

PRESENTATION ON

- THE PREVENTION OF MONEY LAUNDERING ACT, 2002
- THE REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016
- THE CODE OF CIVIL PROCEDURE, 1908
- THE LIMITATION ACT, 1963
- THE PREVENTION OF CORRUPTION ACT, 1988
- THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

The Prevention of Money Laundering act, 2002

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THE REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016

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FAQ On Prevention of Money Laundering Act, 2002

Acknowledgement: <https://taxguru.in/rbi/faq-prevention-money-laundering-act-2002.html#:~:text=As%20stated%20in%20the%20Preamble,involvement%20in%2C%20money%2Dlaundering.>

<https://www.lexology.com/library/detail.aspx?g=9e915b4e-ff0d-4139-a0cc-18a7f4cf34f6#:~:text=Part%20B%20offences%20include%20offences,million%20rupees%20has%20been%20prescribed.>

Q1. What is PMLA?

PMLA refers to the Prevention of Money Laundering Act, 2002.

Q2. When did the Prevention of Money Laundering Act come into force?

The Prevention of Money Laundering Act, 2002 has come into force with effect from 1 July, 2005. The Act was amended by Prevention of Money Laundering (Amendment) Act 2009 w.e.f 01.06.2009.

Q3. Does the Act extend to the whole of India?

Yes, it extends to the whole of India including the state of Jammu & Kashmir.

Q4. What is the object of the enactment of Prevention of Money Laundering Act, 2002?

As stated in the Preamble to the Act, it is an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering.

Q5 Which agency administers the Prevention of Money Laundering Act?

The Directorate of Enforcement of the Department of Revenue, Ministry of Finance is responsible for administering the Prevention of Money Laundering Act.

Q6. What is Money Laundering?

The goal of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amount of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimize” the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of ‘dirty money’. Money Laundering is the process of conversion of such proceeds of crime, the ‘dirty money’, to make it appear Legitimate Money.

Q7. How does Money Laundering take place?

Usually, the process of Money Laundering goes through the following three stages :

(a) Placement:- The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial system.

This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.

(b) Layering:- The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.

(c) Integration:- Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies. The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

Q8. What has been the international response to tackle Money Laundering?

In response to mounting concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations which set out the measures national governments should take to implement effective anti-money laundering programmes.

Q9. What steps have been taken by the Government of India to tackle the menace of Money Laundering?

Government of India is committed to tackle the menace of Money Laundering and has always been part of the global efforts in this direction. India is signatory to the following UN Conventions, which deal with Anti Money Laundering / Countering the Financing of Terrorism :

1. International Convention for the Suppression of the Financing of Terrorism (1999)
2. UN Convention against Transnational Organized Crime (2000)
3. UN Convention against Corruption (2003)

In pursuance to the political Declaration adopted by the special session of the United Nations General Assembly (UNGASS) held on 8 to 10 June 1998 (of which India is one of the signatories) calling upon member states to adopt Anti Money Laundering Legislation & Programme, the Parliament has enacted a special law called the 'Prevention of Money Laundering Act, 2002' (PMLA 2002). This Act has been substantially amended, by way of enlarging its scope, in 2009 (w.e.f. 1.6.2009), by enactment of Prevention of Money Laundering (Amendment) Act, 2009.

Q10. What is the offence of Money Laundering?

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.

(Section 3 of PMLA)

Q11. What are proceeds of crime?

“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;(Section 2(1)(u) of PMLA)

Q12. What is a `scheduled offence' ?

The offences listed in the Schedule to the Prevention of Money Laundering Act, 2002 are scheduled offences in terms of Section 2(1)(y) of the Act.

With the amendment of the Act in 2009, a large number of offences have been included in the Schedule of the Act. The scheduled offences are divided into three parts – Part A, Part B, & Part C.

In Part A, certain serious offences such as those connected with waging war against the Nation, circulation of Fake Indian Currency Notes, offences relating to Narcotic Drugs, etc. have been included, wherein no monetary limit for initiating action under PMLA has been prescribed.

In relation to offences under Part 'B' of the schedule, the value involved should be Rs 10 million **or More**.

Part 'C' of the Schedule deals with trans-border crimes, and is a vital step in tackling Money Laundering across international boundaries.

Q13. What is a Predicate Offence?

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence as the offence is a prerequisite and integral part of Money Laundering Offence.

Q14. What are the major Acts covered in the Schedule?

- (a) Indian Penal Code (IPC)
- (b) NDPS Act
- (c) Unlawful Activities (Prevention) Act
- (d) Prevention of Corruption Act
- (e) Customs Act
- (f) SEBI Act
- (g) Copyright Act
- (h) Trademark Act
- (i) Information Technology Act
- (j) Explosive Act
- (k) Wild Life (Protection) Act

The various Acts covered in the Schedule to PMLA are given in Annexure A.

Q15. Who investigates Scheduled Offences?

Scheduled Offences are investigated by agencies such as Police, Customs, SEBI, NCB, CBI under their respective Acts.

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Q16. Who can investigate a case of Money Laundering ?

As per Sections 48 & 49 of the PMLA, the officers of the Directorate of Enforcement have been given powers to investigate cases of Money Laundering. The officers have also been authorized to initiate proceedings for attachment of property and to launch prosecution in the designated Special Court.

Q17. What are the possible actions which can be taken against persons/properties involved in Money Laundering?

Following actions can be taken against the persons involved in Money Laundering:-

(a) Attachment of property derived or obtained as a result of a scheduled offence. The attached properties may be confiscated and disposed off. (Sections 5 & 8 of the Act).

(b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to a fine up to Rupees 5 Lakhs (Section 4 of the Act). When the scheduled offence is committed under the Narcotic and Psychotropic Substances Act, 1985, the punishment shall be imprisonment for a term which shall not be less than three years but may extend upto ten years and liable to a fine of upto Rs.5 lakhs.

Q18. What are the powers available to the Investigating Officers under the Act ?

The Investigating Officers have the powers :-

- (a) To conduct survey of a place (Section 16)
- (b) To conduct search of building, place, vessel, vehicle or aircraft & seize records & property (Section 17)

- (c) To conduct personal search (Section 18)
- (d) To summon and record the statements of persons concerned (Sec. 50);
- (e) To arrest persons accused of committing the offence of Money Laundering (Section 19).
- (f) To provisionally attach any property suspected to be derived from the proceeds of crime (Section 5)

Q19. What are the powers of authority during survey?

An authority during the survey may—

- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies there from
- (ii) make an inventory of any property checked or verified by him, and
- (iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.(Section 16)

Q20. What are the powers of officers / authority during search & seizure?

Authorized officer may

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or make or cause to be made extracts or copies there from;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act. (Section 17)

Q21. What is the time limit for retention of records and property seized during search & seizure?

Three months from the end of the month in which such records & property were seized.

On the expiry of the said three months period, the records & property shall be returned to the person from whom such records & property was seized unless the Adjudicating 6/17

Authority permits retention of such property beyond the said period. (Sections 20 & 21)

Q22. What are the rights of persons being searched during search?

(i) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate.

(ii) If the requisition is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section.

(iii) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(iv) Search shall be made in the presence of two or more persons.

(v) No female shall be searched by any one except a female. (Section 18)

Q23. What are the rights of persons during arrest?

(i) Person making arrest shall, as soon as may be, inform him of the grounds for such arrest to the arrestee.

(ii) Every person arrested shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metro politan Magistrate, as the case may be, having jurisdiction (Section 19)

Q24. What are the powers of authorities regarding issuing summons, enforcing production of documents and to give evidence etc.?

(i) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director of the Directorate of Enforcement have the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(ii) All the persons so summoned are bound to attend in person or through authorized agents, as such officer may direct, and are bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(iii) Such proceedings are deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code. (Section 50)

Q25. What is the time limit for retention of record impounded during the proceedings conducted under the PMLA?

Authority empowered to issue summons may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act :

Provided that an Assistant Director or a Deputy Director cannot

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director. (Section 50)

Q26. What are the presumptions in interconnected transactions?

Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter-connected transactions. (Section 23)

Q27. Whether the statement recorded before the Investigating Officer under PMLA is admissible evidence under the Law?

Yes, the statement recorded before the Investigating Officer under PMLA is admissible evidence in the Court as such proceeding under Section 50(2) and 50(3) of the Act is a judicial proceeding within the meaning of Section 193 and 228 of IPC.

Q28. Who has burden to prove the commission of offence under PMLA?

When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused. (Section 24)

Q29. What is meant by the term “Property” appearing in the Prevention of Money Laundering Act, 2002?

“Property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located [Section 2(v)]

Q30. What is “attachment”?

“Attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act. [Section 2(d)]

Q31. What are the circumstances under which properties involved in money laundering can be attached?

- (i) Where the Director, or any other officer not below the rank of Deputy Director authorized by him for the purposes of this section, has reasons to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that
- (a) any person is in possession of any proceeds of crime;
 - (b) such person has been charged of having committed a scheduled offence; and
 - (c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by an order in writing, provisionally attach such property for a period not exceeding **180 days** from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961).

(ii) No such order of attachment shall be made unless in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorized to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be. (Section 5)

Q32. How long will this order of provisional attachment of property remain valid?

Every order of provisional attachment shall cease to have effect after **180 days** from the date of the order, if no order is passed by the Adjudicating Authority in this regard. However, within the said 150 days, if the Adjudicating Authority, by an order, records a finding that all or any of the properties are not involved in money laundering, then order of provisional attachment shall cease to have effect from the date of such order of the Adjudicating Authority. [Section 3(5)]

Q33. Whether the persons claiming or entitled to claim any interest in the enjoyment of immovable property can enjoy the property during the period of provisional attachment?

Yes. [Section 5 (4)]

Q34. What is the remedy available to aggrieved person, where property is provisionally attached?

It has been provided in the Act that before recording the finding that all or any of the properties are involved in money laundering, the Adjudicating Authority has to issue a show cause notice of not less than thirty days to the aggrieved person. The aggrieved person at this stage can submit his reply and attend the hearing, either by himself or through his authorized representative, before the Adjudicating Authority to present his standpoint. [Section 8(1)]

Q35. What will happen if the Adjudicating Authority records the finding that all or any of the properties are involved in money laundering?

- (i) Where the Adjudicating Authority decides that any property is involved in money laundering, he shall, by an order in writing, confirm the attachment of the property. Such attachment shall
 - (a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and
 - (b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final
- (iii) After the confirmation of provisional order of attachment, the Director or any other officer authorized by him in this behalf shall forthwith take the possession of the attached property.

Q36. What will happen if the Adjudicating Authority records the finding that all or any of the properties are not involved in money laundering?

In such cases, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized. [Section 20 (5) However, the Director or any other officer authorized by him in this behalf, may withhold the release of any property until filing of appeal under section 26 or forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal. [Section 20(6)]

Q37. What will happen to the seized records after passing of the order by the adjudicating authority?

The Adjudicating Authority shall direct the release of the records to the person from whom such records were seized. However, the Director or any officer authorized by him in this behalf may withhold the release of any records until filing of appeal under section 26 or after forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.[Section 21]]

Q38. What will happen to the attached properties after conclusion of trial for the scheduled offence?

- (i) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property and net income, if any, shall cease to have effect. [Section 8(5)]
- (ii) Where on conclusion of a trial for any scheduled offence, the guilt of the person is proved in the trial court and order of such trial court becomes final, the order of attachment of property will become final. [Section 8 (3)]

(iii) Where the attachment of any property becomes final, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property. [Section 8(6)]

(iv) After an order of confiscation, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances. (Section 9)

Q39. Which is the Appellate Authority against the order passed by Adjudicating Authority and what is the time limit to file appeal?

The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. (Section 26)

Q40. Which is the Appellate Authority against the order passed by Appellate Tribunal and what is the time limit to file appeal?

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. Thus appeal can be filed before High Court on any question of law or fact. High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. (Section 42)

Q41. How do you describe the expression, “person” appearing in the Prevention of Money Laundering Act, 2002?

“Person” includes

1. an individual,
2. a Hindu undivided family,
3. a company,
4. a firm,
- 5 an association of persons or a body of individuals, whether incorporated or not,
6. every artificial juridical person not falling within any of the preceding sub-clauses, and
7. any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.

Thus, besides the natural person, even legal entities are also covered under the expression “person” as per the Act.

Q42. What are the offences specified under Part “A” of the schedule?

Para 1: The Indian Penal Code (Section 121,121A,489A,489B)

Para 2: The Narcotics Drugs & Psychotropic Substances Act, 1985 (Section 15,16,17,18,19,20,21,22,23, 24, 25A,27A,29)

Para 3: The Explosives Substances Act, 1908 (Section 3,4,5)

Para 4: Unlawful Activities (Prevention) Act, 1967 (Section 10 read with 3, 11 read with 3&7, 13 read with 3,16 with 15, 16A, 17,18,18A, 18B,19,20,21,38,39 & 40)

Para 5: The Arms Act, 1959 (Section 25,26,27,28,29 &30)

Para 6 The Wildlife (Protection) Act, 1972 (Section 51 read with 9, 51 read with 17A, 51 read with 39, 51 read with 44, 51 read with 48, 51 read with 49B).

Para 7 : Immoral Traffic (Prevention) Act, 1956 (Section 5,6,8,9)

Para 8 : The Prevention of Corruption Act, 1988 (Section 7,8,9,10 & 13)

Para 9 : The Explosives Act, 1884. (Section 9B, 9C)

Para 10 : The Antiquities and Arts Treasures Act, 1972 (Section 25 read with 3, 28)

Para 11 : The Securities and Exchange Board of India Act, 1992 (Section 12A read with 24))

Para 12 : The Customs Act, 1962. (Section 135)

Para 13: The Bonded Labour System (Abolition) Act, 1976 (Section 16,18,20)

Para 14: The Child Labour (Prohibition and Regulation) Act, 1986 (Section 14)

Para 15: The Transplantation of Human Organs Act, 1994 (Section 18,19,20)

Para 16: The Juvenile Justice (Care and Protection of children) Act, 2000. (Section 23,24,25,26)

Para 17: The Emigration Act, 1983 (Section 24)

Para 18: The Passports Act. 1967 (Section 12)

Para 19: The Foreigners Act, 1946 (Section 14,14B,14C)

Para 20: The Copy Right Act, 1957 (Section 63,63A,63B,68A)

Para 21: The Trade Marks Act, 1999. (Section 103,104,105,107,120)

Para 22: The Information Technology Act, 2000. (Section 72,75)

Para 23: The Biological Diversity act, 2002. (Section 55 read with 6)

Para 24: The Protection of Plant varieties and farmers' Rights Act, 2001. (Section 70,71,72,73 all read with 68)

Para 25: The Environment Protection Act, 1986. (Section 15 read with 7 & 8)

Para 26: The Water (Prevention and Control of Pollution) Act, 1974 [Section 41(2), 43]

Para 27: The Air (Prevention and Control of Pollution) Act, 1981. (Section 37)

Para 28: The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002. (Section 3)

Q43. What are the offences specified under Part “B” of the schedule?

Part B (containing para 1 to para 25) has been omitted by The Prevention of Money Laundering (Amendment) Act,2012 (2 of 2013) and all the offences of Part B have now been placed in Part A of the Schedule.

Q44. What are the offences specified under Part “C” of the schedule?

An offence which is the offence of cross border implications and is specified in, –

1. Part A; or
2. Omitted by the PMLA(Amendment) Act,2012 92 of 2013) with effect from 15.02.2013);
or
3. The offences against property under Chapter XVII of the Indian Penal Code.

Q45. What is “offence of cross border implication”?

Any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B, or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or

Any offence specified in Part A, Part B, or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India. [Section 2 (ra)]

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Q46. What are the obligations of Banking Companies, Financial Institutions and Intermediaries of securities market in terms of the provisions of PMLA,2002?

Every banking company, financial institution and intermediary has to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise a single transaction or a series of transactions integrally connected to each other and furnish such information to the Director within such time as prescribed. They are also to verify and maintain the records of the identity of all its clients, in prescribed manner. These records are to be maintained for a period of ten years. (Section 12)

Q47. What are the penalties that can be imposed on banking company, financial institution and intermediary for non maintenance of records or non submission of aforesaid information?

Fine can be levied on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. (Section 13)

Q48. Who is the appellate authority against the order passed by Director?

Any banking company, financial institution or intermediary aggrieved by any order of the Director made under section 13, may prefer an appeal to the Appellate Tribunal. (Section 26)

SPECIAL COURTS

Q49. What are special Courts under PMLA?

For the trial of an offence punishable under section 4 of PMLA, the Central Government, in consultation with the Chief Justice of the High Court, by notification, has designated one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as specified in the notifications. While trying an offence under PMLA, a Special Court has also to try an offence, other than an offence of money laundering, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. (Section 43)

Q50. What are offences trial able by special Courts under PMLA?

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the scheduled offence and the offence punishable under section 4 of PMLA, shall be triable only by the Special Court constituted for the area in which the offence has been committed. (Section 44)

Q51. Which is the Appellate Authority against the order passed by Special Court?

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.(Section 47)

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

Q52. What is meant by term “Contracting State”?

“Contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise. (Section 55)

Q53. What is the mechanism to obtain evidence required in connection with investigation into an offence or proceedings under the Act if such evidence may be available in any place in a contracting State?

An application is to be made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer and the Special Court, on being satisfied, may issue a Letter of Request to a court or an authority in the contracting State competent to deal with such request to

- (i) examine facts and circumstances of the case,
- (ii) take such steps as the Special Court may specify in such letter of request, and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

Every statement recorded or document or thing received from contracting state shall be deemed to be the evidence collected during the course of investigation.(Section 57).

Q54. What is the mechanism to provide assistance to a contracting State?

Where a Letter of Request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under PMLA and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such Letter of Request to the Special Court or to any authority under the Act for execution of such request. (Section 58)

Q55. What are the Reciprocal arrangements for processes and assistance for transfer of accused persons?

(1) A Special Court, in relation to an offence punishable under section 4 for the service or execution of a summons, a warrant or a search warrant in a contracting state shall send such summons or warrant in duplicate in prescribed form to the Court, Judge or Magistrate through specified authorities.

(2) Similarly summons, a warrant or a search warrant in relation to an offence punishable under section 4 received for service or execution from a contracting state shall be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution. After execution of summon or search warrant received from a contracting State, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through the specified authority. (Section 59)

Q56. Whether the property involved in money laundering and located in the contracting State can also be attached?

Yes. In such cases, after issue of an order for attachment of any property made under section 5 or an order confirming such attachment made by an Adjudicating Authority, the Special Court, on an application by the Director or the Administrator may issue a Letter of Request to a court or an authority in the contracting State for execution of such order. (Section 60)

Q57. Whether the request received from contracting state requesting attachment or confiscation of the property in India (derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 committed in that contracting State) can be executed?

Yes.

MISCELLANEOUS

Q58. What is the punishment for vexatious search?

Imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.(Section 62)

Q59. What is the punishment for false information or failure to give information, etc.?

Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both. (Section 63)

Q60. What is the punishment if a person being legally bound to state the truth of any matter refuses to answer any question put to him, refuses to sign any statement made by him, or omits to attend or produce books of account or documents at the place or time in compliance of summon issued under section 50?

Penalty of a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure can be imposed. (Section 63)

Q61. Whether a suit can be brought in civil court to set aside or modify any proceedings taken or made under PMLA?

No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under PMLA and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under PMLA. (Section 67)

Q62. What is the mechanism to recover the fine imposed on any person under Section 13 or Section 63?

Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.(Section 69)

Q63. What are the provisions when the offence of money laundering is committed by companies?

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. (Section 70)

Q64. What will happen if there is conflict between the provisions of PMLA, and other Acts / laws?

The provisions of PMLA have over-riding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. (Section 71)

Q65. What will happen to the proceedings initiated under PMLA in the event of death or insolvency of the person?

In cases where any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred, then, the legal representatives or the official assignee or the official receiver may prefer an appeal to the Appellate Tribunal / High Court or to continue the appeal before the Appellate Tribunal / High Court, in place of such person. (Section 72)

The following officers and others are empowered and required to assist the authorities in the enforcement of the provisions of the PML Act

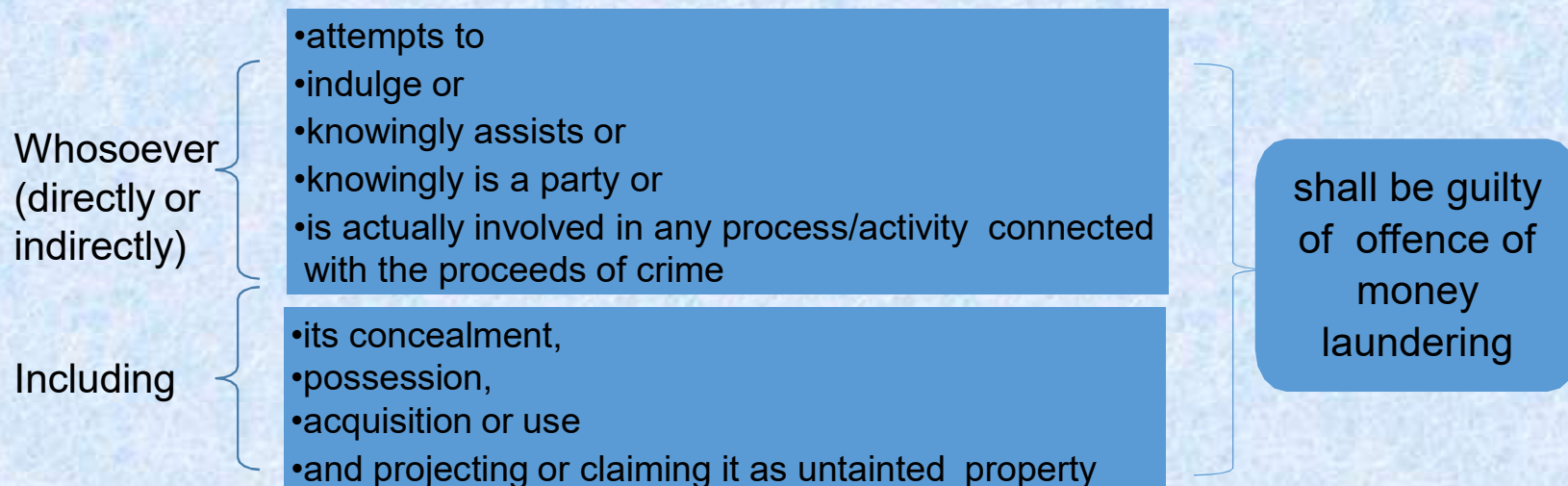
- A.** Officer of the Customs and Central Excise Depts.
- B.** Officer appointed under section 5(1) of the Narcotic Drugs and Psychotropic substances Act,1985
- C.** Income –tax Authorities under sections 117(1) of the Income –tax Act,1961
- D.** Members of the recognised stock exchange referred to in section 2(f) and the officer of the stock exchanges recognised under section 4 of the Securities Contracts (regulation) Act.1956
- E.** Officer of the Reserve Bank on India sections 3 of the Reserve Bank of India Act ,1934
- F.** Officers of the Police
- G.** Officers of enforcement appointed under sections 36(1) of the Foreign Exchange Management Act,1999
- H.** Officer of the Securities and Exchange Board of India established under sections 3 of the Securities and Exchange Board of India Act,1992
- I.** Officer of the Insurance Regulatory and Development Authority established under sections 3 of the Insurance Regulatory and Development Authority Act,1999
- J.** Officer and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountant Act,1949
- K.** Officer and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act,1959
- L.** Officer and members Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act.1980

PREVENTION OF
MONEY
LAUNDERING
ACT, 2002

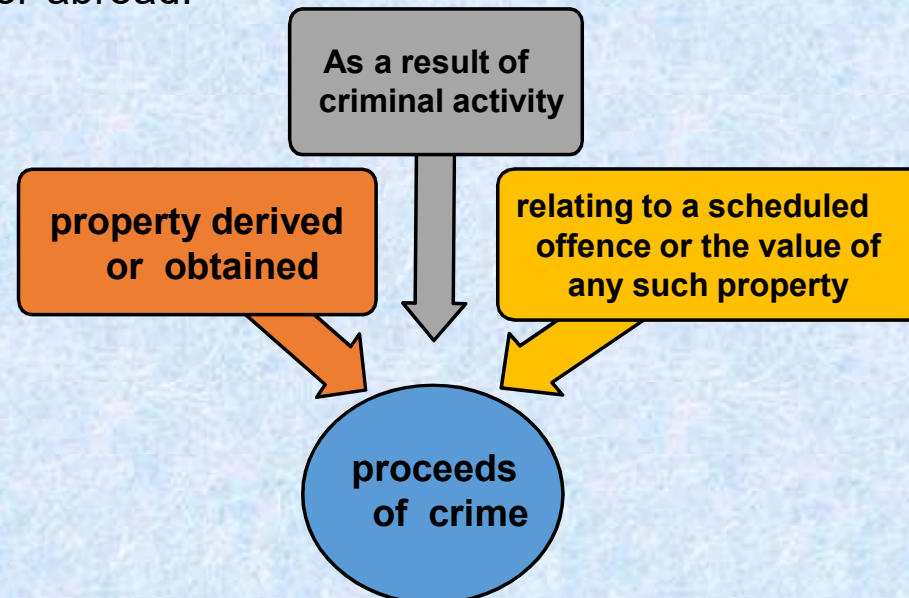
SECTION:2 DEFINITIONS

To understand the meaning of money – laundering it is essential to define proceeds of crime, property and scheduled offence. In fact, all the above definitions have to be read together.

- I. Clause (p) of sub section (1) of section 2 provides that "**money-laundering**" has the meaning assigned to it in section 3. Moving to section 3, it is observed that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.



II. Section 2(1)(u) defines "**proceeds of crime**" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken/held outside the country, then the property equivalent in value held within the country or abroad.



III. Now, let us understand what is this **Property** as talked above. In terms of clause (v) of sub – section (1) of section 2, "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

Further definition clarifies that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences.

IV. In terms of clause (rb) of sub – section (1) of section 2 "**payment system**" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

V. The term "**scheduled offence**" has been defined in clause (y) of sub-section (1) of section 2. It means –

- a) the offences specified under Part A of the Schedule; or
- b) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
- c) The offences specified under Part C of the Schedule.

The Schedule to the Act gives a list of all the above offences. The Schedule is divided into three parts- Part A, Part B and Part C, which are given in Annexure to the Chapter.

VI. "**Transfer**" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

OTHER DEFINITIONS

"Authorised person" means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999. [Section 2(1)(da)]

"Banking company" means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act. [Section 2(1)(e)]

"Beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person. [Section 2(1)(fa)]

"Client" means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting. [Section 2(1)(ha)]

“Financial institution” means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India. [Section 2(1)(l)]

“Intermediary” means,

- (i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or
- (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or
- (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
- (iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956. [Section 2(1)(n)]

"Investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence. [Section 2(1)(na)]

"Non-banking financial company" shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934. [Section 2(1)(q)]

"Payment system operator" means a person who operates a payment system and such person includes his overseas principal.

Explanation — For the purposes of this clause, "overseas principal" means,—

- (A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
- (B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India.
[Sec: 2(1)(rc)]

"Person" includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses; [Section 2(1)(s)]

"Person carrying on designated business or profession" means,—

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;
- (iii) real estate agent, as may be notified by the Central Government;
- (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time. [Section 2(1)(sa)]

"Records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed. [Section 2(1)(w)]

“Reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. [Section 2(1)(wa)]

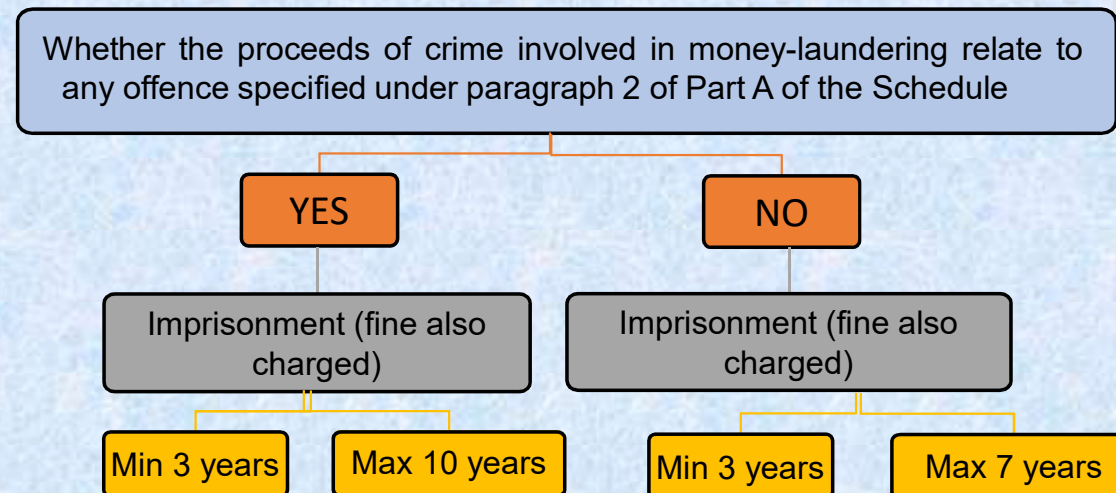
"Value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person. [Section 2(1)(zb)].

Section:3 & 4 PUNISHMENT FOR THE OFFENCE OF MONEY LAUNDERING

Section 3 deals with the offence of money laundering which has been discussed in the definition part above.

Section 4 provides for the Punishment for Money-Laundering - Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule (i.e. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985), the maximum punishment may extend to ten years instead of seven years.



ATTACHMENT, ADJUDICATION AND CONFISCATION

“**Attachment**” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act.

“**Adjudicating Authority**” means an Adjudicating Authority appointed under sub-section (1) of section 6.

The Prevention of Money Laundering Act gives extremely wide powers to the authorities to attach properties suspected to be involved in Money Laundering.

Attachment of property involved in money-laundering [Section 5]

1. Where the Director or any other officer (not below the rank of Deputy Director authorised by the Director) for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—
 - (a) any person is in possession of any proceeds of crime; and
 - (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

Condition for attachment: Provided that no such order of attachment shall be made unless, in relation to the scheduled offence:

- a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or
- a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or
- a similar report or complaint has been made or filed under the corresponding law of any other country.

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

2. The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1) (i.e. point 1 above), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

3. Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) (i.e. point 2 above) of section 8, whichever is earlier.

4. Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation- For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

5. The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Adjudicating Authorities, composition, powers, etc. [Section 6]

1. **Appointment of Adjudicating Authority (AO):** The Central Government shall, by notification, appoint an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act.
2. **Composition of AO:** An Adjudicating Authority shall consist of a Chairperson and two other Members: However, one Member each shall be a person having experience in the field of law, administration, finance or accountancy.
3. **Eligibility:** A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority:-
 - (a) in the field of law, unless he—
 - (i) is qualified for appointment as District Judge; or
 - (ii) has been a Member of the Indian Legal Service and has held a post in Grade I of that service;
 - (b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.
4. **Appointment of Chairperson of the AO:** The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

5. **Jurisdiction:** Subject to the provisions of this Act,—

- (a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;
- (b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;
- (c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;
- (d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction. [Sub-section (5)]

6. **Transfer of Member:** Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.

7. **Transfer of Case/matter:** If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

8. **Term of Office:** The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office: However, no Chairperson or other Member shall hold office as such after he has attained the age of 65 years.

9. **Payment of Salary and Allowances:** The salary and allowances payable to and the other terms and conditions of service of the Member shall be such as may be prescribed:

However, neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to his disadvantage after appointment.

10. **Filling of Vacancies:** If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Adjudicating Authority from the stage at which the vacancy is filled.

11. **Resign from Office:** The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

However, the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

12. **Removal:** The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

13. **Occurrence of Vacancy:** In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

14. **Discharge of function in absence of chairperson of AO:** When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

15. **Powers of AO to regulate its own procedure:** The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure.

Staff of Adjudicating Authorities [Section 7]

1. The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.
2. The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.
3. The salaries and allowances and other conditions of service of the officers and employees of the Adjudicating Authority shall be such as may be prescribed.

Adjudication [Section 8]

(1) Serving of Notice by AO: On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than 30 days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government.

Where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) **Order Passed:** The Adjudicating Authority shall, after—

- (a) considering the reply, if any, to the notice issued under sub-section (1);
 - (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and
 - (c) taking into account all relevant materials placed on record before him,
- by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering.

If the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) **Confirmation of Execution of Passed order:** Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not exceeding 365 days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

Explanation.—For the purposes of computing the period of 365 days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) **In case of Provisional order:** Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) **Property involved be confiscated to the Central Government:** Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) **Order of release:** Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) **Passing of an appropriate order in case where trial cannot be concluded:** Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) **Direction to CG by the Special Court:** Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

Section 48 provides for the following classes of authorities for the purposes of this Act, namely:-

1. Director or Additional Director or Joint Director,
2. Deputy Director,
3. Assistant Director, and
4. such other class of officers as may be appointed for the purposes of this Act.

PUNISHMENT FOR FALSE INFORMATION OR FAILURE TO GIVE INFORMATION, ETC. [SECTION 63]

1. Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.
2. If any person,-
 - (a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or

(c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than 500 rupees but which may extend to 10,000 rupees for each such default or failure.

3. No order under this section shall be passed by an authority referred to in sub-section (2) (i.e. point 2 above) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

4. Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.

Bar of suits in civil courts [Section 67]

No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.

Act to have overriding effect [Section 71]

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Continuation of proceedings in the event of death or insolvency [Section 72]

1. Where-

- (a) any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred; or
- (b) any appeal has been preferred to the Appellate Tribunal, and-

(i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or

in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply, to such appeal.

2. Where-

(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High court under section 42; or

(b) any such appeal has been preferred to the High Court,- then-

(i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or

in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provisions of section 42 shall, so far as may be, apply, or continue to apply, to such appeal.

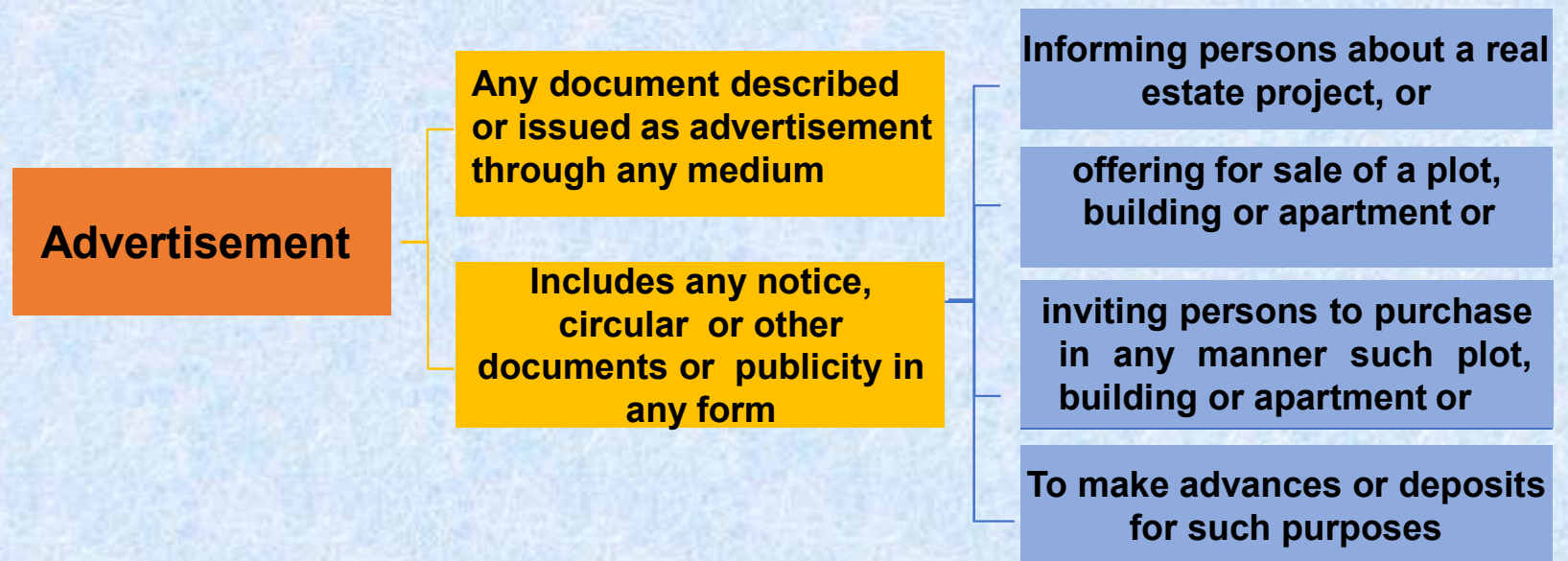
3. The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

THE REAL ESTATE
(REGULATION &
DEVELOPMENT)
ACT, 2016

SECTION:2 DEFINITIONS

Relevant Definitions are covered under section 2 of the Act which are as follows:

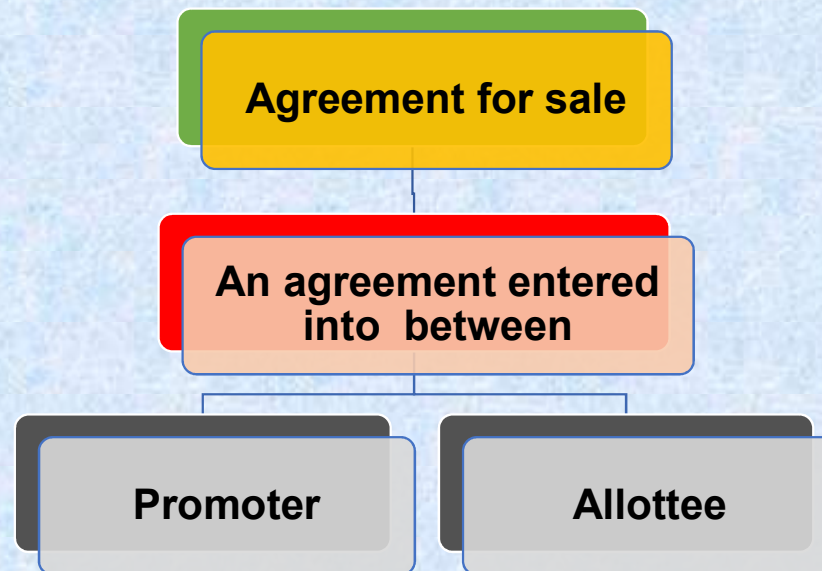
- (a) **"Adjudicating officer"** means the adjudicating officer appointed under sub-section (1) of section 71;
- (b) **"advertisement"** means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot ,building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;



Example: Does advertisement include solicitation by emails, WhatsApp, social media and SMS? Is issuance of prospectus considered to be a case of 'advertisement'?

Answer: Any medium adopted in soliciting for sale would be covered under the said definition of Advertisement, including SMS, WhatsApp, social media and emails.

(c) **"agreement for sale"** means an agreement entered into between the promoter and the allottee;



(d) **"allottee"** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

Allottee
(in relation to real estate project)

the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter,

includes the person who subsequently acquires the said allotment through sale, transfer or otherwise

does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;


Example: Does the term 'allottee' include persons who have acquired the property through secondary sales?

Answer: Yes, As per section 2(d), an allottee includes a person who acquires the said 'apartment / plot' through transfer or sale, but does not include a person to whom such plot, apartment is given on rent.

(e) **"apartment"** whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

(f) **"Appellate Tribunal"** means the Real Estate Appellate Tribunal established under section 43;

(g) **"Appropriate Government"** means in respect of matters relating to,—

- 
- the Union territory without Legislature, the Central Government;
 - the Union territory of Puducherry, the Union territory Government;
 - the Union territory of Delhi, the Central Ministry of Urban Development;
 - the State, the State Government.

- (h) "**architect**" means a person registered as an architect under the provisions of the Architects Act, 1972;
- (i) "**Authority**" means the Real Estate Regulatory Authority established under sub-section (1) of section 20;
- (j) "**Building**" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;
- (k) "**carpet area**" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation.— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

- (l) "**Chairperson**" means the Chairperson of the Real Estate Regulatory Authority appointed under section 21;

(m) "**commencement certificate**" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;

(n) "**common areas**" mean—

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

(vii) all community and commercial facilities as provided in the real estate project;

(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

Example 1: Is 'open parking areas' a part of 'common areas'?

Answer: Section 2(n) defines 'common areas' to include 'open parking areas'.

Example 2: Is 'community and commercial facilities' which are provided in a real estate project are part of 'common areas'?

Answer: Section 2(n) defines 'common areas' to include 'community and commercial facilities', thus they are an integral part of the project, and are required to be handed over by the promoter to the Association of Allottees.

(o) "**company**" means a company incorporated and registered under the Companies Act, 2013 and includes,—

(i) a corporation established by or under any Central Act or State Act;

(ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force;

(p) "**competent authority**" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(q) "**completion certificate**" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

(r) "**day**" means the working day, in the concerned State or Union territory, as the case may be, notified by the appropriate Government from time to time;

(s) "**development**" with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;

(t) "**development works**" means the external development works and internal development works on immovable property;

(u) **"engineer"** means a person who possesses a bachelor's degree or equivalent from an institution recognised by the All India Council of Technical Education or any University or any institution recognised under a law or is registered as an engineer under any law for the time being in force;

(v) **"estimated cost of real estate project"** means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges;

(w) **"external development works"** includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

(x) **"family"** includes husband, wife, minor son and unmarried daughter wholly dependent on a person;

(y) **"garage"** means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

(z) **"immovable property"** includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;

Immovable Property

includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth

But not standing timber, standing crops or grass

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

(zb) **"internal development works"** means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as education health and other public amenities or any other work in a project for its benefit, as per sanctioned plans;

(zc) **"local authority"** means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(zd) **"Member"** means the member of the Real Estate Regulatory Authority appointed under section 21 and includes the Chairperson;

(ze) **"notification"** means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(zf) **"Occupancy certificate"** means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic Infrastructure such as water, sanitation and electricity;

Example: What is the difference between the term 'completion certificate' and 'occupancy certificate'?

Answer: Section 2(zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. Occupancy certificate relates to permitting the occupation of the apartment/building, which has provision for civic infrastructure such as water, sanitation and electricity and is habitable. Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

(zg) **"Person"** includes,—

An Individual;

A Hindu Undivided Family;

A Company;

A firm under the Indian Partnership Act, 1932 or the limited liability partnership Act, 2008 as the case may be;

A Competent Authority

an association of persons or a body of individuals whether incorporated or not;

a co-operative society registered under any law relating to co- operative societies;

any such other entity as the appropriate Government may, by notification, specify in this behalf;

(zh) **"planning area"** means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;

(zi) **"prescribed"** means prescribed by rules made under this Act;

(zj) **"project"** means the real estate project as defined in clause (zn);

(zk) **"promoter"** means,—

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government;

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; Or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

Example: Does the definition of ‘promoter’ include public bodies such as Development Authorities and Housing Boards?

Answer: The Act covers all bodies (private and public) which develop real estate projects for sale to the general public. Section 2(zk) defines the term ‘promoter’ which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.

(zl) "**prospectus**" means any document described or issued as a prospectus or any notice, circular, or other document offering for sale of any real estate project or inviting any person to make advances or deposits for such purposes;

(zm) **"real estate agent"** means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

(zn) **"real estate project"** means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

(zo) **"regulations"** means the regulations made by the Authority under this Act;

(zp) **"rule"** means the rules made under this Act by the appropriate Government;

(zq) **"sanctioned plan"** means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;

(zr) words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

Application for registration of real estate projects (Section 4)

This section provides for the application for registration of real estate project by the promoter.

- (1) This section provides that every promoter shall make an application to the Authority for registration of the project in such form, manner, within such time and accompanied by such fee as may be prescribed
- (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

- (a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies competent authority), and the particulars of registration, and the names and photographs of the promoter;
- (b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
- (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
- (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;

- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the appurtenant, if any;
- (i) the number and area of garage for sale in the project;
- (j) the names and addresses of his real estate agents, if any, for the proposed project;
- (h) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (i) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—

- (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;
- (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;
- (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;
- (D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

The promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.

The amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.

The promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.— For the purpose of this clause, the term "scheduled bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

GRANT OF REGISTRATION (SECTION 5)

This section provides for the grant of registration.

(1) This section provides that the Authority shall within a period of thirty days,

(a) grant registration subject to the provision of the Act and the rules and regulations made thereunder and provide a registration number including a Login Id and password to the applicant for accessing the website of the authority and to create his webpage and to fill therein the details of the proposed project, or

(b) reject that application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the rules and regulations made thereunder.

However, no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) This section also provides that if the Authority fails to grant the registration or reject the application, as provided within thirty days, the project shall be deemed to have been registered and the Authority shall within seven days of the expiry of the said thirty days, provide a registration number and a Login ID and password to the promoter.

The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (c) of Clause (I) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

Authority shall within 30 days, grant registration and

- Provide Registration number including a Login ID and password to the applicant for accessing the website of the authority and to create his webpage and to fill therein the details of the proposed project,

Authority shall within 30 days reject the application and

- Provide reasons to be recorded in writing .
- Opportunity of being heard to the applicant before passing such order.

If the Authority fails to grant the registration or reject the application within 30 days

- Project shall be deemed to have been registered
- Authority shall within 7 days of the expiry of said 30 days, provide Registration number and Login Id and Password to the applicant for accessing the website of the authority and create his webpage.

FUNCTIONS AND DUTIES OF PROMOTER (SECTION 11)

(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section

(a) Details of the registration granted by the authority

(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date the list of number of garages booked;

(d) Quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate

(e) Quarterly up-to-date status of the project; and

(f) Such other information and documents as may be specified by the regulations made by the authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The promoter may cancel the allotment only in terms of the agreement for sale.

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

TRANSFER OF TITLE (SECTION 17)

(1) This section provides for the transfer of Title. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws.

In the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within **three months** from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws.

In the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.

RETURN OF AMOUNT AND COMPENSATION (SECTION 18)

This section provides for the return of amount and compensation.

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

However, where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

THE REAL ESTATE REGULATORY AUTHORITY ESTABLISHMENT AND INCORPORATION OF REAL ESTATE REGULATORY AUTHORITY (SECTION 20)

This section provides for the establishment and incorporation of Real Estate Regulatory Authority.

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act.

The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority.

The appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be.

Until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act.

After the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

TERM OF OFFICE OF CHAIRPERSON AND MEMBERS (SECTION 23)

This section provides for the term of office of Chairperson and Members

- (1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty five years, whichever is earlier and **shall not be eligible for re-appointment.**
- (2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

FILING OF COMPLAINTS WITH THE AUTHORITY OR ADJUDICATION OFFICER (SECTION 31)

This section provides for the filing of complaints with the Authority or adjudication officer

- (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—**For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.**

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed.

Functions of Authority (Section 34) This section provides that the functions of the Authority shall include—

- (a) to register and regulate real estate projects and real estate agents registered under this Act;
- (b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- (c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;
- (d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;
- (e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;

- (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;
- (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;
- (h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

POWER TO ISSUE INTERIM ORDERS (SECTION 36)

This section provides for the power to issue interim orders.

Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

POWERS OF AUTHORITY TO ISSUE DIRECTIONS (SECTION 37)

This section provides that the Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

POWERS OF AUTHORITY (SECTION 38)

This section provides for the powers of Authority.

(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that—

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India.

RECOVERY OF INTEREST OR PENALTY OR COMPENSATION AND ENFORCEMENT OF ORDER, ETC. (SECTION 40)

This section provides for the recovery of Interest or penalty or compensation and enforcement of order, etc.

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

CENTRAL ADVISORY COUNCIL: ESTABLISHMENT OF CENTRAL ADVISORY COUNCIL (SECTION 41)

This section provides for the establishment of Central Advisory Council

- (1)** The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.
- (2)** The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council.
- (3)** The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.
- (4)** The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

FUNCTIONS OF CENTRAL ADVISORY COUNCIL (SECTION 42)

This section provides for the functions of Central Advisory Council

(1) The functions of the Central Advisory Council shall be to advise and recommend the Central Government,—

- (a) on all matters concerning the implementation of this Act;
- (b) on major questions of policy;
- (c) towards protection of consumer interest;
- (d) to foster the growth and development of the real estate sector;
- (e) on any other matter as may be assigned to it by the Central Government.

(2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

APPEAL TO HIGH COURT (SECTION 58)

This section provides for the appeal to High Court.

(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. The High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

OFFENCES, PENALTIES AND ADJUDICATION: PUNISHMENT FOR NON-REGISTRATION UNDER SECTION

3 (SECTION 59): This section provides for the punishment for non-registration under section 3

(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend **up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.**

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which **may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.**

OFFENCES BY COMPANIES (SECTION 69): This section provides for the Offences by Companies.

(1) Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

- (a) "Company" means any body corporate and includes a firm, or other association of individuals; and
- (b) "Director" in relation to a firm, means a partner in the firm.

COMPOUNDING OF OFFENCES (SECTION 70)

This section provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, if any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed. However, the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

POWER TO ADJUDICATE (SECTION 71)

This section provides for the power to adjudicate.

(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more **judicial officer** as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.

Any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, **he may, with the permission of such Forum or Commission,** as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application.

Where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

MISCELLANEOUS:

BAR OF JURISDICTION (SECTION 79)

This section provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

COGNIZANCE OF OFFENCES (SECTION 80)

This section provides for the cognizance of offences.

(1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

POWER TO MAKE REGULATIONS (SECTION 85)

This section provides for the power to make regulations.

(1) The Authority shall, within a period of three months of its establishment, by notification, make regulations, consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) Omitted

(b) Omitted

(c) such other information and documents required under clause (f) of sub-section (1) of section 11;

(d) display of sanctioned plans, layout plans along with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11;

(e) preparation and maintenance of other details under sub-section (6) of section 11;

(f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 29;

(g) omitted

(h) standard fees to be levied on the promoter, the allottees or the real estate agent under clause (e) of section 34; (i) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations.

LAYING OF RULES (SECTION 86)

This section provides for the laying of Rules.

(1) Every rule made by the Central Government, every regulation made by the Authority under the Union territory of Delhi and the Union territories without Legislature and every notification issued by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

(2) Every rule made by a State Government or the Union territory Government, as the case may be, every regulation made by the Authority under the State Government or the Union territory Government of Puducherry, as the case may be, and every notification issued by the State Government or the Union territory Government of Puducherry, as the case may be, under this Act, shall be laid as soon as may be, after it is made, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

APPLICATION OF OTHER LAWS NOT BARRED (SECTION 88)

This section provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

ACT TO HAVE OVERRIDING EFFECT (SECTION 89)

This section provides that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

PROTECTION OF ACTION TAKEN IN GOOD FAITH (SECTION 90)

This section provides that no suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

THE CODE OF CIVIL PROCEDURE, 1908

Courts to try all civil suits unless barred (SECTION 9)	Execution of decrees passed by Civil Courts in places to which this Code does not extend (SECTION 43)
Stay of suit (SECTION 10)	Execution of decrees passed by Revenue Courts in places to which this Code does not extend (SECTION 44)
Res judicata (SECTION 11)	Execution of decrees passed by Courts in reciprocating territory (SECTION 44A)
Institution of suits (SECTION 26)	Execution of decrees outside India (SECTION 45)
Summons to defendants (SECTION 27)	Property liable to attachment and sale in execution of decree (Sec60)
Service of summons where defendant resides in another State (28)	Partial exemption of agricultural produce (SECTION 61)
Service of foreign summons (SECTION 29)	Seizure of property in dwelling-house (SECTION 62)
Power to order discovery and the like (SECTION 30)	Property attached in execution of decrees of several Courts (Sec63)
Summons to witness (SECTION 31)	Private alienation of property after attachment to be void (SEC64)
Penalty for default (SECTION 32)	Proceeds of execution-sale to be rateably distributed among decree-holders (SECTION 73)
Court by which decree may be executed (SECTION 38):	Power of Court to issue commissions (SECTION 75)
Transfer of decree (SECTION 39)	Commission to another Court (SECTION 76)
Transfer of decree to Court in another State (SECTION 40)	Letter of request (SECTION 77)
Result of execution proceedings to be certified (SECTION 41)	Commissions issued by foreign Courts (SECTION 78)
Powers of Court in executing transferred decree (SECTION 42)	Order 21

THE CODE OF
CIVIL
PROCEDURE,
1908

Jurisdiction

Territorial- Area wise

Pecuniary-Value-wise

Subject matter wise-
Administrative,
Income Tax and
Labour Tribunals

Original and Appellate Jurisdiction

[illegible]

Type of Suits Whether of a Civil Nature Yes/No

- Property
- Right of Worship
- Right to share in offerings
- Damages for civil wrongs
- Specific Relief
- Rent
- Restitution of Conjugal rights
- Dissolution of Partnership
- Accounts
- Damages for Breach of Contract
- Caste related issues
- Purely religious matters
- Dignity matters

Res judicata (SECTION 11)

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I. — The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II. — For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III. — The matter above referred to must in the former suit have been alleged by

one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV. — Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V. — Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI. — Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Section 26-27

- Section 26
- Every suit shall be initiated by the presentation of a plaint or in such other manner as may be prescribed.
- In every plaint , facts shall be proved by affidavit which shall be in the form and manner as prescribed under order VI of Rule 15A.
- Section 27
- Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed on such day not beyond 30 days from the date of the institution of the suit.

- **Service of summons where defendant resides in another State (SECTION 28)**

- **(1)** A summons may be sent for service in another State to such Court and in such manner as may be prescribed by rules in force in that State.
- **(2)** The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.
- **(3)** Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (2), a translation of the record,—

(a) in Hindi, where the language of the Court issuing the summons is Hindi, or

(b) in Hindi or English where the language of such record is other than Hindi or English, shall also be sent together with the record sent under that sub-section.

Service of foreign summonses (SECTION 29): Summonses and other processes issued by

(a) any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extend, or

(b) any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or

(c)any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply, may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.

- **Power to order discovery and the like (SECTION 30):** Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

Summons to witness (SECTION 31): The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Penalty for default (SECTION 32): The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding five thousand rupees;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

- **Powers of Court in executing transferred decree (SECTION 42):**

- **(1)** The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had passed by itself.
- **(2)** Without prejudice to the generality of the provisions of sub-section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:—

(a) power to send the decree for execution to another Court under section 39;

(b)(b) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;

(c) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:—

(a) power to order execution at the instance of the transferee of the decree;

(b) in the case of a decree passed against a firm, power to grant leave to

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to 1 [an agriculturist or a labourer of a domestic servant] and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;

(kb) all moneys payable under a policy of insurance on the life of the judgment debtor;

(kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

(l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree, and

(p) where the judgment-debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation 1. —The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment whether before or after it is actually payable.

Explanation IV—For the purposes of this proviso, “wages” includes bonus, and “labourer” includes a skilled unskilled or semi-skilled labourer.

Explanation V—For the purposes of this proviso, the expression “agriculturist” means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI—For the purposes of Explanation V an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(a) by his own labour, or

Partial exemption of agricultural produce (SECTION 61): The State Government may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

- **Seizure of property in dwelling-house (SECTION 62):**

- **(1)** No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

Explanation.—For the purposes of sub-section (2), “proceeding taken by a Court” does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.

Private alienation of property after attachment to be void (SECTION 64):

(1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

Explanation. — For the purpose of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

DISTRIBUTION OF ASSETS

Proceeds of execution-sale to be rateably distributed among decree-holders (SECTION 73):

(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:

Commission to another Court (SECTION 76): (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a State other than the State in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

Order XXI

It is only the execution, which reveals and signifies the importance of the decrees to be passed and the pedestal of the Court and sanctity of the document. As such, the decrees are required to be executed with force, so that the Decree Holder having a document containing declaration of his rights may not feel cheated or helpless having earned no fruits of the lis got settled by him from the Court even after spending decades altogether.

This Order can be divided into six parts. If the Courts deal the executions while considering the applications/objections topic wise, it would be easy for them to adjudicate the matter easily.

The main classification is as under:-

(1) Applications for execution and the process to be applied.

(2) Stay of executions.

(3) Mode of executions.

(4) Sale of immovable property and movable property.

(5) Adjudication of the claims and objections.

(6) Resistance and delivery of possession.

Important 10 rules under Order XXI

Rule No	Title	Implication
Rule 1	Method of adjustment in money decree	Appropriate the amount towards interest, then towards the costs and thereafter, towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment debtor while making the deposit and intimating the decree holder of his intention
28	Binding force of decree of the court which the decree on the court to which it is sent for execution	Any order of the Court by which the decree was passed, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution
29	Suit pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed	the Court may, on such terms as to security or otherwise, as it thinks fit stay execution of the decree until the pending suit has been decided. The words “such Court” are important “Such Court” means in the context of that rule the Court in which the suit is pending. In other words, the suit must be

Rule 35 (3) and Rule 97	Complaint for resistance in execution	These two Rule provides a right to the Decree Holder to complain against a person, who creates resistance in the execution of the decree.
Rule 41	Arrest and detention	Attendance and examination of judgement debtor. Civil prison for not exceeding 3 months if decree remains unsatisfied for 3 months or in case of disobedience by the judgement debtor
Rule 16	The assignment and transfer of the decree made	The assignment in writing of the decree to be passed would thus result in a contract to assign which contract to assign would become a complete equitable assignment on the decree being Passed and would fulfil the requirements.
Rule 99	Opportunity to an objector, other than the Judgment Debtor, to raise objection claiming any right in the	Normally the Courts frame the issues while deciding the lis between the parties. but where the

105	Applicant does not appear Opposite Party does not appear	Dismiss Hear Ex parte
106	Setting aside orders passed ex parte, etc	Sufficient cause is shown. Application to be made within 30 days of the order or knowledge of notice. Objector does not appear again- dismissal
Rule 92 (2)	conditions when the sale could be set aside after auction	Deposit within 30 days-Sale to be set aside Deposit within 60 days-Discretion of the court. Any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good

Rule 89	Primary condition precedent to set aside the sale of a mortgaged property	Rule intended to confer a right upon the judgment- debtor, even after the property is sold, to satisfy the claim of the decree-holder and to compensate the auction purchaser by paying him 5% of the purchase-money.
Rule 90	Other conditions where sale could be set aside	Mere to establish irregularity or fraud is not sufficient to set aside the sale. The applicant must establish that material irregularity or fraud (in publishing or conducting the sale) has resulted in substantial injury to the applicant
Rule 58	Attachment of mortgaged property	If the property is under attachment in another money suit and the mortgagee is not in actual or constructive possession of the property on that date, then the objection by such objector under Order 21 Rule 58 CPC to such attachment is not maintainable.

Rule 35 (3)	Extent of force to be used to take possession	after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break any door or do any other act necessary for putting the Decree-Holder in possession.
Rule 17	Recovery of maintenance by sale of the property over which charge was created-	Execution for maintenance after the charge has been created by the Court on many lots of the properties. Even if the purchase of one lot is found to be made by the decree-holder prior to the execution, then the recovery of maintenance could be effected from the other properties over which, the charge has been created.

THE LIMITATION ACT, 1963

1. Short title, extent and commencement.—

- (1)** This Act may be called the Limitation Act, 1963.
- (2)** It extends to the whole of India except, the State of Jammu and Kashmir.
- (3)** It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “applicant” includes—

- (i)** a petitioner;
- (ii)** any person from or through whom an applicant derives his right to apply;
- (iii)** any person whose estate is represented by the applicant as executor, administrator or other representative;

(b) “application” includes a petition;

(c) “bill of exchange” includes a hundi and a cheque;

(d) “bond “ includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(e) “defendant” includes—

(i) any person from or through whom a defendant derives his liability to be sued;

(ii) any person whose estate is represented by the defendant as executor, administrator or other representative;

(f) “easement” includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another;

(g) “foreign country” means any country other than India;

(h) “good faith”— nothing shall be deemed to be done in good faith which is not done with due care and attention;

(i) “plaintiff” includes—

- (i) any person from or through whom a plaintiff derives his right to sue;
- (ii) any person whose estate is represented by the plaintiff as executor, administrator or other representative;

(j) “period of limitation” means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act;

(k) “promissory note” means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight;

(l) “suit” does not include an appeal or an application;

(m) “tort” means a civil wrong which is not exclusively the breach of a contract or the breach of a trust;

(n) “trustee” does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied or a person in a wrongful possession without title.

3. Bar of limitation.—

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act— (2) For the purposes of this Act—“

(a) a suit is instituted— (a) a suit is instituted—”

- (i) in an ordinary case, when the plaint is presented to the proper officer; (i) in an ordinary case, when the plaint is presented to the proper officer;“
- (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and“
- (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator; (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;“

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted— (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—“

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded; (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;“

(ii) in the case of a counter claim, on the date on which the counter claim is made in court; (ii) in the case of a counter claim, on the date on which the counter claim is made in court;“

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. Explanation.— A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

5. Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

6. Legal disability.—

(1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.

(2) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

(3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died. Explanation.—For the purposes of this section, ‘minor’ includes a child in the womb.

7. Disability of one of several persons.—Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I.— This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property. Explanation II.— For the purposes of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

8. Special exceptions.— Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application.

9. Continuous running of time.—Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it: Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.

10. Suits against trustees and their representatives.—Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Explanation.—For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.

11. Suits on contracts entered into outside the territories to which the Act extends.—

(1) Suits instituted in the territories to which this Act extends on contracts entered into in the State of Jammu and Kashmir or in a foreign country shall be subject to the rules of limitation contained in this Act.

(2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defence to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless—

(a) the rule has extinguished the contract; and

(b) the parties were domiciled in that State or in the foreign country during the period prescribed by such rule.

12. Exclusion of time in legal proceedings.—

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

13. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for.—In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the court fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court fees had been paid in the first instance.

14 Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

15. Exclusion of time in certain other cases.—

(1) In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded.

16. Effect of death on or before the accrual of the right to sue.—

(1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an application accrues only on the death of a person, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute such suit or make such application.

(3) Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office.

17. Effect of fraud or mistake.—

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

(d) where any document necessary to establish the right of the plaintiff or applicant has been

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production: Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order: Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: 19. Effect of payment on account of debt or of interest on legacy.

—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made\:" Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment."

Explanation.—For the purposes of this section,— Explanation.—For the purposes of this section,—“

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment; (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;“

(b) “debt” does not include money payable under a decree or order of a court. (b) “debt” does not include money payable under a decree or order of a court."

20. Effect of acknowledgment or payment by another person.—

(1) The expression “agent duly authorised in this behalf” in sections 18 and 19 shall, in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent, of, any other or others of them.

(3) For the purposes of the said sections,—

(a) an acknowledgment signed or a payment made in respect of any liability by or by the duly authorised agent of, any limited owner of property who is governed by Hindu law, shall be a valid acknowledgment or payment, as the case may be, against a reversioner succeeding to such liability; and

(b) where a liability has been incurred by or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

21. Effect of substituting or adding new plaintiff or defendant.—

(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party: 21. Effect of substituting or adding new plaintiff or defendant.—(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party\:" Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff. (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

22. Continuing breaches and torts.—In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues. 22. Continuing breaches and torts.—In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.“

23. Suits for compensation for acts not actionable without special damage.—In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

24. Computation of time mentioned in instruments.—All instruments shall for the purposes of this Act be deemed to be made with reference to the Gregorian calendar.

25. Acquisition of easement by prescription.—

(1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years, and where any way or watercourse or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

(2) Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(3) Where the property over which a right is claimed under sub-section (1) belongs to the Government that sub-section shall be read as if for the words “twenty years” the words “thirty years” were substituted.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

State Amendment;

[\(Orissa\)](#) —Section 25 is repealed. [Vide Orissa Act 24 of 1967, sec. 3 (w.e.f. 31-8-1967)]. to "[Vide Orissa Act 24 of 1967, sec. 3 (w.e.f. 31-8-1967)].“

[26.](#) Exclusion in favour of reversioner of servient tenement.—Where any land or water upon, over or from, which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or in terms of years exceeding three years from the granting thereof the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period to twenty years in case the claim is, within three years next after the determination of such interests or term resisted by the person entitled on such determination to the said land or water. State Amendment

[\(Orissa\)](#) —Section 26 is repealed. [Vide Orissa Act 24 of 1967, sec. 3 (w.e.f. 31-8-1967)]. to "[Vide Orissa Act 24 of 1967, sec. 3 (w.e.f. 31-8-1967)].“

[27.](#) Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. 27.

Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

28. Amendment of certain Acts.—[Rep. by the Repealing and Amending Act, 1974 (56 of 1974), sec. 2 and First Sch.]

29. Savings.—

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of “easement” in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

30. Provision for suits, etc ., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908. —Notwithstanding anything contained in this Act,—

(a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908 (9 of 1908), whichever period expires earlier:

Provided that if in respect of any such suit, the said period of seven years expires earlier than period of limitation prescribed therefor under the Indian Limitation Act, 1908 (9 of 1908) and the said period of seven years together with so much of the period of limitation in respect of such suit under the Indian Limitation Act, 1908 (9 of 1908), as has already expired before the commencement of this Act is shorter than the period prescribed for such suit under this Act, then, the suit may be instituted within the period of limitation prescribed therefor under this Act;

(b) any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier. State Amendment (Modification under Article 371F of the Constitution of India)

Sikkim —For section 30, substitute the following section, namely:— “30. Notwithstanding anything contained in this Act, any suit, appeal or application, which could be instituted, preferred or made before the commencement of this Act and for which the period of limitation is shorter than the period provided therefor by the law in Sikkim immediately before such commencement, may be instituted, preferred or made within the period provided by such law.” [Vide Gazette of India, Extra., Pt. II, Sec. 3(ii), p. 4 (No. 329), dated 29th July, 1983 (w.e.f. 22-7-1983).]

31. Provisions as to barred or pending suits, etc:- Nothing in this Act shall,—

(a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), expired before the commencement of this Act; or

(b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement.

State Amendment (Modification under Article 371F of the Constitution of India)

Sikkim —In section 31, in clause (a), for the words “Indian Limitation Act, 1908 (9 of 1908), expired before the commencement of this Act”, substitute the words “law in force in Sikkim immediately before the commencement of this Act, expired before such commencement”. [Vide Gazette of India, Extra., Pt. II, Sec. 3(ii), p. 4 (No. 329), dated 29th July, 1983 (w.e.f. 22-7-1983).]

32. Repeal.—[Rep. by the Repealing and Amending Act, 1974 (56 of 1974), sec. 2 and First Sch.]

Objects of The Act

The Law of limitation prescribes a time period within which a right can be enforced in a Court of Law. **The time period for various suits has been provided in the schedule of the Act.** The main purpose of this Act is to prevent litigation from being dragged for a long time and quick disposal of cases which leads to effective litigation.

Section: 1

It Extends to the whole of India.

As per the **Jammu and Kashmir Reorganization Act, 2019**, provisions of the Limitation Act will now apply to the whole of India. The Limitation Act, 1963 contains provisions relating to the computation of time for the period of limitation, condonation of delay, etc.

The Limitation Act contains **32 sections and 137 articles and the articles are divided into 10 parts.**

Retrospective Operations

In [BK Education Services Private Limited v. Parag Gupta and Associates](#), the Supreme Court clarified that since the law of limitation is procedural in nature, it will be applied retrospectively.

The Supreme Court in [Thirumalai Chemicals Ltd v. Union of India](#) observed that statutes of limitation are retrospective so far as they apply to all legal proceedings brought after their operations for enforcing causes of action accrued earlier.

In [Excise and Taxation v. M/S Frigoglass India Private Ltd](#), the Punjab and Haryana High Court ruled that It is well-settled that the law of limitation is a procedural law and operates retrospectively unless it has been provided differently in the amending statute. In other words, unless there is a contrary intention manifested by express or necessary implication of the legislation itself, procedural law is generally retrospective law.

Limitation Does Not Bar Defense

- The law of limitation does not restrict the defendant if he raises a legitimate plea in his defence even though the suit is time-barred.
- It **was** held in *Rullia Ram Hakim Rai v. Fateh Singh*, the bar of limitation does not stand in the way of defence. It only bars action and it is only its recovery that is time-barred. There is no provision that prohibits or prevents a debtor from clearing his time-barred outstandings.
- The Supreme Court observed in [*Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi*](#), the Limitation Act takes away the plaintiff's remedy to enforce his rights by bringing an action in a court of law, but it does not place any restriction on the defendant to put forward his defence though such defence is barred by limitation and is unenforceable in the Court.

Plea of limitation: Duty of Court

- The Court is under an obligation to dismiss a suit if it is filed beyond the time prescribed by the Limitation Act. The provisions of Section 3 are mandatory and the Court will not proceed with the suit if it is barred by time.
- Under Section 3 of the Act, it is clearly mentioned that every suit instituted, appeal preferred and the application made after the prescribed period shall be dismissed. Even though limitation has not been set up as a defence.
- It was held in [Craft Centre v. Koncherry Coir Factories](#), it is the duty of the plaintiff to convince the Court that his suit is within time. If it is out of time and the plaintiff relies on any acknowledgments in order to save the limitations then he has to plead them or prove, if denied.

Starting Point of Limitation

The time from which period of limitation begins to run depends upon the subject matter of the case and a specific starting point of such period is provided extensively by the **Schedule in the Act**. It generally starts from the date when the summons or notice is served, or the date on which the decree or judgment is passed, or the date on which the event that forms the basis of the suit takes place.

The Supreme Court in *Trustee's Port Bombay v. The Premier Automobile* held that the starting point of limitation is the accrual of the cause of action.

Expiry Period of Limitation When Court is Closed

- When a court is closed on a certain day and the period of limitation expires on that day, then any suit, appeal or application shall be taken up to the Court on the day on which it reopens. This means that a party is prevented not by his own fault but because of the Court being closed on that day.
- **Section 4** of the Limitation Act provides that when the period of limitation is prescribed for any suit, appeal or application and such period expires on a day when the Court is closed, such suit, appeal or application shall be instituted, preferred or made on the day on which the Court reopens. The explanation to this section mentions that within the meaning of this Section a Court shall be deemed to be closed on any day if during any part of the normal working of the Court it remains closed on that day.
- For instance, if a Court reopens on 1st January and the time for filing the appeal expires on 30th December (the day on which the Court remains closed) then the appeal can be preferred on the 1st of January when the Court reopens.

Condonation of Delay

Condonation of delay means that extension of time given in certain cases provided there is sufficient cause for such delay.

Section 5 talks about the extension of the prescribed period in certain cases. It provides that if the appellant or the applicant satisfies the court that he had sufficient cause to not prefer the appeal or application within that period, such appeal or application can be admitted after the prescribed time. This Section further mentions that an application made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908). The explanation states that in ascertaining or computing the period prescribed when the applicant or appellant has been misled by any order, practice or judgment of the High Court. It will be a sufficient cause within the meaning of this section.

However, If a party does not show any cogent ground for delay then the application, suit or appeal will be rejected by the court.

Sufficient Cause

- Sufficient cause means that there should be adequate reasons or reasonable ground for the court to believe that the applicant was prevented from being proceeding with the application in a Court of Law.
- In *State (NCT of Delhi) v. Ahmed Jaan*, it was said that the expression “sufficient cause” should receive a liberal construction.
- In *Balwant Singh (Dead) v. Jagdish Singh & Ors*, the Supreme Court held that it is obligatory upon the applicant to show sufficient cause because of which he was prevented from continuing to prosecute the proceeding in the suit. In this case, there was a delay of 778 days in filing the application for bringing the legal representatives on record.

Disability of One of Several Persons – Section 7

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I.— This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Explanation II.— For the purposes of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

Special Exceptions: Section 8

Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application.

Continuous running of time : Section 9

Once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.

Exclusion of Time

- Section 12 to Section 15 deals with the exclusion of time under the Limitation Act.
- **Section 12** talks about the time that has to be excluded for computing time of limitation in legal proceedings. Sub-section (1) says that the day on which the cause of action arises that day shall be excluded while computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned.
- The following time has to be excluded from computing the period of limitation:
- The day on which the period of limitation for any suit, appeal or application has been reckoned.
- **In case of an appeal or an application for leave to appeal/revision/review of a judgment:**
 - i) The day on which the judgment complained of was pronounced.
 - ii) Necessary time taken for obtaining a copy of the decree, sentence, order appealed from or sought to be revised or reviewed.
- **In case of decree or order is appealed from or sought to be revised or reviewed or an application for leave to appeal from a decree:**
 - i) Time requisite for obtaining a copy of the judgment
- **In case of application to set aside an award:**
 - i) Time requisite for obtaining a copy of the award
- Explanation to this Section states that in computing the time necessary for obtaining a copy of the decree or order the time taken by the court to prepare the decree or order before an application for a copy of the decree or order is made shall not be excluded.

Exclusion of Time

- **Section 13**, where an application for leave to sue or appeal as a pauper (indigent) has been made and rejected, the time spent by the applicant in prosecuting in good faith shall be excluded.
- **Section 14**, if a party is proceeding in good faith in a court without jurisdiction any suit or application the time spent by the party should be prosecuting another civil proceeding with due diligence and that prosecution shall be in good faith shall be excluded.
- **Section 15**, the following time shall be excluded:
 - The day of the issuance and withdrawal of the stay order or injunction.
 - In case where a previous consent or sanction of the government is required – the time spent on obtaining the consent or sanction.
 - In case of proceedings for winding up of a company- the time during which the receiver or liquidator was appointed.
 - In case of a suit for possession by a purchaser at a sale in execution of decree- the time during which proceeding to set aside sale has been prosecuted.
 - The time during which the defendant is absent from India and under territory outside India under the administration of the Central Government.

Section	Event	Time to be excluded
13	where an application for leave to sue or appeal as a pauper (indigent) has been made and rejected	the time spent by the applicant in prosecuting in good faith shall be excluded.
14	a party is proceeding in good faith in a court without jurisdiction any suit or application	Time spent in prosecuting in good faith
15	stay order or injunction.	The day of the issuance and withdrawal of the stay order or injunction.
	in case prior consent/sanction is required	the time spent on obtaining the consent or sanction
	in case of winding up	the time during which the receiver or liquidator was appointed
	In case of a suit for possession by a purchaser at a sale in execution of decree	the time during which proceeding to set aside sale has been prosecuted.
	Absence from India	The time during which the defendant is absent from India

Postponement of Limitation

Postponement of limitation means extending the period of limitation. Section 16 to 23 of the Act deals with the postponement of limitation.

In the following cases the period of limitation will not begin to run:

- **Section 16:** *Firstly*, where a person having the right to sue or make an application has died before the right accrues or right accrues only on the death of that person- the period of limitation will be computed from the time when there is a legal representative who is capable of instituting. *Secondly*, where a person against whom the right to sue or make an application would have accrued dies or would have accrued on his death, limitation will start when there will be a legal representative of the deceased.
- **Section 17:** Where the suit or application is based upon fraud, mistake or concealment by fraud- the period of limitation will not start unless the plaintiff or applicant has discovered the fraud, concealment or mistake.
- **Section 18:** In case of an acknowledgment of liability in respect of any property or right-a-fresh period of limitation will be computed from the time acknowledgment was signed.

Postponement of Limitation-Draw a table

- **Section 19:** Where payment on account of a debt or of interest on legacy- a fresh period of limitation will be computed when payment was made.
- **Section 20:** Section 20 is only a further explanation of section 18 and section 19. It says that under a disability the expression 'agent duly authorised' will include the lawful guardian, committee, manager or agent duly authorised by such guardian, committee or manager.
- **Section 21:** Where a new plaintiff or defendant is added or substituted after the institution of suit- the suit will be deemed to be instituted when he was so made the party. However, if the new plaintiff or defendant was added due to a mistake in good faith and the Court is satisfied, the suit shall be deemed to have been instituted on an earlier date.
- **Section 22:** Where there is a continuing breach of contract or tort – a fresh period of limitation will start at the moment when the breach or tort continues.
- **Section 23:** In case of suits for compensation for acts not actionable without special damage- limitation period will start from the time when the injury occurs.

Extinguishment of Right

- General Rule that the law of limitation only bars the remedy but does not bar the right itself.
- **Section 27:** is an exception to this rule. It talks about adverse possession. Adverse possession means someone who is in the possession of another's land for an extended period of time can claim a legal title over it. In other words, the title of the property will vest with the person who resides in or is in possession of the land or property for a long period. If the rightful owner sleeps over his right, then the right of the owner will be extinguished and the possessor of the property will confer a good title over it.
- Section 27 is not limited to physical possession but also includes de jure possession. As per the wordings of this Section, it applies and is limited only to suits for possession of the property.

Case Law: Exception: Union Carbide Corporation. v. Union of India (1991)

- This [case](#) involved Union Carbide (India) Ltd (UCIL) which was a subsidiary of the Union Carbide Corporation (UCC), New York. One of the world's largest disaster occurred on the fateful night of 2nd and 3rd December 1984. Methyl Isocyanide Gas (MIC) considered the most toxic chemical in industrial use leaked from the tanks used for its storage in the Union Carbide Company at Bhopal causing the death of thousands of people.
- An Act was passed by the Central Government on 23 March 1985 named the [Bhopal Gas Leak Disaster \(Processing of Claims\) Act, 1985](#) to authorise the Central Government to ensure that the claims arising out of or in connection to Bhopal Gas Tragedy are dealt with effectively, swiftly and to the best advantage of the claimant and for matters related to it.
- The Union of India in the exercise of its power conferred by the Act instituted an action on behalf of the victims for the award of compensation before the US District Court, Southern District of New York.
- Justice Keenan of the Federal District Court dismissed the case as *forum non conveniens* with the condition that Union Carbide shall consent to the jurisdiction of the Indian court and shall waive the defence based upon the statute of limitations.

Conclusion

- The law of limitation prescribes the time within which a person can enforce his legal right. This Act keeps a check on the cases so that they are not dragged for over a long time. This Act also recognizes the fact that there are situations when persons instituting a suit or preferring an appeal for a genuine cause are unable to institute a suit within the time prescribed in the Act and the same criteria cannot be applied to every situation.

Multiple Choice Questions (MCQ :1)

Suits under section 2(i) of the Limitation Act includes:

- (a) Appeal
- (b) Application
- (c) A or A
- (d) None of the Above

(Source: IIP of ICAI)

MCQ : 2

Trustee Under Section 2(n) of the Limitation Act includes:

- (a) Benamidaar
- (b) A mortgage remaining in possession after the mortgage has been satisfied.
- (c) A person in wrongful possession without title.
- (d) None of the Above

(Source: IIP of ICAI)

MCQ:3

Section 3 of the Act is applicable to the following proceedings:

- (a) Suits
- (b) Applications
- (c) Appeal
- (d) All of the above.

(Source: IIP of ICAI)

MCQ :4

Section 3 of the Act Applies:

- (a) to proceedings in court.
- (b) to proceedings in quasi judicial bodies.
- (c) to proceedings in tribunals.
- (d) to proceedings in executive authorities.

(Source: IIP of ICAI)

MCQ:5

Period of Limitation Starts:

- (a) After 1 Year from date of payment.
- (b) After 2 Year from date of Payment.
- (c) Before the fraud or mistake is discovered by the effective party.
- (d) Only after the fraud is discovered by the effective party.

(Source: IIP of ICAI)

MCQ:7

Any Claim by Way of _____ shall be treated as separate suit:

- (a) Set off or a counter claim
- (b) Claim
- (c) Fresh Suit
- (d) Cross Suit

(Source: IIP of ICAI)

MCQ:8

Which Legal Disabilities are covered under section 6 of the Limitation Act.

- (a) Minority
- (b) Insanity
- (c) Idiocy
- (d) All of the Above

(Source: IIP of ICAI)

MCQ:9

Any claim by way of a set off or a counter claim shall be treated as _____ suit:

- (a) Fresh Suit
- (b) Further Suit
- (c) Separate Suit
- (d) Cross Suit

(Source: IIP of ICAI)

MCQ:10

Limitation of filing an appeal under section 12 of the Act commences from:

- (a) The date of signing of the decree
- (b) The date of Judgment
- (c) The date of obtaining the Judgment
- (d) The Date of Dispatch of the Copy of the Judgment

(Source: IIP of ICAI)

MCQ:11

For Computing the period of limitation which period shall not be excluded:

- (a) The day on which period begins to run
- (b) Day of Judgment
- (c) Time Required for in obtaining copy of Judgment/order/award/decreed
- (d) The time requisite for a obtaining a copy of the decree or an order, any time taken by the court to prepare by the court to prepare the decree or order before an application for a copy thereof is made.

(Source: IIP of ICAI)

MCQ:12

Which Type of suits does Section 13 of the Limitation Act Applies to:

- (a) Suits and Appeal filed as pauper
- (b) Suits and Appeal filed by a minor
- (c) Suits and Appeal filed by a insane
- (d) All of the Above

(Source: IIP of ICAI)

MCQ:13

Under Section 15 of the Limitation Act, in computing the period of limitation of any suit or application of the execution of a decree, for the time of injunction or order, which period shall be excluded:

- (a) The day on which it was issued or made and not the day on which it was withdrawn
- (b) The day on which it was issued or made and the day on which it was withdrawn
- (c) The day on which it was issued or made shall be included the day on which it was withdrawn
- (d) The day on which it was issued or made shall be included the day on which it was withdrawn

(Source: IIP of ICAI)

MCQ:14

What is the period of Limitation for suits relating to trusts and trust property to set aside a transfer of moveable property comprised in Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration:

- (a) 3 Years
- (b) 12 Years
- (c) 24 Years
- (d) 30 Years

(Source: IIP of ICAI)

THE PREVENTION
OF CORRUPTION
ACT, 1988

THE PREVENTION OF CORRUPTION ACT, 1988

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27. Appeal and revision.

28. Act to be in addition to any other law.

29. Amendment of the Ordinance 38 of 1944.

29A. Power to make rules.

30. Repeal and saving.

31. [Repealed.]

THE PREVENTION OF CORRUPTION ACT, 1988

ACT NO. 49 OF 1988

- An Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.
- BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title and extent.—

- (1) This Act may be called the Prevention of Corruption Act, 1988.
- (2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “election” means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority;
- (aa) “prescribed” means prescribed by rules made under this Act and the expression “prescribe” shall be construed accordingly;
- (b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.—In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(c) “public servant” means—

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

(d) “undue advantage” means any gratification whatever, other than legal remuneration.

Explanation.—For the purposes of this clause,—

(a) the word “gratification” is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression “legal remuneration” is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.

Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

CHAPTER II

APPOINTMENT OF SPECIAL JUDGES

3. Power to appoint special Judges.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

- (a) any offence punishable under this Act; and
- (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.

5. Procedure and powers of special Judge.—(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

6. Power to try summarily.—(1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily.

The special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge.

CHAPTER III

OFFENCES AND PENALTIES

7. Offence relating to public servant being bribed.—Any public servant who,—

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or
- (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
- (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

- (i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

7A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

8. Offence relating to bribing of a public servant.—(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention—

- (i) to induce a public servant to perform improperly a public duty; or
- (ii) to reward such public servant for the improper performance of public duty, shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

9. Offence relating to bribing a public servant by a commercial organisation.—(1)

Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending—

- (a) to obtain or retain business for such commercial organisation; or
- (b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.

(3) For the purposes of section 8 and this section,—

- (a) “commercial organisation” means—

- (i) a body which is incorporated in India and which carries on a business, whether in India or outside India;
 - (ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;
 - (iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or
 - (iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;
- (b) “business” includes a trade or profession or providing service;
- (c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sections 7A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.

10. Person in charge of commercial organisation to be guilty of offence.—Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this section, “director”, in relation to a firm means a partner in the firm.]

11. Public servant obtaining 1 [undue advantage], without consideration from person concerned in proceeding or business transacted by such public servant.—Whoever, being a public servant, accepts or obtains 2 *** or attempts to obtain for himself, or for any other person, any 1 [undue advantage] without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the 3 [official functions or public duty] of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned

Shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

12. Punishment for abetment of offences.—Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.

13. Criminal misconduct by a public servant.— (1) A public servant is said to commit the offence of criminal misconduct,—

- (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
- (b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

CHAPTER IV

INVESTIGATION INTO CASES UNDER THE ACT

17. Persons authorised to investigate.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
- (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

18. Power to inspect bankers' books.—If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section:

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.—In this section, the expressions “bank” and “bankers' books” shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891 (18 of 1891).

CHAPTER IVA

ATTACHMENT AND FORFEITURE OF PROPERTY

18A. Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.—

(1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to “District Judge” shall be construed as references to “Special Judge”.]

CHAPTER V

SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

- 19. Previous sanction necessary for prosecution.**—(1) No court shall take cognizance of an offence punishable under 1 [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction 2 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—
- (a) in the case of a person 3 [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
 - (b) in the case of a person 3 [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression “public servant” includes such person—

- (a) who has ceased to hold the office during which the offence is alleged to have been committed; or
- (b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
- (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

- (a) error includes competency of the authority to grant sanction;
- (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

20. Presumption where public servant accepts any undue advantage.—Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.]

21. Accused person to be a competent witness.—Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except at his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—

- (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
- (ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
- (iii) he has given evidence against any other person charged with the same offence.

22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.—

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,—

- (a) in sub-section (1) of section 243, for the words “The accused shall then be called upon”, the words “The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon” had been substituted;
- (b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:—
- (c) “Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.”;
- (c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:—

“(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.”;

(d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely :—

“Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:—

- (a) without giving the other party an opportunity of showing cause why the record should not be called for; or
- (b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.”.

23. Particulars in a charge in relation to an offence under 1 [section 13(1)(a)].—

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an accused is charged with an offence under 2 [clause (a)] of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

24. Statement by bribe giver not to subject him to prosecution.] Omitted by the Prevention of Corruption (Amendment) Act, 2018 (16 of 2018), s. 17 (w.e.f. 26-7-2018).

25. Military, Naval and Air Force or other law not to be affected.—(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act.—Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

27. Appeal and revision.—Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a court of Session trying cases within the local limits of the High Court.

28. Act to be in addition to any other law.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

29. Amendment of the Ordinance 38 of 1944.—In the Criminal Law Amendment Ordinance, 1944,—

- (a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, subsection (1) of section 11 and sub-section (1) of section 13, for the words “State Government”, wherever they occur, the words “State Government or, as the case may be, the Central Government” shall be substituted;
- (b) in section 10, in clause (a), for the words “three months”, the words “one year” shall be substituted;
- (c) in the Schedule,—
 - (i) paragraph 1 shall be omitted;
 - (ii) in paragraphs 2 and 4,—

- (a) after the words “a local authority”, the words and figures “or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government company” shall be inserted;
- (b) after the words “or authority”, the words “or corporation or body or Government company or society” shall be inserted;
- (iii) for paragraph 4A, the following paragraph shall be substituted, namely:—
“4A. An offence punishable under the Prevention of Corruption Act, 1988.”;
- (iv) in paragraph 5, for the words and figures “items 2, 3 and 4”, the words, figures and letter “items 2, 3, 4 and 4A” shall be substituted.

29A. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) guidelines which can be put in place by commercial organisation under section 9;
- (b) guidelines for sanction of prosecution under sub-section (1) of section 19;
- (c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. Repeal and saving.—(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

31. [Omission of certain sections of Act 45 of 1860.]—Rep. by the Repealing and Amending Act, 2001(30 of 2001), s.2 and the First Schedule (w.e.f. 3-9-2001).

“public servant” means:

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

OFFENCES AND PENALTIES

Public servant taking gratification other than legal remuneration in respect of an official act. (SECTION 7):

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to 2 seven years and shall also be liable to fine.

Explanations.—

(a) “Expecting to be a public servant.” If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) “Gratification.” The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) “Legal remuneration.” The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) “A motive or reward for doing.” A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

Taking gratification, in order, by corrupt or illegal means, to influence public servant (SECTION 8):

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than 1 [three years] but which may extend to 2 [seven years] and shall also be liable to fine.

Taking gratification, for exercise of personal influence with public servant (SECTION 9):

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than 1 [three years] but which may extend to 2 [seven years] and shall also be liable to fine.

Punishment for abetment by public servant of offences defined in section 8 or 9 (SECTION 10):

Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant (SECTION 11):

Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Punishment for abetment of offences defined in section 7 or 11 (SECTION 12):

Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

Criminal misconduct by a public servant (SECTION 13):

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

Habitual committing of offence under sections 8, 9 and 12 (SECTION 14): Whoever habitually commits—

(a) an offence punishable under section 8 or section 9; or

(b) an offence punishable under section 12,

shall be punishable with imprisonment for a term which shall be not less than 1 [five years] but which may extend to 2 [ten years] and shall also be liable to fine.

Punishment for attempt (SECTION 15): —Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine.

Matters to be taken into consideration for fixing fine (SECTION 16): Where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

Insertion of new section 29A:

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a)** guidelines which can be put in place by commercial organisation under section 9;.
- (b)** guidelines for sanction of prosecution under sub-section (1) of section 19;
- (c)** any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE MICRO, SMALL
AND MEDIUM
ENTERPRISES
DEVELOPMENT
ACT, 2006

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THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 ACT NO. 27 OF 2006

An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

WHEREAS a declaration as to expediency of control of certain industries by the Union was made under section 2 of the Industries (Development and Regulation) Act, 1951;

AND WHEREAS it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto;

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title and commencement.—

- (1) This Act may be called the Micro, Small and Medium Enterprises Development Act, 2006.
- (2) It shall come into force on such date¹ as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “Advisory Committee” means the committee constituted by the Central Government under sub-section (2) of section 7;

Regarding Advisory Committee

The Central Government shall, by notification, constitute an Advisory Committee consisting of the following members, namely:—

- (a)** the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be the Chairperson, ex officio;
- (b)** not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises, members, ex officio;
- (c)** not more than three representatives of the State Governments, members, ex officio; and
- (d)** one representative each of the associations of micro, small and medium enterprises, members, ex officio.

The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.

The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee.

The Advisory Committee shall examine the matters referred to it by the Board in connection with any subject referred to in section 5 and furnish its recommendations to the Board.

The Central Government may seek the advice of the Advisory Committee on any of the matters specified in section 9, 10, 11, 12 or 14 of Chapter IV.

The State Government may seek advice of the Advisory Committee on any of the matters specified in the rules made under section 30.

The Advisory Committee shall, after considering the following matters, communicate its recommendations or advice to the Central Government or, as the case may be, State Government or the Board, namely:—

- (a)** the level of employment in a class or classes of enterprises;
- (b)** the level of investments in plant and machinery or equipment in a class or classes of enterprises;
- (c)** the need of higher investment in plant and machinery or equipment for technological upgradation, employment generation and enhanced competitiveness of the class or classes of enterprises;
- (d)** the possibility of promoting and diffusing entrepreneurship in micro, small or medium enterprises; and
- (e)** the international standards for classification of small and medium enterprises

(b) “appointed day” means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Explanation.—For the purposes of this clause,—

(i) “the day of acceptance” means,—

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) “the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

(c) “Board” means the National Board for Micro, Small and Medium Enterprises established under section 3;

(d) “buyer” means whoever buys any goods or receives any services from a supplier for consideration;

WHAT IS “ENTERPRISE”

Sec 2(e) of MSMED, Act 2006

“Enterprise” means an industrial undertaking or a business concern or any other establishment, by whatever name called,

➤ Engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries

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(Development and Regulation) Act, 1951 (55 of 1951)

or

Engaged in providing or rendering of any service or services

- (e) “enterprise” means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services;
- (f) “goods” means every kind of movable property other than actionable claims and money;
- (g) “medium enterprise” means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of sub-section (1) of section 7;
- (h) “micro enterprise” means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7;
- (i) “National Bank” means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (51 of 1981);
- (j) “notification” means a notification published in the Official Gazette;
- (k) “prescribed” means prescribed by rules made under this Act;
- (l) “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

- (m) “small enterprise” means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7;
- (n) “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—
- (i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);
 - (ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);
 - (iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;
- (o) “Small Industries Bank” means the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989);
- (p) “State Government”, in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution.

CHAPTER II

NATIONAL BOARD FOR MICRO, SMALL AND MEDIUM ENTERPRISES

3. Establishment of Board.—(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board to be known as the National Board for Micro, Small and Medium Enterprises.

(2) The head office of the Board shall be at Delhi.

(3) The Board shall consist of the following members, namely:—

(a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the ex officio Chairperson of the Board;

(b) the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be ex officio Vice-Chairperson of the Board, and where there is no such Minister of State or Deputy

Minister, such person as may be appointed by the Central Government to be the Vice-Chairperson of the Board;

(c) six Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, micro, small and medium enterprises, to be appointed by the Central Government to represent such regions of the country as may be notified by the Central Government in this behalf, ex officio;

(d) three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States;

(e) the Administrator of a Union territory to be appointed by the Central Government, ex officio;

(f) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises, ex officio;

(g) four Secretaries to the Government of India, to represent the Ministries of the Central Government dealing with commerce and industry, finance, food processing industries, labour and planning to be appointed by the Central Government, ex officio;

- (h) the Chairman of the Board of Directors of the National Bank, ex officio;
- (i) the chairman and managing director of the Board of Directors of the Small Industries Bank, ex officio;
- (j) the chairman, Indian Banks Association, ex officio;
- (k) one officer of the Reserve Bank, not below the rank of an Executive Director, to be appointed by the Central Government to represent the Reserve Bank;
- (l) twenty persons to represent the associations of micro, small and medium enterprises, including not less than three persons representing associations of women's enterprises and not less than three persons representing associations of micro enterprises, to be appointed by the Central Government;
- (m) three persons of eminence, one each from the fields of economics, industry and science and technology, not less than one of whom shall be a woman, to be appointed by the Central Government;
- (n) two representatives of Central Trade Union Organisations, to be appointed by the Central Government; and

(o) one officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, ex officio.

(4) The term of office of the members of the Board, other than ex officio members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of their functions by the members of the Board, shall be such as may be prescribed:

Provided that the term of office of an ex officio member of the Board shall continue so long as he holds the office by virtue of which he is such a member.

(5) No act or proceedings of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

(6) The Board shall meet at least once in every three months in a year.

(7) The Board may associate with itself, in such manner and for such purposes as it may deem necessary, any person or persons whose assistance or advice it may desire in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated but shall not have the right to vote.

(8) Without prejudice to sub-section (7) the Chairperson of the Board shall, for not less than two of the meetings of the Board in a year, invite such Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, the micro, small and medium enterprises, or the Administrators of Union territories and representatives of such other associations of micro, small and medium enterprises, as he may deem necessary for carrying out the purposes of this Act.

(9) It is hereby declared that the office of member of the Board shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

4. Removal of member from Board.—

- (1) The Central Government may remove a member of the Board from it, if he—
- (a) is, or at any time has been, adjudged as insolvent; or
 - (b) is, or becomes, of unsound mind and stands so declared by a competent court; or
 - (c) refuses to act or becomes incapable of acting as a member of the Board; or
 - (d) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (e) has so abused, in the opinion of the Central Government, his position as a member of the Board as to render his continuance in the Board detrimental to the interests of the general public.
- (2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the grounds specified in clauses (c) to (e) of that sub-section unless he has been given a reasonable opportunity of being heard in the matter.

5. Functions of Board.—The Board shall, subject to the general directions of the Central Government, perform all or any of the following functions, namely:—

- (a) examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises and the impact thereof on such enterprises;
- (b) make recommendations on matters referred to in clause (a) or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises; and
- (c) advise the Central Government on the use of the Fund or Funds constituted under section 12.

6. Powers and functions of Member-Secretary of Board.—Subject to other provisions of this Act, the Member-Secretary of the Board shall exercise such powers and perform such functions as may be prescribed.

CHAPTER III

CLASSIFICATION OF ENTERPRISES, ADVISORY COMMITTEE AND MEMORANDUM OF MICRO, SMALL AND MEDIUM ENTERPRISES

7. Classification of enterprises.—

(1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,—

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as—

- (i) a micro enterprise, where the investment in plant and machinery does not exceed twenty five lakh rupees;
 - (ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or
 - (iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;
- (b) in the case of the enterprises engaged in providing or rendering of services, as—
- (i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;
 - (ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or
 - (iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

Explanation 1.—For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

CLASSIFICATION OF AN ENTERPRISE

An Enterprise has been classified in to the 3 categories (Sec 7):

- Micro
- Small
- Medium

Micro, Small & Medium Enterprises, In accordance with the provision of (MSMED) Act, 2006 were classified in two Classes based on the investment:

Manufacturing Enterprises:-

Service Enterprises:-

Existing MSME Classification			
Criteria : Investment in Plant Machinery or Equipment			
Classification	Micro	Small	Medium
Mfg. Enterprises	Investment< Rs. 25 Lacs	Investment< Rs. 5 Cr.	Investment< Rs. 10 Cr.
Services Enterprises	Investment< Rs. 10 Lacs	Investment< Rs. 2 Cr.	Investment< Rs. 5 Cr.

Ministry of MSMEs has amended the classification criteria and threshold limit.

Revised definition provides twin criteria and no such distinction between manufacturing and service enterprises (13th May 2020):

Investment in Plant & Machinery or Equipment

Turnover

Existing MSME Classification			
Criteria : Investment in Plant Machinery or Equipment			
Classification	Micro	Small	Medium
Mfg. Enterprises	Investment< Rs. 25 Lacs	Investment< Rs. 5 Cr.	Investment< Rs. 10 Cr.
Services Enterprises	Investment< Rs. 10 Lacs	Investment< Rs. 2 Cr.	Investment< Rs. 5 Cr.

Further the limit of investment and turnover for Medium category has been enhanced vide notification date 26th Jun 2020.

Classification	Micro	Small	Medium
Manufacturing & Services	Investment< Rs. 1 Cr. And Turnover < 5 Cr.	Investment< Rs. 10 Cr. And Turnover < 50 Cr.	Investment< Rs. 50 Cr. And Turnover < 250 Cr.

- In case of Upward change, enterprise will maintain its prevailing status till expiry of one year from the close of the Financial year of registration.
- In case of Reverse-Graduation, Enterprise will continue in its present category till the closure of the financial year.
- Benefit of the changed status only w.e.f 1st April of the F.Y. following the year in which such change took place.

COMPOSITE CRITERIA OF INVESTMENT & TURNOVER FOR CLASSIFICATION

- 1) A composite criterion of investment and turnover shall apply for classification of an enterprise as micro, small or medium.
- 2) If an enterprise crosses the ceiling limits specified for its present category in either of the two criteria of investment or turnover, it will cease to exist in that category and be placed in the next higher category but no enterprise shall be placed in the lower category unless it goes below the ceiling limits specified for its present category in both the criteria of investment as well as turnover.
- 3) All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together and only the aggregate values will be considered for deciding the category as micro, small or medium enterprise.

CALCULATION OF INVESTMENT IN PLANT AND MACHINERY OR EQUIPMENT

- 1) The calculation of investment in plant and machinery or equipment will be linked to the Income Tax Return (ITR) of the previous years filed under the Income Tax Act.
- 2) In case of a new enterprise, where no prior ITR is available, the investment will be based on self-declaration of the promoter of the enterprise and such relaxation shall end after the 31st March of the financial year in which it files its first ITR. The expression “plant and machinery or equipment” of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 and shall include all tangible assets (other than land and building, furniture and fittings).
- 3) The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding Goods and Services Tax (GST), on self-disclosure basis, if the enterprise is a new one without any ITR.

CALCULATION OF INVESTMENT IN PLANT AND MACHINERY OR EQUIPMENT

- 5) The Depreciated value (WDV) of a plant and machinery or equipment, Will be considered for the existing /Running units having ITR and Balance sheet.
- 6) The cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Act shall be excluded from the calculation of the amount of investment in plant and machinery

Explanation I to sub-section (1) of section 7:

Explanation 1.—For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery,

- Cost of pollution control,
- Research and development,
- Industrial safety devices and
- Such other items as may be specified, by notification, shall be excluded.

CALCULATION OF TURNOVER

- 1) Exports of goods or services or both, shall be excluded while calculating the turnover of any enterprise whether micro, small or medium, for the purposes of classification.
- 2) Information as regards turnover and exports turnover for an enterprise shall be linked to the Income Tax Act or the Central Goods and Services Act (CGST Act) and the GSTIN. The turnover related figures of such enterprise which do not have PAN will be considered on self-declaration basis for a period up to 31st March, 2021 and thereafter, PAN and GSTIN shall be mandatory.

(2) The Central Government shall, by notification, constitute an Advisory Committee consisting of the following members, namely:—

- (a) the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be the Chairperson, ex officio;
- (b) not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises, members, ex officio;
- (c) not more than three representatives of the State Governments, members, ex officio; and
- (d) one representative each of the associations of micro, small and medium enterprises, members, ex officio.

(3) The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.

(4) The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee. .

- (5) The Advisory Committee shall examine the matters referred to it by the Board in connection with any subject referred to in section 5 and furnish its recommendations to the Board.
- (6) The Central Government may seek the advice of the Advisory Committee on any of the matters specified in section 9, 10, 11, 12 or 14 of Chapter IV.
- (7) The State Government may seek advice of the Advisory Committee on any of the matters specified in the rules made under section 30.
- (8) The Advisory Committee shall, after considering the following matters, communicate its recommendations or advice to the Central Government or, as the case may be, State Government or the Board, namely:—
- (a) the level of employment in a class or classes of enterprises;
 - (b) the level of investments in plant and machinery or equipment in a class or classes of enterprises;
 - (c) the need of higher investment in plant and machinery or equipment for technological upgradation, employment generation and enhanced competitiveness of the class or classes of enterprises;

(d) the possibility of promoting and diffusing entrepreneurship in micro, small or medium enterprises; and

(e) the international standards for classification of small and medium enterprises.

(9) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), the Central Government may, while classifying any class or classes of enterprises under sub-section (1), vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.

8. Memorandum of micro, small and medium enterprises.—(1) Any person who intends to establish,—

(a) a micro or small enterprise, may, at his discretion; or

(b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or

(c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established—

- (a) a small scale industry and obtained a registration certificate, may, at his discretion; and
- (b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E), dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum, shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.

- (2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.
- (3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified, by notification, by the Central Government.
- (4) The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.
- (5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).

CHAPTER IV

MEASURES FOR PROMOTION, DEVELOPMENT AND ENHANCEMENT OF COMPETITIVENESS OF MICRO, SMALL AND MEDIUM ENTERPRISES

9.Measures for promotion and development.—The Central Government may, from time to time, for the purposes of facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises, particularly of the micro and small enterprises, by way of development of skill in the employees, management and entrepreneurs, provisioning for technological upgradation, marketing assistance or infrastructure facilities and cluster development of such enterprises with a view to strengthening backward and forward linkages, specify, by notification, such programmes, guidelines or instructions, as it may deem fit.

10. Credit facilities.—The policies and practices in respect of credit to the micro, small and medium enterprises shall be progressive and such as may be specified in the guidelines or instructions issued by the Reserve Bank, from time to time, to ensure timely and smooth flow of credit to such enterprises, minimise the incidence of sickness among and enhance the competitiveness of such enterprises.

11. Procurement preference policy.—For facilitating promotion and development of micro and small enterprises, the Central Government or the State Government may, by order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises.

12. Funds.—There shall be constituted, by notification, one or more Funds to be called by such name as may be specified in the notification and there shall be credited thereto any grants made by the Central Government under section 13.

13. Grants by Central Government.—The Central Government may, after due appropriation made by Parliament by law in this behalf, credit to the Fund or Funds by way of grants for the purposes of this Act, such sums of money as that Government may consider necessary to provide.

14.Administration and utilisation of Fund or Funds.—

- (1) The Central Government shall have the power to administer the Fund or Funds in such manner as may be prescribed.
- (2) The Fund or Funds shall be utilised exclusively for the measures specified in sub-section (1) of section 9.
- (3) The Central Government shall be responsible for the coordination and ensuring timely utilisation and release of sums in accordance with such criteria as may be prescribed.

CHAPTER V

DELAYED PAYMENTS TO MICRO AND SMALL ENTERPRISES

15.Liability of buyer to make payment.—Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16.Date from which and rate at which interest is payable.—Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

Delayed payments to micro and small enterprises

Liability of buyer to make payment (SECTION 15): Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Date from which and rate at which interest is payable (SECTION 16): Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

18.Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

Recovery of amount due (SECTION 17): For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

Reference to Micro and Small Enterprises Facilitation Council (SECTION 18):

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

19.Application for setting aside decree, award or order.—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

20.Establishment of Micro and Small Enterprises Facilitation Council.—The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

21. Composition of Micro and Small Enterprises Facilitation Council.—(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:—

- (i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and
 - (ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and
 - (iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or
 - (iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.
- (2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

(3) The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.

22.Requirement to specify unpaid amount with interest in the annual statement of accounts.— Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:—

- (i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;
- (ii) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- (iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;
- (iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

23. Interest not to be allowed as deduction from income.—Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

24. Overriding effect.—The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

25. Scheme for closure of business of micro, small and medium enterprises.—Notwithstanding anything contained in any law for the time being in force, the Central Government may, with a view to facilitating closure of business by a micro, small or medium enterprise, not being a company registered under the Companies Act, 1956 (1 of 1956), notify a Scheme within one year from the date of commencement of this Act.

CHAPTER VI

MISCELLANEOUS

26.Appointment of officers and other employees.—

- (1) The Central Government or the State Government may appoint such officers with such designations and such other employees as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.
- (2) The Officers appointed under sub-section (1) may, for the purposes of this Act, by order require any person to furnish such information, in such form, as may be prescribed.

27.Penalty for contravention of section 8 or section 22 or section 26.—(1) Whoever intentionally contravenes or attempts to contravene or abets the contravention of any of the provisions contained in sub-section (1) of section 8 or sub-section (2) of section 26 shall be punishable—

- (a) in the case of the first conviction, with fine which may extend to rupees one thousand; and
 - (b) in the case of second or subsequent conviction, with fine which shall not be less than rupees one thousand but may extend to rupees ten thousand.
- (2) Where a buyer contravenes the provisions of section 22, he shall be punishable with fine which shall not be less than rupees ten thousand.

28. Jurisdiction of courts.—No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

29. Power to make rules.—

- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the term of office of the members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of functions by the members of the Board under sub-section (4) of section 3;
 - (b) the powers and functions of the Member-Secretary under section 6;
 - (c) the manner in which the Fund may be administered under sub-section (1) of section 14;
 - (d) the criteria based on which sums may be released under sub-section (3) of section 14;
 - (e) the information to be furnished and the form in which it is to be furnished under sub-section (2) of section 26; and
 - (f) any other matter which is to be or may be prescribed under this Act.
- (3) Every notification issued under section 9 and every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session

or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

30. Power to make rules by State Government.—

- (1) The State Government may, by notification, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Micro and Small Enterprises Facilitation Council under sub-section (3) of section 21;
 - (b) any other matter which is to be, or may be, prescribed under this Act.

(3) The rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

31. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

32.Repeal of Act 32 of 1993.—(1) The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act.



Thank You

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