

# DIRECTORATE OF LEGAL STUDIES

Chennai - 600 010

5 Year B.A. B.L., Course  
Semester System

**V<sup>th</sup> Year**

**IX - Semester**

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**COURSE MATERIALS 2013-2014**

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# 1. CRIMINAL PROCEDURE CODE

## Historical background:

The acts dealing with criminal procedure in respect of Presidency towns were consolidated for the first time by the Criminal Procedure Supreme Courts Act, 1852. This act was replaced by the High Courts Criminal Procedure Act, 1865. The criminal procedure act, 1861 was replaced by 1872, then came in 1882 and last came Code of Criminal Procedure, 1898. Finally the Code of Criminal Procedure Code, 1973 was passed.

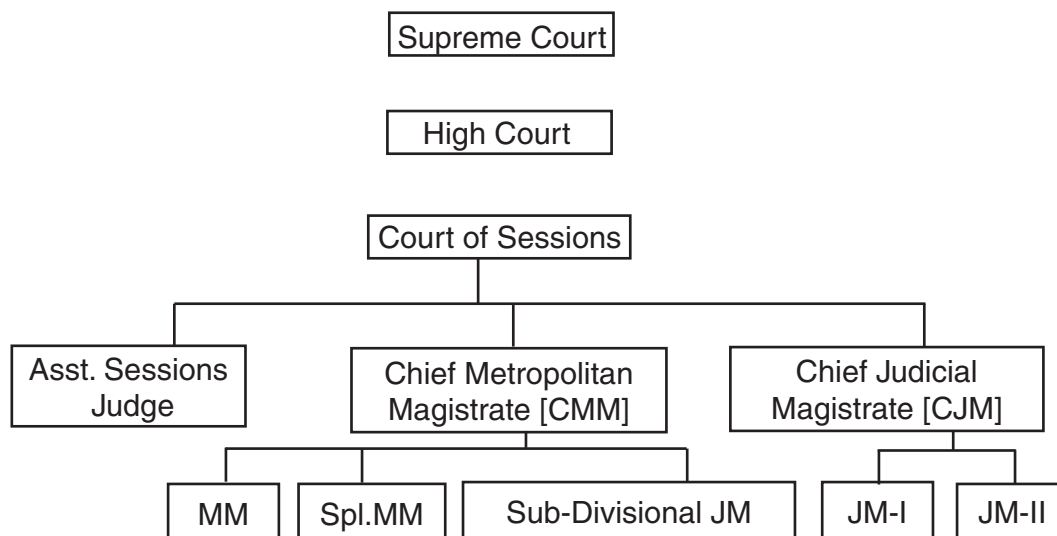
The main of the code is to provide for the mechanism for the sound administration of criminal justice. It is an act to amend and consolidate the law relating to criminal procedure.

## Functionaries under the code:

The authorities under the code for the administration of criminal justice are:

1. The police
2. The prosecutors
3. The defence counsel
4. The courts
5. Prison authorities and correctional institutions.

## The hierarchy of criminal courts:



## **ARREST: [chapter V] [secs 41-60]**

The term 'arrest' means 'curtailment of personal liberty by legal authority'. It is of two types namely:

1. Arrest with warrant
2. Arrest without warrant
  - a) Arrest by police [secs 41,42 and 55]
  - b) Arrest by private person [sec 43]
  - c) Arrest by a magistrate [sec 44]

### **The rights of arrested persons are:**

1. Rights to be informed of the grounds of arrest [sec 50 1 ]
2. Right of bail [sec 50 2 ]
3. Right to be produced before the court [sec 56 and 76]
4. No detention beyond twenty hours without judicial security [sec 57]
5. Right to consult legal practitioner [sec 303]
6. Right to be examined by medical practitioners [sec 54]

## **PROCESS TO COMPEL APPEARANCE: [chapter VI] [Secs 61-90]**

### **1. Summons [Ss. 61-69]:**

It is a process for the production of document or thing or for the appearance of witness.

### **2. Warrant [Ss. 70-81]:**

It is addressed to one or more police officers directing to arrest a person, whose name and address is given with the offence charged, for the purpose of producing him before the magistrate.

### **3. Proclamation and attachment [Ss 82-86]:**

Proclamation is the process to compel the appearance before the court, if he absconds himself. Attachment is the last step resorted by the court to compel the appearance of the accused before the court.

### **4. Other processes [Ss 87-89]:**

It empowers the court to issue a warrant in addition to summons. If the person bound by the bond does not appear in the court, the court has a right to cancel such bond and issue warrant directing such persons be arrested and produced before the court.

## **PROCESS TO COMPEL THE PRODUCTION OF THINGS: [Ss 91-105]**

Summons to produce- when a court or police officer in charge of a police station requires a document or thing necessary for the purpose of investigation or inquiry or trial.

Search and seizure- when the court cannot make it possible to get the document or thing by means of summons, then it may resort to issue a search warrant.

## **SECURITY FOR KEEPING PEACE AND GOOD BEHAVIOUR: [Ss 106-124]**

The proceedings are not administrative proceedings. It is for the prevention of offence and not for the punishment of persons committing offences. If the executive magistrate is satisfied that a person is likely to commit breach of peace or public tranquility, he can bring them under

section 107. Section 110 provides for habitual offenders. Habitual offender is one, who habitually commits or attempts to commit or abets commission of offence.

Seetharaman vs State [1956] AIR Mad. 92

Section 110 is intended to deal with ex-convicts or habitual of and dangerous and incorrigible criminals.

### **MAINTENANCE OF WIVES, CHILDREN AND PARENTS: [chapter IX] [Ss 125-128]**

Section 125 provides for maintenance of wife, children and parents. Section 126 deals with procedure followed by the court which takes cognizance of the complaint. Section 127 empowers the magistrate to alter the amount of monthly maintenance. Section 128 provides for the enforcement of the order of maintenance.

Chand Begum vs Hyder Baig [1972] Cr.L.J 1270

A person having sufficient means will be liable to pay separate maintenance to his wife and children if it is shown that he has neglected or refused to maintain his wife and illegitimate child unable to maintain itself.

### **MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY: [chapter X] [Ss. 129-148]**

#### **The Unlawful assembly [Ss. 129-132]:**

The main function is to maintain law and order. When five or more persons jointly with a common object, cause disturbance to public peace, assembly of such persons may be termed as unlawful assembly as per section 141 of I.P.C.

- a) Overruling the government
- b) Resisting the execution of law or legal process
- c) To commit any mischief, criminal trespass or other offence
- d) Forcible possession and dispossession of property
- e) Illegal compulsion

#### **Public nuisance: [Ss. 133-143]**

A person is guilty of a public nuisance, who does any act, or is guilty of a illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy the property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Re Venkata Reddy [1952] 2MLJ 554

The accused, in front of his house, built a cross bund across the road. As a result, the flow of rain water was stagnated causing inconvenience to the public. It was held that it was a case of nuisance.

Section 144 confers wide power to issue an order in urgent cases of nuisance or apprehended danger. The order must state the material facts on which it is based. In case of emergency an exparte order can be passed. The order remains in force only for 2 months.

Sections 145-148 deal with the prevention of offences relating to disputes as to immovable property. The object is to prevent breach of peace by bringing to and end by a summary process disputes relating to property.

## **PREVENTIVE ACTION OF POLICE: [Chapter XI] [Ss. 149-153]**

- a) Power to prevent cognizable offences [sec 149]
- b) Duty to inform the superiors [sec 150]
- c) Power to arrest without warrant [sec 151]
- d) Duty to prevent injury to public property [sec 152]
- e) Power to inspect the weights and measures [sec 153]

## **INFORMATION TO THE POLICE AND POWERS OF POLICE TO INVESTIGATE: [Chapter XII] [Ss 154-176]**

### **First Information Report [sec 154]:**

It is the information relating to the commission of cognizable offence given to the police orally or in writing, in order to put the police in motion to investigate the matter. It is not by itself an substantive evidence. F.I.R cannot be used for the purpose of corroborating or contradicting any witnesses other than the one lodging the F.I.R.

Section 155 provides that a non-cognizable case cannot be investigated by a police officer. He must get the permission from the magistrate. When a complaint discloses two offences one cognizable and another non-cognizable then he can start the investigation.

Section 156 deals with the investigation into cognizable offences. Any magistrate empowered under section 190 of Cr.P.C may order an investigation.

Section 157 deals with the duties of the officer in charge of police station. Arresting is discretionary. If the police officer thinks that there is no sufficient ground for calling investigation he shall not investigate the case. The officer in charge of police station should state in his report his reasons for not fully complying with the requirements.

Section 159 is intended for the use when it is found that the report under section 157 Cr.P.C that the police are neglecting of their duties to investigate the case in which materials are such that there should be an investigation.

Section 162 provides that it is not obligatory to record statements of witnesses examined by the police. It can be used only for contradiction and not for corroboration.

### **Confessions: [section 164]**

Confession means self harming statement. Only metropolitan magistrate or judicial magistrate can exercise his power under this section. It empowers them to record any statement or confession of a person made in the course of investigation by the police officer or at any time afterwards but before the commencement of the enquiry of trial.

### **Search: [section 165 and 166]**

Section 165 authorizes a police officer to search without warrant. Once he seizes the property he must follow section 100 of Cr.P.C.

Ronny vs State of Maharashtra [1998] Cri.L.J 1638

A breach was conducted by the investigation team within the limits of another police station. After the completion of the search, the investigating officer wrote two letters relating to the search and seizure to the police station in whose jurisdiction the search and seizure were made. It was held that the provisions under sections 166[3] and [4] are said not complied with.

**Remand: [section 167]**

When investigation cannot be completed within 24 hours, then the person in custody can be taken to the nearest magistrate. The magistrate to whom he has been taken whether he has no jurisdiction to try the case authorizes the detention of the accused in such custody as such magistrate thinks fit for the term not exceeding 15 days. He must give the reasons in writing.

**Case diary: [section 172]**

It is also known as special diary or station house report. The main purpose is to enable the court to know the day to day information and check the method of investigation by the police. It is not used as an evidence but as an aid in inquiry and trial.

**Police report: [section 173]**

It is also called as charge sheet. The final report has to be submitted as soon as the investigation is completed. It is the duty of the police to complete the investigation as early as possible. The investigation has to be completed without delay.

**Inquest: [section 174-176]**

This sections provides for inquest and inquiries in to the cases of unnatural deaths or deaths under suspicious circumstances like suicides, deaths in police custody, killed by another person or animal, accident etc.,

**JURISDICTION OF THE CRIMINAL COURTS: [Chapter XIII] [Ss 177-189]**

The term jurisdiction means the power of a criminal court to try a person for commission of a criminal act. Ordinarily every offences should be tried by a court within the local limits of whose jurisdiction it was committed [section 177].

Eg- 'A' committed murder of 'B' in Hyderabad and was arrested in Vishakapatnam. The inquiry and trial shall take place at Vishakapatnam since the local court competent to try him is Vishakapatnam.

The general rule regarding the jurisdiction is provided under sections 178-183. If the offence is:

1. Uncertain
2. Committed partly in one area and partly in another area
3. If the offence is a continuing offence
4. Consists of several acts done in different local areas etc.,

If the objection to jurisdiction is to be taken then it shall be decided before the commencing of the trial and such objection shall be taken at the earliest opportunity.

**COGNIZANCE OF OFFENCES: [Chapter XIV] [Ss 190 - 199]**

To ensure fair trial, the Code of Criminal Procedure envisages that certain preliminary steps as stated hereunder:

1. To take cognizance of the offence
2. To ascertain whether any prima facie case exists against the accused person, and in case it does not exist, then
3. To issue process against the accused person in order to secure his presence at the time of his trial

4. To supply to the accused person the copies of police statements
5. To consolidate different proceedings pertaining to the same case and
6. If the case is exclusively triable by a court of session to commit the case to that court.

### **Limitations on the power to take cognizance of an offence:**

#### **Prosecution-**

1. For contempt of lawful authority of public servant
2. For offences against public justice and for relating to documents given in evidence
3. For offences against the state
4. For the offence of criminal conspiracy
5. Of judges and public servants
6. Of members of armed forces
7. For offences against marriage
8. Of husband for rape
9. For defamation

### **COMPLAINTS TO MAGISTRATE: [Chapter XV] [Ss 200-203]**

1. Examination of the complainant [sec 200]
2. Procedure by magistrate not competent to take cognizance of the case [sec 201]
3. Postponement of issue of process [sec 202]
4. Dismissal of complaint [sec 203]

### **COMMENCEMENT OF JUDICIAL PROCEEDINGS: [Chapter XVI] [Ss. 204-210]**

1. Issue of process [sec 204]
2. Special summons in cases of petty cases [sec 206]
3. Supply to the accused person copies of statements, documents and police report [sec 207]
4. Committing the case to court of session [sec 209]
5. Consolidation of cases relating to the same offence [sec 210]

### **THE CHARGE: [Chapter XVII] [Ss 211-224]**

The term charge means 'accusation'. The form and content of charge includes:

1. The offence with which the accused is charged
2. The specific law
3. If no specific name then the description
4. It should be written
5. If previous conviction, then the particulars as to previous conviction shall be furnished in the charge
6. It must contain the particulars as to time and place etc.,

Radhey Shyam vs State of U.P 1992 Cri.L.J 2002 [All]

An application moved by a private counsel engaged by the complainant was forwarded by the public prosecutor for alteration of charge. It was held that the application was not illegal and the alteration of charge was allowed.



## **TRIAL BEFORE COURT OF SESSION: [Chapter XVIII] [Ss 225-237]**

The procedures followed by the Court of Session are as follows:

1. Parties [sec 225]
2. Opening of the case [sec 226]
3. Discharged of the accused [sec 227]
4. Framing of the charge [sec 228]
5. Explaining the charge and enquiry about plea [sec 228 2 ]
6. Conviction on plea of guilty [sec 229]
7. Date of prosecution evidence [sec 230]
8. Evidence for prosecution [sec 231]
9. Arguments of the prosecution [sec 314 2 ]
10. Examination of the accused
11. Acquittal [sec 232]
12. Entering upon the defence [sec 233]
13. Arguments [sec 234]
14. Judgment of acquittal or conviction [sec 235]
15. Previous conviction [sec 236]

## **TRIAL OF WARRANT CASES BY THE MAGISTRATE: [Chapter XIX] [Ss 238-250]**

It is of the three categories:

1. Cases instituted on a police report
2. Cases instituted otherwise than on a police report
3. Provisions regarding conclusions of trial

Trial of warrant cases instituted on a police report [Ss 238-243]:

1. Supply of copies to the accused [sec 238]
2. Discharge of the accused [sec 239]
3. Framing of charge [sec 240]
4. Conviction on plea of guilty [sec 241]
5. Examination of witnesses
6. Evidence for prosecution [sec 242]
7. Evidence for defence [sec 243]
8. Acquittal or conviction

## **Cases instituted otherwise than on a police report: [Ss 244-247]**

1. Evidence for prosecution [sec 244]
2. Discharge [sec 245]
3. Explaining charge and the plea of the accused [sec 246]
4. Choice of the accused to recall the prosecution witnesses
5. Evidence for the defence [sec 247]
6. Acquittal or conviction

**Common provisions regarding conclusion of trial: [Ss 248-250]**

1. Acquittal or conviction [sec 248]
2. Previous conviction
3. Absence of complainant [sec 249]
4. Compensation for accusation without reasonable cause [sec 250]

**TRIAL OF SUMMONS CASES BY MAGISTRATES: [Chapter XX] [Ss 251-259]**

1. Explaining the substance of accusation [sec 251]
2. Conviction on plea of guilty [sec 252]
3. Conviction on plea of guilty in the absence of accused in petty cases [sec 253]
4. Hearing of the prosecution and defence or procedure when not convicted [sec 254]
5. Acquittal or conviction [sec 255]
6. Non-appearance or death of complainant [sec 256]
7. Withdrawal of complaint [sec 257]
8. Power to stop proceedings in certain cases [sec 258]
9. Conversion of summons cases into warrant case [sec 259]
10. Compensation for wrongful accusation [sec 250]

**SUMMARY TRIALS: [Chapter XXI] [Ss 260-265]**

1. Magistrate competent to try summarily [sec 260 (1) ]
2. Offences triable summarily [sec 260 (2) ]
3. Procedure for summary trials [sec 262 (1) ]
4. Punishment [sec 262 (2) ]
5. Record in summary trials [sec 263]
6. Jurisdiction [sec 264]
7. Language of record and judgment [sec 265]

**DISPOSAL OF CRIMINAL CASES WITHOUT FULL TRIAL :**

1. Absence of complainant [Ss 249 and 256]
2. Withdrawal of complaint [Ss 257]
3. Autrefois acquit and Autrefois convict [sec 300]
4. Principle of issue-estoppel
5. Tender of pardon [Ss 306-308]
6. Compounding of offences [sec 320]
7. Nolle prosequi or withdrawal from prosecution [sec 321]
8. Criminal proceedings barred by limitation [Ss 467-473]:
  - Bar of limitation [sec 468]
  - Commencement of the period of limitation [sec 469]
  - Exclusion of time in certain cases [sec 470]
  - Continuing offence [sec 472]
  - Extension of period of limitation in certain cases [sec 473]

## **JUDGMENT: [Chapter XXVII] [Ss 353-365]**

Judgment is the final reasoned decision or sentence of court in a legal proceeding. It is an expression of opinion arrived at by the judge or magistrate on the basis of the facts, evidence and arguments of the case.

A metropolitan magistrate shall record the following particulars namely:

- a) the serial number of the case
- b) the date of commission of the offence
- c) the name of the complainant
- d) the name of the accused person, his parentage and residence
- e) the offence complained of or proved
- f) the plea of the accused and his examination
- g) the final order
- h) the date of such order

## **APPEALS: [Chapter XXIX] [Ss 372-394]**

The term 'appeal' means 'any proceeding taken to rectify an erroneous decision of a court by bringing it before a higher court.

Appeal shall lie from the following orders

1. Order requiring security for keeping peace or for good behavior [sec 117]
2. Order refusing to accept or rejecting surety [sec 212]
3. Order to pay compensation [sec 250]
4. Order for disposal of property [sec 452]
5. Order to disposal of property [sec 458]
6. Order to pay bona fide purchaser compensation [sec 453]
7. Order releasing first offender [sec 360]

## **REFERENCE, REVISION AND TRANSFER: [Chapter XXX] [Ss 395 - 405]**

### **Reference:**

When a question involving validity of law it is referred to a referee for its decision or opinion it is called as reference. Reference to high court takes place in the following circumstances:

- a) if it involves a question of the constitutional validity of any law or provision
- b) the determination of such constitutional validity is necessary for the disposal of the case before it
- c) if the legal provision is invalid or inoperative

### **Revision:**

It denotes, to reconsider for the purpose of correction or to alter. The object is

- a) to exercise supervisory jurisdiction over the lower court to correct any miscarriage of justice
- b) to save time of the superior court and to have advantage of the opinion of the lower courts.

### **Transfer: [Ss 406 - 412]**

In the interest of the accused and to ensure fair trial, the code confers on the accused a right to have his case transferred, when he is doubtful of fair trial by a particular judge. The Supreme Court or high court or Court of Session is empowered to transfer cases and appeals.

## **BAIL: [Chapter XXXIII] [Ss 436 - 450]**

Bail is the process by which arrested person is released from custody. The release of arrestee is mandatory in the following cases:

- a) not accused of non-bailable offences [sec 436(1)]
- b) investigation incomplete within prescribed period [sec 167]
- c) no ground to believe to be non-bailable [sec 437(2)]
- d) trial incomplete within 60 days [sec 437(6)]
- e) no reasonable ground to believe to be guilty after trial but before judgment [sec 437 (7)]

Bulchand Jain vs State of M.P [1976] 4 SCC 572

It was laid down in this case that, it is manifest that there can be no question of bail unless a person is under detention or custody.

## **PROBATION OF OFFENDERS**

The term 'probation' is derived from the latin word 'probare' which means 'to test' or 'to prove'. The ultimate purpose of this is to reclaim back those young and first offenders to orderly society who have for certain reasons fallen in to bad company or gone astray and landed in to criminality. John Augustus is the father of probation. Sec 562 of Cr.P.C,1898 provides for statutory recognition of probation.

The probation of offenders Act, 1958 provides provision relating to probation of offenders. Sec 562 of Cr.P.C ceased to apply after the passing of the Act. Sec 4 of the Act empowers the court to release on probation with or without surety, a person guilty of any offence other than the offence punishable with death or life imprisonment. Sec 6 provides that the age of the probationer must be below 21 years. Sections 13-16 lays down the provisions relating to the appointment of probation officer.

## **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000**

1. CHAPTER I  
PRELIMINARY Sec:1 to sec:3
2. CHAPTER II  
JUVENILE IN CONFLICT WITH LAW Sec:4 to sec:28
3. CHAPTER III  
CHILD IN NEED OF CARE AND PROTECTION Sec:29 to sec:39
4. CHAPTER IV  
REHABILITATION AND SOCIAL REINTEGRATION Sec:40 to sec:45
5. CHAPTER V  
MISCELLANEOUS Sec:46 to sec:70

The term "juvenile" means "child" and "delinquent" means "criminal". So the term "juvenile delinquency" means "crime committed by a child" or "child criminal". The main purpose of this act is to provide care, treatment, development and rehabilitation to the juveniles.

## **CHAPTER I- PRELIMINARY**

- Section:1 Short title, extent and commencement
- Section:2 Definitions
- Section:2(a) “advisory board”
- Section:2(b) “begging”
- Section:2(c) “Board”
- Section:2(d) “child in need of care and protection”
- Section:2(e) “children’s home”
- Section:2(f) “Committee”
- Section:2(g) “competent authority”
- Section:2(h) “fit institution”
- Section:2(i) “fit person”
- Section:2(j) “guardian”
- Section:2(k) “juvenile” or “child”
- Section:2(l) “juvenile in conflict with law”
- Section:2(m) “local authority”
- Section:2(n) “narcotic drug” and “psychotropic substance”
- Section:2(o) “observation home”
- Section:2(p) “offence”
- Section:2(q) “place of safety”
- Section:2(r) “prescribed”
- Section:2(s) “probation officer”
- Section:2(t) “public place”
- Section:2(u) “shelter home”
- Section:2(w) “special home”
- Section:2(x) “special juvenile police unit”
- Section:2(y) “State Government”
- Section:3 Continuation of inquiry in respect of juvenile who has ceased to be a juvenile

## **CHAPTER II - JUVENILE IN CONFLICT WITH LAW**

- Section:4 Juvenile Justice Board
- Section:5 Procedure, etc., in relation to Board
- Section:6 Powers of Juvenile Justice Board.-
- Section:7 Procedure to be followed by a Magistrate not empowered under the Act
- Section:8 Observation homes
- Section:9 Special homes
- Section:10 Apprehension of juvenile in conflict with law
- Section:11 Control of custodian over juvenile
- Section:12 Bail of juvenile

- Section:13 Information to parent, guardian or probation officer
- Section:14 Inquiry by Board regarding juvenile
- Section:15 Order that may be passed regarding juvenile
- Section:16 Order that may not be passed against juvenile
- Section:17 Proceeding under Chapter VIII of the Code of Criminal Procedure not competent against juvenile
- Section:18 No joint proceeding of juvenile and person not a juvenile
- Section:19 Removal of disqualification attaching to conviction
- Section:20 Special provision in respect of pending cases
- Section:21 Prohibition of publication of name, etc., of juvenile involved in any proceeding under the Act
- Section:22 Provision in respect of escaped juvenile
- Section:23 Punishment for cruelty to juvenile or child
- Section:24 Employment of juvenile or child for begging
- Section:25 Penalty for giving intoxicating drug or psychotropic substance to juvenile or child
- Section:26 Exploitation of juvenile or child employee
- Section:27 Special offences
- Section:28 Alternative punishment

**CHAPTER III - CHILD IN NEED OF CARE AND PROTECTION**

- Section:29 Child Welfare Committee
- Section:30 Procedure, etc., in relation to Committee
- Section:31 Powers of Committee
- Section:32 Production before Committee
- Section:33 Inquiry
- Section:34 Children's homes
- Section:35 Inspection
- Section:36 Social auditing
- Section:37 Shelter homes
- Section:38 Transfer
- Section:39 Restoration

**CHAPTER IV - REHABILITATION AND SOCIAL REINTEGRATION**

- Section:40 Process of rehabilitation and social reintegration
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- Section:45 Linkages and co-ordination

**CHAPTER V - MISCELLANEOUS**

- Section:46 Attendance of parent or guardian of juvenile or child

Section:47	Dispensing with attendance of juvenile or child
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Section:55	Power to amend orders
Section:56	Power of competent authority to discharge and transfer juvenile or child
Section:57	Transfer between children's homes, under the Act, and juvenile homes, of like nature in different parts of India
Section:58	Transfer of juvenile or child of unsound mind or suffering from leprosy or addicted to drugs
Section:59	Release and absence of juvenile or child on placement
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Section:61	Fund
Section:62	Central, State, district and city advisory boards
Section:63	Special juvenile police unit
Section:64	Juvenile in conflict with law undergoing sentence at commencement of this Act
Section:65	Procedure in respect of bonds
Section:66	Delegation of powers
Section:67	Protection of action taken in good faith
Section:68	Power to make rules
Section:69	Repeal and savings
Section:70	Power to remove difficulties

## **AMENDMENTS:**

### **I. AMENDMENTS RELATING TO ARREST:**

- a) It is now compulsory for the police to record the reasons both for making as well as for not making an arrest on the basis of a complaint or information or reasonable suspicion in respect of a cognizable offence for which the maximum punishment prescribed is 7 years or less. Henceforth, no person can be arrested for a complaint or suspicion of involvement in such an offence without a warrant unless:
  - (I) Such person commits a cognizable offence in the presence of a police officer; or
  - (II) When the cognizable offence is punishable with imprisonment for a term which is less than 7 years or may extend up to 7 years, the police officer has reason to believe that such person has committed the offence and is satisfied that such arrest



is necessary,

- i. to prevent such person from committing any further offence; or
  - ii. for proper investigation of the offence; or
  - iii. to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
  - iv. to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case; or
  - v. to ensure his presence before the court as and when required.
- (b) In all cases where the arrest of a person is not required under the provisions of sub section 41 (1), the police officer shall, issue a notice directing the person to appear before him and to comply with the terms of notice. He can be arrested if such person fails to comply with such direction.
- (c) The police officer while making arrest shall (a) bear an accurate, visible and clear identification, (b) prepare a memorandum of arrest which shall be attested by at least one witness and countersigned by the person arrested, (c) inform the person that he has a right to have a relative or friend informed of his arrest.
- (d) When any person is arrested for any offence and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout the interrogation.
- (e) Section 46 has been amended by adding proviso to sub section 1 which prescribes that the “where a women is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest is presumed” and “unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.”
- (f) Section 54 in the pre-amended Cr PC required examination of arrested person by a medical practitioner at the request of arrested person on production before a Magistrate. The amended Section 54 mandates compulsory medical inspection in all cases of arrest by the police. A copy of the medical report is to be provided to the arrested person or his nominee.

Section 55A has been incorporated which bestows upon the person having custody of the accused, the duty to take reasonable care of the health and safety of the accused. Thus the police are duty bound to take all reasonable care of the health and safety of the accused in custody.

## **II. DETENTION OF ACCUSED:**

In sub clause (b) of the proviso to Section 167 (2), amendment has been incorporated making it mandatory that the detention in police custody of the accused will be authorized only on physical production of the accused. Significantly detention in judicial custody can be extended by the production of accused either in person or through the medium of electronic video linkage.

## **III. STATEMENT OF WITNESSES:**

Section 161(3) has been amended with a proviso which enables 161 statements taken by the police to include recording by audio, video or electronic means. Thus legal sanction has been accorded to the preparation of an electronic record of the statement of witnesses under S.161 in the Cr PC in keeping with changes in the Indian Evidence Act and Information Technology Act,



2000.

Section 164(1) has also been amended by permitting electronic recording by audio-video means of the statement/confession recorded under the section before a magistrate as long as it is in the presence of the advocate of the person accused of an offence.

Section 275 which deals with recording of evidence of witnesses in warrant cases has been amended providing for the evidence to be recorded by audio/video means in the presence of the advocate of the person accused of the offence.

Section 242 which deals with prosecution evidence in trial of warrant cases instituted on a police report by magistrates has been amended by providing that the magistrate shall supply, in advance to the accused, the statements of witnesses recorded by the police during investigation.

#### **IV. CASE DIARY:**

Section 172 has been amended making it mandatory for the statement of witnesses recorded during the course of investigation to be inserted in the case diary. The case diary has also to be duly paginated and in a volume.

#### **V. INVESTIGATION OF OFFENCES RELATING TO WOMEN:**

Section 26 of the Code of Criminal Procedure, 1973 has been amended by prescribing that the offences under sec. 376 of 376 A to D of IPC, are to be tried, as far as practicable, by a court presided by a woman.

Section 157 has been amended to prescribe that in relation to rape, recording of the statement of the victim shall be conducted at the residence of the victim or at the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardians or near relatives or social workers of the locality.

Section 173 has been amended to state that the investigation of a case of rape of a child may be completed within 3 months from the date on which the information was recorded by the officer in charge of a police station. The final report under Section 173(1)(g) will also have to mention whether report of medical examination of the woman has been attached where the investigation relates to an offence under section 376, and 376A to D of the IPC.

Section 327 (2) which prescribes in camera trial in cases of offences under Section 376, 376 A to D has been amended by providing that 'in camera' trial shall be conducted as far as possible by a woman judge or magistrate.

Section 327 (3) which bars printing/ publishing any matter in relation to such 'in camera' proceedings except with the previous permission of the court has been relaxed by mandating that the ban may be lifted subject to maintaining confidentiality of names and addresses of the parties.

#### **VI. INTIMIDATION OF WITNESSES:**

The amended Act permits the witness or any other person to file a complaint in relation to threatening of any person to give false evidence prescribed u/s 195 A of the IPC. This procedure is prescribed by the insertion of Section 195 (A) of the Cr PC.

#### **VII. COMPOUNDING OF OFFENCES:**

The scope of compounding under Section 320 has been enhanced. Section 335, 343,344,

346, 379, 403, 407, 411, 414, 417, 419, 421, 422, 423, 424, 428, 429, 430, 451, 482, 483 and 486 are newly incorporated in the list of offences which can be compounded by the persons detailed in the table (i.e. victims of the offence). All these sections which earlier required the permission of court as well for compounding, no longer require the same after the 2008 amendment. Section 312 has been included in the list of offences which, with the permission of court before which such prosecution is pending, can be compounded by the persons detailed in the table. It is to be noted that S.354 has been deleted from the table of compounded offences.

#### **VIII. RIGHTS OF THE VICTIM**

- a) Section 2 has been amended by including clause (wa) which define victim as “person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir”.
- b) The new Section 357A mandates that the State Government in coordination with the Central Government shall prepare schemes for providing funds for compensation to victims.
- c) Right of Appeal: Section 372 of the Cr PC has been amended. The victim shall have the right to prefer an appeal against any order passed by a court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.
- d) Permission to engage advocate: Section 24 of the Cr PC has been amended by adding sub section 8 enabling the court to permit the victim to engage an advocate of his choice to assist the prosecution.

# 2. CIVIL PROCEDURE CODE

## INTRODUCTION

Each Law can be classified into 2 kinds of laws (i.e) Procedural or Adjective law and Substantive Law. The Substantive Law determines the rights and liabilities of parties, while the Procedural or Adjective law prescribes the practice, procedure and machinery for the enforcement of those rights and liabilities. This Civil Procedure Code comes under Procedural or Adjective law. The function of Procedural or Adjective law is to provide the machinery or the manner in which the legal rights or status and legal duties may be enforced or recognized by a court of law or other properly formed tribunal. Before 1859, there was no uniform law of civil procedure. The 1st uniform Code of civil procedure was enacted in 1859 and the same was replaced by the codes of 1877, 1882 and 1908. In the present 1908 code, the provisions of the code were rearranged into 2 parts namely the body of the code and the Schedule. The body of the code contains 158 sections which deal with provisions of a substantive nature, laying down the general principles of jurisdiction, which could not be amended except by legislative process. The Code of Civil Procedure (Amendment) Acts of 1999 and 2002 are now in force.

The substantive part of the Code of Civil Procedure contains 158 sections. The [First] Schedule comprises 51 orders and Rules providing procedure. Appendices contain Model Forms of Pleadings, Processes, decrees, Appeals, Execution proceedings, etc.

Sections 1 to 8 are preliminary in nature. Section 1 provides for commencement and applicability of the Code. Section 2 is a definition clause and a sort of statutory dictionary of important terms used in the body of the Code. Sections 3 to 8 deal with constitution of different types of courts and their jurisdiction.

Part 1 [Sections 9 to 35B] and Orders 1 to 20 of the [First] Schedule deal with suits. Section 9 enacts that a civil court has jurisdiction to try all suits of a civil nature unless they are barred expressly or impliedly. Whereas Section 10 provides for stay of suit [res sub judice], Section 11 deals with a well-known doctrine of Res Judicata. Sections 13 and 14 relate to foreign judgments.

Sections 15 to 21 A regulate the place of suing. They lay down rules as to jurisdiction of courts and objections as to jurisdiction. Sections 22 to 25 make provisions for transfer and withdrawal of suits, appeals and other proceedings from one court to another.

Orders 1 to 4 deal with institution and frame of suits parties to suit and recognized agents and pleaders. Order 5 contains provisions as to issue and service of summons. Orders 7 and 8 relate to plaints, written statements, set-offs and counter-claims. Order 9 requires parties to the suit to appear before the court and enumerates consequences of non-appearance. It also provides the remedy for setting aside an order of dismissal of the suit of a plaintiff and of setting aside an ex parte decree against a defendant.

Order 10 enjoys the court to examine parties with a view to ascertaining matters in controversy in the suit. Orders 11 to 13 deal with discovery, inspection and production of documents and also admissions by parties. Order 14 requires the court to frame issues and Order 15 enables the court to pronounce judgment at the 'first hearing' in certain cases.

Orders 16 to 18 contain provisions for summoning, attendance and examination of witnesses and adjournments. Order 19 empowers the court to make an order or to prove facts on the basis of an affidavit of a party.

Sections 75 to 78 and Order 26 make provisions as to issue of Commissions. Sections 94 and 95 and Order 38 provide for arrest of a defendant and attachment before judgment. Order 39 lays down procedure for issuing temporary injunctions and passing interlocutory orders. Order 40 deals with appointment of receivers. Order 25 provides for security for costs. Order 23 deals with withdrawal and compromise of suits. Order 22 declares effect of death, marriage or insolvency of a party to the suit.

After the hearing is over, the court pronounces a judgment. Section 33 and Order 20 deal with judgments and decrees. Section 34 makes provision for interest. Sections 35, 35A, 35B, and Order 20-A deal with costs.

Sections 132 to 158 relates to miscellaneous proceedings. Section 144 embodies the doctrine of restitution and deals with the power of the court to grant relief of restitution in case a decree is set aside or modified by a superior court.

Section 148-A as inserted by the Code of Civil Procedure [Amendment], Act, 1976 is an important provision which permits a person to lodge a caveat in a suit or proceeding instituted or about to be instituted against him. It is the duty of the court to issue notice and afford an opportunity of hearing to a caveator to appear and oppose interim relief sought by an applicant.

### **Selections of proper court in which the suit has to be filed**

Before filing a suit, person must find the correct court in which he has to file the suit. There are various civil courts of different jurisdictions, small cause court, city civil court, District Munsif Court, Subordinate court, District court, High court and Supreme Court. The suit must be filed in the court which has got pecuniary and territorial jurisdictions over the subject matter of the suit vide sections 6, 15 to 20.

### **PLAINT**

The suit can be filed by presenting a plaint. The plaint must be prepared according to the provisions of Orders I, II and VII.

### **SUMMONS TO DEFENDANTS**

After the suit has been duly filed, summons to the defendant has to be served. Vide Sections 27 to 29 and order V.

### **APPEARANCE AND NON-APPEARANCE OF PARTIES**

The consequences and the procedure to be adopted when the parties appear or fail to appear has been dealt with in order IX. If the Plaintiff not appears the suit will be dismissed and if the defendant did not appear the suit will be set Exparte.

### **WRITTEN STATEMENT-SET-OFF COUNTER CLAIM**

The defendant must state his defence in writing in the form of written statement and in doing so he can make the claim of set off or counter claim Order VIII R.6 and 6A. In *Kailash Vs. Nanhku*, (2005)4 SCC 480, Held the limitation of 90 days for filing Written statement can be extended if the court is satisfied about the delay.

### **DOCUMENTS**

The parties have to produce all the documentary evidence into courts as per Order XI, XII & XIII.

## **ISSUES**

The court has to find out of the points of dispute between the parties and has to frame and record the issues on which the right decision of the case depends. Order XIV. "Issue " is the question of fact which one party admits and opposite party denies.

## **TRIAL**

The case has to be enquired into. The parties will be allowed to place before the Court all the documentary and oral evidence. Witnesses and documents can be summoned O. XVI, XVII, XVIII witnesses can be examined. The Procedure in Indian Evidence Act, 1872 regarding Chief, Cross and Re-examination to be followed.

## **AFFIDAVITS**

Any matter can be proved by means of an affidavit subject to the provisions of O. XIX.

## **ARGUMENTS**

After all the evidences have been produced before the court, the parties can state their respective cases with reference to the evidence on record and by citing decided cases on the points by way of arguments.

## **JUDGEMENT AND DECREE**

After the case has been heard the judge shall give his decision S.33 and O. XX.

## **COSTS**

The Court shall make provision regarding costs incurred by the parties section 35 and O. XXA.

## **REVIEW**

The aggrieved person may apply for a review of the decision to the Court which passed the same under certain circumstances. Section 114 and order XLVII.

## **REVISION**

Under certain circumstances the High court or can call for revise the decision of the subordinate Courts-Section 115.

## **REFERENCE**

The Lower court may state a case and refer the same for the opinion of the High Court under S. 113 and Order XLVI

## **FIRST APPEAL**

As against every decree an appeal shall lie to the court authorized to here appeal under Section 96 to 99 and Order XLI.

As against certain orders an appeal shall lie under Section 104,105 and orders 43 Powers of appellate Court-S.107.

## **SECOND APPEAL**

The High Court may admit a second appeal if the case involves a substantial question of law -Section 100 to 102 and order XLII.

## **SUPREME COURT APPEAL**

If the High Court certified that the case involves a question of Law of general importance and it needs to be decided by the Supreme Court an appeal shall lie to the Supreme Court [Section 109 and Order XLV].

## **SPECIAL KINDS OF SUITS**

1. Suits by or against the Government-Section 79, 80 and Order XXVII.
2. Suits by or against aliens, foreign rulers, ambassadors and envoys sections 83 to 87.
3. Suits by or against Minors or Insane. Every such suit can be filed by the next friend or defended by the guardian-ad-litem [Order XXXII].

## **SUITS BY INDIGENT PERSONS**

Any suits can be instituted without payment of court fees by a person who is unable to pay the requisite Court fees. Provision has also been made to provide free legal service. (Order XXXIII).

## **SUITS RELATING TO MORTGAGES -ORDER XXXIV**

### **INTERPLEADER SUIT**

Where the plaintiff claims no interest in the subject matter of the suit and there are rival claim by various persons for the same, he can file the suit impleading all those persons as defendants which is called as interpleader suit - Sections 88 and Order XXXV.

### **SPECIAL CASE**

Both the parties can agree and state their case for the Opinion of the court - Section 90 and Order XXXVI.

### **SUITS RELATING TO PUBLIC NUISANCE AND PUBLIC CHARITY**

Such suits can be filed either by Advocate-General or by two or more persons with the leave of the court. Before 1976, leave of the Advocate-General to be obtained as per Section 91, 92 and 93.

### **SUMMARY SUITS**

In certain specified courts, in certain specified matter, the plaintiff can institute summary suits which will be disposed of in summary manner. That is, the defendant can defend the suit only with the leave of the Court Order XXXVII.

### **INCIDENTAL PROCEEDINGS DURING THE PENDENCY OF THE SUIT**

1. The effect and the procedure to be adopted in the case of death, married and insolvency of parties during the pendency of a suit has dealt with in Order XXII.
2. The procedure for withdrawal or compromise of the suit as dealt with in Order XIII.
3. The procedure for appointing a commissioner to examine witnesses, to make local investigation, to make petition, to examine accounts has been dealt with in section 75 to 78 and Order XXVI.
4. The procedure for arrest and attachment before judgment has been dealt with in Order XXXVIII.
5. The procedure regarding temporary injunction and interlocutory orders has been dealt with in Order XXXIX.
6. The procedure for the appointment of a receiver has been dealt with in Order 40.

### **EXECUTION OF DECREES AND ORDERS**

Subject to certain condition, the decree can be executed by

- (i) Delivery of any property.

- (ii) Attachment and sale of any property.
- (iii) Arrest and detention on civil prison.
- (iv) Appointing a receiver
- (v) Other matter as the nature of the relief granted may require - Sections 51 to 67, 73, and 74 and order XXI.

The procedure regarding the execution of a decree for specific movable property for specific performance, for restitution of conjugal rights, for execution of a document also has been dealt with in Order XXI.

### **MISCELLANEOUS**

Section 132 exempts certain woman from personal appearance in court. Section 133 exempts certain other persons from personal appearance. Section 134 and 135 deal with the exemptions from arrest under civil process.

Section 151 deals with the general inherent powers of court.

### **STAY OF SUIT**

Where two suits are pending between the same parties and the matter to be decided is the same the second suit shall be stayed till the first suit is decided (RES SUBJUDICE) Section 10.

### **RES JUDICATA**

No court shall try any suit in which the matter to be decided between the same parties has already been decided in a previous suit - Section 11.

### **FOREIGN JUDGEMENT**

Presumption regarding foreign judgment and when the foreign judgment is not conclusive has been dealt with in Section 13 and 14.

## **THE LAW OF LIMITATION ACT 1963**

### **OBJECT AND SCOPE OF THE ACT**

Delay Defends equity- Normally the court helps those who are vigilant and do not slumber over rights is said to be the reason for enacting this Act.

Its object is to give effect to the maxim, 'Interest rei publicae ut sit finis litium', which means, the interest of the state requires that there should be a limit to litigation to prevent disturbance (or) deprivation of what may have been acquired in equity and justice by long enjoyment (or) what may lost by a party's own inaction, negligence or laches. This law affords guarantee to the litigant public that after the lapse of a particular period of time prescribed under the act, the cause of action rests. This law does not create any right in favor of any person. But what it says is that the remedy could be exercised only up to a certain period and not subsequently.

### **HISTORY:**

Under the Hindu- Jurisprudence there was only a law of prescription and no law of limitation. For the acquisition of title by prescription, a period of 20 years was laid down by certain smriti writers, but others differed regarding the length of the period. During that period, the main occupation of the people being agriculture and very few were engaged in commerce and trade. This was the position not only in Hindu Society but also in other countries. For example, before the James statute of 1523, there was no specific law of limitation.

Before 1858, different systems of law of limitation were administered by the courts in India. Ultimately, the present Act 1963 came into existence.



## **SCOPE:**

It is a procedural law.

There are three propositions of this law:-

- 1) Limitation does not extinguish the right but only bars the remedy.
- 2) If a remedy is barred under the law in force at a time, a subsequent change in the law giving a longer period of limitation in the absence of provision for the purpose recreate the remedy and
- 3) The law of limitation to be applied is that law in force at the time proceedings in question is instituted.

## **APPLICABILITY:-**

- 1) The period of limitation prescribed by the Act don't apply to applications under Art 226. Delay to be taken into consideration.
- 2) Do not apply to ultra virus act. For example question of limitation does not arise if the impugned order is void.

## **CONSTRUCTION:-**

- 1) It should be constructed liberally.
- 2) Hardship, injustice and in convenience are out of place in construcing the provisions.
- 3) Equitable considerations are out of place. Strict grammatical meaning of the words is the only safeguards.

The Limitation Act is a complete code. The courts should not and can't travel beyond its provisions. It must be decided in accordance with the provisions.

## **S.4 AND S.12 & 14 OF THE ACT:-**

The language of the Section.4 indicates that it has nothing to do with computing the prescribed period. It has not the effect of extending (or) enlarging the period of the limitation. It simply provides that where the prescribed period for any suit, apple (or) application expires on a day when the court is closed, notwithstanding that fact, the same may be instituting, preferred (or) made on the day when the court re-open.

Whereas the language of S.12 & 14 clearly provide for the extension of the period of limitation.

## **S.5 OF THE ACT:-**

The section provides for extension of period in certain cases. It lays down that any appeal or application may be admitted after the prescribed period of limitation if sufficient cause is established by the appellant (or) applicant.

The jurisdiction conferred upon the court to condone the delay by the section is discretionary as it uses the word 'may' in the section. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction so conferred upon the court.

## **MEANING OF SUFFICIENT CAUSE:-**

It is very difficult to define precisely the meaning of the word 'sufficient cause'.

## **INSTANCES:**

- 1) Illness
- 2) Loss of court documents etc.



- 3) Negligence of counsel or his clerk ( Ramprasad Vs. Smt. Poornima)
- 4) Proceedings in wrong court
- 5) Ignorance of fact
- 6) Mistake advice of counsel
- 7) Imprisonment
- 8) Conflict of decision.

In **Balwant singh Vs. Jagdish Singh & Others**, (2010) 8 SCC 685, Held, Sufficient Cause' implies presence of legal and adequate reasons. The Supreme Court in this case condones delay of 778 days for not impleading legal representatives under Order XXII.

#### **S.6 AND S.9 OF THE ACT:**

S.6 deals with legal liability.

S.9 deals with subsequent disability.

Disability means want of legal qualification to act and inability means want of physical power to act.

S.6 gives an idea that the word 'disability' refers to the state of being a minor, insane or an idiot.

But S.9 refers only to subsequent disability or inability to sue.

The principal governing limitation as embodied in S.9 of the Act is that when once limitation has commenced to run, it will continue to do so unless it is stopped by virtue of any express statutory provisions.

#### **S.17- COMPUTATION OF PERIOD OF LIMITATION IN CASE OF FRAUD OR MISTAKE:-**

Prior to the act of 1963, mistake was not recognized as a ground for extension of period of limitation. But the present section has been so drafted on the lines of S.26 of the English Limitation Act, 1963, so as to include action based on fraud and also for relief founded on mistake. This section applies only to suits and applications.

If the plaintiff desires to invoke the aid of this section he must establish that there has been fraud and that by means of such fraud he has been kept away from the knowledge of his right to sue or of the title whereon it is founded.

#### **COMPUTATION OF PERIOD OF LIMITATION:**

- (1) In case of fraud or mistake limitation runs from the date when the fraud or mistake becomes known to the plaintiff or applicant.
- (2) In the case of concealed document and it shall run from the date when the plaintiff or the applicant first had means of producing the concealed document or compelling its production.

#### **ACKNOWLEDGEMENT:**

Section 18, 19 & 20 of the Act, in fact, form a group dealing with various aspects of the effect of acknowledgement.

S.18 deals with the effect of acknowledgement when it is in writing. It provides that incase of acknowledgement in writing is a period of limitation shall be computed from the time when the acknowledgement was signed. But in such computation, the date on which the acknowledgement was signed must be excluded according to S.12 (1) of the Act.

S. 19 deals with part payment.

S. 20 deals with the effect of acknowledgement of the payment made by another person.

Section 25, 26 & 27 of the Indian Limitation Act, 1963 deals with the law relating to the ownership by possession.

S. 25 deals with acquisition of easement by prescription.

S. 26 also deals with the acquisition of easement of but its chief object is to protect the interests of reversioners of servient- tenement.

S.27 is an exception to the general principle that limitation bars only the remedy and does not extinguish the right, so far as suits for possession of property are concerned.

The limitation act, with regards to personal actions, bars the remedy without extinguish the rights.

It is only in the case of a suit for possession of any property that the determination of the period of limitation not only the remedy, but the right also is extinguished under S. 27 of the Act.

In all personal actions, the right subsists although the remedy is no longer available.

It is well established that the law of limitation bars the remedy without touching the right unless expressly so provided.

## **2002 - AMENDMENTS TO CIVIL PROCEDURE CODE**

The Parliament has amended the Code vide Civil Procedure (Amendment) Act, 2002. The amendment in Code was done in 1999 also, but the said amendments were not made effective. Both the amendment acts, which became effective from 1 st July 2002, taken together intend to bring in virtually certain radical changes. After a long wait and struggle, the Central Government has managed to effect some very significant and path breaking changes in the Code aiming to simplify the procedure and reduce the delays.

Some of the main highlights of the two amendment acts are:

### **Institution of Suits**

The Amendment Act of 1999 has inserted a new sub-section to section 26, whereby it has become mandatory that all the facts mentioned in the plaint are proved by way of an affidavit. Therefore, at the time of institution of a suit, now the plaint will have to be accompanied by an affidavit.

### **Summons To Defendants**

Section 27 of the Code provides for the issue of summons to the defendants in a suit to appear and answer the claim in the suit. Earlier, the section did not provide any time limit for the plaintiff to serve the summons on the defendants. That resulted in the suits instituted decades ago being still at the preliminary stage because the plaintiffs failed to serve summons on the defendants. The Amendment Act of 1999, has plugged this loophole by providing that the defendants must be served with summons within 30 days of institution of the suit.

### **Alternate Dispute Resolution**

This is one of the most radical changes introduced in the Code. There was no such provision earlier. According to a newly introduced section 89, the Courts have been given the power to refer the disputes to:

- a) Arbitration;
- b) Conciliation;
- c) Judicial settlement including settlement through Lok Adalat;
- d) Mediation.

The Court will endeavour in case of such disputes to formulate the terms of settlement between the parties and will also effect a compromise as per the prescribed procedure.

### **No Further Appeal/No Second Appeal**

The scope of section 100A has been widened so far as restriction on right of further appeal is concerned. According to the amended provision, now appeal arising out of an original order / decree, which is heard and decided by a single Judge, is also covered by this restriction.

Similarly, section 102 has also been amended so as to widen the scope of the section. Hence, no second appeal will lie from any decree where the subject matter in the original suit was for recovery of money upto Rs. 25,000. The earlier limit was Rs 3,000 and it was restricted to suits of which cognizance could be taken in Courts of Small Causes.

### **Issue and Service of Summons**

The amendments made to Order V have brought in some sweeping changes to ensure a speedy trial. According to the new provisions of Order V:

- a) The Defendant is required to file his Written Statement within 30 days of being served with the summons;
- b) The Court may extend the said period of 30 days to 90 days and not thereafter, for reasons to be recorded in writing;
- c) It is now mandatory for every summons to be accompanied by a copy of the plaint;
- d) One of the most important changes brought in by the recent amendments is the change in the mode of delivery of summons by the Court.

Earlier, the summons had to be delivered only through the proper officer of the Court and no one else. However, the Amendment Act of 2002 has now laid down that summons may be delivered either through a proper officer of the court or through such courier services as are approved by the Court. Further, the delivery of summons can also be made by way of registered post, speed post or courier services as approved by the Court, at the expense of the Plaintiff. In addition, the Court may also permit on an application of the Plaintiff, for the Plaintiff himself to effect service of summons. In other words, the serving of summons can be speeded up.

### **Pleadings in General**

A new provision has been inserted in Order VI whereby, a person verifying the pleadings has also to furnish an affidavit in support of his pleadings. Moreover, now no application for amendment will be allowed once the trial has commenced, except when the Court concludes that the party could not have raised the matter before the commencement of the trial.

### **Number of Adjournments Curtailed**

The newly inserted provisions now provide that a Court may grant adjournments from time to time. However, the catch is that adjournments can only be granted on the basis of a written application. Besides, the Court should not grant more than three adjournments to a party to the suit.

**Written Arguments:** The Amendment Act of 2002 has made provisions for submission of written arguments in support of one & #8217;s case. Earlier, there was no such provision in the Code and it provided only for oral arguments. Now any party to the suit, in addition to oral arguments, can make written arguments as well and it has to be done with the permission of the Court. This measure should help in saving the valuable time of the Court.

**Recording of Evidence:** Another very important change in the Code is in respect of the procedure of recording of evidence; this will have wide reaching implications. According to the new rule, recording of evidence has to be conducted in the following manner:

- a) Examination in Chief of a witness shall be on affidavit;
- b) The Cross Examination and Re-Examination of such a witness will be either taken by the Court or the Commissioner appointed by it;
- c) The Court or the Commissioner will then record the evidence in writing or mechanically in the presence of the Judge or the Commissioner, as the case may be;
- d) The Commissioner has to return the evidence along with his report in writing to the concerned Court;
- e) The report of the Commissioner has to be submitted to the concerned Court within 60 days of such appointment or within such further extended time as the Court may permit for reasons to be recorded in writing;
- f) Such evidence shall form part of the record of the suit.

The Union Government has notified the Civil Procedure Code (Amendment) Act, 2002, fixing a time-limit of one year for the settlement of civil cases. The amended CPC now will make it possible for courts to dispose of civil suits expeditiously and benefit hundreds of thousands of litigants in getting quick justice. The amendments to the CPC are simple in nature but will have far-reaching consequences in terms of working of civil courts in the country.

As is commonly known, most of the judicial delays take place during pre-trial and at the stage of hearing for various reasons.

In order to cut down law's delay at the former stage, the service of summons has been made faster making use of private couriers and information technology. The Act allows the use of fax, e-mail and courier for serving summons, hitherto regarded illegal.

The situations of pre-empt avoidance or refusal to accept summons by a party has been made almost impossible by providing that the person to whom it was issued shall be presumed to have received it even if the summons are returned with an endorsement that the "party refuses to accept".

The general power of courts to extend the time prescribed in the CPC is restricted to 30 days now. Earlier, the courts could extend time without any limit. The result was unconscionable delays and increasingly list of pending cases. Besides, on filing of revision application against the orders of a subordinate court, its record shall not be called unless the high court orders to do so specifically cases far conciliation and arbitration

The Act now limits the number of adjournments in a civil case to three. If a party tries to adopt delaying tactics, the court will hereafter direct it to pay higher costs to the other party. Also, the courts have been empowered to fix a time-limit for oral arguments and, if necessary, seek written submissions from parties to save time and avoid delays. Also, the judges too have been made accountable.

They will have to give their ruling within 60 days of the completion of hearing of a civil case. The existing provision of a second appeal in financial suits where the value did not exceed Rs 25,000 has also been abolished. This would considerably reduce the litigation time, which previously used to extend beyond 10 years in many cases and next generation had to carry on with the legal battle.

# 3. LAW OF TAXATION

## Definition of 'Taxation'

Taxation refers to the act of a taxing authority actually levying tax. Taxation as a term applies to all types of taxes, from income to gift to estate taxes. It is usually referred to as an act; any revenue collected is usually called "taxes."

A tax is a compulsory extraction of money by the public authority for public purpose enforceable by law and is not payment for services rendered. (See commissioner , H.R.& CE vs. Lakshmendra.

The above definition is an Australian definition for tax and it was discussed in the above case in Supreme Court of India.

In *McCullach vs. Marland*, Chief Justice Marshall observes, "Tax means to destroy"

## Difference between Tax and Fee

A government has several means of raising revenue in order to allow itself to function. Among the two most popular methods of raising revenue are to impose taxes and fees on various activities. Generally, taxes are applied to various transactions, often as a percentage, as a means of raising revenue or, in some cases, as a means of incentivising behaviour. Fees, unlike taxes, are directly linked to the cost of providing a service.

## Taxes

A tax represents money that a government charges an individual or business when they perform a particular action or complete a specific transaction. This tax is often assessed as a percentage of an amount of money involved in the transaction. For example, a tax is applied on the income that a person makes during a year. In addition, a tax is often placed on the sale of goods.

## Fees

A fee is related to a tax, in that it is also a charge paid to the government by individuals or by a business. However, a fee is specifically applied for the use of a service. The fee rate is directly tied to the cost of maintaining the service. Money from the fee is generally not applied to uses other than to providing the service for which the fee is applied. For example, a government may charge a fee to visit a park.

## Confusion

Sometimes, the line between a tax and a fee is not entirely clear. In some cases, the cost of providing a service can be directly calculated — for example, the cost of taking care of a park — so the fee can be easily linked to that. However, in other cases, when costs are more indirect it can be unclear whether the money placed on a related product or service. For example, the money spent by governments to treat smoking related illnesses — in this case, the sale of cigarettes — might be considered either a tax or a fee.

## Considerations

Sometimes, a tax will be incorrectly labeled as a fee, often for political reasons. For example, if a politician wishes to keep a promise that he will not raise taxes, but still wishes to increase government revenue, he may push for an increase in certain kinds of taxes that can be labeled as fees. This is because, for voters, a “fee” does not always have the same loaded political connotations that taxes do.

### Constitutional basis of Taxation:

Taxes in India are levied by the Central Government and the state governments. Some minor taxes are also levied by the local authorities such the Municipality or the Local Council.

The authority to levy a tax is derived from the Constitution of India which allocates the power to levy various taxes between the Centre and the State. An important restriction on this power is Article 265 of the Constitution which states that “No tax shall be levied or collected except by the authority of law.” Therefore each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature.

### Constitutionally established scheme of taxation

Article 246 of the Indian Constitution, distributes legislative powers including taxation, between the Parliament of India and the State Legislature. Schedule VII enumerates these subject matters with the use of three lists;

- List - I entailing the areas on which only the parliament is competent to make laws,
- List - II entailing the areas on which only the state legislature can make laws, and
- List - III listing the areas on which both the Parliament and the State Legislature can make laws upon concurrently.

Separate heads of taxation are is no head of taxation in the Concurrent List (Union and the States have no concurrent power of taxation). The list of thirteen Union heads of taxation and the list of nineteen State heads are given below:

### Case Laws:

1. K.T. Moopil Nair vs. State of Kerala
2. Kutty Naha vs, State of Kerala
3. Travancore Rubber and Tea Co. vs. State of Kerala

Under Article 276 “The State government has the right to levy professional tax within its ceiling on income, the professional tax can be levied”.

Under Article 286 “State has the right to levy tax only if sale and purchase takes place within its own state. Otherwise the central government has the right to levy tax”. (United Motors vs. State of Bombay)

Article 301 - 304 “The Union Parliament has the power to fix tax if an sale or purchase takes place in the course of Inter-State Trade or commerce”.(Navin Chandra Mebatlal vs. CIT, 26 ITR 758SC, G.T.O. vs. D.H. Nazareth, AIR 1970 SC 999, Union Of India Vs.H. S.Dhillon , AIR 1972SC 1061)



## **Cannons of Taxation**

Four specific canons of Taxation for a “good tax” (Adam Smith, 1904):

1. Equality or equity - equal treatment of similarly situated taxpayers.  
horizontal equity: all purchasers of the same equity pay the same tax  
vertical equity: unequally situated taxpayers being taxed on their ability to pay as per progressive taxation philosophies.  
For mining industry - natural conflicts.  
Mining goal ==> the maximization of resource utilization;  
Taxing authority goal ==> the maximization of social economic benefits to the individual state of taxing power.
2. Canon of Convenience - a tax that can be readily and easily assessed, collected, and administered.
3. Canon of Certainty - the consistency & stability in the prediction of taxpayers' bills and the amount of revenue collected over time.
4. Canon of Economy - compliance and administration of a tax should be minimal in terms of cost.

### **Three additional criteria:**

5. Adequacy - a tax should have the ability to produce sufficient and desired amount of revenue to the taxing authority.
6. Achievement of social and economic effects - the use of taxes to reallocate resources to achieve various specific social and economic objectives.
7. Neutrality - a tax should not encourage inefficient allocation of resources by being so extreme that taxpayers make counter productive economic decisions.

## **The Indian Income Tax Act, 1961**

### **BASIC CONCEPTS**

Before one can embark on a study of the law of income-tax, it is absolutely vital to understand some of the expressions found under the Income-tax Act, 1961. The purpose of this Chapter is to enable the students to comprehend basic expressions.

Therefore, all such basic terms are explained and suitable illustrations are provided to define their meaning and scope.

### **ASSESSMENT YEAR**

“Assessment year” means the period starting from April 1 and ending on March 31 of the next year.

Example- Assessment year 2012-2013 which will commence on April 1, 2012, will end on March 31, 2013

Income of previous year of an assessee is taxed during the next following assessment year at the rates prescribed by the relevant Finance Act for tax rates.

## **PREVIOUS YEAR**

Income earned in a year is taxable in the next year. The year in which income is earned is known as previous year and the next year in which income is taxable is known as assessment year. In other words, previous year is the financial year immediately preceding the assessment year.

Illustration - For the assessment year 2012-13, the immediately preceding financial year (i.e., 2011-12) is the previous year.

Income earned by an individual during the previous year 2011-2012 is taxable in the immediately following assessment year 2012-2013 at the rates applicable for the assessment year 2012-2013.

Similarly, income earned during the previous year 2012-2013 by a company will be taxable for the assessment year 2013-2014.

This rule is applicable in all cases

## **PERSON**

The term “person” includes:

- a) an individual;
- b) a Hindu undivided family;
- c) a company;
- d) a firm;
- e) an association of persons or a body of individuals, whether incorporated or not;
- f) a local authority; and
- g) every artificial juridical person not falling within any of the preceding categories.

These are seven categories of persons chargeable to tax under the Act. The aforesaid definition is inclusive and not exhaustive. Therefore, any person, not falling in the above-mentioned seven categories, may still fall in the four corners of the term “person” and accordingly may be liable to tax.

## **ASSESSEE**

“Assessee” means a person by whom income tax or any other sum of money is payable under the Act. It includes every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or loss or the amount of refund due to him. It also includes a person who is assessable in respect of income or loss of another person or who is deemed to be an assessee, or an assessee in default under any provision of the Act.

## **MEANING OF INCOME**

The definition of the term “income” in section 2(24) is inclusive and not exhaustive. Therefore, the term “income” not only includes those things that are included in section 2(24) but also includes those things that the term signifies according to its general and natural meaning.

In *Kikabai Premchand vs. CIT* (1953) 24 ITR 506 (SC) , it was held that Income should be real income and cannot be fictional income .

In *CIT vs. Lachatoorah Tea Co.Ltd.*, (1993 ) 200 ITR 391 (Cal) , it was held that income tax law does not make any difference between legal and illegal income. Hence illegal income is also treated as income.



## Residential Status

The three residential status, viz.,

### Resident Ordinarily Residents

Under this category, person must be living in India at least 182 days during previous year or must have been in India 365 days during 4 years preceding previous year and 60 days in previous year. Ordinary residents are always taxable on their income earned both in India and abroad.

### Resident but not Ordinarily Residents

Must have been a non-resident in India 9 out of 10 years preceding previous year or have been in India in total 730 or less days out of last 7 years preceding the previous year. Not residents are taxable in relation to income received in India or income accrued or deemed to be accrue or arise in India and income from business or profession controlled from India.

### Non Residents

Non Residents are exempt from tax if accrue or arise or deemed to be accrue or arise outside India. Taxable if income is earned from business or profession setting in India or having their head office in India.

## Difference between Capital Receipt and Revenue Receipts

Following are the differences between capital receipts and revenue receipts.

### Source

Capital receipt is the amount received from the sale of assets, shares and debentures. Revenue receipt is the amount received from the sale of goods and services.

### Nature

Capital receipt is of non-recurring nature. Revenue receipt is of recurring nature.

### Impact

Main items of capital receipt are capital and loan, which affect financial position of the business. Main items of revenue receipt are sale of merchandise, discount and commission, which affect operating results of the business.

### Treatment

Capital receipt is shown on the liabilities side of the balance sheet. Revenue receipt is shown on the credit side of the trading and profit and loss accounts.

In kamakshNarain Singh vs. CIT , 11 ITR 513 , income was compared to the fruit of a tree or the crop of a field. If we consider fruit as income, the tree becomes the Source of such income

**Following is the difference between capital and revenue expenditures.**

### Capital Expenditures Revenue Expenditures

<ul style="list-style-type: none"><li>Its effect is long term i.e., it is not exhausted within the current account year. Its benefit is enjoyed in future year or years also. In a word, its effect is reduces gradually.</li></ul>	Its effect is temporary, i.e., it is exhausted within the current accounting year.
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<ul style="list-style-type: none"> <li>An asset is acquired or the value of an asset is increased as a result of this expenditure.</li> </ul>	Neither an asset is acquired nor the value of an asset is increased.
<ul style="list-style-type: none"> <li>It does not occur again and again - it is non-recurring and irregular.</li> </ul>	It occurs repeatedly - It is recurring and regular.
<ul style="list-style-type: none"> <li>Generally, it has physical existence i.e., it can be seen with eyes.</li> </ul>	It has no physical existence, i.e., it cannot be seen with eyes.
<ul style="list-style-type: none"> <li>This expenditure improves the position of the concern</li> </ul>	This expenditure helps to maintain the concern
<ul style="list-style-type: none"> <li>A portion of this expenditure is shown in the trading and profit and loss account or income and expenditure account as depreciation.</li> </ul>	The whole amount of this expenditure is shown in trading and profit and loss account or income and expense account. But deferred revenue expenditures and prepaid expenses are not shown.
<ul style="list-style-type: none"> <li>It appears in balance sheet until its benefit is fully exhausted.</li> </ul>	It does not appear in balance sheet. Deferred revenue expenditure, outstanding expenditure, outstanding expenses and prepaid expenses, however, temporarily shown in the balance sheet.
<ul style="list-style-type: none"> <li>It does not reduce the revenue of the concern.</li> </ul>	Purchase of fixed assets does not effect revenue.

In C.I.T. vs. Shaw Wallace & Co. AIR 1931 PC 138 , it was held that compensation paid for termination of distribution agency of the assessee, held no income but capital because it was not paid for carrying on a business but paid compensation for compulsory cessation of business.

Shifting of factory to some other location is considered to be capital expenditure, Sitalpur Sugar Works Limited .vs CIT (49 ITR 160).

## HOW TO CHARGE TAX ON INCOME

To know the procedure for charging tax on income, one should be familiar with the following:

1. Annual tax - Income-tax is an annual tax on income.
2. Tax rate of assessment year - Income of previous year is chargeable to tax in the next following assessment year at the tax rates applicable for the assessment year. This rule is, however, subject to some exceptions.
3. Rates fixed by Finance Act - Tax rates are fixed by the annual Finance Act and not by the Income-tax Act. For instance, the Finance Act, 2012, fixes tax rates for the previous year 2012 - 2013 assessment year 2013 - 2014.
4. Tax on person - Tax is charged on every person .
5. Tax on total income - Tax is levied on the "total income" of every assessee computed in accordance with the provisions of the Act.

In justice DeokiNandan Agarwal vs. Union of India, (237 ITR 872 (SC)) the Supreme court held that what the judges receive are salaries and such salaries are taxable as income under the head 'salaries'. The court held that even though the Judges have no employer, they are constitutional functionaries and are taxable in the same manner as the salary of an other citizen.

In CIT vs. Navnital Sakarlal, 247 IT 70 the Supreme court held that commission paid to Managing Director of the company is chargeable to tax as part of salary since employer-employee relationship exists.

## **GROSS TOTAL INCOME**

Under chapter 4 of Income Tax Act, 1961 (Section 14), income of a person is calculated under various defined heads of income. The total income is first assessed under heads of income and then it is charged for Income Tax as under rules of Income Tax Act. According to Section 14 of Income Tax Act, 1961, there are following heads of income under which total income of a person is calculated:

- Heads of Income: Salary
- Heads of Income: House Property
- Heads of Income: Profit In Business/ Profession
- Heads of Income: Capital Gains
- Heads of Income: Other Sources The aggregate income under these heads is termed as "gross total income". In other words, gross total income means total income computed in accordance with the provisions of the Act before making any deduction under sections 80C to 80U.

## **INCOME UNDER THE HEAD HEADS OF INCOME**

Income of a person is classified into 5 categories. Thus, income belonging to a particular category is taxed under a separate head of income pertaining to that category. Section 14 of the Act, has classified five different heads of income for the purpose of computation of total income. The five heads of income are:

- 1) Income under the head salaries (Section 15 - 17)
- 2) Income from house property (Section 22 - 27)
- 3) Profits and gains from business or profession (Section 28 - 44)
- 4) Capital gains (Section 45 - 55)
- 5) Income from other sources (Section 56 - 59)

It may be noted here that an income belonging to a specific head must be computed under that head only. If an income cannot be placed under any of the first four heads, it will be taxed under the head "Income from other sources".

Certain expenses incurred in earning incomes under each head are allowed to be deducted from its gross income according to the provisions applicable to that specific head. Then, the net income under various heads is aggregated together to compute gross total income of the person. After making certain deductions which are allowed from gross total income (relating to certain expenses incurred or payments made or certain incomes earned) we arrive at the figure of total income for taxation purpose.

## **INCOME UNDER HEAD SALARY: MEANING OF SALARY**

Salary, in simple words, means remuneration of a person, which he has received from his employer for rendering services to him. But receipts for all kinds of services rendered cannot be taxed as salary. The remuneration received by professionals like doctors, architects, lawyers etc. cannot be covered under salary since it is not received from their employers but from their clients. So, it is taxed under business or profession head. In order to understand what is included in salary, let us discuss few characteristics of salary.

### **Characteristics of Salary**

1. The relationship of payer and payee must be of employer and employee for an income to be categorized as salary income. For example: Salary income of a Member of Parliament cannot be specified as salary, since it is received from Government of India which is not his employer.
2. The Act makes no distinction between salary and wages, though generally salary is paid for non-manual work and wages are paid for manual work.
3. Salary received from employer, whether one or more than one is included in this head.
4. Salary is taxable either on due basis or receipt basis whichever ever matures earlier:
  - i) Due basis - when it is earned even if it is not received in the previous year.
  - ii) Receipt basis - when it is received even if it is not earned in the previous year.
  - iii) Arrears of salary- which were not due and received earlier are taxable when due or received, whichever ever is earlier.
5. Compulsory deduction from salary such as employees' contribution to provident fund, deduction on account of medical scheme or staff welfare scheme etc. are examples of instances of application of income. In these cases, for computing total income, these deductions have to be added back.

### **What is Leave Encashment:**

Leave encashment is the salary received by an individual for leave period. It is a chargeable income whether he is a government employee or not. Under section 10(10AA) (i) there is also a provision of exemption in case of leave encashment depending upon whether he is a government employee or other employees.

### **What is Annuity:**

It is an annual income received by the employee from his employer. It may be paid by the employer as voluntarily or on account of contractual agreement. It is not taxable until the right to receive the same arises. Under section 56, Income Tax Act, 1961 other annuities come under a will or granted by a life insurance company or accruing as a result of contract which comes as income under from other sources.

### **What is Gratuity:**

It is salary received by an individual paid by the employer at the time of his retirement or by his legal heir in the case of death of the employee.

## **What is Allowance:**

It is the amount received by an individual paid by his/her employer in addition to salary. Under section 15 of the Income Tax Act, 1961 these allowance are taxable excluding few condition where they are entitled of deduction/ exemptions

## **INCOMES FORMING PART OF SALARY:**

Section 17 of the Act gives an inclusive definition of salary. Broadly, it includes:

1. Basic salary
2. Fees, Commission and Bonus
3. Taxable value of cash allowances
4. Taxable value of perquisites
5. Retirement Benefits

Although, all the components of salary income are included in salary, there are certain incomes in each of these categories, which are either fully exempt or exempt upto a certain limit. The aggregate of the above incomes, after the exemption(s) available, if any, is known as 'Gross Salary'. Salary', the following three deductions are allowed under Section 16 of the Act to arrive at the figure of Net Salary:

1. Standard deduction - Section 16 (i)
2. Deduction for entertainment allowance - Section 16 (ii)
3. Deduction on account of any sum paid towards tax on employment -

## **BASIC SALARY**

All employees are entitled to a basic salary which is fixed as per their respective terms of employment either as a fixed amount or at a graded system of salary.

Under this graded system, apart from the basic salary at which the employee will start, annual increments to be given to the employee are pre fixed in the grade.

For example, if a person is employed on 1st May, 2004 in the grade of 12000 - 300 - 15000, this means that he will start at a basic salary of Rs.12000 from 1

## **FEES, COMMISSION AND BONUS**

Any fees or commission paid or payable to an employee is fully taxable and is included in salary. Commission payable may be at a fixed amount or a fixed percentage of turnovers. In both the cases, it is taxable as salary only when it is paid or payable by the employer to the employee. When commission is based on fixed percentage of turnover achieved by employee, it is included in basic salary for the purpose of grant of retirement benefits and for computing certain exemptions that we will discuss later on.

## **TAXABLE VALUE OF ALLOWANCES**

Allowance is a fixed monetary amount paid by the employer to the employee (over and above basic salary) for meeting certain expenses, whether personal or for the performance of his duties. These allowances are generally taxable and are to be included in gross salary unless specific exemption is provided in respect of such allowance. For the purpose of tax treatment, we divide these allowances into 3 categories:

- I. Fully taxable cash allowances
- II. Partially exempt cash allowances
- III. Fully exempt cash allowances 35

## **I. FULLY TAXABLE CASH ALLOWANCES**

This category includes all the allowances, which are fully taxable. So, if an allowance is not partially exempt or fully exempt, it gets included in this category.

The main allowances under this category are enumerated below:

### **(i) Dearness Allowance and Dearness Pay**

As is clear by its name, this allowance is paid to compensate the employee against the rise in price level in the economy. Although it is a compensatory allowance against high prices, the whole of it is taxable. When a part of Dearness Allowance is converted into Dearness Pay, it becomes part of basic salary for the grant of retirement benefits and is assumed to be given under the terms of employment.

### **(ii) City Compensatory Allowance**

This allowance is paid to employees who are posted in big cities. The purpose is to compensate the high cost of living in cities like Delhi, Mumbai etc. However, it is fully taxable.

### **(iii) Tiffin / Lunch Allowance**

It is fully taxable. It is given for lunch to the employees.

### **(iv) Non practicing Allowance**

This is normally given to those professionals (like medical doctors, chartered accountants etc.) who are in government service and are banned from doing private practice. It is to compensate them for this ban. It is fully taxable.

### **(v) Warden or Proctor Allowance**

These allowances are given in educational institutions for working as a Warden of the hostel or as a Proctor in the institution. They are fully taxable.

### **(vi) Deputation Allowance**

When an employee is sent from his permanent place of service to some place or institute on deputation for a temporary period, he is given this allowance. It is fully taxable.

### **(vii) Overtime Allowance**

When an employee works for extra hours over and above his normal hours of duty, he is given overtime allowance as extra wages. It is fully taxable.

### **(viii) Fixed Medical Allowance**

Medical allowance is fully taxable even if some expenditure has actually been incurred for medical treatment of employee or family.

### **(ix) Servant Allowance**

It is fully taxable whether or not servants have been employed by the employee.

### **(x) Other allowances**

There may be several other allowances like family allowance, project allowance, marriage allowance, education allowance, and holiday allowance etc. which are not covered under specifically exempt category, so are fully taxable.

## II. PARTIALLY EXEMPT ALLOWANCES

This category includes allowances which are exempt upto certain limit. For certain allowances, exemption is dependent on amount of allowance spent for the purpose for which it was received and for other allowances, there is a fixed limit of exemption.

### (i) House Rent Allowance (H.R.A.)

An allowance granted to a person by his employer to meet expenditure incurred on payment of rent in respect of residential accommodation occupied by him is exempt from tax to the extent of least of the following three amounts:

- a) House Rent Allowance actually received by the assessee
- b) Excess of rent paid by the assessee over 10% of salary due to him
- c) An amount equal to 50% of salary due to assessee (If accommodation is situated in Mumbai, Kolkata, Delhi, Chennai)

‘Or’ an amount equal to 40% of salary (if accommodation is situated in any other place).

Salary for this purpose includes Basic Salary, Dearness Allowance (if it forms part of salary for the purpose of retirement benefits), Commission based on fixed percentage of turnover achieved by the employee.

The exemption of HRA depends upon the following factors:

- (1) Basic Salary
- (2) Place of residence
- (3) Rent paid
- (4) HRA received

If an employee is living in his own house and receiving HRA, it will be fully taxable.

## III. FULLY EXEMPT ALLOWANCES

### (i) Foreign allowance

This allowance is usually paid by the government to its employees being Indian citizen posted out of India for rendering services abroad. It is fully exempt from tax.

### (ii) Allowance to High Court and Supreme Court Judges of whatever nature are exempt from tax.

### (iii) Allowances from UNO organisation to its employees are fully exempt from tax.

Illustration : (based on different allowances received by employee)

From the following particulars, compute gross salary of Mr X for the assessment year 2006-07. He is employed in textile industry in Mumbai at a monthly salary of Rs.4000. He is entitled to commission of 1% on sales achieved by him, which were Rs.10 lakh for the year.

In addition, he received the following allowances from the employer during the previous year:

1. Dearness Allowance Rs.2,000 per month which is granted under terms of employment and counted for retirement benefits.



2. Bonus Rs.32,000
3. House Rent Allowance Rs.1,000 per month (Rent paid for house in Mumbai Rs.1200 per month)
4. Entertainment Allowance Rs.1,000 per month
5. Children Education Allowance Rs.500 per month
6. Transport Allowance Rs.1,000 per month
7. Medical Allowance Rs.500 per month
8. Servant Allowance Rs.200 per month
9. Research Allowance Rs.500 per month (amount spent on research Rs.3,000)

3. Income forming part of salary: They include basic salary, advance salary, fees, commission, bonus, taxable value of cash allowances, perquisites and retirement benefits.

4. Allowances: These are of three types

- (a) Taxable Allowances: Dearness allowance, Medical allowance, Servant allowance, Warden Allowance, Family allowance, City Compensatory allowance etc.
- (b) Allowances exempt upto specified limit: House rent allowances, Entertainment allowance, Certain Special allowances, etc.
- (c) Fully exempted allowances: Foreign allowance, sumptuary allowance to High Court / Supreme Court Judges, Allowances

### **What is Pre- requisite ?**

Under section 17(2) of Income Tax Act, 1961 perquisite is defined as:

Amount paid for the rent-free accommodation provided to the assessee by his employer

Any concession in the matter of rent respecting any accommodation provided to the assessee by his employer

Any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases:

1. By a company to an employee, who is a director thereof
2. By a company to an employee being a person who has a substantial interest in the company
3. By any employer to an employee whose income under the head 'Salaries' exceeds Rs.24,000 excluding the value of non monetary benefits or amenities
4. Any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee
5. Any sum payable by the employer whether directly or through a fund, other than a recognised provident fund or EPF, to effect an assurance on the life of the assessee or to effect a contract for an annuity

### **There are following Pre- requisite which are tax free:**

- Medical facility
- Medical reimbursement
- Refreshments
- Subsidised Lunch/Dinner provided by employer

- Facilities for recreation
- Telephone Bills
- Products at concessional rate to employee sold by his/ her employer
- Insurance premium paid by employer
- Loans to employees by given by employer
- Transportation
- Training
- House without rent
- Residence Facility to member of Parliament, judges of High Court/ Supreme Court
- Conveyance to member of Parliament, judges of High Court/ Supreme Court
- Contribution of employers to employee's pension, annuity schemes and group insurance "profits in lieu of salary" includes—

- (i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;
- (ii) any payment (other than any payment referred to in clause (10), 8 [clause (10A)], [clause (10B)], clause (11), 10[clause (12) 11, [clause (13)] or clause (13A)] of section 10), due to or received by an assessee from an employer or a former employer or from a provident or other fund , to the extent to which it does not consist of contributions by the assessee or interest on such contributions or any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this sub-clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (10D) of section 10;]

14[(iii) any amount due to or received, whether in lump sum or otherwise, by any assessee from any person—

- (A) before his joining any employment with that person; or
- (B) after cessation of his employment with that person.

Explanation.-For the purposes of this sub-section, "assessed tax" means the tax on the total income as declared in the return as reduced by the amount of tax deducted or collected at source, in accordance with the provisions of Chapter XVII, on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

## **Examples of Income Tax Calculation**

### **Income tax assessment comprises of following stages:**

- Computation of total income.
- Deducting valid deductions.
- Determination of the tax payable thereon.
- Paying the tax.
- Filling Income Tax Return Form

**Total Income:**The total income is the sum of all sources of income that an individual has or the total income he earns in a financial year. It has to fall into one of the five heads and is supported with documents

1. Income from Salary : Form 16, Form 12BA
2. Income from House Property
3. Income from Profits and Gains of Business or Profession
4. Income from Capital Gains
5. Income from other Sources

**Deduction under various sections:** Tax Deduction is a legal way to reduce the income hence the tax that one needs to pay. One can claim the reduction under different heads like Sec.80C (limit 1 lakh). Annual Year 2013 - 2014.

### Income Tax slabs

After a person calculates his income, applies various deductions one gets taxable income. If taxable income is less than the exemption limit specified by the government he does not have to pay any tax. If the taxable income is more than the exemption limit then one has to see which category or Type ex Individual, Hindu Undivided Family (HUF), Firm, Trust etc, does one fall into. For an individual it depends on: Gender (male or female), Age (senior citizen between 60 years to 80 years, women below the age of 60 years ) , Residential status (NRI, NRE). Tax rates for Resident Indian based on gender and income slab For Financial year 2012 - 2013 or Assessment Year 2013 - 2014 are given below.

TAX	MEN Below 60 years	WOMEN Below 60 years	SENIOR CITIZEN (60 - 80 years)	VERY SENIOR CITIZENS (Above 80 years)
Basic Exemption	2,00,000	2,00,000	2,50,000	5,00,000
10% tax	2,00,001 to 5,00,000	2,00,001 to 5,00,000	2,50,001 to 5,00,000	-
20% tax	5,00,001 to 10,00,000	5,00,001 to 10,00,000	5,00,001 to 10,00,000	5,00,001 to 10,00,000
30% tax	above 10,00,000	above 10,00,000	above 10,00,000	above 10,00,000

**Education cess:** Education cess @ 2% of tax and Secondary and Higher Education Cess @ 1% of Tax or together at 3% is added to payable tax. Note Education cess and Secondary and Higher Education Cess is on the tax and not on the income. Explained in example below:

Gross Salary	5,00,000
Less: Deduction U/s 80C	50,000
Taxable Income	4,50,000
(A) Tax thereon	25,000

<b>Add:</b>	
(i) Education Cess @ 2%.	500
(ii) Secondary and Higher Education Cess @1%	250
<b>Total tax payable</b>	<b>25,750</b>

Mandatory Quoting of PAN and TAN: According to the provisions of section 203A of the Income-tax Act, it is obligatory for all persons responsible for deducting tax at source to obtain and quote the Tax-deduction Account No. (TAN) in the challans, TDS-certificates, statements and other documents.

The person for whom Tax is being deducted has to provide Permanent Account number or PAN. Note that non-furnishing of PAN by the deductee to the deductor will result in deduction of TDS at higher rates. For Salary please read about Section 206AA.

### Examples of Calculation of Income tax

Man below 60 years and only contribution it to Provident Fund

**Example:** A male employee, say Mr Sharma, is below the age of sixty years and has gross salary income of Rs.1,50,000 with Rs 10,000 contribution to G.P.F.

Gross Income	1,50,000
<b>Deductions</b> under section 80C	10,000
Total taxable income	1,40,000
Tax thereon	Nil

As total taxable income for Assessment Year (AY) 2013 - 2014 & Financial Year (FY) 2012 - 2013 less than 2,00,000 for men. Mr Sharma does not have to pay tax.

Examples: Male employee below 60 years of age with salary and contribution to GPF.

Particulars	Rupees	Rupees	Rupees	Rupees
Gross Salary	2,00,000	5,00,000	10,00,000	20,00,000
<b>Less:</b> Deduction U/s 80C	45,000	50,000	1,00,000	1,00,000
Taxable Income	1,55,000	4,50,000	9,00,000	19,00,000
(A) Tax thereon	<b>Nil</b>	<b>25,000</b>	<b>1,10,000</b>	<b>4,00,000</b>
<b>Add:</b>				
(i) Education Cess @2% of Tax.	Nil	500	2200	8000
(ii) Secondary and Higher Education Cess @1% of Tax	Nil	250	1100	4000
<b>Total Tax Payable</b>	<b>Nil</b>	<b>25,750</b>	<b>1,13,300</b>	<b>4,12,000</b>

### Woman below age of 60 years with no tax savings investments.

**Example:** A female employee, say Ms Anjali, below the age of sixty years and has gross salary income of Rs. 2,40,000. She has made no tax savings investments during the year. Let us calculate her income tax liability.

Gross Total Income		Rs.	2,40,000
Deductions			Nil
Taxable Income		Rs.	2,40,000
Income Tax Calculations			Tax
Tax on Income upto Rs 2,00,000	0 %		
Tax on the remaining Rs 40,000	10 %	Rs.	4,000
Total Income Tax Due		Rs.	4,000
Educational Cess @ 3%		Rs.	120
Total Tax Payable		Rs.	4,120

### Woman with Income from Salary and Interest on Saving Bank Account

**Example:** MsBharti is a salaried employee below 60 years of age. Basic salary is Rs 8,00,000. She has received Rs 14,000 as interest from bank. Her contribution towards Employee Provident Fund is Rs 34,000. TDS deducted by her employer is 80,000.

Income from salary		Rs.	8,00,000
<b>Income from other sources</b>			
Interest on Saving Bank Account		Rs.	14,000
Total Income		Rs.	8,14,000
<b>Deductions:</b>			
Under Section 80C :Employee Provident Fund		Rs.	34,000
Total Taxable Income		Rs.	7,80,000
<b>Income Tax Calculations:</b>			
Tax on Income upto Rs 2,00,000			Zero
Tax at 10% ( on income between Rs 2,00,000 to Rs 5,00,000)		Rs.	30,000
Tax at 20% (on income exceeding Rs. 5,00,000 i.e 280000)		Rs.	56,000
Total tax on income of Rs 7,80,000		Rs.	86,000
Education Cess @ 3% of Income Tax Payable		Rs.	2,580
Total Tax liability		Rs.	88,580
Less:TDS / Advance Tax deposited		Rs.	80,000
Net Income Tax due		Rs.	8,580

### Woman with Income from Salary and Interest on Saving Bank Account exceeding 10,000

**Example:** MsAarti is a salaried employee below 60 years of age. Basic salary is Rs 8,00,000. She has received Rs 18,000 as **interest from saving bank account**. Her contribution towards Employee Provident Fund is Rs 34,000. TDS deducted by her employer is 80,000.

Income from salary	Rs.	8,00,000
<b>Income from other sources</b>		
Interest on Saving Bank Account	Rs.	18,000
Total Income	Rs.	8,18,000
<b>Deductions:</b>		
Under Section 80C :Employee Provident Fund	Rs.	34,000
Total Taxable Income	Rs.	7,84,000
<b>Income Tax Calculations:</b>		
Tax on Income upto Rs 2,00,000		Zero
Tax at 10% ( on income between Rs 2,00,000 to Rs 5,00,000)	Rs.	30,000
Tax at 20% (on income exceeding Rs. 5,00,000 i.e 2,84,000)	Rs.	56,800
Total tax on income of Rs 7,84,000	Rs.	86,800
Education Cess @ 3% of Income Tax Payable	Rs.	2,604
Total Tax liability	Rs.	89,404
Less:TDS / Advance Tax deposited	Rs.	80,000
Net Income Tax due	Rs.	9,404

### Advance Tax

As per income tax an assessee is expected to calculate the estimated income for the year and if the total tax due is more than Rs 10,000 he has to pay advance tax. If one fails to pay Advance Tax or if one pays less than the stipulated tax, (s)he would be penalised and would have to pay extra tax under Sections 234A, 234B, 234C.

Advance tax calculation would be as follows assuming that Ms. Bharti files her return by 31st July 2012 and does not pay any advance tax during the year.

Description	Amount
Calculation of Interest Payable Under Section 234 A	Rs. 0
Calculation of Interest Payable Under Section 234 B	-
Number of months for which interest is payable on shortfall amount @ 1% per month	Rs. 4
Interest Payable under Section 234 B	Rs. 417
Calculation of Interest Payable Under Section 234 C	
Advance Tax Payable upto 15th September 2011 (At least 30% of Total Tax Liability)	Rs. 3,130
Shortfall in Advance Tax payment	Rs. 3,130
Interest Payable under Section 234 C (1% per month for 3 months on shortfall, if Total Tax Liability is more than Rs. 10,000/-)	Rs. 94
Advance Tax Payable upto 15th December 2011 (At least 60% of Total Tax Liability)	Rs. 6,260

Shortfall in Advance Tax payment	Rs. 6,260
Interest Payable under Section 234 C (1% per month for 3 months on shortfall, if Total Tax Liability is more than Rs. 10,000/-)	Rs. 188
Advance Tax Payable upto 15th March 2012 (100% of Total Tax Liability)	Rs. 10,434
Shortfall in Advance Tax payment	Rs. 10,434
Interest Payable under Section 234 C (1% per month for 3 months on shortfall, if Total Tax Liability is more than Rs. 10,000/-)	Rs. 104
Total Interest payable under Section 234 C (94+188 + 104)	Rs. 386
Total Interest payable under Sections 234 A, 234 B and 234 C	Rs. 803

So the total tax due to be paid before 31st July by Ms. Bharti becomes 11,237 (10,434 + 803).

### Man with Income from Salary and Interest on Saving Bank Account exceeding 10,000

**Example:** Mr Ajay is a salaried employee below 60 years of age. Basic salary is Rs 8,00,000. He has received Rs 18,000 as interest from Saving Bank Account. His contribution towards Employee Provident Fund is Rs 34,000. TDS deducted by his employer is 80,000.

Income from salary	Rs. 8,00,000
Income from other sources	
Interest on Saving Bank Account	Rs. 18,000
Total Income	Rs. 8,18,000
<b>Deductions:</b>	
Under Section 80C:Employee Provident Fund	Rs. 34,000
Total Taxable Income	Rs. 7,84,000
<b>Income Tax Calculations</b>	
Tax on Income upto Rs 2,00,000	Zero
Tax at 10% ( on income between Rs 2,00,000 to Rs 5,00,000)	Rs. 30,000
Tax at 20% (on income exceeding Rs. 5,00,000 i.e 284000)	Rs. 56,800
Total tax on income of Rs 7,84,000	Rs. 86,800
Education Cess @ 3% of Income Tax Payable	Rs. 2,604
Total Tax liability	Rs. 89,404
Less:TDS / Advance Tax deposited	Rs. 80,000
Net Income Tax due	Rs. 9,404

### INCOME UNDER THE HEAD PROFITS AND GAINS OF BUSINESS OR PROFESSION

The income from business and profession is known as profit and gains. While calculating the profit and gains, we deduct various expenses from it. The expenses to be deducted for calculating the gain are defined in the income tax act. Sections 30 to 37 cover expenses, which are expressly allowed as deduction while computing business income, sections 40, 40A and 43B cover expenses which are not deductible.

Expenses deductions under section 30 to 37 are of two types. The first is specific deductions which are covered under section 30 to 35 and second is general 90deductions which are covered



under section 36 and 37. Specific deductions are allowed only to some of the business while general deductions are allowed to all the business.

There are certain provisions which allow an assessee to calculate the profit on the presumptive basis, i.e., the profit is presumed on certain basis. These provisions are contained under section 44.

## **BASIS OF CHARGE**

Under section 28, the following income is chargeable to tax under the head “Profits and gains of business or profession”:

- a) profits and gains of any business or profession;
- b) any compensation or other payments due to or received by any person specified in section 28(ii);
- c) income derived by a trade, professional or similar association from specific services performed for its members;
- d) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;
- e) export incentive available to exporters;
- f) any interest, salary, bonus, commission or remuneration received by a partner from firm;
- g) any sum received for not carrying out any activity in relation to any business or not to share any know-how, patent, copyright, trademark, etc.;
- h) any sum received under a key man insurance policy including bonus;
- i) profits and gains of managing agency; and
- j) income from speculative transaction.

Income from the aforesaid activities is computed in accordance with the provisions laid down in sections 29 to 44D.

## **GENERAL DEDUCTION**

Section 37(1) is a residuary section. In order to claim deduction under this section, the following conditions should be satisfied:

### **Condition:**

1. The expenditure should not be of the nature described under sections 30 to 36.
2. It should not be in the nature of capital expenditure.
3. It should not be personal expenditure of the assessee.
4. It should have been incurred in the previous year.
5. It should be in respect of business carried on by the assessee.
6. It should have been expended wholly and exclusively for the purpose of such business.
7. It should not have been incurred for any purpose, which is an offence or is prohibited by any law.

## **SPECIFIC DISALLOWANCE**

The following expenses given by sections 40, 40A and 43B are expressly disallowed by the Act while computing income chargeable under the head "Profits and gains of business or profession".

**FRINGE BENEFIT TAX [SEC. 40(a) (ic)]** - Fringe benefit tax is not deductible while calculating business income from the assessment year 2006-07.

**INCOME-TAX [SEC. 40(a) (ii)]** - Any sum paid on account of income-tax (i.e., any rate or tax levied on the profits or gains of any business or profession) is not deductible. Similarly, any interest/penalty/fine for non-payment or late payment of income-tax is not deductible. This rule is applicable whether income-tax is payable in India or outside India.

**WEALTH-TAX [SEC. 40(a)(ia)]** - Any sum paid on account of wealth-tax under the Wealth-tax Act, 1957, or tax of a similar nature chargeable under any law outside India is not deductible.

## **AMOUNT NOT DEDUCTIBLE IN RESPECT OF PAYMENT TO RELATIVES**

Any expenditure incurred by an assessee in respect of which payment has been made to the specified persons is liable to be disallowed in computing business profit to the extent such expenditure is considered to be excessive or unreasonable, having regard to the fair market value of goods or services or facilities, etc.

As per section 2(41), the term relative in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

"When there was a temporary suspension of business with the object of tiding over the crisis condition and during such period the machinery, used in the business, is leased out then the rental income therefrom is to be identified as Business Income" CIT vs. Vikram Cotton Mills Ltd, (169 ITR 597 (SC)).

Lease of a factor after the assessee stopped business with no intention of reviving the business will amount to earning lease rental which is not in the nature of business income. In such a case the income is assessable under the head "income from other sources", Universal Plast Ltd. Vs. CIT, (237 ITR 454(SC)).

## **INCOME UNDER THE HEAD INCOME FROM OTHER SOURCES**

There are some incomes, which are exempt, while others are taxable. The taxability of income is either under the head salary, house property, business income or capital gain. All of these heads of income are mentioned under section 16 of the income tax act.

The incomes, which are neither covered under the above heads of salary, house property, business income, or capital gain, are covered in the head of income from other sources. This head of income is a residual head because it tries to cover all other incomes which are uncovered and which are not exempt from tax.

## **INCOMES SPECIFIED IN SECTION 56**

Income of every kind which are to be taxed, and which are not included in the income heads of Salary, House Property, Capital Gains, Profession and Business shall be charged under the head Income from Other Sources. Income chargeable under this head shall be computed as per the method of accounting followed by assesses. There are two methods of accounting namely

cash basis and mercantile basis. In the cash basis of accounting the income is recognized only on its actual receipt and expenses are recognized only on its actual payment. However, in mercantile basis of accounting the income is recognized even before its actual receipt and expense is recognized even before its actual payment.

Following incomes are specifically mentioned in the I .T. Act U/s 56, which are included in the income from other sources:

1. Dividend
2. Interest on securities if not chargeable under the head business or profession.
3. Wining from lotteries, crossword puzzles, races including horse races, card games and any other sort of games or gambling or betting of any form.
4. Income from machine, plant or furniture let on hire.
5. Income from machinery, plant, or furniture along with building and letting thereof is inseparable.
6. Any sum received under a key-man insurance policy including bonus if not taxable as salary or business income.

Dividend is the share of profit, which is distributed by the company to its shareholders; this is an income for shareholders. Interest on securities means interest on debentures, bonds etc. which is an income of the person receiving this interest. Letting machine, plant, furniture generates the rental income.

### **INCOMES NOT SPECIFIED IN SECTION 56**

Following incomes are not mentioned in the Income Tax Act but are to be charged to tax. Therefore, these incomes are also included in the head of income from other sources.

1. Income from sub letting
2. Interest on bank deposits and loans and securities.
3. Agricultural income from a place outside India.
4. Rent of plot of land
5. Mining rent and royalty.
6. Casual income under a will, contract, trust deed.
7. Salary payable to a member of parliament.
8. Income from undisclosed sources.
9. Gratuity paid to a director who is not an employee of a company.
10. Any casual income exceeding Rs. 5,000.

### **INCOME UNDER THE HEAD INCOME FROM HOUSE PROPERTY**

This lesson deals with income, which falls under the head 'Income from house property'. The scope of income charged under this head is defined by section 22 of the Income Tax Act and the computation of income falling under this head is governed by sections 23 to 27. All the provisions relating to tax treatment of income from house property are explained in this lesson.

### **BASIS OF CHARGE (SECTION 22)**

The annual value of a property, consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head 'Income from house

property'. However, if a house property, or any portion thereof, is occupied by the assessee, for the purpose of any business or profession, carried on by him, the profits of which are chargeable to income-tax, the value of such property is not chargeable to tax under this head.

Thus, three conditions are to be satisfied for property income to be taxable under this head.

1. The property should consist of buildings or lands appurtenant thereto.
2. The assessee should be the owner of the property.
3. The property should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income-tax.

## **APPLICABILITY OF SECTION 22**

Buildings or lands appurtenant thereto The term 'building' includes residential houses, bungalows, office buildings, warehouses, docks, factory buildings, music halls, lecture halls, auditorium etc.

The appurtenant lands in respect of a residential building may be in the form of approach roads to and from public streets, compounds, courtyards, backyards, playgrounds, kitchen garden, motor garage, stable or coach home, cattle-shed etc, attached to and forming part of the building.

In respect of non-residential buildings, the appurtenant lands may be in the form of car-parking spaces, roads connecting one department with another department, playgrounds for the benefit of employees, etc.

All other types of properties are excluded from the scope of section 22. Rental income from a vacant plot of land (not appurtenant to a building) is not chargeable to tax under the head 'Income from house property', but is taxable either under the head 'Profits and gains of business or profession' or under the head 'Income from other sources', as the case may be. However, if there is land appurtenant to a house property, and it is let out along with the house property, the income arising from it is taxable under this head.

### **Ownership of house property**

It is only the owner (or deemed owner) of house property who is liable to tax on income under this head. Owner may be an individual, firm, company, cooperative society or association of persons. The property may be let out to a third party either for residential purposes or for business purposes. Annual value of property is assessed to tax in the hands of the owner even if he is not in receipt of the income. For tax purposes, the assessee is required to be the owner in the previous year only. If the ownership of the property changes in the relevant assessment year, it is immaterial as the tax is to be paid on the income of the previous year.

Income from subletting is not taxable under section 22. For example, A owns a house property. He lets it out to B. B further lets it (or a portion of it) out to C. Rental income of A is taxable under the head 'Income from house property'.

However, since B is not the owner of the house, his income is not taxable as income from house property, but as income from other sources under section 56.

Deemed owner: Section 27 of the Income Tax Act provides that, in certain circumstances, persons who are not legal owners are to be treated as deemed owners of house property for the purpose of tax liability under this head.

1. If an individual transfers a house property to his or her spouse (except in connection with an agreement to live apart) or to a minor child (except a married daughter) without adequate consideration, he is deemed as the owner of the property for tax purposes. However, if an individual transfers cash to his or her spouse or minor child, and the transferee acquires a house property out of the property.
2. The holder of an Impartible Estate is deemed to be the owner of all the properties comprised in the estate.
3. A member of a co-operative society, company or association of persons, to whom a property (or a part thereof) is allotted or leased under a housebuilding scheme of the society, company or association, is deemed to be the owner of such property.
4. A person who has acquired a property under a power of attorney transaction, by satisfying the conditions of section 53A of the Transfer of Property Act, that is under a written agreement, the purchaser has paid the consideration or is ready to pay the consideration and has taken the possession of the property, is the deemed owner of the property, although he may not be the registered owner.
5. A person who has acquired a right in a building (under clause (f) of section 269UA), by way of a lease for a term of not less than 12 years (whether fixed originally or extended through a provision in the agreement), is the deemed owner of the property. This provision does not cover any right by way of a lease renewable from month to month or for a period not exceeding one year.

Ownership must be of the superstructure. It is not necessary that the assessee is also the owner of the land. Thus, when a person obtains a piece of land on lease and constructs a building on it, the income from such building will be taxed in his hands as income from house property.

### **Property used for own business or profession**

The owner of a house property is not liable to tax under this head if the property is used by him for his own business or profession. But the business or profession should be such whose income is chargeable to tax. Chargeability to tax does not mean that the income is actually taxed. It is possible that in a particular year the profits are not sufficient enough to attract tax liability. What it means is that the income from such business or profession is not exempt from tax.

If an employer builds quarters for residential use by his employees and the letting out of these quarters is considered as incidental to his business, the income from such property is not taxable under this head, because the property in this case is considered to be used by the owner for his own business. It shall, therefore, be taxed as business income.

The above position will not change even if the buildings are let out to government authorities for locating their undertakings like Banks, Post Office, Police Station, Central Excise Office, etc., provided the dominant purpose of letting out the accommodation is to enable the assessee to carry on his business more efficiently and smoothly. Also, income from paying-guest accommodation is taxable as income from business.

Where house property owned by a partner is used by the firm (neither it is let out to the firm nor any rent is obtained for it) for its business purposes, the partner is entitled to the exemption.

House property in a foreign country A resident assessee is taxable under section 22 in respect of annual value of a property in a foreign country. A resident but not ordinarily resident or

a nonresident is, however, chargeable under section 22 in respect of income of a house property situated abroad, provided income is received in India during the previous year. If tax incidence is attracted under section 22 in respect of a house property situated abroad, its annual value will be computed as if the property is situated in India.

### COMPUTATION OF INCOME FROM LET OUT HOUSE PROPERTY

Income from house property is determined as under:

Gross Annual Value	xxxxxxx
<b>Less :</b> Municipal Taxes	xxxxxxx
Net Annual Value	xxxxxxx
<b>Less:</b> Deductions under Section 24	
- Statutory Deduction (30% of NAV)	xxxxxxx
- Interest on Borrowed Capital	xxxxxxx
Income From House Property	xxxxxxx

### DETERMINATION OF ANNUAL VALUE

The basis of calculating Income from House property is the 'annual value'. This is the inherent capacity of the property to earn income and it has been defined as the amount for which the property may reasonably be expected to be let out from year to year. It is not necessary that the property should actually be let out. It is also not necessary that the reasonable return from property should be equal to the actual rent realized when the property is, in fact, let out. Where the actual rent received is more than the reasonable return, it has been specifically provided that the actual rent will be the annual value. Where, however, the actual rent is less than the reasonable rent (e.g., in case where the tenancy is affected by fraud, emergency, close relationship or such other consideration), the latter will be the annual value. The municipal value of the property, the cost of construction, the standard rent, if any, under the Rent Control Act, the rent of similar properties in the same locality, are all pointers to the determination of annual value.

#### Gross Annual Value [Section 23(1)]

The following four factors have to be taken into consideration while determining the Gross Annual Value of the property:

1. Rent payable by the tenant (actual rent)
2. Municipal valuation of the property.
3. Fair rental value (market value of a similar property in the same area).
4. Standard rent payable under the Rent Control Act.

**Actual Rent:** It is the most important factor in determining the annual value of a let out house property. It does not include rent for the period during which the property remains vacant. Moreover, it does not include the rent that the tax payer is unable to realize, if certain conditions are satisfied. Sometimes a tenant pays a composite rent for the property as well as certain benefits provided by the landlord. Such composite rent is to be disintegrated and only that part of it which is attributable to the letting out of the house property is to be considered in the determination of the annual value.

**Municipal Valuation:** Municipal or local authorities charge house tax on properties situated in the urban areas. For this purpose, they have to determine the income earning capacity of the property so as to calculate the amount of house tax to be paid by the owner of the property. But



this valuation cannot be treated as a conclusive evidence of the rental value of the property, although such valuation is given due consideration by the Assessing Officer.

**Fair Rental Value:** It is the rent normally charged for similar house properties in the same locality. Although two properties cannot be alike in every respect, the evidence provided by transactions of other parties in the matter of other properties in the neighborhood, more or less comparable to the property in question, is relevant in arriving at reasonable expected rent.

**Standard Rent:** Standard Rent is the maximum rent which a person can legally recover from his tenant under a Rent Control Act. This rule is applicable even if a tenant has lost his right to apply for fixation of the standard rent. This means that if a property is covered under the Rent Control Act, its reasonable expected rent cannot exceed the standard rent.

The Gross Annual Value is the municipal value, the actual rent (whether received or receivable) or the fair rental value, whichever is highest. If, however, the Rent Control Act applies to the property, the gross annual value cannot exceed the standard rent under the Rent Control Act, or the actual rent, whichever is higher.

If the property is let out but remains vacant during any part or whole of the year and due to such vacancy, the rent received is less than the reasonable expected rent, such lesser amount shall be the Annual value.

For the purpose of determining the Annual value, the actual rent shall not include the rent which cannot be realized by the owner. However, the following conditions need to be satisfied for this:

- (a) The tenancy is bona fide;
- (b) The defaulting tenant has vacated, or steps have been taken to compel him to vacate the property.
- (c) The defaulting tenant is not in occupation of any other property of the assessee;
- (d) The assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfied the Assessing Officer that legal proceedings would be useless.

## ILLUSTRATION

Find the Gross Annual Value in the case of the following properties:

	(1)	(2)	(3)	(4)	(5)
Municipal value	52,000	1, 00,000	60,000	75,000	1, 80,000
Fair rent	60,000	1, 02,000	68,000	70,000	1, 85,000
Standard rent	NA	90,000	70,000	60,000	1, 75,000
Actualrent receivable	55,000	95,000	72,000	72,000	1, 68,000
Unrealized rent	—	—	5,000	—	42,000
Period of vacancy	—	—	—	8 months	1 month



## SOLUTION

- (1) Since Rent Control Act is not applicable, GAV will be the highest of municipal value, fair rent and actual rent. Hence, the GAV will be Rs. 60,000.
- (2) GAV cannot exceed the standard rent or actual rent, whichever is higher. Therefore, GAV will be Rs. 95,000.
- (3) Actual rent receivable will be reduced by the amount of unrealized rent i.e. Rs. 72,000 - Rs. 5,000 = Rs. 67,000. Now, GAV will be the highest of municipal value, fair rent and actual rent, subject to the maximum of standard rent. Hence, GAV will be Rs. 68,000.
- (4) GAV will be the actual rent receivable adjusted by the loss due to vacancy i.e. Rs. 72,000 - Rs. 48,000 = Rs. 24,000.
- (5) Actual rent receivable will be reduced by the amount of unrealized rent and loss due to vacancy i.e. Rs. 68,000 - Rs. 42,000 - Rs. 14,000 = Rs. 12,000.

Now, we will take the highest of municipal value, fair rent and actual rent, subject to the maximum of standard rent. So, GAV will be Rs. 1, 75,000 reduced by the loss due to vacancy i.e. Rs. 1, 75,000 - Rs. 14,000 = Rs. 1, 61,000.

## COMPUTATION OF INCOME FROM SELF - OCCUPIED HOUSE PROPERTY

The annual value of one self-occupied house property, which has not been actually let out at any time during the previous year, is taken as 'Nil' [Section 23(2) (a)]. From the annual value, only the interest on borrowed capital is allowed as a deduction under section 24. The amount of deduction will be:

- Either the actual amount accrued or Rs.30,000/- whichever is less
- When borrowal of money or acquisition of the property is after 31.3.1999 - deduction is Rs.1, 50,000/- applicable to A.Y 2002-03 and onwards.

However, if the borrowal is for repairs, renewals or reconstruction, the deduction is restricted to Rs.30, 000. If the borrowal is for construction/acquisition, higher deduction as noted above is available.

If a person owns more than one house property, using all of them for self-occupation, he is entitled to exercise an option in terms of which, the annual value of one house property as specified by him will be taken at Nil. The other self-occupied house property/is will be deemed to be let out and their annual value will be determined on notional basis as if they had been let out. Annual Value of one house away from work place [Section 23(2) (b)]

A person may own a house property, for example, in Bangalore, which he normally uses for his residence. He is transferred to Chennai, where he does not own any house property and stays in a rental accommodation. In such a case, the house property in Bangalore cannot be used for self-occupation and notional income, therefore, would normally have been chargeable although he derives no benefit from the property. To save the tax payer from hardship in such situations, it has been specifically provided that the annual value of such a property would be taken to be nil subject to the following conditions:

- The assessee must be the owner of only one house property.
- He is not able to occupy the house property because of his employment, business etc., away from the place where the property is situated.

- The property should not have been actually let or any benefit is derived therefrom.
- He has to reside at the place of employment in a building not belonging to him. Annual value of a house property which is partly self - occupied and partly let out.

## DEDUCTIONS

### INTRODUCTION

Indian tax laws contain certain provisions, which are intended to act as an incentive for achieving certain desirable socio-economic objectives. These 166 provisions are contained in Chapter VI A and are in the form of deductions (80C TO 80U) from the Gross Income. By reducing the chargeable income, these provisions reduce the tax liability, increase the post-tax income and thus induce the tax-payers to act in the desired manner. This unit is intended to give a broad idea of such deductions.

### COMPUTATION OF NET INCOME

To compute the net income of the assessee, first of all we compute the income under the five head. The provisions for the same have been already discussed in the previous units. The aggregate of income under each head is known as “gross total income”. Certain deductions which are not deductible under any particular head of income are allowed out of gross total income to arrive at the total income liable to tax.

Total income is accordingly computed as under:		
1.	Income from salaries	:
2.	Income from House property	:
3.	Profits and Gains of Business and Profession	:
4.	Income from capital gains	:
5.	Income from other sources	:
<b>Gross Total Income</b>		:
Less deduction under Chapter VI-A(80C TO 80U)(-)		:
<b>Total income</b>		:

These deductions are discussed in the following sections.

### BASIC RULES

Following are the basic rules for deduction

1. The aggregate amount of deductions under sections 80C to 80U cannot exceed gross total income (gross total income after excluding long term capital gains, short term capital gain under section 111A, winnings from lottery, crossword puzzles etc.)
2. These deductions are to be allowed only if the assessee claims these and gives the proof of such investments/expenditure/income. 167

### CATEGORIES OF DEDUCTIONS

There are various kinds of deductions. Some of them are to encourage savings, some are for certain personal expenditure, a few are for socially desirable activities, and some are for

economic growth. For the sake of better understanding we have categorized them into four kinds. They are

- To encourage savings
- For certain personal expenditure
- For socially desirable activities
- For physically disabled persons

## **DEDUCTIONS TO ENCOURAGE SAVINGS**

The government wants to encourage the habit of people to save for the rainy day.

To give impetus to savings these deductions are given on certain investments or certain expenditure made by the assessee. Deduction is allowed when the saving is invested but normally any withdrawal is treated as income in the year of withdrawal.

### **DEDUCTION IN RESPECT OF LIFE INSURANCE PREMIA, ETC. (SEC. 80C)**

A new section 80C has been inserted from the assessment year 2006-07 onwards.

Section 80C provides deduction in respect of certain expenditure/ investments (which are specified in this section) paid or deposited by the assessee in the previous year.

Deduction under this section is available only to individual & Hindu Undivided Family.

### **Gross Qualifying Amount**

The following payments/investments qualify for deduction under this section. The total amount of investments made during the P.Y. under these below mentioned schemes is known as Gross Qualifying Amount ( GQA )

1. Life Insurance premium paid on a policy taken on his own life, life of the spouse or any child (child may be dependent/ independent ). In the case of a Hindu undivided family, policy may be taken on the life of any member of the family. The premium paid should be maximum of 10% of sum assured .
2. Any sum deducted from salary payable to a Government employee for the purpose of securing him a deferred annuity (subject to a maximum of 20% of salary)
3. Contribution towards statutory provident fund and recognized provident fund.
4. Contribution towards 15 year public provident fund (maximum of Rs 1,00,000).
5. Contribution towards an approved superannuation fund
6. Subscription to National Savings Certificates, VIII Issue .
7. Contribution for participating in the Unit-Linked Insurance Plan (ULIP) of Unit Trust of India..
8. Contribution for participating in the unit-linked insurance plan (ULIP) of LIC Mutual Fund (i.e. Dhanraksha plan of LIC Mutual Fund)
9. Payment for notified annuity plan of LIC (i.e. JeevanDhara, JeevanAkshay New JeevanDhara ,etc ) or any other insurer.

10. Subscription towards notified units of Mutual Fund or UTI
11. Contribution to notified pension fund set up by Mutual Fund or UTI .
12. Any sum paid (including accrued interest) as subscription to Home Loan Account Scheme of the National Housing Bank
13. Any sum paid as tuition fees to any university/college/educational institution in India for full time education.

### **Amount of deduction**

We add the amounts invested / spent in above mentioned schemes and this amount is known as Gross qualifying amount. The amount deductible is

- a) Gross qualifying amount; or
- b) Rs 1,00,000 Whichever is less

### **DEDUCTION IN RESPECT OF PENSION FUND (SEC. 80CCC)**

If the following conditions are fulfilled an assessee may claim deduction under this section

- The taxpayer is an individual
- During the previous year, he has paid/deposited a sum under an annuity plan of the Life Insurance Corporation of India or any other insurer for receiving pension.
- If deduction has not been claimed under section 80C.

### **Amount of deduction**

If the aforesaid conditions are satisfied, then

- a) the amount deposited

Note:-The maximum deduction under sections 80C, 80CCC and 80CCD is  
Rs. 1,00,000.

### **Tax treatment of pension received**

The pension amount received by the assessee or his nominee as pension will be taxable in the year of the receipt.

### **DEDUCTION IN RESPECT OF CONTRIBUTION TO PENSION SCHEME OF CENTRAL GOVERNMENT (SEC. 80CCD)**

This section is for allowing deduction to new central Government employees, if the following conditions are satisfied:

- The tax payer is an individual
- He is employed by the Central Government on or after January 1, 2004.
- He has in the previous year paid or deposited any amount in his account under a pension scheme notified by the Central Government.

## Amount of Deduction

The amount deductible is

- a) The total employee's contribution and employer's contribution to the notified pension scheme during the year.
- b) Or 10% of salary of the employee.

Whichever is less

The aggregate amount of deduction under sections 80C, 80CC and 80CCD cannot exceed Rs. 1,00,000.

**INCOME EXEMPT FROM TAX** Section 10 is specifically dedicated to grant various exemptions to assessees of all class on Incomes earned by them. Below is a comprehensive summary of such exemptions, catch out if you could grab one:-

Section	Eligible Assessee	Type of Income	Limits	Conditions for claiming Exemption
10(1)	Any assessee	Agricultural Income	Entire amount	1. Rent or Revenue
10(2)	Any individual, being a member of HUF	Amount received as share of income from the HUF	Entire amount	Only those members can claim exemption who are entitled to demand share on partition or entitled to maintenance under Hindu Law.
10(2A)	Any assessee, being a partner of a partnership firm.	Amount received as share of profits from the firm	Entire amount	1. Exemption is allowable only if the partnership firm of which the assessee is a partner is assessed as such. 2. Emoluments other than share of profit received from the firm such as remuneration, interest, etc. remain taxable.
10(4)(i)	Any assessee, being a non-resident	Amount received as interest or premium on redemption on specified bonds or securities	Entire amount	1. Bonds or securities must be specified by the Central Government by notification in Official Gazette on or before 1st June'2002.

10(5)	An individual	Amount received as leave travel concession from employer or former employer	Entire amount received or the amount actually spent for the purpose of travel whichever is less	For Conditions in detail refer 'Leave Travel Concession' under Salaries Head.
10(6)(vi)	An individual, being a person who is not a citizen of India	Amount received as remuneration as an employee of a foreign enterprise for services rendered by him during his stay in India.	Entire amount	<ol style="list-style-type: none"> <li>1. The foreign enterprise must not carry on any business in India.</li> <li>2. The stay of the assessee in India should not exceed a period of 90 days.</li> <li>3. The remuneration so paid is not liable to be deducted from income of employer chargeable under the Income- tax Act, 1961.</li> </ol>
10(6B)	A non-resident (not being a foreign company) and a foreign company.	Tax paid on income (does not include Salary, Royalty, and Technical fees) by Central Govt. or by an Indian concern to the Central Govt.	Entire amount	<ol style="list-style-type: none"> <li>1. Income is received from Government or an Indian Concern.</li> <li>2. Income must be derived in pursuance of an agreement entered into by the Central Government with the Government of a foreign state or an international organization.</li> <li>3. The agreement must be entered into before the 1st day of June, 2002.</li> </ol>
10(6C)	Foreign companies notified by the Central Government.	Royalty or fees for technical services.	Entire amount	<ol style="list-style-type: none"> <li>1. Income must be derived in pursuance of an agreement entered into with the Central Government</li> <li>2. The agreement must be for providing services in projects connected with the security of India.</li> <li>3. Services may be provided in India or outside.</li> </ol>
10(10)	An individual	Gratuity	As per conditions specified in the section.	For Conditions in detail refer Gratuity under Salaries Head.

10(10A)	An individual	Commutated pension	As per conditions specified in the section	For Conditions in detail refer 'Pension' under Salaries Head.
10(10AA)	An individual	Leave encashment	As per conditions specified in the section	For Conditions in detail refer 'Leave Encashment' under Salaries Head.
10(10B)	An individual	Retrenchment Compensation	Least of (i) an amount calculated as per section 25F (b) of the Industrial Disputes Act, 1947; or (ii) Rs. 5,00,000 or (iii) actual amount received.	1. The limits do not apply to any compensation received in accordance with any scheme of the Central Government.
10(10C)	An employee individual	Compensation for voluntary retirement (V.R.S)	Maximum of Rs. 5,00,000.	1. The scheme of voluntary retirement should be framed as per Rule 2BA of the Income Tax Rules.
10(10CC)	An employee individual	Tax on non-monetary perquisites paid by the employer	Entire amount	1. Tax can be paid by the employer notwithstanding Section 200 of the Companies Act.
10(11)	An individual	Payments received from a provident fund	Entire amounts	The provident fund should fall within the purview of the Provident Funds Act, 1925 or should be set up and notified by the Central Government. (For Detailed discussion see Salaries Module)
10(12)	An individual	Accumulated balance in a recognized provident fund	To the extent provided in rule 8 of Part of the Fourth Schedule of the Income- tax Act	



10(13A)	An individual	House rent allowance	Least of the following: i. H R A actually received ii. Rent paid - 10% of Salary. iii. 50% of Salary if residing in Kolkata, Mumbai, Delhi or Chennai and 40% of Salary in other cases; wherein salary includes Basic +DA + commission based on fixed percentage of turnover.	As per rule 2A (For Detailed discussion see Salaries Module)
10(14)	An individual	Prescribed allowances	As per rule 2BB	As per rule 2BB. (For Detailed discussion see Salaries Module)
10(15)	All assessee	Interest, premium on redemption and other payments on securities, bonds, annuity certificates, saving certificates and notified deposits.	As Specified.	For detailed discussion on exemptions available to various assesses refer Income from other sources module.
10(16)	An individual	Scholarships	Entire amount	Scholarships should be received to meet the cost of education. It's not necessary that the scholarship should be financed by Govt. only.

10(17)	A Member of Parliament or of any State Legislature or of any Committee thereof.	Prescribed Allowances	Entire amount	Amendment: Under the amendment provided in Finance Bill 2006 the Pattern of exemptions will be as follows: 1. Daily Allowance - Fully exempt for Member of Parliament as well as for Members of State Legislature 2. Constituency Allowance - Fully exempt for Member of Parliament as well as for Members of State Legislature 3. Any Allowance - Fully exempt for Member of Parliament as well as for Members of State Legislature.
10(17A)	Any assessee	Awards received in cash or kind.	Entire amount.	The award/ reward should have been instituted by the Central or State Government, or by any other body and approved by the Central Government.  • For a comprehensive list of awards exempted please refer Section 10 (17A)
10(18)	Central or State Government employee.	Pension/ Family Pension	Entire amount	The individual was in service of Central / State Govt. & should have been awarded either "ParamVir Chakra" or the "MahaVir Chakra" or the "Vir Chakra" or such other notified gallantry award.

10(19)	Widow or children or nominated heirs of the armed forces of the union.	Family pension	Entire amount	<p>The death of a member of the armed forces (including para military forces) of Union occurs:-</p> <ul style="list-style-type: none"> <li>• During performance of operational duties under notified circumstances-</li> <li>• A certificate to this effect has been obtained from Head of the deptt. where the deceased member had last served.</li> </ul>
10(23AA)	Any person	Any Income	Entire amount	Income should be received on behalf of any Regimental fund or Non-Public Fund established by the armed forces.
10(23AAA)	Any person	Any income	Entire amount	<p>Fund should be established for following purposes &amp; for the welfare of the employees or their dependents:-</p> <ul style="list-style-type: none"> <li>• Cash benefits to a member of the fund in case of Superannuation; Event of his illness/ of spouse/ of dependent children; to meet cost of education of dependent children.</li> <li>• Cash benefits to the dependents of a member of the fund in the event of death of such member.</li> </ul> <p>Employees are members of the fund. Application of fund's income exclusively towards the Set objectives. Investment of fund's income &amp; members' contribution in modes set. The fund has been duly approved by the commissioner as per rules on this behalf.</p>

10(23AAB)	Any person	Any income	Entire amount	Income should be received on behalf of a fund established by LIC or any other insurer under a pension scheme duly approved by the Controller of Insurance/ IRDA
10(23D)	Mutual Funds	Any income	Entire amount u/s 11(5)	<ul style="list-style-type: none"> <li>• The Fund must be registered with SEBI; or-</li> <li>• The Fund should be a notified one set up by a Public sector bank/ Public financial institution/ is authorized by RBI on this behalf.</li> </ul>
10(24)	T r a d e Unions	Income from House Property & from Income from Other Sources	Entire amount	<ul style="list-style-type: none"> <li>• The trade union should be registered under the Trade Unions Act' 1925.</li> <li>• The union should have been primarily formed for the purpose of regulations between employer &amp; workmen or between workmen themselves.</li> </ul>
10(26BB)	Corporation established under Central / State Govt.	Any income	Entire amount	The corporation must be formed for the purpose of promoting the interest of the notified minority communities.
10(26BBB)	Corporation established for welfare of Ex-servicemen	Any income	Entire amount	The corporation must be formed for the purpose of welfare & economic upliftment of Ex-servicemen.
10(32)	Individual	Any income	Rs. 1,500 or Income of the Minor, Whichever is lower.	For detailed discussion refer Clubbing of Income module

10(33)	Any person	Income arising from transfer of Unit acquired under U/s 64 Scheme.	Entire amount	<ul style="list-style-type: none"> <li>• Transfer of such units takes place on or after April 1st'2002.</li> <li>• Noticeable fact is that a loss on sale of US 64 units cannot be setoff against any income in its year of purchase since income from US 64 is exempt from tax and no deduction can be allowed against already exempt income.</li> </ul>
10(34) & 10(35)	Any person	Dividend received from an Indian company	Entire amount	<p>Following incomes are exempt from tax:-</p> <ul style="list-style-type: none"> <li>• Any income by way of dividend received on which Corporate Dividend tax is payable.</li> <li>• Any income in respect of units of Mutual funds.</li> <li>• Income received from a Unit holder of UTI.</li> <li>• Remember that Dividend received from a Co-operative Society is not exempt from tax.</li> </ul>
10(36)	Any person	Long Term Capital Gains	Entire amount	<ul style="list-style-type: none"> <li>• An eligible equity share being a Long term capital asset is transferred.</li> <li>• Such shares are acquired after March 1st' 2003 but before March 1st' 2004.</li> <li>• Such shares are held by the taxpayer for more than 12 months.</li> </ul>

10(37)	Individual or HUF	Capital gains on transfer of agricultural land situated in area specified in item (a) or (b) of section 2(14)(iii)	Entire amount	<ol style="list-style-type: none"> <li>1. The capital gains must arise from compulsory acquisition of agricultural land held in an urban area and compensation is received on or after 1st April, 2004</li> <li>2. Such land was used by the HUF or in case of individual by himself or his parents, for a period of 2 years immediately preceding the date of transfer.</li> <li>3. Such transfer is by way of compulsory acquisition under any law, or a transfer whose consideration is determined or approved by the Central Government or the Reserve Bank of India.</li> <li>4. The consideration or compensation for such transfer is received by the assessee on or after 1st April, 2004</li> </ol>
10(38)	Any person	Long term Capital Gain	Entire amount	<ul style="list-style-type: none"> <li>• Long term Capital gain must arise on transfer of equity shares of a listed company or units of equity oriented mutual funds(a mutual fund wherein investible funds are invested in domestic companies for more than 65% of the total proceeds of such fund)</li> <li>• Such transaction is chargeable to Securities Transaction Tax.</li> </ul>

### INCOME UNDER THE HEAD CAPITAL GAINS

When we buy any kind of property for a lower price and then subsequently sell it at a higher price, we make a gain. The gain on sale of a capital asset is called capital gain. This gain is not a regular income like salary, or house rent. It is a one-time gain; in other words the capital gain is not recurring, i.e., not occur again and again periodically.

Opposite of gain is called loss; therefore, there can be a loss under the head capital gain. We are not using the term capital loss, as it is incorrect. Capital Loss means the loss on account of destruction or damage of capital asset. Thus, whenever there is a loss on sale of any capital asset it will be termed as loss under the head capital gain.

### **BASIS OF CHARGE**

The capital gain is chargeable to income tax if the following conditions are satisfied:

1. There is a capital asset.
2. Assessee should transfer the capital asset.
3. Transfer of capital assets should take place during the previous year.
4. There should be gain or loss on account of such transfer of capital asset.

### **CAPITAL ASSET**

Any income profit or gains arising from the transfer of a capital asset is chargeable as capital gains. Now let us understand the meaning of capital asset.

Capital Asset means property of any kind, whether fixed or circulating, movable or immovable, tangible or intangible, held by the assessee, whether or not connected with his business or profession, but does not include, i.e., Capital Assets exclude:

1. Stock in trade held for business
2. Agricultural land in India not in urban area i.e., an area with population more than 10,000.
3. Items of personal effects, i.e., personal use excluding jewellery, costly stones, silver, gold
4. Special bearer bonds 1991
5. 6.5%, 7% Gold bonds & National Defence Bonds 1980.
6. Gold Deposit Bonds 1999.

### **TYPES OF CAPITAL ASSET**

There are two types of Capital Assets:

1. Short Term Capital Assets (STCA): An asset, which is held by an assessee for less than 36 months, immediately before its transfer, is called Short Term Capital Assets. In other words, an asset, which is transferred within 36 months of its acquisition by assessee, is called Short Term Capital Assets.
2. Long Term Capital Assets (LTCA): An asset, which is held by an assessee for 36 months or more, immediately before its transfer, is called Long Term Capital Assets. In other words, an asset, which is transferred on or after 36 months of its acquisition by assessee, is called Long Term Capital Assets.

The period of 36 months is taken as 12 months under following cases:

- Equity or Preference shares,
- Securities like debentures, government securities, which are listed in recognised stock exchange,
- Units of UTI



- Units of Mutual Funds
- Zero Coupon Bonds

## **TYPES OF CAPITAL GAIN**

The profit on transfer of STCA is treated as Short Term Capital Gains (STCG) while that on LTCA is known as Long Term Capital Gains (LTCG). While calculating tax the STCG is included in Total Income and taxed as per normal rates while LTCG is taxable at a flat rate @ 20%.

The taxability is discussed in details later in this lesson.

Activity B: State whether the following are the capital Asset or not:

1. Bicycle
2. Horse
3. Car
4. House for self residence
5. Jewellery
6. House let on hire
7. Silver utensils
8. Air Conditioner used as stock in trade
9. Air Conditioner not used as stock in trade
10. Rural Agricultural Land
11. Urban Agricultural Land

## **TRANSFER**

Capital gain arises on transfer of capital asset; so it becomes important to understand what is the meaning of word transfer. The word transfer occupy a very important place in capital gain, because if the transaction involving movement of capital asset from one person to another person is not covered under the definition of transfer there will be no capital gain chargeable to income tax. Even if there is a capital asset and there is a capital gain.

The word transfer under income tax act is defined under section 2(47). As per section 2 (47) Transfer, in relation to a capital asset, includes sale, exchange or relinquishment of the asset or extinguishments of any right therein or the compulsory acquisition thereof under any law.

In simple words Transfer includes:

- Sale of asset
- Exchange of asset
- Relinquishment of asset (means surrender of asset)
- Extinguishments of any right on asset (means reducing any right on asset)
- Compulsory acquisition of asset.

The definition of transfer is inclusive, thus transfer includes only above said five ways. In other words, transfer can take place only on these five ways. If there is any other way where an asset is given to other such as by way of gift, inheritance etc. it will not be termed as transfer.

## COMPUTATION OF CAPITAL GAINS

The capital gain can be computed by subtracting the cost of capital asset from its transfer price, i.e., the sale price. The computation can be made by making a following simple statement.

Statement of Capital Gains

Particulars	Amount
Full Value of Consideration	
Less: Cost of Acquisition*(COA)	
Cost of Improvement*(COI)	
Expenditure on transfer	
Capital Gains	
Less: Exemption U/S 54	
Taxable Capital Gains	

\* To be indexed in case of LTCA

## FULL VALUE OF CONSIDERATION

Full value of consideration means & includes the whole/complete sale price or exchange value or compensation including enhanced compensation received in respect of capital asset in transfer. The following points are important to note in relation to full value of consideration.

- The consideration may be in cash or kind.
- The consideration received in kind is valued at its fair market value.
- It may be received or receivable.
- The consideration must be actual irrespective of its adequacy.

## COST OF ACQUISITION

Cost of Acquisition (COA) means any capital expense at the time of acquiring capital asset under transfer, i.e., to include the purchase price, expenses incurred up to acquiring date in the form of registration, storage etc. expenses incurred on completing transfer.

In other words, cost of acquisition of an asset is the value for which it was acquired by the assessee. Expenses of capital nature for completing or acquiring the title are included in the cost of acquisition.

Indexed Cost of Acquisition =  $COA \times CII$  of Year of transfer  
CII of Year of acquisition

## COST OF IMPROVEMENT

Cost of improvement is the capital expenditure incurred by an assessee for making any addition or improvement in the capital asset. It also includes any expenditure incurred in protecting or curing the title. In other words, cost of improvement includes all those expenditures, which are incurred to increase the value of the capital asset.

## EXPENDITURE ON TRANSFER

Expenditure incurred wholly and exclusively for transfer of capital asset is called expenditure on transfer. It is fully deductible from the full value of consideration while calculating the capital gain. Examples of expenditure on transfer are the commission or brokerage paid by seller, any fees like registration fees, and cost of stamp papers etc., travelling expenses, and litigation expenses incurred for transferring the capital assets are expenditure on transfer.

Note: Expenditure incurred by buyer at the time of buying the capital assets like brokerage, commission, registration fees, cost of stamp paper etc. are to be added in the cost of acquisition before indexation.

The detailed cost inflation index notified by the central Government is given below:-

FINANCIAL YEAR	COST INFLATION INDEX	Increase in CII and 75% of percentage of real inflation allowed	Real inflation % of CII Increase allowed / 3 X 4
1981-1982	100		
1982-1983	109	9 = 9%	12%
1983-1984	116	7= 6.422%	8.563%
1984-1985	125	9=7.7586%	10.344%
1985-1986	133	8=6.4%	8.5333%
1986-1987	140	7=5.263	7.0173%
1987-1988	150	10=7.1428%	9.5237%
1988-1989	161	11=7.333%	9.7777%
1989-1990	172	11=6.8323%	9.1097%
1990-1991	182	10=5.8139%	7.7519%
1991-1992	199	17=9.340%	12.4542%
1992-1993	223	24=12.060%	16.080%
1993-1994	244	21=9.4170%	12.556%
1994-1995	259	15=6.1475%	8.1967%
1995-1996	281	22=8.494%	11.325%
1996-1997	305	24=8.5409%	11.388%
1997-1998	331	26=7.8549%	10.473%
1998-1999	351	20=6.0423%	8.0564%
1999-2000	389	38=10.826%	14.435%
2000-2001	406	17=4.370%	5.827%
2001-2002	426	20=4.926%	6.568%
2002-2003	447	21=4.929%	6.573%
2003-2004	463	16=3.579%	4.773%
2004-2005	480	17=3.6717%	4.896%
2005-2006	497	17=3.5416%	4.7222%
2006-2007	519	22=4.4265%	5.902%
2007-2008	551	32=6.1657%	8.221%
2008-2009	582	31=5.6213%	7.501%
2009-2010	632	50=8.591%	11.455%
2010-2011	711	79=12.36%	16.485%
2011-2012	785	74=10.44%	13.8772%

## **EXEMPTION FROM CAPITAL GAINS**

Exemption means a reduction from the taxable amount of capital gain on which tax will not be levied and paid. The exemptions are given under section 54, these exemptions are of various types but here we will discuss only one of the exemptions relating to the house property.

### **Exemption u/s 54**

The exemption u/s 54 relates to the capital gain arising out of transfer of residential house. The exemption is available to only Individual assessee. The exemption relates to the capital gains arising on the transfer of a residential house.

Conditions: Exemption is available if: -

1. House Property transferred was used for residential purpose.
2. House Property was a long term capital asset.
3. Assesses has purchased another house property within a period of one year before or two years after the date of transfer or has constructed another house property within three years of date of transfer i.e. the construction of the new house property should be completed within three years. The date of starting of construction is irrelevant.

Amount of Exemption: will be the least of: -

1. Capital Gains
2. Cost of new house.

Withdrawal of exemption: If the newly acquired house property is transferred within three years of acquisition. Thus the earlier exempted capital gain will be charged to tax in the year in which the newly acquired house property is transferred. For that the cost of acquisition of the newly acquired house property will be reduced by the amount of exemption already availed thus the cost will reduce and thus the capital gains on the new house property will be more. Above all the new house property will be a STCA since for withdrawal of exemption it should had been sold within three years of its acquisition thus now the capital gain of the new house property will be STCG which is charged as per the normal rates which may be 30% (a higher rate as compare to the flat rate of LTCG of 20%) in the case of individuals.

### **Definition of 'Bad Debt'**

A debt that is not collectible and therefore worthless to the creditor. This occurs after all attempts are made to collect on the debt. Bad debt is usually a product of the debtor going into bankruptcy or where the additional cost of pursuing the debt is more than the amount the creditor could collect. This debt, once considered to be bad, will be written off by the company as an expense.

Most companies make sales on credit as it generally allows them to increase their sales, even though some sales are to customers with less than desirable credit. Companies that do make credit sales will estimate the amount of sales they expect to lose to bad debt, which is found in the allowance for doubtful accounts.

A debtor with a history of bad debts will see their credit rating decline, which makes it difficult for the debtor to access any additional form of credit.

## **Definition of 'Written-Down Value'**

The value of an asset after accounting for depreciation or amortization. Written-down value is also called book value or net book value. It is calculated by subtracting accumulated depreciation or amortization from the asset's original value. Written-down value reflects the asset's present worth from an accounting perspective. An asset's written-down value will appear on the company's balance sheet.

## **Double taxation relief under income tax act:**

A condition in which two or more taxes may need to be paid for the same asset, financial transaction or income is known as double taxation. It generally takes place due to the overlapping of the tax laws and regulations of different countries. Thus, double taxation occurs when a taxpayer is charged income tax, both at his country of residence as well as in the country where the income is generated. Taking into account the laws of income tax in India, a non-resident becomes liable to tax payment in India, given that it is the place where the income is generated. Moreover, he has to additionally bear the burden of tax payment in his own country, by virtue of the inclusion of the same income in the 'total world income', which forms the tax base of the country where he resides.

To effectively deal with the problems related to double taxation, Central Government, under Section 90 of the Income Tax Act of 1961, has been certified to enter into Double Tax Avoidance Agreements (DTAA) with other countries. These agreements are meant to alleviate various problems related with double taxation. So far, India has entered into Double Taxation Avoidance Agreements with 65 countries, including U.S.A, Canada, U.K, Japan, Germany, Australia, Singapore, U.A.E and Switzerland. The tax treaties offers relaxation from double taxation, by providing release or by providing credits for taxes paid in one of the countries.

Under Section 90 and 91 of the Income Tax Act, relief against double taxation in India is provided in two ways:

## **Double Taxation Relief In India**

Double taxation relief in India is of two type's Unilateral relief and Bilateral relief.

### **Unilateral Relief**

Under Section 91, Indian government can relieve an individual from burden of double taxation, irrespective of whether there is a DTAA between India and the other country concerned or not, under certain conditions. Cases where a person enjoys double taxation relief as per the unilateral relief scheme are:

If the person or company has been a resident of India in the previous year.

If the person or company has paid income tax under the laws of the foreign country.

The same income should be gained and received by the tax payer outside India in the previous year.

The income should have been taxed in India and in a country with which India has no tax treaty

### **Bilateral Relief**

Under Section 90, Indian government provides protection against double taxation by entering into a mutually agreed tax treaty (DTAA) with another country. Under bilateral relief, protection against double taxation is provided either by completely avoidance of overlapping tax or waiving a certain amount of the tax payable in India.

## **140A. Self-assessment.**

(1) Where any tax is payable on the basis of any return required to be furnished under section 139 or section 142 or section 148 or, as the case may be, section 158BC, after taking into account the amount of tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

Explanation. Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.

(1A) For the purposes of sub-section (1), interest payable under section 234A shall be computed on the amount of the tax on the total income as declared in the return as reduced by the advance tax, if any, paid and any tax deducted or collected at source. (1B) For the purposes of sub-section (1), interest payable under section 234B shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.

### **Permanent Account Number:**

Permanent Account Number (PAN) is unique alphanumeric combination issued to all juristic entities identifiable under the Indian Income Tax Act 1961. It is issued by the Indian Income Tax Department under the supervision of the Central Board for Direct Taxes (CBDT) and is almost equivalent to a national identification number. It also serves as an important ID proof.

This number is almost mandatory for financial transactions such as opening a bank account, receiving taxable salary or professional fees, sale or purchase of assets above specified limits.

The primary purpose of PAN is to bring a universal identification key factor for all financial transactions and indirectly prevent tax evasion by keeping a track of monetary transactions of high net worth individuals.

The PAN is unique, national, and permanent. It is unaffected by a change of address, even between states

**Self Assessment:** The Assessee is required to make a self assessment and pay the tax on the basis of the returns furnished. Any tax paid by the Assessee under self assessment is deemed to have been paid towards regular assessment.

**Regular Assessment:** On the basis of the return of income chargeable to tax furnished by the Assessee an intimation shall be sent to the Assessee informing him about the tax or interest payable or refundable to him.

**Best Judgment Assessment:** In a best judgment assessment the assessing officer should really base the assessment on his best judgement i.e. he must not act dishonestly or vindictively or capriciously. There are two types of judgement assessment:

1. Compulsory best judgement assessment made by the assessing officer in cases of non-co-operation on the part of the Assessee or when the Assessee is in default as regards supplying informations.

2. Discretionary best judgement assessment is done even in cases where the assessing officer is not satisfied about the correctness or the completeness of the accounts of the Assessee or where no method of accounting has been regularly and consistently employed by the Assessee.

Income escaping assessment or re-assessment: If the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year assess or reassess such income and also nay other income chargeable to tax which has escaped assessment and which comes to his notice in course of the proceedings or any other allowance, as the case may be.

Precautionary assessment: Where it is not clear as to who has received the income, the assessing officer can commence proceedings against the persons to determine the question as to who is responsible to pay the tax.

## **ADVANCE INCOME TAX**

### **Obligation to pay Advance Tax - Sec. 210**

Apart from making provisions for deduction of tax at source on various income based upon quantum of income, the Indian Income-tax Act makes it compulsory for every person liable to pay tax in India, to pay Income-tax in advance on the income of the current financial year. However no such advance tax is payable unless the tax payable is Rs. 5000/- or more after deducting the tax deducted at source from the gross tax payable on the current income.

### **PAYMENT OF ADVANCE TAX ON THE ESTIMATED TAXABLE INCOME BY ALL ASSESSEE (Other than companies)**

<b>Installment</b>	<b>Percentage</b>	<b>Due Date</b>
First	30%	15th September
Second	30%	15th December
Final	40%	15th March

Eg.: If an Assessee's estimated tax payable for the full year is Rs.10,000 , he has to pay an Advance Tax of Rs.3,000 each in 1st & 2nd Installment&Rs. 4,000 in Final Installment. No Advance Tax need to be paid, if total tax payable for the year is less than Rs. 5,000. When employer deducts tax from Salary, employee need not pay Advance Tax.

Non-payment or short payment of Advance Tax will attract penal interest.

Refund means 'to repay' or 'restore what was taken'. Under the income-tax and other direct tax laws refund arises in those cases, where the amount of tax paid by a person or on his behalf is greater than the amount with which he is properly chargeable.

### **How does a refund arise ?**

There are several circumstances under which refunds may become due under the Income-tax Act. Examples are as follows:

- (a) The tax deducted at source from salary, interest on securities or debentures, dividends or any other payment is higher than the amount of tax payable as determined on regular assessment.
- (b) The amount of advance to it paid on the basis of self-assessment exceeds the tax payable as determined on regular assessment.



- (c) The tax originally determined and on the basis of regular assessment gets reduced as a result of rectification of a mistake which has crept in the assessment or through appellate or revision of reason authorities.
- (d) The same income is taxed both in India and in a foreign country with which the Government of India has entered into an agreement for avoidance of double taxation.

### **Rules relating to refunds :**

Rule number of the Income-tax Rules contains the following provisions relating to application for refund:

- (a) A claim for refund shall be made in Form No. 30.
- (b) The claim shall be accompanied by a return in the form prescribed u/s 139, unless the claimant has already made such a return to the AO.
- (c) Where any part of the total income of a person making claim for refund of tax consists of individuals or any other income from which tax has been deducted under the provisions of sections 192 to 194, 194A and 195, the claim shall be accompanied by the certificate prescribed u/s 203.
- (d) The claim for refund may be presented by the claimant in person or through a duly authorized agent or may be sent by post.

### **Filing of Income Tax Returns**

If a person is enjoying any of the following items, he/she has to file his/her return.

- Occupation of a House
- Ownership of a motor car
- Expenditure on foreign travel
- Holder of credit card
- Electricity payments in excess of Rs 50,000/annum
- Member of a club - where the entrance fee is more than Rs 25,000/-.

The assessee is obliged to voluntarily file the return of income without waiting for the notice of the assessing officer calling for the filing of the return. The time limit for filing of the return by an assessee if his total income of any other person in respect of which he is assessable exceeds the maximum amount not chargeable to tax shall be as follows:

- Where the assessee is a company the 30th day of November of the assessment year
- Where the assessee is a person, other than a company :-
  - where the account of the assessee are required to be audited under the income tax act or any other law, or in cases where the report of the chartered Accountant is required to be furnished under sections 80HHC or 80HHD i.e.. for deduction in respect of profits retained for export business and also in respect of earnings in convertible foreign exchange, or in case of a cooperative society, the 31st day of October of the assessment year

- where the total income includes any income from the business or profession, not being a case falling under sub clause (i), the 31st day of August for the assessment year
- in any other case, 30th day of June of the assessment year

The requirements of Income-tax Act making it obligatory for the assessee to file a return of his total income apply equally even in cases where the assessee has incurred a loss under the head 'profit and gains from business and profession' or under the head 'capital gains' or maintenance of race horses. Unless the assessee files a return of loss in the manner and within the same time limits as required for a return of income or by the 31st day of July of the assessment relevant to the previous year during which the loss was sustained, the assessee would not be entitled to carry forward the loss for being set off against income in the subsequent year.

### **Late Return**

Any person who has not filed the return within the time allowed may be file a belated return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. However, in case of returns relating to assessment year 1988-89 or any other assessment year, the period allowable is two years.

### **Revised Return**

An assessee who is required to file a return of income is entitled to revise the return of income originally filed by him to make such amendments, additions or changes as may be found necessary by him. Such a revised return may be filed by the assessee at any time before the assessment is made. There is no limit under the income tax Act in respect of the number of time for which the return of income may be revised by the assessee. However, if a person deliberately files a false return he will be liable to be imprisoned under section 277 and the offence will not be condoned by filing a revised return.

Where the return relates to assessment year 1988-89 or any earlier assessment year, the period of limitation is two years from the end of the relevant assessment year.

### **Defective Return**

If the assessing officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within 15 days from the date of such intimation or within such further period as may be allowed by the assessing officer on the request of the assessee. If the assessee fails to rectify the defect within the aforesaid period, the return shall be deemed invalid and further it shall be deemed that the assessee had failed to furnish the return. However, where the assessee is made the assessment officer may condone the delay and treat the return as a valid return.

### **Signing of Return**

The return of income must be signed and verified. In case of an individual

- by the individual himself
- where he is absent from India, by the individual himself or by some person duly authorised by him in this behalf
- where he is mentally incapacitated from attending to his affairs, by his guardian or any person competent to act on his behalf

- where for any other reason, it is not possible for the individual to sign the return, by any person duly authorized by him in this behalf.

## **Penalty**

Under the existing law, penalty for delay in filing of return of income is calculated as a percentage of the shortfall of tax. Where tax has already been deducted at source, or advance tax has been duly paid, no penalty is leviable. It is proposed to amend the law to provide for the penalty of Rs.1000 even in such cases. This provision is targeted towards the salary earners who always had the impression that their liability was over the moment the tax was deducted by the employer.

## **Tax Deduction @ Source:**

Tax deducted at source is one of the modes of collecting Income-tax from the assesseees in India. Such collection of tax is effected at the source when income arises or accrues. Hence where any specified type of income arises or accrues to any one, the Income-tax Act enjoins on the payer of such income to deduct a stipulated percentage of such income by way of Income-tax and pay only the balance amount to the recipient of such income.

The tax so deducted at source by the payer, has to be deposited in the Government treasury to the credit of Central Govt. within the specified time. The tax so deducted from the income of the recipient is deemed to be payment of Income-tax by the recipient at the time of his assessment.

Income from several sources is subjected to tax deduction at source. Presently this concept of T.D.S. is also used as an instrument in enlarging the tax base. Some of such income subjected to T.D.S. are salary, interest, dividend, interest on securities, winnings from lottery, horse races, commission and brokerage, rent, fees for professional and technical services, payments to non-residents etc. It is always considered as an Advance tax which is paid to the government when we are being paid for provision made by us in the form of products or services.

## **Advance Tax**

Tax payers whose total income is likely to be chargeable to tax for the assessment year are required to pay tax in advance during the financial year (April 1 to March 31) on their estimated current income, which will be assessable to tax during the next following financial year called assessment year. The current income for this purpose means the total income which will be chargeable to tax in the relevant assessment year.

The advance tax payable is the tax on the current income minus the tax deductible at source or collectible out of any income included in the current income.

If the tax payer does not make payment of advance tax voluntarily, the assessing officer can issue a notice at any time during the financial year, but not later than the last day of February asking him to pay the advance tax in specified instalments. Such notice is ordinarily based on the assessed income of the tax payer for the latest year. The assessee in that case has an option to pay advance tax on the basis of his own estimate if he considers that his current income during the relevant accounting period would be less than the income on the basis of which advance tax has been demanded from him. The assessing officer can modify his notice of demand in certain circumstances. Similarly, the assessee can also revise his estimate any number of times and after adjusting the amount already paid, if any, pay the balance in instalments falling due after the revised estimate.

Clubbing of income means Income of other person included in assessee's total income, for example: Income of husband which is shown to be the income of his wife is clubbed in the income of Husband and is taxable in the hands of the husband.

Income of a minor child is taxable in the hands of his parents.

### **Why it is so?**

Under the Income Tax Act a person has to pay taxes on his income. A person cannot transfer his income or an asset which is his one of source of his income to some other person or in other words we can say that a person cannot divert his income to any other person and says that it is not his income. If he do so the income shown to be earned by any other person is included in the assessee's total income and the assessee has to pay tax on it.

For example: A purchased a house property in the name of his wife B. A let out this house property . The rental income earned by A in name of his wife B is taxable in the hands of A.

### **Carry forward and set off of business losses**

- (1) Where for any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of section 71, so much of the loss as has not been so set off or, where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and-
  - (i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year:
  - (ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on:

Provided that where the whole or any part of such loss is sustained in any such business as is referred to in section 33B which is discontinued in the circumstances specified in that section, and, thereafter, at any time before the expiry of the period of three years referred to in that section, such business is re-established, reconstructed or revived by the assessee, so much of the loss as is attributable to such business shall be carried forward to the assessment year relevant to the previous year in which the business is so re-established, reconstructed or revived, and-

- (a) it shall be set off against the profits and gains, if any, of that business or any other business carried on by him and assessable for that assessment year; and
  - (b) if the loss cannot be wholly so set off, the amount of loss not so set off shall, in case the business so re-established, reconstructed or revived continues to be carried on by the assessee, be carried forward to the following assessment year and so on for seven assessment years immediately succeeding.
- (2) Where any allowance or part thereof is, under sub-section (2) of section 32 or sub-section (4) of section 35, to be carried forward, effect shall first be given to the provisions of this section.

- (3) No loss (other than the loss referred to in the proviso to sub-section (1) of this section) shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

### **Income-Tax Authorities :**

There shall be the following classes of income-tax authorities for the purposes of the Act 116, namely:-

- (a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),
- (b) Directors-General of Income-tax or Chief Commissioners of Income-tax,
- (c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income- tax (Appeals),
- (cc) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals),
- (cca) Joint Directors of Income-tax or Joint Commissioners of Income-tax.
- (d) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals),
- (e) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,
- (f) Income-tax Officers,
- (g) Tax Recovery Officers,
- (h) Inspectors of Income-tax.

### **Powers of the authorities :**

For all purposes of the Income-tax Act, the IT authorities are vested with the various powers which are vested in a Court of Law under the Code of Civil Procedure while trying a suit in respect of any case. More particularly, the provisions of the Code of Civil procedure and the powers granted to the tax authorities under the code would be in respect of :

1. Discovery and inspection
2. enforcing the attendance, including any officer of a bank and examining him on oath
3. compelling the production of books of account and the documents
4. collection certain information [section 133B-inserted by the finance act, 1986]
5. Issuing commissions and summons

It shall be duty of every person who has been allotted permanent account number to quote such number in all his returns or correspondence with income tax authorities, in all challans for the payment of any sum, in all documents prescribed by the board in the interest of revenue.

## **WEALTH TAX ACT, 1957**

Wealth tax came into existence on 1st April 1957. Wealth tax is derived from the property owned by the proprietor. The proprietor needs to pay tax every year on property owned by them. The residential property that does not yield any income to its owner is also subjected to wealth tax. Wealth tax is termed as most significant direct tax.

### **CHARGEABILITY**

The Wealth Tax is charged for every assessment year in respect of the net wealth on the corresponding valuation date of every individual, Hindu Undivided Family, and company, @1% of the amount by which net wealth exceeds Rs.30 lakhs. By virtue of section 45, no wealth tax is chargeable in respect of net wealth of the following persons:

- a) Any company registered under section 25 of Companies Act 1956
- b) Any co-operative society
- c) Any social club
- d) Any political party
- e) A Mutual Fund specified under section 10(23D) of the Income Tax Act

### **ASSESSMENT YEAR [A.Y.] [Sec2 (d)]**

Assessment year means a period of 12 months commencing from 1st day of April every year falling immediately after valuation date

### **VALUATION DATE Sec.2 (q)**

Valuation date is 31st March immediately preceding the assessment year.

### **NET WEALTH**

Net Wealth represents the amount by which the total value of all assets including deemed assets but excluding exempt assets, belonging to the assessee on the valuation date exceeds the value of all debts owed by the assessee on the valuation date incurred in relation to the taxable assets.

### **ASSETS Sec.2 (ea)**

The term assets include the followings:

#### **1) Building Sec.2 (ea) (i)**

Any building or land appurtenant thereto u/s2 (ea) (i) is treated as an asset and it includes:

- a) Commercial building
- b) Residential building
- c) Any guest house
- d) A farmhouse situated within 25 kilometres from the local limits of a local authority

However following buildings are not treated as assets

- a) A house meant for residential purposes is allotted by a company to an employee or an officer or a director who is in full time employment, having a gross annual salary of less than Rs.5lakhs

- b) Any house for residential or commercial purposes, which forms part of stock in-trade
- c) Any house occupied by assessee for the purposes of his own business or profession
- d) Any residential property that has been let out for a minimum period of 30 days in the previous year.
- e) Any property in the nature of commercial establishments or complexes

## **2) Motor Cars Sec.2 (ea) (ii)**

Any motorcar is an asset except the following

- a) Motor cars used by the assessee in the business of running them on hire
- b) Motor cars held as stock-in-trade

## **3) Jewellery, Bullion, Utensils Of Gold, Silver etc. Sec. 2(ea) (iii)**

Jewellery, bullion furniture, utensils or any other article made wholly or partly of gold, silver, platinum, or any other precious metal of any alloy containing one or more of such precious metals are treated as an asset.

The term jewellery shall not include the Gold Deposit Bonds issued under Gold Deposit Scheme, 1999 notified by the Central Government. However, if any of the above stated assets are held by the assessee as stock-in-trade, then it is not treated as an asset.

## **4) Yachts, Boats and Aircrafts Sec 2(ea) (iv)**

Yachts, boats and aircrafts are treated as “assets” excluding yachts boats and aircrafts used by assessee for commercial purposes.

## **5) Urban Land Sec 2(ea) (v)**

Urban land is treated as an “asset” .

However land is not treated as “asset” in the following cases:

- a) Land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated;
- b) Land occupied by any building which has been constructed with approval of the appropriate authority;
- c) Any unused land held by the assessee for industrial purposes for a period of two years from the date of acquisition by him
- d) Land held by an assessee as stock-in-trade for a period of 10 years from the date of its acquisition by him.

## **6) Cash-in-hand Sec 2(ea) (vi)**

Following is treated as an “assets”:

- a) In case of any individual and HUF, cash in hand on the last moment of the valuation date in excess of 50,000 shall be treated as “asset”
- b) In case of any other person any amount not recorded in the books of accounts shall be treated as “asset”.



## **DEEMED ASSETS [sec. 4]**

Deemed assets represent those assets, which belong to some other person but for the purpose of calculation of wealth tax. these are included in the wealth of the assessee.(transferor),it is because at time an individual may transfer his assets without adequate consideration to persons in whom he may be interested. Thus to prevent avoidance of wealth tax in this manner, wealth tax Act provides that assets transferred by an individual shall be included in the net wealth of the transferor, provided following conditions are satisfied.

- (i) The individual must be the owner of these assets.
- (ii) The assets must be transferred without adequate consideration in money or money is worth.
- (iii) The asset must be held by the transferor on the valuation date whether in the same form or in converted form.

### **DEEMED ASSETS u/s 4 (i) are as follows.**

#### **1) Assets transferred to spouse Sec. 4(1) (a) (ii).**

If the assessee has transferred an asset to his/her spouse without adequate consideration or in connection with in an agreement to live apart, then value of such asset is included in the wealth of assessee provided their relationship exists both on the date of transfer and on the date of valuation.

#### **2) Assets held by minor child Sec. 4 (1) (a) (ii)**

The value of assets held by minor child including step child and adopted child, excluding a married daughter, a handicapped child, illegitimate child and grand child of an individual is included in the wealth of a parent.

If marriage of parents subsists, then in the wealth of that parent whose net wealth is more. If marriage of parents does not subsist, then in the wealth of that parent who maintains the minor child in the previous year.

However there are certain exceptions to it.

- (i) Assets acquired by the minor child out of his income arising on account of his manual work or activities involving application of his specialized knowledge and experience shall not be included in the net wealth of a parent.
- (ii) Assets held by a disabled minor child shall not be included in the wealth of the parent.

#### **3) Assets transferred to a person or to AOP's, Sec. 4 (1) (a) (iii)**

If an individual transfers his assets to another person or AOP's without adequate consideration, directly or indirectly, for the immediate or deferred benefit of the individual or his spouse then these assets are included in the wealth of the individual provided their relationship exists on valuation date.

#### **4) Revocable transfer of asset Sec. 4(1) (a) (iv)**

Revocable transfer means a transfer which can be revoked at any time by the transferor. Thus, if an individual has transferred any assets to another person or AOP under revocable transfer then value of such assets is included in the wealth of the individual.

### **5) Assets transferred to son's wife Sec. 4(1) (a) (v)**

If an individual transferred an asset to his son's wife directly or indirectly without adequate consideration then the value of such assets is included in the net wealth of the individual.

### **6) Assets transferred to a person/AOP for the benefit of son's wife Sec. 4(I)(a) (vi)**

If an assessee has transferred his asset to another person or AOP directly or indirectly without adequate consideration for the immediate or deferred benefit of his son's wife then value of such assets shall be included in wealth of the individual.

### **7) Interest in a Firm or AOP Sec. 4(1) (b)**

If the assessee is a partner in a firm or a member of an AOP (not being a cooperative housing society), then value of his interest in the assets of firm or association shall be included in his net wealth.

### **8) Converted Property Sec. 4(1 A)**

If an individual who is a member of an HUF converts his individual property into Joint family property either by throwing it into the common stock or by making gifts of separate property or through act of impressing such separate property with the character of property belonging to family without adequate consideration, such property is called converted property. In this case value of the converted property or any part of it held by the family on valuation date is included in the net wealth of the individual .

### **9) Transfer by means of book entry [Sec.4 (5A)]**

Where a person makes a gift of money to another person by means of entries in the books of account maintained by the donor or an individual or HUF or firm or AOP or body of individuals with which the donee has business or other relationship. Then value of such gift is includible in the net wealth of donor unless the donor satisfies the Assessing officer that the money was actually delivered to the donee at the time of making the entries.

### **10) Impartible Estate Sec. 4(6)**

Impartible estate of an IT.U.F. is that estate which by special law or custom descend to one member of the family though it is a Joint property belonging equally to all, Value of impartible estate is included in the net wealth of such holder, so far wealth tax purposes. He is the deemed owner of the impartible estate.

### **11) House from a Co- operative Housing society etc. Sec .4(7)**

If the assessee is a member of a co-operative Housing Society, company or AOP's and he is allotted a building part thereof or leased under a house building scheme of the society, company or association, as the case may be then he is the deemed owner of that building part thereof and hence value of such building shall be included in his net wealth.

### **12) Building in part performance of a contract Sec. 4(8) (a)**

If a person is allowed to take or retain possession of any building in part performance of a contract of the nature referred u/s 53 A of Transfer of Property Act, 1882 then he is the deemed owner of that building or part thereof and hence value of such building shall be included in his net wealth.

## **Exempt Assets [Sec 5]**

The following assets are exempt from wealth tax

### **1) Property held under trust Sec. 5(i)**

Any property held under trust or other legal obligations by the assessee for any public purpose of a charitable or religious nature in India is exempt.

### **2) Interest in the coparcener property Sec. 5(ii)**

If the assessee is a member of H.U.F., he is not liable to pay tax on his share in the joint property, so long as the property remains joint and he continues as the member of that family.

### **3) One building in the occupation of former Ruler Sec. 5(iii)**

any one building which is in the occupation of a Ruler and which has been declared as his official residence by the Central Govt .is totally exempt from tax. However the exemption available only to the Ruler during his life time.

### **4) Jewellery in possession of a former Ruler Sec. 5(iv)**

Jewellery in possession of a former Ruler not being his personal property which has been recognized by the Central Govt, as his heirloom, before commencement of Wealth Tax Act or by the board after that shall be exempt. However this exemption is subject to fulfilment of certain conditions like keeping of jewellery in India, in its original shape, allowing authorized person to examine the jewellery as and when necessary.

### **5) Assets of Indian repatriate Sec. 5 (v)**

Indian repatriate means a person of Indian origin or a citizen of India who was residing in a foreign country and on leaving such country assessee has returned to India with the intention of permanently residing therein. In this case his following assets shall be exempt for 7 successive assessment years, commencing with the assessment year following the date of his return to India.

- (i) Money brought by him in India
- (ii) Assets brought by him in India
- (iii) Any balance in Non-Resident External Accounts in India on the date of his return
- (iv) Assets acquired by him out of money in his Non-resident External Account or by sending money from foreign country within 1 year immediately preceding the date of his return to India.
- (v) Any assets acquired by him out of money brought in by him in India or out of the balance in NRE account after his arrival in India.

### **6) House [Sec 5 (vi)]**

One house or part of a house or a plot of land belonging to an individual or HUF is exempt provided size of plot is not bigger than 500 square meters.

## DEBT OWED

Debt owed represents an obligation to pay an amount either in present or in future. In the computation of net wealth, from the total of all assets value of debts owed by an assessee is deductible provided following conditions are satisfied

- i) Debt is owed by assessee on valuation date
- ii) Debt should have been incurred in relation to acquisition or creation of any asset, which is taxable for Wealth Tax in the hands of assessee.

## COMPUTATION OF NET WEALTH AND WEALTH TAX

Procedure for computation of net wealth is as follows:

<b>Computation of Net wealth of the assessee.</b>	<b>Rupees</b>
Assets owned by assessee on valuation date including deemed assets and excluding exempt assets	X
Less Deductible debts owed by assessee on the valuation date.	(Y)
Net Wealth	X-Y

### Procedure for computation of Wealth tax.

Wealth tax is chargeable @1% of the amount by which net wealth

Exceeds Rs 30 lac rupees, hence

If net wealth is up to Rs. 30 lac, there will not be any wealth tax.

If net wealth exceeds Rs.30 lac, wealth tax is calculated as:

Wealth Tax = 1 % [Net Wealth - Rs 30 Lac]

### How to file return of wealth tax?

To file a wealth tax is same as like filing an income tax. A person is required to file a return of wealth in form A. If the net value of the asset comes under the bracket of wealth tax then person is bound to file the wealth tax. This should be noted that before filing a wealth tax all the essential documents should be attached with the form A.

## CENTRAL SALES TAX ACT, 1956 (ACT No. 74 OF 1956)

### Definitions

- (a) "appropriate State" means-
  - (i) in relation to a dealer who has one or more places of business situated in the same State, that State;
  - (ii) in relation to a dealer who has [\*\*\*] places of business situated in different States, every such State with respect to the place or places of business situated within its territory;
- (aa) "business" includes-(i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and (ii) any transaction in connection

with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

- (b) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other
- (c) 'declared goods" means goods declared under section 14 to be of special importance in inter-State trade or commerce.
- (d) "goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities;
- (dd) "place of business" includes -
  - (i) in any case where a dealer carries on business through an agent (by whatever name called), the place of business of such agent;
  - (ii) a warehouse, godown or other place where a dealer stores his goods; and
  - (iii) a place where a dealer keeps his books of account;

### 1. Section 3

Formulation of Principles for determining when a Sale or Purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of Import or Export:

When is a sale or purchase of goods said to take place in the course of Inter-State trade or commerce. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

- (a) occasions the movement of goods from one State to another; or
- (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

**Explanation 1** - Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

**Explanation 2** - Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

### 2. Section 4

When is a sale or purchase of goods said to take place outside a State

- (1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.
- (2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State—
  - (a) in the case of specific or ascertained goods, at the time the contract of sale is made; and
  - (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

**Explanation** - Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places.

### 3. Section 5

When is a sale or purchase of goods said to take place in the course of import or export

- (1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.
- (2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.
- (3) Notwithstanding anything contained in sub-section (1), the last sale or Purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.
- (4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.
- (5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

**Explanation** - For the purposes of this sub-section, “designated Indian carrier” means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf. Inter-State Sales Tax

#### Liability to tax on inter-State sales

- (1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

PROVIDED that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5, is a sale in the course of export of those goods out of the territory of India.

- (1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.



Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,-

- (a) to the Government, or
- (b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

PROVIDED that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit, -

- (a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and
- (b) if the subsequent sale is made—
  - (i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or
  - (ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of Section 8:

PROVIDED FURTHER that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if, -

- (a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name); and
  - (b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.
- (3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of -
- (i) any foreign diplomatic mission or consulate in India; or
  - (ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.
- (4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be.



#### **4. Section 7- Registration of dealers:-**

- (1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.
- (2) Any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in sub-section (1), and every such application shall contain such particulars as may be prescribed.

Section 8- Equal to the tax payable under this Act, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished; and (b) in the case of a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax leviable under this Act, in accordance with the estimate of such authority on the sales to such dealer in the course of inter-State trade or commerce in the year in which such security or, as the case may be, additional security is required to be furnished, had such dealer been not registered under this Act.

#### **5. Section 14 - Goods of special importance in inter-State trade or commerce.**

Certain goods to be of special importance in inter-State trade or commercial is hereby declared that the following goods are of special importance in inter-State trade or commerce:-

- (i) cereals, that is to say,-
- (i) paddy (*Oryza sativa L.*);
- (ii) rice (*Oryza sativa L.*);
- (iii) wheat (*Triticumvulgare, T. Compactum, T sphaerococcum, T durum, T aestivum L., T. dicoccum*);
- (iv) Jowar or milo (*Sorghum vulgare Pers*);
- (v) bajra (*Pennisetumtyphoideum L.*);
- (vi) maize (*Zea mays L.*);
- (vii) ragi (*Eleusine coracana Gaertn*);
- (viii) kodon (*Paspalumscrobiculatum L.*);
- (ix) kutki (*Panicummiliare L.*);
- (x) barley (*Hordeumvulgare L.*);
- (xi) coal, including coke in all its forms, but excluding charcoal:

#### **Section-15: Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.**

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:

- (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two percent of the sale or purchase price thereof, [\*\*\*] ;
- (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;
- (c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy ;
- (ca) where a tax on sale or purchase of paddy referred to in sub-clause (i) of clause (i) of section 14 is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purpose of sub-section (3) of section 5, the paddy and rice shall be treated as a single commodity ;
- (d) each of the pulses referred to in clause (vi-a) of section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.

## **LIABILITY IN SPECIAL CASES**

### **SECTION 16**

#### **Definitions**

#### **6. Under Section 16**

- (a) "appropriate authority", in relation to a company, means the authority competent to assess tax on the company;
- (b) "company" and "private company" have the meanings respectively assigned to them by clauses (i) and (iii) of sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956).

#### **Section 17- Company in liquidation**

- (1) Every person —
  - (a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or
  - (b) who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the appropriate authority.
- (2) The appropriate authority shall, after making such inquiry or calling for such information as it may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the appropriate authority would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

- (3) The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority under sub-section (2) and on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

PROVIDED that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of the payment of the tax payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the appropriate authority reasonable.

- (4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by, or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of the tax which the company would be liable to pay:

PROVIDED that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

- (5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.
- (6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

## **AUTHORITY TO SETTLE DISPUTES IN COURSE OF INTER-STATE TRADE OR COMMERCE**

### **1. Central Sales Tax Appellate Authority**

- (1) The Central Government shall constitute by notification in the Official Gazette, an Authority to settle inter-State disputes falling under section 6A read with section 9 of this Act, to be known as “the Central Sales Tax Appellate Authority (hereinafter referred to as the Authority)”.
- (2) The Authority shall consist of the following Members appointed by the Central Government, namely:-
- (a) a Chairman, who is a retired Judge of the Supreme Court, or a retired Chief Justice of a High Court;
  - (b) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India; and
  - (c) an officer of a State Government not below the rank of Secretary or an officer of the Central Government not below the rank of Additional Secretary, who is an expert in sales tax matters.

- (2A) Notwithstanding anything contained in sub-section (2), the Chairman or a Member holding a post as such in the authority for Advance Rulings appointed under clause (a) or clause (c), as the case may be, of sub-section (2) of section 245-O of the Income-tax Act, 1961 (43 of 1961) may, in addition to his being the Chairman or a Member of that authority, be appointed as the Chairman or a Member, as the case may be, of the authority under this Act.
- (3) The salaries and allowances payable to, and the terms and conditions of service of the Chairman and Members shall be such as may be prescribed.
- (4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

Section 19A Vacancies, etc., not to invalidate proceedings No proceeding before the authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the authority.

## **Section 20 Appeals**

- (1) The provisions of this chapter shall apply to appeals filed by any aggrieved person against any order of the highest appellate authority of a State, made under section 6A

## **VALUE ADDED TAX (VAT)**

India does not have a classic Value-Added Tax (VAT) structure. Instead, separate tax on sale of goods and on rendering of services is imposed under different legislation. Sale and purchase of goods is subjected to charge of sales tax. Sales tax is levied under Central and State Sales Tax legislation depending upon the movement of goods in pursuance of a sale transaction. If the transaction involves movement of goods from one state to another (inter-state), the tax is levied under Central Sales Tax Act (CSTA), 1956.

This Act also covers transactions of import of goods into or export of goods out of India. Sales tax is not imposed on import of goods into the country or export of goods out of the country. The Central Sales Tax (CST) Act is administered by the state governments and the tax is levied at the origination of transaction (origin based levy). The revenue collected under Central Sales Tax Act is retained by the state governments. The rates of tax under Central Sales Tax Act vary from state to state and product to product. The standard rate of CST is 4 per cent or the lower rate applicable in the state of seller if the purchaser is purchasing the same for resale or for use in manufacture of goods for sale or for specified purposes and both the seller and buyer are registered dealers. Otherwise, the rate is higher of 10 per cent or the rate applicable in the state of sale.

The transactions of sales or purchases involving movement of goods within a state (intra-state) are governed by respective State Sales Tax Acts. States also levy tax on transactions which are "deemed sales" like works contracts and leases. A works contract essentially is a contract for carrying out work involving supply of labor and material where the property in the materials passes during the course of execution of the contract. Lease is a transaction involving transfer of right to use goods.

From 1 April 2005, 21 states of India have replaced local sales tax with VAT. The rest of the states are still continuing to impose sales tax. The VAT, as introduced by 21 states, is not much different from local sales tax regime except that it captures value addition at each level of distribution network. The State VAT, as introduced by the states, continues to be a tax on sale of goods and does not include taxation of services. The standard rate of VAT is 12.5 per cent and there is reduced rate of 4 per cent. Besides that, there are exemptions and rate of 1 per cent and 20 percent for specified products.

In addition to sales tax, some states also levy additional tax / surcharge, turnover tax or entry tax. Sales tax / state VAT is payable by the seller to the government. Ordinarily, sales tax / state VAT is recovered from the buyer as a part of consideration for sale of goods.

### **TAMIL NADU VALUE ADDED TAX, 2006**

“Casual trader” means a person who has, whether as principal, agent or in any other capacity, occasional transactions of a business nature involving the buying, selling, supply or distribution of goods in the State, whether for cash, or for deferred payment, or for commission, remuneration, or other valuable consideration, and who does not reside or has no fixed place of business within the State.) “dealer” means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes—

- (i) a local authority, company, Hindu undivided family, firm or other association of persons which carries on such business;
- (ii) a casual trader;
- (iii) a factor, a broker, a commission agent or arhati, a del credere agent or an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed;
- (iv) every local branch of a firm or company situated outside the State;
- (v) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
- (vi) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (vii) a person engaged in the business of delivery of goods on hire purchase or any system of payment by instalments;
- (viii) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (ix) a person engaged in the business of supplying by way of, or as part of, any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

**Explanation I.** - A society including a co-operative society, club or firm or an association which, whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash, or for deferred payment or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act:

**Explanation II.** - The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act;

**Explanation III.** - Each of the following persons or bodies who dispose of any goods including unclaimed or confiscated or unserviceable or scrap surplus, old or obsolete goods or discarded material or waste products whether by auction or otherwise directly or through an agent for cash or for deferred payment or for any other valuable consideration, notwithstanding anything contained in this Act, shall be deemed to be a dealer for the purposes of this Act to the extent of such disposals, namely:-

- (i) Port Trust;
- (ii) Municipal Corporations, Municipal Councils and other local authorities constituted under any law for the time being in force;
- (iii) Railways administration as defined under the Railways Act, 1989;
- (iv) Shipping, transport and construction companies;
- (v) Air Transport Companies and Airlines;
- (vi) Any person holding permit for the transport vehicles granted under the Motor Vehicles Act, 1988 which are used or adopted to be used for hire;
- (vii) The Tamil Nadu State Road Transport Corporations;
- (viii) Customs Department of the Government of India administering the Customs Act, 1962;
- (ix) Insurance and Financial Corporations or Companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934;
- (x) Advertising agencies; and
- (xi) Any other corporation, company, body or authority owned or set up by, or subject to administrative control of the Central Government or any State Government.

“Registered dealer” means a dealer registered under this Act;

“sale” with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes -

- (i) a transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
- (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (iii) a delivery of goods on hire-purchase or any system of payment by instalments;
- (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;



- (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

**Explanation I.-** The transfer of property involved in the supply or distribution of goods by a society (including a co-operative society), club, firm or any association to its members, for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

**Explanation II.-** Every transfer of property in goods by the Central Government or any State Government for cash or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

**Explanation III.-** Every transfer of property in goods including goods as unclaimed or confiscated or unserviceable or scrap surplus, old, obsolete or discarded materials or waste products, by the persons or bodies referred to in Explanation III in clause (15) of section 2 for cash or for deferred payment or for any other valuable consideration whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

**Explanation IV.-** The transfer of property involved in the purchase, sale, supply or distribution of goods through a factor, broker, commission agent or arhati, del credere agent or an auctioneer or any other mercantile agent, by whatever name called, whether for cash or for deferred payment or other valuable consideration, shall be deemed to be a purchase or sale, as the case may be, by such factor, broker, commission agent, arhati, del credere agent, auctioneer or any other mercantile agent, by whatever name called, for the purposes of this Act.

**Explanation V.-**

- (a) The sale or purchase of goods shall be deemed for the purposes of this Act, to have taken place in the State, wherever the contract of sale or purchase might have been made, if the goods are within the State —
  - (i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and
  - (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation.
- (b) Where there is a single contract of sale or purchase of goods, situated at more places than one, the provisions of clause (a) shall apply as if there were separate contracts in respect of the goods at each of such places.

**Explanation VI.-** Notwithstanding anything to the contrary contained in this Act, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place —



- (a) when the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser, or
- (b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of the cases aforesaid-
  - (i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal at another rate, or
  - (ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate, or
  - (iii) not to have accounted to his principal for the entire collections or deductions made by him in the sales or purchases effected by him on behalf of his principal.

“Taxable turnover” means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed.

“Total turnover” means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not, the whole or any portion of such turnover is liable to tax; (41) “turnover” means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (33), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

**Explanation I.-** “Agricultural or horticultural produce” shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or dying;

**Explanation II.-** Subject to such conditions and restrictions, if any, as may be prescribed in this behalf -

- (i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of, or before the delivery thereof;
- (ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover;

**Explanation III.-** Any amount realised by a dealer by way of sale of his business as a whole, shall not be included in the turnover;

**Explanation IV.-** Any amount, charged by a dealer by way of tax separately without including the same in the price of the goods sold, shall not be included in the turnover;

## **REGISTRATION OF DEALERS:**

### **Under Section 38**

- (1) (a) Every dealer, whose total turnover in respect of purchase and sale within the State in any year is not less than ten lakhs of rupees and every other dealer whose total turnover in a year is not less than five lakhs of rupees shall, and Registration of dealers.

- (b) any other dealer or person intending to commence business may, get himself registered under this Act.
- (2) Where a person intending to commence business is a minor or where a minor inherits an existing business or succeeds a dealer, the certificate of registration shall be issued in the name of any guardian, trustee or agent of the minor carrying on business on behalf of and for the benefit of such minor.
- (3) Notwithstanding anything contained in sub-section (1),—
  - (a) every casual trader;
  - (b) every dealer in bullion, gold, silver and platinum jewellery including articles thereof and worn-out or beaten jewellery and precious stones;
  - (c) every dealer registered under sub-section (3) of section 7 of the Central Sales Tax Act, 1956;
  - (d) every dealer residing outside the State, but carrying on business in the State;
  - (e) every agent of a non-resident dealer;
  - (f) every factor, broker, commission agent or arhati, del credere agent or auctioneer or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed; and
  - (g) every dealer who in the course of his business obtains or brings goods from outside the State or effects export of goods out of the territory of India shall get himself registered under this Act, irrespective of the quantum of his turnover in such goods.
- (4) Where a registered dealer -
  - (a) dies, or
  - (b) transfers or otherwise disposes of his business, in whole or in part, or
  - (c) effects any change in the ownership of his business, in consequence of which he is succeeded in the business, or part thereof, by any other person, such successor in business shall, unless he already holds a certificate of registration get himself registered under this Act.
- (5) The Government may, from time to time, by notification —
  - (a) exempt from the operation of sub-section(1), or sub-section (3), or sub-section (4) any specified class of dealers or dealers in any specified goods or class of goods;
  - (b) enhance the total turnover limit specified in sub-section (1) for the registration of any specified class of dealers or dealers in any specified goods or class of goods.
- (6) Any exemption under clause (a) and any enhancement of the total turnover limit under clause (b) of sub-section (5) —
  - (a) may extend to the whole State or to any specified area or areas therein;

- (b) may be subject to such restrictions and conditions as may be specified in the notification.
- (7) The Government may, by notification, cancel or vary any notification issued under sub-section (5). (8) Nothing contained in this section shall apply to any State Government or Central Government.

## **PROCEDURE FOR REGISTRATION.**

### **Under Section 39.**

- (1) An application for registration shall be made to such authority, in such manner and within such period as may be prescribed and shall be accompanied by a fee of five hundred rupees for the principal place of business and in addition, a further fee of fifty rupees in respect of each of the places of business other than the principal place of business.
- (2) If the authority granting certificate of registration is satisfied that the application is in order, it shall register the applicant and grant to him a certificate of registration in the prescribed form specifying all his places of business with copies for each of his place of business other than the principal place of business.
- (3) A certificate issued under sub-section (2) shall take effect from such date as may be specified.
- (4) Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of the tax payable under this Act it may, at any time, while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security or, if the dealer has already furnished any security in pursuance of an order under this sub-section such additional security, as may be specified in the order for the aforesaid purpose.
- (5) No dealer shall be required to furnish any security or additional security under sub-section (4) by the authority referred to therein, unless he has been given an opportunity of being heard. The amount of security which a dealer may be required to furnish under sub-section (4) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section (4) by the authority referred to therein, shall not exceed one half of the tax payable, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished.
- (6) Where the security furnished by a dealer under sub-section (5) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.
- (7) The authority granting the certificate of registration may by order and for good and sufficient cause forfeit the whole or any part of the security furnished by the dealer for realizing any amount of tax or penalty or interest payable by the dealer:

Provided that no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

- (8) Where by reason of an order under sub-section (7), the security furnished by any dealer is rendered insufficient, he shall make up the deficiency in such manner and within such time as may be prescribed.
- (9) The authority granting the certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under this section or, where the security is furnished by the dealer in the form of a pledge, release the pledge, if it is not required for the purpose of this Act, or if in the course of three years the dealer proves himself to be prompt in payment of tax and above reproach in the conduct of his business.
- (10) The certificate issued under sub-section (3) shall be valid till it is cancelled by the competent authority or on the closure of business.
- (11) If the authority granting the certificate of registration is satisfied that a registration certificate or a copy thereof is lost or accidentally destroyed, it shall, on an application by the registered dealer accompanied by a fee of one hundred rupees, issue to him a duplicate of the registration certificate.
- (12) A registered dealer shall exhibit at each place of his business the registration certificate, or a duplicate, or a copy thereof.
- (13) A registered dealer shall be entitled to have his registration cancelled, if he is able to prove to the satisfaction of the prescribed authority that his turnover in each of the two consecutive years immediately preceding the application was less than the limit specified in section 3.
- (14) The authority granting the certificate of registration may, by order, for good and sufficient reasons to cancel, modify or amend any certificate of registration granted by it.
- (15) No application for registration or for a copy or duplicate of the certificate under this section shall be refused and no order under sub-section (14) shall be made, unless the dealer concerned has been given an opportunity of being heard.

#### **AUTHORITIES UNDER THE ACT:**

Section 48 : The Government may appoint a Commissioner of Commercial Taxes and as many Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes (Enforcement), Appellate Assistant Commissioners of Commercial Taxes, Territorial Assistant Commissioners of Commercial Taxes, Administrative Assistant Commissioners of

Commercial Taxes, Assistant Commissioners of Commercial Taxes (Assessment), Assistant Commissioners of Commercial Taxes (Enforcement) and Commercial Tax Officers, as they think fit, for the purpose of performing the functions respectively conferred on them by or under this Act. The Commissioner of Commercial Taxes shall perform the functions conferred on him throughout the State, and the other officers shall perform their functions within such local limits as the Government or any authority or officer empowered in this behalf, may assign to them.

Appointment of Commissioner of Commercial Taxes, Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes and Commercial Tax Officers.

### **Constitution of Appellate Tribunal.**

Provided that as nearly as may be one half of such additional members shall be Judicial Officers not below the rank of a Subordinate Judge and the remaining additional members shall possess such qualifications as may be prescribed.

- (3) Any vacancy in the membership of the Appellate Tribunal shall be filled by the Government.
- (4) (a) The functions of the Appellate Tribunal may be exercised -
  - (i) by a Bench consisting of three members constituted by the Chairman; or
  - (ii) by a Bench consisting of two members constituted by the Chairman;
  - (iii) by a single member of the Appellate Tribunal nominated in this behalf by the Chairman, in cases where the disputed turnover as determined by the assessing authority does not exceed one lakh of rupees.

**Explanation**—The single member referred to in sub-clause (iii) may be either the Chairman or any other member: Provided that, if any case which comes up before a single member (who is not the Chairman) or a Bench (of which the Chairman is not a member) involves a question of law, such single member or Bench may, in his or its discretion, reserve such case for decision by a Bench of which the Chairman shall be a member.

- (b) Where an appeal or application is heard by a Bench consisting of three members and the members differ in opinion on any point, the point shall be decided in accordance with the opinion of the majority.
  - (c) Where an appeal or application is heard by a Bench consisting of two members, and the members are divided in their opinion on any point, the point shall be referred for decision to a Bench consisting of three members, of whom one shall be the Chairman.
- (5) The Appellate Tribunal shall, with the previous sanction of the Government, make by notification, regulations consistent with the provisions of this Act and the rules made thereunder for regulating the constitution and the procedure and the disposal of its business.

### **Appeal to High Court.**

- (2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (3) In disposing of an appeal, the High Court may, after giving the appellant a reasonable opportunity of being heard,—
  - (a) in the case of an order of assessment—
    - (i) confirm, reduce, enhance or annul the assessment or penalty or both; or
    - (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or (iii) pass such order as it may think fit; or

- (b) in the case of any other order, confirm, cancel or vary such order:  
 Provided that at the hearing of any appeal, the assessing authority shall have the right to be heard either in person or by a representative.
- (4) Every order passed in appeal under this section shall be final.
- (5) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:  
 Provided that the High Court may, in its discretion, give such directions as it thinks fit, in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction, in such form and in such manner as may be prescribed.
- (6) (a) The appellant or respondent may apply for review of any order passed by the High Court under sub-section (3) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made.  
 (b) The application for review shall be preferred within such time, and in such manner as may be prescribed, and shall, where it is preferred by the assessee, be accompanied by such fee as may be prescribed.
- 60. (1) Within ninety days from the date on which the order under sub-sections (4), (5) or (7) of section 58 is served, any person who objects to such order or the Deputy Commissioner may prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law:

### **Revision by High Court**

Provided that the High Court may, within a further period of ninety days, admit a petition preferred after the expiration of the first mentioned period of ninety days aforesaid if it is satisfied, that the petitioner had sufficient cause for not preferring the petition within the first mentioned period.

- (2) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall, where it is preferred by any party other than the Deputy Commissioner, be accompanied by such fee as may be prescribed.
- (3) If the High Court, on perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition summarily:  
 Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard.
- (4) (a) If the High Court does not dismiss the petition summarily, it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal, with the opinion of the High Court on the question of law raised or pass such order in relation to the matter as the High Court thinks fit.  
 (b) Where the High Court remits the matter under clause (a) with its opinion on the question of law raised, the Appellate Tribunal shall amend the order passed by it in conformity with such opinion.



- (5) Before passing an order under sub-section (4), the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal, and direct it to return the petition with its finding on any specific question or issue.
- (6) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the order against which the revision has been preferred.
- (7) (a) The petitioner or the respondent may apply for review of any order passed by the High Court under clause (a) of sub-section (4) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made.  
  
(b) The application for review shall be preferred within such time, and in such manner as may be prescribed, and shall, where it is preferred by any party other than the Deputy Commissioner, be accompanied by such fee as may be prescribed.
- (8) In respect of every petition or application preferred under sub-section (1), or clause (a) of sub-section (7), respectively, the costs shall be in the discretion of the High Court.

**Petitions and appeals to High Court to be heard by a Bench of not less than two Judges.**

Section .61: Every appeal preferred to the High Court under section 59 and every petition under section 60 shall be heard by a Bench of not less than two Judges, and in respect of such appeal or petition the provisions of section 98 of the Code of Civil Procedure, 1908 shall, so far as may be, apply.



# **4. CLINICAL COURSE - III**

## **DRAFTING, PLEADING & CONVEYANCING**

### **PLEADINGS & RULES OF HIGH COURT (Appellate & Original)**

#### **GENERAL**

##### **1. Pleadings shall mean complaints or written statements (O vi RI.)**

Pleadings shall contain a statement of the material facts on which the party pleading relies for his claim or defence, as the case may be in concise form, but not the evidence, by which they are to be proved, and shall be divided into paragraphs, numbered consecutively dates, sums and numbers shall be expressed in figures (order vi Rules 2). In a pleading, facts should be stated and questions of Law need not be mentioned. In all cases in which the party relies on any mis-representation, fraud, breach of trust, wilful default, undue influence or coercion, particulars with dates and items, if necessary, shall be stated in the pleading, (O vi R4) Where the suit is in respect of immovable property, a description of the property sufficient to identify it, should be given in the plaint (O vii R3). Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in the pleading. The performance of any condition precedent need not be alleged therein. (O vi R6) Wherever the contents of any document are material, it shall be sufficient in any pleadings to state the effect thereof as briefly as possible. It is not necessary to state the whole or any part of a document; unless any word therefrom is considered absolutely necessary (O vi R9). Where it is material to allege malice, fraudulent intention and the like, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the same may be inferred (O vi R10). Implied contract if any, between the parties should be alleged in the pleadings. Fact which the law presumes in favour of a party need not be alleged in pleadings (O vi R12).

##### **1. (a) Written Statement**

A general denial of the grounds alleged in the plaint is not enough. The denial has to be specific and should not be evasive or general. Each allegation of fact not admitted should be dealt with specially except damages (O viii R3). Written statement must show all points whereon the defendant claims the suit as not maintainable. All facts which show that the transaction is either void or voidable in law and all grounds of defence which is not raised would be likely to take the plaintiff by surprise or would raise issues of fact not arising out of the plaint (for example- fraud, limitation, release, payment performance of facts showing illegality) should be specifically mentioned (O viii R2). Defendant, in his written statement, may fully deny all the allegation made in the plaint, each of which should be denied separately in specific paragraphs. He may also admit them but at the same time answer them by alleging fresh facts or by raising questions of Law. In such case by way of amendment, in his turn, the plaintiff may reply denying the facts alleged by the defendant admitting the new facts raised by the defendant, but rebutting them alleging further fresh facts.

## **2. Verification of Pleadings**

Every pleading shall be signed by the party and his pleader (if any). When a party pleading is, by reason of absence of or other good cause unable to sign himself, it may be signed on his behalf by any other person authorised by him. The party must sign at the right hand bottom corner of every page of the plaint or the written statement and only of those petitions which are required by law to be signed by the party. In cases requiring verification, the pleadings and petitions shall be verified at the bottom of the last page. The person verifying shall specify by reference to the numbered paragraphs, what he verifies of his own knowledge and what he verifies on information and believes to be true. The verification shall further state the place where it is signed and shall bear the date. Persons able to write must sign their own names both at the corners and also at the end of the verification. Verification at the bottom of the plaint need not be signed by all the plaintiffs. It is sufficient, if the same is signed by one of them with the consent and knowledge of others. Plaint or written statement in a suit by or against the Government shall be signed by such person as the Government may appoint in this behalf and the verification may be signed by such person acquainted with the facts of the case. The Secretary or any Director or any other principal officer, who is able to depose to facts of the case may sign and verify the pleadings on behalf of a Corporation. Where persons sue or being sued as partners, the pleadings may be signed and verified by any one of such persons. In case of an illiterate person, somebody should sign the name of the person and also his own names as writer and the party shall put his mark.

## **3. Drawing up Plaints, Written Statements and Affidavits**

Parties : All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction is alleged to exist, whether jointly severally or in the alternative, where if such persons brought separate suits, any common question of law or fact would arise (O i R 1 ). It is not necessary that every defendant should be interested as to all the reliefs claimed in any suit against him (O i R 5). When in a suit two or more persons join as plaintiffs their right to relief should arise from the same act or transaction and their should be common questions of law or fact. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons, any common question of law or fact would arise (O i R 3). The court must have jurisdiction against all the defendants. There must be same common link amongst the defendants it is not necessary that all the defendants should be interested in all the reliefs or that their liability should be the same. A suit will be bad for misjoinder or defendants and causes of action or multifariousness, if in one and the same suit, different causes of are joined against different defendants.

4. All persons having an interest either in the mortgage security or in the rights of redemption shall be joined as parties to any suit relating to the mortgage. But a puisne mortgage may sue for foreclosure or for sale without making the prior mortgage a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgagee (order xxxiv R.I.C.P.C.). The object is to avoid multiplicity of suits. A person who sets up a title paramount to that of the mortgage or mortgagee should not be joined as a party, for he is neither interested in the mortgage security nor in the right of redemption. The interest of a person, who ought to have been joined as a party (e.g. puisne mortgage or assignee of mortgagee security) but has not been impleaded, remains unaffected.

## **5. Misjoinder and Non-Joinder**

All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and in all cases, where issues are settled at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived. A statement that a suit is bad for misjoinder of parties is not enough. It is necessary to mention specifically the names of the persons to be impleaded. (Order i. R. 13, C.P.C.). A case of misjoinder of plaintiffs and causes of action will arise, when in a suit there are two or more plaintiffs and two or more causes of actions and the plaintiffs are not jointly interested in all the causes of action (Or ii, R 3 C.P.C.) read with (or ii, RI C.P.C.). No suit shall be defeated by reason of the mis-joinder or non joinder of ' parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interest of the parties actually before it (Order i. R. 9 C.P.C.) But if necessary parties to a suit are not before the Court, so that no effective decree can be passed, the suit must fail. Thus a suit for ejectment is not maintainable in the absence of some of the landlords or tenants. A suit for partition is bound to fail if all the co-owners have not been made parties. Similarly, a suit for dissolution of partnership shall fail, if all the partners have not been impleaded.

**6.** The court may at any stage of the proceedings strike out or add parties (O.1 .R. 10 C.P.C.). The Court has no jurisdiction to add party unless he is necessary or proper party. When after the institution of a suit a party is added as defendant, the proceedings as against such person shall be deemed to have begun only on the service of the summons (O.1.R.10 (5)).

## **7. Representative Suits**

Where there are numerous persons having the same interest in one suit one or more of such persons may, with the permission of court sue or be sued or may defend in such suit on behalf of or for the benefit of all persons so interested, and the court may direct that one or more of such persons may sue or be used or may defend such suit on behalf of or for the benefit of all persons as interested, (or i R 8 (1) ). But in such case the Court may direct notice of institution of the suit by personal service on the defendants or by public advertisement (Order i, R 8 (2) C.P.C.). Any person on whose behalf or for whose benefit the suit has been instituted or defended may apply to the court, to be made a party to suit (O i R 8 (3) C.P.C.)

The proper course is to obtain permission before the suit is instituted. Permission may also be granted even after the institution of the suit. Claims in such suits can not be abandoned or withdrawn or compromised, unless the court has given at plaintiff's expense notice to all interested persons, (or) 8 (4) court may substitute any plaintiff or defendant not proceeding with due diligence with any other person having same interest in the suit (O i R 8 (5)). A decree passed in such a suit shall be binding on all persons on whose behalf or for whose benefit the suit is instituted or defended as the case may be (O i R 8 (6)). It is not necessary in such a suit that each plaintiff or defendant should have the same cause of action as the other plaintiffs or defendants.

## **8. Suits by or against minors or persons of unsound mind**

Every suit by minor or a person of unsound mind shall be instituted in his name by a person, who in such suit shall be called the next friend. In suits against such persons the plaintiff should apply for appointment of guardian for the defendant (Order xxxii C.P.C.) such person is called next friend in the case of a minor plaintiff and guardian adlitem or guardian in the case of a defendant. A decree against an unrepresented minor does not bind him. A court guardian will be appointed if the court finds no persons fit and willing to act as guardian is available.

## 9. Misjoinder-Causes of Action

Different Causes should not be joined in the same suit, for a suit may be dismissed for the mis-joinder of causes of action. When two or more-plaintiffs are jointly interested in two or more causes, of action, they may be joined together in one suit. In other cases, i.e. when they are not so interested, mis-joinder of plaintiffs and causes of action will result. If in the same suit different causes of action are joined against different defendants separately the suit becomes bad for multifariousness. Such a mis-joinder in case of irregularity and a Court will not interfere on that account, if the merit of the case could be otherwise satisfactorily decided. All persons jointly and severally liable under a contract may be made defendants at the plaintiff's option. (Order in Rule 6 C.P.C.) Persons who have no interest in the subject matter should not be made parties so that the plaintiff may not be unnecessarily saddled with costs.

## 10. Misjoinder of Claims

No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property except.

- a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof.
- b) claims for damages for breach of any contract under with the property or any part thereof is held.
- c) claims in which the relief sought is based on the same cause of action (Order ii, Rule 4, C.P.C.)

Where other claims for movable property, or money are made in a suit for recovery of immovable property, an application shall be filed with the plaint for taking permission of the Court for joining the claims in the same suit, and such leave may be granted, if the two classes of claims can be conveniently disposed of in one suit. Leave of the Court is not necessary in seeking recovery of movable and immovable property in one suit, if the cause of action is the same in respect of both.

**11.** Plaintiff should include in the suit the whole of the claim, which he is entitled to make in respect of the cause of action. Where a plaintiff omits to sue in respect of any portion of his claims or internationally relinquishes the same, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person who is entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits expect with the leave of the court to sue for any such reliefs, he shall not afterwards sue for any relief so omitted. This is generally known as the bar under Order ii Rule 2 C.P.C. It is however open to a plaintiff to relinquish any portion of the claim in order to bring the suit within the jurisdiction of any court.

## 12. Plaints (General)

Order vii C.P.C. provides, that plaint shall contain the following particulars.

- (1) Name of the court
- (2) Name and description and place of residence of the plaintiff
- (3) Name and description and place of residence of defendant
- (4) Where any party to the suit is a minor or a person of unsound mind statement to that effect and in the case of minor a statement as to his age, if the same can be ascertained
- (5) Facts constituting the cause of action and when it arose

- (6) Facts showing that the court has jurisdiction
- (7) The relief claimed by the plaintiff
- (8) Where the plaintiff has allowed a set off or relinquished a portion of the claim, the amount so allowed or relinquished and
- (9) A statement of the value of the subject matter of the suit for the purpose of jurisdiction and court fees. In money suits plaintiff shall state the precise amount claimed.

In suits for mesne profits or for taking account or for recovery of movables or for recovery of debts, the value of which cannot be estimated, it is sufficient, if the plaintiff shall state the approximate amount of value (O. vii-R 2j).

Plaintiff shall show the ground upon which exemption from law of limitation is claimed, in case the suit is filed after the expiry of the period of limitation (O. vii-R 6).

Plaintiff shall show the ground upon which exemption from law of limitation is claimed, in case the suit is filed after the expiry of the period of limitation (O. vii-R 6).

Plaintiff shall also contain a list of documents, if any on which plaintiff relies whether in her possession or not-Documents in the possession of plaintiff and on whom the plaintiff sues should be produced and copy of such document shall be filed with the plaintiff (O vii-R 14).

**13. Forms of plaint (Common to all cases)**

**(i) Name of the Court**

In the court of the Subordinate Judge\*.....

District Judge \*.....

\*here enter the name of Town.

or

In the Court of..... \*Assistant Judge, City

.....Civil Court

Additional Madras.

\*here enter the number

or

In the Court of .....Judge,

Small cause Court, Madras.

or

In the High Court of Judicature, Tamilnadu

(Original Jurisdiction)

**(ii) Parties**

Between A.B.

Plaintiff

and C.D

Defendant

Minor A.B by next friend X.Y.

Plaintiff

Minor C.D. by guardian R.S.	Defendant
A.B. (a person of unsound mind) by next friend X.Y.	Plaintiff
C.D. (a person of unsound mind) by guardian, R.S.	Defendant
A.B. a firm by its partners X,Y and Z	Plaintiff
C.D. a firm by its partners R,S and T	Defendant
A.B. a Public Limited Company by X, Principal Officer	Plaintiff
C.D. a Public Limited Company by R, Principal Officer	Defendant
Union of India by	Plaintiff
Union of India by	Defendant
State of Tamilnadu by Collector of .....or by Secretary.....Department	Plaintiff
State of Tamilnadu by Collector of.....or by Secretary..... Department	Defendant

**(iii) Description, Address of Plaintiff and Address for Service.**

Plaintiff is A.B. son of E.F., aged..... employed as .....and residing at.....The address for service of all notices and communications is that of his counsel Mr.G.H.....Law chambers etc.

**Minor :** Plaintiff is minor A.B. aged.....son of E.F. residing at..... and represented by the next friend X.Y. the address for service is that of his counsel Mr.G.H.....aw chambers etc.

**Person of unsound mind :** Plaintiff is A.B. a person of unsound mind, aged.....son of E.F. residing at .....represented by X.Y. The address for service etc., is that of his counsel Mr. G.H.....etc.

**Firm :** Plaintiff is a firm carrying on business in partnership at.....and represented by the Partners X.Y. and Z Address for service.....etc; is that of their counsel Mr.G.H.....etc.

**Company :** Plaintiff is a public private Limited Company having its registered office at.....and represented by G.H. Principal Officer authorised to sue on behalf of the company.

Address for service.....etc.

Union of India or

Plaintiff is Union of India or

State of .....

State of.....by.....

.Address for service....etc.

**(iv) Description of Defendant :**

Defendant is C.D. son of J.K. aged ..... employed as.....and residing at.....which is the address for service of Summons and notices.

**Minor :** Defendant is C.D. a minor aged.....(or whose age could not be ascertained by plaintiff) son of L.M. residing at.....and represented by R.S,the guardian orL.M. the father and natural guardian and appointed by the Court inI.A. of 200.....Address for service of summons and notices is that of the address of the said guardian viz.....

**Person of unsound mind :** Defendant is C.D. son of J.K. and aged.....a person unsound mind residing at .....and represented by R.S. the guardian, appointed by the court in I.A. of 200.....Address of the said guardian viz .....

**Firm :** Defendant is a firm carrying on business in partnership at ..... and represented by the Partners R.S. and T. Address for service of all summons and notice is .....

**Company :** Defendant is a Private or Public Limited Company having its registered office at .....and represented by G.H. the person authorised to sue to behalf of the company. Address for service of all summons and notices is the address of the registered office of the defendant.

Union of India or State of ..... Plaintiff is Union of India or State of.....by.....Address for service of all summons and notices to.....

- (v) Plaintiff presented under Order vii C.P.C.
- (vi) Paragraphs containing facts on which claim is based.
- (vii) Paragraph containing facts mentioning as to when and where the cause of action arose and also about the territorial jurisdiction of the Court.
- (viii) Paragraph containing a Statement of the purpose of court fees and jurisdiction and the court fee paid on the plaint and the provision of law.
- (ix) Relief claimed by the plaintiff.

**(x) Verification**

Plaintiff declares that facts stated in paragraphs.....are true to his knowledge and that what is stated in paragraphs.....has been stated on information and belief and plaintiff believed the same to be true.

Dated this day.....at .....



Counsel for Plaintiff.

Plaintiff

(ix) List of documents filed under O vii R. 14 C.P.C.

Serial Number	Date of Document	Parties to Document	Description of Document

**14. Formal parts of plaint of suits of the value of less than Rs.30,000.**

In the Court of the District-Munsif.....

Original suit No.....of 200.....

between

AB                      Plaintiff

and

CD                      Defendant

Plaint under Order vii C.P.C.

The plaintiff states as follows :

- 1 . Plaintiff is A.B. son of E.F. aged.....employed as.....and residing at.....The address for service of all notices and communications is that of his counsel, Madras G.M.....(here enter counsel’s address)
2. Defendant is CD son of J.K. aged..... employed as.....and residing at..... which is the address for service of summons and all notices.
3. Paragraphs consecutively numbered mentioning facts on which claim is based and which from the cause of action.  
**\*Note :** The portion containing name of Court, number of proceedings names of parties is known as Cause Title.
4. The cause of action arose at.....within the jurisdiction of this Hon’ble court on ..... (and on subsequent dates when..... ) (to be added only if necessary)

5. The value of the suit for the purposes of court fees and jurisdiction is Rs..... and plaintiff has paid a Court fee of Rs..... and Plaintiff has paid a court fee of Rs.....under Section.....of Tamil Nadu Court Fees and Suit Valuation Act.
6. The plaintiff prays that the Hon'ble court may be pleased to pass a decree for ..... Plaintiff declares that facts stated in paragraphs .....e true to his knowledge and that what is stated in paragraphs.....has been stated on information and belief and plaintiff, believes the same to be true.

Dated this day..... at.....

Counsel for Plaintiff

Plaintiff.

List of documents filed under (See Paragraphs 13 under 7 Order vii Rule 14 C.P.C.)

### 15. **Plaint on a promissory Note**

Cause Title etc. up to paragraphs 2 of 14.

3. The defendant borrowed a sum of Rs.....on..... and executed a promissory Note for the said amount at.....undertaking to repay the amount to the plaintiff or order with interest at.....% per annum.
4. The defendant has not repaid any amounts (or has paid only a sum of Rs..... and has endorsed the same on.....on the Promissory Note) inspite of oral demands and the notice dated.....A sum of Rs.....is due by the defendant, towards interest and principal.
5. The Cause of action arose on..... at.....within the jurisdiction of this court (and on.....when the defendant made a part payment and made the endorsement on the promissory note) and on.....when notice demanding payment was sent served on the defendant.
6. The suit is in time as the plaint has been presented within 3 years after the execution of the promissory note (or plaint has been presented with years from the date of the last endorsement of part payment.)
7. The value of the suit for the purpose of court Fees and Jurisdiction is Rs..... and a court fee of Rs.....has been paid under Section 22 Tamil Nadu court Fees and Suit valuation Act.
8. The plaintiff prays that the Hon'ble court may be pleased to pass a decree directing the defendant to pay a sum of Rs.....with future interest and costs.

#### **Verification**

Counsel for Plaintiff

Plaintiff

List of Documents filed under O vii Rule 14 CPC.

Serial Number	Date of Document	Parties to Document	Description of Document
1.		Defendant executed in favour of Plaintiff	Promissory Note for Rs ..... (No endorsement or with endorsement)
		Plaintiff to Defendant	Notice dated.....

**16. Plaint on a suit on lost promissory note :**

(Note : O vii Rule 16 provides that where the suit is founded upon a negotiable instrument and it is proved that the instrument is lost and an indemnity is given by the Plaintiff to the satisfaction of the Court, against the claims of any other person upon the instrument, the Court may pass such decree as it would have passed, if the plaintiff had produced the instrument in Court, when the plaint was presented. It is therefore necessary that the plaint should mention that the promissory note had been lost. Plaintiff should besides the plaint file a petition for accepting the identity bond.)

- (1) & (2) Cause Title etc., up to paragraphs 2 of 14.
- (3) The defendant borrowed a sum of Rs.....on..... and executed a promissory note for the said amount at.....undertaking to repay the amount to the plaintiff or order with interest at.....% per annum.
- (4) The suit promissory note has been lost and the plaintiff herewith gives indemnity to the satisfaction of this court against the claims of any other person upon the suit promissory note as provided under Order vii Rule 16 C.P.C.
- (5) The defendant has not repaid any amount inspite of several demands and a sum of Rs.....is due by the defendant.

6 to 9, Same as 5 to 8 of the form in 15.

**Verification**

Counsel for Plaintiff

Plaintiff

List of documents - Nil

Besides the plaint following petition and indemnity bond should be filed.

**Petition :**

In the court of the .....  
I.A. No..... of 200.....  
in  
O.S. No. of 200

**Between :**

A. B.....Plaintiff / Petitioner  
and  
C.D .....Defendant

Petition submitted under Order vii Rule 16 C.P.C.

1. Petitioner has filed the suit for recovery of the amount due under a promissory note executed by the defendant.
2. The said promissory note has been lost.
3. The petitioner is offering indemnity against claims any of other person upon the said promissory note as required by Order vii Rule 16 C.P.C.
4. Petitioner therefore prays that the indemnity bond submitted herewith may be accepted.

Petitioner declares that the paragraphs 1 to 4 are true to his knowledge.

Dated this day the.....200....

Petitioner’s Counsel

Plaintiff/ Petitioner.

**Indemnity Bond :**

This Indemnity Bond is executed by A.B. Son of .....  
aged.....residing at.....in favour of Thiru X, the District  
Munsif / Sub Judge of .....and his successors in office.

Whereas one C.D. had executed a promissory note for Rs ..... in favour  
of the executant of this Bond and subsequently the said promissory note has been  
lost.

Whereas the executant has filed a suit for recovery of the amount due to under the said  
promissory note.

Whereas Order 7 Rule 16 requires the giving of indemnity to the rates faction of this court  
against the claims of any other person upon the said promissory note. Now the executant hereby  
undertakes to indemning and keep harmless the defendant against the claims of any other  
person upon the said promissory note.

Executed this day the .....at.....

Witness :

A.B.

(1) .....

(2).....

## 17. Suit on a simple mortgage deed.

1 to 3 Cause Title etc., upto paragraph 2 of 14.

4. The defendant honoured a sum of Rs.....and executed at..... a simple mortgage deed undertaking to repay the amount with interest at .....% per annum. The property more fully described in the schedule of which he is the owner was given as security for the repayment.
5. The period of redemption was fixed as..... years.
6. The defendant has paid only a sum of Rs .....and a sum of Rs ..... and a sum of Rs .....is due. Defendant has not repaid the balance inspite of oral demands and notice dated.
7. The Hypotheca is situate within the local limits of this court.
8. The cause of action for this suit arose on .....when he defendant executed the mortgage deed on.....when the period of redemption expired.
9. The value of the suit for the purpose of the court fees and jurisdiction is Rs.....and a court fee of Rs .....s been paid under Section 33 (1) Tamil Nadu Court Fees and Suits Valuation Act of 1955.
10. The plaintiff therefore prays.
  - i) That a preliminary mortgage decree, be passed against the defendant for the sum of Rs.....with future interest and costs of the suit.
  - ii) That a time be fixed in the decree for payment of the amount due and that in default of payment within the time allowed a finaldecree for sale may be passed for sale or the hypotheca.  
and
  - iii) That in case the sale proceeds are found to be insufficient to satisfy the decree, then the plaintiff be given the liberty to apply for a personal decree for the balance.

### Schedule of Property

(Description of the property mortgaged)

### Verification

List of documents (Tabular) from as in 14.

1. Mortgage deed dated, executed by defendant.
2. Notice dated ..... issued to the defendant.

## 18. Redemption suit (Simple mortgage)

Cause Title, parties etc., as in 14.

4. Plaintiff executed a simple mortgage deed in favour of the defendant on..... for Rs.....creating a security over the plaintiff's property more fully described in the schedule. The mortgage amount is repayable with interest at.....% per annum and the period of redemption was fixed as.....years. The hypotheca is situated within the jurisdiction of this court.

5. Plaintiff was requesting the defendant to receive the mortgage amount together with the interest, but the latter has been evading to do so.
6. Only a sum of Rs.....is due under the mortgage.
7. The cause of action for the suit arose on .....the date of execution of the mortgage deed and on the subsequent days when plaintiff offered to pay the mortgage amount.
8. The value for the purposes of court fees and jurisdiction is Rs.....and a court fee of Rs.....has been paid under Section 33 (8) of Tamil Nadu Court Fees and Suits Valuation Act.
9. The Plaintiff therefore prays for :
  - (i). A decree for redemption of the mortgaged property and for ascertaining the amount due under the mortgage and for allowing time to the Plaintiff to pay off the amount so found due; and
  - (ii). To release the property from the mortgage debt on such payment; and
  - (iii). Direct the defendant to return to the plaintiff the title deeds deposited with him at the time of execution of the mortgage; and
  - (iv). Direct the defendant to pay the costs of the suit and grant such other relief the plain tiff is found entitled to.

### **Schedule of Property**

### **Verification**

*List of Documents:*

#### **19. Suit for partition of Joint Family properties.**

Cause Title, parties etc., as in 14.

4. Plaintiff and Defendants constitute a Joint Hindu Family owning the properties described in the schedule. The properties have been in common enjoyment of the parties.
5. Plaintiff and Defendants are each entitled to .....share in the Joint Family Properties.
6. Plaintiff does not want to remain joint with the defendants and hence he called upon them by a Notice dated .....to effect a partition. Defendant have been evading the partition.
7. The cause of action for the suit arose on ..... when the plaintiff demanded partition.
8. The value of the suit for the purposes of Court fees is Rs.....being the value of the plaintiff's share and as parties are in common enjoyment a fixed court fee of Rs.200\* is paid under Section 37 Tamil Nadu Court Fees and Suits Valuation Act.
9. The plaintiff prays for.
  - (1) Preliminary decree for partition of the properties according to the share of the parties.
  - (2) For the appointment of a Commissioner for effecting division by metes and bounds.

(3) For passing a final decree as per such division.

(4) For costs of the suit and for such other relief the parties are found entitled.

\*Note : Court fee of Rs.200 has to be paid if plaintiff's share is of the value of Rs. 100,000 and above, of Rs.100 if the value is between Rs.5,000 and 1 ,000 or Rs.300 if the value is less than Rs.5,000.

## **Schedule of Property Verification**

List of documents

### **20. Suit for Dissolution of Partnership**

Cause Title etc., as in 14.

4. The Plaintiff and defendants entered into a partnership agreement on..... and have been carrying on business of the partnership under the name and style as.....which is the name of the firm. The firm has been registered under the provisions of Partnership Act and the firm has been doing business at .....within the jurisdiction of this court.
5. Plaintiff and defendants are each entitled to..... %of the profits of the firm. Parties have also contributed principal amounts as mentioned in the partnership agreement.
6. The firm has been working in profit and there are no liabilities. Nevertheless due to serious differences of opinion between the partners, it has become impossible to carry on the partnership. Further defendants have also been acting against the interests of the partnership. Plaintiff therefore prays for dissolution of the partnership.
7. The cause of action for this suit arose on.....the date of execution of the partnership and on the subsequent dates when the defendants acted against the interests of the partnership thereby, making it impossible for the partnership to function.
8. The plaintiff tentatively values his share etc. at Rs.....which is the value of the suit for the purpose of Court Fees and Jurisdiction and pays a Court Fees of Rs .....under Section 36 Tamil Nadu Court Fees and Suit Valuation Act. Plaintiff is prepared to the appropriate court fee on the amount found due to his share on taking accounts.
9. The plaintiff prays for a decree for :
  - (1) Dissolution of the partnership
  - (2) Taking accounts to ascertain the amount due to the plaintiff, and to pass a decree for the amount so found due and
  - (3) For costs of the suit.

### **Verification**

List of Documents :

- (1) Partnership agreement dated .....

### **21. Suit for Declaration of Title and recovery of possession**

Cause Title etc. as in 14.

4. Plaintiff is the absolute owner of the property more fully described in the schedule having purchased the same from XY on.....The property is situate within the jurisdiction of the Court.



5. Plaintiff has been in possession and enjoyment of the property from the date of purchase.
6. Defendant has no manner of right in the property. He has forcibly occupied the property on He was required by a Notice to vacate and deliver possession. He has failed to do so and has sent a reply claiming title to the property.
7. The cause of action for the suit arose on when the defendant took forcible possession of the property.
8. The value of the suit for the purposes of Court Fee and Jurisdiction is Rs..... and a Court fee of Rs..... has been paid under section 25(a) Tamil Nadu Court Fees and Suits Valuation Act.
9. The plaintiff therefore prays for a decree.
  - (i) Declaring plaintiff's title to the suit property;
  - (ii) Directing the defendant to deliver possession of the property;
  - (iii) Directing defendant to pay future profits, to be ascertained by the court; and
  - (vi) For the costs of the suit.

### **Schedule of the property Verification**

List of Documents :

1. Sale dated in favour of plaintiff executed by X, Y.
2. Copy of Notice dated ..... sent by Plaintiff.
3. Reply dated ..... sent by defendant.

Plaintiff's counsel

Plaintiff

## **22. Suit for Recovery of possession under Section 6 Specific Relief Act**

**Note :** Suit for recovery of possession under Section 6 Specific Relief Act should be instituted within 6 months from the date of dispossession. As the question of possession alone is material, the question of title is not relevant. Mesne profits cannot be asked in this suit. Half of the Court fee payable for other suits for recovery of possession or on Rs.200, whichever is higher has to be paid for this suit.

Cause Title etc. as in 14.

4. The property more fully described in the schedule has been in the open and peaceful possession of the plaintiff for a long time.
5. The defendant has trespassed upon the property on.....and has dispossessed the plaintiff.
6. The suit is in time as the same is being instituted within 6 months from the date of dispossession.
7. The cause of action for the suit arose on ..... the date on which the defendant dispossessed the plaintiff and at..... where the property is situated and which is within the jurisdiction of this court.
8. The value of the suit for the purposes of court fee and jurisdiction is Rs..... and a court fee of Rs ..... is paid under section 29 Tamil Nadu Court Fees and Suits Valuation Act.

9. The plaintiff therefore prays for a decree
  - i) directing the defendant to deliver possession of the property under Section 6 Specific Relief Act and
  - ii) directing the defendant to pay the costs of the suit.

**Schedule of property**

**Verification**

Plaintiff Counsel

Plaintiff

**23. Suit for Recovery of arrears of Rent**

Cause Title, etc. as in 14.

4. Plaintiff is the owner of the building more fully described in the Schedule and situate within the Jurisdiction of this Hon'ble court.
5. The building was leased to the defendant on .....for a monthly rent of Rs.....and the rent is payable on the 1 st or every succeeding month. The tenancy month has to be reckoned from the first of the calender month.
6. The defendant has not paid the rent from.....and rent for.....months is in arrears. The defendant has not paid the arrears of rent in spite of repeated demands and a notice dated.....was sent by the plaintiff to the Defendant which the defendant has acknowledge.
7. The cause of action for suit arose at.....on.....and the date of the original lease and on.....the dates, when the defendant defaulted in the payment of the monthly rent.
8. The value of the suit for the purpose of court fees and jurisdiction is Rs.....and a court fee of Rs.....has been paid under Section 22 of the Tamil Nadu Court Fees and Suits Valuation Act.
9. The plaintiff therefore prays for a decree directing the defendant to pay the sum of Rs.....with interest costs of the suit.

**Schedule of Property**

Verification as in 14

Counsel for the Plaintiff

Plaintiff

**24. Suit for value of goods sold and delivered. Cause title etc. as in 14.**

4. The plaintiff is doing business in.....at.....situate within the jurisdiction of this Honourable Court.
5. The defendant purchased .....quantity of.....on.....for a sum of Rs.....He paid only a sum of Rs.....and the balance of Rs.....is due by defendant, even though he had taken delivery of the entire goods. The balance amount is payable to the plaintiff at his place of business.
6. The defendant has not paid the balance despite demands. The defendant is liable to pay the balance amount with the interest at.....% per annum from the date of delivery as per the contract and trade usage. The total sum of Rs .....is thus

due from the defendant.

7. The cause of action arose at.....where the goods were delivered and where the balance is payable and on.....the date of delivery of the goods, and on the subsequent days, when demands were made for the balance.
8. The suit is valued at Rs.....for the purposes of court fees and the jurisdiction and a court fee of Rs .....is paid under section 22 of the Tamilnadu Court Fees and Suits Valuation Act.
9. The plaintiff therefore prays for a decree directing the defendant to pay a sum of Rs.....with future interest and cost.

Verification as in 14.

Plaintiff's Counsel

Plaintiff

## **25. Suit for setting aside decree on ground of fraud**

Cause title etc., as in 14.

4. The defendant has obtained a fraudulent decree against the plaintiff in O.S. No.....of 200.....in this court.
5. The defendant did not take out the summons to the proper address of the plaintiff. The plaintiff has been residing at.....at all relevant times. The suit claim was false to the knowledge of the defendant. The suit document. The defendant had completely suppressed information about the suit from the knowledge of the plaintiff.
6. The decree obtained by the defendant is therefore liable to be set aside on account of the fraud played by the defendant as mentioned above.
7. The cause of action for the suit arose on.....when plaintiff became aware of the said decree.
8. The value of the suit for the purposes of jurisdiction and court fees is Rs.....and a court fee of Rs.....is paid under Sec.40 Tamil Nadu Court Fees and SuitsValuation Act.
9. The plaintiff therefore prays for a decree setting aside the decree passed against him in O.S. No.....of.....and the directing the defendant to pay the costs of the suit.

### **Schedule of Property if any**

#### **Verification**

Plaintiff's Counsel

Plaintiff

## **26. Suit for setting aside alienation by guardian of minor**

Cause title etc., as in 14.

4. The plaintiff was born on.....and attained majority on.....The first defendant was the guardian of the plaintiff during his minority. Plaintiff is governed by Hindu Law.
5. The property described in the schedule belongs to the plaintiff and the same was managed by the first defendant. The plaintiff understands that the first defendant has alienated the said property in favour of the second defendant on.....The

said sale is not binding on the plaintiff as there was no legal necessity for the same. The plaintiff was also not benefitted by the same. The sale was also for grossly inadequate consideration.

6. The plaintiff is therefore entitled to have the sale set aside and to recover the possession of the property from the second defendant with profits past and future.
7. The cause of action for the suit arose on.....the date on which the impugned, alienation was made and on.....when plaintiff attained majority.
8. The suit is in time as it has been instituted within three years after the plaintiff attained majority.
9. The suit has been valued for the purposes of court fees and jurisdiction at Rs.....and the court fee of Rs.....has been paid under Section 40 Tamil Nadu Court Fees and Suits valuation Act.
10. The plaintiff therefore prays for a decree
  1. Setting aside the sale dated.....in favour of the second defendant;
  2. Directing the second defendant to deliver possession of the suit property;
  3. Directing the second defendant to pay a sum of Rs.....as past profits;
  4. Directing the second defendant to pay future profits at the rate to be fixed by the court; and
  5. Directing the defendants to pay the costs of the suit.

### **Schedule of the Property**

#### **Verification**

List of documents in tabular form

1. Copy of sale deed dated .....executed by the first defendant as the guardian of the plaintiff in favour of the second defendant.

Plaintiff's Counsel

Plaintiff

### **27. Suit for damages for breach of contract.**

Cause title etc. as in 14.

4. The defendant entered into an agreement on..... with the plaintiff undertaking to supply.....bales of cotton at the rate of Rs.....per bale, It was agreed that the supply should be made within three months and time was the essence of the contract.
5. The defendant supplied only.....bales and did not supply the balance.
6. The plaintiff had to purchase the remaining bales from other dealers at the rate of Rs..... per bale. The plaintiff has therefore sustained a loss of Rs..... which was occasioned by the defendant's breach of contract.
7. The cause of action for the suit arose on.....the date on agreement and at.....with in the jurisdiction of this Court, where delivery is to be effected.
8. The value of the suit for the purposes of court fees and jurisdiction is Rs..... and a court fee of Rs.....is paid under Sec.22, Tamil Nadu Court fees and suits valuation Act.

9. The plaintiff therefore prays for a decree directing the defendant to pay a sum of Rs.....as damages and further pay the costs of the suit.

### Verification

List of documents in tabular form as in 14.

1. Agreement dated.....executed by the defendant in favour of the plaintiff.

Plaintiff's Counsel

Plaintiff

## 28. Suit for damages for malicious prosecution

Cause title etc., as in 14.

4. The defendant preferred a complaint against the plaintiff in the Court of.....and the plaintiff was tried in C.C. No.....of 200....., for an offence under Section.....Indian Penal Code.
5. The plaintiff was ultimately acquitted on
6. The defendant has prosecuted the plaintiff without any probable and reasonable cause and the prosecution was also malicious.
7. The plaintiff suffered loss of reputation and mental agony valued of Rs.....and he had to incur expenditure of Rs.....for attending the court for various hearings, and had to incur an expenditure of Rs.....towards the fees for his counsel and an expenditure of Rs.....for other expenses for defending the case. The plaintiff also sustained a loss of Rs.....as he was unable to look after his business during the trial of the case. The plaintiff will therefore be entitle to recover a total sum of Rs.....as damages from the defendant.
8. The cause of action for the suit arose on.....the date when the criminal cause was instituted and on.....when the plaintiff was acquitted by the Court in.....within the jurisdiction of this Court.
9. The value of the suit for the purposes of court fees and jurisdiction is Rs.....and court fee of Rs.....is paid under Section 22, Tamilnadu Court Fees Suits Valuation Act.
10. The plaintiff therefore prays for a decree directing the costs of the suit.

### Verification

List of documents in tabular form as in 14

1. Copy of the judgment of the Criminal Court dated .....
2. Fee certificate dated..... issued by the Plaintiff's counsel.

Plaintiff's Counsel

Plaintiff

## 29. Suit for damages against Railway

Cause title etc., as in 14.

4. The plaintiff booked 200 bags of wheat for transport from Calcutta to Madras for carriage at railways risk. The forwarding note was executed on.....
5. At the time of delivery of goods at Madras only 150 bags were delivered and the

remaining bags were found missing. The Value of those fifty bags works out of Rs.....

6. The plaintiff sent a notice under Sec.78 (b) Railways Act claiming the said value of the bags not delivered. Subsequently notice under Sec.80 C.P.C. was also sent on.....
7. The cause of action arose on....., when delivery was given if only 150 bags at Madras.
8. The plaintiff values the suit at Rs.....for the purposes of court fees and jurisdiction and court fee of Rs.....is paid under Section 22 Tamilnadu Court Fees and Suit Valuation Act.
9. The plaintiff therefore prays for a decree for Rs.....as damages with subsequent interest and costs of the suit.

### **Verification**

List of documents in tabular as in 14.

1. Copy of Notice dated.....under Section 78(b) Railways Act.
2. Copy of Notice dated.....under Section 80 C.P.C.
3. Copy of invoice dated.....showing value of the bags.

Plaintiff's Counsel

Plaintiff.

### **30. Suit for Accounts against Agent**

Cause title etc., as in 14

4. The defendant was the agent of plaintiff from.....to.....and he was managing the properties of the plaintiff situate at.....within the jurisdiction of this court.
5. The defendant had collected the entire income from the properties during the said period but he has not rendered any account.
6. The defendant as the agent is bound to render true and proper accounts and pay the amount due to the plaintiff. Large amount are due to the plaintiff and the plaintiff tentatively values the suit at Rs.....
7. The cause of action for the suit arose at.....where the property is situate and where the defendant resides and works and on-when the agency was terminated.
8. The plaintiff tentatively values the suit at Rs-and pays a court fee of Rs-under Section 35 Tamilnadu Court Fees and Suits Valuation Act. The plaintiff undertakes to pay the court fee on the actual amount ascertained by the court.
9. The plaintiff therefore prays for a decree
  1. directing the defendant to render accounts.
  2. to ascertain the amount due to the plaintiff.
  3. direct the defendant to pay the cost of suit.

### **Verification**

List of documents in tabular form as in 14.

1. Power of Attorney dated.....executed by the plaintiff in favour of the defendant on

2. Copy of notice dated.....sent by the plaintiff to the defendant terminating agency.

Plaintiff's Counsel

Plaintiff

### 31. Suit for specific performance

Cause title etc., as in 14

4. The defendant executed an agreement on .....undertaking to convey the suit property to the plaintiff for a sum of Rs.....within a period of.....month for a sum of Rs.....Plaintiff has paid a sum of Rs.....as advance.
5. The plaintiff has been ready and willing to conclude the sale by paying the balance of Rs.....but the defendant has been evading execution of the sale and he has finally refused to execute the sale. The plaintiff is therefore entitled to a decree for specific performance of the agreement of sale and recovery of possessions of the suit property. Plaintiff is also entitled in the alternative to recover the advance amount paid by him and a compensation of Rs .....being the loss sustained by him.
6. The cause of action for the suit arose on.....the date of execution of the sale agreement and on the subsequent days, when the defendant evaded and ultimately refused to execute the sale. The cause of action arose at..... where the property is situate within the jurisdiction of this Court.
7. The suit is valued at Rs.....being the consideration for sale and a court fee of Rs.....is paid under Section 42 of the Tamil Nadu Court Fees and Suits Valuation Act of 1955.
8. The plaintiff prays for a decree:
  1. for specific performance directing the defendant to execute the sale of the suit property in favour of the plaintiff and
  2. to deliver possession of the suit property, or in alternative for a decree directing the defendant to pay a sum of Rs.....as compensation and
  3. for the costs of suit.

### Schedule of the Property

#### Verification

List of documents in tabular form as in 14

1. Agreement of sale dated.....executed by this defendant in favour of the plaintiff

Plaintiff's Counsel

Plaintiff

### 32. Written Statements

General principles relating to written statements have been dealt within paragraph 1(a). Order VIII C.P.C. contains the rules regarding written statements. A defendant, who claims a set-off against the plaintiff's demand can claim a set-off of any ascertained sum of money legally



recoverable from the plaintiff not exceeding the pecuniary limits of the court, provided both parties fill the same character as they fill in plaintiff's suit. The written statement containing particulars of set-off should be filed at the first hearing of the suit and can be filed later only, if permitted by the court. Likewise, a defendant can also prefer a counter claim regarding any rights or claim in respect of any cause of action accruing against the plaintiff either before or after the suit, but before delivering his defence has expired. The counterclaim should not exceed the pecuniary jurisdiction of the court. The counter claim shall have the same effect as a cross suit and the plaintiff shall be at liberty to file a written statement in answer to the counter claim. The defendant is also bound to produce in court at the time filing the written statement, a list of documents relied on by him, and should also produce either the documents or copies thereof. Failure to file in the suit being decreed.

**33. The written statement should also contain the cause title which is as follow:**

In the Court of the.....  
 O.S. No.....of 200.....

Between A B	Plaintiff
and	
C D	Defendant

**33. The forms of written statements in various suits are given below:**

Allegations to suit the defences peculiar to each should be added at the appropriate places. The forms are not exhaustive, nor should the defences mentioned alone should be taken as the available defences. Most of the available defences have been included. Some of them may be inconsistent with other. Only defences consistent with the facts of the particular case or the problem should be used, while drafting the written statement. It is also usual to incorporate the following as the first paragraph in written statements :- This defendant submit that allegations in the plaint that are not specifically admitted expressly denied and not admitted. The forms contain written statements corresponding to the plaints found in paragraphs 15 to 31 .

**34. Written statement in a suit on promissory Notes : (vide para 15)**

Cause title as plaint

Written statement of the defendant

Defendant states as follows :

1. He did not execute any promissory note in favour of the plaintiff either on the date mentioned in the plaint or on any other date.
  2. The defendant did not receive any consideration and the suit promissory note is therefore not supported by consideration.
- or
3. The suit promissory note is only partially supported the consideration, since the plaintiff paid only a sum of Rs.....
  4. The suit promissory note had been discharged by payment.
  5. The defendant has paid a total sum of Rs.....in addition to the payment given credit to by the plaintiff as detailed below:- (Here enter details of the payments)
  6. At any rate the suit is barred by limitation.

7. No part of the cause of action arose, within the jurisdiction of this court and hence, this court has no jurisdiction to try the suit.
8. The defendant therefore prays, that the suit may be dismissed with his costs. Verification as in plaint.

Defendant's Counsel

Defendant

### **35. Written statement in a suit on lost promissory Note (vide para 16)**

Cause title etc.,

Written statement filed by the defendant. The defendant states as follows:

1. The defendant did not borrow any amount from the plaintiff on the date mentioned in the plaint or on any other date.
2. The defendant did not execute any promissory note in favour of the plaintiff.
3. Plaint allegation, that the alleged promissory note, said to have been executed by the defendant is lost is not true, as the defendant had not executed any promissory note at any time in favour of the plaintiff.
4. The indemnity given by the plaintiff is not proper.
5. At any rate the suit is barred by limitation.

or

6. The suit claim has been discharged and the payments made by the defendant had been endorsed on the promissory note. The plaintiff has alleged that the promissory note, has been lost only with a view to get over those endorsements and with a view to cause loss to the defendant.
7. The defendant therefore, prays, that the suit may be dismissed with his costs. Verification Defendant's Counsel Defendant

### **36. Written Statement in a simple mortgage (Vide para-17)**

Cause Title etc.,

Written statement filed by the defendant. The defendant states as follows:

1. He did not receive any consideration for the mortgage. The plaintiff, who promised to advance the money subsequent to the execution did not do so.
2. The suit is barred by limitation.
3. The plaintiff has not given credit to all the payments made by the defendant. The following payments were made by the defendant (here enter details). It would thus be seen, that no amount is due from the defendant.
4. The interest claimed is excessive.
5. The defendant therefore prays, that the suit may be dismissed with his costs.

**Verification**

Defendant's Counsel

Defendant

### **37. Written Statement in a suit for redemption (Vide para 18)**

Cause Title etc.,

Written statement filed by the defendant. The defendant states as follows:

1. The execution of the mortgage by the plaintiff in favour of this defendant is admitted.
2. The plaintiff had not paid any amount towards the mortgage.
3. The plaintiff allegation that only a sum of Rs.....is due under the mortgage is not correct. In fact a sum of Rs.....is due under the mortgage.
4. The plaintiff has not impleaded all the persons interested in the equity of redemption and hence, the suit is bad for non-joinder of necessary and proper parties.
5. At any rate the suit is barred by limitation.
6. The defendant therefore prays, that suit may be dismissed with his costs.

#### **Verification**

Defendant's Counsel

Defendant

### **38. Written Statement in a suit for partition (vide para 19)**

Cause Title etc.,

The written statement filed by the defendant No.

The defendant states as follows:

1. The plaintiff allegation that only the plaintiff and defendant constitute a joint Hindu family is not correct. X,Y,Z are also members of the joint family, The suit is therefore bad for non-joinder of necessary parties.
2. The plaintiff has not included all the joint family properties in the suit and hence, the suit is bad for partial partition.
3. The plaintiff is not correctly set out the share of each co-parcener. In fact, plaintiff is only entitled to.....share and not the share claimed by him.
4. The plaintiff is not in common enjoyment of the suit properties. The court fee paid is therefore not correct, and the suit has also not been properly valued.
5. The defendant pays court fee under section 37 (3) Tamilnadu Court Fees and Suits Valuation Act and prays for partition of his.....share in the properties.
6. The defendant therefore prays, that his share in the properties may be divided by metes and bounds.

#### **Verification**

Defendant's Counsel

Defendant

### **39. Written statement in a suit for dissolution of partnership (vide para 20)**

Cause Title etc.,

The written statement filed by the defendant

The defendant states as follows :

1. The partnership agreement pleaded in the plaint is admitted.

2. There were no serious differences of opinion between the partners and this defendant and other defendants did not act against the interest of the partnership. The partnership as mentioned in the plaint is working profitably and there is no need to dissolve the partnership.
3. The plaintiff has been overdrawing from the funds of the partnership and these defendants have objected to the same. Plaintiff, who has been maintaining the accounts has not kept proper account and he has to render proper accounts.
4. The various amounts advanced by this defendant as mentioned below have not been entered in the accounts (Here enter details)
5. This defendant therefore prays for the dismissal of the suit with his costs.

**Verification**

Defendant's Counsel

Defendant

**40. Written statement in a suit for declaration of Title and Recovery of Possession**

Cause Title etc.,

The written statement filed by the defendant

The defendant states as follows :

1. The plaintiff is not the owner of the property as alleged in the plaint. Plaintiff's predecessor himself did not have title to the suit property. In fact, the property belonged to one ST. and he had settled the property on this defendant under the settlement deed dated...
2. The plaintiff was never in possession of the property at any time.
3. The allegation in the plaint, that the defendant tress-passed on suit property on.....is not true. The property has all along been in the possession of this defendant and that, of S.T for the past several twelve years. Such possession was peaceful, open exclusive and adverse to the plaintiff. This defendant has thus at any rate perfected title by adverse possession and the suit is barred by adverse possession.
4. The suit is also barred by limitation.
5. The plaintiff, who does not have title is not entitled to declaration of title or to possession.
6. The defendant therefore prays that the suit be dismissed with his costs.

**Verification**

Defendant's Counsel

Defendant

List of documents in Tabular column as in 14

1. Sale deed dated.....executed by.....in favour of S.T.
2. Settlement deed dated.....executed by S.T.....in favour of this defdant.
3. Tax receipts dated.....cause Title etc.,

**41. Written statement in suit under Section 6 Specific Relief Act (vide para 22)**

Written statement filed by the defendant.

The defendant states as follows:

1. The plaintiff was never in possession of the property, much less within 6 months prior to suit. The suit is therefore not maintainable.
2. The trespass alleged by the plaintiff is not true, as the defendant had always been in possession.
3. The plaintiff never had even possessory title.
4. The plaintiff is not entitled to recover possession.
5. The defendant pray for dismissal of the suit with his costs.

**Verifications**

Defendant's Counsel

Defendant

**42. Written Statement in suit for arrears of rent (vide para (23)**

1. The tenancy is admitted.
2. The monthly rent payable is only Rs.....and not Rs.....as alleged by the plaintiff.
3. The plaintiff has not given credit of the following payments made by the defendant. (Enter here details). The defendant submits that if credit is given to all payments made by him, no amount will be due by him.
4. The defendant could not send any reply as he was out of town. 5. The defendant prays, that suit may be dismissed with costs.

**Verifications**

Defendant's Counsel

Defendant

**43. Written statement in a suit for value of goods sold and delivered: (vide para 24)**

Cause Title etc.,

Written statement filed by the defendant.

The defendant states as follows :

1. The allegation of the plaintiff, that he supplied.....quantity is not true. The plaintiff supplied only.....Defendant informed the plaintiff that the entire quantity was not supplied. The plaintiff thereafter undertook to supply the balance, but he has not done so till now.
2. Plaintiff has not given credit to all the payments made by this defendant. The following payments were made by this defendant. (Here give details)
3. The plaintiff has supplied some defective goods. On his agreeing to take back the defective goods.....quantity of defective goods were returned to him. Plaintiff is therefore bound to deduct the value of the defective goods.
4. Defendant submits that on a proper calculation it would be seen, that no amount is due from him (or only a sum of Rs.....is due by him)

5. The defendant prays for dismissal of the suit (or that the suit may be decreed for Rs.....with proportionate costs)

### Verifications

Defendant's Counsel

Defendant

#### 44. Written Statement in suit for setting aside the decree on ground of fraud (vide para 25)

Cause Title etc.,

Written statement filed by the defendant.

The defendant states as follows :

1. The plaintiff's allegation that summons were not taken out to the correct address of the defendant is not correct. Summons were taken out to the correct address of the plaintiff himself in the letters written by him and those letters are produced herewith. Summons were thus taken to the correct address.
2. The suit document is a genuine document.
3. The suit claim is genuine.
4. It is the plaintiff, who plays a fraud by now furnishing an incorrect address. Summons could not be served on the plaintiff, since he avoided service of the summons. Ultimately substituted service was ordered on the court and publication in the newspaper.....was effected. Information about the suit was not suppressed or kept of the plaintiff.
5. Defendant submits that the decree is not vitiated by any fraud and hence this suit has to be dismissed with costs.

### Verification

List of Documents in Tabular form as in 14.

1. Letter written by plaintiff on.....
2. Letter written by plaintiff on.....
3. Letter written by plaintiff on.....

#### 45. Written statement in a suit for setting aside alienation (vide para 26)

Cause Title etc.,

Written statement filed by defendant No. 2

The Second defendant states as follows:

1. The alienation in favour of this defendant is admitted.
2. The first defendant is the father and natural guardian (or mention the relationship) of the quantum minor plaintiff and he had to discharge prior debts binding on the plaintiff. The following prior debts were discharged with the portion of the sale consideration (Here enter details of the debts, creditors names and amounts due and paid) The discharged instruments and receipts issued by the creditors are submitted herewith.
3. The first defendant was even unable to maintain the minor and money was required for the maintenance and education of the plaintiff. A sum of Rs..... was paid in cash for the said maintenance and education of the minor.
4. The sale was for proper price. The sale is for the reasons mentioned above binding on the plaintiff. This suit has been collusively filed at the instance of the

first defendant.

5. This defendant therefore prays that the suit may be dismissed with costs.

**Verification**

List of Documents in Tabular form as in 14.

1. Discharged promissory note executed by I defendant on.....in favour of .....
2. Discharged promissory note executed by I defendant on.....in favour of Y
3. Receipt dated.....issued by Z.

Defendants' Counsel

Defendant

**46. Written Statement in suit for damage for breach of contract (Vide para 27)**

Cause Title etc.,

Written Statement filed by the defendant.

The defendant states as follows :

1. The agreement mentioned in the plaint is admitted. Time was not the essence of the contract. The agreement nowhere mentions, that this defendant should effect the supply within 3 months.
2. The balance was not supplied under the following circumstances.
  - (a) The plaintiff did not lift the bales immediately on arrival but was evading and putting forth various untenable contentions.
  - (b) Plaintiff himself wanted this defendant to delay the supply of the balance on the ground, that plaintiff was expecting sanction of loan to him only after some time.
  - (c) There was some political agitation and strike and the defendant was not able to transport the bales.
3. The allegation that the plaintiff purchased bales at the rate of Rs.....per bale is not admitted. The ruling price at the relevant time was only Rs..... per bale which is the contract rate itself. The plaintiff has not therefore sustained any loss.
4. This court has no jurisdiction to try the suit because the agreement provides that all disputes should be decided by the court in.....town.
5. The defendant therefore prays that the suit may be dismissed with costs.

**Verification**

Defendant's Counsel

Defendant

**47. Written statement in Suit for Damages for malicious prosecution (vide para 28)**

Cause Title etc.,

Written statement filed by the Defendant.

The defendant states as follows:



1. The plaintiff was prosecuted because he committed the offence of.....  
The plaintiff is a powerful man and he was able to win over some witness and terrorize the plaintiff was acquitted. This defendant had sustained injuries because of the offence committed by the plaintiff. There was therefore reasonable cause for the prosecution.
2. This defendant immediately after occurrence reported the matter to the police who after independent investigation came to the conclusion that the plaintiff had committed the offence. In exercise of their independent judgement, the police filed the charge sheet and prosecuted the plaintiff. This defendant cannot therefore be held to have prosecuted the plaintiff.
3. As the plaintiff had actually committed the offence and as the prosecution was initiated by the police, the prosecution was not malicious.
4. The plaintiff did not suffer any loss of reputation or mental agony or any loss of income. The expenditures said to have been incurred by him are highly exaggerated.
5. The plaintiff is therefore not entitled to any damages and the damages claimed is in any event excessive.
6. The defendant therefore prays, that the suit may be dismissed with costs.

**Verification**

Defendant's Counsel

Defendant

**48. Written Statement in Suit for damages against Railways** (vide para 29)

Cause Title etc.,

Written statement filed by the defendant.

The defendant states as follows :

1. The consignment was carried with due care and caution and there was no negligence on the part of Railways.
2. The consignment was not properly packed as per the Regulations.
3. The statutory notices were not properly sent and within the time.
4. The value of the goods set out in the plaint is not correct.
5. The plaintiff is therefore not entitled to any damages and the damages claimed is in any event excessive.

**Verification**

Defendant's Counsel

Defendant

**49. Written Statement in Suit for Accounts against the Agent** (vide para 30)

Cause Title etc.,

Written statement filed by the defendant.

The defendant states as follows:

1. It is true that this defendant acted as agent of the plaintiff in the management of the properties of the plaintiff.

2. This defendant has no doubt collected the income from the properties during the relevant time. The plaintiff had been appraised of the income and expenditure.
3. The defendant has incurred an expenditure of Rs.....as mentioned in the statement of Accounts, for the management of the properties and the said amount has to be set off and only the balance is payable to the plaintiff.
4. The defendant therefore prays that the suit may be decreed for the actual amount due.

### **Verifications**

List of documents in tabular form as in 14

- |    |                     |           |
|----|---------------------|-----------|
| 1. | Accounts            |           |
|    | Defendant's Counsel | Defendant |

## **50. Written Statement in Suit for specific performances (vide para 31 )**

Cause Title etc.,

Written statement filed by the defendant. The defendant filed by the defendant.

The defendant states as follows :

1. The suit agreement is admitted.
2. The plaintiff was never ready and willing to complete the sale. The plaintiff did not at any time have sufficient money for taking the sale. He did not also meet this defendant or inform him that he was ready and willing to complete the same.
3. The plaintiff was called upon by a notice dated.....to complete the sale even there after the plaintiff did not come forward to complete the sale.
4. As the plaintiff had committed breach of the contract this defendant is entitled to forfeit the advance amount as per the contract.
5. The defendant therefore submits that the plaintiff is not entitle to any relief, and that the suit may be dismissed with costs.

### **Verifications**

List of documents in Tabular form :

- |    |  |           |
|----|--|-----------|
| 1. | Copy of notice dated.....sent by defendant to the plaintiff. |           |
|    | Defendant's Counsel  | Defendant |

## **51. Interlocutory applications**

These petitions filed in pending proceedings and are usually referred to as I.A.S. Most of these applications are filed with a supporting affidavit, wherein the necessary facts are alleged. Some petitions are filed as verified petitions, which are drafted like complaints with verification at the end. The following petitions are filed as interlocutory applications.

1. For appointments of guardian adlitem.
2. For leave to file suit.
3. For leave to file or defend the suit in representative capacity.

4. For appointment of Commissioner.
5. For interim injunctions.
6. For attachment before judgement.
7. For bringing on record legal representatives in pending proceedings.
8. For filing additional pleadings or for amendment of the pleadings.
9. For appointment of receiver in pending proceedings etc.

## 52. Original Petitions

These are petitions whereby any proceedings other than a suit or appeal or proceeding in execution is instituted in any court.

Example :

1. For transfer of pending proceedings from one court to another.
2. For divorce
3. For restitution conjugal rights.
4. For enhancement of compensation in land acquisition cases.
5. Rent control cases.
6. Motor accident claims etc.

## 54. Execution applications

These are various petitions filed on the execution side.

Example :

1. Bringing on record legal representatives in execution proceedings.
2. To recognise assignments of decrees.
3. For transfer of decrees to other courts for execution.
4. For reducing upset price etc.

### Affidavits

There are statements made on oath and may be sworn before any court or magistrate MPs, MLAs, MLCs, any advocate other than the advocate appearing for the party and some others mentioned in rule 34 civil rules of practice. The following are parts of affidavits.

1. Cause Title.
2. Description of defendant.
3. Affirmation
4. For reducing upset price etc.
5. Attestation

**Form :**

In the court of the.....

O.S. No.....of 200.....

(or number of proceedings)

Between AB

Plaintiff

and

CD

Defendant

Affidavit filed by .....

I, AB son of.....Hindu.....(state religion) aged about years.....residing at.....do hereby and solemnly and sincerely affirm and state as follows :

1. I am the.....(state whether plaintiff or defendant or petitioner or third party) and I am acquainted with the facts mentioned below :
2. Mentioned the facts in paragraphs
3. ....

Solemnly affirmed at  
this day the.....day of..... 200.....  
and has signed his name in my presence

Signature.....

Before me

.....

**55.** Facts that are necessary and on the basis of which the relief is prayed for have to be mentioned in convenient paragraphs in the affidavit. These facts have to be drawn up in accordance with the circumstances of each case. Hence, the following hints alone are given and affidavits should be accordingly drawn up.

**56. Appointment of Guardian :**

(See Or xxxii) Mention

- (1) Defendant is minor
- (2) Age
- (3) Name of proposed guardians
- (4) Their relationship with minor
- (5) Statement that proposed guardians do not have any interest adverse to the interests of the minor.

**57. Leave to sue or defend in representative capacity (see order I Rule 8)**

1. There are numerous persons having same interest in the subject matter of suit.
2. It is convenient that the persons mentioned in the petition may be permitted to sue or defend the suit on behalf of or for the benefit of all persons so interested.
3. That it is necessary to do so to avoid multiplicity of proceedings.

**58. Appointment of Commissioner (See Or xxvi)**

1. Necessity to gather the available evidence or to take inventory or to make local inspection or to take accounts or for dividing properties by meters and bounds.

**59. Interim injunction (See Order xxxix Rule 1)**

1. Existing state of affairs.
2. Threatened injury.
3. Property in dispute is in danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree or defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors.
4. Irreparable injury will result if interim injunction is not granted and that the injury cannot be compensated by award of damage.
5. In case of threatened trespass, that the plaintiff is in possession.

**60. Attachment before Judgement :** (See Or xxxviii Rule 5 and 6)

1. Claim against defendant.
2. Defendant with the intention to obstruct or delay the execution the decree that may be passed against him is about either to dispose of the whole or any part of his property or to remove the whole or any part of his property from the local limits of the court.
3. Property to be attached should be specified and value of the same should be furnished.

**61. Application for impleading Legal Representatives in pending Proceedings**

(see Or xxii Rules 3 and 4)

1. Fact of death of the party to the suit with date of death.
2. The persons, who are entitled to succeed, inherit and represent the estate.
3. That they may be brought on record as the Legal Representatives of the deceased party (either plaintiff or defendant).

**62. Amendment of pleadings :-** (see Or vi Rule 17)

1. The existing allegations in pleadings.
2. The need to bring on record correct allegations.
3. The proposed amendments.
4. There would be loss if amendment is not allowed.
5. Amendments do not alter the nature of the suit or cause of action.

**63. Appointment of Receiver :** (See Or xi Rule/CPC)

1. Details of property.
2. Persons who are in possession.
3. Persons who are collecting income and are managing properties.
4. Need to secure the property and income.
5. Property is likely to be wasted or is danger of being sold for debts of the defendant.

**64. Petition to set aside expert decree (Under Order ix Rule 13 C.P.C.)**

1. Suit had been filed against the petitioner for.....
2. Plaintiff, respondent had not given correct address of the petitioner in the plaint with the result summons was not served on the petitioner and the suit was decreed exparte on .....
3. Petitioner could not therefore attend the court. (If summons had been served instead of 2 and 3 mention the following:
4. Summons was served on the petitioner. But he could not attend the hearing due to his sickness, in evidence of which he produces medical certificate or he could not attend, because he had to attend the important function of.....at.....
5. He had not been negligent and was prevented by the said sufficient cause appearing, when the suit was called on for hearing. In cases of non-service of summons mention besides 2 and 3 that the petitioner could not attend the hearing as he was not ware of the suit and that the petition has been filed within 30 days from the date of the knowledge of the decree.
6. In case summons had been served, mention that petition has been filed with 30

days from the date of decree prayer should be for setting aside the ex parte decree dated.....passed against the petitioner in O.S. No.....20.....

**65. Petition to restore the suit dismissed for default (Under Order ix, R9)**

This petition has to be filed by the plaintiff mentioning

1. That he had filed the suit for .....
2. Date of hearing
3. He was unable to attend the hearing because.....  
(here give the reason for not attending the hearing)
4. That there was sufficient cause for his non-appearance.
5. Petition has been filed within 30 days from the date of dismissal of the suit. Prayer should be for restoring the suit dismissed for default.

**66. Affidavits mentioning facts**

Affidavits mentioning facts and points mentioned above have to be filed in support of the prayer in the petitions.

The petitions should be in the following form.

In the court of the.....

I.A. No of 200 in O.S. No.....of 200.....

Between

A.B.....

Petitioner/Plaintiff or Defendant

and

C.D Respondent/Defendant or Plaintiff

**Petition filed by.....under order.....Rule.....C.P.C.**

For the reasons mentioned in the accompanying affidavit the petitioner prays that the Hon'ble court may be pleased to pass an order.....(Mention here the relief claimed in the petitions)

Petitioner

**67. Original petitions**

These petitions are to be filed as verified petitions. Petition for transfer from one court to another : Necessity for transfer has to be mentioned.

**68. Petition for Divorce**

Section 13 Hindu Marriage Act 1985 provides for a decree of divorce on any of the following grounds. Other party has after the marriage.

1. Had voluntary sexual inter-course with some person other than the spouse.
2. Had treated the petitioner with cruelty.
3. And deserted the petitioner for a continuous period of not less than 2 years immediately proceeding the petition.
4. Had ceased to be Hindu by conversion to another religion.
5. Had been incurably of unsound mind or has been suffering continuously or

intermittently from mental disorder of such a kind and to such an extent, that the petitioner cannot reasonably be expected to live with the respondent.

6. Had been suffering from a virulent and incurable form of leprosy.
7. Had been suffering from Venereal disease in a communicable form.
8. Had renounced the world by entering any religious order.
9. Had not been heard of as being alive for period of 7 years.
10. There had been no resumption of cohabitation as between the parties for a period of one year or upwards after the passing a decree for judicial separation or restitution of conjugal rights for the period of one year or more after passing the decree restitution of conjugal rights.
11. By mutual consent.

**69. Wife can pray for divorce on following grounds :**

1. Husband had married any other wife.
2. Husband is guilty of rape sodomy or bestiality
3. A decree or order directing the husband to pay maintenance was passed and cohabitation had not been resumed for a period of one year and upwards thereafter.
4. Marriage was solemnized before 15 years of her age and she has repudiated the same before attaining 18 years.

**70. The following averments have to be made in the petitions for Divorce.**

1. Place and date of marriage.
2. Place where they lived after the wedding
3. Place where they lived last as husband and wife
4. Facts consisting the ground or grounds for divorce. (Sufficient details have to be furnished).
5. There had been no collusion between the parties.
6. Marriage was solemnized more than one year ago, if section 14 does not only. Mention following details :

In case following under :

**Ground No. 1:** Name of the person with whom the other spouse had sexual intercourse, the date, time and place.

**Ground No. 2 :** Details of acts of cruelty-Date, place nature of facts of cruelty - cruelty includes both physical and mental-False accusation of immorality is mental cruelty.

**Ground No. 3 :** Date of desertion and place.

**Ground No. 4 :** Date of conversion, place, religion to which converted.

**Ground No. 5:** Nature of mental disease, treatment given, period of illness and the fact that petitioner cannot reasonably be expected to live with respondent.

**Ground No. 6 :** Duration of leprosy, treatment given and allege that the leprosy is virulent and incurable.

**Ground No. 7:** Duration and type of venereal disease and that it is in communicable form.



**Ground No. 8:** Date place of renouncing the world and the religious order entered by the other spouse.

**Ground No. 9:** When and where he or she was last seen or was heard of and the fact that he or she was not heard of as being alive for a period of 7 years proceeding the date of filing the petition for divorce.

**Ground No. 10:** Date of passing the decree for decree for Judicial separation or restitution of conjugal rights, the court and number of O.P. in which the decree was passed Further mention that there had been no resumption of cohabitation between the parties for one year or more after passing the said decree.

**Ground No. 11:** Parties have been living separately for a period of one year or more and they have not been able to live together and that they have mutually agreed to dissolve the marriage.

### 71. Wife's Petition :

1. and 2. Mention details such as dates, names of persons place etc.
3. Details about the order date, court which passed the order, proceedings number etc. Also mention that cohabitation had not been resumed for one year and more subsequent to the order.
4. Mention date of birth of wife, marriage took place before she was 15 and that she had repudiated the wedding before she attained 18.

### 72. Form

In the court of the Assistant Judge,  
City Civil Court of Madras.  
(or Subordinate Judge of.....(mention town)  
O.P. No.....of 200.....

Between

AB .....

Petitioner

and

CD.....

Respondent

Petition under section 13 Hindu Marriage Act 1955.

1. Petitioner is husband wife of.....the respondent herein, Hind age residing at.....Address for service of all notices and communications is that of his counsel.
2. Respondent is wife/husband of petitioner aged..... Hindu residing at..... which is the address for service of summons and notices.
3. The petitioner and respondent were married on.....
4. ....
5. ....
6. The cause of action arose at.....where the parties were married (or where the parties last resided as husband and wife) and onand

subsequent dates when the various acts complained happened.

- 7. The petitioner therefore prays that this Hon'ble Court may be pleased to dissolve the marriage by a decree of divorce with costs.

**Verification**

Petitioner's counsel

Petitioner

**73. Judicial separation:**

Petition for Judicial separation can be filed by either the husband or the wife on any of the grounds mentioned as 1 to 8 in para 68. Wife can pray for Judicial separation on the first two grounds mentioned in para 69. (vide section 10 Hindu Marriage Act)

Original petition for Judicial separation has to be in more or less the same for of petition for Divorce with this difference that after cause title the following is written.

Petition under Section 10 Hindu Marriage Act 1955.

**74. Petition for Restitution of conjugal Rights :**

Petition for Restitution of conjugal Rights are also filed as original petitions mentioning date and place of marriage place of their living together last as husband wife and that the other party has without reasonable excuse withdrawn from the society of the petitioner (vide Section 9 Hindu Marriage Act 1955).

**75. Annulment of Marriage by a decree of Mutility :**

Here also an original petition has to be drafted like petition for divorce. The averments have to be drafted with necessary details and the requirement of law in section 12 Hindu Marriage Act 1955.

**76. Counters**

Counters are prepared following the principles to be followed for drafting written statements. Counters must contain the answer to the points raised in the petitions, and defence for the same. The following form is used.

In the court of the.....

I.A. No 200.....200.....

in O.S. No.....200.....

Between

AB.....

Petitioner

and

CD.....

Respondent

Counter Affidavit filed by the Respondent.

I, CD son of XY Hindu aged.....and residing at.....solemnly

and sincerely affirm and state as follows :

- 1. I am the Respondent in the petition and I am fully acquainted with the facts of the case.
- 2. ....
- 3. ....
- 4. ....

Solemnly affirmed at  
this day the .....day of .....200.....  
and has signed his name in my presence

Signature.....  
Before me

.....

### 77. Writ petitions

Habeas Corpus: An affidavit of the person filing the Habeas Corpus petition as well as supporting affidavits of some others (if necessary) have to be filed. The following will show the form and nature of averments.

In the High Court of Judicature at Madras  
Under Article 226 of Constitution of India.  
W.P. No .....of 200.....  
(Habeas Corpus)

S.Nallausamy

.....Petitioner

Vs.

The Sub-Inspector of Police, Sriperumbudoor Police Station

Chingleput District and another

.....Respondents

#### Affidavit of S. Nallusamy

I, S. Nallusamy, son of Sengodan, aged 32 Years residing at Arun. Sriperumbudoor Post, Chingleput Taluk, do hereby solemnly affirm and sincerely state as follows :

1. I am the petitioner herein and I am fully acquainted with the facts and circumstances of the case stated hereunder.
2. I state that I was working as a Part Time Instructor in National Adult Education Programme of the State Government sponsored by Tamil Nadu Board of Continuing Education Madras, for one year which ended in the last May (2000) At the time of working in the Scheme I had contact with Mr. Ranganathan who was working in the Rural Development Society, Chingleput and later with A. Ramamurthy an Advocate from Chingleput.
3. I submit that on 15th July 2000 when I was going to my uncle's village I saw a crowd of people on Mahabalipuram Tirukazhukundram Main Road near Kuzhipendanthalam village assemble in a sensitive mode talking to each other with an inquisitive look. When I went near the assembled group I saw Ranganathan was in the middle of the crowd answering to two Police Constables. When I tried to talk with Mr. Ranganathan one of the constables took me out and enquired about my relationship with Mr. Ranganathan. I replied that I have known him from days of our working in the National Audit Education Scheme and I also told the Constable he was a sincere social worker. At that time some of my friends interrogated me regarding some offences. They further told me that my presence there would result in to unnecessary risk of arrest by Police. So I proceeded to my uncle's village.
4. On 15th July 2000 returned back to my village in the evening and contacted some of my friends and told them about the arrest of Mr. Ranganathan. We tried to contact our Advocates at Chingleput but we were unable to get them in touch. The

arrest of Mr. Ranganathan was the talk of the surrounding villages. As I was not feeling well for nearly three days the date of his arrest. I was unable to know the subsequent happening in this matter.

5. I submit that people were talking about this arrest and there is a fear of young people is spreading all over the surrounding villages. Particularly the landless poor people feel insecure and started to avoid talks with even to their neighbours. As the person arrested is a well known social worker in that locality the fear and feeling of insecurity is a real and natural one.
6. I further state that Mr. Ranganathan started organizing the landless poor for getting the prescribed minimum wages from the landlords to whom the poor people were the source of exploitation. From January to March of this year this process of organizing the landless workers went on. At the end of March when the struggle had its strength to the highest level the landlords organized themselves to deny the minimum wages and refuse to cultivate their lands and thus put a pressure on the poor workers to go them to beg for their charity. When Mr. Ranganathan and other youth activists took steps to resist the landlords adamant attitude towards the poor landless workers, false charges were made against Mr. Ranganathan and others. I have never come across any single incident of misbehaviour or misdeeds by Mr. Ranganathan who had strong relationship with the poor. I have never seen him to appear as a Middle Class extravagant person.
7. On 20th July 2000 in the evening our Advocate came to the village and enquired me and other friends about the arrest of Mr. Ranganathan and they proceeded to the Sriperumbudoor Police Station and returned back after enquiring with the Police about the custody of Mr. Ranganathan. They stated to me that the concerned police denied any knowledge of Mr. Ranganathan. They again proceeded to enquire at Sunguvachatram Police Station, Thiruvallur Police Station and Pattunoolchathiram Police Station, which form part of the Sriperumbudoor Circle limits. They came back and reported that they found Mr. Ranganathan at Thiruvallur Police Station under unrecorded custody in a severely beaten condition.
8. I and my friends have an apprehension of danger to the life of Mr. Ranganathan in the hands of the Police who have already violated the law and established procedure. If such a condition is left unchecked the poor who are fighting for their just cause will be put to a state of subservient condition.

For the above stated reasons, I pray that this Honourable Court may be pleased to issue a Writ of Habeas Corpus of direction directing the respondents to release Mr. Ranganathan from the illegal custody or to pass any order as this Honourable

Court may deem fit and proper in the circumstances of the case and thus render justice Solemnly affirmed at Chennai, this the 21 st day of July 2000 .

In The High Court of Judicature of Madras  
Under Article 226 of Constitution of India  
WP No.....of 2000  
(Habeas Corpus)

S. Nallusamy

.....Petitioner

Vs.

Sub Inspector of Police, Mahabalipuram Police Station,  
Chingleput District and another

.....Respondents

**Supporting Affidavit of K. Sundaram**

I, K. Sundaram, Advocate, son K. Krishnan aged 40 years, residing at 3, Chirt Street, Pallavaram, Madras 43 Chingleput District do hereby solemnly affirm and sincerely state as follows :

1. I hereby submit that I am fully acquainted with the facts and circumstances of the case stated hereunder.
2. I state that I am an Advocate practising at Chingleput. On 19th July 1980 I was contacted and informed of the arrest of Mr. Ranganathan on 15th July in person by some of the villagers of Kuzhipantandharam village. I was contacted since they were aware of the fact that I had known Mr. Ranganathan earlier.
3. On 20th July I contacted my Advocate friend in Chingleput and informed them about the arrest of Mr. Ranganathan and his illegal custody by the police. There of my friends Mr. P. Sokkan. Mr. S. Nagalingam and Mr.A. Pitchandi agreed to go over to the villages and the police station to enquire and render help. Around 4 p.m. on 20th July we reached Kuzhipandantharam village and enquired the people about the alleged arrest of Mr. Ranganathan. The eye witness to the occurrence confirmed the fact that Mr. Ranganathan was taken to custody by the first respondent on the morning of 15th July 2000. We were also further informed that he was yet be remanded for judicial custody and his whereabouts were unknown which created suspicion and doubts in our minds.
4. Having further confirmed the petitioner herein we proceeded to the Sriperumbudoor police station and reached the Police Station around 5 p.m. and we were told that the Sub-Inspector was away and two constables who were on duty with whom we enquired whether one Mr. Ranganathan was taken into custody on 15th July 2000. We were told that no such person was taken into custody and one of the constables told us to enquire at Thiruvallur Town Police Station where 10 persons were supposed to be in custody.
5. I submit that we returned to meet the petitioner and the others to confirm about the facts. We were told that Mr. Ranganathan was shifted from one Police Station to another so we decided to inquire in all the Police Stations within the circle limits.
6. I submit that we proceeded to Sunkuvarchatram Police Station where the police constables denied any knowledge of Mr. Ranganathan. At last we reached Thiruvallur Police Station at about 6.30 p.m. and to our great shock we saw Mr. Ranganathan standing in the verandah of the Police Station. It was obvious to

the eye that he was bodily injured for both his legs and face were in a state of contusion and we saw cotton dressings on his feet. As soon as we entered the police station he recognized us and his face pathetic and it looked that he wanted to express something and he was unable to do. Then we passed on and met the Sub-Inspector Mr. Kumarasamy who accepted the fact that Mr. Ranganathan was brought from the Sriperumbudoor Police Station for recovery of stolen articles. He also disclosed the fact that no articles were recovered though Mr. Ranganathan within the Thiruvalluvar Police Station limits. He also wanted to know from us on what charges Mr. Ranganathan he frankly admitted that it was not in his hands but rests with the Sub-Inspector of Sriperumbudoor Police Station. Then we informed our desire to have an interview with the person in custody to which he was hesitant and evasive. When we insisted he half heartedly accepted the request and told us to wait since Mr. Ranganathan had been taken out by the Sriperumbudoor Police Station escort. We waited for sometime and left without meeting him. While we were leaving the Sub-Inspector informed us that he has talked to the Sub-Inspector of Sriperumbudoor Police Station and he asked us to go over there.

7. I submit that Mr. Ranganathan was working as Field Assistant in the Rural Development Society, a voluntary organization and he was a dedicated social worker. I also came to hear about his work in the villages to get minimum wages for the poor agricultural labourers. For the above stated reasons I pray this Honourable court may be pleased to allow the writ petition and render justice.

Solemnly affirmed at Chennai,  
this 21 st day of July 2000

In the High Court of Judicature at Madras  
W.P. No.....of 200.....  
(Under Article 226 of the Constitution of India)  
(Habeas Corpus)

S. Nallusamy

.....Petitioner

Vs.

The Sub-Inspector of Police, Sriperumbudoor Police Station, Chinglepet District and another

For the reasons contained in the accompanying Affidavits, it is just and necessary that this Hon'ble Court may be pleased to issue a Writ of Habeas Corpus or any other direction or directions directing the respondents to release Mr. Ranganathan from the illegal custody or to pass any order or orders as this Honourable Court deems fit and proper in the circumstances and thus render justice.

Dated at Madras this.....day of.....20.....

Counsel for the petitioner

## 78. Other Writs

Affidavit in support of the writ petition has to set out the necessary and relevant facts.

Form of writ certiorari Memorandum of writ petition.

(Under Article 226 of the Constitution of India)

In the High Court of Judicature at Madras.

(Special Original Jurisdiction.)

W.P. No.....of 200.....

AB

.....Petitioner

Vs.

State of Tamil Nadu

.....Respondent

Represented by the Commissioner and

Secretary to the Government

.....Department,

Fort St. George, Madras-9.

The address for service of the petitioner is that of his counsel at Law chambers etc. The address for service of the respondent is as above.

For the reasons stated in the accompanying affidavit, the petitioner prays that the Hon'ble court may be pleased to issue a writ of Certiorari or any other appropriate writ or order or directions, calling for the records of the respondent relating to.....and quash the same and pass such further orders as this Hon'ble court may deem fit to pass in the circumstances, of this case and thus render justice.

Dated at Madras this day the.....of.....200.....

Counsel for petitioner

## 79. Writ of Mandamus

The prayer in writ of Mandamus will be as follows :

For the reasons.....to issue a writ of Mandamus or any other appropriate writ or order or directions directing the respondent to.....and pass such further.....justice. (Prayer in 76 is modified)

## 80. Writ of Quo Warranto :

Prayer is to be as follows :

For the reasons.....to issue a writ of quo-warranto or any other appropriate writ or direction in the nature of a writ of quo warranto calling upon the respondent to show cause as to under what authority the respondent is holding the post of.....and to pass such further.....Justice. (Prayer in 76 is modified)

## 81. Appeals

In the Court of the District Judge of.....

Appeal Suit No.....



Between .....Appellant  
AB  
and  
CD .....Respondant

On appeal from the Court of the District Munsif of .....

O.S. No.....200...

O.P. No.....or E.P. Number.....

Between  
AB .....Plaintiff  
and  
CD .....Defendant

The address for service on the Appellant is that of his, Counsel Mr.....

The address for service on the respondent is.....

To above named plaintiff, appellant begs to prefer this Memorandum of appeal against the judgement and decree dated.....passed by Thiru..... District Munsif of.....in O.S. No.....of 200.....on the following among other grounds.

1. The Judgment of the trial court is contrary to Law, facts of the case and the probabilities of the case.
2. The learned trial Judge has erred in not properly appreciating the evidence adduced by the appellant.
3. The learned trial Judge should have accepted the evidence oral and documentary let in the appellant.
4. ....
5. ....
6. ....

Dated this day the.....day of.....200.....at Madras.

### Appellant

Appeal grounds have to be carefully prepared with reference to each case. All questions of law and facts can be raised in the first appeal while in the second appeal only questions of law can be raised.

## RULES OF THE HIGHCOURT OF JUDICATURE IN ITS ORIGINAL JURISDICTION 1956

### Order I - Preliminary

#### Order II - Form of Proceedings

A suit shall be commenced by presenting a plaint to the court or such officer as the Chief Justice appoint in this behalf and all other proceedings shall be commenced by petition. All affidavits interlocutory applications and other proceedings presented to the court shall be in typewritten or printed and legibly, on substantial white foolscap polio paper and a gap of two inches wide left for margin and an inner margin wide with separate sheets shall be stitched together the writing and printing shall be on both sides of the paper.

The plaint or original petition or originating summons shall be headed with a cause title in Form No. 1. The cause title shall be set out the name of the court the serial number of the suit or original petition and the names of the parties, separately numbered description plaintiff and defendant or petitioner.

The Plaint shall contain a statement of valuation. The plaint is sufficiently stamped if it is insufficient the Registrar shall require the plaintiff to make good the deficiency in a period of time.

A memorandum of appeal shall be pleaded with a cause till setting out the name of the court the foil number of the appeal, the names of the parties, separately numbered and described as appellants and respondents and also the full cause title of the original suit as in Form II.

### **Order III - Leave to sue**

An application for leave to institute a suit in the court shall be made by Judge's summon entitled in the matter of the intended suit and shall be supported by an affidavit stating the residence and occupation of the defendant and the reason for instituting the suit in the court.

If leave to sue is granted the summons to the defendant shall contain the notice set out in Form No. 9.

### **Order IV**

Institution of ordinary suits and service of summons Order IV

Summon rule 5 to 15 - Registrar may alter the service of summons. The summons shall be served within fourteen days from the date thereof in the case by proceeding other than proceedings order VII

### **Order VII**

Plaint - 20 days of a person resides within Tamilnadu.

### **Order XIII**

Originating summons

### **Order XIV - Interlocutory applications**

All application in a suit or matter shall be made to a Judge or to the master as provided by these rules upon a summons in Form 15 issued has such officer as may be appointed for the purpose.

The summons shall contain the provision of law and contain one or more prayer the register shall enter the same in the list of application on the next day for hearing.

Interlocutory application when it can be entertained in detail eg. Application for the transfer of suits - appointment of commission - receivers.

### **Order XV - Affidavits and Forms of Oaths**

In any suit or proceeding evidence may be given by affidavit but the court order the attendance for cross examination of the person making such affidavit. Every affidavit shall be drawn in the first person and divided in the paragraph numbered consecutively and each paragraph as nearly as may be prepared to a distinct portion of the subject. It must contain on whole behalf it is filed. The full name, father's name, his religion, persuasion, his age, his profession, occupation, place of residence and shall be signed and marked by him. Affidavits attested by notary public, advocate or officer authorised to administer oath firms of oath and affirmation.

Original side - plaint the value of the suit above 10 lakhs may be filed by the Person before the High Court registrar.

Original Petition:- succession certificate matrimonial suits is also come under original petition.

### **Order XIV - Commercial Courts**

Mercantile nature of Suits, export import of merchandise affreightment, carriage of goods by land or air. The Judge may include such suits as commercial cases suits. Direct of issue the summons to the defendants.

### **Order XIII - Originating Summons**

Trusts, The documents with regard the gruster arising in the administrating an estate or trust.

A Judge may in all cases direct the such other persons to be served into an originating summons as the may deem fit

Appellate side rules (Rules of the High Court)

Judicature at Madras 1965

#### **Constitution of Benches :**

1. Single Judge
2. Bench of the Judge - 2 Judges Division Bench
3. Full Bench 3 Judges

### **Single Judge**

Order I Rule 1 (1) -

- (a) Every application for determining in which of several courts having jurisdiction a suit an appeal or other proceeding shall be heard,
- (b) For the transfer of any suit appeal or other proceedings including to execution is a decree from one by the civil courts,
- (c) Interlocutory application: Even petition for leave to appeal to the Supreme Court where the Judgement or order sought to be appealed against that of a single Judge.

Every appeal from subordinate court it relates to courts only.

Every appeal from an original decree of a subordinate court or a final order under the code or any other enactment when the value of the appeal is below Rs.50,000

Every Criminal revision petition

Every appeal from a Judgement or ordinary a criminal court except in case in which of death or imprisonment for life has been passed into the appellant or a person tried with him.

### **The following matters shall be heard and determined by hearing two Judges.**

Provided if both the Judges agree the matter involves a question of law, he may order that the matter of the question of law be referred to a full bench.

Every proceeding including are involving a substantial question of law as the interpretation of the constitution referred by a single judge.

Every application - for the admissory appeals in form a pauperis.

Every application for a direction order or writ in the nature of Habeas Corpus.

Every reference under 5.113 of the Code. Every reference U.S. 374 of the codes of Cr.P.C. Every appeal from a Judgement of a criminal court in which a sentence of death or imprisonment for life has passed on the appellant or a person tried with him, including order for admission of such appeal.

**Full Bench :**

A full Bench shall consist of not less than three Judges.

The following matter shall be heard by the Judges.

Order I Rule 5.

- 5 (a) Every enquires under Section 13 of the legal practitioners act 1879.
- (b) Every reference under the Indian Divorce Act 1869.
- (c) Every reference under section 57 or section by the Indian Stamp Act.
- (d) Notwithstanding anything in the following rule the Chief Justice may direct that any application petition, suit, appeal or reference shall be heard by a full bench.

**Order 11**

Officers of the Court

Registrar, Assistant Registrar, By Registrar master of court.

Order IV Institution of Proceedings

Appeals - Memorandum of Appeal

Under order 41 V 1 ,2,3,4,5 C.P.C.

Every declarant of an affidavit shall be described in such a manner that he can be identified clearly his full name, his father's name, his age, his religion and profession and his residence address shall be given. An affidavit shall be copied to statement of fact and he divided into numbers paragraph, each paragraph composed as reach as may a distinct portion of the supt. Affidant can be unwritten both sides of the paper. The declarant shall sign name at the foot of the page. The declarant swears to any fact with in his knowledge, he shall do directly and postally using the words. I make oath and verify it and sign. Affidavits intended for use on the appellate side of the court may be made prepare any person authorised under the rule to at least a vallate.

Documents referred may be called as Exhibit and shall bear a certificate signed by the person before when the affidavit is made in the following form. Solemnly affirmed and signed. Alteration and interlineations in an affidavit he correct by initials of the person authenticated initials of the person.

Appeals against original decrees of subordinate courts under order IV rule 14-15. Appeals against order and appeals against appellate decrees and order rule 16-19. Appeals under clause 15 of the letters patent appeal what an appeal against an appellate decree or order has been heard and disposed of by a single Judge.

Any application for a certificate that the case is a fit one for appeal under clause 15 of the letters patent shall be made orally and immediately after the Judgment has been delivered order IV rule 28-32.

**Order IX**

Appeals to the Supreme Court with an order XLV and XLV A C.P.C. accompanied with a petition for certificate of leave the appeal. Preparation and transmission of the manuscripts documents from High Court the Supreme Court Order X Rule 3-6.

Order X Rule 7 Preparing the records quote the relevant C.P.C. order XLV of C.P.C. rules with order X rule 3 to 7 of rules of the Highcourt Madras appellate side rules act 1965.

## CONVEYANCING

### The Component parts of a Deed (Common to all documents)

The following are the essential parts of any Deed.

1. **Description of the Deed** : The correct nomenclature of the document . should be given at the commencement of the deed. (Example) Sales, Mortgage, gift, lease, etc.

In interpreting the document, the entire document has to be taken into consideration and the nomenclature given by the parties is not conclusive.

2. **Date** : The date of execution of the document has to be invariably mentioned following the description of the document. In the absence of any other specific recital about the date on which the document shall come into effect, the document takes effect from the date of execution. If it is desired to provide for a different date on which the document shall come into force, the same should be specifically mentioned in the body of the document.

3. **Parties to the document** : The documents may be unilateral or multi-lateral, Uni-lateral documents are documents executed by one of the parties. Those documents are also known as deed poll.

**Example** : Bills, bonds, power of attorneys, etc.

Parties to the documents have to be carefully described, so that they can be easily identified. The following details are usually provided. Name, age, religion, Father's Name, Profession and Residential address.

**Minors** : Whenever minors represented by the natural guardian or by guardian appointed by the court (if any) and in the later case it is advisable to mention the proceedings in which such guardians were appointed. Likewise, persons of unsound mind have to be represented by properly appointed guardians or Manager, appointed by the court under Section 75 of the Indian Lunacy Act. In case of minors and persons of unsound mind, if the law requires permission of the court for any alienation such permission should be obtained and the document should specifically mention the fact of grant of such permission by the court the court granting such permission. Idols can be owners of the properties, but should always be represented by the Shebait or Trustee. If persons enter into transactions, in their capacities as trustee, the said fact should also be specifically mentioned. In case of companies the description should include not only the name but also the address of the Registered Principal Office. In the case of a Society, etc., the respective representative must be described.

The alienation of properties of a firm can be made only by all the partners. Such documents should be executed by all the partners under Section 19 of the Indian Partnership Act. Documents executed by the Government should specifically mention about the persons authorised under Article 229 ( 1 2) of the Constitution of India, in addition to the fact, that the document has been executed on behalf of or in the name of either the President of India or the Governor of the State.

4. **Recitals** : The narrative recitals mention the history of the title and the introductory recitals explain the reason and the motive for the preparation and the execution of the document. It is desirable to mention adequate details regarding title and the right to execute the documents in the narrative recitals

5. **Consideration** : The consideration for the transaction has to be specially mentioned. The stamp duty payable on the document-is invariably calculated on the amount of consideration and hence, the same should be fully set out. Mode in which the consideration has-either passed or is intended to pass should also be clearly mentioned.
6. **Testatum** : This is the operative part of the document containing words indicating the nature of the transfer. Usually words Hike grants, agrees, sells, transfers, conveys or assigns are used, according to the nature of the deed.
7. **Habendem** : The purpose of the Habendem is to specify the nature of the interest transferred under the document. The nature of the interest conveyed under the document has to be clearly set out and it is also desirable to mention, whether there is any prior encumbrance over the property or not, if so, sufficient details about the same have to be given.
8. **Exceptions and Reservations:** Recitals in this part of the documents should clearly set forth, whether the executant reserves any right either in the property or in the operation of the transactions (Example) Right of revocation in case of gift.
9. **Covenants** : Covenants, which are applicable under law need not be mentioned contracts to the contrary between the parties and special agreements between them varying the implied covenants should be specifically and carefully described.
10. **Testmonium** : The part mentions the fact, that the parties have executed the document and have signed the same.
11. **Signature and Attestation** : Attestation of a document in case of sale mortgage, lease, gift will is necessary. Two witnesses, who had either seen the executant signing the documents or should have received an acknowledgement from the executant of his signature, should attest the documents and it is usual to write the word witness above the signatures of the attestors, in case of illiterate persons, it is advisable to incorporate a certificate in the end of the document that the same was read over and explained to the executant before the execution.
12. **Paroles** : The accurate description of the property transferred should be given invariably a separate schedule of property is appended containing the details about -
  - (1) the Registration and Sub Registration District
  - (2) the name of the of the town or the village
  - (3) Name of the street
  - (4) Survey Number or town survey number and boundaries
  - (5) Measurements and area.

The body of the document normally mentions the description of the property in general words and with a further provision, that the property is more fully described in the schedule. In case of lay outs, it is advisable to attach a map of the property dealt with under the document.

**The following general forms indicate the above mentioned component parts of documents.**

(1) This “deed of sale” or “mortgage” or “lease” or “gift” or “settlement”, etc. made on between AB aged..... son of..... employed as..... and residing at.....hereinafter called the or Vendor or

mortgages or lessor or donor, etc. and CD aged.....son of.....  
employed as..... and residing at.....hereinafter called  
the vendee, mortgagee or lessee or donee etc.

Whereas.....is the owner of the property having purchased the same  
on.....from.....under.....document number.....  
of.....

Now this deed witnesses.....in consideration of.....hereby  
transfers to mortgagees or leasees or conveys, etc. to CD the property more fully described  
in the schedule. In witness whereof, the parties have signed this deed on the date first above  
written.

**Witnesses :**

**Schedule of Property**

All that piece and parcel of land situate in.....District of.....  
Registration Sub-Registration district.....village.....  
street.....bearing survey number, bounded on the east  
by.....on the west by.....on the north  
by.....and the south by.....and measuring  
approximately.....feet north to south.....feet east to west.....  
and containing approximately an area of.....etc.

**AGREEMENT**

Agreement can be drafted either as unilateral or documents as deed executed by both the  
parties. The agreed terms of the contract between the parties have to be set out by clear, definite  
and precise language. The agreements can be executed even in duplicate in which case each  
party is given a copy of the agreement executed either by both or the other party. Normally most  
of the agreements do not require attestation. An agreement which does not by itself create an  
interest in immovable property need not be compulsorily registered. Stamp Rs.2.50.

**Agreement for sale of Immovable property :**

This agreement made.....on.....day.....etc  
for sale of.....between AB aged.....about.....s  
on..... employed as.....an  
d..... residing at ..... hereinafter called  
the which expression shall include his heirs, executors, administrators, legal representatives and  
assigns and CD..... aged.....son of.....  
employed as..... and residing at.....hereinafter  
called the seller purchaser, which expression shall include, unless the contrary appears, his  
heirs executors, administrators, legal representatives or assigns.

Whereas the seller is the owner and is in possession of the property more fully described  
in the schedule, having purchased the same on.....under document.....  
of.....from and has been willing to sell the same for the sum  
of Rs .....and the purchaser, is willing to purchase the property for the said sum.

Now, therefore this agreement witnesses that the seller agrees to sell the property free  
of all encumbrances, and the purchaser shall purchase the same for the said price and within  
months.



## Agreement to sell property :

The agreement of sale is made the..... day of..... in year.....  
Between Sri.....son of.....aged about  
.....Hindu years residing at, hereinafter called the "seller" of the one part. The term seller wherever the content permit means and includes his heirs, executors, administrators, legal representatives and assigns AND Sri.....aged about,.....years son of.....resident.....of, hereinafter called "purchaser" of the other part, the term purchased wherever the context permit mean and include his heirs, executors, administrators, legal representatives and assigns.

Whereas the seller is desirous of selling and the purchaser is agreeable to purchaser the house with site and land situate..... in the city of.....(more specifically described in the schedule hereto) belonging to the Seller for a sum of Rupees.....only, free of all encumbrances, charges and liens whatsoever, Nowtherefore this agreement witnesses as under.

1. That the Seller shall free of all encumbrances, charges and liens whatsoever his dwelling housesite and land situate....in the city of...more particularly described in the Schedule here under and the purchaser shall buy the same at the price and condition.
2. That this agreement has been entered into by the Purchaser and the seller holding out that he, the seller is the absolute owner of the said house, site and land with a subsisting right to make of the tranfer in the manner hereby contemplated and that the said property is not in any manner encumberted or charged with the payment of any money.
3. That the purchaser has this day on the execution of the agreement paid to the seller a sum of Rupees..... (Rs.....) only which constitutes the consideration of this agreement and the balance of the purchaser price shall be paid by the Purchaser on or before the expiry of one month from the date hereof, but subject to the conditions hereinafter appearing.
4. That the Seller shall produce within one week from today all the title deeds pertaining to the property intended to be sold for scrutiny by Sri..... legal adviser to the purchaser and if the said legal adviser does not find the title clear and subsisting this agreement shall be of no avail and the consideration pi this agreement amounting to Rs..... (Rs.....) only received by the seller from the purchaser today shall be refunded to the purchaser without any deductions whatsoever and without any delay.
5. That on the purchaser making available the balance of the purchase price on or before the stipulated period a sale deed prepared by the said:legal adviser of the Purchaser shall be executed and registered by the Seller at"the cost of the purchaser. The sale deed shall contain the usual indemnity at the cost of the purchaser. The sale deed shall contain the usual indemnity at the cost of the purchaser. The sale deed shall contain the usual indemnity clauses of good and subsisting title and freedom from encumbrance, etc.
6. That the Seller shall hand over all the title deeds together with the latest receipts, of tax payment in respect of the property showing full payment up to the nearest financial year at the time or before registration of the sale deed.

In witness whereof the said.....the seller and the said.....the purchaser have hereto signed and executed this agreement on the day and year first above written.

Sd. Purchaser

Sd. Seller

Normally time is not the essence of the contract in agreements for sale of immovable property. If parties desire to make time the essence of the contract, the following recital should be incorporated after the period expressed and add "that time shall be the essence of the contract".

### **An Agreement to supply Goods according to sample.**

This agreement is made this.....day of May in the year 20.... Between AB.....aged about.....years son of.....resident of..... (hereinafter called "the Seller") of the one part AND.....Cotton Mills Ltd., a company incorporated under the Indian Companies Act 1960 with its' registered office at.....(hereinafter called "the purchaser") of the other part, And Witnesseth as under.

1. That seller shall deliver to the purchaser 100 quintals of pure white cotton of the variety known as according to the sample sealed by the parties and kept with the parties for reference in future in case of need.
2. That the total quantity of cotton shall be supplied within two months from the date of hereof.
3. That the purchaser shall, pay for cash instalment of cotton received, its full price within one week of receipt after the same has been received by and checked for quality by Sri....of the purchaser Mills. In case the said Sri...(hereinafter called "the Arbitrator") after checking the cotton rejects it as below standard or not the variety contracted no price shall be paid by the purchaser, whether the same has been forthwith removed by the seller from the custody of the said Sri.... or not. In case the cotton after rejection is not removed within two days after having been rejected the Mills shall have the option to auction it at the risk and cost of the seller without any reference to the seller and shall deduct the cost of the auction and storage charge at Rs.....per quintal per day and make available the balance of the same price to the seller.
4. That the parties here to accept the decision of the said Sri.....of the purchaser Mills in regard to the quality and standard of the cotton as final and binding.
5. That the period of two months fixed for the supply of the entire quantity (not including any rejected) shall be considered as the very essence of the contract and if the seller fails to adhere to this condition, the purchasers shall have the right to repudiate the contract and purchase the quantity not supplied from any person, party or firm at such price as may then be ruling and claim from the seller and deficiency in price and any expenses and damages incurred or suffered by the purchasers in so buying.

In witness where of the above named parties have respectively set their hands Sr.....himself acting for the Seller and Sri ..... the Managing Director acting for the purchaser and sealing the contract with the seal of the company the day and the year first above written.

Sd. Seller 2

Sd. Purchaser.

Witnesses.

1. ....

2. ....

**POWER OF ATTORNEY**

A power of attorney is executed to empower a specified person or persons to act for or in the name of the executant. A special power of attorney is executed. If the appointment is for a specified act or acts. If the appointment is made generally, it is called general power of attorney. A special power of attorney has to be engrossed on a non-judicial stamp paper of Rs.5 whereas the general power of attorney has to be on non-judicial stamp paper of Rs.20. A registration fee of Rs..... has to be paid. The power of attorney has to be executed in the presence of and authenticated by the Sub-Registrar.

**Special power to execute the Sale deed :**

Know all men by this presence that A, AB aged son of..... employed, as.....residing at.....hereby appoints CD.....aged son of employed as.....residing at.....etc. as my attorney to execute a proper sale deed of property to XY aged.....son of..... employed as.....and to receive from the said XY a sum of Rs..... being the consideration for the sale and to give proper receipt. I hereby agree lawfully done and construed as Acts, deeds done by me and I undertake to ratify and confirm all that my said attorney shall lawfully do and caused to be done by me and by virtue of the power hereby given.

**Description of property**

In witness whereof, I have signed this day of.....

Signature of the Executant.

**General power of attorney :**

Know all men, etc. that I, AB: etc. hereby appoints EF, etc. my attorney in name or on my behalf to execute or any of the acts or things hereinafter mentioned, that is to say.

1. To appear and act in all the courts, civil revenue or criminal whether original or appellate in the Registration offices and in no other office of Government or Municipality Notified Area or any other local authority;
2. To sign and verify plaints written statements, petitions of claims and objections memorandum of appeal and petitions and applications of all kind and to file them in any such court or office;
3. To appoint any advocate, vakil, pleader, mukhtar revenue agent or any other legal practitioner;
4. To compromise, compound or withdraw cases, to confess judgments and to refer cases to arbitration;

5. To file and receive back documents, to deposit and withdraw money, and to grant receipts therefor;
6. To obtain refund of stamp duty or repayment of court fees.
7. To purchase property at court auction-sales in execution of my decree upto the amount of the decree;
8. To take delivery of possession of property purchased for me at an auction sale;
9. To realize debts due to me, to collect rent from my tenants of houses and land and to receive any money due to me from any other persons and to grant receipts and discharges for same;
10. To distrain the crops of my tenants for arrears of rent;
11. To grant leases of my house property, lands, agricultural and nonagricultural;
12. To file suits for rent and ejectment of tenants and when expressly instructed by me, other kinds of suit;
13. To apply to courts and officers for copies of documents and papers;
14. To apply for the inspection and to inspect judicial records;
15. To nominate and to have consent to the appointment of servants, etc.;
16. To accept service of any summons, notice or writ issued by court of officer against me; and
17. Generally to do all lawful acts necessary for the above mentioned purposes provided that the powers hereby conferred shall not extend to -
  - a. granting of an agricultural lease for a term over.....years or reserving a monthly rent exceeding Rs.....
  - b. granting of a lease of house of property for a term over.....years or reserving a monthly rent exceeding Rs.....
  - c. Compromising or withdrawing a claim valued at more than Rs.....or involving proceeds of the value exceeding Rs.....
  - d. borrowing any money hypothecating any property or creating any charge thereon.

AND provided also that the said attorney shall keep a true and correct of all income and expenditure shall render an account of all income and expenditure to me annually and shall pay the monthly all balances of money in his hand;

AND I hereby agree etc. In Witness etc.

## PROMISSORY NOTE

Promissory note has been defined as a-i instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money to certain person or order. The following ingredients should be mentioned in the promissory note.

1. The drawer must be certain person. The payee must be a certain person. The promissory note must be for payment of certain sum of money.

The promise to pay must be unconditional. The following form can be used :

On demand, I..... son of.....  
residing at.....chennai, promise to  
pay to..... son of residing at.....  
Chennai,or order, the sum of Rs.....  
(Rupees.....only) with interest at.....percent per annum.

Sd. AB.

If the borrowing under promissory note is done by a firm, the executants should execute the promissory note as partners and the name of the firm should be specifically mentioned in the body of the document. The promissory note should be stamped with Revenue stamp as follows

Where the amount does not exceed Rs.250.20 paise where amount exceeds Rs.250 but not Rs.500.30 paise, in all other cases 50 paise.

## EASEMENTS

The grant of easement can be made orally or by a document if the value of the easement is Rs. 1 00 or more. It has to be then registered. The nature of the easement and the purpose should be specifically mentioned in the document. Likewise, there should be specific description of the servient tenement in respect of which the easement is being granted.

### Grant of Rights away :

This deed is made on the.....day.....of between AB, etc. (hereinafter called "the grantor" of one part and CD. etc. (hereinafter called "the grantees" of the other part.)

Whereas -

1. The grantor is the owner and is in possession of a plot of land situate at..... and entered in the Municipal Registers at No.....delineated on the plan annexed hereto and coloured in red. (Hereinafter called "the red "and") and on the such of the said plot of land runs a public road called the .....
2. The grantee is the owner and is in possession of a plot of land adjoining the red land on the North and deimeated to the said plan and coloured blue (hereinafter called "the blue land") and
3. The grantor has agreed with the grantee in consideration of the sum of Rs..... to grant to the grantee the right of way hereinafter mentioned.

Now this deed witnesses that in pursuance of the said agreement and in consideration of the sum of Rs.....paid by the grantee to the grantor (the receipt of which the grantor hereby acknowledges) the grantor hereby grants to the grantee Full and Free right and liberty for him and his successors in title, owners of occupiers for the time being of the blue and his and their tenants, servants visitors and all other persons authorised by him or them

in common with the grantor and other having the like right at all times, hereafter to pass and repass with or without horses, cattle or other animals, carts, carriages of other Vehicles laden or unladen of any description over the red land along a path.....feet wide between the points marked A and B on the said plan which said path has been shown on the said plan by dotted lines for the purpose of going from the blue land to the said public road called the.....road and vice versa. To hold the same to the grantee and his successors in title as appurtenant to the land.

In witness whereof etc.

### **Grant of an Easement of Light:**

This deed made the.....day of.....etc. as form 1.

Witnesses that in consideration of the sum of Rs.....paid by the grantee to the grantor (the receipt of which the grantor hereby acknowledges the grantor hereby grants to the grantee full and free right to the uninterrupted access, transmission and enjoyment of light over and across all that piece of land belonging to the grantor situate at.... areas and delineated on the plan annexed hereto and coloured in red to existing windows of the house of the grantee erected on the land adjoining the said land on the North-thereof. To hold the said easement hereby granted to the grantee and his successors in title as appurtenant to the aforesaid house.

Easements of right of way and right to light, if of the value of Rs.100 or more can be granted only under registered document. (Section 17 Registration Act)

### **EXCHANGE**

Exchange is a mutual transfer of ownership of one property in consideration for transfer of ownership of another property. An Exchange thus consists two transfers and stamp duty is payable on the property of the highest value set forth in the document. In case both the properties are of the same value, then the stamp duty is payable on the value of either of the properties. Stamp duty is levied at the same rate as sale namely 13 Rs./per 1000 in the city and per cent 11 in the moufassil. A deed of exchange is compulsorily registerable under Section 54 of the Transfer of Property Act and under Section 17 of Registration Act, if the value of one of the properties either Rs.100 or more.

### **Deed of Exchange :**

This deed of Exchange is made on the.....day of.....20... between AB etc. of the one part and CD etc. of the other part.

Where the said AB and CD are the absolute owners of the properties described in the first and second schedule respectively.

Now this deed witnesses as follows:

1. In pursuance of the agreement and in consideration of the transfer by the said CD of the second schedule property to AB, the said AB hereby grants and transfers to the said CD, all that property described in the first schedule TO HOLD the same absolutely for ever.
2. In further pursuance of the said agreement and in consideration of the transfer by the said AB of the schedule property CD, the said CD hereby grants and transfers to the said AB, ALL THAT property described in the second schedule TO HOLD the same to absolutely for ever.

3. Each of the parties hereby covenants with the other First that the property hereby transferred by him is free from encumbrances AND (secondly) that the property so transferred by each of them shall be quietly entered upon and held and enjoyed by the other of them and the rents and profits received by the other of them without any interruption or disturbance by the party transferring the same and (thirdly) that each of parties hereto will at the request and cost of the other execute every such assurance and do every such act or thing as shall reasonably be required by such other for further or more perfectly assuring to such other the property hereby transferred to him.
4. It is hereby declared that the value of the property mentioned in each of the schedule hereto is Rs.....
5. The grants hereby made and each of the covenants herein contained shall in the case of each party hereto be binding upon and ensure for the benefit of his heirs legal representatives successors and assigns.

In witness whereof etc....

**Exchange, when cash is paid to equalise the value :**

This deed of Exchange is made etc. Whereas -

1. The said AB owns the property mentioned in the first schedule hereto valued at Rs.5,000.
2. The said CD owns the property mentioned in the second Schedule hereto valued at Rs.6,500 and
3. The parties hereto have agreed to exchange their aforesaid properties with each other with effect from and the said AB has further agreed to pay to the said CD the sum of Rs.1 ,500 to equalise the value.

Now this Deed Witnessed as follows :

1. (as in form 1)

2. In pursuance of the said agreement and in consideration of the transfer by the said AB and of the sum of Rs.500 paid by the said AB the said CD (the receipt of which the said CD hereby acknowledges the said etc. (as in form 1).

In Witness whereof etc.

**GIFT**

Gift is a voluntary transfer of immovable property without any valuable consideration. Under section 124 of the transfer of Property Act, gift can be only in respect of the existing immovable property. Gift should be made by a document and the gift need is compulsorily registerable (both made section 123 Transfer of Property Act and Section 17 of Registration Act) and should be attested atleast by two witnesses. The stamp duty payable is at the rate of Rs.26 per thousand. The gift is completed on the acceptance of the gift by donee. Acceptance may be either oral or by taking possession of the property or in writing. It is advisable to engross an endorsement acceptance on the document by the donee. The gift ordinarily is not revokable. In cases the donor desires to reserve the right to revoke a gift he must specifically incorporate, the right of revocation in the body of the document.



**Gift Deed :**

This gift is made on the day of.....Between AB etc. (hereinafter called “the donor”) of the one part and CD etc. (hereinafter called the donee) of the other part.

Whereas the donor is the donor out of his natural love and affection for his daughter, the donee is desirous of making a gift of the said property to the donee at the time.of her marriage.

Now this Deed witnesses as follows :

- 1. That in consideration of the natural love and affection of the donor for the donee. The donor hereby transfers to the donee free from encumbrances, all the property described in the schedule hereto hold same by the donee absolutely for ever.
- 2. The donee hereby accepts the said transfer. In witness whereof etc. Clause Reserving right of Revocation : After clause 2 in the first from the following clause may be inserted.

The donee however reserves the right to revoke the gift in the following contingencies.

- 1. ....
- 2. ....
- 3. ....

The gift can take effect immediately. It can be either absolute or only of a limited interest. Appropriate recitals have to be included.

The rule against perpetuity should not be violated.

**GUARANTEE**

A contract of a guarantee is an agreement by which one person guarantee the performance of the contract by another. The guarantor is known as surety and the person whose contract is guaranteed is called the principle Debtor. A guarantee not obtained by means of misrepresentation or coercion cannot be rescinded or withdrawn/in any contract of guarantee, there is an implied promise by the principal Debt, to indemnify the surety and the surety is entitled to recover from the principal Debtor, the sums lawfully paid by him under the guarantee, Contract of guarantee is executed and attested like bond. Such contracts are not compulsorily registrable, if the document does not create an interest in immovable property of the value of Rs.100 and above.

**Bank Guarantee to a company in the form of a letter**

Dear Sirs,

We understand, that Sri/Smt.....resident of has by order dated.....booked for sale to him/her.

We hereby guarantee to pay you Rupees..... (Rs.....) only on his/her behalf on demand by you immediately notice is received by us from you to the effect that the said.....is ready for delivery and sale to the said Sri/Smt .....

We further agree not to revoke this guarantee without your written permission for a period of.....from date, after which period the guarantee shall stand cancelled and revoked without any notice to you.

Yours faithfully,

For.....Bank Ltd.

## Continuing Guarantee of pay of Goods Supplied.

This Agreement of Guarantee is made between A, B aged:.....year son of.....resident at.....(Hereinafter called the surety) of the one part and CD Ltd. a manufacturing company constituted under the provisions of the Indian Companies Act 1956 having its registered Office at..... hereinafter called the Creditor) of the other part.

Whereas the creditor has the request and on the assurance herein given agreed to supply to EF of etc. goods on credit up to the value of Rupees.....per month on orders placed by the said EF from time to time. Now it is hereby agreed as follows:

1. That the said Creditor shall supply on credit to EF all goods manufactured by him as may be ordered from time to time by EF up to the value not exceeding Rupees.....per month.
2. That all goods supplied by said Creditor to EF shall be paid for two months after delivery by EF and on his failure by the surety together with interest..... per annum from the date of default.
3. That the guarantee herein agreed shall be a continuing one, and irrevocable for a period of one year from the date hereof, but the Surety shall not be liable for any price or interest due on goods supplied during any month exceeding the sum of Rs.....only.
4. That the manner of enforcement of this guarantee shall be by suit or otherwise after one week of service of a demand notice sent by the Creditor to the Surety by registered post at the address hereon given.
5. That the rights of the Creditor shall not be affected by
  - i. EF becoming insolvent or joining with any person in partnership.
  - ii. EF being entitled to any indulgence under any law for the time being in force.
  - iii. The Creditor showing any indulgence, whatsoever to EF,
6. That the Surety shall have the right to demand a full and correct statement of the indebtedness of EF supported by vouchers before making payment.
7. That the supply of goods of EF and all payments under this guarantee shall be deemed to be at the principal place of business of the said Creditor.

In witness whereof the said AB and CD have hereto signed at.....the..... day of.....20.....

Witness

Sd. AB Surety

Sd. Cd Creditor

## LEASE

Lease of immovable property can be made only by a registered document, if the lease is from year to year or for a term exceeding one year or if it reserves yearly rent. All other leases can be made either by a registered document or by oral agreement accompanied by delivery of possession vide (Section 107 TP Act) Usually the Land Lord is described as lessor and the tenant as lessee. The lease deed should contain accurate description of the property leased and the period of the lease, the rent payable and the other terms of the tenancy Agricultural leases not exceeding one year need not be stamped or registered.

### Lease of Buildings :

An agreement made the.....day of.....between AB. etc. (hereinafter called "the lessor") of the first part and CD etc. (hereinafter called "the lessee") of the other part.

Whereby it is agreed as follows :

1. The lessor shall grant and the lessee shall accept a lease of the house known as No..... street and situate in the town of..... (or fully described in the schedule hereto) for.....years from the day of.....at the monthly rent of Rs.....payable in advance on the 1st day of each calendar month.
2. The lessee shall enter into the following covenants:
  - a. To all rates and taxes except the house tax;
  - b. Not to alter the premises without lessor's consent;
  - c. To use the house for residential purpose only;
  - d. Not to assign or sublet without the lessor's consent.
3. The lessor will enter into the following covenants :
  - a. To keep the house in repairs.
  - b. To white wash and colour wash every year such party as are not white washed or colour washed.
  - c. To paint wood work every third year.
4. The lessor and lessee will expressly covenant.
  - a. That they will respectively have the rights and liabilities specified in Section 108, Transfer of Property Act, 1882 except in Clauses (i) (j) and (m) thereof and
  - b. That the lease will be determinable by either party by three months notice to the other.
5. The lease shall contain a provision for re-entry in case of nonpayment of rent or breach of a covenant by the lessee.
6. The lease deed shall be prepared by the lessor at the expense of the lessee and shall be executed by lessor and lessee on or before the

In Witness whereof the parties have put their signatures hereunder on the day and the year first above-written (or on the respective dates mentioned against their signatures).

## LICENCE

A licence, is permission granted to a person to use the property or to exercise some rights over the property. A licence does not transfer any interest in the property. License is generally revocable and can be granted orally or in writing. Stamp on a licence deed is chargeable as per agreements not otherwise provided for. The document need not be registered unless any right, title or interest in the immovable property of the value of Rs.100 or more is created or extinguished.

### Licence in deed form:-

This deed of Licence made the.....day of.....between AB etc. (hereinafter called "the licensor" which term shall include his heirs, representatives successors and assigns) of the one part and CD, EF, GH etc. members of the.....club hereinafter called "the licensees" which term shall include all persons, who may for the time being be the members of the other part.

### Witnesses as follows:

1. The licensor hereby licenses and authorizes the licensees to permit at all times during the continuance of this licence and so long as, they play cricket the....club...(Hereinafter called "the club") continues to exist by themselves and the servants and agents of the club to enter upon that plot of land in.....known as the Cricket law and measuring approximately.....by feet and bounded on the North by.....on the south by.....on the East by.....and on the west by.....and there to practise and play the game of Cricket and to roll the said plot and do all things incidental to practising and playing the game of Cricket.
2. The licensees hereby agree with the licensor as follows:
  - (a) The licensees shall not commit any waste or cause any damage to the land.
  - (b) The licensor shall be at liberty at anytime to put an end to this license by giving to the licensees such notice as he may consider reasonable, and any notice delivered to the Honorary Secretary for the time being of the Club or to any other office bearer of the Club or left at the office of the Club will be deemed to be sufficient notice to the licensees.
  - (c) If the said land is required by the licensor temporarily for any purpose, the licensee shall be required to quit the same and suspend its use as aforesaid for such time as the licensor may direct and during the period of such suspension, the licensor shall not be responsible for the maintenance of the grounds and shall not be bound to incur any expense on its maintenance other than to meet his own requirements.
  - (d) The licensee and everyone using the said land on their behalf under this license shall refrain from the use of the grounds when they are unfit for play and the decision of the licensor on the question of such unfitness shall be final. In witness where of etc

## MORTGAGE

Mortgage is a transfer of an interest in specific immovable property as security for the repayment of the money advanced or to be advanced by way of Loan or an existing or future debt, or the performance of an engagement, which may give rise to a pecuniary liability (vide Section 58 of Transfer of property Act). The following are ingredients of the different types of mortgages.

## Simple Mortgages

- (a) The mortgagor under takes personal liability for repayment.
- (b) No possession of mortgaged property is delivered.
- (c) There is no foreclosure of the mortgaged property.
- (d) No power of sale out of Court, power to sell mortgaged property is only obtained, on a decree for sale being obtained and
- (e) The mortgage must be effected by a registered deed even if the consideration is below Rs.100.

## Mortgage by conditional sale -

The salient features are :

- (a) The mortgagor ostensibly sells the mortgaged property.
- (b) The stipulation being that the sale be absolute in default of payment by a particular date or that the sale shall be void on payment by a particular date and the property retransferred.
- (c) The remedy of the mortgagee is by foreclosure and not by sale.
- (d) The mortgage must be by registered deed if the consideration is Rs.100 or more. If the consideration is less than Rs.1 00 registration is optional but delivery of possession is necessary.
- (e) The transaction must be embodied in a single deed.

## Usufructury Mortgage -

The salient features are :

- (a) There is delivery of possession of the mortgagee.
- (b) The property remains in the possession of the mortgagee till full repayment.
- (c) The profit of the property is appropriated by the mortgagee towards liquidation of the advance.
- (d) The property is returned when the amount due is personally paid or is discharged by rent and profits received.
- (e) There is no remedy by sale or foreclosure.
- (f) The mortgage must be effected by a deed registered, if the consideration is Rs.1 00 or more. If the consideration is less than Rs.100 registration is optional, but delivery of property is essential.

## English Mortgage

The salient features are:

- (a) The possession of the mortgaged property passes from the mortgagor to the mortgagee.
- (b) It is effected by an absolute transfer of property with the stipulation for retransfer in case of repayment of the loan.
- (c) There is a personal covenant to repay.
- (d) The remedy of the mortgagee is by sale and not by foreclosure.
- (e) Power of sale out of court and to have receiver appointed can be conferred on the mortgagee.

## **Equitable mortgage**

The salient features are:

- (a) Such a mortgage is only created in the towns of Calcutta, Madras, Bombay and in any othertown, which the statge Government may, by notification in the official Gazette specify.
- (b) It is created by deposit of the title deeds of the mortgaged property no delivery of possession of the property.
- (c) It is made only forthe purpose of securing a past debt for advance or to cover future advances.
- (d) No registration is necessary, even if there is a writing recording the deposit.
- (e) The remedy is by sale and not by foreclosure.
- (f) All the provisions relating to a simple mortgage apply to an equatable mortgage.

## **Anamalous mortgages**

The salient features are:

- (a) If it includes a simple mortgage, usufructuary mortgages and a mortgage usufactory conditional sale possession may or may not be delivered.
- (b) The remedy is by sale or by foreclosure depending on the terms of the deed.
- (c) If the mortgage is for a consideration of Rs.100/- or more the deed must be registered if below Rs.100/- delivery of possession is essential, Registration in optional.

The following points are essential in a deed of Mortgage Parties to the document; The mortgagor should be described first followed by the mortgagee.

**Recitals** : Recitals should contain a short history of the property up to right of the mortgagor, the object of the loan, the amount and the rate of interest.

**Operative words** : Should be properly entered according, to the characteristics of the Mortgage.

**Possession** : In case of usufruary mortgagee, English mortgage, and Anamolous mortgage with possession, the mortgagee has a right to possession. There should be specific avertments regarding possession.

**Redemption**: Period of redemption has to be clearly mentioned.

Other conditions of Mortgage: The Mortgage; if he is entitled to the right of private sale without the intervention of the court or to the appointment of a receiver or any other contracts regarding covenant and delivery of title deeds to mortgagee should alt be clearly set out.

Mortgage deeds should be attested. The registration is compulsory of all mortgages of value of more than Rs.100/- and all simple mortgages. The stamp duty payable for mortgage is at the rate of 26 per thousand.

Registration fee is payable at the rate of 2-1/2 percent of the sum secured underthe mortgage.

**Simple mortgage:**

This deed of simple mortgage is made the.....day.....20.....between AB, aged.....etc. (hereinafter called the Mortgagor) of the one part and CD, aged.....etc (hereinafter called the Mortgagee) of the other part, witnesses that in consideration of the sum of Rs..... (Rs.....only) paid by the said CD to the said AB, receipt where of the said AB, hereby acknowledged the said AB, as beneficial owner hereby transfers unto the mortgagee by way of simple mortgage the property more specifically described in the schedule. And it is hereby agreed and declared, that if the said sum of Rupees..... (Rs.....) only with interest thereon at the rate of.....per cent per annum, shall not be paid within the period of.....years ending with the.....day of.....20.....according to the covenants herein agreed in that behalf, it shall be lawful for the mortgagee his heirs, executors, administrators or assigns at any time or times, to the said property and with and out of the moneys so realised from such sale as aforesaid, in the first place pay and retain the cost and expenses attending such sale or otherwise incurred in relation to this security and in the next place pay and satisfy the money which shall then be allowed upon this security and shall thereafter pay the surplus, if and to the mortgagor and should the sale not realise the sum due upon the mortgage sum one mortgagor hereby covenants with the Mortgagee, that the Mortgagor will pay to the Mortgagee any sum found or remaining due over and above the amount realised by sale, it is further declared that the said mortgagor has the power and right to effect this mortgage and that the property hereby given in mortgage is neither charged for the payment of any money nor encumbered in any other manner whatsoever.

In witness where of the said AB and CD have hereto signed at.....the day and the year first above mentioned.

**Schedule of Property**

Witness :

Sd....A, B Mortgagor

Sd....C, D Mortgagee

**Deed Mortgage by Condition Sale :**

This deed of Mortgage made the.....day of.....Between AB of etc. (hereinafter called "the mortgagor" of the one part) and CD of etc. (hereinafter called the "Mortgagee" of the other part) witnesses that in consideration of the sum of Rupees..... paid to the Mortgagor by the Mortgagee (the receipt whereof the Mortgagor hereby acknowledges) the Mortgagor do hereby grant transfer, convey, assign the property more fully described in the schedule.

To have and to hold the same absolutely add for ever subject to the condition hereby expressly declared namely that if and when the Mortgagor shall repay or cause to be repaid the said sum of Rupees.....with interest thereon at the rate of.....per cent, per annum on or before.....day of.....and in such an event the sale hereby made, shall stand void to all intents and purposes and the Mortgagee shall at the costs of the Mortgagor recover and retransfer the said property and every part thereof as then existing to Mortgagor provided however that if the Mortgagor shall fail and/or neglect to repay the said sum with interest at the said rate on or before the said date or any portion thereof the hereby effected shall become absolute owner and the Mortgagee shall be entitled to foreclose the



mortgage when and in such an event the Mortgagee shall be the absolute owner of the property freed and discharged from all right of equity of redemption of the Mortgagor. And it is hereby further agreed and declared that the Mortgagor shall remain in possession of the said property and pay all rents, cess, taxes, rates property other imposition which are or may hereinafter be imposed on the said property and in case the mortgagor fails and/or neglects to make such payments on or before the due date of payments there of the Mortgagee shall be at liberty to pay the same and add such sum or sums to the principal money hereby secured, which shall carry interest at the afore'said rate. Further the Mortgagor do hereby covenant with the Mortgagee that he has good title to the property and absolute authority and power to transfer the same in the manner hereinbefore indicated and that the property is free from all encumbrances Schedule of property in witness etc.

### **Usufrctuary Mortgage:**

This deed of Mortgage made on the.....day of.....between AB of the etc. (hereinafter called the "Mortgagor") of the other part witnesses that in consideration of the sum of Rupees..... paid by the Mortgagee to the Mortgagor at the time of the execution of this deed (the receipt of which sum the Mortgagor hereby acknowledges the Mortgagor does ,hereby convey as and by way of usufructuary mortgagor mortgages the property more fully described in the schedule. To have and to hold the same and posses as security until the repayment of the said sum with interest thereon at the rate of Rs....per cent per annum. And this Indenture further witnesseth and it is agreed and declared that the Mortgagor hereby delivers possession of the said property to the Mortgagee who shall retain such possession until payment of the said sum with interest as aforesaid and shall receive the rent issues and profits accruing from the said pronerty and pay all rents cesses, taxes and other impositions and appropriate the balance firstly, in payment of the interest due and then in reduction or payment of the principal sum advanced and that one such payment and satisfaction of the whole of the principal sum and interest thereon the Mortgagor shall be entitled to get back possession of the said property.

And is further agreed and declared that the Mortgagee shall manage and the said property as a person of ordinary prudence would manage as if it were his own and use his best endeavours collect the rents and Profits thereof and make necessary arrangements for maintenance, preservation and repair of the said property and keep clear, full and accurate accounts of all sums received and spent by him as Mortgage and furnish to Mortgagor at his costs true copies of such accounts and of the receipts and vouchers by which they are supported.

And it is further more agreed that in any event expiry of.....years the mortgage debt shall be deemed as satisfied and extinguished out of the usufruct of the propert and mortgagee shall unconditionally reconvey the property to the Mortgagor at hi costs and expense.

### **Schedule of property**

In witness etc.

Signed sealed and delivered.

### **Usufructuary Mortgage by Conditional Sale:**

This mortgage made on the da between A B of etc. (hereinafter called, the "Mortgagor") of the one part and C D of etc (hereinafter called the "Mortgagee") of the other part witnesses, that in consideratio of the sum of Rupees.....now paid to the Mortgages (the

receipt where of the Mortgagee does hereby acknowledge) the said AB hereby conveys to the said CD, the property more fully described in the Schedule from this day and that the Mortgagee shall be possession of the mortgaged property under the terms of deed for security payable on the....day of.....of the principal sum secured, with the interest thereon at Rs.....pc cent per annum, which mortgage money will be set off, against the usufruct of the mortgaged property and the Mortgagee does hereby promise to keep clear account thereof.

The Mortgagor hereby agree that the Mortgagee is to retain possession of the mortgaged property until the principal sum together with the interest due, be paid out of the proceeds of the property and on payment of the aforesaid sum, the Mortgagee shall execute a release of the mortgaged property in favour of the Mortgagor and, that the Mortgagee also shall not do any act in respect of the said property in its possession by which its value may be diminished.

The Mortgagor does also agree to pay the Government revenue and the municipal taxes of the said property regularly, and in case he fails to make such payment the Mortgagee shall be at liberty to pay such revenue and taxes, and such sum paid shall be considered an additional principal sum advanced to the Mortgagor also agrees that if he the Mortgagor does not pay the principal sum with the interest then due on the stipulated date, this conveyance will become absolute and the Mortgagee will be entitled to foreclose the mortgaged property and thereafter the Mortgagor, his heirs executors, administrators or assigns shall be absolutely debarred of all the rights to redeem the same.

### **Schedule of Property**

In witness etc.

#### **English Mortgage :**

This Mortgage made.....the.....day of.....between AB of etc. (hereinafter called "the Mortgagor") of the one part and of etc. (hereinafter called "Mortgagee") of the other part, witness whereas the Mortgagor is the absolute owner of the property more fully described in the schedule having purchased the same from.....on under Document number of.....and whereas the Mortgagor having occasion to borrow a sum of Rs.....approached the Mortgagee which the Mortgagee has agreed to lend and advance on having repayment thereof with interest at.....% per annum and secured by a conveyance by way of mortgage of said property. Now this Indenture witness that in consideration of the sum of Rupees.....this by paid to the said AB by the said CD (the receipt whereof the said AB hereby acknowledge) the Mortgagor hereby agrees with and covenant to pay to the Mortgagee on the day of.....the sum of Rupees.....with interest thereon in the meantime at the rate of per cent per annum computed from the date such interest to be paid monthly and every month on the 15th of every current month and this Indenture also witnesses that for the consideration aforesaid the said AB as beneficial owner do hereby grant, transfer convey unto and to the use of the said CD all that etc. (describe the property). To have and to hold and the same absolutely and ever provided always that if the Mortgagor shall pay the sum of Rs.....with interest thereon on the.....day of.....according to the foregoing agreement in that behalf the Mortgagee his heirs, representatives or assigns shall at the request and costs of the Mortgagor his heirs, representatives or assigns reconvey to him or them as they shall direct the said property. And that the Mortgagor do here by covenant with the mortgagee that the Mortgagor has absolute title to the property hereby granted and conveyed and that the Mortgagor assures the same unto and to the use of the mortgagee in the manner hereinbefore

indicated and further the Mortgagor and all persons having lawfully or equitably and estate or interest in the same shall at all time hereafter during the continuance of the security do execute perform or cause to be done, executed and performed all such further or other acts, deeds and things as may be reasonably required for further and more perfectly assuring the same unto and in favour of the mortgagee.

Provided however and it is further agreed by and between the parties that if the Mortgagor defaults in payment of the principal amount on the due date or any three instalments of interest it shall be lawful for the Mortgagee to institute a suit for sale and to have a receiver appointed over the mortgaged property.

### **Schedule of Property**

In witness etc.

#### **Memorandum of Mortgage by Deposit of Title-deeds :**

Memorandum that this .....day of.....AB.....of etc. (the mortgagor) as beneficial owner has deposited with CD. of etc. (the mortgagee) the original deeds comprised in the schedule hereto relating to certain property belonging to the said AB and situate in here describe the property in detail with intent to create a charge thereon for securing repayment to the said CD. of Rupees.....this day advanced by the said CD, to the said AB, on demand with interest for the same from this date at the rate of Rs..... per annum.

The said AB, do hereby undertakes and when required by the said CD, to execute and register a legal mortgage in such form and containing such covenants and provisions as he may reasonable require.

### **Schedule of Documents**

(Sd.) Mortgagee

#### **Endorsement of Discharge on the Mortgage Deed :**

I, C.D. the mortgage having received the mortgagee money with interest, from..... the mortgage stand discharged.

(Sd.) Mortgagee

#### **Receipt of Mortgage Money :**

I, AB. etc. have this day received from.....CD the sum of Rs..... in full payment of the money due to me under the mortgage deed dated.....within mortgaged deed) and have returned (am returning) the said mortgage deed to the said CD.

Dated.....

(Sd.) Mortgagee

### **NOTICE**

Notices are usually issued prior to taking legal proceedings. Notices have to be carefully drafted and usually as much care as is necessary in preparing a plaint has to be taken. The Advocate has to be properly instructed before issuing the notice. It is usual to note down the instructions and get the same signed by the client. The notice should carefully set out the details

and the facts given rise to the cause of action ar should also mention about statutory requirement. The postal receipts and the postal acknowledgements have to be properly preserved along with the copy of the notice. The notice should invariably mention the name of the person on whose behalf ar under whose instructions the notice is given the name of the party to whom the notic is sent and the object of sending the notice,

### **Notice terminating the tenancy :**

I hereby give you a notice under instructor from AB etc. terminating the lease executed by you on and in.....respect ofthe propei in.....belonging to the said AB by the end of the month and you are hereby called upc to deliver possession of the property at the end of the month (notice terminating ti tenancy should end with the month or year of the tenancy and there should be days notice in case of other tenancies and six months notice is case of anm tenancies.

Statutory Notice should confirm to the requirements of law.

### **Notice of suit against the Government under Section 80 C.P.C.**

Suits against the Government servants can be filed only after the expiry of days after the service of notice under Section 80 C.P.C. Such notice should contain following :

1. Name, address and description of Plaintiff.
2. Name and address and description of the defendant.
3. Cause of action.
4. Relief claimed.

## **PARTITION**

Partition between co-owners effects a division in status and division of the properties by metes and bounds. Partition is made either by on agreement oral or written or through court or by arbitration. Partition can be made either orally or under document. The following are essential ingrediants of a partition deed.

1. Recitals regarding title of the parties to the joint property, their respective share and that they desired to have the properties divided.
2. Description : Of the properties allotted to each sharer. If would be convenient to set our properties in different schedule allotted to each co-owner should be carefully and specifically set out. Value of each but has to be mentioned.
3. Where money compensation has to be paid to equalise the value of the shares (known as owerly) the details regarding the actual amount, the person by whom the money is payable, the person to whom the money is paid, the time within which the money should be paid should all be clearly set out.

Details about the prior encumbrances and the persons who have to discharge the same should be carefully mentioned.

If any easement of necessity arises, the same should also be set out. Persons, who will have custody of the original documents of title and the right to inspection and to cause the production of the same, whenever necessary should also be carefully mentioned.

In the case of minor co-owners recitals showing that the partition is fair and equitable and is to the advantage of the minor should also be set out. If any portion is reserved for common

enjoyment details of such property and the person entitled to common enjoyment should also be carefully mentioned. All the co-owners should execute the partition deed.

Stamp duty is payable at the rate of Rs.26 per thousand and the partition deed has to be registered, if it relates to immovable property for the value of Rs.100 and above. More lists of properties allotted to shares do not require registration if the lists purport to be record of an anterior partition and actual partition is not effected under the document.

### Partition in a joint Hindu Family

This partition is made the.....day of.....between AB, aged about.....years hereinafter called the First Party and CD aged about.....years hereinafter called Second party sons of the late EF, and GH aged about.....years widow of the said EF and mother of the First and second party, hereinafter called the Third party, all residents of.....in the city of.....

Whereas the said EF, and the Karta of a joint Hindu Family consisting of himself and his sons AB and CD.

And whereas the said EF died leaving considerable property some of which was ancestral, whilst most of which was his self-acquired property and after his demise in AB being the eldest son acquired Kartarship of the family but as differences and disputes and are agreed that the properties, movable and immovable given in lists AB and C made part of this deed be divided and given to the respective parties on the conditions and terms hereinafter appearing.

Now therefore this partition witness :

1. That it is mutually agreed that the properties, movable and immovable subject of this partition are of the value of Rs.9,00,000 and the value of the separated shall be Rs.3,00,000 each which shall be the value for the purpose of stamp duty.
2. That the properties given in list A shall hereto fore belong absolutely to the First party and the properties given in list B shall heretofore belongs absolutely to the Second party and the properties given in list C shall belong to the third party.
3. That the respective documents and deeds of title pertaining to the properties have been handed over to their respective owners.
4. That this deed has been drawn up in triplicate and the stamped original shall remain with A,B while the remaining two, bearing the registration endorsement remain with CD and GH.

In witness whereof the parties have hereto affixed their hands the day and the year first above mentioned.

Witness :-

- |         |            |
|---------|------------|
| 1. .... | (Sd.) A.B. |
| 2. .... | (Sd.) C.D. |
| 3. .... | (Sd.) G.H. |

List A with value of each item and a total

List B with value of each item and a total

List C with value of each item and a total

This partition is made.....the day of.....20 between A.B. etc .....of the First part and B, C etc. of the second part and C,D, etc of the Third part.

Whereas the parties hereto being in possession as members of a joint Hindu Family in equal shares free from all encumbrances whatsoever the houses, gardens, lands and premises more specifically described in the schedules marked A,B,C, made part of this deed have agreed with each other to put an end to their joint ownership and to divide the properties contained in the said schedules for the purpose of the same being separately and individually owned, possessed and enjoyed.

And whereas the said A,B, who became kartha of the joint family comprising of the parties hereto on the death of E,F, father of the parties hereto has rendered full account for the period of his management and no moneys, claims or charges are due and owing by any of the parties hereto against him or any other co-sharer.

And whereas A,B, is prepared to pay sum of Rs.500 to each of the remaining parties as dowry for the purpose of equalising the shares.

Now therefore this deed witnesses:

1. That in pursuance of the said agreement the said AB and the said B,C as absolute owners hereby transfer free of all encumbrances and convey absolutely unto and to the use of the said C,D their two thirds, shares. In the houses, gardens, lands and said C.D. shall hereafter hold it. Properties described in the Schedule I, absolutely and Premises and the for ever.
2. That in pursuance of the said agreement and the payment of the sum of Rs.500 each by A,B. to BC and CD, payment of which sums the said BC and CD hereby individually acknowledges the said BC and CD as absolute owners hereby transfer free of all encumbrances and convey absolutely unto and to the use of the said AB their two- thirds share in the house, gardens, lands and premises and the said AB shall hereafter hold the properties described in the schedule 2 absolutely and for ever.
3. That in pursuance of the said agreement that said CD and the said AB as absolute owners hereby transfer, free of all encumbrances and convey absolutely unto and to use of the said BC their two-thirds share in the house, gardens, lands and premises and the said BC shall hereafter hold the properties described in the schedule 3 absolutely and for ever.
4. That as the documents of titles mentioned in list D pertain to the properties subject of this partition and are common it is hereby mutually agreed, that the said AB shall as custodian for and on behalf of all the parties keep the same upon the express condition that whenever needed by the parties, the said AB shall produce the same for inspection if, and allow copies to be made if so desired.
5. That the value of each share shown in detail in the schedule hereto in Rs which is the value for the purpose of stamp duty.
6. That this deed being executed in triplicate, the original stamped copy shall be kept by the said A.B. and the duplicates bearing the registry endorsements by the remaining parties.



In witness whereof the said A.B. B.C. and C.D. have hereto signed at.....his  
the first day of January.....20....

Witness

Schedule B (Property with Valuation)	Sd.A.B.
Schedule C (Property with Valuation)	Sd.B.C.
Schedule D (list of document of title)	Sd.C.D.

## PARTNERSHIP

Partnership deed is provided as an agreement between the partners to carry on the business of the partnership according I to certain agreed terms and conditions.

The following are the essentials for partnership deeds :

1. Description of all the partners.
2. Description of the nature of the business
3. The Capital contributed by each partner.
4. The shares of the partners in the profit and loss.
5. Banking account of the firm.
6. Authority to operate the bank accounts.
7. Management of the business.
8. Duties of the partners.
9. Method of keeping accounts.
10. Arrangement for borrowings.
11. Arrangement on the death of a partner reconstitution of the partnership.
12. Retirement and expulsion of partners.
13. Dissolution of the partnership.
14. Mode of service of notice.
15. Arbitration: The Statutory rights and liabilities of the partners need not be set out unless there is contract to the contrary.

The stamp duty payable for a partnership deed is Rs.65/- and stamp duty payable for the dissolution of the partnership is Rs.40/-. The document should be engrossed on stamp paper of a requisite value, Partnership deeds are not compulsorily registerable.

### Partnership deed between two partners with usual clauses:

Partnership deed made the.....day of.....20.....between AB, aged.....  
years, son of.....resident of.....hereinafter  
called the "First Party" and C.D. aged.....years, son of.....resident  
of.....hereinafter called the "Second party" whereby, it is agreed as follows:

1. The parties shall become and be partners under the firm name of....as from the.....  
day of.....20.....
2. The duration of the partnership shall be, to begin with a period of.....years



- oi for such further or lessor period as the parties may choose to mutually agree.
3. The registered office of the firm shall be at.....or such other place of places oi the partners choose to fit.
  4. The capital of the partnership shall be the sum of Rupees..... (Rs.....) only oi such other sum as the partners may mutually agree and shall be contributed by the partners equally.
  5. The partners shall distribute the profits and bear the losses in equal shares
  6. The partners shall be entitled to withdraw out of the profits, money not exceeding Rs.....in each month adjustable against the account of the respective partners at the time of annual accounting.
  7. The first party shall make available to the firm the shop or premises ir which the business of the firm shall be carried on, situate at ..... Road and which said shop premises is in his occupation as a tenant from month to month paying a monthly rent of Rs.....to Shri..... and shall hereafter hold the said shop or premises in trust for the partnership for which he shall be paid out of the partnership the said monthly rent of Rs..... as from the date mentioned in para 1 above.
  8. The said rent and all taxes, duties repairs, and outgoings in respect of the said shops or premises or other place or places of business of the partnership shall be paid of the partnership.
  9. No apprentice, clerk or servant shall be employed or dismissed without the consent of the partners and all premiums and fees taken or paid shall be profits are expenses of the partnership.
  10. The partners shall cause all usual accounts and entries to be kept and made in proper books and together with all securities, vouchers and such books shall be kept at the registered office of the partnership and be open to inspection of each partner.
  11. Immediately after each...day of...in every year, the partners shall take an account and valuation of the effects, credits and liabilities of the partnership. Such accounts and valuations shall after mutual examination be drawn up in duplicate and signed by the partners who shall each retain a copy. The entries in such signed accounts shall be the final and binding as between the partners. The profits or loss as the case may be divided as aforesaid, after the signing of such account.
  12. The authority of the partners, individually shall be limited to the following :
    - a) No partner shall individually purchase goods for the partnership without consulting the other and obtaining his consent for purchases of the value exceedings Rs.....

- b) No partner shall signly bind the partnership by taking any loan or raising any money whether with or without security to the extent of more than Rs.....
  - c) No partner shall commit the partnership without obtaining the written consent of the other to any undertaking which involves the partnership financially to the extent of more than Rs.....
13. The partnership shall be deemed to be continuing on the admission of a fresh partner or partners provided the admission is on the terms herein laid down and is approved by all the partners.
  14. Every partner shall be entitled to dissolve the partnership in the event of the other committing breach of the conditions herein covenanted. The partnership may be dissolved by a notice in writting sent by registered post to the address herein given or such address as may be registered from time to time with the Registrar of Firms. On the dissolution of the firm under this clause the expelled partner shall not be entitled to the profits of the partnership and not liable for any loss incurred as from the date of dissolution, but not profit or loss shall be paid, or become payable except at the time of the annual accounting.
  15. On the bankruptcy of any partner or any notice being given to either partner under ctause 14 above or the death and there being no major legal representative willing to take the place of the deceased partner the partnership shall terminate. The share of such partner may be purchased by the remaining partner at a valuation to be made by arbitrators or their umpire as hereinafter mentioned. The price shall be paid in 3 equal six monthly instalments. The tenancy right of the first party shall be valued at...years rental.
  16. Upon the determination of the partnership by efflux of time or upon its determination by any other proper means if the option to purchase is not exercised by any other partner then as soon as convenient a full and general account of the valuation shall be taken of the property and assets put to sale and the debts realised and the credits paid. The net process in each shall be equaily divided between the then partners or the partners and the legal representative or representatives of the deceased partners provided always that if the proceeds are less than the liabilites the loss shall be made good in equal shares by the then partner or the legal representative or representatives of any deceased partner.
  17. If at any time any dispute, doubt or question shall arise between the partners, or their representative either on the construction of these presents, or respecting the accounts transaction. Profits or losses of the business of otherwise in relation to the partnership then every such dispute doubt or question shall be referred to arbitrators chosen by each of the partners and the representatives or their umpire to be appointed in the manner provided by law and such reference shall in all respects as to the mode and consequence thereof conform to the provisions in that behalf contained in the Arbitration Act 1940 or any statutory modification there of.

In witness whereof the said A.B and C.D. have hereto at.....signed the day and the year first above mentioned.

Sd.A.B.

Sd./..C.D.

Witness :

### **Dissolution of partnership :**

This deed of dissolution of partnership made the.....day of..... 20..... between.

(Give name and description of all the partners)

Whereas the partners hereto under a deed of partnership dated... made between them formed themselves into a trading firm and carried on business under the name and style of.....in pursuant'to the covenants stipulation and provisions contained in the said deed

And whereas it has been mutually decided between the partners that said partnership shall be dissolved, and the said business shall be wound up and the stock in trade assets and credits realised and called in, and the nett proceeds after payment and satisfaction of all debts and liabilities divided between the partners according of the covenants in this behalf appearing in the deed of partnership.

Now this deed witness and agreed by that in pursuance of the said agreement it is hereby declared and between the parties hereto as follows that is to say.

1. The said partnership between the partners hereto under the deed, dated...here into appended shall be determind and stand dissolved as from the.....day of.....20.... and the parties hereto singly or jointly shall not carry on the business of the said firm of under the said name or style for a period of ..... years hence.
2. The parties hereto shall on the aforesaid date of.....sign notices of the dissolution and forthwith advertise in the local official, gazette the fact of dissolution as required by Section 45 of the Indian Partnership Act and shall also intimate the fact of dissolution to the Registrar of Firms under the provision of Section 63 of the said Act.
3. With in days after the dissolution of the partnership a full and general account and balance sheet shall be taken and made of the property assets and liabilities of the partnership and a full inventory and valuation of all the machinery plants tools utensils, stock in hand office equipment materials and effects belonging to the firm shall be made by the parties or such other person as the partners and all debts owing to the firm shall be collected and got in by the parties or such other person as the parties may be instrument in this behalf appoint.
4. That as soon as may be, after the property assets and liabilities have been got in and disbursed, the parties or such other person or persons whom the parties may have appointed underthe foregoing clause shall divide and apportion the share if

the parties in the proportion to the contribution of the parties towards the capital. In such division any amounts paid earlier or due to the parties according to the books or the partnership shall be taken into account. That the cost of liquidation proceedings shall also be deemed to be a liability of the partnership and paid from the funds of the partnership.

5. That in case the dissolution up shows a loss or the assets of the partnership are insufficient to meet the liabilities and debts of the partnership, the partners shall forthwith pay such losses in the proportion of their contribution to the capital.
6. Each of the parties shall as soon as the others or any of them, or their or his representatives, shall have executed and done all the assurances, acts and things hereby agreed to be done by them respectively and that the request and cost of others or other or their or his representatives execute to them or him such releases indemnities and assurances as may be reasonable and proper.

In witness whereof the said A.B.C.D. and E.F. have hereto signed and executed his agreement of dissolution and appended it to the said deed of partnership dated.

Witnesses :

Sd. . ...AB

1.

Sd. .. ...CD

2.

Sd. . ....EF

### RELEASE

Release is a document under which a person renounces a claim upon another or against any specified property which he has or is entitled to enforce. A release deed can be prepared as an uni-lateral document and is compulsorily registerable if the value of the claim is Rs.100 or more. The document has to be attested as a bond. The following are essentials.

1. Recitals about the origin of the claim. The knowledge of the releasor about the claim.
2. The intention of the releasor to renounce the right or claim should be specifically set out in clear and unambiguous words. The property in respect of which the right and in respect of which the relinquishment is made should be carefully and specifically described.

### Deed of release between two partners on dissolution of a Partnership :

This release is made the.....day of.....20.....between A.B. aged etc, (hereinafter called in first part) of the one part and C.D. aged.....etc. (hereinafter called the second part) of the other part whereas the said AB and CD were carrying on in partnership the business of.....and the said business was wound up and the partnership dissolved by deed, dated.....executed by the said partners.

And whereas the winding up of the said business was entrusted to the management of EF for winding up.....and he after realising the debts and selling the property and liquidating all the liabilities appointed the shares of the parties giving to the said AB a sum of R s.....and to the said CD the sum of Rs.....

And whereas the parties for mutual safety are desirous of executing this deed of release so that, all future disputes in regard to the said partnership or the business may be set at rest.

Now therefore this deed witnesses that in pursuance of the said mutual desire the said

AB hereby release the said CD and also that the said CD hereby releases the said AB from all sums of money, accounts, proceedings, claims and demands whatsoever, which either of other, in respect of or in relation to the said partnership of the business of the said partnership.

In witness whereof the said AB and the sale CD have hereto at..... signed the day and the year first above mentioned.

Witness :

Sd. ....AB

Sd. ....CD

**Release by a separated co-parcener :**

This release is made this.....day of.....20.....between AB aged.....years, son of.....acting for himself and his sons, namely.....and..... presently residing at No..... Road in city of.....hereinafter referred to as the releasee of the one part, and CD, aged,...years separated son of the said AB presently residing at No.....Road.....in said city of..... hereinafter referred to as the "Releasor" of the other part.

Whereas the said AB and his brother EF carried on a joint family business at various places in the cities of.....and.....under the name and style of.....And whereas the said EF died leaving two sons, two did not desire to continue in the said business and desired to be separated from the joint family property. In pursuance of the said wishes of the sons EF and with the consent of AB the matter was referred to the sole arbitration of Shri.....of..... who by this awarded, dated.....divided the entire property and the entire joint business of....carried on in the cities afore mentioned, and over which possession was given to AB who has from the said date to the date herein mentioned, possess and enjoy the said business as a business of his branch of the family.

And whereas, the said CD on the..... by notice to AB demanded separation and was after taking accounts and valuation of all the property of the joint family allotted the business of firm carried on in the city of.....and have established himself separately and independently of his father or his brothers.

And whereas it is necessary to safeguard the future interest of the parties and their representative after them and in order to end all possible claims, which the parties or their representatives after them may have hereinafter put forward in respect of the separated shares and properties of the said parties in the belief that such claims do in reality exist.

Now this deed witnesses that in pursuance of the fact, that the 'Releasor is separated and has duly and fully received his share of all the joint family property including his share in the family business from the said Releasee and in pursuance of the fact that, he the said Releasor, has no claim. Interest or title on Releasee on his property, the said Releasor hereby releases unto the Releasee and to such of other members mentioned above as are joint with him, and to their respective representative for ever, all rights titles and obligations in present or in future which the said Releasor may have had or has in or upon the remaining joint family or the property of the said joint family now in existence or which may hereafter be acquired by the Releasee or his family.

And the said Releasee for himself and as Karta of his joint family mentioned above hereby release the said Releasor from all rights titles and obligations which the said remaining joint

family of the said AB may have had or have in or upon the said Releasor or his representatives and his or their property, now existing or which he or they may hereafter acquire.

It is also mutually agreed that the value of the property hereby affected for the purpose of stamp duty is of the value of Rs.....there about.

In witness where of the said AB for himself and as Karta of his joint family and the said CD have hereto signed at.....the day and year first above mentioned.

Sd. ....CD  
Releasee

Sd. ....AB  
Releasor

The stamp duty is calculated at Rs.26 per thousand in the value of the property in respect of which relinquishment is made. Registration fee is payable at the rate of one percent.

## SALE

Sale is a transfer of ownership of the immovable property in exchange for a price paid or promised or part paid or part promised. Sale of immovable property of the value of Rs. 100 and upwards can be made only under registered document (vide section 54 under Transfer of Property Act:) [

The following are the important points in sale deeds:-

1. History of the title to the property should be given in the recitals.
2. The consideration and the mode of passing of the consideration should be carefully set out.
3. Reservation and exceptions if any have to be described in detail.
4. The delivery of the possession of the property should be mentioned.
5. The existence of the prior encumbrance if any and the mode of discharge of the same have to be set out.
6. Handing over the documents of title (if any) should be mentioned.

In addition to the consideration paid for the sale, the value of the property should also be mentioned.

The sale deed has to be engrossed on stamp paper to the value calculated at the rate of Rs.13 per thousand in the city of Madras and at Rs.11 per thousand in Mofussil. Stamp duty is levied on the value of property or the consideration for the sale, whichever is high. Sale deeds have to be attested.

### Deed for Sale :

This deed of sale made this.....day of.....between AB of etc (hereinafter called the "Vendor") of the one part and CD of etc. (hereinafter called the Purchaser) of the other part. Whereas the vendor is the owner and is in possession of the dwelling house more fully described in the schedule, free from emcumbrances.

Whereas by an agreement dated the .....dayof.....made between the parties hereto the vendor agreed with the purchaser for the absolute sale to him to the property on terms there under contained at and for the price Rs.....Now this Deed witnesses that in pursuance of the said agreement and in consideration of the sum of Rupees.....paid by the purchaser to the vendor simulatneously with the execution of these presents (the receipt whereof the hereby..... admits and acknowledges) the said AB do hereby conveys unto and to the said CD free from encumbrances.



To have and hold the same unto and to the use of the purchaser his heirs, executors administrators assigns, absolutely and for ever together with title deeds, writings, documents and other evidences of title and the vendor do hereby covenant with the purchaser his heirs executors, administrators representatives and assigns that not with standing any acts, deed or things to heretofore done executed or knowingly suffered to the contrary the vendor is now lawfully seized and possessed of the said property free from any encumbrances attachments or defect in title what so and that the vendor has full power and absolute authority to sell the said property in the manner aforesaid. And to purchaser shall hereafter peacefully and quietly hold, possess and enjoy the said property without any claim or demand whatsoever from the vendor or any person claiming through or under him. And further that the vendor his heirs executors administrators or assigns, covenants with the purchaser, his heirs, executors, administrators, or assigns to keep harmless indemnify and keep indemnified, the purchaser his heirs, administrators or assigns from or against all encumbrances, charges and equities whatsoever. And the vendor his heirs administrators or assigns further covenant that he or they shall at the request and costs of the purchaser his heirs, executors administrators or assigns do or execute on cause to be done all such lawful acts deeds and things whatsoever for further and more perfectly conveying and assuming the said property and every part thereof in manner aforesaid according to the true intent and meaning of this deed. (Schedule of property) in witness etc. Signed sealed and delivered.

**Sale of ownership flats:**

This sale made this the.....day of..... between AB son.....hereinafter referred to as the vendor which expression unless repugnant to the context shall mean and include the said vendor, his/heirs successors executors, administrators and assigns of the one part and CD son of (hereinafter referred to as the purchaser which expression unless repugant to the context shall mean and include the said purchaser his/ heirs successors executors, administrators and assigns) of the other part witness as follows:

Where the vendor the sole and absolute owner of the multistoreyed building more fully described in the schedule A hereto and hereinafter referred to as the said building and whereas the vendor offered the sale of the said flats as ownership flat and whereas by an agreement dated...made between the parties the vendor agreed-to sell and the purchaser agreed to purchase and thereby own the flat in the front portion of the third floor of the building known as flat No...with absolute title and right to use the same together with undivided..... share of interest in stair case and equipmetns other common parts services and of the building. Now this indenture witnesses that in pursuance of the said agreement and in consideration of the sum paid by the purchaser to the vendor the receipt of which sum the vendor hereby acknowledges the said vendor as the owner does hereby convey unto the said purchaser free from all encumbrances the flat on the front portion of the third floor of.....being the property described to schedule 2 hereunder written with half the debts in all the joints above between its ceiling and floor above and also between the floor below and with full ownership of all doors windows, fittings. Fixtures both sanitary and electrical all external and internal wall with share or interest .in the staircase land below and all ways and passages free from encumbrances and attachments whatsoever except the right of molition on committing waste to have and hold the property hereby conveyed to the purchaser absolutely.



And that the vendor hereby covenants and agrees with the purchaser (usual covenants as in the case of conveyance and is further agreed and declared between the parties as follows:

1. The purchaser shall be liable to pay directly to the authorities or contribute in proportion to the floor area of the flat and garage, if any hereby conveyed to the purchaser towards payment of municipal taxes and other outgoings payable in respect of the property and in case, where the said payments are not made directly to any statutory authority then the same shall be made by the purchaser to the co-owners of the flats in the building for the said purpose and the said co-owners as a body shall have right of attachment and sale of the purchaser flat No. as security for dues aforesaid in case of non-payment.
2. The purchaser shall have full and absolute proprietary rights such as the vendor derives from his title save and except that of demolishing or committing waste in respect of the property described in schedule 2 in any manner so as to affect the vendor or other co-owners who have already purchased and acquire or may hereafter purchase or acquire similar property rights as covered by his conveyance.
3. The purchaser's undivided interest in the soil as more fully described in schedule... hereunder written shall remain joint or all times with the vendor and or other co-owners who may there after or here to before have acquired right title and interest in the land and in any flat/ garage in the building it being hereby declared that the interest in the soil is impartible.
4. The purchaser shall have the right and ownership of the servants quarters and the garage indicated in the map or plan hereunto annexed which are also hereunder conveyed and allotted for his separate use.

### **Schedule of Properties**

#### **Schedule 1**

#### **Schedule 2**

In witness where of the parties have put their signatures here to the day month and year first above written

Signed sealed and Delivered by the vendor at.....in the presence of

### **SETTLEMENT**

Practically same as the gift.

### **WILLS**

The following are the important aspects in drafting a will.

1. **Description of the Testator:** He must be a person in full possession of his sense and there should be a recital that he has executed the will in sound disposing state of mind.
2. **The Intention of the Testator:** The intention of the testator regarding the division under the will should be carefully set out in detail.

3. There should be a recital that the will shall take effect on the death of the testator.
4. The will should be mentioned that the testator has the right to revoke the will during his life time.
5. Description of properties and the person to whom the properties are bequeathed have to be clearly set out. (The nature of the interest bequeathed should all carefully mentioned). The will has to be attested by least two persons unless it is a privileged will. Will need not be engrossed on stamp paper and are not compulsorily registerable.

The registration fee of Rs.30/- has to be paid in case a will is a registered and will can be deposited with depositing authority under Section 42 of the Indian Registration Act.

### **Privileged Wills :**

Any person in active and is actually engaged in expedition or warfare can dispose of his properties by a will if he is above the age of 18 years. Such wills are called privileged wills and they can be written by the testator and need not even be signed attested. The will must be signed if some person other than the testator writes the will. A soldier or air man or Mariner may make a will by word of mouth, declaring his intention before two witnesses.

### **Codicil :**

Codicil is an instrument made in relation to a will and expanding altering disposition and is deemed as a part of the will.

The provisions of Sections 57 to 100 of India Succession Act should be borne in mind in drafting the will.

### **Will bequeathing all property to one person :**

This is the last will and testament of me AB of etc. I hereby revoke all prior wills and codicils and other testamentary dispositions made by me at any time heretofore and declare this to be my last will. It will take effect after my death. It is my wish and desire that after my death my wife (or son) CD shall be entitled to all my estate and effects thereof absolutely and for ever.

I accordingly declare him or her the sole beneficiary and legatee of my will.

I hereby leave, give devise and bequeath absolutely and for ever of my said wife (or son) CD here (of his) heirs executors or administrators, for her (or his) use and benefit absolutely and for ever all my property assets and credits both moveable and immovable at whatsoever character or wheresoever situate including all reversion expectancy and future assets if any acquired by me and I hereby appoint her (or him) her (for him) the said CD sole executrix (or executor) of this my will, who be entitled to obtain probate without being required to furnish any security. Dated this.....day of.....20....

## Schedule of Properties

In witness, I have here unto set and subscribed my hand and signature this.....day of.....20.....

Signed by the said last AB his will and testament in our presence all being present at the same time. Thereafter at his request and in his presence we subscribed our respective name and signatures as attesting addresses all being also present at the same time. .

(Signatures of witnesses)

### **Will with legacies, residue to one person**

This Is the last will and testament of me AB of etc. I hereby revoke all form of wills and other testamentary dispositions by me at any time heretofore made and declare this to be my last will

1. I appoint CD of etc., to be sole executor of my this will and the trustee of my estate.
2. I direct that my said executor shall soon after obtaining probate and as soon as convenient to him pay, discharge and satisfy all testamentary expenses and my just debts and liabilities.
3. I leave, bequeath and give a sum of Rs.....to my grandson, EF and my gold watch and the whole of library with its use and enjoyment to my friend GH.
4. Subject to the above specific legacies I bequeath the rest and residue of my estate, movable and immovable including future assets, if any acquired by me hereafter absolutely and for ever unto and to the use my son XY his heirs, executors administrators oP assigns;

## Schedule of Properties

Dated this.....day of.....20....

In witness, etc.(see previous precedent)

Signed by, etc. (see previous precedent)

### **Codicil with new bequests on death of a legatee :**

This is a codicil to the last will made and published by me, AB of etc. on the day of.....  
20.....

Whereas CD one of the residuary legatees named in my said will having died since the date thereof (exact date to be given if known) the legacy thereunder bequeathed unto and in his favour shall after my death fail and form a part of my general estate, which was never intended by me. And where as in the circumstances aforesaid it is my wish and desire that the said legacy shall go to this brother EF. Now by this codicil I do hereby give leave and bequeath the same unto and in favour of his brother, EF provided however, and in case the said EF shall also predecease me, than and in such an event the same shall pass unto and vest in GH and LJ the two sons of the said EF in equal shares absolutely and forever. And in all other respects, I confirm my said will.

In witness, etc. .(See first precedent)

signed by etc. (See first precedent)

