associates, etc.) prior to the IPO.

Liquidation Phase: The business life cycle tends to work like the cycle of life itself, even for the most successful of Startup enterprises that have succeeded beyond their wildest imaginations. For those enterprises that have made it all the way, the questions of ―how and when‖ to ―cashout‖ may be inevitable.

FFF – Friends, Family and Fools as a source of Finance

FFF, or Friends, Family and Fools has long been the first line of contact with entrepreneurs, but usually the fools were either family or friends. These new tools potentially bring a lot of new fools‖ to the market many of them founders and they should take a note from the buyer beware‖ book. The reality is, that the vast majority of these startups will likely fail to a certain degree.

The dream of making millions, is the rare occasion, not the common one as it requires a major exit – either by acquisition (trade sale‖) or by IPO (we know how that is going…). FFF or not, investment requires due diligence (even if quick and dirty) into the product, the team and the market, and this is a step unseasoned investors are likely to skip unless educated on how to do that. As a general rule, professional investors will expect that you have already some commitments from this source to show your credibility. If your friends and family don‘t believe in you, don‘t expect outsiders to jump in. This is the primary source of non-personal funds for very early-stage startups.

This one is outside of the normal lines of financing and it does what it says on the tin this is funding from your closest humans (and, of course, the easy to fool). This is one of the most prevalent forms of SME financing, accounting for 38% of funds raised by startups. Friends & Family are clear categories of lovely people who either share your genes or have other reasons to think you‘re at least an acceptable person. Fools, on the other hand, are people who don‘t particularly love you, but who you‘ve convinced by great sales talent or sheer enthusiasm that your company will make it big. They are not professional investors and will be unable to run the necessary due diligence, but they will have expectations, sometimes wildly misinformed ones about the potential success of the business. The potential pitfalls of FFF are many, but so is the advantage.

This will probably be your easiest to access form of financing. It‘s very unlikely that they‘ll sneer at your valuation, ask for securities or grill you on the minutest details of the business plan.

As an entrepreneur, you can lobby friends, family, and associates for funding that is usually invested more because of your personal relationship rather than an accurate assessment of the business plan.

The Friends and Family Round often acts as a seed investment to get the business to a point where it will be able to obtain larger funding from an Angels or VCs. Funding is usually obtainable quickly due to your existing relationship. Potential exists for the mutual vested interest in the business to bring you closer with loved ones.

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The investment terms are usually more flexible and potential exists for numerous equity or pay back methods. However, there are certain downsides to FFF funding, immense pressure to succeed can strain personal relationships. Friends and family frequently have an extremely limited ability to evaluate the potential of your business, though they tend to give advice because of their monetary stake in the company.

y. Friends and family usually bring nothing more to the table as an investor besides the initial capital.

Angel Investor Financing

Angel Investors often provide a required round of financing to startups that are on the early stage path to profitability. In many cases, startups have over- looked the category of angel investor for their financing needs. Some academics place angel investors in the seed stage category of capital sources and others identify angel investors as filling the gap between seed stage capital and venture capital. Angel investing is, in actuality, a hybrid between the two.

Angel investors are often affluent people such as successful entrepreneurs, who wish to stay involved with their industry by assisting the next generation of startups. It is not just money that motivates angel investors; providing needed and valuable guidance to management of the startup is gratifying as well. Startup founders need to take a close look at their own needs and requirements before entering customized agreements with angel investors as they may find them- selves giving away more control over their companies than they really want to.

Angel investors require a return on investment in the area of 20x-30x their initial investment. These investors are not interested in slow-growth or ―lifestyle‖ businesses. They are after businesses that can grow at an annual rate of 40% or more. Unlike venture capitalists (VCs), many angel investors do not calculate Internal Rates of Return (IRR) and other measures of investment performance. Angels often regard these types of calculations as too speculative. Startups can also expect a changing playing field when negotiating return expectations with angel investors.

Angel Investors place a great deal of emphasis upon the selection of the entrepreneurs they choose to fund. Angels typically focus on factors such as the entrepreneur‘s enthusiasm, trustworthiness, and experience. Obtaining angel financing, or any financing for that matter, is akin to making any other high-ticket sale. Good first impressions play an important role with these investors. Angel investors are often pivotal in funding the seed stage or very early stage startup requiring an infusion of $500,000 or less. Angel capital can ―pave the road‖ toward venture capital, as lacking this key financing, many start- ups would not grow to the stage required to attract the interests of venture capital firms. However, unlike high profile venture capital firms, angel investors often stay ―under the radar‖ to avoid being deluged with business plans and requests for capital. Most potential investments are introduced to angels by their business, professional, and personal contacts. Seventy-five percent of startup founders say an angel investor‘s active participation benefits the firm, so be

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sure to select angel investors who can contribute the relevant expertise –as well as capital– to your firm.

Venture Capital Financing

Venture capital is a source of financing that usually follows seed stage funding and angel investor funding that is utilized in the earlier stages of the startup‘s life. This type of growth financing is provided to high-potential, growth-oriented companies that require a substantial round of investment. The amounts are usually in excess of five-hundred thousand dollars and up to tens of millions of dollars or more. However, it should be noted that venture capital funding can occur at any time throughout the startup‘s initial phases prior to IPO. Venture capital firms bear a high degree of risk investing in startups, including a complete loss of their investment. As such, most venture capital investments are done in a pooled for- mat, where several investors combine their investments into one large fund that invests in many different startup companies. Large pooled funds of VC firms can range anywhere in size from $25 million–$1 billion. The VC firm will generally take a seat on the Board of Directors of the startup and will take an active role in bringing their management experience to the company. Many VC firms specialize in certain industries such as technology, biotechnology, and health care where they bring deep industry expertise to bear.

VC‘s most often take equity positions in startup companies in exchange for their capital and expect annual rates of return of between 30%-50%. It should be noted, however, that rates of return in this category are subject to a wide variety of factors, not least of which has been the difficulty in raising

pools of capital for venture financing over the last several years. VC‘s require high rates of return because, in many cases, their investments in startups are highly illiquid and require anywhere from 3-7 years to come to fruition through a favorable exit event such as an IPO, merger and acquisition, or a leveraged buy-out. It is critical for startups to perform their due diligence on VC firms before jumping into bed with them. While it is true that VC financing is difficult to obtain, it is probably a good idea to avoid VC firms with a long standing record of being ―Vulture Capitalists‖. Some VC‘s have no problem firing everyone in the startup, including the founders, and shutting down the company, if they determine there is a financial advantage (for them) to do so.

Crowd funding

A flourishing new source of financing for startups in the seed stage phase is just beginning to emerge and is known as crowdfunding. It is our belief that this form of capital funding will represent a significant opportunity for startup companies going forward. We believe that crowdfunding has the potential for profoundly changing the landscape of global startup finance.

Although crowdfunding, (also known as crowdsourcing), has served the financial needs of charitable causes, bands, authors, and non-profit initiatives for some time, it was the financial crisis in 2008 that drove the need for a new paradigm in small scale financing for commercial endeavors. The idea behind crowd- funding is both simple and profound. Crowdfunding neutralizes the advantage of the powerful Wall Street Investment Banks by distributing the ability to invest and profit to the people.

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Business Incubation (BI)

Business incubation is a process aimed at supporting the development and scaling of growth-oriented, early-stage enterprises. The process provides entrepreneurs with an enabling environment at the start-up stage of enterprise development. This environment should help reduce the cost of launching the enterprise, increase the confidence and capacity of the entrepreneur, and link the entrepreneur to the resources required to start and scale a competitive enterprise. Entrepreneurs accepted into the business incubator stay until an agreed upon milestone is reached, often measured in terms of sales revenue or profitability. Business incubation is one of many tools aimed at fostering innovative enterprise creation and growth. Other complementary intermediaries also exist, such as business development service providers and technology parks. The below figure illustrates how business incubation is positioned in relation to these two complementary vehicles.

	BUSINESS DEVELOPMENT SERVICE PROVIDERS	BUSINESS INCUBATORS	TECHNOLOGY PARKS
TARGET ENTERPRISES	Any SME	Early-stage enterprises with high growth potential	Emerging and established technology businesses
KEY FEATURES	• Ad hoc, demand-driven assistance. • Focused on a particular issue for which the entrepreneur asks for assistance. • Usually broad business support, including training and advisory services.	• Emphasis on co-location and the "cluster" effect between enterprises. • Ongoing supply and demand-driven assistance until an agreed upon performance milestone has been reached. • Integrated mix of intensive strategic and operational support focused on the enterprise in its entirety.	• Emphasis on co-location and the "cluster" effect between enterprises. • Demand-driven assistance. • Emphasis on provision of state-of-the-art real estate, office space, and research facilities and networking opportunities.
REVENUE SOURCES	Government / donor subsidies, fee-for-service	Government/ donor subsidies, fee-for-service, rent, royalties, equity	Government/ donor subsidies, fee-for-service, rent, royalties, equity
BUSINESS MODEL	Non-profit or profit-making		

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Key Principles of Business Incubation:

1. Realize the incubator itself is a dynamic model of a sustainable and efficient business operation, and must be managed as a business-like organization. An incubator cannot prepare its clients for success and have a lasting impact if it does not succeed. Incubators must operate as businesses with a strong focus on succeeding as one.

2.Focus the energy and resources of the incubator on assisting companies throughout their growth process, thereby maximizing the companies‘ chances of success and their positive impact on the community‘s economy. Incubators should devote their services to those companies most in need of their support and most-likely to succeed as a result of that support.

3. Develop a sophisticated range of services and programs directed at companies according to their needs and stage of development. Incubators are only as good as the services they can provide their clients. Developing targeted and effective services which can be utilized by incubatees at various stages of development is critical.

4. Develop a network that the incubator can rely on. An incubator is not a standalone business that has all the required competencies and capacities _in-house‘. It needs to involve the community and gain the support of their area‘s stakeholders. Collaboration and integration are a critical success factor. For example, incubators need to refer to external sources of support in different expertise areas such as for mentors for instance.

The Incubation Process

The development of BI was earlier tracked as an example of generational evolution, but the results of this study also confirmed that BI follow a path of staged-development involving: start-up where BI typically provide pre-incubation assistance such as innovation assessment, business planning, exploration of business models, and training; early incubation stage where services include access to finance, mentoring, training, hosting, commercialization, and advanced business planning; and the final expansion or post-incubation stage which is the graduation stage where services may cover internationalization efforts, technology commercialization, business development or innovation initiatives, and such BIs are referred to as accelerators.

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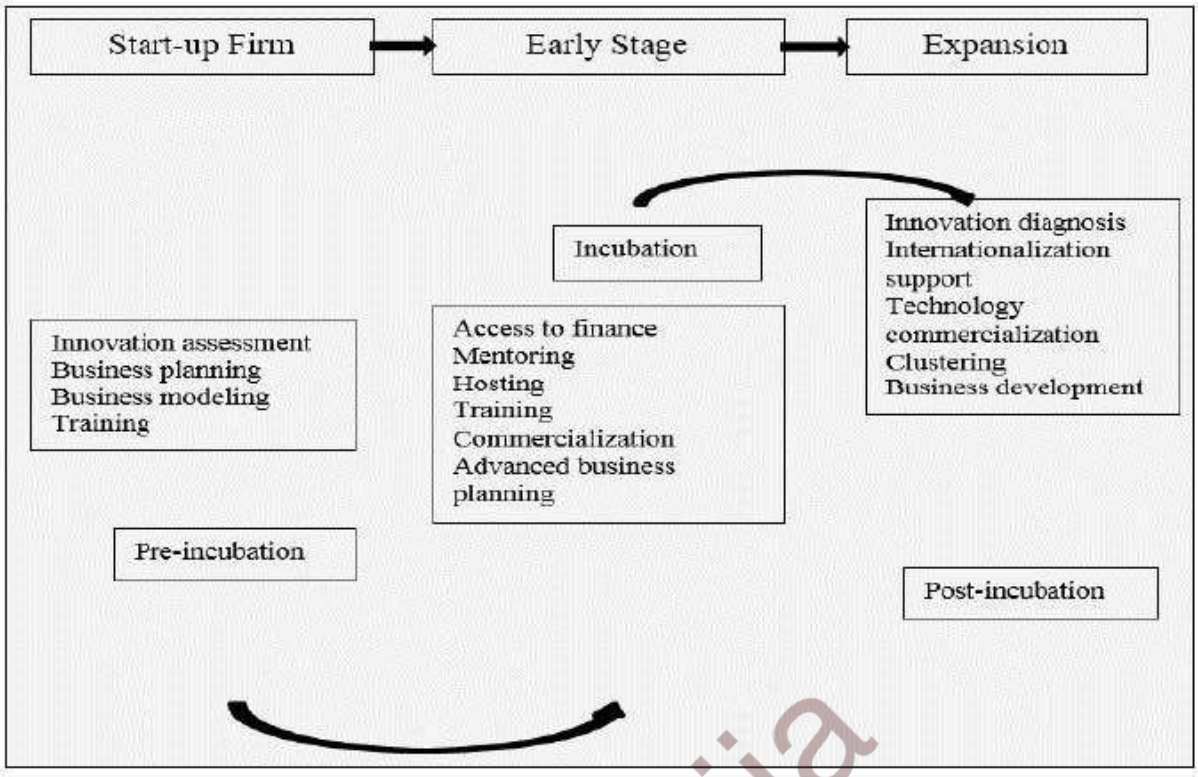

Classification of Incubators:

Interestingly, many incubators do not consider profit or financial returns as their primary goals. These incubators considered creating profit-oriented start-ups more as a means to fulfilling other goals, such as employee retention or public image. Ideally, companies finance activities in the next period with revenues generated in the previous period. Other forms of financing are dependent on anticipated positive cash flows. The success of a start-up, however, is inherently difficult to predict. Incubators have no constant inflow of revenues, and investments in start-ups take several years to return a sizeable profit. Some incubators understand themselves as risk-brokers and try to develop a portfolio of different revenue generators. Earlier incubator business models that relied solely on exit proceeds were particularly vulnerable. For instance, following the new economy shake-up in the year 2000, start-ups developing internet and web-applications realised that they would take much longer to (and may never) become profitable. As a consequence, most investors cut back on their financial support of for-profit internet incubators. Start-ups and incubators in biotech have fared much better. Not-for-profit incubators generally have a strong financial sponsor such as a university or municipality to back losses and potentially long droughts. Not-for-profit incubators outnumber for-profit incubators. Various researchers found that only about 10% of incubators were for profit,

Incubators fall into two basic types: **for-profit or not-for-profit**. We further identified five basic archetypes, operating with various degrees of competitive focus (segment, industry, geography):

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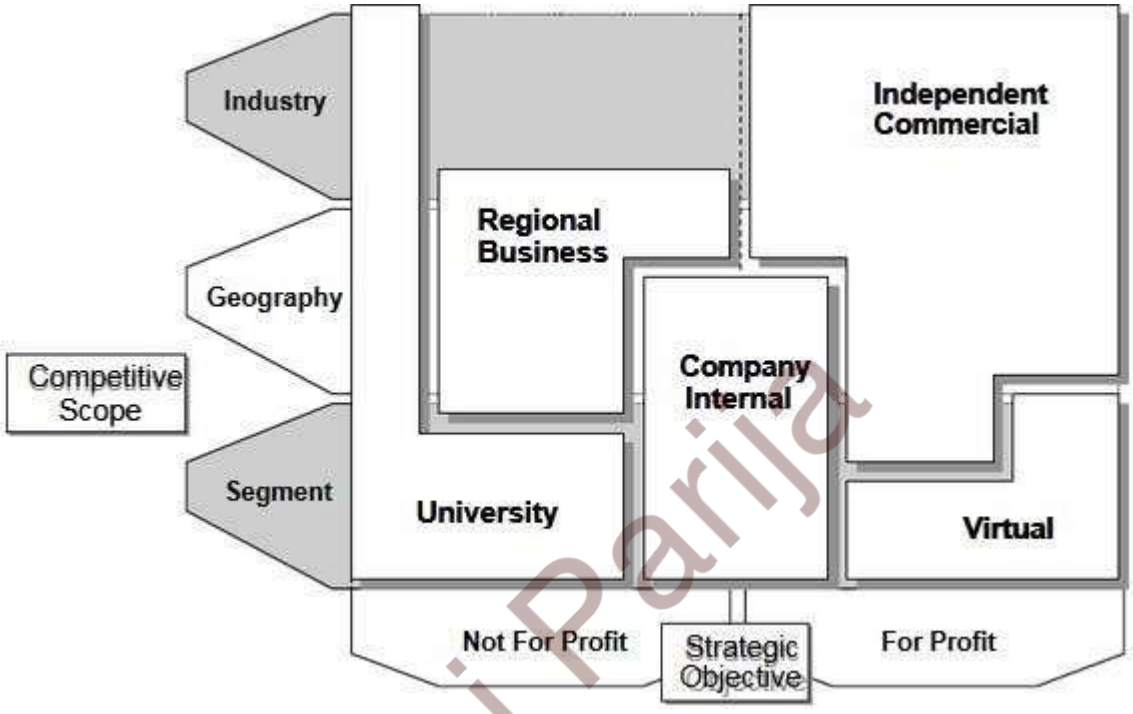
a. Independent commercial incubators
b. Regional business incubators
c. University incubators
d. Company-internal incubators
e. Virtual incubators



Each of these incubator archetypes is explained in more detail below. The above figure illustrates how competitive focus and strategic objective differentiate between incubator archetypes. The competitive focus axis distinguishes between three competitive scopes: industry, geography and segment. The strategic objective axis differentiates incubators according to their profit orientation: For-profit incubators have profitability as their primary strategic objective; not-for-profit incubators usually fulfil a public mission first, such as regional employment and growth, or they serve goals only indirectly related to operational profits, such as employee retention, innovation capacity building or stock market valuations. Although the strategic objectives of a not-for-profit incubator are also economic in the long term, the benefits are often reaped outside the incubator by a parent or sponsoring organisation, and the incubator‘s contributions are difficult or impossible to measure. Internal sustainability objectives are relatively recent trends for most not-for- profit incubators.

Most incubators can be associated with one of the five archetypical forms, although some incubators incorporate elements of two or even three incubation archetypes. University incubators usually have no financial pressure to return a profit, but they are focused on serving the scientific community at the university. Regional business incubators serve a local community first of all, and their objective is to create jobs and support local commerce and wealth. Independent commercial incubators are profit oriented, and they often focus on a particular technology or industry to achieve this. Virtual

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incubators are also for-profit, but they focus on particular needs in the entrepreneurial community rather than a particular industry. Company-internal incubators are more difficult to categorise because on the one hand their parent companies have strong commercial objectives, but

on the other hand the internal incubator serves (both internal and external) political interests as well as corporate development objectives.

a)Independent commercial incubators: Pure, commercial, independent incubators are characterised by a strong profit or commercial objective, although this does not rule out motivations to generate benefits for the local community. Commercial incubators are generally spun off as entrepreneurial boot camps by venture capital firms or started by independent entrepreneurs as a place to help other entrepreneurs. Since commercial incubators are often established without the constraints of having to fit into an existing organisation, there is more freedom to develop an efficient incubation business model. The business model of an independent incubator is based on clear internal competencies and focuses on a given technology or industry (e.g., language recognition software) or target market (e.g., Japan). A set of internal technical competencies attracts a preferred-profile entrepreneur, and the incubator is able not only to create synergy among the incubated start-ups but also to fine-tune its skills in this particular competitive environment. The incubator thus enhances its possibilities to optimally leverage each individual start-up.

b)Regional business incubators: Regional business incubators are established by local governments or organisations with similar regional political and economic interests, to provide office space and start-up support for the local community. Their main objectives are public: to generate employment, improve local industry or improve public image. Commercial results, at least for the initiator of the regional incubator, are a secondary factor, the public mission is stronger than the profit objective. Typically, a government agency is a principal investor in and sponsor of the incubator. Since funding is comparatively secure, this type of incubation provides a relatively safe haven for fledgling start-ups. With their geographical focus, regional incubators are on the short-list of international companies seeking partners to develop a local presence and a local industry network – all good news for start-ups looking for large customers with potential global market access.

c)University incubators: Naturally, technical universities are hotbeds of new inventions and cutting-edge technologies. Until recently, however, most universities had no intention of capturing some of this value commercially. The first technology-transfer offices were established in the 1970s, amongst much debate about the extent to which academic institutions should _soil' their hands with financial interests. By early 2001, few of these offices had returned profits to their universities and their main mission had remained to support the transfer of technology rather than its commercialisation. As a consequence of increased internal demand and some political interest, some universities provide or build office space for entrepreneurial-minded researchers and students. These university incubators often emerge from already existing technology parks – laboratories designed to foster collaboration between scientists in academia and industry. Start-up coaches support resident entrepreneurs.

d)Company-internal incubators: Company-internal incubation of new technologies has been a responsibility of corporate R&D for many years. There is plenty of literature on strategy and management concepts of how to improve innovation from R&D departments. Some of the most cited problems of R&D-based innovation include, among others: inability to cope with disruptive technologies, poor communication between technical and business functions, inflexible management

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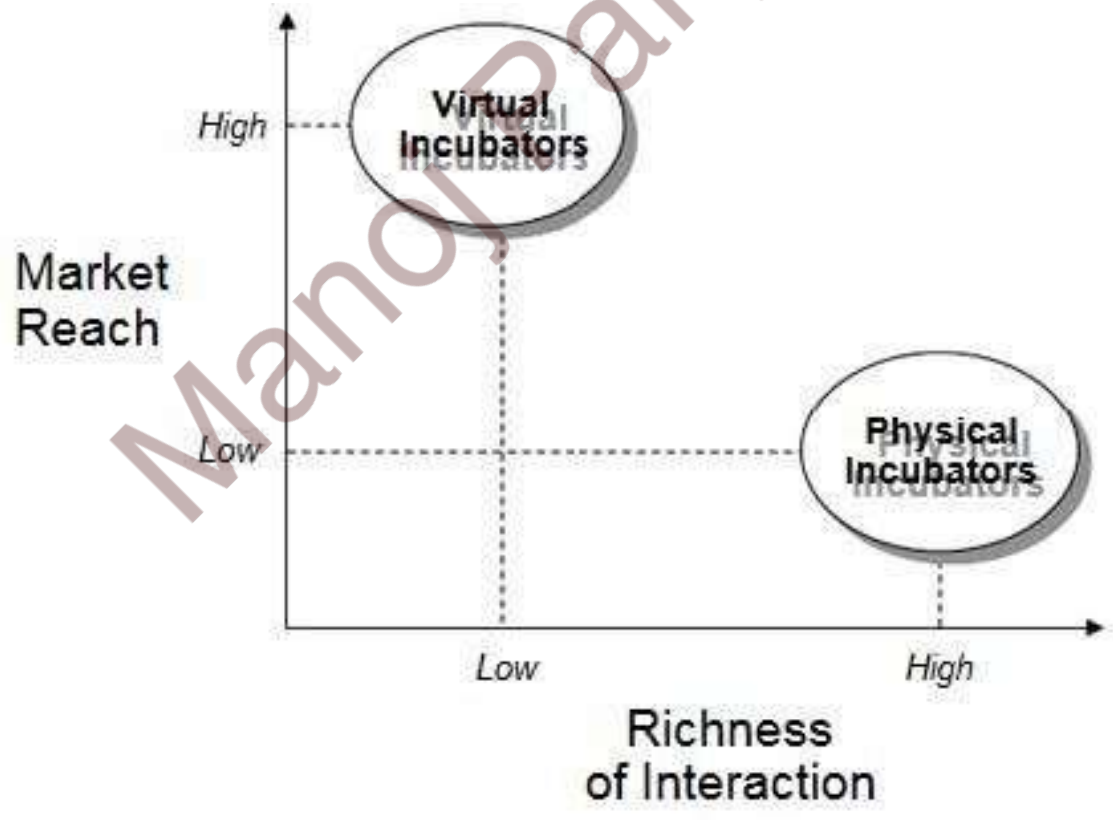
and organisational structures, inability to align long-term vision with short-term needs. In the late 1990s, companies turned to the incubation concept to overcome some of these difficulties. However, they found that promoting radically new ideas often encounters huge resistance. It requires an entrepreneurial culture that challenges existing technical competencies and requires a redefinition of what the company‘s business is supposed to be. The R&D pipeline is optimised for ideas that fit into dominant business and technology strategies, so unwanted projects are often eliminated or spun off

e)Virtual incubators: In comparison with traditional incubators, virtual incubators offer no physical workspace or office support. Instead, they offer online access to a network of entrepreneurs, investors and advisors, as well as support to help match other entrepreneurial needs to professional advice. Virtual incubators do not offer the positive effects of local synergy between similar startup companies obtained through face-to-face networking and problem-solution sharing. Also, start-ups do not have a running start to their business life, with secretarial or infrastructure support. However, virtual incubators are able to offer a greater advisory network to their incubatees, better matching supply and demand of management and technical talent. This is often left to the initiative of the entrepreneur – the incubator merely provides the platform and the network. We observed two functions of virtual incubators: online matchmaking and service aggregation. The online matchmaker provided a communication and news platform for entrepreneurs and start-ups, and organised conferences and seminars. Matchmakers also designed online learning groups around special interests, which included advice seeking from professionals as well as experience sharing among peers. Although there was little hands-on coaching from the incubator management, there was certainly a lot of exchange of advice and best practices within the start-up community.



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The role of incubators

A fundamental question regarding incubators, is why do they need to exist at all? Why is the support for start-ups that incubators provide necessary? A number of authors and researchers from the incubation industry advocate the positive impact of incubators for communities, economies, business, individuals and policy-making.

a)It has been suggested that business incubation is an invaluable tool for both stimulating enterprises and developing businesses with growth potential, both in practical and policy-making terms.

b)Incubators also save money and time through the acceleration of enterprise growth, achieving this through the provision of an enabling environment for business in the start-up stage, helping to reduce the costs associated with launching an enterprise and increasing the confidence of entrepreneurs and linking them to the resources and networks required to scale the business.

c)Incubators contribute to local and regional economies. Indeed, government subsidies for incubation programmes, it is argued, can be seen as a strong investment in local and regional economies.

d)Incubators contribute to economies in a variety of ways with incubator graduates going on to become job creators locally, nationally and regionally and incubators assisting in the commercialisation of new technologies, strengthening local, national and regional economies.

e)Incubation is recognized as a way of meeting a variety of economic and socio-economic policy needs which can include:

- Employment and wealth creation
- Support for small firms with high growth potential
- Transfer of technology
- Promoting innovation
- Enhancing links between universities, research institutions and the business community
- Industry cluster development
- Assessment of a company‘s risk profile

f)Spending public money is efficient when market failures exist and benefits of such support exceed the costs. If the potential social returns of the innovation are higher than private returns, the incubation process may well be the efficient way for a start-up to exploit a new innovation.

Incubator Models

In the 1980s, the first generation incubators were primarily providers of shared office space and infrastructure in order to provide small start-ups economies of scale. In the 1990s, in the second generation, the emphasis shifted to providing business support in order to accelerate the start-up learning curve. The third generation of incubators emerged at the end of the 1990s with an emphasis

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on facilitating access to external resources, knowledge and legitimacy. Additionally, the newer generation of incubators have a stronger focus on more specific sectors, in particular high- tech, ICT as well as targeting the most promising innovative start-ups. The changes in incubator models over time has consequences for research as the studies conducted on earlier generations of incubators do not necessarily apply to the present incubators and it is thus important to survey more recent data.

However, nowadays, even older generation incubators tend to offer a similar portfolio of services to incubatees and new generation, thus the provisions of most incubators are quite similar.

	1st Generation 1980s	2nd Generation 1990s	3rd Generation 2000 +
Offering	Office space and shared resources	Business support via coaching and training	Access to networks
Theoretical Rationale	Economies of scale	Accelerating the learning curve	Access to external resources, knowledge and legitimacy

Next, we turn to discussing the different incubation services in more detail. Whilst, as seen in the above Figure 1 it is argued that the functions of incubator services have changed overtime –moving from a focus on activities to achieve economies of scale through accelerating the learning curve and, presently, facilitating access to external resources, knowledge and legitimacy.

A more concise framework illustrated below divides incubation activities into buffering and bridging‖ functions that limit the likelihood of start-up failure. Buffering protects new firms from their external environment by providing resources to shelter new firms against lack of own resources, thus encouraging the survival of new firms. Bridging, on the other hand, enables new firms to actively engage in their external environment by facilitating the building of connections with external organisations and developing social capital and legitimacy. This is intended to encourage business growth.

	Buffering	Bridging
Role	Helping new firms develop their internal resources	Helping new firms connect with external resources
Incubation activities	Subsidized office space Subsidized office support service Subsidized training and development services Subsidized business advisory services Provision of financial resources	Networking Agglomeration Field development

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How incubation programmes make money?

This is major challenge for any incubation programme as providing supporting services to start-ups is costly and most start-ups are cash-strapped so are unable to pay the full value for the services themselves. Three core strategies used by incubation programmes to finance their activities: growth-driven, fee-driven and independent.

a) **In the growth-driven model** the programme is designed to eventually be financed by the supported start-ups by generating revenue from equity, taking a share of the start-ups earnings or through appealing to business angels and venture capitalists. This funding model relies on the incubators having access to a stream of high-growth businesses but also backers who are willing to support the incubator for a number of years until returns from investment can be realised. This requirement means that growth-driven financed programmes tend to focus on ventures in early or later stage.

b) **In the fee-driven model,** the incubator programmes are financed directly by the start-ups who are charged regular fees such as rent, membership fees or service fees. As start-ups have to pay in order to participate in such programmes, fee-driven models tend to support start-ups that have already established a revenue-stream or have investment from which they can pay the fees. This means that they are not likely to support pre-start-up entrepreneurs or very early stage start-ups.

c)**Independent incubator** programmes are the third designated category. This means that the programmes do not rely on the start-ups as a source of income-as in the growth-driven and fee-driven models. Instead, revenue comes from other sources, such as public bodies and corporate sponsors who see an advantage in establishing and running an incubator or through running events, hiring out spaces and providing catering using the incubator space. As these types of programmes do not rely on the start-up for generating income, they can service a wider range of stages of the start-up journey. However, the authors find that independently financed programmes tend to focus on the pre-start-up and start-up phase.

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Success Factors of Business Incubation

Access to science and technology expertise and facilities. Conducive environments for business incubation are located where access to scientific and technical knowledge and services and supporting infrastructure is readily available, either from universities or scientific institutions such as the CSIR and science councils.

Availability of funding. Incubators must have the ability to help raise capital and provide business tax and risk management services for its clients. Conducive environments are those that have ready access to low-interest funding such as government grants and loans or angel and venture capital.

Quality of entrepreneurs. Notwithstanding the fact that this research found a weak correlation between stringent selection criteria and incubator success, it did find that successful incubation depends on the quality of entrepreneurs being incubated. Entrepreneurship development seems to be more important than selection. The entrepreneurs must have sufficient knowledge and ability, be prepared to take calculated risks, and have the desire to succeed.

Stakeholder support. The involvement and support of stakeholders, consisting of sponsors drawn from the local business community, government, the broader community, venture capital providers, entrepreneurs and incubator management are vital for success. It is important that there is clarity, consistency and cooperation from its stakeholders that is consistent with the needs and capacities of the locality it is aiming to serve. There should be consensus on a mission that defines the incubator's role in the community and quantifiable objectives to achieve the mission. Incubators should develop stakeholder support, including a resource network.

This research found only a weak correlation between support from an experienced advisory board and incubator success. This could simply be that advisory boards have not yet made an impact because of the early stage of incubation in South Africa, or it might indicate that advisory boards are currently ineffective. Incubators need to appoint effective boards of directors committed to the incubator's mission.

Supportive government policies. The success of services directed to entrepreneurship promotion depends largely on a broad-based consensus on economic and industrial policy. Initiatives such as business incubators make sense only if the relationship between entrepreneurship and economic growth has been acknowledged at all levels of government.1 Government policies should therefore be aimed at creating and sustaining environments that report. are conducive for business incubation, which is, having the characteristics described in this

Competent and motivated management. The success of business incubators depends to a large extent on the quality of the management teams appointed to operate them. The team leader should have a business background and entrepreneurial skills, a flair for leadership and organization and be well networked in the community. The management team should be given measurable objectives against which performance can be monitored and incentives should be offered to managers to encourage and award outstanding performance. Incubators must recruit and appropriately compensate management capable of achieving the mission of the incubator.

Financial sustainability. Incubators should operate as viable businesses, with their own sources of sustainability such as taking equity, royalties and even ongoing subsidies. The ultimate test of success of an incubator is whether it can be self-sustaining. Incubators should be dynamic models of sustainable, efficient business operations. It is surprising that we found only a weak correlation between implementing a comprehensive business plan and success in incubation. This might also be due of the early stage of incubation in South Africa. Business plans might simply not have had enough time to make an impact yet.

Networking. Partner networks contribute to incubator successes through sharing of the wisdom reaped from both achievement and failure. Networking is also important in expanding market opportunities for entrepreneurs and graduates. This network typically includes universities, industrial contacts, and professional service providers such as lawyers, accountants, marketing specialists, venture capitalists, angel investors, and volunteers.

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ENTREPRENEURESHIP AND LEGAL ENVIRONMRNT

LAW OF CONTRACT

(MBA 1st SEMESTER) **MODULE – II**

Compiled by : ***Mr. Manoj Parija***
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What is Law?

Law means a 'set of rules' which regulate our relation and behaviors with other individuals and with state. In the words of Salmond, `law is the body of principles recognized and by state in the administration of justice

Why Should One Know Law?
One should know the law to which he is subject because ignorance of law is no excuse.

Kinds of Indian law:

There are thousands of law in India and it may not be possible to strictly classify them .However, Indian law will be broadly be classified according to their purpose and objectives and then sub classified in to main categories.

For legal redressal, Indian law may be classified in to two main categories;

1. Procedural law; It is the guide which helps to know the process to present a matter
There are two main statutes in India which regulate the procedures followed in court in court of law for;

A. Code of criminal procedure-1973, for regulating procedure in criminal case.

B. Code of civil procedure -1908 for Commercial law that includes Indian contract-1872, sale goods Act-1930 etc. regulating the procedure in civil case.

2. Substantive law- There are thousands of substantive law in India. These law defines rights, liability, obligation of citizen and non-citizens.

Various substantive laws according to their nature and objectives are:-

A. Commercial law that includes Indian contract Act-1872, Sale of goods Act-1930 etc.
B. Penal law- these law create, define and provide punishment for various offences according to Indian penal code-1860.
C. property law.
D. Taxation law.
E. Constitutional law.
F. Cyber law.
G. Intellectual property law.
H. personal law.
I. Environmental law.

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The Indian Contract Act, 1872 codifies the legal principles that govern such 'contracts'. The Act basically identifies the ingredients of a legally enforceable valid

What is law of contract?

The law of contract is most important and basic part of business\ mercantile law. It is the foundation on which superstructure of modern business is built. It is not only merchant and traders but every person who lives in organized society, consciously or unconsciously enters in to contract from sunset io sunrise. When a person buys mobile or hires a taxi or go to cyber café or takes a credit card or he does booking for a orchestra for marriage party, he enters in to and performs contracts though he may be unaware of this fact. Such contracts create legal relations giving rise to certain rights and obligations.

Contract in addition to dealing with certain special type of contractual relationships like

1. -Indemnity,
2. -Guarantee,
3. -Bailment,
4. -Pledge,
5. -Quasi contracts,
6. -Contingent contracts.

- ✓ It is said on the back drop of Indian contract Act -1872 that, all contracts are agreements but all agreements are not contracts.
- ✓ The above observation would raise a question in our minds as to what is the exact meaning of the words 'agreements' and 'contracts' and `promise'.
- ✓ Contract; According to Sec 2(h) of Indian contract Act' 1872, 'an agreement enforceable by law is contract".
- ✓ Salmond defines; contract is an agreement creating and defining obligations between the parties.
- ✓ Agreement; An agreement is defined in sec 2 (e) as ``every promise or every set of promises forming the consideration for each other".

Agreement

Promise ; A promise is defined in sec 2 (b) as, ' proposal when accepted becomes a promise.

Agreement: Agreement is defined in sec 2 (e) as ``every promise or every set of promises forming the consideration for each other .

a) An agreement involves proposal or offer by one party and acceptance of the same by other party.

b) It requires existence of two or more persons because a person can not enter in to an agreement with himself.

c) It implies that the parties have common intention about the subject matter of there agreement.

d) Two parties should be thinking of the same thing in same sense at the same time. Thus agreement is outcome of two consenting mind.

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Agreement are of two types;

1. **Un-enforceable agreements.**

2. **Enforceable agreements.**

Agreement not enforceable by law	**Agreement enforceable by law**
Any essential of a valid contract is not available	All essentials of a valid contract are available

1-Un-enforceable agreement: All those agreements are said to be un-enforceable in which an aggrieved party can not go to a law court and that is left at the mercy of
the parties only

2-Enforceable agreements: parties only.It is simply a gentleman's promise which may or may not fulfilled by promiser. All these agreements remain only an agreements between parties and they never become a contract in the eyes of law,because they are merely social or domestic arrangements.

All those agreements are said to be enforceable in which an agrrieved party has a right to approach law court to get the agreement enforced and other party is held liable either to perform the agreement or face the consequences for breach of that agreements. All these agreements which are enforceable at law are ``CONTRACT".

Enforceable at law: An agreement to become a contract must give rise to a legal obligation. The common acceptance and communication between the parties must create legal relations and not merely the relation which are purely social or domestic in nature.

Example; Mr Rakesh invites Mr Bijoy to a dinner. Mr Bijoy accepts the invitation. It is purely asocial agreement. If Bijoy fails to arrive at dinner at dinner time due to important work, can not sue Bijoy for not fulfillig the promise, the reason being, there was no intention between two parties to create any legal obligation.

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Contract

According to Sec 2(h) of Indian contract Act' 1872, 'an agreement enforceable by law is contract".
Salmond defines; contract is an agreement creating and defining obligations between the parties.

Basis	Contract Sec. 2(h)	Agreement Sec. 2(e)
1. Section :	Sec. 2(h)	Sec. 2(e)
2. Definition:	A contract is an agreement enforceable by law.	Every promise or every set of promises forming consideration for each other is an agreements
3. Enforceability:	Every contract is enforceable A contract includes an agreement.	Every promise is not enforceable..
4. Interrelationship	A contract includes an agreement	An agreement does not include a contract
5.Scope:	The scope of a contract is limited, as it includes only commercial agreements	Its scope is relatively wide it includes both social &commercial agreement

Types of Contract

Contract may be classified according to their (1) validity (2) Formation (3)Performance

Classification according to validity

a) Void contract :- A contract not enforceable by law is void.
Example- Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract .

b) Voidable contract 2(i):- An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by option of the other or others.
Example-A promises to sell his car to B for Rs 20000.His consent is obtained by use of force. The contract is voidable at the option of A.He may avoid the contract or elect to be bound by it.

c) Illegal Contract: Illegal contract are those that are forbidden by law. All illegal contracts are hence void also. Because of the illegality of their nature they cannot be enforced by any court of law. In fact even associated contracts cannot

Express contract :- A contract made by word spoken or written. According to sec 9 in so for as the proposal or acceptance of any promise is made in words, the promise is said to be express.
Example : A says to B 'will you purchase my bike for Rs.20,000?" B says to A "Yes" without knowing that the bike was purchased by A from bike lifter.

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Difference between Void and illegal Agreement		
Matter	**Void Agreement**	**Illegal Agreement**
What	Void agreement is not prohibited by law	It is prohibited by law.
Effect on collateral Transaction	Enforced	Not Enforced
Punishment	No	Yes
void ab initio	May not be void ab initio	Always void ab initio

Matter	**Void contract**	**Voidable contract**
Definition	It means contract which ceases to be enforceableby law	It is a contract which one of the parties may affirm or reject at his option.
Rights or remedy	No legal remedy.	Aggrieved party has remedy to cancel
Nature	Valid when made but subsequently becomes unenforceable.	It remains voidable until cancelled by party
Performance of Contract.	Party can't demand performance of contract	If aggrieved party doesn't cancel it Within reasonable time performance can be demanded.
compensation	There does not arise compensation for non-performance of contract	Person is entitled to compensation for loss or damages for non performance Of contract.

Classification according to formation

d) Implied contract:- An implied contract is one which is inferred from the act or conduct of parties or course of dealing between them. It not the result of any express promise or promise by the parties but of their particular acts.
Example:
A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.

e) Quasi contract -Quasi Contracts are contracts which are created –
•Neither by word spoken
•Nor written
•Nor by the conduct of the parties.
But these are created by the law. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expense of other
Example:
If Mr. A leaves his goods at Mr. B's shop by mistake, then it is for Mr. B to return the goods or to compensate the price.

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f) e – Contract: An e – contract is one, which is entered into between two parties via the internet.

Classification according to performance

-g) Unenforceable contract: - where a contract is good in substance but because of some technical defect , one or both the parties cannot sue upon but is described as unenforceable contract. Example: Writing registration or stamping.

Example: An agreement which is required to be stamped will be unenforceable if the same at all or is is not stamped under stamped.

h) Executed contract :- A contract in which both the parties have fulfilled their obligations under the contract.
Example: A contracts to buy a car from B by paying cash, B instantly delivers his car receving payment from A.

i) Executory contract:- A contract in which both the parties have still to fulfill their obligations.
Example : D agrees to buy V's cycle by promising to pay cash on 15th July. V agrees to deliver the cycle on 20th July.

j) Partly executed and partly executory:- A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation.

Example : A sells his car to B and A has delivered the car but B is yet to pay the price. For Ait is excuted contract whereas it is executory contract on the part of B since the price is yet to be paid

Classification according to liability

k) Bilateral contract:- contract in which both the parties commit to perform their respective promises is called a bilateral contract.

Example : A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promise.

L) Unilateral contract:- A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation party has to perform his promise or obligation to do or forbear.

Example :- A wants to get his room painted. He offers Rs.500 to B for this purpose B says to A " if I have spare time on next Sunday I will paint your room". There is a promise by A to pay Rs 500 to B. If B is able to spare time to paint A's room. However there is no promise by B to Paint the house. There is only one promise.

M) Contract of Record: A contract of record derives its binding force from the authority of court. The authority of court is invariably through judgment of a court or by way of recognizance. The judgment of a court is technically not a contract as it is not based on the agreement between parties. However the judgment is binding on all the persons who

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are litigants. The judgment creates certain rights on certain persons and obligation on certain other persons. A recognizance, on the other hand is a written acknowledgement of a debt due to the state generally in the context of criminal proceedings.

(N) Contract under Seal: A contract under seal is one which derives its binding force from its form alone. It is in writing, duly signed and sealed and delivered to parties. It is also referred to as a deed or a specialty contract.

Essential Elements of Valid Contract

1. **Offer and Acceptance:** In the first place, there must be an offer and the said offer must have been accepted. Such offer and acceptance should create legal obligations between parties. This should result in a moral duty on the person who promises (called promisor) or offers to do something. Similarly this should also give a right to other party (called promisee) to claim its fulfillment. Such duties and rights should be legal and not merely moral.

Case law:

A husband promised to pay Rs5000 household allowance every month to his wife,. When husband failed to perform this promise, she brought an action to enforce it. As it is an agreement of domestic nature, it was held that it does not contemplate to create any legal obligation.

2. ***Free Consent:*** *The second element is the 'consent' of the parties. 'Consent' means 'knowledge and approval' of the parties concerned. This can also be understood as identity of minds in understanding the term viz consensus ad idem. Further such a consent must be free. Consent would be considered as free consent if it is not vitiated by coercion, undue influence, fraud, misrepresentation or mistake. Wherever the consent of any party is not free, the contract is voidable at the option of that party.*

Illustration:- A threatened to shoot B if he (B) does not lend him ` 2000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

3. **Capacity of the parties:** The third element is the capacity of the parties to make a valid contract. Capacity or incapacity of a person could be decided only after reckoning various factors. Section 11 of the Indian Contract Act,1872 elaborates on the issue by providing that a person who- should be considered as not competent to enter into any contract. Therefore a person is not eligible to enter in to valid contract ;

(a) who has not attained the age of majority,

(b) who is of unsound mind and

(c) who is disqualified from entering into a contract by any law to which he is subject,be considered as not competent to enter into any contract. Therefore law prohibits (a) Minors (b) persons of unsound mind [excluding the Lucid intervals] and (c should) person who are otherwise disqualified like an alien enemy, insolvents, convicts etc from entering into any contract.

4. **Consideration:** The fourth element is presence of a lawful 'consideration'. 'Consideration' would generally mean 'compensation' for doing or omitting to do an act or deed. It is also referred to as 'quid pro quo' viz 'something in return for another thing'. Such a consideration should be a lawful consideration.

Example:- A agrees to sell his books to B for 100, B's promise to pay 100 is the consideration for A's promise to sell his books . A's promise to sell the books is the consideration for B's .

5. **Lawful object:** The last element to clinch a contract is that the agreement entered into for this purpose must not be which the law declares to be either illegal or void. An illegal agreement is

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an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.
For Example: Threat to commit murder or making/publishing defamatory are statements or

entering into agreements which are opposed to public policy are illegal in nature. Similarly any agreement in re
been other hand voidable contract would remain valid until it is rescinded by the person who has the option to treat it as voidable. The right to treat it as voidable does On not invalidate the contract until such right is exercised. All contracts caused by coercion, undue influence, fraud misrepresentation are voidable. Generally, a contract caused by mistake is void.

OFFER AND ACCEPTANCE

OFFER

It has been explained in the previous paragraphs that a proposal or a promise backed by legal consideration is an agreement and such an agreement, if legally enforceable, becomes a contract. It would therefore be clear that the starting point of this chain is a proposal or a promise. It is proposed now to discuss as to what is a proposal/offer, what are the types of offer, etc.

The word 'proposal' and the word 'offer' mean one and the same thing and therefore are used interchangeably.
In terms of Section 2(a) of the *contract* Act-1872 "a person is said to make a proposal when he signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence".
It must be appreciated that 'doing an act' and 'not doing an act' both have the same effect in the eyes of the law, though one is a positive act and the other is a negative act.
Hence there are two important ingredients to an offer;

Firstly, it must be expressions of willingness to do or to abstain from doing an act.

Secondly, the willingness must be expressed with a view to obtain the assent of the other party to whom the offer is made.

This can be illustrated as follows:

(a) Where "A" tells "B" that he desires to marry 'B' by the end of 2006, there is no offer made unless, he also asks "will you marry me?", conveying his willingness and tries to obtain the assent of 'B' in the same breadth.

(b) Where "A" offers to sell his car to "B" it conveys his willingness to do an act. Through this offer not only willingness is being conveyed but also an intention to obtain the assent can be seen.

Classification of offer: Offer can be classified as general offer, special/specific offer, cross offer, counter offer, standing/open/continuing offer. Now let us examine each one of them.

(a) General offer: It is an offer made to public at large with or without any time limit. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer. Example-A issues a public advertisement to the effect that he will give Rs 1000 to anyone who brings back his missing dog amounts to general offer.

(b) Special/specific offer: Where an offer is made to a particular and specified person, it is a specific offer. Only that person can accept such specific offer, as it is special and exclusive to him.

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(c) Cross offer: Two offers similar in respect, made by two parties to each other, in ignorance of each other's offer are termed as cross offer.
For example, if A makes a proposal to B to sell some goods at a specified price and B, without knowing proposal of A, makes a proposal to purchase the same goods at the price specified in the proposal of A, it is not an acceptance, as B was not aware of proposal made by A. It is only cross proposal (cross offer). And when two persons make offer to each other, it can not be treated as mutual acceptance. There is no binding contract in such a case [Tin v. Hoffmen & Co. 1873]

(d) Counter offer: Upon receipt of an offer from an offeror, if the offeree instead of accepting it straightway, imposes conditions which have the effect of modifying or varying the offer, he is said to have made a counter offer. Counter offers amounts to rejection of original offer.

(e) Standing or continuing or open offer: An offer which is made to public at large and if it is kept open for public acceptance for a certain period of time, it is known as standing or continuing or open offer. Tenders that are invited for supply of materials and goods are classic examples of standing offer.
Rules relating to offer:

Following are the rules for a valid and legal offer:

(a) The 'offer' must be with intention to create a legal relationship. Hence if it is accepted, it must result in a valid contract. An invitation to join a friend for dinner is a social activity. This does not create a legal relationship or right or obligation.

(b) The offer must be certain and definite. It must not be vague. If the terms are vague, it is not capable of being accepted as the vagueness would not create any contractual relationship. For example, where 'A' offers to sell 100 litres of oil, without indicating what kind of oil would be sold, it is a vague offer and hence cannot create any contractual relationship. If however there is a mechanism to end the vagueness, the offer can be treated as valid. For example, in the above example if 'A' does not deal in any oil but only in gingilee oil and this is known to every one, the offer cannot be treated as vague offer. This is for the reason that the trade in which 'A' is, is a clear indicator providing a mechanism to understand the terms of offer.

(c) The offer must be express or implied.

(d) The offer must be distinguished from an invitation to offer-An offer must be distinguished from invitation to offer. In case to invitation to offer the aim is only to circulate information of readiness to negotiate business with anybody who on such infor mation comes to enter in to contract. So, a price list, display goods in shelves of show room are attempt to induce offer and not an offer itself.

(e) The offer must be either specific or general.

(f) The offer must be communicated to the person to whom it is made. Otherwise the offeree cannot accept the offer. He cannot accept the offer because he is not aware of the existence of the offer. Such a situation does not create any legal obligation or right on any one.

(g) The offer must be made with a view to obtaining the consent of the offeree.

(h) An offer can be conditional but there should be no term in the offer that non-compliance would amount to acceptance. Thus the offeror cannot say that if non-acceptance is not communicated by a certain time the offer would be treated as accepted.
Example;- T , who could not read , took an excursion ticket form railway on the front of the ticket was printed ' for condition see back". One of the condition was that the railway company will not be liable for personal injuries to passenger. T was injured by a railway accident.Held , T was bound by the condition the condition and could not

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recover any damage

LAPSE OF AN OFFER :

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end in any of the following ways stated in Section 6 of the Indian Contract Act:

1. **By communication of notice of revocation**: An offer may come to an end by communication of notice of revocation by the offeror. It may be noted that an offer can be revoked only before its acceptance is complete for the offeror. In other words, an offeror can revoke his offer at any time before he becomes before bound by it. Thus, the communication of revocation of offer should reach the offeree before the acceptance is communicated.
2. **By lapse of time**; where time is fixed for the acceptance of the offer, and it is not acceptance within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time. The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.
3. **By failure to accept condition precedent**: Where, the offer requires that some condition must, be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.
4. **By the death or insanity of the offeror**: Where, the offeror dies or becomes, insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valid.
   This will result in a valid contract, and legal representatives ofthe deceased offeror shall be bound by the contract. On the death of offeree before acceptance, the offer also comes to an end by operation of law.
5. **By counter offer by the offeree**: Where, a counter – offer is made by the offeree, and then the original offer automatically comes to an end, as the counter offer amounts to rejections of the original offer.
6. **By not accepting the offer**, according to the prescribed or usual mode: Where some manner of acceptance is prescribed in the offer, the offeror can revoke the offer if it is not accepted according to the prescribed manner.
7. **By rejection of offer by the offeree**: Where, the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it.The rejection of offer may be express or implied.
8. By change in law: Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.

Acceptance

Meaning: In terms of Section 2(b) of the Act, "A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something". In short, act of acceptance lies in signifying one's assent to the proposal.

The significance of this is an offer by itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship. Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked. An offer remains an offer so long as it is not accepted, but becomes a contract as soon as it is accepted

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Rules governing acceptance

(1)- Acceptance must be absolute and unqualified: As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly. The above view will be clear from the following example: 'A' enquires from 'B', "Will you purchase my car for ` 2 lakhs?" If 'B' replies "I shall purchase your car for ` 2 lakhs, if you buy my motorcycle for ` 50000/-, here 'B' cannot be considered to have accepted the proposal. If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition. Therefore the acceptance in this case is unconditional.

(2) . The acceptance must be communicated: To conclude a contract between the parties, the ce with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. The above points will be clearer from the following examples,

(a) M offered to sell his land to N for Rs 280000. N replied purporting to accept the offer but enclosed a cheque for Rs 80000 only. He promised to pay the balance of Rs 200000 by monthly installments of Rs 50000 each. It was held that N could not enforce his acceptance because it was not an unqualified one. [Neale vs. Merret [1930] W. N. 189]. acceptance must be communicated in some perceptible form Any conditional acceptance or acceptance

(b) A offers to sell his house to B for ` 1000/-. B replied that, "I can pay ` 800 for it. The offer of 'A' is rejected by 'B' as the acceptance is not unqualified. B however changes his mind and is prepared to pay ` 1000/-. This is also treated as counter offer and it is up to A whether to accept it or not. [Union of India v. Bahulal AIR 1968 Bombay 294]. A mere variation in the language not involving any difference in substance would not make the acceptance ineffective. [Heyworth vs. Knight [1864] 144 ER 120].

(3) Acceptance must be in the prescribed mode: Where the proposal prescribes the mode of acceptance, it must be accepted in that manner. Where the proposal does not prescribe the manner, then it must be accepted in a reasonable manner. If the proposer does not insist on the proposal being accepted in the manner in which it has to be accepted, after it is accepted in any other manner not originally prescribed, the proposer is presumed to have consented to the acceptance. Sometimes the acceptor may agree to a proposal but may insist on a formal agreement, in which case until a formal agreement is drawn up there is no complete acceptance.

(4) The acceptance must be given within a reasonable time and before the offer lapses.

(5) Mere silence is not acceptance. The acceptor should expressly accept the offer. Acceptance can be implied also. Acceptance must be given only by that person to whom it is made, that too only after knowing about the offer made to him.

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Example A offers to B to buy his house for Rs.5 lakhs and writes "If I hear no more about it within a week, I shall presume the house is mine for Rs.5 lakhs. "B does not respond. Here, no contract is concluded between A and B.

However, following are the two exceptions to the above rule.

It means silence amounts as acceptance of offer.

• Where offeree agrees that non – refusal by him within specified time shall amount to acceptance of offer.

• When there is custom or usage of trade which specified that silence shall amount to acceptance.

(6) Acceptance by conduct: As already elaborated above, acceptance has to be signified either in writing or by word of mouth or by performance of some act. The last of the method, namely 'by some act' has to be understood as acceptance by conduct. In a case like this where a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance. In other words, there is an acceptance by conduct.

For example, where a tradesman receives an order from a customer, and the order is executed accordingly by the trader, there is an "acceptance by conduct" of the offer made by the customer. The trader's subsequent act signifies acceptance.

Section 8 of the Act very clearly in this regard lays down that " the performance of the condition(s) of a proposal or the acceptance of any consideration of a reciprocal promise which may be offered with a proposal constitutes an acceptance of the proposal.

In case of acceptance by post

General Rules as to Communication of Acceptance

Where the acceptance is given by post, the communication of acceptance is complete as against the proposer when the letter of acceptance is posted.

Thus, mere posting of letter of acceptance is sufficient to conclude a contract. However, the letter must be properly addressed and stamped.

2. **Delayed or no delivery of letter** Where the letter of acceptance is posted by the acceptor but it never reaches the offeror, or it is delayed in transit, it will not affect the validity of acceptance. The offeror is bound by the acceptance.
3. **Acceptance by telephones telex or fax** If the communication of an acceptance is made by telephone, tele-printer, telex, fax machines, etc, it completes when the acceptance is received by the offeror. The contract is concluded as soon as the offeror receives not hears the acceptance.
4. **The place of Contract**
   In case of acceptance by the post, the place where the letter is posted is the place of contract. Where the acceptance is given by instantaneous means of communication (telephone, fax, tele-printer, telex etc.), the contract is made at the place where the acceptance is received,
5. **The time of Contract** In case of acceptance by post, the time of posting the letter of acceptance to the time of contract. But in case of acceptance by instantaneous means of communication, the time of contract is the time when the offeror gets the communication, the time of contract is the time when offeror gets the communication of acceptance.
6. **Communication of acceptance in case of an agent.**
   Where the offer has been made through an agent, the communication of acceptance is completed when the acceptance is given either to the agent or to the principal. In such a case, if the agent fails to convey the acceptance received from offeree, still the principal

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is bound by the acceptance.

7. **Acceptance on loudspeakers** - Acceptance given on loudspeaker is not a valid acceptance.

Particulars of Offer& Acceptance

When Communication is complete [Sec.4]

• Communication of a , proposal is complete when it comes to the knowledge of the person to whom it is made.

• **Example** : A proposes by letter, to sell his Tonga to B at Rs.10,000. Communication of the proposal is complete when B receives the letter.

• As against the offerer/ Proposer: When it is put in a course of transmission to him so as to be out of the power of the Acceptor.

• As against the Offeree/Acceptor: When it comes to the knowledge of the Proposer.

When Revocation can be made [Sec.5]

• Offer/proposal may be revoked at any time before the communication of its acceptance is complete, as against the proposer, but not afterwards.

• **Example**: U sends a letter to Y proposing to sell his land. Y sends his acceptance by post. U can revoke the offer at any time before or at the moment when Y posts his letter of acceptance, but not after wards.

• **Acceptance may be revoked** at any time before the communication of acceptor, but not afterwards.

• Example: T sends to S by post, an offer to sell his cycle. S sends his acceptance via post, S could revoke his acceptance, up to any time before or at the moment when he posts his letter of acceptance, but not afterwards.

When communication of revocation is complete [Sec.4]

• As against the offeror: When it is put into a course of transmission to the person, to whom it is made,

So as to be out of the power of the person who makes it.

• **Example** :S proposes to H by letter. H sends his acceptance by letter. Suddenly, S sends a telegram revoking his offer. Revocation is complete as against S when the telegram is dispatched;

H's revocation of acceptance is complete when S receives such telegram.

• **As against the Offeree**: When it comes to his knowledge. •

Example : Communication of revocation is complete only when H receives the telegram.

Consideration

Consideration is a term used in sense of Quid Pro Quo i.e. Something in return.

Meaning: Sec 2(d) defines consideration as "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or to abstain from doing something, such an act or abstinence or promise is called consideration for the promise"

it can be concluded that :

Consideration = Promise / Performance that parties exchange with each other.

Form of consideration= Some benefit, right or profit to one party / some detriment, loss, or forbearance to the other.

Whether gratuitous promise can be enforced?

The word "gratuitous" means 'free of cost' or 'without expecting any return'. It can therefore be

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inferred that a gratuitous promise will not result in an agreement in the absence of consideration. For instance a promise to subscribe to a charitablecause cannot be enforced.

Rules of consideration

(i)Consideration must move at the desire of the promisor: Consideration must move at the desire of the promisor, either from the promisee or some other third party. But consideration cannot move at the desire of a third party. Where collector had passed an order that any one using the market constructed by the Zamindar, for the purpose of selling his goods should pay commission to the Zamindar, it was held that it was not a proper order as the desire to receive consideration had not emanated from the Zamindar but from a third party namely the collector [Durga Prasad Vs Baldev (1880) 3, All 221]

ii)Consideration can flow either from the promisee or any other person: The consideration for a contract can move either from the promisee or from any other person. This point is made clear even by the definition of the word "consideration", according to which at the desire of the promisor, the promisee or any other person, doing something is consideration.

That the consideration can legitimately move from a third party is an accepted principle of law in India though not in England.

Example: 'A' by a deed of gift made over certain property toher daughter(D) with condition that her brother(B) should be paid annuity by D. On the same day, D executed a document agreeing to pay annuity accordingly but declined to pay after sometime. B sued D. It was contended on behalf of D, that there was no consideration from B and hence there was no valid contract. This plea was rejected on the ground that the consideration did flow from B's Sister(A) to 'D' and such consideration from third party is sufficient to enforce the promise of D to pay annuity to A's brother (B) [Chinnaya Vs Ramaya(1881) 4.mad.137]

Thus a stranger to a contract can sue upon a contract in India and also in England, where as stranger to a consideration can sue under Indian law though not under English law.

iii) Executed and Executory consideration: Where consideration consists of performance, it is called "executed" consideration. Where it consists only of a promise, it is executory.

For example where A pays ` 5000/- to 'B' requesting 'B' to deliver certain quantity of rice, to which B agrees, then here consideration for B is executed by 'A' as he has already paid ` 5000/- whereas 'B's promise is executory as he is yet to deliver the rice.

Insurance contracts are of the same type. When A pays a premium of ` 5000/- seeking insurance cover for the year, from the insurance company which the company promises in the event of fire, the consideration paid by A to the insurance company is executed but the promise of insurance company is executory or yet to be executed. A forbearance by the promisor should however be considered as an executed consideration provided the forbearance is sufficient at the time of contract.

(iv) Past consideration: The next issue is whether past consideration can be treated as consideration at all. This is because consideration is given and accepted along with a promise concurrently. However the Act recognizes past consideration as consideration when it uses the expression in Section 2(d) 'has done or abstained from doing". But in the event of services being rendered in the past at the request or desire of the promisor the subsequent promise is regarded as an admission that the past consideration was not gratuitous. The plaintiff rendered services to the defendant at his desire during his minority. He also continued to render the same services after the dependant attained majority. It was held to be good consideration for a subsequent express promise by the defendant to pay an annuity to the plaintiff but it was admitted that if the services had not been rendered at the desire of the defendant it would be hit

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by section 25 of the Act. [Sindia Vs Abraham (1985)Z. Bom 755]

(v) Consideration may not be adequate: Inadequacy of consideration is no ground for refusing performance of the promise, unless it is evidence of fraud. Inadequate consideration would not invalidate an agreement but such inadequate consideration could be taken into account by the court in deciding whether the consent of the promisor was freely given.consideration need not be material and may be even absent.

Example: A agreed to sell a watch worth Rs.500 for Rs.20, A's consent to the agreement was freely given. The consideration, though inadequate. Will not affect the validity of the contract. However, the inadequacy of the consideration can be considered in order to know whether the consent of the promisor was free or not .

(vi) consideration must be something which promisor is bound to do: The performance of an act by a person what he is legally bound to perform, the same cannot be consideration for a contract. Hence, `A' promise to pay money to a police officer to investigate in to crime is void as the officer is under duty to do so by law, for it is without consideration. Hence such a contract is void for want of consideration. Similarly, an agreement by a client to pay to his counsel, a certain sum over and above the fee, in the event of success of the case would be void, since it is without consideration.

(vii) Consideration must not be unlawful, immoral, or opposed to public policy.

There is a big difference between a third party to consideration and third party to a contract; while the first can sue, the second cannot sue. Thus a stranger / third Party to an Agreement lead to the doctrine of privity of contract. The doctrine says that only parties to a contract can enforce the contract. The parties stranger to a contract cannot sue and be sued. Example, a contract by the purchaser of a mortgaged property to pay off the mortgage cannot be enforced by the mortgagee who was not a party to the contract between vendor and vendee.

However there are exceptions to the above principle. These are:

1- In the case of a trust, the beneficiary can sue enforcing his right though he was not a party to the contract between the trustee and the settler.

In Khawja Mohammed Khan Vs Hussain Begum 371.A. 152, where, the father of the bridegroom promised to pay through a contract with the father of the bride, an allowance to the bride, if she married his son,the bride sued her father-in-law after marriage for the allowance which he did not pay as per the contract. It was held by the Privy Council that though the bride was not a party to the contract between her father and father in law, she could enforce her claim in equity.

2- In the case of family settlement, if the terms of settlement are reduced in writing, members of the family who were not a party to the settlement can (also) enforce their claim.

.3.In the case of certain marriage contracts a female member can enforce a provision for marriage expense based on a petition made by the Hindu undivided family.

4. Where there is an assignment of a contract, the assignee can enforce the contract for various benefits that would accrue to him on account of the assignment

5. In case of part performance of a contractual obligations or where there is acknowledgment of liability on account of estoppel, a third party can sue for benefits. Where for example 'A' gives ` 25000/- to 'B' to be given to 'C' and 'B' informs 'C' that B is holding it on behalf of C, but subsequently refuses to pay 'C' then 'C' can sue and enforce his claim.

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6. Where a piece of land which is sold to buyer with certain covenants relating to land and the buyer is kept on notice of the covenants with certain duties, there the successors to the seller can enforce these covenants.

"No consideration. No contract".

We have all along learnt that an agreement without consideration is void. Not only that, even inadequate consideration would render the enforceability of the contract quite difficult as the free consent of the parties would become suspect. The Act however contains certain exceptions to this important rule. These are:

(i) On account of natural love and affection: A written and a registered agreement made between parties out of natural love and affection does not require consideration. Such an agreement is enforceable even without consideration. It is important that parties should be of near relation like husband and wife to get this exemption (Rajlukhee Devee Vs Bhootnath).

Example:-An elder brother, on account of natural love and affection, promised to pay the debts of his younger brother. Agreement was put to writing and registered. Held, agreement was valid.

(ii) Compensation paid for past voluntary services: A promise to compensate wholly or in part for past voluntary services rendered by someone to promisor does not require consideration for being enforced. However the past services must have been rendered voluntarily to the promisor. Further the promisor must have been in existence at that time and he must have intended to compensate.

(iii) Promise to pay debts barred by limitation: Where there is a promise in writing to pay a debt, which was barred by limitation, is valid without consideration.

Example : A owes B Rs.10,000 but the debt is barred by Limitation Act. A signs a written promise to pay B Rs.8,000 on account of debt. This is a valid contract.

(iv) Creation of Agency: In term of section 185 of the Act, no consideration is necessary to create an agency

(v) In case of completed gifts, no consideration is necessary. This is clear from the Explanation (1) to section 25 of the Act which provides that "nothing in this Section shall affect the validity as between donor and donee of any gift actually made.

Free consent

We have earlier seen that in terms of section 10 of the Indian Contract Act,1872 a legally enforceable agreement should be made with the free consent of the parties who are competent to contract for a lawful consideration with a lawful object. .

In terms of section 13 of the Act, two or more persons are said to have consented when they agree upon the same thing in the same manner. This is referred to as identity of minds or "consensus-ad-idem".

Absence of identity of minds would arise when there is an error on the part of the parties regarding

a) nature of transaction or

(b) person dealt with or

(c) subject matter of agreement .

Consent is free when it is not caused by

a) coercion,

b)undue influence,

c) fraud,

d) misrepresentation or mistake (Section 14).

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Now let us discuss each of these factors, which should not influence consent.

(a) **Coercion(Section 15):-** "Coercion" is the committing, or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

For example, X says to Y 'I shall not return the documents of title relating to your wife's property, unless you agree to sell your house to me for ` 5000'. 'Y' says, "All right, I shall sell my house to you for ` 5000; do not detain my wife's documents of title", X has employed coercion; he cannot therefore enforce the contract. But Y can enforce the contract if he finds the contract to his benefit. An agreement induced by coercion is voidable and not void. That means it can be enforced by the party coerced, but not by the party using coercion.

It is immaterial whether the Indian Penal Code,1860 is or is not in force at the place where the coercion is employed.

Where husband obtained a release deed from his wife and son under a threat of committing suicide, the transaction was set aside on the ground of coercion, suicide being forbidden by the Indian Penal Code. (Amiraju Vs. Seshamma (1974) 41 Mad, 33)

A person to whom money has been paid or anything delivered under coercion, must repay or return it.

(b) **Undue influence (Section 16):** A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other. A person is deemed to be in a position to dominate the will of the other, when he holds authority, real or apparent over the other, or when he stands in a fiduciary relation to other.

The essential ingredients of undue influence are: One of the parties dominates the will of the other and

(i) he has real or apparent authority over the other;
(ii) he is in a position to dominate the will of the other and
(iii) the dominating party takes advantage of the relation.

Following are the instances where one person can be treated as in a position to dominate the will of the other.

(i) A solicitor can dominate the will of the client.
(ii) A doctor can dominate the will of his patient having protracted illness, and
(iii) A trustee can dominate the will of the beneficiary.

The burden of proof (in situations like the above) that there is no undue influence in an agreement would be on the person who is in a position to dominate the will of the other. For instance the 'father' should prove that he had not unduly influenced his son in the case of any given agreement. The stronger party must act in good faith and see that the weaker party gets independent advice.

The following two decisions would enable us to understand the law.

(a) Allahabad High Court set aside a gift of the whole of the property by an elderly Hindu to his spiritual advisor.

(b illiterate Muslim lady signing an agreement in favour of the manager herestate.

Difference between Coercion and Undue Influence: Having discussed in detail the concepts of coercion and undue influence, let us understand the difference between the two:-

(i) Nature of action: Coercion involves physical force and sometimes only threat. Undue influence involves only moral pressure.

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(ii) Involvement of criminal action: Coercion involves committing or threatening to commit any act prohibited or forbidden by law, or detention or threatening to detain a person or property. In undue influence there is no such illegal act involved.
(iii) Relation ship between parties: In coercion there need not be any relationship between parties; whereas in undue influence, there must be some kind of relationship between parties, which enables to exercise undue influence over the other.
(iv) Exercise by whom: Coercion need not proceed from the promisor. It also need not be directed against the promisee. Undue influence is always exercised by one on the other, both of whom are parties to a contract.
(v) Enforceability: Where there is coercion, the contract is voidable. Where there is undue influence the contract is voidable or court may set aside or enforce it in a modified form.
(vi) Position of benefits received: In case of coercion, where the contract is rescinded by the aggrieved party any benefit received has to be restored back. In the case of undue influence, the court has discretion to pass orders for return of any such benefit or not to give any such directions.

(c) **Fraud(Section-17):** Fraud means and includes any of the following act committed by a party to a contract or with his connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract.
(i) the suggestion, as to a fact, of that which is not true by one who does not believe it be true;
(ii) the active concealment of a fact by one, having knowledge or belief of the fact;
(iii) a promise made without any intention of performing it;
(iv) any other act fitted to deceive; and
(v) any such act or omission as to law specially declared to be fraudulent
It is important to note that 'fraud' that results in a contract alone is covered by section17 of the Act. If there is a 'fraud' but it does not result in a contract, it would not fall within the purview of the Act.
The following can be taken as illustration of fraud:
•A director of a company issues prospectus containing misstatement knowing fully well about such mis-statement. It was held any person who had purchased shares on the faith of such misstatement can repudiate the contract on the ground of fraud.
•B discovered an ore mine in the Estate of 'A' He conceals the mine and the information about the mine. 'A' in ignorance agrees to sell the estate to 'B' at a price that is grossly undervalued. The contract would be voidable of the option of 'A' on the ground of fraud.
•Buying goods with the intention of not paying the price is an act of fraud.
•A seller of a property should disclose any material defect in the property. Concealing the information would be an act of fraud. Any other act committed to deceive is fraud.
Mere silence would amount to fraud under certain circumstances.
Although a mere silence as to facts which is likely to affect the willingness of a person to enter into a contract is no fraud, where there is a duty to speak or where his silence is equivalent to speech, then such silence amounts to fraud.

(d) **Misrepresentation [Section 18]:** "Misrepresentation' does not involve deception but is only an assertion of something by a person which is not true, though he believes it to be true. misrepresentation could arise because of innocence of the person making it or because he lacks sufficient or reasonable ground to make it. A contract which is hit by misrepresentation can be avoided by the person who has been misled.
For example, A makes the statement on an information derived, not directly from C but from M. B applies for shares on the faith of the statement which turns out to be false. The

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statement amounts to misrepresentation, because the information received second-hand did not warrant A to make the positive statement to B [Section 18 (1)]

Now let us analyse the difference between fraud and misrepresentation.

(i) Extent of truth varies: **One of the important difference between fraud and misrepresentation** is that in case of fraud the person making the representation knows it fully well that his statement is untrue & false. In case of misrepresentation, the person making the statement believes it to be true which might later turn out to be untrue. In spite of this difference, the end result is that the other party is misled.

(ii) **Right of the person concerned who suffers**: Fraud not only enables the party to avoid the contract but is also entitled to bring action. Misrepresentation merely provides a ground for avoiding the contract and not for bringing an action in court.

(iii) **Action against the person making the statement**: In order to sustain an action for deceit, there must be proof of fraud. As earlier discussed fraud can be proved only by showing that a false statement was made knowing it to be false or without believing it to be true or recklessly without any care for truth. One is for action against deceit and the other is action for recession of the contract. In the case of mis-representation the person may be free from blame because of his innocence but still the contract cannot stand.

(iv) **Defences available to persons**: In case of misrepresentation, the fact that plaintiff had means of discovering the truth by exercising ordinary diligence can be a good defence against the repudiation of the contract, whereas a defence cannot be set up in case of fraud other than fraudulent silence.

But, where it is possible to discover the truth with ordinary diligence, and though the consent might have been obtained by misrepresentation or silence, then the contract For instance where 'A' misrepresents to 'B' that his sugar factory can produce 500 tons of sugar and whereas it actually produced 300 tones of sugar and if 'B' had the opportunity to examine the accounts through which he could have found out the truth and if in spite of that he had entered into a contract, he can not repudiate it.

Difference between Fraud & Misrepresentation		
	Fraud	**Misrepresentation**
Meaning	wrongful representation is made willfully to deceive the party.	Innocently made to deceive the other party.
Knowledge of falsehood	The person making the wrong statement does not believe it to be true. Right to claim damage	The person making the statement believes it to be true. Can't claim damage
Means of discovering of truth	In case of fraud the contract is voidable even though the aggrieved party had the means of discovering the truth with ordinary diligence.	In case of misrepresentation the contract is not voidable if the aggrieved contract is not voidable if the aggrieved party had the means of discover truth with ordinary diligence

(e) Mistake- The fifth significant element that vitiates consent is 'Mistake'. Where parties to an agreement are under a mistake as to a matter of fact which is essential to the agreement, then the agreement is void. As we all know a void agreement cannot be enforced at all.

Example: 'A' agrees to sell certain cargo which is supposed to be on its way in a ship from London to Bombay. But in fact, just before the bargain was struck, the ship carrying the cargo was cast away because of storm and rain and the goods were lost. Neither of the parties was aware of it. The agreement is void. [Couturier vs Hasite 5 H.L.C.673]

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Mistake must be a matter of fact and not of law. Where 'A' and 'B' enter into contract believing wrongly that a particular debt is not barred by law of limitation, then the contract is valid because there is no mistake of fact but of law only. However a question on foreign law would become a matter of question of fact. Similarly the existence of a particular private right though depends upon rules of law, is only a matter of fact. For instance where a man promises to buy a property which already belongs to him without him being aware of it, then such a promise is not binding on him. However a family arrangements or a compromise of doubtful rights cannot be avoided on the ground of mistake of law.

Yet another issue to remember in mistake is that it must be of an essential fact. Whether the fact is essential or not would again depend on how a reasonable man would regard it under given circumstances. A mere wrong opinion as to the value is not an essential fact.

While deciding whether a contract is hit by mistake or not it must be remembered that 'Mistake' is not unilateral. Both the parties should be under mistake. A unilateral mistake would not render the contract invalid. For example where 'A' agrees to purchase from 'B' 18 carat gold thinking it to be pure gold but 'B' was not instrumental for creating such an impression then contract between 'A' and 'B' should be treated as valid.

From the foregoing it is clear that:-

a. Mistake should be a matter of fact
b. Mistake should not be a matter of law
c. Mistake should be a matter of essential fact
d. Mistake should not be unilateral but of both the parties, and
e. Mistake renders agreement void and neither party can enforce the contract against each other

Key Points

- When two or more persons agree upon the same thing in the same sense,they are said to have consent. Consent is said to be free when it has not been obtained by coercion, undue influence, fraud, misrepresentation or mistake.
- Coercion –An act or threat of a person with an intention of causing any person to enter into an agreement by –(i) committing / threatening to commit any act forbidden by IPC, or (ii) unlawfully detaining or threatening to detain any property of another. Such a contract is voidable.
    - Undue influence –It is used by a dominant party on a weaker one to get an unfair advantage in a contract. In the following circumstances, the party stand in a dominant position-
- Where party holds real/apparent authority over the others, or party stands in a fiduciary relationship to the other,or where the party make a contract with a party in mental or bodily distress.
- A contract caused by undue influence is voidable. Even court is also empowered to set aside such contract absolutely or conditionally.
    - Fraud-Intentional misrepresentation or concealment of material facts of a contract with an intention to deceive and induce the other party to enter into an agreement.
- Silence merely not amount to fraud, except-it's duty to speak,or silence is equivalent to speech, or stating half truth.
    - Misrepresentation- An innocent/ unintentional false statement/ assertion of fact in the making of an agreement.

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- Remedies in the above cases are same, except the right to claim damages in case of fraud.
    - Mistake- An erroneous belief about something. It may be either of fact or of law. Mistake renders the contract void. Unilateral mistake made by one of the parties. It is a valid contract, unless it is caused by misrepresentation or fraud. Even unilateral mistakes as to fact renders the contract void.

Capacity of parties

The next issue for consideration is, who is competent to contract?
Every person who
(a) has attained the age of majority
(b) is of sound mind and
(c) is not otherwise disqualified from contracting, is competent to contract. Now let us discuss each one of these requirements.

Age of majority:-According to section 3 of **Indian majority Act-1875** every person domiciled in Indian attains majority on the completion of 18 years of age.
Excetipon:- 21 years- in the following cases.
a. **Where a guardian of a minor's person or property** is appointed under the Guardian and wardsAct, 1890.
b. **Where minor's property has passed under the superintendence of the court of words.**
Position of Agreements by Minor:-1. Validity: - An agreement with a minor is void-ab-initio
Example : Mr. D, a minor, mortgaged his house for Rs.20000 to a money – lender, but the mortgagee, i.e. the money – lender, paid him a sumof Rs.8000. Subsequently, the minorsued for setting aside the mortgage. Held that the contract was void, as Mr. D was minor **and** therefore he is not liable to pay anything to the lender.

RULES GOVERNING MINOR'S AGREEMENT.

1) A minor's has received any benefit under a void contract, he cannot be asked to return the same.
2) If a minor has received any benefit under a void contract, he cannot be asked to return the same.
3) Fraudulent representation by a minor- no difference in the status of agreement. The contract remains void.
4) A minor with the consent of all the partners, be admitted to the benefitsof an existing partnership.
5) Contracts entered into by minors are void-ab-initio. Hence no specific performance can be enforced for such contracts.
6) Minor's parent/guardians are not liable to a minor's creditor for the breach of contract by theminor.
7) A minor can act as an agent but not personally liable. But he cannot be principal.
8) A minor cannot become shareholder of a the company except when the shares are fully paid up and transfer by share.
9) A minor cannot be adjudicated as insolvent.
10) Can enter into contracts of Apprenticeship, Services, Education, etc:
    i. A minor can enter into contract of apprenticeship, or for training or instruction in a special art, education, etc.
    ii. These are allowed because it generates benefits to the Minor.

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11. Guarantee for and by minor

A contract of guarantee in favor of a minor is valid. However, a minor cannot be a surety in a contract of guarantee. This is because, the surety is ultimately liable under a contract of guarantee whereas a minor can never be held personally liable.

12. Minor as a trade union member

Any person who has attained the age of fifteen years may be a member for registered trade union, provided the rules of the trade union allow so. Such a member will enjoy all the rights of a member.

(a) Age of majority: In terms of the Indian Majority Act, 1875, every domiciled Indian attains majority on the completion of 18 years of age. However where a guardian is appointed by a court to protect the property of a minor and the court takes charge of the property before the person attains 18 years, then he or she would attain majority on completion of 21 years.

Now let us analyze the position with regard to the minor's agreement -

(i) An agreement entered into by a minor is altogether void: An agreement entered into by a minor is void and the question of its enforceability does not arise.

(ii Minor can be a beneficiary: Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act,1932).

(iii) Minor can always plead minority: Any money advanced to a minor cannot be recovered as he can plead minority and that the contract is void. Even if there had been false representation at the time of borrowing that he was a major, the amount lent to him cannot be recovered. as it would amount to enforcing void contract.

(iv) Ratification of agreement not permitted: A minor on his attaining majority cannot validate any agreement which was entered into when he was minor, as the agreement was void. Similarly a minor cannot sign fresh promissory notes on his attaining majority in lieu of promissory notes executed for a loan transaction when he was minor, or a fresh agreement without consideration.

(v) Liability for necessaries: A person who supplied necessaries of life to a minor or his family, is entitled to be reimbursed from the properties of a minor, not on the basis of any contract but on the basis of an obligation resembling a contract. Necessaries of life not only include food and clothing but also education and instruction. They also include 'goods' and 'services'.

(vi) Contract by guardian are valid: Though an agreement with minor is void, valid contract can be entered into with the guardian on behalf of the minor. The guardian must be competent to make the contract and the contract should be for the benefit of the minor. For instance a guardian can make an enforceable marriage contract on behalf of the minor. Similarly father of bride can enter the contract with the father of bridegroom for payment of certain allowance to the bride.

But not all contracts by guardian are valid. A guardian cannot bind a minor in a contract to purchase immovable properties [Mir Sarwarjan vs. Fakharuddan (1912) 39. Cal. 232]. However, a court appointed guardian can bind a minor is respect of certain sale of

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property ordered by the court.

(b) **Sound mind:** The next important requirement by way of capacity to contract is "sound mind". A person will be considered to be of sound mind if he at the time of entering into a contract is capable of understanding it and forming a rational judgment as to its effect upon his interest.

A person of unsound mind (Lunatic Idiot Drunken and Intoxicated)

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

At time of entering into a contract, a person must be sound mind. Law presumes that every person is of sound mind unless otherwise it is proved before court. An agreement by a person of unsound mind is void. The following are categories of a person considered as person of a unsound mind.

An idiot An idiot is a person who is congenital (by birth) unsound mind. His incapacity is permanent and therefore he can never understand contract and make a rational judgment as to its effects upon his interest. Consequently, the agreement of an idiot is absolutely void ab initio. He is not personally liable even for the payment of necessaries of life supplied to him.

Delirious persons A person delirious from fever is also not capable of understanding the nature and implications of an agreement. Therefore, he cannot enter into a contract so long as delirium lasts.

Hypnotized persons Hypnotism produces temporary incapacity till a person is under the effect of artificial induced sleep.

Mental decay There may be mental decay or senile mind due to old age or poor health. When such person is not capable of understanding the contract and its effect upon his interest, he cannot enter into contract.

Lunatic is person who is mentally deranged due to mental strain or other personal experience.He does not suffer permanently of unsound mind. He can enter into contract during lucid intervals i.e., during period when he is of sound mind.

(c) Person Disqualified by law (Alien enemy , Foreign Sovereign ,Convict, Corporation and Company, Insolvent)

1- **Body corporate or company or corporation**
Contractual capacity of company is determined by object clause of its memorandum of association.
Any act done in excess of power given is ultra – virus and hence void.

2- **Alien enemy** An 'alien' is a person who is a foreigner to the land. He may be either an 'alien friend' or an 'alien enemy. If the sovereign or state of the alien is at peace with the country of his stay, he is an alien friend. An if a war is declared between the two countries he is termed as an alien enemy.

• During the war, contract can be entered in to with alien enemy with the permission of central government.

3- **Convict** can't enter into a contract while he is undergoing imprisonment. But he can enter into a contract with permission of central government while undergoing imprisonment. After the imprisonment is over, be becomes capable of entering into contract. Thus the incapacity is only during the period of sentence.

4- **Insolvent** -When any person is declared as an insolvent, his property vests in receiver and therefore, he can't enter into contract relating to his property. Again he becomes capable to enter into contract when he is discharged by court.

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5- **Foreign sovereigns**, diplomatic staff and representative of foreign staff can enter into valid contract. However, a suit cannot be filed against them, in the Indian counts without the prior sanction of the central Government.

Third party to a contract cannot sue or a stranger to a contract cannot sue.

Only those persons, who are parties to a contract, can sue and be **sued** upon the contract.
This Rule is called "**Doctrine of privities of contract."**
Exception.
i. Trust:-In case of trust a beneficiary can sue upon the contract.
Example: A transferred certain properties to B to be held by him in trust for the benefit of C. In this case, C although not a party to the trust, can sue for the benefits available to him under the trust.
This exception to the rule of Privity of contract has been recognized.

ii. **Family settlement** / Marriage contract:-In case of family settlement members who were not originally party to the contract can also sue upon it.
A female members can enforce a provision for marriage expenses made on partition of HUF.
Example: H sued her father – in – law K to recover Rs.15,000 being arrears of allowance called Pin money payable to her by K under an agreement between K and H's father, consideration being H's marriage to K's son D. Both H and D were minors at the time of marriage.
Held, the promise can be made enforceable by H.
Provision of marriage expenses of female members of a Joint Hindu Family, entitles the female member to sue for such expenses on a partition between male members.,
Two brothers, on partition of family joint properties, agreed to invest in equal shares for their mother's maintenance. Held, the mother was entitled to require her sons to make the investment.

iii. **Acknowledgement of liability**:-Where a person admits his Liability thereafter if he refused be will be stopped from denying his liability.
Example X receives money from Y for paying it to Z. X admits the receipt of that amount to Z. Z can recover the amount from X, even though the money is due from Y.

iv. **Assignment of contract** Assignee (the person to whom benefits of contract are assigned) can enforce upon the contract.

v. Contract entered into through an **agent.**

vi. **Covenants** running with land.

Stranger to consideration:-"Stranger to contract" must be distinguished from a stranger to consideration need not necessarily be provided by the promises it may flow from a third party also such a person is ' stranger to consideration.

Legalities of object

Now let us discuss two other important ingredients of a valid contract namely lawful object and lawful consideration. Speaking generally all persons enjoy freedom for entering into contracts of their choice. But this contractual freedom or their right to enter into agreements is not absolute. There is a limitation on such contractual freedom as they are bound by certain

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general provisions of law. The above observation can be illustrated with the following example: suppose 'A' agrees to pay ` 100/- to B on 'B' stealing 'C's purse, then no Court can compel 'A' to pay 'B' even if he manages to steal 'C's purse because it would amount to encouraging these things.

Where consideration and object is opposed to public policy: Agreement, either because of their object or consideration being opposed to public policy are void and not enforceable. Therefore the meaning of the expression 'public policy' is very important. It can be interpreted in a narrow sense or in a broad sense. If it is understood in a narrow sense, it would cut into rights of people to enter into even genuine agreements. 'Public policy' as a concept is evolved basically to develop an orderly society and for good of the community. But framing public policy itself is a difficult exercise since a too restrictive approach would stifle the rights of people and a too liberal approach would open the gate for many illegal transactions. Therefore policy on 'public policy' has to be developed with circumspection. Public policy has been described as "an unruly horse, which if not properly bridled, may carry its rider he knows not where". Time immemorial following activities/ agreements have been identified as "opposed to public policy".

(a) **Trading with enemy:** Any trading or business activity with a person who owes allegiance to a Government of a country with whom India is at war without any license from Government of India is void. This is because such a trade would be against the interest of Government of India and people of India.

Any agreement made during peace time would be suspended automatically and cannot be carried on further until hostilities come to an end.

(b) **Stifling prosecution**: Any agreement to stifle or prevent illegally any prosecution is void as it would amount to perversion or abuse of justice. The principle is that one should not make a trade of felony. It must be understood however that under the Code of Criminal Procedure,1973 many offences are compoundable. Therefore any agreement towards compounding of an offence to avoid prosecution is not void but is very much enforceable. Thus, where 'A' agrees to sell certain land to 'B' in consideration of 'B' abstaining from taking any criminal proceeding against 'A' with respect to an offence which is compoundable, the agreement is not opposed to public policy.

(c) **Maintenance and Champerty:** Maintenance is promotion of litigation in which the litigant has no interest. Champerty is bargain whereby one party agrees to assist the other in recovering property with a view to sharing the profit of litigation. These agreements for maintenance and champerty are void in England but not in India. Hence these are not opposed to public policy. But where such advances are made by way of gambling in litigation, the agreement to share the subject of litigation is certainly opposed to public policy and therefore is void.

(d) **Interference with course of law and justice:** Any agreement with the object of inducing a judicial officer or administrative officer of the state to act corruptly or not impartially is void. Similarly an agreement to use influence in a litigation in a underhand manner is void. For instance through an agreement 'A' agrees to reward 'B' if he abstains from being a witness in a suit against 'A' is void. But an agreement to pay for to a holy man for prayers for success of a suit is valid.

(e) **Marriage brokerage contract:** An agreement to negotiate a marriage for reward is void. Such marriage brokerage contracts are opposed to public policy.

(f) **Interest against obligation:** The following are examples of agreement that are void as they tend to create an interest against obligation.

The object of fowling agreements is opposed to public policy.

(1) An agreement by an agent to receive without his principal's consent compensation from

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another for the performance of his agency is invalid.

(2) A promise by a trustee to do something in violation of his duty is unlawful

(3) A, who is the manager of a firm, agrees to pass a contract to X if X pay to A ` 2000 privately; the agreement is void.

(g) Sale of public offices: While appointing a person to certain important and high public office, merit alone should be the criteria. Any attempt to influence or any agreement to influence anyone in this regard should be seen as an act 'opposed to public policy'.fina

Quasi Contract and contingent contract

Contingent contract

In terms of Section 31 of the Act contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen. Contracts of indemnity and contracts of insurance fall under this category.

For instance if 'A' contracts to pay 'B' ` 100000/- if B's house is destroyed by fire then it is a contingent contract.

Essentials of a contingent contract

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent

(b) The event referred to is collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise. Where 'A' agrees to deliver 100 bags of wheat and 'B' agrees to pay after delivery, this is a conditional contract and not a contingent contract. Similarly where 'A' promises to pay 'B' ` 10000/- if he marries 'C' is not a contingent contract but a conditional contract.

(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.
For example if 'A' promises to pay 'B' ` 10000/- if 'A' left for Delhi from Mumbai on a particular day, it is a contingent contract because though 'A's leaving for Delhi is his own will, it cannot happen only at his will.

The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34 and 36 of the Act.

(a) Contingency is the "happening of an event": Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void. For instance 'X' enters into a contract to buy 'Y's car provided 'Y' survives 'A'. Here 'Y' surviving 'A' or 'A' dying before 'Y' is the event on which the contract is contingent and they cannot be enforced until 'A' dies.

(b) Contingency is the non-happening of an event: Where a contingent contract is made contingent on a non-happening of an event, it can be enforced only when its happening becomes impossible. For example where 'P' agrees to pay 'Q' a sum of money if a particular ship does not return, the contract becomes enforceable only if the ship sinks so that it cannot return.

(c) Contingent on the future conduct of a living person: A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does some thing to make the 'event' or 'conduct' as impossible of happening. For example where 'A' agrees to pay 'B' a sum of money if 'A' marries 'C'. 'C' marries 'D'. This act of 'C' has rendered the event of 'A' marrying 'C' as impossible; it

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is though possible if there is divorce between 'C' and 'D'.

(d) Contingent on an impossible event: A contingent agreement to do a thing or not to do a thing if an impossible event happens is void and hence is not obviously enforceable. The situation would not change even if the parties to the agreement are not aware of such impossibility. 'A' agrees to pay 'B' ` one lakh if sun rises in the west next morning. This is an impossible event and hence void.

Wagering agreement: Let us discuss wagering contract. We shall also distinguish wagering agreements from speculative transactions and mere 'gambling'.

Wagering agreement is one which involves payment of a sum of money upon the determination of an uncertain event. The essence of wagering agreement is where there are two parties, one wins, the other loses upon an uncertain event taking place in which neither of them has legitimate interest.

For example 'A' agrees to pay ` 500/- to 'B' if it rains and similarly 'B' agrees to pay 'A' if it does not. This is a classic case of a wagering agreement. But where one of the parties has control over the event, the agreement is valid. An agreement by way of a wager is void. A good definition of wagering agreement would be the one given by Anson: "A promise to give money or money's worth upon determination or ascertainment of an uncertain event".

For example 'A' agrees

Now let us see the position with regard to transaction of "purchase of lottery ticket" and "horse racing". Section 30 of the Act provides that an agreement [to buy lottery tickets] is one by way of wager and is void. However any subscription or contribution or agreement towards such subscription or contribution towards any plate or prize or sum of money, of the value of ` 500 or more to be awarded to a winner of a horse race is not unlawful.Speculative transactions: While as clearly seen, wagering contracts are void, speculative transactions are valid. It is often difficult to distinguish between the two. There are two bare elements of a speculative transaction. They are (a) mutual intention of parties to acquire or deliver goods or commodities and (b) undertaking of risk arising from movement of prices. In wagering contract, only the element of risk is seen.

Now let us take an example:

'A' enters into a agreement with 'B' to buy 100 bales of jute at ` 150/- per bale for forward delivery after six months. This is a proposed transaction of purchase @ ` 150/- per bale. What if the price at the time of delivery goes up to ` 200/- 'A' has the following two options:

(i) to take delivery of 100 bales at the contracted rate of ` 150/- and sell it to some other buyer and make a profit of ` 50/ -per bale or

(ii) to simply collect the difference of ` 50/- per bale from 'B'

Similarly what if the price at the time of delivery goes down to ` 125/- per bale. 'A' has the following two options:

(i) to take delivery of 100 bales at the contracted rate of ` 150/- [and perhaps sell it to some buyer and incur a loss of ` 25 per bale] or

(ii) to pay the difference of ` 25/- per bale to 'B' & close the contract.

In the above example if the original intention of the parties was only to settle the difference in price, than it would be a wagering contract which would be void. Thus by now it would be clear that wagering postulates only incurring of risk. It is void because it is opposed to public policy.

While gambling and wagering are prohibited by law, speculation is not.

Now let us consider other peculiar situations to see whether they are wagering contracts or speculative contracts or valid contracts.

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Insurance policy: An insurance policy is a valid contract. But if an insurance policy is taken by a person who has no insurable interest, then it is void. For instance a person who has no insurable interest in a ship, takes a policy against it being sunk, then the contract is void.

Promissory notes on a wagering contract: While a wagering contract is void ab initio, it is but automatic that a promissory note given out of a wagering contract is not enforceable by way of a suit. A promissory note of this character is one without consideration and hence is null and void.

Suit to recover deposit: A winner of bet cannot recover the amount which he has won even if the amount is kept by way of deposit by the loser with the stakeholder. Such earmarking or identification of funds does not enhance the validity of the contract which is void. In the above example the loser can recover the amount from stakeholders as long as the amount has not been made over by the stakeholder to the winner.

Wager and collateral transactions: The validity of a collateral transaction cannot be challenged because the main contract is a wager and void. For instance in a wagering contract, the broker is entitled to collect his brokerage. Similarly the principal can recover the prize money from his agent received by him on account of a wagering transactions.

The acid test of validly of a collateral transaction is whether the main transaction is illegal or legal but void. If the main transaction is illegal, the collateral transaction cannot be valid. For example security given for regular payment of the rent of a house let out for the purpose of gambling cannot be recovered; the recovery of security being tainted with the illegality of original transaction cannot be enforced.

A promise made by the loser of a wager to pay the amount lost in consideration of the winners forbearance to sue him as defaulter can be enforced as a fresh contract, separate and distinct from original wagering contract though collateral to it.

Difference between a contingent contract and a wagering contract

1. A wagering agreement is a promise to give money or money's worth with reference to an uncertain event happening or not happening.
   A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening.
2. A wagering agreement consists of reciprocal promises whereas a contingent contract may not contain reciprocal promises.
3. In a wagering contract the uncertain event is the core factor whereas in a contingent contract the event is collateral.
4. A wagering agreement is essentially contingent in nature whereas a contingent contract may not be wagering in nature.
5. In a wagering agreement, the contracting parties have no interest in the subject matter whereas it is not so in a contingent contract.
6. A wagering contract is a game, losing and gaining alone matters whereas it is not so in a contingent contract.
7. A wagering agreement is void where as a contingent contract is valid.

Quasi contract

Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as quasi contracts as they create same obligations as in the case of regular contract.

Quasi contracts are based on principles of equity, justice and good conscience.

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Salient features of quasi contracts are:

(a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.

(b) Secondly, it does not arise from any agreement of the parties concerned, but it imposed by the law; and

(c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

There are five circumstances which are identified by the Act as quasi contracts. These five circumstances do not result in regular contracts.

(a) **Claim for necessaries supplied to persons incapable of contracting:** Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.
For example if 'A' supplies necessaries of life to 'B' a lunatic or to his wife or child whom 'B' is liable to protect and maintain, then 'A' can claim the price from the property of 'B'. For such claim to be valid 'A' should prove the supplies were to the actual requirements of 'B' and his dependents. No claim for supplies of luxury articles can be made. If 'B' has no property 'A' obviously cannot make his claim.

(b) **Right to recover money paid for another person:** A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.
Here the person who makes the payment must honestly believe that his own interest demands payment. [Muni Bibi vs. Trilokinath].
In a case the plaintiff agreed to purchase certain mills and to save it from being sold to outsiders paid certain arrears of municipal dues. Here the payment made by the plaintiff was held to be recoverable as he had interest in the property as prospective buyer.

(c) **Obligation of person enjoying benefits of non-gratuitous act:** In term of section 70 of the Act "where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
The above can be illustrated by a case law where 'K' a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and in the mean time government went on appeal. The appeal was decided in favour of the government and 'K' was directed to return the salary paid to him during the period of reinstatement. [Shyam Lal vs. State of U.P. A.I.R (1968) 130]

(d) **Responsibility of finder of goods:** In terms of section 71 'A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee'.

Thus a finder of lost goods has:
(i) to take proper care of the property as men of ordinary prudence would take
(ii) no right to appropriate the goods and
(iii) to restore the goods if the owner is found.

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Where 'P' a customer in 'D's shop puts down a brooch worn on her coat and forgets to pick it up and one of 'D's assistants finds it and puts it in a drawer over the week end. On Monday, it was discovered to be missing. 'D' was held to be liable in the absence of ordinary care which a prudent man would have taken.

(e) **Liability for money paid or thing delivered by mistake or by coercion:** In terms of Section 72 of the Act, "a person to whom money has been paid or any thing delivered by mistake or under coercion, must repay or return it. Every kind of payment of money or delivery of goods for every type of 'mistake' is recoverable. [Shivprasad vs Sirish Chandra A.I.R. 1949 P.C. 297]

A payment of municipal tax made under mistaken belief or because of mis- understanding of the terms of lease can be recovered from municipal authorities. The above law was affirmed by Supreme Court in cases of Sales tax officer vs. Kanhaiyalal A.I.R.1959 S.C.835

Similarly any money paid by coercion is also recoverable. The word coercion is not necessarily governed by section 15 of the Act. The word is interpreted to mean and include oppression, extortion, or such other means [Seth Khanjelek vs National Bank of India].

In a case where 'T' was traveling without ticket in a tram car and on checking he was asked to pay ` 5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him. The suit was decreed in his favour. [Trikamdas vs. Bombay Municipal Corporation A.I.R.1954]

In all the above cases the contractual liability arose without any agreement between the parties.

While on the subject of 'object' and 'consideration'

it must be said that in practice it is difficult to distinguish between 'object' and 'consideration' especially when consideration consists of a promise to do or, not to do something. Sometimes both 'object' and 'consideration' are seen for evaluation. For example, where 'A' agrees to sell goods to 'B' who is insolvent and B assigns the benefit of the contract for ` 100/- with a view to defrauding creditors, the consideration for the assignment viz ` 100/- is lawful but the object namely defrauding creditors is unlawful as it is to defeat the provision of insolvency law.

Although 'object' and 'consideration' are sometimes intertwined we have to, where ever it is possible, separate them and identify whether they are lawful.

In terms of section 23 of the Act 'consideration' or 'object' is unlawful if it is forbidden by law; or it would if permitted, defeat the provisions of any law or is fraudulent or involves injury to the person or property of another or is immoral or opposed to public policy. Every agreement where the object or consideration is unlawful is void. Thus section 23 has set out the limits to contractual freedom. Following are examples of agreement which are void because the object is unlawful.

(i) Where A, B & C enter into an agreement to share equally among themselves certain gains acquired by fraud or loss acquired by fraud. The agreement is void because the object being commission of fraud, is unlawful.

(ii) A promises to return the stolen property of 'B' if 'B' would withdraw the criminal case filed against him, the agreement is void as its object namely withdrawing the case would mean stifling prosecution.

Now let us consider circumstances which would make consideration and the object as well unlawful. There are seven such circumstances namely -

(i) Agreement forbidden by law: Acts forbidden by law means acts that are punishable under any Statute or Rules or Regulations made under any Statute.

For instance a plantation company that is commenced, for growing, felling and selling

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timber cannot enter into any agreement to grow and fell sandalwood trees as felling of sandalwood is prohibited by law viz the Forest Act.

Example: A license to cut grass is given to 'X' by Forest Department under the Forest Act. The license provides for imposition of penalty in the events of 'X' choosing to assign his right. However, if 'X' assigns his right, the agreement would still be valid since there is no prohibition for such assignment as the consideration stipulating penalty is only to regulate the matter as a matter of administrative measure.

(ii) Consideration defeats the provision of law: Where an agreement is entered into with the object of defeating any provision of law then it is prohibited. "Law" here should mean any Statute, Law, regulation etc, in force. This can be illustrated by the following-

(a) Where a debtor agrees not to plead limitation vis-à-vis his creditor, it is an agreement to defeat the Limitation Act.

(b) An agreement between owner of land who has to pay land revenue in arrears and a stranger that the stranger would purchase his estate for revenue's sake and reconveys it to the former on receipt of purchase money is void, as it would defeat the law relating to revenue, which apparently prohibits defaulting owners from purchasing back the same estate already sold due to his default.

(c) An agreement by a Hindu to give his son in adoption in consideration of annual allowance to natural parents would be in violation of Hindu Law and hence is unlawful.

(d) Any agreement by a Muslim with the wife before their marriage that the wife shall be at liberty to live with her parents after marriage is void as it would defeat the provisions of Muslim Law.

(iii) Consideration that would defeat any rule for the time being in force: This is a situation not very different from point (ii) discussed above. The issue covered by this point can be explained by following two examples:

(a) A 'will' must be proved in order to be probated by a court. A mere consent of parties by way of agreement to except this requirement of proof of genuineness or proper execution of will is not lawful and therefore cannot be enforced under C.P.C.

(b) A receiver is a court officer. Therefore his remuneration has to be fixed by the court. Parties to certain litigations cannot add or deviate of the power of the receiver. Similarly they cannot fix salary of a receiver without the leave of the court however unconditional it may be. Such an act would be in contravention of law.

(iv) Where consideration is a fraud: Following are illustrations to prove where the object or consideration of an agreement is unlawful on the ground of fraud -

(a) 'A' is an agent for Zamindar, the principal. He agrees for money to lease of land for 'B' from his principal, the Zamindar. The agreement between 'A' and 'B' is void as the consideration is fraudulent

(b) 'A' & 'B' are partners in a firm. They agree to defraud a Government department by submitting a tender in the individual name and not in the firm name. This agreement is void as it is a fraud on the Government department.

(v) Where object or consideration is unlawful because it involves or causing injury to a person or loss of property: The term 'injury' means criminal or wrongful harm. Following are the illustrations where the object or consideration is unlawful as it involves injury either to person or property.

(a) 'A' agrees to buy a property from 'B' although A knows 'B' had agreed previously to sell the property to 'C'. The intention of 'A' here is to cause injury to the property of

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'C'

(b) 'A' agrees to print a book of 'B' which has clearly been published by "W" This agreement is void as it is not only in violation of Copyright Act but also with the intent to cause injury to the property of another.

(c) 'A' borrowed money from 'B'. He is unable to pay either the principal or interest. Therefore he agrees to render manual labour for certain period failing which he agrees to pay exorbitant interest. This agreement is void as rendering labour as consideration amounts to agreeing to be a slave. Slavery is opposed to public policy as well. In other words consideration involves 'injury' to 'A'. Hence the agreement is void.

(vi) Where consideration is immoral: Following are illustration where the agreement is void because the object or consideration is unlawful being immoral.

(a) Where 'A' agrees to let his house to a prostitute on rent, where with A's knowledge she carries on her vocation. 'A' cannot collect the rent as the agreement is void, the object being void.

(b) Where 'P' had advanced money to 'D' a married woman to enable her to obtain a divorce from her husband. He also promised to marry her after divorce. It was held that 'P' was not entitled to recover the amount from 'D' as the agreement was against good morals.

(vii) Where consideration is opposed to public policy: Agreement, either because of their object or consideration being opposed to public policy are void and not enforceable.

Time immemorial, following activities/ agreements have been identified as;
"opposed to public policy".

The meaning of the expression 'public policy' is very important. It can be interpreted in a narrow sense or in a broad sense. If it is understood in a narrow sense, it would cut into rights of people to enter into even genuine agreements. 'Public policy' as a concept is evolved basically to develop an orderly society and for good of the community. But framing public policy itself is a difficult exercise since a too restrictive approach would stifle the rights of people and a too liberal approach would open the gate for many illegal transactions. Therefore policy on 'public policy' has to be developed with circumspection. Public policy has been described as "an unruly horse, which if not properly bridled, may carry its rider he knows not where".

(a) **Trading with enemy:** Any trading or business activity with a person who owes allegiance to a Government of a country with whom India is at war without any license from Government of India is void. This is because such a trade would be against the interest of Government of India and people of India.

Any agreement made during peace time would be suspended automatically and cannot be carried on further until hostilities come to an end.

(b) Stifling prosecution: Any agreement to stifle or prevent illegally any prosecution is void as it would amount to perversion or abuse of justice. The principle is that one should not make a trade of felony. It must be understood however that under the Code of Criminal Procedure,1973 many offences are compoundable. Therefore any agreement towards compounding of an offence to avoid prosecution is not void but is very much enforceable. Thus, where 'A' agrees to sell

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certain land to 'B' in consideration of 'B' abstaining from taking any criminal proceeding against 'A' with respect to an offence which is compoundable, the agreement is not opposed to public policy.

(c) Maintenance and Champerty: Maintenance is promotion of litigation in which the litigant has no interest. Champerty is bargain whereby one party agrees to assist the other in recovering property with a view to sharing the profit of litigation. These agreements for maintenance and champerty are void in England but not in India. Hence these are not opposed to public policy. But where such advances are made by way of gambling in litigation, the agreement to share the subject of litigation is certainly opposed to public policy and therefore is void.

(d) Interference with course of law and justice: Any agreement with the object of inducing a judicial officer or administrative officer of the state to act corruptly or not impartially is void. Similarly an agreement to use influence in a litigation in a underhand manner is void. For instance through an agreement 'A' agrees to reward 'B' if he abstains from being a witness in a suit against 'A' is void. But an agreement to pay for to a holy man for prayers for success of a suit is valid.

(e) Marriage brokerage contract: An agreement to negotiate a marriage for reward is void. Such marriage brokerage contracts are opposed to public policy.

(f) **Interest against obligation:** The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.

(1) An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.
(2) A promise by a trustee to do something in violation of his duty is unlawful
(3) A, who is the manager of a firm, agrees to pass a contract to X if X pay to A ` 2000 privately; the agreement is void.

(g) **Sale of public offices:** While appointing a person to certain important and high public office, merit alone should be the criteria. Any attempt to influence or any agreement to influence anyone in this regard should be seen as an act 'opposed to public policy'. 'Public
policy' also demands that there should be no money consideration and if it is there, it could be opposed to public policy. This is for the reason presence of money consideration would convert the situation as sale of public office.

Following are illustrations in this regard.

(1) An agreement to pay money to public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
(2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.
(3) The sale of the office of a mutawali of wakf is opposed to public policy, because the office of mutawali is connected with matters of public interest.

(h) Agreement for the creation of monopolies: Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void. It is also hit by the MRTP Act.

(i) Agreement in restraint of marriage (Section 26): Every agreement in restraint of

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marriage of any person other than a minor, is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding.

(j) Agreement in restraint of trade (Section 27): Any agreement through which a person is restrained from exercising a lawful profession, trade or business of any kind is to that extent void. The object of this law is to protect trade. The restraint, even if it is partial, will make the agreement void. Example: X, a shop keeper, in a particular locality agrees to pay 'Y' his rival in business certain compensation, if 'Y' close his business in that locality the agreement is void.

The principle of law however has a number of exceptions which are discussed hereunder.

(i) where a person sells his business along with the goodwill to another person, agrees not to carry on same line of business in certain reasonable local limits, such an agreement is valid.

(ii) In terms of Section 36 of the Indian Partnership Act,1932 an agreement through which an outgoing partner will not carry on the business of the firm for a reasonable time will be valid, though it is in restraint of trade.

(iii) Again in terms of Section 54 of the Partnership Act,1932 partners among themselves may agree that upon dissolution of the firm some of them may not carry on the business of the firm. Such an agreement is valid.

(iv) Section 55 of the Indian Partnership Act,1932 provides that where a full firm is sold by partners along with goodwill to a buyer, there can be an agreement that they would not carry on the business of the dissolved firm for certain period and within certain local limits and such an agreement will be valid.

(v) An agreement of service through which an employee commits not to compete with his employer is not in restraint of trade.
Example: 'B' is a Doctor and he employs 'A' a juniorDoctor as his assistant. 'A' agrees not to practice as Doctor during the period of his employment with 'B' as a Doctor independently. Such an agreement will be valid.

(vi) An agreement between manufacturer and a wholesale merchant that the entire production during a period will be sold by the manufacturer to the wholesale merchant is not in restraint of trade.

(vii) An agreement among sellers not to sell a particular product below a particular price is not an agreement in restraint of trade.

(k) Agreement in restraint of legal proceedings (Section 28): An agreement in restraint of legal proceedings resulting in restriction of one's right to enforce legal rights is void. Similarly any agreement which abridges the usual period for commencing the legal proceedings is also void. Further these agreement are also void in view of section 23 of the Indian Contract Act,1872 as the object of the agreements are to defeat the provision of law.
Nevertheless, a clause in an fire insurance policy stipulating that if the claim is made and rejected and if no suit is instituted within three months after such a rejection, all the benefits under the policy will be forfeited, is valid. However, there are certain exceptions to the above rule:

(i) A contract by which the parties agree that any dispute between them in respect of any subject shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable is a valid contract. For instance, in agreement between the holder of a fire insurance policy and the insurance company that no suit shall be instituted until the question of the amount of damage sustained by the assured has first been ascertained by a reference to an arbitrator is a perfectly valid agreement.

(ii) Similarly, a contract by which the parties agree to refer to arbitration any question

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between them which has already arisen or which may arise in future, is valid; but such a contract must be in writing.

We have already seen that certain agreements are void ab initio under the Contract Act, like agreements by incompetent persons [Section 11], agreement with unlawful object or consideration [Section 23], agreement made under mutual mistake of fact [Section 20], agreement without consideration [Section 25], agreement in restraint of marriage, trade or legal proceedings etc., as they are opposed to public policy.

In addition to the above, there are also other agreements which are expressly declared as void.

(a) Where consideration is unlawful in part: By virtue of Section 24 of the Indian Contract Act, "If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void". This Section is obviously a corollary to Section 23 of the Act. Where the consideration is unlawful, the entire agreement is void as the agreement has to be looked as a whole. The general principle of law is where the legal part of an agreement can be separated from the illegal part, then the legal part if it can be given effect by rejecting the bad part and retaining the good part, then the good part is given effect. But where no such separation is possible, the contract is altogether void.

Example: 'A' has business interest in Indigo, as a manufacturer. He also has interest in illegal traffic of other goods. Where 'A' employs 'B' for a salary of ` 2000/- to act as superintendent of A's entire business, the agreement is void as the object of A's promise unlawful in part.

(b) Agreement the meaning of which is uncertain (Section 29): Where the meaning of the terms of an agreement is uncertain or if it is not capable of being understood with certainty, then the agreement is void. But where the meaning is capable of being made certain, then the agreement is valid. For example where 'A' enters into an agreement to supply 100 tones of oil, the agreement is not valid as the meaning of it is uncertain since what type of oil that is promised to be supplied is not clear. But on the other hand if 'A' is a dealer of coconut oil only, then the meaning of the agreement would crystallize very easily and then the agreement would be valid.

Performance of contract

Performance of contract takes place when the parties to a contract fulfill there obligations arising under the contract within the time and in manner prescribed .Sec 37(para 1) lays down that the parties to a contract must either perform or offer to perform ,their respective promises, unless such performance is dispensed with or excused.

Offer to perform

Sometimes it so happens that the promisor offer to to perform his obligation under the contract at proper time and place but the promisee does not accept the performance . This is known as "attempted performance" or "tender" .It makes promisor not responsible for non performance , nor does he thereby lose his right under the contract .Thus , a tender performance is equivalent to real performance. And entitles him to sue the promisee for breach of contract.

A. **Tender or offer of performance to be valid must satisfy the following conditions:-**

(i) It must be unconditional

Ex :-'X' offers to 'Y' the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.

(ii) It must be made at a proper time and place.

Ex:-If the promisor wants to deliver the goods at 1 am. This is not a valid tender unless it was so agreed;

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(iii) Reasonable opportunity to examine goods.
Ex:-Delivery of something to the promise by the promisor promise must have reasonable opportunity of inspection.

(iv) It must be for the whole obligation :- goods and amount.
Ex:-'X' a debtor, offer's to pay 'Y' the debt due in installments and tenders the first installment. This is not a valid tender minor deviation – not invalid [Beharilal v ramgulam]

(v) It must be made to the promise or his duty authorized agent.
Ex:-It must be person who is willing to person his part of performance.

(vi) In case of payment of money, tender mustbe of the exact amount due and it must be in the legal tender.

Type of Tender

Tender of goods and services

When a promisor offers to delivery of goods or service to the promisee, it is said to be tender of goods or services, if promisee does not accept a valid tender, It has the following effects:

(i) The promisor is not responsible for non – performance of the contract.

(ii) The promisor is discharged from his obligation under the contract. Therefore, he need not offer again.

(iii) He does not lose his right under the contract. Therefore, he can sue the promise.

Tender of money

Tender of money is an offer to make payment. In case a valid tender of money is not accepted, it will have the following effects:

(i) The offeror is not discharged from his obligation to pay the amount.
(ii) The offeror is discharged from his liability for payment of interest from the date of the tender .

Basic principle of performance: In a contract where there are two parties, each one has to perform his part and demands the other to perform. Discharged of this obligation is the primary principle of performance of contract. The parties would be treated as having been free from obligation only under the provisions of any law after performance of respective promises. Until such time, the performance is neither excused nor dispensed with. Not only the promisor has a primary duty to perform, even the representative in the event of death of a promisor, is bound by the promise to perform, unless a contrary intention appears from the contract [Section 37].

The promise under a contract can be performed by any one of the following

(i) Promisor himself: Invariably the promise has to be performed by the promisor where the contracts are entered into for performance of personal skills, or diligence or personal confidence, it becomes absolutely necessary that the promisor performs it himself.

(ii) Agent:Where personal consideration is not the foundation of a contract, the promisor or his representative can employ a competent person to perform it.

(iii) Representatives: Generally upon the death of promisor, the legal representatives of the deceased are bound by the promise unless it is a promise for performance involving personal skill or ability of the promisor. However the liability of the legal representative is limited to the value of property inherited by him from the promisor.

(iv) Third Person: The question here is whether a total stranger to a contract who is identified as a third person can perform a promise. Where a promisee accepts performance from a third party he cannot afterwards enforce it against the promisor.Such a performance, where accepted by the promisor has the effect of discharging the promisor though he has neither authorized nor ratified the act of the third party.

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(v) Joint promisors: Where two or more persons jointly promise, the promise must be performed jointly unless a contrary intention appears from the contract.
Where one of the joint promisors dies, the legal representative of the deceased along with the other joint promisor(s) is bound to perform the contract.
Where all the joint promisors die, the legal representatives of all of them are bound to perform the promise.

The law set out above can be illustrated with the following examples:

1. A promises B to pay ` 1000/- on delivery of certain goods. A may perform this promise either himself or causing someone else to pay the money to B. If A dies before the time appointed for payment, his representative must pay the money or employ some other person to pay the money. If B dies before the time appointed for the delivery of goods, B's representative shall be bound to deliver the goods to A and A is bound to pay ` 1000/- to B's representative.
2. A promises to paint a picture for B for a certain price. A is bound to perform the promise himself. He cannot employ some other painter to paint the picture on his behalf. If A dies before painting the picture, the contract cannot be enforced either by A's representative or by B.
3. A delivered certain goods to B who promise to pay ` 5000/-. Later on B expresses his inability to clear the dues. C, who is known to B, pays ` 2000/-to A on behalf of B. Before making this payment C did tell B nothing about it. Now A can sue B only for the balance and not for the whole amount.

This discussion arises in the context of the observation that the obligations of a promisor would bind the legal representative also (only) to the extent of value of property inherited by them. This became the law that legal representatives are successors.

Succession: When the benefits of a contract are succeeded by a process of law, both the burden and the benefit would some times devolve on the legal heir. For example 'B' is the son of 'A'. Upon A's death 'B' will inherit all the assets and liabilities of 'A' [These assets and liabilities are also referred to as debts and estates]

Thus 'B' will be liable to all the debts of 'A', but if the liabilities inherited are more than the value of the estate [assets] inherited it will be possible to pay only to the extent of assets inherited.

Joint promisor -In terms of Section 43 of the Act,

(i) when two or more persons make joint promise, the promisor can compel any one of the joint promisors to perform the whole of promise.

(ii) in the above situation, the performing promisor can enforce contribution from other joint promisors, in the absence of express agreement to the contrary.
Example: Where A,B and C have jointly signed a promissory note for ` 3000/-, and where 'A' is compelled to pay the entire amount of ` 3000/- , he is entitled recover by way of contribution of ` 1000/- each from the other two joint promisors namely B and C unlessagreed to otherwise mutually.

In the above situation again, if one of the joint promisors namely 'B' is unable to contribute ` 1000/-, 'A is entitled to recover ` 1500/- from 'C' who is the remaining joint promisor instead of ` 1000.

From the above, it is clear that the liability of joint promisors is joint and several and in the absence of any special contract to the contrary, the amount due can be recovered from any one of the joint promisors.

For example X,Y and Z jointly borrow from P, ` 3000/-, Because the liability of the borrower is

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joint and severed, 'P' can recover the amount either from X or from Y or from Z or from all of them jointly. A joint promisor cannot claim that he be sued along with all other joint promisors only. If, however the promisee sues one of the promisors and obtains a decree against him, he is precluded from bringing a fresh suit against the remaining borrowers.
In the matter of release of one of the joint promisors, by another joint promisor, it must be understood that such a release does not discharge other joint promisors nor does the released joint promisor would stand released to other joint promisor or promisors. [Section 44 of the Act].

Joint promisee-The rights of two or more promisees who are known as joint promisees is discussed in Section 45 of the Act. In terms of the said section "When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly".

For example, A, in consideration of ` 5,000 lent to him by B and C, promises B and C jointly to repay the sum with interest on a specified day but B dies. In such a case right to demand payment shall rest with B's legal representatives, jointly with C during C's lifetime and after the death of C, with the legal representatives of B and C jointly as 'B' and 'C' both are joint promisees". The above principle of joint promises is applicable for partners, joint mortgagees and members of a Hindu Undivided Family. In all these cases there is no single promisee. Therefore in is mentioned, then it can be performed any time on that day but during business hours only.

A promisee may refuse to accept delivery (of goods), if it is delivered after business hours. For example if the promisor wishes to deliver goods at a time which is beyond business hours, the promisee can refuse.

As regards the place of performance, where no place is fixed for the performance of a promise, it is the duty of the promisor to ask the promisee to fix a reasonable place. No distinction is made between an obligation to pay money and an obligation to deliver goods or discharge any other obligation. But generally the promise must be performed or goods must be delivered at the usual place of business.
Where the promisor has not undertaken to perform the promisee without an application by the promisee and the promise is to be performed on a certain day, it is the duty of the promisee to apply for performance at a proper place and with in usual hours of business.

If promisor refuses to perform his promise

Where a party to a contract has refused to perform the promise he has made or had disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless his acquiescence in the continuance of the contract has been conveyed either by words or by deeds [conduct] [Section 39]. Thus from the above it could be seen that the following two rights accrue to the aggrieved party- (i) to terminate the contract and (ii) to indicate by words or conduct that he is interested in its continuance.

In case the promisee decides to continue the contract, he would not be entitled to put an end to

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the contract on this ground immediately. In either case, the promisee would be able to claim damages that he suffers as a result of the breach for it is not incumbent on the promisee to decide immediately in case of an anticipated breach that the contract may be ended. He may, however, choose to do so. In that event, the loss (if any) suffered by him will have to be made good by the promisor. On the other hand, if he indicates that he is interested in the performance of the contract, then he would be entitled to claim damages which accrue on the date the contract is due to be performed. It would, therefore, be clear that the rights that we have just stated above accrue to a promisee when the promisor decides not to perform the promise.

The above law can be illustrated with the following example. Where 'A', 'B' and 'C' jointly borrow a sum of money from 'X' all of them are jointly liable to repay the amount. Where in the above example, 'A' dies, his legal representative, 'L' would be liable to repay the loan along with 'B' and 'C', the remaining joint borrowers.

Now let us consider the position whether the promisee can enforce his right against any one of the joint promisors and if so what are the rights and duties of the other promisors to make contribution

Effect of one party preventing another from performing promise [Section 53]: When in a contract consisting of reciprocal promises one party prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented. The person so prevented is entitled to get compensation for any loss he may have sustained for the non-performance.

The above can be illustrated with the following illustrations by way of two case laws.

(a) Where there is a contract for sale of standing timber and as per the terms seller is expected to cut and cord the standing timber before the buyer takes delivery but seller cords only a part of it, but neglects to cord the rest of it, then the buyer has a right to avoid the contract and claim compensation for any loss sustained.

(b) In the well known case of O 'Nell vs. Armstrong, an Englishman was engaged by the Captain of a Japanese ship to act as fireman on a voyage from England to Japan. During the course of the voyage Japan declared war against China. The Englishman had to leave service because had he continued in service he would have incurred penalties under Foreign Enlistment Act. In effect because of the war, the Englishman was prevented from discharging his part of the contract. The suit filed by him was decreed in his favour in spite of being opposed by the Japanese shipping company. It should be appreciated that the Captain of Japanese ship could not have brought a case against the Englishman for non-performance as the Japanese themselves were responsible for preventing the Englishman from performing his part of the contract.

Sometimes the parties would be prevented from discharging a part of the contract but not the entire contract. In such a case, the party so prevented need not avoid the full contract but perform the rest of it.

Alternative promise one branch being illegal: "In the case of the alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced".

For example, in the nearest reversionary heir of B, agreed to transfer his inheritance to C, if he succeeded to B; and he did not transfer his own estate to C. It was held that first promise was not enforceable, as it amounted to an agreement to transfer an estate on the mere chance of succession prohibited by Section 6 of the Transfer of Property Act, but the second promise was enforceable under Section 58 as an alternative promise. [Mahadeo Prasad Singh vs. Mathura 132 L.C. 321 A]

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whether time is essence of a contract?

Section 55 of the Act regulates the position of performance of contract where time is of essence. In terms of this Section, where it is understood between parties that time is an essential element, and where one party is unable to perform his part of the promise either in full or in part within the time specified, then the contract is voidable at the option of the party either in full or in part to the extent of non performance of the contract within the time. In these cases the contract is not voidable if time is not of essence of the contract, but the promisee is entitled for compensation for loss if any suffered on account of such failure.

In a contract where time is of essence and promisor is unable to perform his part within the time, as already stated the contract becomes voidable at the option of the other party. However the other party agrees that the promisor would perform his part subsequently after the time fixed, the promisee cannot claim any compensation for loss or damage or injury unless he gives any notice to the promisor of his intention to do so.

Ordinarily from a plain examination of a contract it would be difficult to ascertain from the terms of the contract whether time is essence of the contract. A promisee may have failed to perform his contract within the specified time. Yet time may not be treated as essence of the contract in that case. Whether time is essence of a contract has to be decided from the terms of the contract.

In mercantile contracts, as business world is ruled by 'time' and 'money' any stipulation as to 'time' and 'money' is an essential condition.

The general principles that are followed can be enunciated as under.

(i) In transaction on sale of gold, silver, blue chip shares, time of delivery is of essence. Here time will be treated as essence of contract.

(ii) In transaction involving sale of land, redemption of mortgages, though certain time frame is fixed, any delay is not valued seriously provided justice can be done to parties. Of course even in sale of land, time can be made as on essence of contract by express words.

Contract cannot be avoided where time is not of essence: When there is delay in performing promise on executing a contract where the time is not of essence, parties concerned cannot avoid the contract. However in such cases promises must be performed with in a reasonable time other wise it becomes voidable at the option of the promisee.

Effect of acceptance of performance out of time: Even where time is of essence, the party who is entitled to avoid the contract can waive the condition relating to "performance within time"; but in such cases he cannot claim any compensation for loss if any suffered unless he has put the other party on notice.

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Discharge Of Contract

Discharge of a contract means termination of contractual relation between the parties to a contract in other words a contract is discharged when the rights and obligations created by it are extinguished

Mode of discharge of contract

1. **By performance**- Actual, & Attempted
2. **By mutual agreement-** . Novation – Sec 62, Rescission –Sec 62, Alteration – Sec62,Remission –Sec 63, Waiver, Merger
3. **By Operation of law-** Death 2. Merger3. Insolvency 4. Unauthorized alteration
4. **By lapse of Time**

5. **By breach of contract-** Actual& Anticipatory
6. **By impossibility of performance**

Discharge by performance-
Fulfillment of obligations by a party to the contract within the time and in the manner prescribed in the contract.

(a) Actual performance –no party remains liable under the contract. Both the parties performed.

(b) Attempted performance or tender.:-Promisor offers to performhis obligation under the contract but the promise refuses to accept the performance. It is called as attempted performance or tender of performance. But the contract is not discharged.

Discharge by mutual agreement

(a) **Novation** [Sec 62] –Novation means substitution of a new contract in the place of the original contract new contract entered into in consideration of discharge of the old contract. The new contract may be.

Between the same parties (by change in the terms and condition)
Between different parties (the term and condition remains same or changed)

Following conditions are satisfied :-
(1) All the parties must consent to novation
(2) The novation must take place before the breach of original contract.
(3) The new contract must be valid and enforceable.

Example: A owes B Rs.50,000. A enters into an agreements with B and gives B a mortgage of his estate for Rs.40,000 in place of the debt of Rs.50,000. (Between same parties)
A owes money Rs.50,000 to B under a contract. It is agreed between A, B & C that B shall henceforth accept C as his Debtor instead of A for the same amount.
Old debt of A is discharged, and a new debt from C to B is contracted. (Among different parties)

(b) **Rescission [62]:-**Rescission means cancellation of the contract by any party or all the parties to a contract. X promises Y to sell and deliver 100 bales of cotton on 1stoct his go down and Y promises to par for goods on 1stNov. X does not supply the goods. Y may rescind the contract.

(c) **Alteration [62]** :-Alteration means a change in one or more of the terms of a contracts with mutual consent of parties the parties of new contracts remains the same.
Ex:-X Promises to sell and delivers 100 bales of cotton on 1stoct. and Y promises to pay for goods on 1st
Nov. Afterwards X and Y mutually decide that the goods shall be delivered in five equal installments at is godown . Here original contract has been discharged and a new contract has come into effect.

(d) **Remission [63**]:-Remission means accepting a lesser consideration than agreed in the contract. No consideration is necessary for remission. Remission takes place when a Promisee-
(a) dispense with (wholly or part)the performance of a promise made to him.
(b) Extends the time for performance due by the promisors
(c) Accept a lesser sum instead of sum due under the contract
(d) Accept any other consideration that agreed in the contract
A promise to paint a pictured for B. B after words for himto do so. A is no longer bound to perform the promise.

(e) Waiver:-Intentional relinquishment of a night under the contract.
(f) Merger :- conversion of an inferior right into a superior right is called as merger.

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(Inferior right end)

The main difference between the ;

Novation	Alteration
Novation involves changes in the terms of contract. It also sometimes means change in the parties to contract. It in fact operates as a substitution of the old contract.	In alteration there are only changes in the term of contract by mutual consent. The no substitution of old terms; only some terms and conditions change.

Discharge by operation of law

(a) Death :-involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent.

Example : A promises to perform a dance in B's theatre. A dies. The contract comes to an end.

(b) **Insolvency**:- when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.

Example: A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire which leaves nothing to sell, A applies for insolvency and is adjudged insolvent. Contract is discharged.

(c) **By unauthorized material alteration** –without the approval of other party – comes to an end – nature of contract substance or legal effect.

Example : A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as Rs.50,000. A is liable to pay only Rs.5,000.

(d) **Merge**r: When an inferior right accruing to a party in a contract mergers in to a superior right accruing to the same party, then the contract conferring inferior right is discharged.

Example: A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

5. **Rights and liabilities** vest in the same person: Where the rights and liabilities under a Contract vest in the same person, the contract is discharged.

Example: A Bill of Exchange which was accepted by A, reaches A's hands after being negotiated and endorsed through 4 other parties. The contract is discharged.

Discharge by Lapse of time

Where a party fails to take action against the other party within the time prescribe under the limitation Act, 1963. All his rights come end.Ex;- Recover a debt – 3 Years recover an immovable property – 12 years

Ex.:-On 1st July 20X1 ,X sold goods to Y to Rs 1,00,000 and Y had made no payment till August 20X4. state the legal position on 1st Aug 20X4 .

(a) If no. credit period allowed

(b) If 2 month credit period allowed.

Discharge by Breach of contract Failure of a party to perform his part of contract

(a) **Anticipatory Breach of contract** :-Anticipatory breach of contract occurs when the party declares his intention of not performing the contract before the performance is due .

(i) **Express repudiation**: -5 agrees to supply B 100 tunes of specified category of

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iron on 15.01.2006 on 31.12.2005. 5 express his unwillingness to supply the iron toB.

(ii) Party disables himself: -Implied by conduct.
Ex.:-5 agrees to sell his fiat car to B on 15.01.2006 on 31.12.05 5 sells his fiat car to T.

(b) **Actual Breach of contract** :-If party fails or neglects or refuses to perform his obligation on the due date of performance or during performance. It is called as actual breach.
During performance – party has performed a part of the contact.

Consequences of Breach of contract:- The aggrieved party (i.e. the party not at face it) is discharged from his obligation and get rights to proceed against the party at fault. The various remedial available to an aggrieved party.

Discharge by Impossibility performance

(a) Effect of Initial Impossibility
(b) Effect of supervening Impossibility
(a) Initial Impossibility – at the time of making contract, if both parties know from beginning about impossibility of performance of contract, the contract is void. Ex; put life into dead body.
If both don't know about impossibility of performance – the contract becomes void.
If one party knows about impossibility of performance ,he is entitled to compensate to other party.
(b) **Effect of supervening Impossibility:-**
Where an act becomes impossible after the contract is made, contract becomes void.
When contract becomes unlawful, beyond the control of promisor, contract becomes void.
When Promisor alone knows about the Impossibility , he has to compensate loss of other party.
When an agreement is discovered to be void or where a contract becomes void

Cases when a contract is discharged on the ground of supervening Impossibility;-

(a) Distraction of subject matter - Failure of the ultimate purpose of contract –
(b) Death or personal Incapacity
(c) Declaration of **war**
(d) change of Law
(e) Destruction of subject-matter or Non occurrence of a particular state of thing necessary for performance.
Supervening Impossibility which does not make contract void are;-
Difficulty of performance due toCommercial Impossibility (due to natural calamities, delay in transport)
Default of a third party -Strikes, knockout and civil disturbance.
Partial Impossibility – coronation of king and to sailing around the lake by boat.

Agreements become void when it becomes impossible to perform them due to a variety of reasons. This is known as "impossibility of performance" and dealt with by section 56 of the Act

In terms of Section 56 of the Act "An agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

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Where one person has promised to do something which he knew, or with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor, must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise".

(1) **Impossibility existing at the time of contract:** Even at the time of entering into the agreement, it may be impossible to perform certain contracts at the beginning or inception itself. The impossibility of performance may be known or may not be known to the parties

(i) If the impossibility is known to the parties : Where 'A' agrees to pay 'B' ` 5000/- to 'B' if he would swim from Bombay in Indian ocean to 'Aden' in 7 days time, this is an agreement where both the parties known that it is impossible to swim the distance between 'Bombay' to 'Aden' in 7 days time and hence is void.

(ii) If unknown to the parties: Even where both the promisor and the promisee are ignorant of the impossibility the contract is void.

(iii) If known only to the promisor: Where the promisor alone knows it is impossible to perform or even if he does not know but he should have known about the impossibility with reasonable diligence, the promisee is entitled to claim compensation for the loss suffered because of failure of the promisor to perform.

(2) **Supervening impossibility:** When performance of a promise becomes impossible on account of subsequent developments of events or change in circumstances, which are beyond the contemplation of parties, the contract becomes void. Supervening impossibility can arise due to a variety of circumstances as stated below.

(i) Accidental destruction of the subject matter of the contract : 'A' had agreed with 'B' to hire for rent his music hall for holiday concerts on certain specified dates. The music hall was destroyed before the specified dates and hence it became impossible to hold stage concerts. It was held that as the music hall ceased to exist; it is a case of supervening impossibility and both the parties were excused from the performance of the contract [Taylor vs. Caldwell 3B&S826].

(ii) Non-existence or non occurrence of a particular state of things: It was agreed to by the defendant through a contract to have from the plaintiff a flat for specified days for witnessing the coronation procession of King Edward VII. The said procession was cancelled and it did not take place. Therefore the defendant refused to pay the balance rent. It was held that the foundation of the contract had totally failed and here the balance of rent amount cannot be recovered from the defendant. [Krell vs. Henry 2 KB. 740]

(iii) Incapacity to perform a contract of personal services: In case of contract of personal service, disability or incapacity to perform, caused by an Act of God e.g. illness, constitutes lawful excuse for non-performance of the contract [Robinson vs. Davison L.R.6Ex.269]

(iv) Change in law: Performance of a contract may also become impossible due to change in law subsequently. The law passed subsequently may prohibit the act which may form part as basis of contract. Here the parties are discharged from their obligations. For example 'A' and 'B' may agree to start a business for sale of lottery and contribute capital for the business. If the business of sale of lottery ticket is banned by a subsequent law, parties need not keep up their legal obligations.

(v) Outbreak of war: Out break of war may affect the enforceability of contracts in many ways like

(a) emergency legislations controlling prices
(b) relaxation of trade restrictions and
(c) prohibiting or restraining transaction with alien enemy.

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Doctrine of Frustration: The idea of "supervening impossibility" is referred to as 'doctrine of frustration' in U.K. In order to decide whether a contract has been frustrated, it is necessary to consider the "intention of parties as are implied from the terms of contract".
However in India the 'doctrine of frustration' is not applicable. Impossibility of performance must be considered only in term of section 56 of the Act. Section 56 covers only 'supervening impossibility and not implied terms'. This view was upheld by Supreme Court in Satyabrata Ghose vs Mugneeram Bangur A.I.R.(1954) S. C. 44 and Alopi Prasad vs Union of India A.R. 1960 S.C.588.

What would not constitute ground of impossibility: Various decisions which have identified certain situations as not constituting grounds of impossibility -

(a) 'A' promised to 'B' that he would arrange for 'B's marriage with his daughter. 'A' could not persuade his daughter to marry 'B'. 'B' sued 'A' who pleaded on the ground ofimpossibility that he is not liable for any damages. But it was held that there was no ground of impossibility. It was held that 'A' should not have promised what he could not have accomplished. Further 'A' had chosen to answer for voluntary act of his daughter and hence he was liable.

(b) The defendant agreed to supply specified quantity of 'cotton' manufactured by a mill with in a specified time to plaintiff. The defendant could not supply the material as the mill failed to make any production at that time. The defendant pleaded on the ground of impossibility which was not approved by the Privy Council and held that contract was not performed by the defendant and he was responsible for the failure. [Hamandrai vs Pragdas 501A]

(c) The defendant agreed to procure cotton goods manufactured by Victoria Mills to plaintiff as soon as they were supplied to him by the mills. It was held by Supreme Court that the contract between defendant and plaintiff was not frustrated because of failure on the part of Victoria Mills to supply goods [Ganga Saran vs Finn Rama Charan, A.I.R 1952 S.C.9]

(d) A dock strike would not necessarily relieve a labourer from his obligation of unloading the ship within specified time.

(e) In Satyabrat Ghosh vs Mugneeram Bangur & Co. A.I.R 1954 S.C.44, Calcutta High court held in a context of impossibility of performance that "having regard to the actual existence of war condition, the extent of the work involved and total absence of any definite period of time agreed to the parties, the contract could not be treated as falling under impossibility of performance. In the given case the plaintiff had agreed to purchase immediately after outbreak of war a plot of land. This plot of land was part of a scheme undertaken by the defendant who had agreed to sell after completing construction of drains, roads etc. However the said plot of land was requisitioned for war purpose. The defendant thereupon wrote to plaintiff asking him to take back the earnest money deposit, thinking that the contract cannot be performed as it has become impossible of being performed. The plaintiff brought a suit against the defendant that he was entitled for conveyance of the plot of land under condition specified in the contract. It was held that the requisition order did not make the performance impossible.

While judging the impossibility of performance issue, the Courts would be very cautious since contracting parties often bind themselves to perform at any cost of events without regard to price prevailing and market conditions.

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Where a person [Debtor] owes a number of debts to another person [Creditor], and when he releases certain payments, then the question arises as to how to adjust the receipt against so many dues. This issue is considered and answered in Sections 59, 60 and 61 of the Act under the heading 'Appropriation of payments'.

(i) Application of payment where debt to be discharged is indicated: In term of section 59 of the Act "Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly".

Where a debtor owes a number of debts and he pays an amount with express or implied instructions towards appropriation, the debtor is at will to appropriate to any debt and the creditor is bound by it. This is set out in the Latin Maxim of "quicquid sovitur, sovit sectionundum modum solventis" meaning that whatever is paid, is paid according to intention or manner of party paying. The right of debtor to decide the appropriation is also known as decision in Clayton's case.

What is the position if the debtor does not expressly state the method of appropriation? Then we have to go by the circumstances of the case. For example a debtor who owes among other debts ` 2000/- to a creditor and pays ` 2000/- on a given day when the debt of ` 2000/- falls due, then the amount must be accordingly applied and the debt be discharged accordingly.

(ii) Application of payment where debt to be discharged is not indicated: "Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits".

From the above it can be seen that the creditor enjoys the right to appropriate even to a debt which is barred by limitation.

It was held by Lord Macnaughten in Cory Bros. & Co. vs. Owner of the Mecca (1817)

A.C.286 & 293, that if the debtor does not make any appropriation, at the time of payment, the right devolves on the creditor. Creditors have a right to decide till the very last moment.

The abovedecision was followed in a number of important cases including in the famous case of Vinkatadri Appa Rao vs Parthasarthi Appa Rao [(1921) L.R. 48. I.A. 150; 44 Mad 570 and 573.. In the said case it was held that creditor can decide at his discretion on the appropriation of payment towards any lawful debt even if barred by limitation. If there is any debt carrying interest and if there are no express or implied instructions the amount paid should be appropriated towards payment of interest and then to capital.

(iii) Application of payment when neither party appropriates: In terms of section 61 of the Act, where neither party appropriates-

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(a) the payment shall be applied in discharge of debts in order of time, and

(b) if the debts are of equal standing the payment shall be applied in discharge of each proportionately.

The above appropriation takes place whether or not the debt is barred by limitation. For example where there are two debts one ` 500/- and another ` 700/- falling due on the same day, and if the debtor pays ` 600/- the appropriation shall be prorata of ` 250/- and
` 350/- for the two debts.

A contract would not require performance under circumstances spelt out in Sections 62 to 67 of the Act. These circumstances are (i) novation, (ii) rescission,(iii) alteration and (iv) remission.

Section 62 of the Act provides that "if the parties to a contract agree to substitute a new contract for it or to rescind or alter it, the original contract need not be performed".

(a) **Effect of novation**: Novation means substitution. Where a given contract is substituted by a new contract it is novation. The old contract, on novation ceases. It need not be performed. Novation can take place with mutual consent. However novation can take place by substitution of new contract between the same parties or between different parties. Novation results in discharge of old contract. This can be illustrated as follows - A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) **Effect of rescission:** In case of rescission, the old contract is cancelled and no new contract comes in its place. A contract is also discharged by rescission. Some times parties may enter into an agreement to rescind the previous contract. Sometimes, the contract is rescinded by implication or by non- performance for a long time without each other complaining about it.

Difference between novation and rescission: While novation involves rescission, there is no novation in rescission. Both in novation and rescission the contract is discharged by mutual agreement. In both cases parties enter into a new contract to come out of the old contract.

The new agreement is the consideration for rescission.

(c) **Effect of alteration:** Where the contract is altered, the original contract is rescinded. Hence the old one need not be performed whereas the new one has to be performed. Alteration involves both rescission and novation. The line of difference between alteration and novation is very thin. While there can be very minor alterations, there can not be unilateral material alteration to a contract. If it is done it will be void.

Novation and alteration: Both in novation and in alteration the old contract

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need not be performed.

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Remission means waiver. Section 63 of the Act deals with remission. It provides that "every promisee may dispense with or remit wholly or in part, the performance of the promise made to him or may extend the time for such performance or may accept instead of it any satisfaction which it thinks fit". Thus the promisee can waive either in full or in part the obligation of the promisor or extend the time for performance.

For example where 'A' owes 'B' a sum of ` 1 lakh, 'B' may accept a part of it in full and final settlement of the due or waive his entire claim.

While granting the time to the promisor, the promisee cannot do so for his benefit but can do so only for the benefit of the promisor.

For example where 'A' promises 'B' that he would deliver certain goods by a certain date, 'B' can extend the time but he cannot take advantage to charge interest on the extended time.

Similarly a promisee can accept any other performance to his satisfaction instead of the specified stipulated performance.

For example where A promises to sell his horse for a consideration of ` 5000/- to 'B', 'A' may instead of cash consideration of ` 5000/-may accept jewellery worth Rs 5,000/-in full satisfaction of the consideration. In a situation like this the essential element of 'satisfaction' is that the promisee must accept the consideration unequivocally. If a promisor tenders some thing in full satisfaction but the promisee does not accept it or accepts in part performance, such satisfaction will fall outside the ambit of section 63 of the Act. [Shyamnagar tin Factory vs Snow White Food Products, A.I.R (1965) Cal 54] It should be noted that novation, rescission or alteration cannot take place without consideration but in case of part or complete rescission no consideration is required. The promisee can dispense with performance without consideration and without a new agreement.

It has already been seen that certain contracts referred to in Sections 19, 19A, 39, 51, 54 & 55 are voidable. The question for consideration is what is the effect of recession of contract by that person at whose option the contract is voidable. The following are the effects of such an action-

(i) The other party need not perform the promise

(ii) Any benefit received by the person rescinding it must restore it to the person from whom it was received.

A voidable contract which is voidable either at its inception or subsequently comes to an end when it is avoided by the party at whose option it is avoided. In such a case, not only the contract need not be performed there is also restoration of benefit.

(a) the injured party on account of non performance of the contract is entitled to recover compensation for damages suffered and

(b) benefits received must be restored.

In Murlidhar vs. International Film Co. A.I.R 1943 P.C. 34, the plaintiff having wrongfully repudiated the contract, the defendants rescinded it u/s 39 of the Act. The plaintiff brought a suit to recover ` 4000/- paid to the defendant. Held defendant was bound to restore the amount after setting off

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such damages.

When an insurance company has rescinded the policy because the policy holder could not disclose material information, it should refund the premium after making necessary adjustments for expenses already incurred.

In terms of section 65 of the Act, where

(a) an agreement is discovered to be void or

(b) a contract becomes void

any person who received an advantage must (a) restore it or

(b) pay compensation for damages in order to put the position prior to contract.

In Dhuramsey vs. Ahgmedhai (1893) 23 Bom 15, the plaintiff hired a godown from the defe upheld that he was entitled to recover the rent for the unexpired term.

The next issue is the benefit which has to be returned must have been received under the contract. Any benefit received which is ancillary to main contract need not be returned. For example, the deposit paid for a transaction of sale of house between parties, need not be returned just because the sale transaction could not take place. This was on the ground that the deposit is only a security and not part of main contract.

Breach of contract

Where there is a default by one party from performing his part of contract on due date then there is breach of contract.

Breach of contract can be actual breach or anticipatory breach.Actual breach of contract occurs at the time when the perfoermance is due , one party fails or refuses to perfofm his obligation under the contract.

Where a person repudiates a contract before the stipulated due date, it is anticipatory breach. In both the events, the party who has suffered injury is entitled for damages. Further he is

discharged from performing his part of the contract.

Let us now examine breach of contract and the methodology for estimation of compensation for such breach of contract.

1-Where the promisor refuses to perform his obligation even before the specified time for performance and signifies his unwillingness, then there is an anticipatory breach.

. illustration: 'X' agrees to sell 'Y' certain quantity of wheat at a certain price. viz @ ` 100/- per quintal by 3rd March. However on 2nd February X gives notice of his unwillingness to sell the given goods. Price of wheat on that date is ` 110/- per quintal. 'Y' has a right to repudiate the contract on the same day instead of waiting for the date of performance. On that day 2nd February, he is entitled to recover damages of ` 10/- per quintal this being the difference between market price and contracted price. If on the other hand, he chooses to wait till 3rd March and the price on that date is ` 125/-, he can recover damages @ ` 25/- per quintal. The third possibility is that if between 2nd February and 3rd March, Government prohibits sale of wheat, then the contract becomes void and Y will not be able to recover any

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damage whatsoever. Hence from this illustration it would be clear that when the promisee postpones his right to repudiate the promise, it would operate to the advantage of the promisor also depending on circumstances.

2-Where one of the parties breaches the contract by refusing to perform the promise on due date, it is known as actual breach of contract. In such a case the other party to contract obtains a right of action against the one who breached the contract.

In cases where there is a breach of contract, the promisor who breaches is liable to pay compensation for damages suffered by the promisee. The compensation can be classified as:

(i) those for damages that usually arise in the event of breach of contract and

(ii) those for damages which parties know and anticipated at the time of entering into the contract called special damages. This kind of special damages can be claimed only on previous notice.

However no compensation is payable for any remote or any indirect loss. While assessing the damage the inconvenience caused to the aggrieved party on account of non-performance should be assessed carefully, as the party entitled for compensation, he has a duty to take steps to minimise the loss.

REMEDIES FOR THE BREACH OF CONTRACT

Remedy means course of action available to an aggrieved party when other party breaches the contract.

1. Rescission of contract
2. Suit for damage
3. Suit for specific performance
4. Suit for Injunction
5. Quantum Meruit

(1) Rescission of contract.(sec-39.)

⇒ It means right to party to cancel contract.

⇒ In case of breach of contract, other party may rescind contract.

Effects of rescission of contract.

Aggrieved party is not required to perform his part of obligation under contract. Aggrieved party claims compensation for any loss.

Party is liable to restore benefit, if any.

When can Court Grant Rescind Contract?

Court can rescind the contract in the following situation:

-If Contract is voidable.

-If Contract is unlawful.

(2) Suit for damage

It means monetary compensation allowed for loss. Purpose is to compensate aggrieved party and not to punish party as fault.In India, rules relating to damages

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are based on English judgment of Hadley vs Baxendale.
The facts of case were – H's mill was stopped due to the breakdown of the shaft. He delivered the shaft to common carrier to repair it and agree to pay certain sum of repair it and agree to pay certain sum of money for doing this work. H has informed to B that delay would result into loss of profit. B delivered the shaft after reasonable time after repair. H filed suit for loss of profit. It was held that B is not liable for loss of profit. The court laid down rule that damage can be recovered if party has breach of contract.

(3) Suit for Specific Performance

It means, demanding an order from court that promise agreed in contract shall be carried out. When is specific performance allowed?
Where actual damages arising from breach is not measurable. Where monetary compensation is not adequate remedy.
When specific performance is not allowed? When damages are an adequate remedy.
Where performance of contract requires numbers of minute details and therefore not possible for court to supervise.

- Where contract is of personal in nature.
- Where contract made by company beyond its power. (ultra – vires)
- Where one party to contract is minor
- Where contract is inequitable to either party.

Example : A agree to sell B, an artist painting for Rs.30,000. Later on, he refused to sell it. Here B can file suit against A for specific performance of the contract.

(4) Suit for Injunction

⇒ It means stay order granted by court. This order prohibits a person to do particular act.
⇒ Where there is breach of contract by one party and order, of specific performance is not granted by court, injunction may be granted.
Example: Film actress agreed to act exclusively for W for a year and for no one else. During the year she contracted to act for Z.

Kinds of Damages

The liability to pay damages is of four kinds. They are:
(i) liability for special damages
(ii) liability for exemplary damages
(iii) liability to pay nominal damages and
(iv) liability to pay damages for deterioration caused by delay. Now let us discuss each one of them-

(i) Liability for special damages: Where it is understood between parties that in the event of breach of contract, there would be special damages also in addition to normal damages, then special damages would be payable. In our given example above if the tailor had informed about the special circumstances, special damages

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would have become payable.

(ii) Liability for exemplary damages: These situations may arise mainly in two cases namely

(i) breach of promise to marry and (ii) wrongful dishonour of cheques of customer by bank.

In case of breach of promise to marry, the damages are awarded taking into account the injury or humiliation which the aggrieved person would have suffered.

In case of wrongful dishonour of cheques the damages would depend upon the loss of credit and reputation suffered by the customer. The damages could be very heavy if loss had been suffered by a businessman, when compared to a non-businessman customer.

For example Mrs. G, a non-trader paid a cheque for £90 and 16 shillings drawn on Westminster Bank to her landlord for rent. The cheque was dishonoured by the bank. But she was awarded damages of only 40 shilling as nominal damages. [Gibbons vs. Westminster Bank (1939) 2
K.B. 882]

Similarly where the value of cheque is small ,the damages could be very heavy in comparison to a situation where the value of cheque is heavy. This is on the theory that dishonour of a small value of cheque would cause more damages to the honour of the customer.

(iii) Liability to pay nominal damages: Nominal damages are awarded in those cases of breach of contract where no damage has been suffered. Such damages are awarded only to establish the right to decree for breach of contract. Such damages are for nominal amounts like ten rupees or even ten paise.

(iv) Damages for deterioration caused by delay: Compensation can be recovered even without notice for damages or 'deterioration' caused to goods on account of delay by carriers amounting to breach of contract. Here the word "deterioration" means not only physical damages but also loss of opportunity. In Wilson vs. Lancashire and Yorkshire Railway Company 50 LJCP 232, the plaintiff bought velvet with a view to making it into caps for sale during spring. But due to delay in transit, he was unable to use the velvet for making caps for sale during season.

It was held that the fall in value of sale of cloth in consequence of the same having arrived after the season amounted to deterioration. It was here held that the plaintiff is entitled for compensation without notice.

In case of a contract for sale of good-

(i) where the buyer breaks the contract, the damages would be the difference between contract price and market price as on the date of breach.

(ii) where the seller breaks the contract, the buyer can recover the difference between market price and contract price as on date of breach.

Where if the seller retains the goods after the contract has been broken by the buyer- there the seller cannot recover from the buyer any further loss even if the market falls. Again he is not liable to have the damages reduced if the market rises.

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In Jamal vs. Mulla Dawood (1961) 43.I.A. 6, the defendant agreed to purchase from the plaintiff, certain shares on December 30, but wrongfully rejected them when tendered on date.

Quantum Meruit

The phrase 'quantum meruit' literally means "as much as earned" or "according to the quantity of work done". A person who has begun a civil contract work and has to later stop the work because the other party has made the performance impossible, is entitled to receive compensation on the principle of 'Quantum Meruit'.

Following are instances where 'quantum meruit' may arise:

(a) Where the work has been done and accepted under a contract which is subsequently discovered to be void. In such a case, the person who has performed his part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.

(b) Where a person does some act or delivers something to another person with the intention of receiving payment, the other person is bound to make payment if he accepts such services or goods or enjoys the benefits.

(c) Where the contract is divisible and where a party performs a part of the contract and refuses to perform the remaining part, the party in default may sue the other party who enjoyed the benefit of the part performance.

(iii) Suit for specific performance: Where damages are not an adequate remedy in the
case of breach of contract, the court may in its discretion on a suit for specific performance direct the party in breach, to carry out his promise according to the terms of the contract.

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Sale of Goods Act 1930

Scope of the Act

The sale of Goods Act deals with „Sale of Goods Act,1930,". ThisAct is based on „Transfer of Property Act, 1882". This act extends to whole of India, except the State of Jammu and Kashmir. The word Indian was omitted from the title of the Act in 1963 (22 sept.) This Act does not deal with the sale of immovable property.

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

Contract of sale" is a generic term which includes both

- Sale
- Agreement to sale.

Difference Between Sale and Agreement to Sell

Sale	Agreement to sale
Immediate transfer of ownership to buyer.	Ownership remains with the seller
It is a excuted contract	It is executory contract
It creates right in rem for buyer	It provides right in personam for buyer and seller
Seller can sue for price – if not buyer	Seller can sue for damages
Risk passes to buyer	Risk doesn‟t passes to buyer
Buyer can get goods even if seller has becomes insolvent	Buyer can get proportionate share in Money but can‟t get goods.
Delivery to official receiver if buyer becomes becomes insolvent	Delivery can be refused by seller if buyer become insolvent before the payment of price

Essential elements of Contract of sale

1. Seller and buyer

There must be a seller as well as a buyer.‟Buyer‟ means a person who buys or agrees to buy goods[Section 2910].‟Seller‟ means a person who sells or agrees to sell goods [Section 29(13)].

2. Goods

Goods means every kind of movable property other than actionable claims and money, and includes the following:

- movable property other than actionable claims and
- money includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale[Section 2(7)].

3. Transfer of property

Property means the general property in goods, and not merely a special property[Section

2(11)]. General property in goods means ownership of the goods.

Special property in goods means possession of goods.

Thus, there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods. The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.

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4. Price

There must be a price. Price here means the money consideration for a slae of goods[Section 2(10)].When the consideration is only goods, it amounts to a ,,barter" and not sale.When there is no consideration ,it amounts to gift and not sale.

5. Essential elements of a valid contract

In addition to the aforesaid specific essential elements, all the essential elements of a valid contract as specified under Section 10 of Indian Contract Act,1872 must also be present since a contract of sale is a special type of a contract.

Types of Goods[Section 6]

1. Existing Goods

Existing goods mean the goods which are either owned or possessed by the seller at the time of contract of sale. The existing goods may be specific or ascertained or unascertained as follows:

a) Specific Goods[Section 2(14)]:

These are the goods which are identified and agreed upon at the time when a contract of sale is made- For example, specified TV,VCR,Car,Ring.

b) Ascertained Goods:

Goods are said to be ascertained when out of a mass of unascertained goods, the quantity extracted for is identified and set aside for a given contract.Thus,when part of the goods lying in bulk are identified and earmarked for sale, such goods are termed as ascertained goods.

c) Unsanctioned Goods:

These are the goods which are not identified and agreed upon at the time when a contract of sale is made e.g. goods in stock or lying in lots.

2. Future Goods[Section 2(6)]

Future goods mean goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.There can be an agreement to sell only.There can be no sale in respect of future goods because one cannot sell what he does not possess.

3. Contingent Goods [Section 6(2)]

These are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

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Price Of Goods

Meaning[Section

2(10)]

Price means the money consideration for a sale of goods.

Modes of determining Price [Section 9(1)]

There are three modes of determining the price as under:

- It may be fixed by the contract or
- It may be left to be fixed in an agreed manner
- It may be determined by the course of dealing between the parties.
- Thus, the price need not necessarily be fixed at the time of sale.

Consequences of not determining the Price in any of the Mode [Section

Where the price is not determined in accordance with Section 9(1),the buyer must pay seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. It may be noted that a reasonable price need not be market price.

Consequence of not Fixing Price by third party[Section 10(1)]

The agreement to sell goods becomes void if the following two conditions are fulfilled.

- If such agreement provided that the price is to be fixed by the valuation of a third party, If such third party cannot or does not make such valuation.

Duty of buyer

A buyer who has received and appropriated the goods, must pay a reasonable price there-of.

Right of party not at fault to sue

Where such a third party is prevented from making the valuation by fault of the seller or buyer, the party not at fault may maintain a suit for damages against the party in fault.

Conditions and Warranties

It is usual for both seller and buyer to make representations to each other at the time of entering into a contract of sale. Some of these representations are mere opinions which do not form a part of contract of sale. Whereas some of them may become a part of contract of sale. Representations which become a part of contract of sale are termed as stipulations which may rank as condition and warranty e.g. a mere commendation of his goods by the seller doesn‟t become a stipulation and gives no right of action to the buyer against the seller as such representations are mere opinion on the part of the seller. But

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where the seller assumes to assert a fact of which the buyer is ignorant, it will amount to a stipulation forming an essential part of the contract of sale.

Meaning of Conditions [Section 12(2)]

A condition is a stipulation, which is essential to the main purpose of the contract The breach of which gives the aggrieved party a right to terminate the contract.

Meaning of Warranty[Section 12(3)]

Breach of warranty gives rise to the aggrieved party right to claim damages but contract cannot be terminated.

Distinction between condition and warranty

Matter	Condition	Warranty
Stipulation	Essential to main purpose of contract	Subsidiary to main purpose of contract
If breach?	Buyer has right to cancel contract.	Buyer has no right to cancel the contract. But party can claim damage.
Treatment	Breach of condition treated as breach of warranty to claim damages.	Breach of warranty is not treated as breach of condition.

Conditions to be treated as Warranty[Section 13]

In the following three cases a breach of a condition is treated as a breach of a warranty:
-Where the buyer waives a conditions; once the buyer waives a conditions, he cannot insist on its fulfillment condition e.g. accepting defective goods or beyond the stipulated time amount to waiving a conditions.

-Where the buyer elects to treat breach of the condition as a breach of warranty; e.g. where he claims damages instead of repudiating the contract.

-Where the contract is not severable and the buyer has accepted the goods or part thereof ,the breach of any condition by the seller can only be treated as breach of warranty. It can not be treated as a ground for rejecting the goods unless otherwise specified in the contract. Thus, where the buyer after purchasing the goods finds that some condition is not fulfilled, he cannot reject the goods. He has to retain the goods entitling him to claim damages.

Express and Implied Conditions and Warranties

In a contract of sale of goods, conditions and warranties may be express or implied.

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1. **Express Conditions and Warranties.**

These are expressly provided in the contract. For example, a buyer desires to buy a Sony TV Model No. 2020.Here,model no. is an express condition. In an advertisement for Khaitan fans,guatantee for 5 years is an express warranty.

2. **Implied Conditions and Warranties**

These are implied by law in every contract of sale of goods unless a contrary intention appears from the terms of the contract. The various implied conditions and warranties have been shown below:

Implied Conditions

1. Conditions as to title [Section 14 (a)]

There is an implied condition on the part of the seller that;

i. In the case of sale, he has a right to sell the goods, and
ii. In the case of an agreement to sell ,he will have a right to sell the goods at the time when the property is to pass.

2. Condition in case of sale by description [Section 15]

Where there is a contract of sale of goods by description, there is an implied condition that the goods shall correspond with description. The main idea is that the goods supplied must be same as were described by the seller. Sale of goods by description include many situations as under:
i. Where the buyer has never seen the goods and buys them only onm the basis of description given by the seller.
ii. Where the buyer has seen the goods but he buys them only on the basis of description given by the seller.
iii. Where the method pf packing has been described.

3. Condition in case of sale by sample [Section 17]

A contract of sale is a contract for sale by sample when there is a term in the contract, express or implied, to that effect. Such sale by sample is subject to the following three conditions:

-The goods must correspond with the sample in quality.
-The buyer must have a reasonable opportunity of comparing the bulk with the sample.
-The goods must be free from any defect which renders them merchantable and which would not be apparent on reasonable examination of the sample. Such defects are called latent defects and are discovered when the goods are put to use.

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4. Condition in case of sale by description and sample [Section 15]

If the sale is by sample as well as by description, the goods must correspond with the sample as well as the description.

5. Condition as to quality or fitness [Section 16(1)]

There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods.

Exception to this rule:

There is an implied condition that the goods shall be reasonably fit for a particular purpose described if the following three conditions are satisfied:

The particular for which goods are required must have been disclosed(expressly or impliedly) by the buyer to the seller.
-The buyer must have relied upon the seller‟s skill or judgement.
-The seller‟s business must be to sell such goods.

6. Condition as to merchantable quality[Section 16(2)]

Where the goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. The expression „ merchantable quality‟ means that the quality and condition of the goods must be such that a man of ordinary prudence would accept them as the goods of that description. Goods must be free from any latent or hidden defects.

7. Condition as to wholesomeness

In case of eatables or provisions or foodstuffs, there is an implied condition as to wholesomeness. Condition as to wholesomeness means that the goods shall be fit for human consumption.

8. Conditions implied by custom [Section 16(3)]

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

Implied warranties

a) Warranty as to quiet possession [Section14(b)]

There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. The reach of this warranty gives buyer a right to claim damages from the seller.

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b) Warranty of freedom from encumbrances [Section 14(c)]

There is an implied warranty that the goods are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance.The breach of this warranty gives buyer a right to claim damages from the seller.

- Warranty as to quality or fitness for a particular purpose annexed by usage of trade[Section 16(3)]

- Warranty to disclose dangerous nature of goods

In case of goods of dangerous nature the seller fails to do so, the buyer may make him liable for breach of implied warranty.

Transfer of property in goods

Meaning of Passing of Property/Transfer of Property

Passing of property implies transfer of ownership and not the physical possession of goods. For example ,where a principal sends goods to his agent, he merely transfers the physical possession and not the ownership of goods. Here, the principal is the owner of the goods but is not having possession of goods and the agent is having possession of goods but us not the owner.

Significance of Transfer of Property

The time of transfer of ownership of goods decides various rights and liabilities of the seller and the buyer. Thus, it becomes very important to know the exact time of transfer of ownership of goods from seller to buyer to answer the following questions:

1. Who shall bear the risk?
It is the owner who has to bear the risk and not the person who merely has the possession.

2. Who can take action against third party?
It is the owner who can take action and not the person who merely has the possession.

3. Whether a seller can sue for price?
The seller can sue for the price only if the ownership of goods has been transferred to the buyer.

4. In case of insolvency of a buyer whether the official receiver or assignee can take the possession of goods from seller?
The Official Receiver or Assignee can take the possession of goods from seller only if the ownership of goods has been transferred to the buyer.

5. In case of insolvency of a seller whether the official receiver or assignee can take the possession of goods from buyer?

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The official receiver or assignee can take the possession of goods from buyer on law if the ownership of goods has not been transferred to the buyer.

Rules relating to Passing of Property/Transfer of Ownership from seller to buyer

For the purposes of ascertaining the time at which the ownership is transferred from seller to the buyer, the goods have been classified into the following three categories:

a) Specific or ascertained goods

Specific goods mean goods identified and agreed upon at the time when a contract of sale is made.[Section 2(14)]

b) Unascertained goods

c) Goods sent 'on approval' or 'on sale on return' basis.

Performance of the Contract

It is the duty of the seller and buyer that the contract is performed. The duty of the seller is to deliver the goods and that of the buyer to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, payment of the price and the delivery of the goods and concurrent conditions, i.e., they both take place at the same time as in a cash sale over a shop counter.

Delivery (Sections 33-39) Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorized to take possession of the goods.

1. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery.
2. Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not

delivered, but the "means of obtaining possession" of goods is delivered, e.g, by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

Rules as to delivery

The following rules apply regarding delivery of goods:

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(a) Delivery should have the effect of putting the buyer in possession.

(b) The seller must deliver the goods according to the contract.

(c) The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.

(d) Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.

(e) The seller should tender delivery so that the buyer can take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.

(f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract of sale and if not then in existence they are to be delivered at the place at which they are manufactured or produced.

(g) The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller. In other words, in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.

(h) If the goods are to be delivered at a place other than where they are, the risk of deterioration in transit will, unless otherwise agreed, be borne by the buyer.

(i) Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

Acceptance of Goods by the Buyer

Acceptance of the goods by the buyer takes place when the buyer:

(a) intimates to the seller that he has accepted the goods; or

(b) retains the goods, after the lapse of a reasonable time without intimating to the seller that he has rejected them; or

(c) does any act on the goods which is inconsistent with the ownership of the seller, e.g., pledges or resells. If the seller sends the buyer a larger or smaller quantity of goods than ordered, the buyer may:
(a) reject the whole; or

(b) accept the whole; or

(c) accept the quantity be ordered and reject the rest. If the seller delivers with the goods ordered,

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goods of a wrong description, the buyer may accept the goods ordered and reject the rest, or reject the whole.

Where the buyer rightly rejects the goods, he is not bound to return the rejected goods to the seller. It is sufficient if he intimates the seller that he refuses to accept them. In that case, the seller has to remove them.

Installment Deliveries

When there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract

whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

Suits for Breach of Contract

Where the property in the goods has passed to the buyer, the seller may sue him for the price.

Where the price is payable on a certain day regardless of delivery, the seller may sue for the price, if it is not paid on that day, although the property in the goods has not passed.

Where the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue the buyer for damages for non-acceptance.

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

Where there is a breach of warranty or where the buyer elects or is compelled to treat the breach of condition as a breach of warranty, the buyer cannot reject the goods. He can set breach of warranty in extinction or diminution of the price payable by him and if loss suffered by him is more than the price he may sue for the damages.

If the buyer has paid the price and the goods are not delivered, the buyer can sue the seller for the recovery of the amount paid. In appropriate cases the buyer can also get an order from the court that the specific goods ought to be delivered.

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Anticipatory Breach

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

(a) his right of performance on the due date in spite of his prior repudiation; or

(b) his rights to set up any defense for non-performance which might have actually arisen after the date of the prior repudiation.

Measure of Damages

The Act does not specifically provide for rules as regards the measure of damages except by stating that nothing in the Act shall affect the right of the seller or the buyer to recover interest or special damages in any case were by law they are entitled to the same. The inference is that the rules laid down in Section 73 of the Indian Contract Act will apply.

Unpaid seller and his rights

Meaning of an Unpaid Seller [Sec 45(1)(2)]

The seller of goods is deemed to be an „unpaid seller"-

- When the whole of the price has not been paid or tendered
- When a bill of exchange or other negotiable instrument(such as cheque) has been received as conditional payment, and it has been dishonored [Section 45(1)].

- The term „seller" includes any person who is in the position of a seller(for instance ,an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for the price) [Section 4592)].

Rights of an Unpaid Seller [Section 46-52,54-56,60-61]

The rights of an unpaid seller can broadly be classified under the following two categories:
-Rights against the goods
-Rights against the buyer personally

I Rights against the goods where the property in the goods has passed to the buyer

a) Right of Lien [Section 47,48 and 49]

Meaning of Right of Lien:
The right of lien means the right to retain the possession of the goods until the full price is received.

Three circumstance under which right of lien can be exercised[Section 47(1)]
1. Where the goods have been sold without any stipulation to credit;
2. Where the goods have been sold on credit, but the term of credit has expired;
3. Where the buyer becomes insolvent.

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Other provisions regarding right of lien[Sections 47(2),48,49(2)]

1. The seller may exercise his right of lien, even if he possesses the goods as agent or bailee for buyer[Section 47(2)]
2. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder ,unless such part delivery has been made under such circumstances as to show agreement to waive the lien[Section 48].
3. The seller may exercise his right of lien even though he has obtained a decree for the price of the goods[Section 49(2)].

Circumstances under which right of lien in the following cases:

- When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods
- When the buyer or his agent lawfully obtains possession of the goods
- When the seller waives his right of lien[Section 49(1)(c)].
- When the buyer disposes of the goods by sale or in any other manner with the consent of the seller[Section 53(1)].
- Where document of title to goods has been issued or lawfully transferres to any person as buyer or owner of the goods and that person transfers the document by way of sale,to a person who takes the document in good faith and for consideration.[Proviso to Section 53(1)].

b) Right of Stoppage of Goods in Transit

The right of stoppage of goods means the right of stopping the goods while they are in transit,to regain possession and to retain them till the full price is paid.

Conditions under which right of stoppage in transit can be exercised [Section 50]

The unpaid seller can exercise the right of stoppage in transit only if the following conditions are fulfilled:
1. The seller must have parted with the possession of goods,i.e. the goods must not be in the possession of seller.
2. The goods must be in the course of transit.
3. The buyer must have become insolvent.

c) Right of Resale[Section 46(1) and 54]

An unpaid seller can resell the goods under the following three circumstance:
1. Where the goods are of a perishable nature.
2. Where the seller expressly reserves a right of resale if the buyer commits a default in making payment.
3. Where the unpaid seller who has exercised his right of lien or stoppage in transit gives a notice to the buyer about his intention to resell and buyer does not pay or tender within a

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reasonable time.

II Rights against the goods where the property in the goods has not passed to

the buyer Right of withholding delivery[Section 46(2)]

Where the property in the goods has not been passed to the buyer, the unpaid seller, cannot exercise
right of lien, but get a right of withholding the delivery of goods, similar to and co-extensive with lien and stoppage in transit where the property has passed to the buyer.

Rights of Unpaid Seller against the Buyer Personally

The unpaid seller, in addition to his rights against the goods as discussed above, has the following three rights of action against the buyer personally:

1. Suit for price (Sec. 55). Where property in goods has passed to the buyer; or where the sale price is payable „on a day certain", although the property in goods has not passed; and the buyer wrongfully neglects or refuses to pay the price according to the terms of the contract, the seller is entitled to sue the buyer for price, irrespective of the delivery of goods. Where the goods have not been delivered, the seller would file a suit for price normally when the goods have been manufactured to some special order and thus are unsaleable otherwise.

2. Suit for damages for non-acceptance (Sec. 56). Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The seller"s remedy in this case is a suit for damages rather than an action for the full price of the goods.

3. Suit for Interest[Section 61(2)]

In case of breach of the contract on the part of seller, the buyer may sue the seller for interest from the date on which the payment was made.

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COMPANY Law

Module-3

Introduction

The Companies Act, 2013 (hereafter 'The Act') consolidates and amends the law relating to the companies in India and replaces the Companies Act, 1956 in phases, which is 56 years old. The new Act intends to improve corporate governance and to further strengthen regulations for the corporate sector with the introduction of key provisions as to;-

- Duties and Liabilities of Directors/Independent Directors,
- Auditor Rotation,
- Establishment of Serious Fraud Investigation Office (SFIO),
- Constitution of National Financial Reporting Authority (NFRA),
- Class Action Suit,
- Corporate Social Responsibility (CSR) etc.

The Companies Act, 2013 is administered by;-

- The Central Government through the Ministry of Corporate Affairs (MCA) and
- The Offices of Registrar of Companies,
- Official Liquidators,
- Public Trustee,
- Director of Inspection,
- National Company Law Tribunal (NCLT),
- National Company Law Appellate Tribunal (NCLAT), etc.

The Registrar of Companies (ROC) controls the task of incorporation of new companies and the administration of running companies.

Definition of company

"In terms of the Companies Act, 2013 'company' means a company incorporated under the Act, or under the previous company law" [Sec. 2(20)].

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A company may be an incorporated company or a Corporation, or an unincorporated company. An incorporated company is a single and legal (artificial) person distinct from the individuals constituting it, whereas an unincorporated company, such as a partnership, is a mere collection or aggregation of individuals. Therefore, unlike a partnership, a company is a corporate body and a legal person having status and personality distinct and separate from that of the members constituting it.

Characteristics/Advantages of company

1.Independent corporate existence

The outstanding feature of a company is its independent corporate existence. It is a distinct legal person existing independent of its members. By incorporation under the Act, the company is vested with a corporate personality which is distinct from the members who compose it.

A well-known illustration of this principle is the decision of the House of Lords in Salomon v. Salomon & Co. [(1898) AC 22].

2. Limited Liabilities

The privilege of limiting liability for business debts is one of the principal advantages of doing business under the corporate form of organization. Where the subscribers exercise the choice of registering the company with limited liability, the members' liability becomes limited or restricted to the nominal value of the shares taken by them or the amount guaranteed by them. No member is bound to contribute anything more than the nominal value of the shares held by him.

3. Perpetual successions

An incorporated company never dies. It is an entity with perpetual succession. Perpetual succession means that the membership of a company may keep changing from time to time, but that does not affect the company's continuity. The death or insolvency of individual members does not, in any way affect the corporate existence of the company "Members may come and go but the company can go on forever".

It continues to exist even if all its human members are dead. Even where during the war all the members of a private company, while in general meeting, were killed by a bomb, the company survived not even a hydrogen bomb could have destroyed it. [K'9 Meat Supplies (Guildford) Ltd., Re 1966 (3) All. ER 320.]

4. Separate properties

A company, being a legal person, is capable of owning, enjoying and disposing of property in its own name. The company becomes the owner of its capital and assets. The shareholders are not the several or joint owners of the company's property. The company is the real person in which all its property is vested, and by which is controlled, managed and disposed of [Bacha F Guzdar v. C.I.T. AIR 1955 SC 74.].

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The property is vested in the company as a body corporate, and no changes of individual membership affect the title. The property, however much, the shareholders may come and to remains vested in the company, and the company can convey, assign, mortgage, or otherwise deal with it irrespective of these mutations.

5 .Transferable Shares

When joint stock companies were established the great object was that their shares should be capable of being easily transferred. Accordingly, the Companies Act, 2013 in Section 44 declares: 'The shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company'. Thus incorporation enables a member to sell his shares in the open market and to get back his investment without having to withdraw the money from the company. This provides liquidity to the investor and stability to the company.

6. Common seal

Since the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The common seal acts as the official signature of the company. Prior to the Companies (Amendment) Act, 2015 the common seal is a seal used by a corporation as the symbol of its incorporation and also a statutory requirement for a company. As a departure from this concept, the Companies (Amendment) Act, 2015 has deleted the requirement of having Common Seal compulsorily.

After this amendment, in case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

Classes of Companies

A company may be incorporated as a One Person Company (OPC) a new concept all together in the Companies Act, 2013, Private Company or a Public Company, depending upon the number of members joining it. Again it may either be an unlimited company, or may be limited by shares or by guarantee or by both. On the basis of control, companies can be classified as associate company, holding company and subsidiary company. Some other forms of classification of companies are: foreign company, Government Company, small company, dormant company, Nidhi Company and company formed for charitable objects.

Companies may be classified into various classes on the following basis:

1. On the Basis of Incorporation

(a) Statutory companies

These are the companies which are created by a special Act of the Legislature, e.g., the Reserve Bank of India, the State Bank of India, the Life Insurance Corporation, the Industrial Finance Corporation, the Unit trust of India and State Financial Corporations These are mostly concerned with public utilities, e.g.

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railways, tramways, gas and electricity companies and enterprises of national importance. The provisions of the Companies Act, 2013 do not apply to them unless the special act specifies such application. Banking Regulation Act, 1949 is a special legislation concerning banking companies.

(b) Registered companies

These are the companies which are formed and registered under the Companies Act, 2013, or were registered under any of the earlier Companies Acts.

2. On the basis of liability

(a) Company limited by shares

Section 2 (22) of the Companies Act, 2013, defines that when the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares. It thus implies that for meeting the debts of the company, the shareholder may be called upon to contribute only to the extent of the amount, which remains unpaid on his shareholdings. His separate property cannot be encompassed to meet the company's debt.

(b) Company limited by guarantee

Section 2 (21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

(c) Unlimited company

Section 2 (92) of the Companies Act, 2013 defines unlimited company as a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member.
The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members.

3.On the basis of members

(a) One person company

(1) The Concept of One Person Company (OPC)

The concept of One Person Company (OPC) has now been introduced in India, through Section 2 (62) of Companies Act, 2013 thereby enabling Entrepreneur(s) carrying on the business in the Sole Proprietor

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form of business to enter into a Corporate Framework. Though this concept is new in India but it is already a part of many other countries like China, Australia, Pakistan and UK etc.

According to Section 2 (62) of the Companies Act, 2013 'One Person Company' means a company which has only one person as a member. A company formed under one person company may be either:

a) A company limited by shares, or
b) company limited by guarantee, or
c) An unlimited company.

One Person Company is a hybrid of Sole-Proprietor and Company form of business, and has been provided with concessional/relaxed requirements under the Act.

(2) Features of One Person Company (OPC)

a) Only One Shareholder: Only a natural person, who is an Indian citizen and resident in India, shall be eligible to incorporate a One Person Company.

b) Nominee for the Shareholder: The Shareholder shall nominate another person who shall become the shareholders in case of death/incapacity of the original shareholder. Such nominee shall give his/her consent and such consent for being appointed as the Nominee for the sole Shareholder. Only a natural person, who is an Indian citizen and resident in India, shall be a nominee for the sole member of a One Person Company.

c) Director: Must have a minimum of One Director, the Sole Shareholder can himself be the Sole Director. The Company may have a maximum number of 15 directors.

(b) Private Company [Section 2 (68)]

According to Section 2 (68) of Companies Act, 2013 a 'private company' means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

(1) restricts the right to transfer its shares.
(2) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member;

Provided further that:

a) persons who are in the employment of the company, and

b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members, and

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(3) prohibits any invitation to the public to subscribe for any securities of the company.

The Companies (Amendment) Act, 2015 has omitted 'of one lakh rupees or such higher paid-up share capital' from the definition of Private Company w.e.f. 25.05.2015. The impact of this amendment is that today one can have a company of paid up capital of mere ` Two (with each subscriber giving a rupee as subscription) for a private company and ` Seven for a public company.

(c) Public company [Section 2 (71)]

According to Section 2 (71) of Companies Act, 2013 a 'public company' means a company which:

(1) is not a private company.
(2) has a minimum paid-up share capital, as may be prescribed:
(3) Seven or more members are required to form the company.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

The Companies (Amendment) Act, 2015 has omitted "of five lakh rupees or such higher paid-up capital," from the definition of Public Company w.e.f. 25.05.2015.

(d) Small Company [Section 2 (85)]

According to Section 2 (85) of Companies Act, 2013 a ''small company'' means a company, other than a public company:

(1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees. Or

(2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to:

a) a holding company or a subsidiary company.
b) a company registered under Section 8, or
c) a company or body corporate governed by any special Act.

Some of the advantages enjoyed by the small companies are:
a) holding of two board meetings instead of four – one each in the first and second half years and the gap between the two meeting should not be more than 90 days. (section 173(5))
b) Not required to give cash flow statements with the financial statements (section 2(40))

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4 . On the basis of control

Holding company and Subsidiary company

'Holding' and 'Subsidiary' Companies are relative terms. A company is a holding company of another if the other is its subsidiary.

According to Section 2 (46) of the Companies Act, 2013 'holding company', in relation to one or more other companies, means a company of which such companies are subsidiary companies.

According to Section 2 (87) of the Companies Act, 2013 'subsidiary company' or 'subsidiary', in relation to any other company (that is to say the holding company), means a company in which the holding company :

(a) controls the composition of the Board of Directors, Or

(b) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

5 . On the basis of Listing in the recognised Stock Exchange

(a) Listed company (also widely held)

According to Section 2 (52) of the Companies Act, 2013, a 'listed company' means a company which has any of its securities listed on any recognised stock exchange. Whereas the word securities as per the Section 2 (81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956.

(b) Unlisted company

Unlisted Company means company other than listed company.

6. Other types

(a) Government Company

According to Section 2 (45) of the Companies Act, 2013, a 'Government company' means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government,

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or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

(b) Foreign Company

According to Section 2 (42) of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which:

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode. And

(b) Conducts any business activity in India in any other manner.

(c) Associate Company

According to Section 2 (6) of the Companies Act, 2013, 'associate company' in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

As per the Explanation given under the Section, the clause, 'significant influence' means control of at least twenty per cent of total share capital, or of business decisions under an agreement.

(d) Dormant company

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

'Significant accounting transaction' means any transaction other than:

(1) payment of fees by a company to the Registrar.
(2) payments made by it to fulfil the requirements of this Act or any other law. (3) allotment of shares to fulfil the requirements of this Act, and
(4) payments for maintenance of its office and records.

(e) Nidhi Companies

Company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. [Section 406 of the Companies Act, 2013]

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(f) Public financial institutions

According to Section 2 (72) of the Companies Act, 2013 the following institutions are to be regarded as public financial institutions:

(1) The Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956.

(2) The Infrastructure Development Finance Company Limited,

(3) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

(4) Institutions notified by the Central Government under Section 4A (2) of the Companies Act, 1956 so repealed under Section 465 of this Act.

(5) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless:

(a) it has been established or constituted by or under any Central or State Act. Or

(b) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

Conversion of Public Company into a Private Company

A public company can be converted into a private company by passing a special resolution, after altering its articles so as to include therein the restrictions contained in Section 2(68) of the Act. A special resolution passed to convert a public company into a private company is binding on dissenting shareholders provided it is bona fide, is in the interest of the company as a whole, and is consistent with the objects in the Memorandum of Association . Any alteration made in the articles to convert a public company into a private company shall take effect only with the approval of the Tribunal which shall make such order as it may deems fit.

Conversion of private company into public company

Similarly where a private company alters its articles by passing special resolution in such a manner that they no longer includes the restrictions and limitations which are required to be included in the articles of a private company, then such company shall cease to be a private company from the date of such alteration.

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Filing with the registrar

Every alteration of the articles and a copy of the order of the Tribunal approving the alteration of articles in respect of conversion of public company into private company or private company into public company shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

Incorporation of Company

(a) Formation of company

Persons who form the company are known as promoters. It is they, who conceive the idea of forming the company. They take all necessary steps for its registration.

Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company.

(1) Public Company: In the case of a public company with or without limited liability any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration.

(2) Private Company: In exactly the same way, 2 or more persons can form a private company.

(3) One person company (OPC): One person, where the company to be formed is to be One Person Company.

(b) Procedural aspects of incorporation of company

Section 7 of the Companies Act, 2013 provides for the procedure to be followed for incorporation of a company.

(1) Filing of the documents and information with the registrar: For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the company is proposed to be situated:

- The memorandum and articles of the company duly signed by all the subscribers to the memorandum.
- A declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules

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made there under in respect of registration and matters precedent or incidental thereto have been complied with.

- An affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that:

1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or

2) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,

3) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

- The address for correspondence till its registered office is established.

The particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

Particulars provided in this provision shall be of the individual subscriber and not of the professional engaged in the incorporation of the company [The Companies (Incorporation) Rules, 2014].

>Issue of certificate of incorporation on registration: The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

>Allotment of corporate identity number (CIN): On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

>Maintenance of copies of all documents and information: The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.

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Formation of OPC

a) The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

b) The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.

c) Such other person may be given the right to withdraw his consent

d) The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar

e) Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

f) Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year):
1) shall be eligible to incorporate a OPC.
2) shall be a nominee for the sole member of a OPC.

g) No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

h) No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

i) Such Company cannot be incorporated or converted into a company under Section 8 of the Act. Though it may be converted to private or public companies in certain cases. The procedure of conversion is given in the Rules 6 & 7 of the Companies (Incorporation) Rules, 2014.

j) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

k) OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

l) If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

Effect of registration

According to Section 9 of the Companies Act, 2013, from the date of incorporation (mentioned in the certificate of incorporation), the subscribers to the memorandum and all other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the

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memorandum. Such a registered Company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

From the date of incorporation mentioned in the certificate, the company becomes a legal person separate from the incorporators and there comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of Association [Hari Nagar Sugar Mills Ltd. vs. S.S. Jhunjhunwala AIR 1961 SC 1669]. It has perpetual existence until it is dissolved by liquidation or struck out of the register. A shareholder who buys shares, does not buy any interest in the property of the company but in certain cases a writ petition will be maintainable by a company or its shareholders.

A **legal personality emerges from the moment of registration of a company and from that moment the persons subscribing to the Memorandum of Association and other persons joining as members are regarded as a body corporate or a corporation in aggregate and the legal person begins to function as an entity.** A company on registration acquires a separate existence and the law recognises it as a legal person separate and distinct from its members [State Trading Corporation of India vs. Commercial Tax Officer AIR 1963 SC 1811].

It may be noted that under the provisions of the Act, a company may purchase shares of another company and thus become a controlling company. However, merely because a company purchases all shares of another company it will not serve as a means of putting an end to the corporate character of another company and each company is a separate juristic entity [Spencer & Co. Ltd. Madras vs. CWT Madras (1969) 39 Comp. Case 212].

(Differences between a Public Company and a Private company)

1. **Minimum number :** The minimum number of persons required to form a public company is 7. It is 2 in case of a private company.
2. **Maximum number :** There is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 50 in a private company.
3. **Number of directors.** A public company must have at least 3 directors whereas a private company must have at least 2 directors .
4. **Restriction on appointment of directors.** In the case of a public company, the directors must file with the Register a consent to act as directors or sign an undertaking for their qualification shares. The directors or a private company need not do so (Sec 266)
5. **Restriction on invitation to subscribe for shares.** A public company invites the general public to subscribe for shares. A public company invites the general public to subscribe for the shares or the

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debentures of the company. A private company by its Articles prohibits invitation to public to subscribe for its shares.

6. **Name of the Company :** In a private company, the words "Private Limited" shall be added at the end of its name.

7. **Public subscription :** A private company cannot invite the public to purchase its shares or debentures. A public company may do so.

8. **Issue of prospectus :** Unlike a public company a private company is not expected to issue a prospectus or file a statement in lieu of prospectus with the Registrar before allotting shares.

9. **Transferability of Shares.** In a public company, the shares are freely transferable (Sec. 82). In a private company the right to transfer shares is restricted by Articles.

10. **Special Privileges.** A private company enjoys some special privileges. A public company enjoys no such privileges.

11. **Quorum.** If the Articles of a company do not provide for a larger quorum. 5 members personally present in the case of a public company are quorum for a meeting of the company. It is 2 in the case of a private company (Sec. 174)

12. **Managerial remuneration.** Total managerial remuneration in a public company cannot exceed 11 per cent of the net profits (Sec. 198). No such restriction applies to a private company.

13. **Commencement of business.** A private company may commence its business immediately after obtaining a certificate of incorporation. A public company cannot commence its business until it is granted a "Certificate of Commencement of business".

Special privileges of a Private Company

Unlike a private a public company is subject to a number of regulations and restrictions as per the requirements of Companies Act, 1956. It is done to safeguard the interests of investors/shareholders of the public company. These privileges can be studied as follows :

a) Special privileges of all companies. The following privileges are available to every private company, including a private company which is subsidiary of a public company or deemed to be a public company

1. A private company may be formed with only two persons as member.
2. It may commence allotment of shares even before the minimum subscription is subscribed for.
3. It is not required to either issue a prospectus to the public of file statement in lieu of a prospectus.

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4. Restrictions imposed on public companies regarding further issue of capital do not apply on private companies.

5. Provisions of Sections 114 and 115 relating to share warrants shall not apply to it. (Sec. 14)

6. It need not keep an index of members.

7. It can commence its business after obtaining a certificate of incorporation. A certificate of commencement of business is not required.

8. It need not hold statutory meeting or file a statutory report

9. Unless the articles provide for a larger number, only two persons personally present shall form the quorum in case of a private company, while at least five member personally present form the quorum in case of a public company .

10. A director is not required to file consent to act as such with the Registrar. Similarly, the provisions of the Act regarding undertaking to take up qualification shares and pay for them are not applicable to directors of a private companies

11. Provisions in Section 284 regarding removal of directors by the company in general meeting shall not apply to a life director appointed by a private company .

In case of a private company, poll can be demanded by one member if not more than seven members are present, and by two member if not more than seven member are present. In case of a public company, poll can be demanded by persons having not less than one-tenth of the total voting power in respect of the resolution or holding shares on which an aggregate sum of not less than fifty thousand rupees has been paid-up .It need not have more than two directors, while a public company must hav

MEMORANDUM OF ASSOCIATION

The formation of a public company involves preparation and filing of several essential documents. Two of basic documents are :

1. Memorandum of Association
2. Articles of Association

The preparation of Memorandum of Association is the first step in the formation of a company. It is the main document of the company which defines its objects and lays down the fundamental conditions upon which alone the company is allowed to be formed. It is the charter of the company. governs the relationship of the company with the outside world and defines the scope of its activities. Its purpose is to enable shareholders, creditors and those who deal with the company to know what exactly is its permitted range of activities. It enables these parties to know the purpose, for which their money is going to be used by the company and the nature and extent of risk they are undertaking in making

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investment. Memorandum of Association enable the parties dealing with the company to know with certainty as whether the contractual relation to which they intend to enter with the company is within the objects of the company.

Printing and signing of Memorandum (Sec. 15).

The memorandum of Association of a company shall be
(a) printed,
(b) divided into paragraphs numbered consecutively, and
(c) signed by prescribed number of subscribers (7 or more in the case of public company, two or more in the case of private company respectively). Each subscriber must sign for his/her name, address, description and occupation in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

Contents of Memorandum

1. Name clause

I. Promoters of the company have to make an application to the registrar of Companies for the availability of name. The company can adopt any name if :

II. There is no other company registered under the same or under an identical name;

III. The name should not be considered undesirable and prohibited by the Central Government (Sec. 20). A name which misrepresents the public is prohibited by the Government under the Emblems & Names (Prevention of Improper use) Act, 1950 for example, Indian National Flag, name pictorial representation of Mahatma Gandhi and the Prime Minister of India, name and emblems of the U.N.O., and W.H.O., the official seal and Emblems of the Central Government and State Governments.

IV. Where the name of the company closely resembles the name of the company already registered, the Court may direct the change of the name of the company.

Once the name has been approved and the company has been registered, then

a) the name of the company with registered office shall be affixed on outside of the business premises;

b) if the liability of the members is limited the words “Limited” or “Private Limited” as the case may be, shall be added to the name;

Omission of the word ‘Limited’ makes the name incorrect. Where the word’ Limited” forms part of a company’s name, omission of this word shall make the name incorrect. If the company makes a contract without the use of the word “Limited”, the officers of the company who make the contract would be deemed to be personally liable

The omission to use the word ‘Limited’ as part of the name of a company must have been deliberate and not merely accidental. Note the following case in this regard:

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(c) the name and address of the registered office shall be mentioned in all letterheads, business letters, notices and Common Seal of the Company.

name of a company is the symbol of its personal existence. The name should be properly and correctly mentioned. The Central Government may allow a company to drop the word "Limited" from its name.

2. Registered Office Clause

Memorandum of Association must state the name of the State in which the registered office of the company is to be situated. It will fix up the domicile of the company. Further, every company must have a registered office either from the day it begins to carry on business or within 30 days of its incorporation, whichever is earlier, to which all communications and notices may be addressed. Registered Office of a company is the place of its residence for the purpose of delivering or addressing any communication, service of any notice or process of court of law and for determining question of jurisdiction of courts in any action against the company. It is also the place for keeping statutory books of the company.

Notice of the situation of the registered office and every change shall be given to the Registrar within 30 days after the date of incorporation of the company or after the date of change. If default is made in complying with these requirements, the company and every officer of the company who is default shall be punishable with fine which may extend to Rs. 50 per during which the default continues.

3. Object Clause

This is the most important clause in the memorandum because it not only shows the object or objects for which the company is formed but also determines the extent of the powers which the company can exercise in order to achieve the object or objects. Stating the objects of the company in the Memorandum of Association is not a mere legal technicality but it is a necessity of great practical importance. It is essential that the public who purchase its shares should know clearly what are the objects for which they are paying.

In the case of companies which were in existence immediately before the commencement of the Companies (Amendment) Act. 1965, the object clause has simply to state the objects of the company. But in the case of a company to be registered after the amendment, the objects clause must state separately.

i) **Main Objects** : This sub-clause has to state the main objects to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of main objects.

ii) **Other objects**: This sub-clause shall state other objects which are not included in the above clause.

Further, in case of a non-trading company, whose objects are not confined to one state, the objects clause must mention specifically the States to whose territories the objects extend. (Sec. 13)

A company, which has a main object together with a number of subsidiary objects, cannot continue to pursue the subsidiary objects after the main object has come to an end.

i) The objects of the company must not be illegal, e.g. to carry on lottery business.

ii) The objects of the company must not be against the provisions of the Companies Act such as buying its own shares , declaring dividend out of capital etc. iii) The objects must not be against public, e.g. to carry on trade with an enemy country.

iv) The objects must be stated clearly and definitely. An ambiguous statement like "Company may take up any work which it deems profitable" is meaningless.

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v) The objects must be quite elaborate also. Note only the main objects but the subsidiary or incidental objects too should be stated.

The narrower the objects expressed in the memorandum, the less is the subscriber's risk, but the wider such objects the greater is the security of those who transact business with the company.

4. Capital Clause

In case of a company having a share capital unless the company is an unlimited company, Memorandum shall also state the amount of share capital with which the company is to be registered and division there of into shares of a fixed amount. The capital with which the company is registered is called the authorized or nominal share capital. The nominal capital is divided into classes of shares and their values are mentioned in the clause. The amount of nominal or authorized capital of the company would be normally, that which shall be required for the attainment of the main objects of the company. IN case of companies limited by guarantee, the amount promised by each member to be contributed by them in case of the winding up of the company is to be mentioned. No subscriber to the memorandum shall take less than one share. Each subscriber of the Memorandum shall write against his name the number of shares he takes.

5. Liability Clause

In the case of company limited by shares or by guarantee, Memorandum of Association must have a clause to the effect that the liability of the members is limited. It implies that a shareholder cannot be called upon to pay any time amount more then the unpaid portion on the shares held by him. He will no more be liable if once he has paid the full nominal value of the share.

The Memorandum of Association of a company limited by guarantee must further state that each member undertakes to contribute to the assets of the company if wound up, while he is a member or within one year after he ceased to be so, towards the debts and liabilities of the company as well as the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves not exceeding a specified amount.

Any alteration in the memorandum of association compelling a member to take up more shares, or which increases his liability, would be null and void. .

If a company carries on business for more than 6 months while the number of members is less than seven in the case of public company, and less than two in case of a private company, each member aware of this fact, is liable for all the debts contracted by the company after the period of 6 months has elapsed. .

6 Association or Subscription Clause

In this clause, the subscribers declare that they desire to be formed into a company and agree to take shares stated against their names. No subscriber will take less than one share. The memorandum has to be subscribed to by at least seven persons in the case of a public company and by at least two persons in the case of a private company. The signature of each subscriber must be attested by at least one witness who cannot be any of the subscribers. Each subscriber and his witness shall add his address ,description and occupation, if any. This clause generally runs in this form : "we, the several person

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whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of the number of shares in the capital of the company, set opposite of our respective name".

After registration, no subscriber to the memorandum can withdraw his subscription on any ground.

Alteration of Association

Alteration of Memorandum of association involves compliance with detailed formalities and prescribed procedure. Alternations to the extent necessary for simple and fair working of the company would be permitted. Alterations should not be prejudicial to the members or creditors of the comapany and should not have the effect of increasing the liability of the members and the creditors.
Contents of the Memorandum of association can be altered as under :

1.Change of name

A company may change its name by special resolution and with the approval of the Central Government signified in writing . However, no such approval shall be required where the only change in the name of the company is the addition there to or the deletion there from, of the word "Private", consequent on the conversion of a public company into a private company or of a private company into a public company. By ordinary resolution. If through inadvertence or otherwise, a company is registered by a name which, in the opinion of the Central Government, is identical with or too nearly resembles the name of an existing comapany, it may change its name by an ordinary resolution and with the previous approval of the Central Government signified in writing.

Registration of change of name. Within 30 days passing of the resolution, a copy of the order of the Central Government's approval shall also be field with the Registrar within 3 months of the order. The Registrar shall enter the new name in the Register of Companies in place of the former name and shall issue a fresh certificate of incorporation with the necessary alterations. The change of name shall be complete and effective only on the issue of such certificate. The Registrar shall also make the necessary alteration in the company's memorandum of association
The change of name shall not affect any right or obligations of the company or render defective any legal proceeding by or against it. (Sec. 23).

2.Change of Registered Office

This may involve :

a) Change of registered office from one place to another place in the same city, town or village. In this case, a notices is to be give within 30 days after the date of change to the Registrar who shall record the same.

b) Change of registered office from one town to another town in the same State. In this case, a special resolution is required to be passed at a general meeting of the shareholders and a copy of it is to be filed with the Registrar within 30 days. The within 30 days of the removal of the office. A notice has to be given to the Registrar of the new location of the office.

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c) Change of Registered Office from one State to another State to another State.

Section 17 of the Act deals with the change of place of registered office form one State to another State. According to it, a company may alter the provision of its memorandum so as to change the place of its registered office from one State to another State for certain purposes referred to in Sec 17(1) of the Act. In addition the following steps will be taken.

Special Resolution

For effecting this change a special resolution must be passed and a copy there of must be filed with the Registrar within thirty days. Special resolution must be passed in a duly convened meeting.

Confirmation by Central Government

The alteration shall not take effect unless the resolution is confirmed by the Central Government.
The Central Government before confirming or refusing to confirm the change will consider primarily the interests of the company and its shareholders and also whether the change is bonafide and not against the public interest. The Central Government may then issue the confirmation order on such terms and conditions as it may think fit.

3.Alteration of the Object Clause

The Company may alter its objects on any of the grounds (I) to (vii) mentioned in Section 17 of the Act.
The alteration shall be effective only after it is approved by special resolution of the members in general meeting with the Companies Amendment Act, 1996, for alteration of the objects clause in Memorandum of Associations sanction of Central Government is dispensed with.

Limits of alteration of the Object Clause

The limits imposed upon the power of alteration are substantive and procedural. Substantive limits are provided by Section 17 which provides that a company may change its objects only in so far as the alteration is necessary for any of the following purposes:

i) to enable the company to carry on its business more economically or more effectively;

ii) to enable the company to attain its main purpose by new or improved means;

iii) iii) to enlarge or change the local area of the company's operation

iv) iv) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

Alterations in the objects is to be confined within the above limits for otherwise alteration in excess of the above limitations shall be void.
A company shall file with the registrar a special resolution within one month from the date of such resolution together with a printed copy of the memorandum as altered. Registrar shall register the same and certify the registration. [Sec. 18].

Effect of non Registration with Registrar

Any alteration, if not registered shall have no effect. If the documents required to be filed with the Registrar are not filed within one month, such alteration and the order of the Central Government and

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all proceedings connected therewith shall at the expiry of such period become void and inoperative. The Central Government may, on sufficient cause show, revive the order on application made within a further period of one month [Sec. 19]

4.Alteration of Capital Clause

The procedure for the alteration of share capital and the power to make such alteration are generally provided in the Articles of Association If the procedure and power are not given in the Articles of Associational, the company must change the articles of association by passing a special resolution. If the alteration is authorized by the Articles, the following changes in share capital may take place :

1. Alteration of share capital [Section 94-95]
2. Reduction of capital [Section 100-105]
3. Reserve share capital or reserve liability [Section 99]
4. Variation of the rights of shareholders [Section 106-107]
5. Reorganization of capital [Section 390-391]

5.Alteration of Liability Clause

Ordinarily the liability clause cannot be altered so as to make the liability of members unlimited. And the liability of the members cannot be increased without their consent. It lays down that a member cannot by changing the memorandum or articles, be made to take more shares or to pay more the shares already taken unless he agrees to do so in writing either before or after the change.

A company, if authorized by its Articles, may alter its memorandum to make the liability directors or manager unlimited by passing a special resolution.

ARTICLES OF ASSOCIATION

Every company is required to file Articles of Association along with the Memorandum of Association with the Registrar at the time of its registration. Companies Act defines 'Articles as Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies Acts. They also include, so far as they apply to the company, those in the Table A in Schedule I annexed to the Act or corresponding provisions in earlier Acts.

Articles of Association are the rules, regulations and bye-laws for governing the internal affairs of the company. They may be described as the internal regulation of the company governing its management and embodying the powers of the directors and officers of the company as well as the powers of the shareholders. They lay down the mode and the manner in which the business of the company is to be conducted.

In framing Articles of Association care must be taken to see that regulations framed do not go beyond the powers of the company itself as contemplated by the Memorandum of Association nor should they be such as would violate any of the requirements of the companies Act, itself. All clauses in the Articles ultra vires the Memorandum or the Act shall be null and void.

Article of Association are to be printed, divided into paragraphs, serially numbered and signed by each subscriber to Memorandum with the address, description and occupation. Each subscriber shall sign in

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the presence of at least one witness who shall attest the signatures and also mention his own address and occupation.

Contents of Articles of Association

Articles generally contain provision relating to the following matters;

(1) the exclusion, whole or in part of Table A;

(2) share capital different classes of shares of shareholders and variations of these rights

(3) execution or adoption of preliminary agreements, if any;

(4) allotment of shares;

(5) lien on shares

(6) calls on shares;

(7) forfeiture of shares;

(8) issue of share certificates;

(9) issue of share warrants; of shares; transmission of shares; alteration of share capital; borrowing power of the company;

(10) rules regarding meetings;

(11) voting rights of members;

(12) notice to members;

(13) dividends and reserves;

(14) accounts and audit;

(15) arbitration provision, if any;

a. directors, their appointment and remuneration;

b. the appointment and reappointment of the managing director, manager and secretary;

(16) fixing limits of the number of directors

(17) payment of interest out of capital; common seal; and

(18) winding up.

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Model form of Articles

Different model forms of memorandum of association and Articles of Association of various types of companies are specified in Schedule I to the Act. The schedule is divided into following tables.
Table A deals with regulations for management of a company limited by shares.

Table B contains a model form of Memorandum of Association of a company limited by shares.

Table C gives model forms of Memorandum and Articles of Association of a company limited by guarantee and not having a share capital.

Table D gives model forms of Memorandum and Articles of Association of a company limited by guarantee and having a share capital. The Articles of such a company contain in addition to the information about the number of members with which the company proposes to be registered, all other provisions of Table A.

Table E contains the model forms of memorandum and Articles of Association of an unlimited company.
A Public Company may have its own Article of Association.

Alteration of Articles

Company law 2013 grant power to every company to alter its articles whenever it desires by passing a special resolution and filing a copy of altered Articles with the Registrar. An alteration is not invalid simply because it changes the company's constitution. Thus ., A company was allowed by changing articles to issue preference shares when its memorandum was silent on the point.

. Distinctions between Memorandum of Association and Articles of Association

Memorandum of Association	Articles of Association
It is character of company indicating nature of business & capital. It also defines the company's relationship with outside world	They are the regulation for the internal management of the company and are subsidiary to the memorandum.
It defines the scope of the activities of the company, or the area beyond which the actions of the company cannot go.	They are the rules for carrying out the objects of the company as set out in the Memorandum.
It, being the charter of the company, is the supreme document.	They are subordinate to the Memorandum. If there is a conflict between the Articles and the Memorandum, the act of the company
Any act of the company which is ultra vires the Memorandum is wholly void and cannot be ratified even by the whole body of shareholders.	Any act of the company which is ultra vires the Memorandum is wholly void and cannot be ratified even by the whole body of shareholders.
Every company must have its own Memorandum	A company limited by Shares need not have Articles of its own. In such A case, Table A Applies.
There are strict restrictions on its alteration. Some of the conditions of incorporation contained in it	They can be altered by a special resolution, to any extent, provided they do not conflict with the

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cannot be altered except with the sanction of the Central Government.	Memorandum and the Companies Act.

Doctrine of Ultra Vires

Objects clause is contained in the memorandum of association and sets out the powers of the directors in running the company. Traditionally, each power of the company had to be enumerated, which resulted in detailed statements as to the powers of the company. Companies are now able to use the phrase 'to carry on the business of a general commercial company' rather than use exhaustive lists of enumerated powers.

The Introduction to Doctrine of Ultra Vires

The object clause of the memorandum of the company contains the object for which the company is formed. An act of the company must not be beyond the object clause otherwise it will be ultra vires and therefore, void and cannot be ratified even if all the member wish to ratify. This is called the doctrine of ultra vires. The expression "ultra vires" consists of two words: 'ultra' and 'vires'. 'Ultra' means beyond and 'Vires' means powers. Thus, the expression ultra vires means an act beyond the powers. Here the expression ultra vires is used to indicate an act of the company, which is beyond the powers conferred on the company by the objects clause of its memorandum. An ultra vires act is void and cannot be ratified even if all the directors wish to ratify it. Sometimes the expression ultra vires is used to describe the situation when the directors of a company have exceeded the powers delegated to them. Where accompany exceeds its power as conferred on it by the objects clause of its memorandum, it's not bound by it because it lacks legal capacity to incur responsibility for the action, but when the directors of a company have exceeded the powers delegated to them. This use must be avoided for it is apt to cause confusion between two entirely distinct legal principles. Consequently, here are restricting the meaning of ultra vires objects clause of the company's memorandum.

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Protection Of Creditors And Investors

Doctrine of ultra vires has been developed to protect the investors and creditors of the company. This doctrine prevents a company to employ the money of the investors for a purpose other than those stated in the objects clause of its memorandum. Thus, the investors and the company may be assured by this rule that their investment will not be employed for the objects or activities which they did not have in contemplation at the time of investing their money in the company. It enables the investors to know the

objects in which their money is to be employed. This doctrine protects the creditors of the company by ensuring them that the funds of the company to which they must look for payment are not dissipated in unauthorized activities. The wrongful application of the company's assets may result in the insolvency of the company, a situation when the creditors of the company cannot be paid. This doctrine prevents the wrongful application of the company's assets likely to result in the insolvency of the company and thereby protects creditors. Besides the doctrine of ultra vires prevents directors from departing the object for which the company has been formed and, thus, puts a check over the activities of the directions. It enables the directors to know within what lines of business they are authorized to act .

Lifting of the 'Corporate Veil'

It means looking behind the company as a legal person and paying regard to its corporate identity and find out the real life behind the company. In such circumstances ,the Courts ignore the company as legal entity and verify directly with the management of company by members or managers ,thus, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved .

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

(a) In the law relating to trading with the enemy where the test of control is adopted.

(b) In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.

(c) Where companies form other companies as their subsidiaries to act as their agent. The application of the doctrine may operate in favor of such companies depending upon the facts of a particular case. Suppose, a company acquires a partnership concern and registers it as a company, which becomes subsidiary of the acquiring company. In an action for compulsory acquisition of the business premises of the subsidiary, it was held that the parent company (which through itself and nominees held all the shares) was entitled to compensation, maintain action for the same . Where the courts find that there is avoidance of welfare legislation, it will be free to lift the corporate veil.

(d) The Courts invariably lift the corporate veil or a disregard the corporate personality of a company to protect the public policy and prevent transactions contrary to public policy.

(e) Under the law relating to exchange control. The courts pierce the corporate veil in quasi-criminal cases in order to look behind the legal person and punish the real persons who have violated the law.

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(f) Where the use of an incorporated company is being made to avoid legal obligations, the Court may disregard the legal personality of the company and proceed on the assumption as if no company existed.

DOCTRIN OF CONSTRUCTIVE NOTICE OR DOCTRINE OF INDOOR MANAGEMENTS

The Memorandum and Articles of a company are registered with the Registrar. These are the public documents and open to public inspection,. Every person contracting with the company must acquaint himself with their contents and must make sure that his contract is in accordance with them, otherwise he cannot sue the company.

On registration the memorandum and articles of association become public documents. These documents are available for public inspection either in the office of the company or in the office of the Registrar of Companies on payment of one rupee for each inspection and can be copied (Sec. 610).

Every person who deals with the company, whether shareholder or an outsider is presumed to have read the memorandum and articles of association of the company and is deemed to know the contents of these document. Therefore, the knowledge of these documents and their contents is known as the constructive notice of memorandum and articles of association.

It is presumed that persons dealing with the company have not only read these documents but they have also understood their proper meaning.
Where a person deals with the company in a manner, which is inconsistent with the provisions of memorandum or articles, or enters into a transaction which is beyond the powers of the company, shall be personally liable to bear the consequences regarding such dealings.

MANAGEMENT OF COMPANY

Concept of Director

The Board of directors of a company is a nucleus, selected according to the procedure prescribed in the Act and the Articles of Association. Members of the Board of directors are known as directors, who unless especially authorised by the Board of directors of the Company, do not possess any power of management of the affairs of the company. Acting collectively as a Board of directors, they can exercise all the powers of the company except those, which are prescribed by the Act to be specifically exercised by the company in general meeting.

The directors of a company are its eyes, ears, brain, hands, nerves and other essential limbs, upon whose efficient functioning depends the success of the company. The directors formulate policies and establish organisational set up for implementing those policies and to achieve the objectives as contained in the Memorandum, muster resources for achieving the company objectives and control, guide, direct and manage the affairs of the company

Position of Director

The position that the directors occupy in a corporate enterprise is not easy to explain. They are professional men hired by the company to direct its affairs. Yet they are not the servants of the

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company. They are rather the officers of the company. 'A director is not a servant of any master. He cannot be described as a servant of the company or of anyone'. 'A director is in fact a director or controller of the company's affairs'. A director may, however, work as an employee in a different capacity.

Company to have Board of Directors (Section 149)

This section provides for the provisions for companies to have a duly constituted Board of Directors. According to this section:

Number of Directors

According to section 149 (1) of the Companies Act, 2013, every company shall have a Board of Directors consisting of individuals as directors and shall have:

Minimum number of directors

--in the case of Public company - 3,
---in the case of Private Company - 2, and
---in case of One person company (OPC) – 1

Maximum number of directors

:If the company wants to appoint more than 15 directors, it can do so after passing a special resolution. [Every special resolution is required to be filed in form No. MGT – 14 as per Section 117(3)(a)].

As per the Notification G.S.R. 463(E) dated 5th June, 2015, the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to Government Company.

Women director

At least one woman director shall be on the Board of such class or classes of companies as may be prescribed. [Second proviso to section 149(1)]

Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following class of companies shall appoint at least one woman director:

--every listed company.
--every other public company having;--

paid–up share capital of one hundred crore rupees or more; or
turnover of three hundred crore rupees or more.

A company, shall comply with such provisions within **a period of six months** from the date of its incorporation.

Further, any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than **immediate next Board meeting or three months from the date of such vacancy whichever is later.**

Independents Director

Every listed public company shall have at least one-third of the total number of directors as independent directors [Section 149(4)].

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According to the Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2directors as independent directors:

----the Public Companies having paid up share capital of ` 10 crore or more, or

----the Public Companies having turnover of ` 100 crore or more, or

----the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ` 50 crore.

Additional Director [Section 161 (1)]

Section 161(1) of the Companies Act, 2013 provides for appointment of additional director. According to this section:

---The articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time.

----A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director.

---Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Alternate Director [Section 161 (2)]

Section 161(2) of the Companies Act, 2013 provides for appointment of Alternate director. According to this section:

---The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director in place of another director (original director) during his absence for a period of not less than 3 months from India.

---A person who is holding any alternate directorship for any other director in the company cannot be considered for appointment as above.

Nominee Director [Section 161 (3)]

Section 161(3) of the Companies Act, 2013 provides for appointment of Nominee director. According to this section:
Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

Director in Casual Vacancy [Section 161 (4)]

Section 161 (4) of the Companies Act, 2013 provides for appointment of director in casual vacancy. According to this section:

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--In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

--Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Appointment of Directors elected by Small shareholders (Section 151)

According to section 151 of the Companies Act, 2013:

---A listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed.

---Here, "Small Shareholders" means a shareholder holding shares of nominal value of not more than ` 20,000 or such other sum as may be prescribed.

Appointment of Directors (Section 152)

Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. [Section 152 (1)]

--In case of a One Person Company, an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section. [Section 152 (1)]

--Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting. [Section 152 (2)].

--No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number (DIN) under section 154. [Section 152 (3)].

--Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number (DIN) and a declaration that he is not disqualified to become a director under this Act. [Section 152 (4)].

----A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within 30 days of his appointment in Form DIR-12 along with the fee as prescribed [Section 152 (5)].

Retirement by rotation [Section 152 (6)]

Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall:

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----be persons whose period of office is liable to determination by retirement of directors by rotation, and

---be appointed by the company in general meeting.

----The remaining directors in the case of any such company shall also be appointed by the company in general meeting.

----At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

---The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall be determined by lot.

----At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

For the purposes of the above provisions: total number of directors shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

Removal of Directors (Section 169)

section 169 of the Companies Act, 2013 came into force partially 4 from 1st April, 2014 which provides the provisions for removal of directors. According to this section:

---A company may, by ordinary resolution, remove a director before the expiry of the period of his office after giving him a reasonable opportunity of being heard. [Section 169(1)].

----It is further provided that the directors appointed on the principle of proportional representation under section 163 cannot be removed by an ordinary resolution as aforesaid. {Proviso to section 169(1)].

---A special notice shall be required of any resolution, to remove a director under section 169 or to appoint somebody in place of a director so removed, at the meeting at which he is removed. [Section 169 (2)].

On receipt of the notice of a resolution to remove a director under section 169, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled tbeheard on the resolution at the meeting. [Section 169(3)].

---The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall be determined by lot.

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----At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

For the purposes of the above provisions: total number of directors shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.
--On receipt of the notice of a resolution to remove a director under section 169, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting. [Section 169(3)].

--The vacancy resulting from the aforesaid removal if he had been appointed by the company in general meeting or by the Board, may be filled in by the appointment of another director at the same meeting at which the director is removed, provided special notice of the proposed appointment has been given under section 169(2). [Section 169(5)].

--A director so appointed shall hold office for the remaining period for which the director who has been removed would have held office if he had not been removed. [Section 169(6)].

--If the vacancy is not filled in the same meeting as above, then it may be filled as a casual vacancy in accordance with the provisions of this Act provided that the director who was so removed from office shall not be reappointed as a director .[Section 169(7)].

- ---Nothing in this section shall be taken to deprive a person removed under this section of his rights to compensation or damages payable to him in respect of the premature termination of the directorship, or terms of his appointment as director or of any appointment terminating with that as a director.[Section 169(8)(a)].

Meetings of company

1-Board meeting

Section 173 of the Act provides for Meetings of Board. According to this section:

Frequency of Board Meetings [Section 173 (1)]

First Board meeting: Every company shall hold the first meeting of the

- Board of Directors within 30 days of the date of its Incorporation.

Subsequent Board meetings: Every company shall hold minimum of 4 meetings every year provided that the gap between two consecutive board meetings shall not be more than 120 days.

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However, the Central Government may by notification, direct that these provisions will not apply in relation to any class or descriptions of companies or will apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.

Exceptions:

---A one person company, small company and dormant company shall be deemed to have complied with the provisions of section 173, if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.

--Provided that, a one person company in which there is only one director on its Board of Directors shall not be required to hold at least one Board meeting in each half of a calendar year. Thus, it is exempt from following the provisions of section 173(5).

Participation in Board meeting [Section 173 (2)]

(a) Sub section (2) of section 173 allows directors to attend Board meetings:

1-in person, or,
2-through video conferencing, or,
3-other audio visual means as may be prescribed.

(b) Such audio visual means should be capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

(c) Matters not to be dealt with in a meeting through video conferencing or other audio-visual means:-The following matters shall not be dealt with in any meeting held through video conferencing or other audiovisual means, as provided in Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014:

1-the approval of annual financial statements;
2-the approval of the Board's report;
3-the approval of the prospectus;
4-the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any to be approved by the Board; and
the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover

Notice of the Meeting [Section 173 (3)]

According to section 173(3), every board meeting shall be called by giving at least 7 days notice in writing to all the directors at their registered address (whether in India or outside India). The notice may be sent by hand delivery or by post or by electronic means.

Provided that a meeting of the Board of Directors may be called on a shorter notice (than 7 days)
--in order to transact an urgent business, subject to the condition that at least one independent director, if any, shall be present at the meeting.

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---If no independent director is present at such a meeting of the Board then the decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Penalty for failure to give notice [Section 173(4)]

The Act under section 173(4) has prescribed a penalty of ` 25,000 on every officer of the Company whose duty is to give notice under this section and who has failed to do so.

Quorum for meetings of Board (Section 174)

A quorum is the minimum number of qualified persons who must attend in order to transact business at a duly convened Board meeting. A meeting shall not be deemed to have been properly held unless the quorum was present at that meeting.

Rules of quorum

--The companies covered under section 8 of the Act shall constitute quorum for the Board meeting, either eight members or 25% of its total strength whichever is less. Provided that quorum shall not be less than two members.

--The provisions of section 174 are not applicable to one person company in which there is only one director on its Board of directors.

--For the purpose of calculating quorum, any fraction of a number shall be rounded off as one.

--Total strength shall not include directors whose places are vacant.

---Quorum shall be present throughout the meeting.

Meetings of Members :

These are meetings where the members / shareholders of the company meet and discuss various matters. Member's meetings are of the following types :-

A. Statutory Meeting :

A public company limited by shares or a guarantee company having share capital is required to hold a statutory meeting. Such a statutory meeting is held only once in the lifetime of the company. Such a meeting must be held within a period of not less than one month or within a period not more than six months from the date on which it is entitled to commence business i.e. it obtains certificate of commencement of business. In a statutory meeting, the following matters only can be discussed :-

· -- Floatation of shares / debentures by the company
· -- Modification to contracts mentioned in the pr

A notice of at least 21 days before the meeting must be given to members unless consent is accorded to a shorter notice by members, holding not less than 95% of voting rights in the company.
A statutory meeting may be adjourned from time to time by the members present at the meeting.
The Board of Directors must prepare and send to every member a report called the "Statutory Report" at least 21 days before the day on which the meeting is to be held. But if all the members entitled to attend and vote at the meeting agree, the report could be forwarded later also.

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The report should be certified as correct by at least two directors, one of whom must be the managing director, where there is one, and must also be certified as correct by the auditors of the company with respect to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company.
A certified copy of the report must be sent to the Registrar for registration immediately after copies have been sent to the members of the company.

B.Annual General Meeting

Annual General Meeting must be held by every type of company, public or private, limited by shares or by guarantee, with or without share capital or unlimited company, once a year. Every company must in each year hold an annual general meeting. Not more than 15 months must elapse between two annual general meetings. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation. In such a case, it need not hold any annual general meeting in the year of its incorporation as well as in the following year only.

In the case there is any difficulty in holding any annual general meeting (except the first annual meeting), the Registrar may, for any special reasons shown, grant an extension of time for holding the meeting by a period not exceeding 3 months provided the application for the purpose is made before the due date of the annual general meeting..

A notice of at least 21 days before the meeting must be given to members of company. The notice must state that the meeting is an annual general meeting. The time, date and place of the meeting must be mentioned in the notice.

C. Extraordinary General Meeting on Requisition :

The members of a company have the right to require the calling of an extraordinary general meeting by the directors. The board of directors of a company must call an extraordinary general meeting if required to do so by the following number of members :-

--members of the company holding at the date of making the demand for an EGM not less than one-tenth of such of the voting rights in regard to the matter to be discussed at the meeting ; or
-- if the company has no share capital, the members representing not less than one-tenth of the total voting rights at that date in regard to the said matter.
--A requisition is required to be submitted by member intend to call EGM .
The requisition must state the objects of the meetings and must be signed by the requisitioning members.

--The requisition must be deposited at the company's registered office. When the requisition is deposited at the registered office of the company, the directors should within 21 days, move to call a meeting and the meeting should be actually be held within 45 days from the date of the lodgement of the requisition. If the directors fail to call and hold the meeting as aforesaid

D. CLASS MEETINGS

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Class meetings are the meetings of the shareholders and thecreditors. Class meetings are held to pass resolutions which will bind only the members of the particular class concerned. It can be done with the consent of the holders of 3/4 of the issued shares of that class in a separate meeting of that class of holders. Class meetings can only be attended by the members of that class. Whenever it is necessary to alter or change the rights or privileges of a class as provided by the Articles, a class meeting must be called.

Resolutions

A resolution is a legally binding decision made by limited company directors or shareholders. If a majority vote is achieved in favour of the decision, a resolution is 'passed'. Shareholders can pass resolutions or special resolutions at general meetings, or they can pass written resolutions. All ordinary types of collective decisions of directors are simply referred to as 'resolutions'. These decisions can be made at board meetings or in writing.

Types of resolutions

There are 3 types of resolutions available to limited company shareholders:

- **Ordinary resolutions**– Passed by a simple majority of shareholders' votes. Used for all matters, unless the Companies Act, the articles of association, and/or a shareholders' agreement stipulates the need for a special resolution. The majority of ordinary resolutions must be filed with Companies House.
- **Special resolutions**– Passed by a 75% majority of shareholders' votes at a general meeting. Used for extraordinary matters that cannot be passed by an ordinary resolution.
- **Written resolutions**– Used when a general meeting is not required to pass an ordinary resolution or special resolution. Any written ordinary resolution must be passed by a simple majority of shareholders' votes; written special resolutions require a 75% majority vote. Shareholders must sign a written resolution to cast their votes.

What decisions require an ordinary resolution?

An ordinary resolution is passed if a simple majority (above 50%) of the votes cast are in favour of the resolution. This type of resolution can be used by shareholders and directors for all day-to-day matters, such as:

- Appointing and removing directors.
- Appointing and removing secretaries.
- Matters pertaining to directors' employment contracts.
- Amending directors' powers.
- Approving dividend payments.
- Authorizing directors' loans.
- Authorizing the transfer of shares.

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The types of decisions that company directors can make will depend on the powers they are granted by the shareholders. Their rights and powers will be outlined in the articles of association and shareholders' agreement.

What decisions require special resolution?

In the context of limited companies, a special resolution is a motion or proposal that requires approval of at least 75% of shareholder votes. This kind of resolution is reserved for important and rare decisions, such as:

- Changing a company name.
- Reducing share capital.
- Allotting more shares.
- Issuing different share classes.
- Altering the articles of association.
- Removing pre-emption rights.
- Re-registering a company.
- Changing a private company to a public company, or vice versa.
- Winding up a company by members' voluntary liquidation.

The Companies Act 2006 specifies the types of decisions requiring a special resolution. Where no type of resolution is specified, shareholders may pass an ordinary resolution with a simple majority of 50.01% of the votes.

How to pass a special resolution

IN order to pass a special resolution, 14 days' notice must be given to all shareholders (members) about the proposed resolution and its intention, unless the Articles states otherwise. If a general meeting is held, a vote will be taken by a show of hands or using a poll. Alternatively, these decisions can be passed by written resolution. If 75% of the shareholders agree to pass a proposed resolution, the decision is legally binding in accordance with the Companies Act 2006.

Special resolutions must be delivered to Companies House by post within 15 days of being passed. A copy must also be given to all shareholders and the company auditor. Furthermore, a company must keep a copy of all resolutions at its registered office address or SAIL address for a minimum period of 10 years.

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CORPORATE WINDING UP AND DISSOLUTION

The Companies Act, 2013, provides various strategies to deal with such business failures such as arrangement, reconstruction, amalgamation and winding-up. Winding-up of a company is a process of putting an end to the life of a company. It is a proceeding by means of which a company is dissolved and in the course of such dissolution its assets are collected, its debts are

paid off out of the assets of the company or from contributions by its members, if necessary. If any surplus is left, it is distributed among the members in accordance with their rights.

Under Companies Act 2013, the Company may be wound up in any of the following modes:

-By National Company Law Tribunal (the Tribunal).
-Voluntary winding up

Circumstances in which company may be wound up by Tribunal (Section 271)

Grounds on which a Company may be wound up by the Tribunal A company under Section 271(1) may be wound up by the tribunal if:

- if the company is unable to pay its debts.
- if the company has, by special resolution, resolved that the company be wound up by the Tribunal.
- if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality. –
- if the Tribunal has ordered the winding up of the company under Chapter XIX(i.e., Revival and Rehabilitation of Sick Companies).
- if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.
- if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years, or
- if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

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Petition for winding up (Section 272)

An application for the winding up of a company has to be made by way of petition to the Court. A petition may be presented under Section 272 by any of the following persons:

i the company, or

ii Any creditor or creditors, including any contingent or prospective creditor or creditors.

iii Any contributory or contributories.

iv All or any of the parties specified above in clauses (a), (b), (c) together (e) the Registrar.

v Any person authorized by the Central Government in that behalf.

vi By the Central Government or State Government in case falling under clause (c) of Section 271 (1) i.e., Company acing against the interest of the sovereignty and integrity of India.

Final Meeting and dissolution (Section 318)

Section 318 (1) states that as soon as the affairs of a company are fully wound up, the Company Liquidator shall prepare a report of the winding up showing that the property and assets of the company have been disposed of and its debt fully discharged or discharged to the satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying the final winding up accounts before it and giving any explanation there for.

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VOLUNTARY WINDING UP (SECTION 304 TO 323)

Circumstances in which a company may be wound up voluntarily (Section
As per Section 304 (1), a company may be wound up voluntarily:

if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if

any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved, or

if the company passes a special resolution that the company be wound up voluntarily.

Procedures for voluntary winding -up

- Declaration of Solvency in case of proposal to wind up voluntarily (Section 305)
- Meeting of Creditors (Section 306)
- As per Section 306 (1) the company shall call a meeting of its creditors either on the same day on which resolution is passed for winding up or on the next day and
- serve a notice of such meeting by registered post to the creditors.
- The declaration by affidavit to be made by directors or
- In case the company has more than two director , they have to make a full inquiry in to affair of company and give opinion that the company has no debt and it will be able to pay it's debt in full from the proceeds of asset sold.

- Commencement of voluntary winding up (Section 308)

voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up or resolution on the expiry of period fixed by its articles or on occurrence of any event in respect of which the articles provide that the company should be dissolved.

- Publication of resolution

when a company has passed a resolution for voluntary winding up and a resolution is passed, it shall within fourteen days of the passing of the resolution give notice of the resolution by advertisement in the Official Gazette and also in a

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newspaper which is in circulation in the district where the registered office or the principal office of the company is situate.

- Appointment of Company Liquidator (Section 310)

The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a liquidator under Section 310, the manner specified in that Section and submit copy of resolution to Registrar.

- Final Meeting and dissolution (Section 318)

Section 318 (1) states that as soon as the affairs of a company are fully wound up, the Company Liquidator shall prepare a report of the winding up showing that the property and assets of the company have been disposed of and its debt fully discharged or discharged to the satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying the final winding up accounts before it and giving any explanation there for

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