# DIRECTORATE OF LEGAL STUDIES
## Chennai - 600 010

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

# IV - Year

# VIII - Semester



# COURSE MATERIALS


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First Compilation : Dec 2012
Second Compilation of Re-edition : Oct 2013
Third Compilation of Re-edition : Oct 2014
Fourth Compilation of Re-edition : Feb 2016


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# 1. INTERPRETATION OF STATUTES

**Meaning of Statute:**

The meaning of a statute is the will of the legislature otherwise it is an authentic expression of the legislative will, which the court seeks to interpret the document.

The Statutes speak about the intention of the legislature. Its function shall always be "jusdicere" and not "jusdare" which means court can always reform the existing law and not to over rule the law.

Lord Green M.R. states that "there is one rule of construction for statutes and other documents, is that, you must not imply anything in them which is inconsistent with the words expressedly used".

Thus statute lays down main principles which judges apply in construing the statute.

## CLASSIFICATION OF THE STATUTES

A statute is basically classified with reference to its object, reasoning, extent of application. The kinds of statutes are as follows:

1. Temporary Statutes.
2. Permanent Statutes.
   - (i) Mandatory Acts.
   - (ii) Directory Acts.
3. Declaratory Statutes.
4. Remedial Statutes.
5. Enabling Statutes.
6. Disabling Statutes.
7. Penal Statutes.
8. Taxing Statutes.
9. Explanatory Statutes.
10. Amending Statute.
11. Repealing Statute.
12. Curative Enactment
13. Consolidated act
14. Codifying Statute

**Temporary Statute :**

The statute remains to be operative only for a particular period of time, and the date to the extent of its validity is specified in the statute itself.

On the expiry of the said date the act becomes inoperative or the act could be declared as void ab initio. But the remedy accrued before the expiry of the act always remains in force.

Eg. Finance act is passed every year. Repealing an temporary statute However is impermissible by applying. Sec.6 of the General Clauses Act.

**Permanent Statute or Perpetual Statute :**

This type of statute remains in force unless and until it is repealed by the legislature.

## Mandatory & Directory Acts

The use of words “shall” or “may” be taken into consideration to testify whether an act is mandatory or directory. When a contemplated action be taken without any option or discretion it will be called as pre-emptory or Mandatory.

The whole of the provisions or any part thereof is mandate then the noncompliance of the said provision would render an act penal consequences. If however the acting authority is vested with discretion, choice or judgement, the enactment will be taken as permissible or directory so the non-compliance of it does not render an act penal.

## Remedial Statute:

The objective of the statute is to enforce ones right or for to redress the wrongs and to remove the existing defects or mistakes in the former law.

## Enabling Statute:

An enabling statute is the one which enlarges the common law where it is narrow. It empowers necessary implications to do the indispensable things for carrying out the object of the legislature.

## Disabling Statute:

A disabling statute is the one that narrows down or brings down the existing law.

## Penal Statute :

A penal statute is one which punishes certain acts or wrongs. Such a statute may be in the form of a comprehensive criminal code or a large number of sections providing punishments for different wrongs.

## Taxing Statute:

The statutory rules imposes strict construction of taxes or fee. (Refer Topic: Taxing Statute) Explanatory Statute:

The acts remain to be explanatory with a view to supply an apparent omission or to clarify ambiguity as to the meaning of an expression used in a previous statute.

## Amended Statute :

An amending statute is one which makes an addition to or operates to change the original law so as to effect an improvement therein or to more effectively carry out the purposes for which the original law was passed.

An amending statute cannot be called a repealing statute. It is a part of the law it amends.

## Repealing Statute:

A repealing statute is one which repeals an earlier statute. This revocation or termination may be express or explicit language of the statute or it may be, by necessary implication also.

## Curative or Validating Statute:

A curative or validating act is the one which intends to clear the existing defects in other statutes. By doing this, it validates the proceeding. If not done makes an act as void ab initio. It removes the cases of ineffectiveness or invalidity of actions or proceedings which are validated by a legislative measures. Eg. Expose Facto laws.

## Consolidated Statute:

The consolidated acts could be distinguished as pure consolidation which means the re-enactment or consolidation with correction and minor improvement or consolidation with Law Commission amendments.

### What is a consolidated act?

A consolidated statute is the one which intends to consolidate the similar existing statutes dealing with the same subject matter in to a single statute. But its intention is definitely not to alter the existing law. This act can also be a amended act. It is not a sound canon of construction to refer to the provisions in repealed statutes when the consolidating statute contains enactment dealing with the same subject in different terms. In fact, the section from an earlier act is repeated in a consolidated act in identical terms but the sketch of it may be different.

Lord Watson explains "The very objective of consolidation is to collect the statutory law bearing upon a particular object and to bring it down to date, in order that it may form a use full code applicable to the circumstances existing at the time when the consolidating act is passed".

The consolidated act has its origin in different statutory legislation in case of consistency between two such provisions it may be legitimate to refer to the date of commencement of acts the question of construction of a section in a consolidating act may for this reason be a question of construction of an earlier act in which that section first appeared and its necessary to refer to various acts in the series as also to the common law existing at the time when the earliest act was enacted. It is not permissible to construe a section in a consolidating act in such cases with reference to circumstances existing at the time when it was first enacted in a former act.

In Lowsley v. Forbes (1998) 3 ALL ER 897 P 899 (HL)

The distinction between the consolidated act and other statutes is obliterated. The consolidated act should be interpreted according to normal canons of construction and recourse to repealed enactment can be taken only to solve any ambiguity for the process of consolidation would lose much of its point if whenever a question as to construction of a consolidating act arise then reference had to be made to the similar existing statutes. So it is only when there is a real or substantial difficulty or ambiguity that the court is to attempt to resolve the difficulty or ambiguity by reference to the legislation which has been repealed and re-enacted in the consolidated act.

## Codifying Statute:

A codifying statutes gives leading rules of law in an orderly and in an authoritative statement that can be either called as statute law or common law. This is done in an exhaustive manner. The purpose of this statute is that law should be ascertained by interpreting the language used in an codified law and not outside the purview of a particular code.

For e.g. A matter concerning the admission and disposal of criminal appeals has to be dealt with the provisions of Cr. P. C. and not outside those provisions in Commissioner of Wealth Tax v. Chander Sen AI R 1986 SC 1753

Under the Hindu Succession Act of 1956, Sec.8 wherein a law relating to intestate succession among Hindus, in case of son inheriting his father separate property becomes the exclusive property of the son and does not become his coparcenary property under Sec. 8. The basis of the act is to amend and codify the law relating to intestate succession among Hindus but it is not permissible to apply the principles of Hindu law on matters covered by the act.

## BASIC PRINCIPLES OF INTERPRETATION

### Interpretation:

Interpretation is the process whereby courts seeks to ascertain the will of the legislature through the various authoritative forms in which it is expressed.

### Types of Interpretation

1. Legal interpretation
2. Doctrinal interpretation

Legal interpretation is the one that aids the provision of law and Doctrinal interpretation is the one that is recognized as the canons of Interpretation.

**Purpose :** Lawyers try to unfold the meaning of the ambiguous words and expressions resolving inconsistencies besides the age old process of application of the enacted law has led to the formation of certain rules of interpretation or construction.

Salmond comments “By interpretation or construction is meant - the process by which courts seeks to ascertain the meaning of the legislature Through the various authoritative forms in which it is expressed.”

Cooley states “that he could differentiate the terms interpretation and construction.” According to him, Interpretation means it is an art of finding out the true sense of any form of words, that is the sense which their author intended to convey. Construction means drawing of conclusions, respecting subjects that lie beyond the direct expression of the text from elements known from and given in the text conclusions which are in the spirit though not within the letter of law” Thus Statute lays down main principles which the judges apply in carrying out their task in construing a statute.

## INTENTION OF THE LEGISLATURE

Mens or Sententia legis means the duty of the judicature is to act upon the true intention of the legislature. Statutes in general can be considered as the edict of the legislature. One way is that the Intention of the Legislature could be understood from the words or the language of the act that is used i.e., reading the statute as a whole one has to know the intention of the law maker.

Lord Denning states “We sit here to find out the intention of Parliament and that of ministers and carry it out and we do this better to filling in the gaps and making sense of the enactment than by opening it up to destructive analysis”

Francis Mc Caffrey states Intention of Legislature, first of all to be sought in the words of the statute, taking in them their natural and ordinary sense, and if, as thus read, they are free from ambiguity and doubt, and express a single definite and sensible meaning there is neither necessity nor justification for resorting to other means of interpretation.

In a case, Salmon v. Salmon states that intention of the legislature can be known by express means and also by implication.

Intention of the legislature can be understood by applying the express means, when any question arises as to the meaning of certain provision in a statute, its proper to read the provision in its context and this also enables statutes to be placed in its true relation with the other parts, and in order that its meaning shall be deduced from the words of the statute that gives plain, ordinary meaning unless the context requires some special or technical meaning to be attached to a word. Sometimes the intention of legislature can be understood by implication.

## GENERAL PRINCIPLES OF INTERPRETATION

**Interpretation is mainly of two kinds:**

(1) Literal Interpretation.

(2) Liberal Interpretation.

### (1) LITERAL INTERPRETATION:

This interpretation confines itself to the words of law and shall not go beyond the Letters of Law (Litera Legis). Whenever the words of the statute as clear. It must give effect to it. The judges do not go to determine the idea behind them with the help of Legislative debates or reports of commission etc.,

**Defects in Literal Interpretation:**

(i) Logical defects such as ambiguity, inconsistency & incompleteness. Ambiguity occurs when statute has not one but various meanings and its not clear which one of the particular meaning it represents. Inconsistency occurs when the different parts of the statute are repugnant to each other. Incompleteness means when a statute has Lacunae or Omission or Its Logically incomplete.

(ii) Unreasonable or Absurdity :- When the statute has certain provisions that highly unreasonable or absurd then Legislature would not have meant so court try to ascertain the intention of Legislature by adopting certain rules namely,

(i) Golden Rule.

(ii) Mischief Rule.

**When Literal Construction of Statute Observed:**

To construe the plain meaning of a statute every word of a statute have to be understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning. This could be done unless the words lead to some absurdity or unless there is something in the context or in the object of the statute to comment to the contrary. Similarly wherever the technical meaning found it could be understood in technical sense.

The basis of this principle is that the object of all interpretations being to know what the legislature intended, what ever was the intention of the legislature has been expressed by its through words which are to be interpreted according to the rules of grammar.

**For Eg., Will :** It is a written document, its ordinary and grammatical meaning could be adhered to, unless it leads to any absurdity, or some repugnance or inconsistency with sense of the words then it can be modified, so as to avoid that absurdity, and inconsistency no further.

Viscount Simonds L.C. comments: “The golden rule is that the words of a statute must primo facie be given their ordinary meaning”. Natural and ordinary meaning of words should not be departed from “unless it can be shown that the legal context in ‘which the words are used requires a different meaning”.

The legislature intention can be deduced only from the language through which it has expressed itself. If the language of a statute is plain then court need not carry out interpretation. The duty of the court is to examine the law as it exists and leave rest of the way to the hands of the legislature.

In A. R. Antulay v. R.S.Nayak, AI R 1984 SC 1656 held that the provisions of the statute should be construed as it is and cannot alter the same according to the circumstances of a case. Sec 8(1) of the Criminal Law Amendment Act (46 of 1952) states a special judge shall take cognizance of an offence and shall not take it on commitment of the accused. Here, the legislature provided both power on special judge to take cognizance and in turn removed the concept of commitment. Hence may not say that Sec.8(1 ) as canvassed of behalf of the appellant, that cognizance can be taken upon a police report.

In Tej Kumar Balakrishna Ruia v. A.K.Menon AIR 1997 5.C.442

Held, that while interpreting Sec.3(3) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, courts are empowered to interpret the law as it reads. Where two interpretations are possible, the purposive interpretation always preserves the constitutionality of the provision.

### Mischief Rule or Purposive Construction

The words of the statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonies with the subject of the enactment and the object which the legislature has in view. The meaning of the statute in a strict grammatical or etymological sense in the subject shall attain the object.

Rule laid down in Heydon's Case: When the material words are capable of bearing two or more constructions, the most firmly established rule for construction of such words of all statutes in general (be they penal or beneficial, restrictive or enlarging of common law

### Principles of the Case:

- What was the common law before the making of the Act?
- What was the mischief and defect for which the common law did not provide?
- What remedy the parliament hath resolved and appointed to cure the disease of the common Law, and
- The true reason of the remedy;

In Bengal Immunity Co. v. State of Bihar. The aforesaid principles laid down in Heydons case would be the true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) are to be always discerned and considered.

### Golden Rule of Interpretation

It's a modification of the principle of grammatical interpretation. It's the day of the court to find out the intention of the legislature from the words found in the statute by giving them their natural meaning but if this leads to absurdity, repugnance, inconvenience, hardship, in justice or evasion, the court must modify the meaning-to such an extent that the provisions of statute is unambiguous, clear and explicit so as to make every provision render workable.

Directorate of Enforcement v. Deepak Mahajan AIR 1995 SC 1775.

Where a person was guilty of an offence under the provisions of the Foreign Exchange Regulation Act or the Customs Act and court has to construe the provisions of the act by reading the statute as a whole. Wherever results in ambiguity which means the legislative intent is not clear then it is permissible for the court to have functional approaches and look behind the words of the enactment and take other factors into consideration to give effect to the legislative intent and to the purpose and spirit of the enactment.

### (2) LIBERAL INTERPRETATION:

The Judge should go beyond the Letter of the Statute in order to ascertain the true intention (of the statute) or the ratio Legis. Examples are historical & sociological Interpretation. This rule of applied whenever there are defects in Statutes.

According to this rule, the needs of the society are taken into consideration in Interpreting a Statute. Judges shall give full effect to the intent of Legislature and the intent should be ascertained in the context of social needs in which the Legislation takes place.

## Construction of Statutes:

(1) Harmonious Construction.

(2) Alternative Construction.

(3) Beneficial Construction.

### Harmonious Construction

When provisions of statute are repugnant to each other, the court duty is to construe the provisions in such a manner so as to give effect to all the provisions. The court may do so by regarding or by holding that one provision merely provides for an exception of the general rule contained in the other. The question as to whether separate provisions of the same statute are coinciding.

In Mis. Rahabhar Productions Private Ltd. v. Rajendra K.Tandon

The Delhi Control Act, 1958 provides for protection of tenancy rights subjected to the privilege of the land owner that a tenant can be evicted by the aforesaid act, inclusive of the Transfer of Property Act. The act is both beneficial and restrictive in nature in the sense for both the tenant and land lord and hence the court balances its right of the land lord and obligations of the tenant towards each other keeping-in mind that one of the objects of the legislature while enacting that Act was to curb the tenancy of and to harmoniously read the provisions of the act so as to balance the rights of the land lord as well.

### Alternative Construction

When there are two constructions made to the provisions of a statute then that construction which acts best in conformity with the scheme of the act is always taken into consideration. So wherever alternative construction is possible for the smooth functioning of the system for which the statute, has been enacted rather than the one which would create inconvenience. The narrower of the two interpretations which would fail to achieve the objective of the law must give way to a good construction paving way for a good result. Thus interpreting any part of a provision without effect is not permissible.

### Beneficial Construction

It is a method of interpretation whereby a liberal process is adopted so as to give effect to the declared intention of the legislature. This could be applied in the cases where the strict meaning of the words used in the statute, if given in the technical meaning, if given a technical interpretation, might defeat the object of the legislation.

Words found in the provisions of a statute, their natural meaning shall not be strained so as to achieve the object of the statute. If the legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one of which would preserve the benefit and other which would take it away, the meaning which preserves it should be adopted. So, the court should always give due regard to the beneficial part of it. The omission made need not be supplied by the court in straining the construction made. Hence in case where, more description is given, that gives wider meaning can best be construed than the narrow meaning from the provision of a statute.

In Regional Executive Kerala Fishermens Welfare Board v. Mis. Fancy Food case, 1985 SC 1620 the Supreme Court held that the definition to the Welfare legislation, the Kerala Fishermen's Welfare Fund Act, 1985, direction towards promoting welfare of fishermen which is in consonance with the Article 39 of the Constitution and hence the provision of the constitution must be construed to achieve the objective of the act. When the word is not defined in the statute its meaning has to be gathered from the context.

## INTERNAL AIDS TO INTERPRETATION OF STATUTE (OR)
## THE DIFFERENT PARTS OF THE STATUTE

**Title**

(i) Short Title

(ii) Long Title

- Preamble
- Marginal notes
- Provisos
- Heading
- Schedule
- Non Obstante Clause
- Punctuation Marks
- Gender
- Interpretation Clause
- Conjunctive & Disjunctive words

**Short Title :**

The short title of the act is used as ready reference. It doesn't play much role in interpretation of statutes. Short title neither explains the content of the act nor can it delimit the clear meaning of a particular provision.

**Long Title:**

A statute is headed by a long title whose purpose is to give a general description about the object of the Act. (Eg., Code of Criminal Procedure Code, 1973 states an act to consolidate and amend the law relating to criminal procedure.

Pollock states that "the term title aids the construction of an Act but agrees that its certainly not the part of law but its strictness need not be taken into consideration at ali".

In the present context, it is now a settled law that the title of the statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction.

Aswini Kumar v. Arabindo Bose

In this case the Supreme Court looked at the long title of the Supreme Court Advocates (practise in High Court) Act, 1951 which said "An act to authorise Advocates of Supreme Court to practise as of right in any court "Hence the same was adopted by reading the long title of the act.

**Preamble:**

Preamble contains the general principles and also the main objects of the Act and is therefore a part of the statute. Court considers it as an internal aid to interpretation in case of ambiguity that exists and Court doesn't apply preamble as an intrinsic aid if the language used in the provision of the statute is clear and explicit and unambiguous the preamble has no part to play. Modern Statutes avoid adding preamble as a part of a statute.

**Eg.** Inre Berubauri Case

Kesavananda Bharathi's Case

KedarNath v. State of West Bengal AI R SC 404.

**Marginal Notes:**

Marginal Note or Side Note are those notes that are inserted at the side of the sections.

Jurists opine that use of Marginal Note leads only to confusion. Marginal notes doesn't aid in construction of a statutes, because it cannot be said to have construed in the same sense as the long tit': or any part of the body. Of the act sometimes a marginal note may be inaccurate on its own merits of no assistance what ever.

Lord McNaghten states: "It is a well settled that marginal notes to the sections of an Act of the Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake and has been exploded long ago":

Patanjali Shastri, J state: "Marginal Notes in a Indian statute, as in an act of Parliament cannot be referred to for the purpose of construing the statute.

**Proviso:**

A proviso is a conditional clause which acts as a subsidiary to the main section. The general rule is that it has to be construed in its strict legal sense in the light of the main section. Hence it carves something from the main section itself. Proviso never destroys the section as a whole for the reason even in case of an ambiguity with that proviso and main section, it is always the main section that would prevail against a proviso.

**For Eg.**, The Main Section, Under Article 240(1) of the constitution power is conferred on the president "to make regulations for the peace progress and good government" of the union territories. The proviso appended to the Article 240(1) which directs that the President shall not make any regulations after the constitution of the legislature of Union Territory for that Union Territory.

It was contended that on the basis of the proviso that the power of the President is coextensive with the power of the legislature which may be constituted for a union territory and hence the President's power to make regulations is limited to subjects falling which the concurrent and state lists. This contention was not accepted by the court and the court stated President is conferred with plenary power of making regulations which are not curtailed by a proviso.

**Heading:**

A heading is always prefixed to a section or a group of sections. It explains ambiguous words.

In Frick India Ltd v. Union of India AIR 1990 SC 689, P.693

The Supreme Court of India expressed its view "Its well settled that the headings prefixed to sections or entries cannot control the plain words of the provision they cannot also be referred to for the purpose of construing the provisions when the word used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision".

**Schedule:**

It's a part of the act itself. This part deals with as to how claims or rights under the act are to be asserted or as to how powers conferred under the act are to be exercised.

Mis Apali Pharmaceuticals Limited v. State of Maharashtra AIR 1989 SC 2227

Held, whenever there is a conflict between the main proviso and that of the schedule, it is always the main section that would prevail and the schedule has to be rejected.

**Non Obstante Clause:**

A clause stating "Notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force". This word is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of Act mentioned in the main obstante clause. It is used as a legislative device to modify the ambit of the provision or law mentioned in the non obstante clause.

**Punctuation Marks:**

When a case is referred the court looks in to the provision as it is which means as they are punctuated and if they feel that there is no ambiguity while interpreting the punctuated provision they shall so interpret it. But while interpretation if there exists any ambiguity or repugnancy the court shall read the whole provision without any punctuations and if the meaning is clear will so interpret it.

In Aswini Kumar Bose v. Aurobindo Bose AIR 1952 SC 369

The Supreme Court held that the punctuation cannot be regarded as a controlling element and cannot be allowed to control the plain meaning of a text.

**Interpretation Clause:**

Every act contains an interpretation clause dealing with the definition of various expressions and explaining some terms. When a word or a phrase is defined as having a particular meaning in an enactment, it is that meaning which alone must be given to interpret a section of the act, unless there by anything repugnant in the context. When the term is defined in the act it is not permissible to ignore the definition and to give another meaning when the expression occurs anywhere in the act. Sometimes an expression might have been defined in the interpretation clause in an altogether different way from its ordinary meaning and it is not permissible to depart from the meaning and assign the ordinary meaning to it unless there are strong circumstances to the effect.

**Conjunction & Disjunctive Words:**

The use of word 'or' is disjunctive and the use of the word 'and' is a conjunctive word but at times they can also be read vice-versa in order to give effect to the intention of the legislature.

## EXTRINSIC AIDS OF INTERPRETATION OF STATUTES:

**Dictionaries :**

The words used in a statute shall be interpreted as it is in its ordinary sense. When a word is not defined in the Act itself it is permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance. Dictionaries help to understand the real meaning of the word in its original sense.

In Ram Nair v. State of U. P. AI R 1957 SC. It is stated that "the meanings of words and expressions used in an Act must take their colour from the context in which they appear.

In State Bank of India v. N. Sundara Money, AIR 1976 SC

Krishna Iyer. J states "Dictionaries are not dictators of statutory construction where the benignant mood of law and more emphatically, the definition clause finish a different denotation".

**Parliamentary History:**

English Practise : The method of approach of using parliamentary history as an aid in construction was not much appreciated in the earlier stages of law. Where intention of the parliament which passed the act was not to be gathered from the parliamentary history of the statute. Gradually the opinion changed.

Lord Halsbury L. C. admitted the report of a commission that had been set to inquire into the working of an earlier act, which had been superseded by the act construed by him, and observed "No more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission".

In Pepper v. Hart (1993) 1 All ER 42 (HL) Lord Wilkinson laid down: "Reference to parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to absurdity. Even in such cases reference in court to parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in parliament, as at present advised, I cannot for see that any statement .other then the statement of the minister or other promoter of the Bill is likely to meet these criteria. Thus Wilkinson states if the words are capable of bearing more than one meaning to words which they cannot bear, but if the words are capable of bearing more than one meaning why should not parliament" true intention be enforced.

**Indian Practice:**

The initial period reveals that the parliamentary history of an enactment was not considered, later on felt that if the use of the parliamentary is within circumspect limits can be considered in resolving ambiguities.

Indira Sawhney v. Union of India AIR 1993 SG

The Supreme Court in interpreting Article 16(4) referred the speeches made by Dr.Ambedkar and stated that the debates in the Constituent assembly can be relied upon as an aid in interpretation, in particular where the court wants to ascertain at any rate the context background and the objective behind them.

In P.V.Narashima Rao v. State AIR 1998 SC 2120

The court observed that according to the earlier decisions of the court, the statement of a minister who had moved the Bill can be looked at to ascertain the mischief sought to be remedied and object and purpose for which the legislation was enacted, but it is not taken into account for interpreting the provisions of the enactment.

**Reference to other Statues :**

**Statutes In Pari Materia:**

Every statute should be read in its original context and sometimes inferences can also be obtained from other statutes. It means when there are similar statutes dealing with the same subject matter or forming a part of the same system is said to be statutes in pari materia.

Lord Mansfield states "where there are different statutes in pari materia though made at different times or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other"

In Registered society v. Union of India AIR 1996 SC.

The representation of the Peoples Act, 1950 the explanation 1 of Sec. 77( 1) states "Any expenditure incurred or authorised in connection with the election of a candidate by a political party shall not be deemed to be an expenditure in connection with the election incurred or authorised by the candidate." Under the Income Tax Act of 1961 the Sec.13A and 319 (4B) demands to maintain audited accounts and to file income tax return for each assessment year irrespective of class of persons. The case concerned with political parties whether these parties shall be bounded to maintain audit accounts as per the provision of I.T. Act or would get exemption under the Explanation I of Section 77(1) of Representation of Peoples Act 1950 by showing a statute in pari materia that restrict their liabilities. Court held that if a political party is not maintaining audited and authentic accounts and is not filing return to income, it cannot justifiably plead that it has incurred authorised any expenditure in connection with the election of party candidate within the meaning of Representation of Peoples Act.

State of Madras v. A. Vaidyanath Iyer. AI R 1958 SC

The court constructed the provisions of Sec A Prevention of Corruption Act, 1947, the words used "It shall be presumed" and the word "Shall Presume" in the provisions of the Indian Evidence Act; 1872 were considered as Statutes in Pari Materia.

## COMMENCEMENT, REPEAL AND REVIVAL OF STATUTES

### Commencement

Commencement of an act means the period of time in which an act comes into operation. Generally act refers to "Short Title, and the extent of an act.

### Modes of Communication:

- Act shall come into force at once.
- Act shall come into force, when it is published in the official gazette wherein the date of commencement of an act is specified.
- In case if the date of commencement of an act is not published in the official gazette then there are certain rules that are recognized by the courts so as to ascertain the dates on which a particular act comes into force.
- Sec.5 of the General Clauses Act states "When any central Act is not expressed to come into operation on a particular day then it shall come into operation on a day on which it receives it assent. (i) In the case of the Central Act made before the commencement of the constitution the Governor General. (ii) In the case of an Act of the parliament of the President.

This rule also governs the cases where the commencement of the Act is stated in the Act then the act shall come into force at once.

**Eg.** Indian Constitution. Date of Commencement of the constitution is November 26th 1949.

On this day, certain provisions like Citizenship, Election, Provisions Parliament temporary and transitional provisions were given immediate relief. On 26th January 1950, the rest of the constitution came into force and this date is referred to in the constitution as the date of the commencement.

### Time limit for an Act to come into existence:

Whether is there any exact time for which an act has to come into force! Sec.5(3) of General Clauses Act says that "An act could come into force on the midnight of the previous day. Duration can also be construed according to the nature of the Statute whether it is in the nature of Temporary statute where the term expire on the expiry date or Permanent Statute where the term would remain always until it is repealed by the legislature.

### Extent of Applicability of an Act:

Extent means the territories to which the act applies. A Central Act would be applicable to whole of India and State Act would be applicable to whole of the State. The Act while referring to the date of commencement would also express as to the extent of applicability sometimes it may exempt any particular state (For Eg. Jammu & Kashmir).

As per the Interpretation of Statutes Act 1889, commencement means "Where an act is not to come into effect immediately after it is passed and it confers powers to make appointments, issue instruments, give notice, prescribes forms or do give notices prescribe forms or do any other thing for the purpose of the Act, that power may in the absence of the contrary intention, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of commencement thereof, subject to this restriction, that any instrument made under the power shall not unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation came into operation until the Act comes into operation".

## REPEAL

Repeal is a process by which legislature takes away certain provisions of an enactment expressly are by implication if found inconsistent with the other provisions of the statute. The object of an act is to excise dead matter prune off superfluities and reject the clearly inconsistent enactment and doesn't create any fresh liabilities. By this provision of the statute expressedly or by implication revokes another statute because, when an enactment is repealed by the legislature no fresh proceedings can be taken under it, but repeal would not affect the vested rights or would not affect matters already concluded before the repeal.

In Orissa v. M.A. Tullock (AIR 1964 SC 1284)

It has been long established that when an Act is repealed it must be considered except as to transaction past and closed as though it has never existed. The exception to :this rule is contained under Sec.6 of the General Clauses Act.

**Sec. 6 of the act reads:**

Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any central act or regulation was amended by the express omission, insertion or substitution of any matter, then unless a different intention appears the repeal shall not affect the continuance of any such amendment made by the enactment to repealed and in operation at the time of such an repeal"

**Meaning:**

The regulations made, repeals any enactment made or hereinafter to be made then unless a different intention appears the repeal shall not -

(i) revive anything not in force or existing at the time at which the repeal takes effect; or

(ii) affects the previous operation of any enactment so repealed or anything duty done or suffered there under or

(iii) affect any right, privilege, obligation or liability acquired occurred or incurred under any enactment so repealed or

(iv) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed.

(v) affect any investigation legal proceeding or remedy in respect of any such right privilege obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and such penalty, forfeiture or punishment may be imposed if the repealing Act or Regulation Act has not been passed.

Thus whenever repeal to be made then all the provisions of Sec.6 of the General Clauses Act would follow.

Under Sec.6(A) when provisions of an Act are incorporated in another Act, the repeal of the original Act does not affect its operation in the incorporated act unless a different intention appears in the repealing act.

## REVIVAL

When the repealing provision in an act is repealed by another it does not revive the original enactment unless such revival is expressly stated in the new repealing act. Sec.? Of the General Clauses Act states "In any central Act or Regulation made after the commencement of this Act it shall be necessary for the purpose of reviving either wholly or partially, an enactment wholly or partially repealed expressly to state that purpose.

## SUBSIDIARY RULES

### Mandatory and Directory Enactments

The language of an Act alone is not taken into consideration and due regard should be given as to the context, subject matter and objects of statutory provision in question. In determining whether the act is of the nature Mandatory or Directory depends upon the intent of legislature and not upon the language in which the intent is clothed. In case of a Mandatory provision any act done in breach thereof will be invalidated and would be liable for penalty. Because it's a bounded duty to fulfill the conditions exactly and if it is directory a substantial compliance is enough which may give rise to some other penalty if provided by the statute. Under the directory provision two conditions must be imposed (1) The act to the extent of substantial compliance is valid. And secondly even if it is not complied it would not render the act invalid.

### Banwarilal's Case:

The Issue in this case was whether Sec.59(3) of the Mines Act 1952, requiring the Central Government to consult every mining board before framing regulations was Mandatory; and it was held that having regard to the language, the object of providing for consultation, the constitution of the Mining Boards and the provision for making regulations in cases of emergency without such consultation, the provision for making regulations in cases of emergency without such consultation, the provision of section 59(3) was mandatory.

In N.Nagendra Rao and Company v. State of Andhra Pradesh

The goods seized by the collector if perishable in nature though Sec.6(a)(2) of the Essential Commodities Act, 1955 demands for custody of the said goods the collector may call for the disposal of the goods in order to prevent the deteriorated condition of the seized goods. Even though the section uses the word may but keeping in view the objective of the Act and the context in which it has been used it should be read as 'shall' otherwise it would frustrate the objective.

Of the sub-section. Therefore, the collector has to form an opinion if the goods seized are of the one of the other category mentioned in Section 6 (A) (2) and once he comes to the conclusion that they belong to one of the categories he has no option but to direct their disposal or selling of in the manner provided.

### Strict Construction of Penal Statutes

In ancient days, breach of duty could be made liable for the offence of the contempt of the statute. Wherever, a statute enacting or imposing penalty shall be strictly construed. According to Maxwell the strict construction of penal statutes seems to operate if the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the compliance to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction.

Polfock C B. comments. "Whether there be any difference left between a criminal statute and any other statute not creating offence, I should say that in a criminal statute you just be quite sure that the offence charged is within the letter of law of the law"

The court will inflict punishment on a person only when the circumstances of a case unambiguously fall under the letter of the law. If there are two reasonable constructions made to the penal provision, the more lenient should be given effect to. Punishment can be meted out to a person only if the plain words of penal provision are able to bring that person under its purview.

In Dyke v. Elliot (1872) LR 4 PC 184. P.191

Lord Justice James opined "No doubt all penal statutes are to be construed strictly that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip; that there has been a causa

omissus, that the thing is so clearly within the mischief that it; must have been included if thought of. On the other hand the person charged has a right to say the thing charged although within the words is not within the spirit of the enactment. But where the thing is brought within the words and ,within the spirit, there a penal enactment is to be construed, like any other instrument, according to fair common sense meaning of the language used, and a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other enactment".

According to him the plain words should be construed as it is and shall not be strained to derive at an ordinary meaning.

State of Punjab v. Ram Singh AIR 1992 SC 2188.

A constable on duty holding a gun was seen roaming in the market with service revolver. The constable misbehaved with a medical officer on duty due to his drinking habit. The SC held that his conduct would constitute gravest misconduct warranting dismissal from service. The authorities justified their act of imposing the penalty of dismissal.

The word misconduct though not capable of precise definition. Its reflection receive its connotation from the context the delinquency in its performance and its effect on the discipline and nature of the duty. It's negligence or carelessness in performance of his duty.

**Illustrative Cases:**

State of Punjab v. Ram Sign AIR 1992 SC 2188.

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In Sanjay Dutt v. State Through CBI. Bombay. JT 1994 (5) SC 540. PP557. 560.561. Sec.5 of the Terrorist and Distributive Activities (Prevention) Act, 1987 provides, where a person is in possession of any arms and ammunition specified in columns 2 & 3 of the category lor category III (a) of Schedule I to the Arms Rules, 1962 or bombs or dynamite or other explosives substances unauthorisedly in a notified area, he shall notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Notified Area is defined in Sec.2(1) to mean such areas as the state government may, by notification in the official gazette specify, considering the Act, state government can on its subjective satisfaction notify only such area as notified area under the act which is prone terrorist and disruptive activities.

Sec.5 of the act requires possession of any of the specified arms and ammunitions, unauthorisedly, in a notified area. Here the section does not in terms provide that the accused can in any way Escape punishment if the aforesaid conditions are established. However, it was held that the possession of the unauthorised arms etc. In a notified area raised a presumption that the arms etc. Were meant to be used for a terrorist or disruptive act which was in effect of the conditions and therefore the accused was entitled to counter the statements and escaped punishment under Sec.5 Held, that his unauthorised possession of arms etc., was wholly unrelated to any terrorist or disruptive activity and the same was neither used nor available in the area for any such use and its availability in a notified area was innocuous.

## STRICT CONSTRUCTION OF TAXING STATUTES

### General Principles of Strict Construction

A taxing statute has to be strictly be construed. A person cannot be taxed unless the language of the statute unambiguously imposes the obligation without straining itself. Intention of the legislature to tax must be gathered from the natural meaning of the words by which it has expressed itself.

Rowlatt.J expressing the principle states “In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read. In nothing is to be implied. One can only look fairly at the language used.”

While construing a Taxing statute, if the language is clear, effect must be given to them irrespective of the consequences. Statutes imposing pecuniary burdens are interpreted strictly in favour of those on whom the burden is desired to be imposed. If the words of a taxing statute are clear effect must be given to them irrespective of the consequences. Statutes imposing pecuniary burdens are interpreted strictly in favour of those on whom the burden is desired to be imposed.

In Commissioner of Income Tax. Hyderabad v. Mis. P.J.Chemicals Limited.

It was held that the expression actual cost in sections 32 and 43(1 ) of the Income Tax Act, 1961 needs to be interpreted liberally. The subsidy of the nature granted by the government to industries does not partake of the incidents which attract the conditions for their deductibility from ‘actual cos!’. The government subsidy, it is not unreasonable to say, is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as or geared to a percentage of such cost. If that be so, it does not partake of the character of a payment intended either directly or indirectly to meet the actual cost.

### Interpretation of the Constitution

Constitutional interpretation could be distinguished as the rules relating to the interpretation of the constitution itself and the interpretation of other statutes with the aid of the constitution. The constitutional document is the most solemn document of the country. And all the authorities are subordinate thereto, the legislative, executive and judicial organs of the derive power from the constitution. In interpreting the constitution the court has to look at the functioning of the constitution as a whole. Certain general principles to be adopted that words used in the constitution should not be given a narrow and contracted meaning but should be construed in its original sense. That every words hall have its original meaning and no word shall be rejected as superfluous. If the language is plain, it should be applied irrespective of any inconvenience that might result but if two views are possible, the one which obviates the inconvenience should be always preferred and when there are two conflicting provisions every effort should be made to reconcile them by applying the rule of harmonious Construction and in case of any ambiguity in a provision, the General Clauses Act be applied.

In Madhava Rao v. Union of India, AIR 1971 SC 530

Held, the constitutional provision, words or expression used in the constitution often is coloured by the context in which it occurs; the simpler and more common the word or expression the more meanings and the shades of meanings it has. It is the duty of the court to determine in what particular meaning and particular shade of meaning the word or expression was used by the constitution makers and in discharging the duty the court will take into account the context in which it occurs, the object to serve which it was used its collocation, the general concept or object was intended to particular and host of other consideration, held, the expression Article 363 means provision having dominant and immediate connection with “It does not mean merely having a reference to a wide meaning of the expression may exclude disputes from the jurisdiction of the courts in respect of rights and obligations, however indirect or tenuous the connection between the constitutional provision and the covenant may be .. “

Kesavanandha Bharathi v. State of Kerala AIR 1973 SC

Stated that the preamble of the constitution like any other statutes furnishes the key to open the mind of the makers of the constitution more so because the constituent assembly took great pains in formulating it so that it may reflect the essential features and basic objectives of the constitution. The preamble is a part of the constitution. The constitution including the preamble, must be read as a whole and in case of doubt interpreted consistent with its basic structure to promote the great objectives stated in the Preamble. The judges further conferred that Preamble cannot be amended of alter the basic structure of the constitution.

**Maxims that are used in Interpretation:**

**Utiloguitur Vulgus:**

This refers to interpretation made in popular sense or according to the common understanding and acceptance of the terms 'that are employed in such sense and if anyone asserts that they are employed in such technical sense the burden is upon them to establish it. When words are used in a statute which have gained a technical meaning in legal parlance, those words must be taken to mean: in such technical sense. When expressions which cannot technical sense in English law are important those expressions must be given their meaning under the English Law.

**Argumentum in Convenience :**

The expression means an argument cannot be ignored or not implemented on the ground that it will create inconvenience.

Which means a provision of an act cannot be ignored or not implemented on the ground that it will create inconvenience.

In Mysore State Electricity Board v. Bangalore Woolen Mills Ltd. and others,

The supreme court of India held that the inconvenience is not a factor in interpreting a Statute. The courts have to interpret the provision of an Act so as not cause inconvenience but if such an interpretation becomes impossible an inconvenience should not stand in the way of giving effect.

**Utres magis valeat quam pereat :**

This maxim means that "the thing may prevail rather than being destroyed". This principle is evolved from Murray v. Inland Rev. Commissioner were Lord Dunedin states: "Its our duty to make what we can of statutes, knowing that they are meant to be operative, and not redundant and nothing short of impossibility should allow a judge to declare a statute unworkable"

In Tinsukia Electric Supply Company Limited v. State of Assam, the supreme court observed the Tinsukia and Dibrugarh Electric Supply undertakings Acquisition 1 Act 1973 shall not be made applicable. The provision of a statute must be so construed as to make it effective and operative on the principle of Ut res magis valeat quam pereat. It is no doubt true that if a statute is absolutely vague them it could be declared as void for vagueness. This could be done by checking the arbitrariness and reasonableness part of the statute in order to ascertain from and accord to the statute the meaning and purpose which the legislature intended for it. It is the court duty to make what it can understand from the statute knowing that the statutes are meant to be operative and not incept and that nothing short of impossibility should allow a court to declare a statute unworkable.

**Construction Noscitur a Sociis**

The meaning of a doubtful word may be ascertained from the words that are associated with it. This rule would apply where the word isolated from the context yields so sensible meanings, but when associated with other expressions, gives a sensible meaning. The term Noscere means to know and sociis means to from its association. So when two or more words which are susceptile of analogous meaning and are put together, they are to be understood in its cognate sense.

In Alamgir v. State of Bihar. AIR 1959 SC 436

The Supreme court referred to Sec.498 of the IPC wherein the word detention means detaining a person against a will and the meaning cannot be attributed to word here in the case because the expression should be construed in the light of other words used. This clarifies that the word detains should be interpreted with reference to the expression takes entices, and conceals used in the Sec.498. The word detains therefore, should mean detention without the consent of the person involved.

In K.Janardhan Pillai v. Union of India, AIR 1981 SC 1485

The issue of this case is the commodity raw Cashew nut is a food stuff falling under Sec.2(A) Essential Commodities Act, 1955 and hence it cannot be declared to be as an essential article under Sec.2(A) of the Kerala Essential Articles control Act 1962. The Supreme Court stated that associated words take their meaning from one another and that is the meaning of the rule of noscitur a sociis. When foodstuffs are associated with edible oil seeds which have to be processed before the oil in them can be consumed. It is appropriate to interpret foodstuffs in the wider sense as including all articles of food which may be consumed by human beings after processing.

**Construction Ejusdem Generis :**

**Construction of General Words:**

The general words of the enactment shall have general construction unless and until it is specified that the legislative intent is to restrict their meaning. So the scope of the general word cannot be restricted. Generally the meaning as it is to a word has to be construed, otherwise sometimes a qualified meaning be given to it.

It is a well established rule in construction of statutes that general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehend in the language of the legislature.

**Rule of Ejusdem Generis :**

This rule is otherwise known as Tenderden's rule which provides that where words of specific meaning are followed by general words, the general words will be construed as being limited to persons or things of the same general kind or class as those enumerated by the specific words.

When the legislature uses a words of a general nature following specific and particular words, they are meant and intended to be limited to things as those specified by the particular words. So the legislature uses the general words in a restricted sense. The effect is the same as if the specific or particular words were actually enacted by the legislature itself. Hence, whenever any words of limitation or restriction are read in a statute they should be treated as having been enacted.

It's a rule of construction which lays down that when particular words are followed by general words, the meaning of the general words is to be understood with reference to the particular words, the general words are limited to the same kind as the particular words. The rule of ejusdem generis is certainly not the rule of law, but only a permissible inference where in view of the context and the purpose of the enactment it is necessary to assign to the words their plain and simple meaning.

It always attempts to reconcile the incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous.

Lord Evershed, M.R. points out "in all times of public, processions, rejoicings or illuminations, and in any case etc., were intended to be confined to cases within the genus or category of which public processions, rejoicings and illuminations were specific instances and they are limited to particular extraordinary occasion".

In Assistant Collector of Central Excise v. Ramdev Tabocco Company AIR 1991. SC pg. 506

The Central Excise and Salt Act, 1994 SecAO(2) before any amendment could be made states that no suit, prosecution or other legal proceeding could be initiated for anything done or ordered to be done under the law after expiration of six months form the accrual of the case of the action. Here, the expression other legal proceedings must be read ejusdem generis with preceding words 'suit' and 'prosecution' as they constitute a distinct genus. Therefore, the penalty and adjudication proceedings do not fall within the expression 'other legal proceedings in Sec 40(2) as it stood prior to its amendment on 1973 and consequently, the said proceedings were not subject to the limitation prescribed; by the said sub-sec. Suit or Prosecution are those judicial or legal proceedings which are lodged in a court of law and not before any executive authority, even if a statutory one.

In Bihar State Electricity Board v. Parmeshwar Kumar Agarwala, AIR 1996 SC 2214 Held, the SecA9(3) of the Electricity Supply Act, 1948 empower.

The electricity board to fix different tariffs for the supply of electricity to any person having regard to the geographical position of any area, the nature of the supply arid purpose for which the supply is required and any other relevant factors. In construing the section the supreme court declined to apply the rule of ejusdem generis for limiting the ambit of 'other relevant factors' on the ground that there was no genus of the relevant factors.

**Reddendo Singular Singulis :**

Where there are general words of description, following an enumeration of particular things such general words are to be construed distributively. In simple way we may say it as "Giving each to each".

When there are provisions that gives different meaning to different objects it has to be understood respectively.

For e.g .. , I devise and bequeath all my real and personal property to "A" will be construed reddendo singula singulis by applying "device" to "real property" and bequeath to "Personal property".

Where there are general words of description, following an enumeration of particular thing such general words are to be construed detractively reddendo singular singulis; and if the general words will apply to some things and not to others, the general words are to be applied to those things to which they will, and not to those to which they will not apply, that rule is beyond all controversy.

In Koteswar Vittal Kamath v. K. Rangappa Baliga & Co., AIR 1969 SC 504

Under Article 304 of the Constitution, when we look into the construction made to the proviso "Provided that no Bill or amendment for the purpose of clause (B) shall be introduced or moved in the legislature of a State without the previous sanction of the President. It was held by the supreme court that the word "introduced" referred to "Bill" and the word "moved" to amendment.

**Contemporanea Exposito:**

This means expositions made by the contemporary authorities it is always the clear meaning of a statute must be given effect to but in case of an ambiguity of a word used reference could be made to the contemporanea exposito. This usually applies in case of old statutes. Where an act has come into existence and soon after the commencement of the act the judges associated themselves with the act prevailing and were in an advantageous position of gathering the intention of the legislature. Its difficult for the court to gather the intention of the legislature prevalent at that time now in the present context and therefore it is most expedient to rely upon the construction given by the judges who had occasion to interpret the law soon after the legislation.

Lord Upjohn states "For my part, am quite unable to apply the principle to a statute although it was passed a hundred years ago, whose language is plain and unambiguous a "The view of the jurists are no doubt of greater value. This principle finds no application in latest enactments.

In state of Tamilnadu v. Mahi Traders, AIR 1989, SC 1167

The Ministry of Commerce sought clarification in construing the meaning of the expression 'hides and skins in dressed state' as used in Sec.14 of the Central Sales Tax Act, 1956. The act was used as contemporanea exposito to construe the meaning of the hides and skins.

**Casua Omissus:**

Means the case is omitted. Legislature ought to have made provision, to meet every contingency but due to in advertency or otherwise the case do not fit in all the cases. Generally, the legislature contemplates all cases coming under the provision and it will be so worded so as to be applicable to all varieties of cases that might come up. But there may be instances where a provision enacted may not fit into the facts of a particular case. Here, the court is not empowered to supply the omission there by filling the gaps, it is only empowered to point out causa omissus. Some times if it is in the general scheme of the act then the legislature intended to include the particular case also within the provision the court can give effect to it by supplying the omission.

Lord Denning states "when a defect appears a judge cannot simply fold his hands and blame the draftsman rather know the intention of the legislature in order to give" force & life to the intention of the legislature.

In Seaford court Estates Ltd. v. Asher (1994) 1 All ER 155, P. 164 (CA) stated that 'A judge must not alter the material of which the Act is woven, but he can and should iron out the creases".

**Exvesceribus actus:**

Meaning a statute cannot be interpreted in isolation. The meaning of the word may be understood by the other words used in the same section, while in some cases, a section may be interpreted in the light of some other sections of the same statute. Its always the scheme of the act should be taken into consideration.

In Aswin Kumar Bose v. Aurobindo Bose

Held, to find out the true intention of the legislature it is necessary to take all the parts of the statute together for interpreting any provision in it.

## INTERPRETATION OF THE CONSTITUTION

A constitution is an organic instrument. It is a fundamental law. The General Rules adopted for construing a written constitution embodied in a statute are the same as far construing any alter statue. When more than one reasonable interpretation of a constitutional provision are possible, that which would ensure a smooth and harmonious working of the constitution shall be accepted rather than the one that would lead to absurdity or give rise to practical inconvenience or make well-existing provisions of existing law nugatory. The constitution must be interpreted in a broad and liberal manner giving effect to all its parts and the presumptions should be that no conflict or repugnancy was intended by its frames. While interpreting the constitution a construction most beneficial to the widest possible amplitude must be adopted.

**Preamble and Interpretation of Constitution:**

The preamble of the constitution like the preamble of any statute furnishes the key to open the mind of the makers of the constitution more so because the constituent assembly took great pains in formulating it so that it may reflect the essential features and basic objectives of the Constitution. The preamble is part of the Constitution. The Constitution, including the preamble, must be read as a whole and in case of doubt interpreted consistent with its basic structure to promote the great objectives in the preamble. The value of the preamble in respect of the interpretation of the constitution is same as that of a preamble to any other Act. The modern view is that where the enacting part is explicit and unambiguous, the preamble cannot be restored to, to control quality or restrict it. It is a well established rule of interpretation that it is only when an Act is ambiguous ( i.e., not clear) that a preamble can be made use of to throw further light on the express provisions of the enactment.

In **D.S.Nakara vs Union of India (1983) SCC 304)** Supreme Court held that the preamble is the floodlight illuminating the path to be pursued by the state set up a Socialist, Secular, Democratic Republic.

In the **Berubari Union Case AIR 1960 SC** Supreme Court held that the preamble was not a part of constitution and could not be regarded as a source of any substantive powers. It was held that the preamble was a key to open the mind of makers.

In **(Keshavananda Bharti -vs- State of Kerala AIR (1973) SC 1461)** a majority of the Full Bench of the Supreme Court held that the objectives stated in the Preamble reflect the basic structure of the Constitution which cannot be amended by exercising the power of amendment under Art.368 of the Constitution and further it was held that preamble is a part of our constitution.

In **K.K.Kochuni vs State of Madras and Kerala (AIR 1960 SC 1080)** the Supreme Court observed that in case of an apparent clash between an Article granting a fundamental right and any other Article every attempt should be made to harmonies them, and if that is impossible only then should one provision be allowed to yield to the other.

Following principles have frequently been discussed by the court while interpreting the constitution:

**Principle of pith and Substance:** The principle means that if an enactment substantially falls within the powers conferred by Constitution upon the Legislature by which it was enacted, it does not become invalid merely between it incidentally touches upon subjects within the domain of another legislature as designated by the Constitution. The court would go in depth of care and see the pith and substance from the facts.

**Doctrine of Colourable Legislation:** The doctrine of colorable legislation applies where the legislature in a particular case has transgressed the limits of its constitutional powers (Constitution distributes legislative powers by specific legislative entries in three legislative lists. There are certain constitutional limits on the legislative authority in the shape of fundamental rights etc., ) The legislature may have transgressed the limits in respect of the subject-matter of the statute or it may be disguised covert and indirect. The expression “colourable legislation” has been applied in certain judicial pronouncements to this latter class of cases.

The whole doctrine of colourable legislation is based on the maxim that you cannot do indirectly what you cannot do directly. But when a thing within competence of a legislature is attempted in an indirect or disguised manner it cannot make the Act invalid. The inquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not form alone that will determine as to whether or not in relates to a subject which is within the power of the legislative authority.

### Doctrine of eclipse

The doctrine of eclipse applies only to valid pre-constitution laws which have become inoperative and void by reason of some supervening circumstance which case a shadow on it or eclipse it for the time being. The impugned (valid) law does not become dead but remains dormant to the extent it is inconsistent. It revives and becomes effective again when the shadow is removed. By virtue of the doctrine of eclipse such law does not need to be re-enacted in order to be enforced, if the cause of its unconstitutionality is removed the impugned law revives and becomes effective again. For instance, a pre-constitution law may remain dormant to the extent it is inconsistent or in conflict with the fundamental rights enshrined in the Constitution, it may again revive and become effective by virtue of the doctrine or eclipse if an amendment of the constitution removes the inconsistency.

**Principle of Severability:** When the part of any enactment is found to be unconstitutional, it can be severed from the rest of the enactment; it is called the principle of severability. Only the severed part of the enactment shall be declared unconstitutional while the rest of the part of the enactment shall remain constitutional and remain in force.

However, it is to be rated that where such severance is not possible the whole enactment shall be declared unconstitutional.

# THE GENERAL CLAUSES ACT, 1897

## Scope and applicability

The General Clauses Act, 1897 makes provisions as to construction of general Acts and laws. It is an important component for interpretation of statutes.

The Act is not restrictive in its application. It applies to all branches of law.

The General Clauses Act, 1897, is applicable only to Central Acts, rules and regulations. Most of the States have their own versions of state General Clauses Act which are modelled on the Central Act. Such State General Clauses Acts are used for interpretation of statutes enacted by the legislatures governing those States.

## Objectives achieved by the General Clauses Act, 1897

1. It provides for uniformity in application/expression by defining terms of common use.
2. It expressly states rules for the construction and interpretation of Acts
3. It defines common clauses that would otherwise have to be inserted expressly into every Central Act
4. It codifies the law relating to statutory interpretation (guidelines for interpretation)
5. The General Clauses Act 1897 serves as the template for all State General Clauses Act.
6. The Act is expressly applied for interpretation of the Constitution by virtue of Article 367 of the Constitution.

## Structure of the Act

Sections 5 to 13 contain general rules of construction of statutes, other than definitions.

This can be considered in two aspects -

- Sections dealing with commencement and repeal of enactments. In other words, these sections concern issues during the time when the law is in force (sections 5 to 8)
- Sections dealing with general rules of construction. These sections deal with matters of detail, such as time, distance, gender, rate of duty, number, etc. (sections 9 to 13).

Sections 14 to 19 of the Act deal with bodies of persons, i.e., power and functionaries. It also concerns itself with notifications issued under enactments. It states the provisions applicable to the making of rules and bylaws after previous publications, and issue of orders between passing and commencement of enactment. It also deals with the power to issue, providing that the power to issue includes the power to add to, amend, vary or rescind notifications, orders, rules and bylaws.

The important aspects of the General Clauses Act, 1897 deal with continuation of orders etc. issued under enactments repealed and re-enacted, recovery of files, provisions as to offences punishable under two or more enactments, meaning of the term “service by post” and citation of enactments. It also deals with saving for previous enactments, rules, and bylaws, application of Act to Ordinances, Application of the Act to laws made by the governor-general.

## Important provisions of the General Clauses Act

The important sections of the Act are as follows: -

**Section 3 :** Among other things, the Act defines common but legally significant expressions like “Central Government” which is used in many Acts passed by Parliament, District Judge, Document, Enactment, Financial Year, High Court, immovable property, imprisonment, month, movable property, offence, Gazette, Presidency Town, registered, schedule, and section. Further, the opening sentence of this section makes it clear that the definitions are applicable “in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context.”

**Section 5 :** Coming into operation of enactments.

This Section provides that where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent ... in the case of an Act of Parliament, of the President [Relevant Section: Section 5(1)(b)].

In terms of sub-section (3), a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement, unless the contrary is expressed. In other words, if an enactment were to come into force with effect from 12.09.2012, then it shall be deemed to have come into force at midnight of 11th -12th September 2012.

**Section 6 :** Effect of Repeal - repeal of an Act or Regulation shall not -

- Revive anything not in force or existing at the time the repeal takes effect,
- affect any right or liability under any enactment so repealed
- Affect any penalty, forfeiture or punishment incurred in respect of any offence
- any investigation, legal proceeding or remedy in respect of any such right or obligation, meaning thereby that such investigation, legal proceeding or remedy can continue as if the repealing Act or regulation had not been passed.

The general rule of construction is that when any Central Act is not expressed to come into operation on a particular day, it shall come into force on the day it receives Presidential assent.

**Section 9 :** Commencement and termination of time.

**Section 15:** The power to appoint includes the power to appoint ex officio. Section 16: The power to appoint includes the power to suspend or dismiss.

**Section 24:** Continuation of orders etc. issued under enactments repealed and re-enacted. This section provides that once an order etc. is issued under an enactment which is subsequently repealed, any action in pursuance of that order shall continue to be valid until it is expressly superseded by another order or notification, etc.

For example, Sanjay Dutt's prosecution under TADA continued in spite of the fact that TADA was repealed during the pendency of the trial itself.

**Section 27:** This section defines the meaning of "service by post."

It states that where any Central Act or regulation authorises or requires any document to be served by post, where the expression "serve" or "give" or "send" is used, then the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Advocates and law students should realise that this is the reason why we address legal notices by registered post, so that the benefit of section 27 may be obtained when the postal record is submitted before court.

**Section 28:** This section provides that any Central Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

For example, the Companies Act, 1956, may be referred to either as Companies Act, 1956, or as Act 1 of 1956. We also refer to specific provisions of the law by reference to section number or sub-section number.

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# 2. LAND LAWS INCLUDING CEILING & ANY OTHER LOCAL LAWS

**UNIT – I**

**HISTORICAL SKETCH OF LAND REFORMS/LAND LAWS**

**Concept of Land:-**

The term 'land' includes all physical elements in the wealth of a nation bestowed by nature; such as climate, environment, fields, forests, minerals, mountains, lakes, streams, seas, and animals.

Land comprises the physical environment, including climate, relief, soils, hydrology and vegetation, to the extent that these influence potential for land use. It includes the results of past and present human activity, e.g. reclamation from the sea, vegetation clearance, and also adverse results, e.g. soil salinization. Purely economic and social characteristics, however, are not included in the concept of land; these form part of the economic and social context.

**Kinds of Land:-**

The different types of land are known as biomes. These are divided into four classifications: desert, forest, grassland and tundra. Land biomes are typically defined by the type of vegetation they possess, the types of animals that inhabit them and their climate, such as rainfall and temperature.

**Land Reforms in India:-**

It was only after independence that serious efforts were made to introduce land reforms measures. They are as follows:

1. Abolition of intermediaries.
2. Tenancy reforms to regulate fair rent and provide security to tenure.
3. Ceilings on holdings and distribution of surplus land among the landlords.
4. Consolidation of holdings and prevention of their further fragmentation and
5. Development of cooperative farming.

The Zamindars acted as the intermediaries. Until Independence, a large part of agricultural land was held by the intermediaries under the zamindari, mahalwari and ryotwari systems. Consequently, the tenants were burdened with high rents, unproductive cultivation and other forms of exploitation.

**Eminent Domain:-**

Doctrine of 'Eminent domain', in its general connotation means the supreme power of the king or the government under which property of any person can be taken over in the interest of general public. Doctrine of 'eminent domain' is based on two maxims namely salus populi supreme lex esto which means that the welfare of the people is the paramount law and necessita public major est quan, which means that public necessity is greater than the private necessity.

Eminent Domain is power of the sovereign to acquire property of an individual for public use without the necessity of his consent. This power is based on sovereignty of the State. Payment of just compensation to the owner of the land which is acquired is part of exercise of this power. Eminent domain power is regarded as an inherent power of the State to take private property for public purpose.

**Constitutional Provisions:-**

The compulsory acquisition of property under Art.31 of the Constitution of India was repealed. The right hold the property is now vested in Art.300A reads as:-

"No person shall be deprived of his property save by authority of law."

Therefore the right to hold property is not a fundamental right Art.31A gives protection to those laws which provides for acquisition of estates. Likewise Art.31B gives validity to certain Acts and regulations specified in the IX Schedule of the Constitution of India. Whereas Art.31 C saves the laws or Acts which promote or give effect to the directive principles of the state policy.

Keshwanand Bharathi -v- State of Kerala.

**Village system and revenue administration in Tamil Nadu**

**Melwaram:-** A share of produce from the cultivated lads received by the Sovereign. The other name is Rajabhogam.

**Kudiwaram:-** The other share of produce retained by the cultivator is called Kudiwaram.

Villlage Administration of each village was looked after by the two pertsons namely the Head man who was the representative of the King and Karnam who looked after the village accounts etc. The village in Tamil Nadu was divided into Warapet. Ti warpet, tarisu a Poram boke.

**Kinds of Revenue Administration:**

1. Ryotwari or Kulwar System.
2. Zamindari System.
3. Inamdari System.

**Ryotwari System: -**

This system was introduced in the year 1792 by Col. Read. The main feature of this system is that there is direct5 contact between the state and the owners or cultivators of the land and the revenue is collected through the village servants without any intermediate agents.

**Rights and Powers of Ryot:-**

1. Transfer of interest.
2. Right to cultivation.
3. Right to minerals.
4. Right to trees.
5. Right to water.
6. Right to patta.

**Obligations:-**

1. Liability to pay land tax.
2. Liability to pay water cess.

**Zamindari system:-**

This system became familiar during the Mohammedan regime. Since the Mohammedan Concentrated on the wars and expansion of their territories, they could not have sufficient man power to look after and scrutiny the collection of revenue and revenue administration. Therefore the Revenue administration particularly the collection of revenue i.e, land tax was handed over to the intermediate namely zamindars. Zamindar was an officer entrusted with certain portions of the country for the purpose of collecting the revenue payable to the Government by the cultivators of the land .There were two kinds of zamindars namely Hill Zamindars and Zamindars of the plain.

**Rights and Obligation of the Zamindar:-**

**Rights:-**

(1)Right of alienation

(2) Right to water

(3) Right to minerals

(4) Right to waste lands.

**Obligations:-**

1) Duty to maintain tanks

(2) Liability to pay water cess

(3) Liability to pay Peishkush.

**Abolition of Zamindari System**

The Zamindari system was abolished by the introduction of Madras Estates Abolition and conversion into Ryotwari Act 1948. The object of this Act was to compensate only the right to collect rent. Further it suggested to vest in Government all there rights claimed by the Zamindar, lock, stock and barrel. In this Act, compensation was given to pre-settlement estate in the same basis as the Inams and to the post-settlement estates as if they are Zaminadars.

**Inamwari System:**

Inam means Manyam. Based on extent, the Inam is classified into major and Minor Inams. Likewise based on the benefits, it is categorized into personal grants and service grants. Depending on the remission the grants is classified into Sarva Manyam, Artha and Chaturbhagam.

## UNIT – II

## ACQUISITION OF LAND

**The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013:-**

It is also called as Land Acquisition Act, 2013. It is an Act of Indian Parliament that regulates land acquisition and lays down the procedure and rules for granting compensation, rehabilitation and resettlement to the affected persons in India. The Act has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected. The Act establishes regulations for land acquisition as a part of India's massive industrialization drive driven by public-private partnership. The Act replaced the Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule.

**Need for the new land acquisition law:-**

There is unanimity of opinion across the social and political spectrum that the Old Law (The Land Acquisition Act 1894) suffers from various shortcomings and is outdate. Some of these include:

i. Forced acquisitions
ii. No safeguards.
iii. Silent on resettlement and rehabilitation of those displaced
iv. Urgency clause
v. Low rates of compensation
vi. Litigation

**Definitions:-**

Sec. 3(c) of the Act, defines an "Affected Family"

Sec. 3(p) of the Act, defines " Land"

Sec. 3(r) of the Act, defines "Land Owner."

Sec. 3(n) of the Act, defines "Holding of Land"

Chapter V, Sec. 31 (1) & (2) of the Act deals with the Rehabilitation and Resettlement award and its particulars. The Collector shall have the power to pass the award.

Chapter VIII, Sec.51 to 74 of the Act deals with the constitution, members, powers and functions of the LARR Authority.

Chapter IX, Sec.75 & 76 of the Act deals with Apportionment of Compensation.

Chapter X, Sec. 77 to 80 of the Act deals with the Payment of Compensation.

Chapter XI, Sec.81 to 83 of the Act deals with the Temporary Occupation of Land

**Amendment Ordinance 2014:-**

i) Exemption of five categories of land use from certain provisions:

The Ordinance creates five special categories of land use: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure projects including Public Private Partnership, projects where the central government owns the land.

ii) Return of unutilized land

iii) Time period for retrospective application

**UNIT – III**

**ENACTMENTS AND CULTIVATING TENANTS**

**Tamil Nadu Cultivating Tenants Protection Act 1955**

**Object & Scope:**

An act for the protection from eviction of cultivating tenants in certain areas in the State of Tamil Nadu.

The Tamil Nadu Cultivating Tenants Protection Act was only a beneficial legislation for the security of tenure to the cultivating tenants of agricultural lands. The Original Parent Act enacted was in force only for a period of one year and it would be expired by 26th September 1956. By the amending Act XIV of 1956 the period of enforcement was extended. A series of amended Acts extended both the area of operation of the Act and also the continuance of the Act.

**Cultivating Tenant:**

Cultivating tenant means a person who contributes his own physical labour or that of any member of his family who contributes their own physical labour.

On the death of the cultivating tenant, his legal representatives would be entitled to claim the protection of the Act if anyone of them satisfied that he has personally contributed his labour in the cultivation of such land.

**Landlord:**

Landlord in relation to a holding or part thereof means the person entitled to evict the cultivating tenant from such holding or part.

Landlord as defined in Section 2(e) of the Tamil Nadu Cultivating Tenants Protection Act would clarify include any person who is entitled under the common law, to evict a cultivating tenant from a holding, exercising the same rights as his predecessor in-interest.

**Disposal of Application under Section 3:**

On receipt of an application for eviction, the Revenue Divisional Officer shall hear the landlord and the cultivating tenant and hold an enquiry into the matter and pass an order accordingly. It is therefore obvious that the officer acting under the Act has either to allow the application or to dismiss it after hearing the representations of the parties who have been served and in case he finds the tenant is in arrears, he may in his discretion grant some time for depositing such arrears and if the cultivating tenant does not comply with the order, he may pass an order of eviction. One of the grounds in which eviction can be sought is that set out in Section 3 (2) I i.e. use of the land for any purpose not being an agricultural or horticultural purpose.

**Restoration of Possession:**

In cases where the tenant surrenders possession voluntarily without being compelled to do so by any act or conduct on the part of the landlord there is no eviction.

In order to entitle, a person to apply for restoration to possession of land under the Cultivating Tenants' Protection Act 1956, he must be a cultivating tenant within the meaning of the Act. It means that there should be the relationship of landlord and tenant between the parties.

**Privileges to Army Personnels:**

Sub-section (3) of Section 4-AA gives special privilege to the landlord who got himself enrolled as a member of the Armed Forces to resume lands for personal cultivation after his discharge or retirement from service or he being sent to reserve from the Armed Force.

**Bar of Civil Jurisdiction:**

Under Section 6 the civil court has been barred from entertaining matters in which the Revenue Divisional Officer is empowered to decide and determine. The clear import o Section 6-A is that in any suit before any civil court for possession, if the defendant proves not only that he is a cultivating tenant but also he is entitled to the benefits of the Act, the civil court is bound to transfer it to the Revenue Divisional Officer and cannot proceed to try and dispose of it itself.

**Revision:**

The civil revision petition would lie before the High Court under Section 6-B of the Act against any order passed by the Authorised Officer.

## The Tamil Nadu Cultivating Tenants Special Provisions Act, 1968

As it was felt that it would be difficult for the cultivating tenants to pay in one lump sum the entire arrears of the rent outstanding on the 20th April 1968 due to the unprecedented drought in 1965, The Tamil Nadu Cultivating Tenants (Special Provisions) Act, 1968 was enacted to provide for the payment of arrears of rent accrued and due to the landlord and outstanding on the 20th April 1968, in for equal annual installments on or before 1st April 1969, 1st April 1970, 1st April 1971 and 1st April 1972, along with current dues.

Section 3 of this Act protects the Cultivating Tenant from eviction on the ground of arrears of rent for the period prior to 20th April 1968. By the help of this Act, he can pay the arrears of rent in four equal installments. Failing which he will be evicted according to the procedure established by law under this Act.

## The Tamil Nadu Cultivating Tenants Arrears of Rent Relief Act, 1972

In 1972, this Act has been passed to provide relief to cultivating tenants in respect of certain arrears of rent.

This Act removed the cultivating tenant's fear of eviction for arrears of rent. So their occupancy right is secured. Sections 3 to 7 are to protect the interest of the poor peasants. This Act is a milestone in the achievement of protecting the cultivating tenants in Tamil Nadu.

Section 4 of the Act further says if any Cultivating Tenant makes any payment by way of rent in the Court shall be deemed to have paid or deposited towards the current rent.

This Act specially lays emphasis that no suit for recovery of the debt shall be instituted and no application for the execution of a decree or payment of money passed in a suit for recovery of a debt.

## Tamil Nadu Cultivating Tenants' (Payment of Fair Rent) Act 1956

### Introduction:

Whereas it is expedient to provide for the payment of fair rent by cultivating tenant in certain areas in the State of Tamil Nadu. The Tamil Nadu Cultivating Tenants' (Payment of Fair Rent) Act 1956 is intended to regulate rents payable by a cultivating tenant to the landlord and its provisions will take effect irrespective of any contract or usage, decree or order of court or any provision of law to the contrary ;

The fixation of fair rent by the Rent court would take effect from the date of application in which the order was passed.

### Definitions:

Section 2 of this Act viz., Tamil Nadu Cultivating Tenants (Payment of Fair Rent Act 1956, clearly explains the meaning of various terms and expressions to construe the provisions of the Act in a right manner. The term cultivating tenant explained in this Act is the same as explained in the Tamil Nadu Cultivating Tenants Protection Act 1956.

### Rights and Liabilities of Cultivating Tenant and Land Owners:

With effect from 1st day of October 1956, every cultivating tenant shall be bound to pay to the land owner and every land owner shall be entitled to collect from the cultivating tenant fair rent payable under this Act.

The Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act 1956 whilst providing for the fixation of fair rent in the case of wet land where the normal produce is paddy, it avoids to advert itself to cases where the main crop is sugar cane, Plantain or betel vines, etc.

What is the procedure to the adopted to fix such rent which was not the subject matter of agreement or arrangement between the landlords and the Tenant? The normal basis is the market rent or fair rent that is being obtained for similar land in similar locality in the vicinity.

**Fair Rent:**

Where there was no concluded contract between the landlord and the tenant in regard to the rent relating to the year in question the rent payable would be in accordance with Section 4 of the Tamil Nadu Cultivating Tenant (Payment of Fair Rent) Act 1956, i.e., in the case of wet land 40 per cent of the normal gross produce or its value in money.

**Payment of Fair Rent:**

The Fair Rent may be paid either in cash or in kind as embodied in Section 5 of the Act. Section 5 and 7 of the Act governs the parties only when there is no dispute s to the fair rent payable by the tenant to the landlord. Section which provides for payment in cash or in kind or partly in cash and partly in kind refers clearly to the fair rent and not the agreed rent.

**Sharing of Produce:**

It is clear that Section 7 of the Fair Rent Act can be transgressed in one of two ways, namely (1) when the tenant does not bring the crop to the threshing floor at all or (2) having brought it to the threshing floor, he removes any portion of it at such time or in such manner as to prevent the due division thereof at the proper time. The section forbids removal of any portion of the crop. There is no question therefore, of share of the tenant or the landlord's either the removal as a whole will transgress Section 7 or it will not; and that will depend upon the fact whether the removal was in order to prevent due division of the crops at the proper time.

**Appeal and Revision:**

The appeal remedy is contemplated under section 9 of the Act to Court from any orders passed by the Record Officer. Whereas Section 11 deals with the revisional power of the High Court. Against the order passed by the Rent Court appeal shall lie to the Rent Tribunal and his decision shall be final subject to the revision under Section 11. The orders of the Rent Tribunal shall be liable to revision by the High Court.

**Surrender of Excess Land:**

Section 14 applies only to the case of a tenant claiming relief under the Fair Rent Act. That section will have no application to the case of a landowner whose tenant owns or enjoys more than 6.2/3 acres of land.

Under the Acts tenant in order to get the benefit of fixation of fair rent should surrender the excess land before the ending of the agricultural year 1957. The intention of the Section 14(2) is that the tenants should exercise the option but relinquish at the end of the agricultural year ending in 1957, but not subsequent thereto.

**Tamil Nadu Agricultural Lands Records of Tenancy Rights Act, 1969**

**Object and Scope:**

An act to provide for the preparation and maintenance of record of tenancy rights in respect of agricultural lands I the State of Tamil Nadu.

The object of the Act is to provide for the preparation and maintenance of the record of tenancy rights in respect of agricultural lands in the State of Tamil Nadu. The operation of the Act was extended by notification issued in the official Gazette every now and then.

To implement the provisions of the Act, under Section 2(7) of the Act, Government had appointed Special Tahsildars as Record Officers and Special Deputy Collectors or Revenue Divisional Officer as Appellate Authority. The Special Tahsildars who were working as records officer have completed enquiries and prepared Draft Records in respect of most of the villages and published them in the District Gazette.

The need for the Act arose out of the fact that the implementation of tenancy laws was very much retarded for want of an authentic record of tenancy rights. The condition stipulated in the Tenants Protection Act for the land owners to tender lease deeds to tenants annually was observed more in the breach than in its practical observance. The tenants were at the mercy of the land owner in acknowledging their tenancy right. Receipts were scarcely given for waram delivered by the tenants. The land owners took action to forcibly evict tenants taking advantage of the absence of a record of tenancy. Protection was therefore needed to the tenants. Except in very few cases, the leases were mostly oral and as hitherto there was no record to prove the tenancy, the tenants found it difficult to establish their rights by recorded evidence and claim the protections given to them under the various tenancy laws. Now all such cases o tenancy will find place in the approved record and thereby the tenants concerned will be ensured of the benefits of tenancy legislation.

**Preparation of Record of Tenancy Rights:**

Section 3 of the Act empowers the government to prepare the record of tenancy rights. The land owner, Tenant or any other intermediary must submit a written statement to the Record Officer (Special Tahsildars) containing the particulars required in From III provided under the rules. The officer will prepare a draft record and it will be published in the District Gazette. After hearing the parties, final draft will be prepared and published in the Fort St. George Gazette.

**Inclusion of Lands in the Approval Records:**

Section 4 of the Act provides procedure for inclusion of any land let in for cultivation after preparation of the record. It also includes provision to add any land left out at the time of preparation of the final record.

**Modification:**

At times modification in the record is necessary due to the following reasons:

(a) Death of the Owner or tenant or intermediary

(b) The land may be transferred or for any other reasons. In such cases the record is modified after hearing the interested person. This procedure is provided in Section 5 of the Act.

**Appeal and Revision:**

Any person aggrieved by the order passed by the Record Officer can prefer an appeal to the District Collector. Further the District Collector has the power to call for examine and pass orders in respect of any proceedings under this Act.

Bar of jurisdiction of civil courts. No civil court shall have jurisdiction in respect of any matter which the Record Officer, the District Collector has the power to call for examine and pass orders in respect of any proceedings under this Act. The record will be modified as per the order in Appeal for Revision and it will be given effect by the Record Officer.

Bar of jurisdiction of civil courts. No civil court shall have jurisdiction in respect of any matter which the Record Officer, the District Collector or oter officer or authority empowered by or under this Act has to be determine and no injunction shall be granted by any court in tespect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under the Act.

## Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act 1971

The object of this Act is to provide for the conferment of ownership rights on occupant of kudiyiruppu in the State of Tamil Nadu. Further the Act is applicable to any agriculturist or agricultural labourer occupying any kudiyiruppu as tenant or licensee as on 01-04-1990.

Kudiyiruppu means any site of dwelling house or hut occupies as tenant or licensee by agriculturist or agricultural labourers and also the adjacent areas required for quiet enjoyment of the dwelling house or hut.

According to Section.3 of the Act, those agriculturist or agricultural labourer occupying any kudiyiruppu on 01-04-1990 shall be the owner of such kudiyiruppu and vest absolutely free from encumbrances. If the Authorised officer is satisfied that the vesting of existing kudiyiruppu would cause inconvenience to the owner, the owner may be permitted to provide any alternate site with certain conditions.

The Authorised officer has power to decide the disputes regarding (1) whether the person is agriculturist o agricultural labourer, (2) whether the land is an agricultural land, (3) whether site is a kudiyiruppu and (4) whether any adjacent area is necessary for quiet enjoyment of dwelling house or hut. Aggrieved by any decision or order by the authorised officer, appeal lies to the District Collector. The limitation period for preferring appeal is 90 days. On sufficient cause the Appellate Authority can condone the delay in filing the appeal.

After hearing the occupant and owner of the kudiyiruppu and all the persons interested, the authorised officer shall decide the compensation in accordance with the schedule and thereafter publish the order in the District Gazette. Aggrieved by the order of the authorised officer in respect of determination of compensation, appeal lies to the court namely Sub court. It has to be preferred within 90 days from the date of communication of the order. There lies a right of second appeal to the High Court from the order of that court that too when the compensation fixed exceeds Rs.10,000/- .

The compensation paid to the owner shall be recovered by the government from the occupant on whom the ownership is conferred in 15 equal monthly installments.

### Prohibition of Alienation:

There is a restraint on the power of alienation of the occupant or legal representative of the occupant of the kudiyiruppu on whom the ownership is conferred for a period of 10 years particularly in respect of sale, mortgage, lease, etc. Any how with the sanction of the authorised officer, they have the power of alienation. If there is any contravention to these provisions, the alienation shall be made as null and void and the kudiyiruppu shall vest with the government free from encumbrances.

### Bar of Civil Jurisdiction:

By virtue of Section 23, the jurisdiction of the civil court has been taken away. In matters over which the government or authorised officer has power to determine any issue, the civil courts cannot interfere. In case of any breach of the provisions of this enactment, there are penal provisions for fine and for prosecution of the offence committed.

Even in respect of any prosecution for any action contravening the provisions of the Act, there is a protection given by the enactment itself if the action is in good faith.

## UNIT – IV

## LAW AND LAND CEILING

### Tamil Nadu Reforms (Fixation of Ceiling on Land) Act 1961

Preamble of the Act is that an Act to provide for the fixation of ceiling on agricultural land holdings and for certain other matters connected therewith in the State of Tamil Nadu. The object is to acquire the excess holdings and distribute to landless and other persons.

According to Section. 3(1) of this Act. Agriculture includes horticulture, dairy farming, poultry farming, livestock breeding, growing of trees etc. The term cultivating tenant is defined in Section 3(10) which means a person who contributes his own physical labour in the cultivation of land under tenancy or lease. The ceiling limit has been prescribed in terms of standard acre which would constitute one stand acre depends on the nature of the land namely wet land or dry land and also upon the assessment of land revenue.

In this enactment different ceiling limits have been prescribed for various categories like educational institutions, individuals etc. In respect of a family consisting of not more than 5 members, the limit is 15 standard acres and for any college, the limit is 40 standard acres. Likewise in any event the total extent of land held or deemed to be held by a family shall not exceed 30 standard acres. Therefore from the date of commencement of the Act, no person shall be entitled to hold land in excess of the ceiling area prescribed by the Act.

### Furnishing of Return & Collection of Information:

Each and every person who held land in excess of ceiling area ought to have furnished the return to the authorized officer within 30 days from the notified date in case of failure to furnish the return, the authorised officer has to collect the information regarding the extent held by each person and other particulars of the land. After giving reasonable opportunity to make representations and considering the same, the authorised officer shall prepare a draft statement in respect of each person.

In respect of any question relating to the title of the land, the authorised officer may decide the issue summarily. If it involves, any substantial question of law or tact, the question shall be referred to the Land Tribunal. Against the order of the authorized officer no appeal or revision lies. The authorised officer shall publish the final statement which reveals the extent of land of a person, the surplus of land etc. After the publication of the final statement, a notification to the effect that the surplus land is required for public purpose would be made. The authorised officer may take possession of the land after publication of notification and vests with the government. From the date of vesting of land with government to the date of possession of the land, the person in occupation of the said land is liable to pay amount or use and occupation and for enjoyment.

When any surplus land of a person is acquired by the government that person shall be paid compensation amount according to the Schedule III as on the date of acquisition of land. In case of any disputes, the aggrieved person can approach (1) Authorised officer (2) Land Board (3) Land Tribunal (4) Land Commissioner and (5) T.N. Land Reforms Special Appellate Tribunal. This is the hierarchy of Tribunals. Against the orders of the authorised officer, appeal lies to the Land Tribunal which has to be filed within a period of 30 days from the date of decision. Similarly the revisional powers have been given to the Land Commissioner and also the Special Appellate Tribunal. The various sections 85 to 92 deals with various penalties that would be inflicted on the person who commits any breach of the provisions of the Act.

## UNIT – V

## LAW- BUILDINGS

## Tamil Nadu Building (Lease and Rent Control) Act 1960

### Introduction:

The Rent control legislation in this state is by now more than 52 years old. It deals mainly with landlord and tenant a very sensitive subject like the relationship of mother-in-law and daughter-in-law. Some landlords and tenants fight for prestige. Others fight for necessity and shelter. It has been extended to almost the entire state.

The Act is a self contained and complete code for regulation of rights of landlords and tenants as defined in the Act with respect of buildings. A short analysis of the act would show that the Act provides for every contingency that is likely to arise in the relationship between landlord and tenant.

### Object and scope:

Whereas it is expedient to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants there from in the State of Tamil Nadu.

### DEFINITIONS:

### Building:

Building means any building or hut or part of building or hut, let or to be let separately for residential or non-residential purposes includes (a) the garden, grounds and out houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut. (b) Any furniture supplied by the landlord for use in such building or hut or part of building or hut, but does not include a room in a hotel or boarding house.

### Landlord:

"Landlord" includes the person who is receiving or is entitled to receive the rent of a building whether on his own account or on behalf of himself and others or as an agent trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant. A tenant who sub-lets shall be deemed to be a landlord within the meaning of this Act in relation to the sub-tenant.

### Tenant:

The definition of the word tenant as given in the Rent Control Acts, is the indicative of the widest meaning assigned to it, but it is to be limited in accordance with the scope of the term of a particular Act. While some Acts define the term 'tenant' as a person by whom or on whose behalf the rent is payable, the other Acts include the sub-tenant also. Tenant includes any person by whom or on whose account rent is payable for a building and even includes the surviving spouse or any son or daughter and any person continuing in possession after the termination of tenancy in his favour.

### Fixation of Fair Rent:

Under Section 4 Sub-section (2) either the tenant or the landlord can file application for fixation of fair rent and the Rent controller after making such enquiry according to the guidance and principles laid down in other sub sections of Section 4 shall fix the fair, rent. The fair rent shall be nine per cent gross return per 'annum in the case of residential building and twelve per cent gross return per annum in the case of non-residential building on the total cost of such building. This has been laid down in sub-section (2) and (3) and includes the market value of the site, cost of construction of the building and cost

of provisions of the amenities specified in schedule I. While calculating the market value of the site, the area of the site on which the building is constructed and up to fifty percent of the portion of the site on which the building is constructed of the vacant land shall be taken into account and the remaining excess portion of the vacant land as amenity. In the cost of site in which the building is constructed and the cost of construction of the building, certain percentage will be the cost of provision of amenities. In the case of residential building, it shall not exceed fifteen per cent and in the case of non-residential building twenty five per cent. The cost of construction of the building is determined after deducting the depreciation calculated at the rate as specified in Schedule H by using the formula P = A [1000-r/100]n

Where A= total cost of construction of the building, r = rate of depreciation per annum, n = age of the building (i.e. number of years) p = the final depreciated value of the building. The amount of depreciation will be equal to (A-P) subject to a minimum of ten percent of "A".

**Deposit of Rent:**

According to section 8(1) it is mandatory for the landlord to issue duly signed receipt for the actual amount of rent or advance which he has received. If the landlord refuses to accept or evades to receive any rent lawfully payable by the tenant in respect of the rented premises, then the tenant may issue notice directing the landlord to specify a bank to deposit the rent lawfully payable to him within ten days from the date of receipt of the notice. It is always open to the landlord to specify another bank instead of one which he has already specified. Where landlord specifies a bank then the tenant has to deposit the same in respect of the building. After issuing notice to the landlord to specify a bank, if the landlord does not specify a bank, it is mandatory for the tenant to remit the rent to the landlord by way of Money order after deducting the money order commission. Suppose the landlord refuses to receive the rent remitted by the tenant as per sub-section (4) of Section 8, the tenant may deposit and continue to deposit the rent before the controller.

**Grounds for Eviction of Tenants:**

A landlord can evict the tenants only in accordance with the provisions of the Act. The Act specifies certain grounds for eviction and they are as follows: -

| | | | |
|---|---|---|---|
| (A) | Wilful Default | --- | Section 10(2) (1) |
| (B) | Sub-letting | --- | Section 10(2) (ii) (a) |
| (C) | Different User | --- | Section 10(2) (ii) (b) |
| (D) | Act of Waste | --- | Section 10(2) (iii) |
| (E) | Immoral or Illegal Purpose | --- | Section 10(2) (iv) |
| (F) | Act of nuisance | --- | Section 10(2) (v) |
| (G) | Non-occupation of the Building | --- | Section 10(2) (vi) |
| (H) | Denial of Title | --- | Section 10(2) (vii) |
| (I) | Personal Occupation | --- | Section 10(3) (a) |
| (J) | Additional Accommodation | --- | Section 10(3) (c) |
| (K) | Demolition and Reconstruction | --- | Section 14 |

**(a) Wilful Default:**

No tenant could be evicted from the premises in his occupation unless without default was established. To arrive at a finding that the tenant is in willful default, the mere fact that the tenant is in arrears is in arrears of rent would not be enough and the court has to consider whether there has been intentional violation of the clear obligation to pay rent.

**(b) Sub-Letting:**

In the lease deed there must be a specific clause authorizing the tenant to sub-let the premises and in the absence of such specific clause, it cannot be said that the right the tenant enjoys under the ordinary law with regard to subletting can be inferred. If the tenant sub-lets the premises without the consent of the landlord, then that is a ground for eviction.

**(c) Different User:**

Though the word 'purpose' occurring in this section has been defined in the Act, it is qualified by the other words occurring in the sub-clause viz., other than that for which it was leased. Once the purpose of lease is determined the evidence regarding different user of the premises by the tenant will afford material to the controller to decide whether the tenant has put the premises for different user or not.

**(d) Act of Waste:**

In short though changing the nature of the demised premises is technically waste yet this is not so if the change has been expressly sanctioned by the lessor, and the mere change is not waste unless it is in act injurious to the inheritance either by diminishing the value of the estate or by increasing the burden upon it or by impairing the evidence of title.

**(e) Illegal or Immoral Purpose:**

Using the building for the illegal or immoral purpose is a ground for eviction. Merely because a tenant played cards for stakes in the building in his occupation on a solitary occasion and was convicted under the city Police Act, it is not proper to say that the building has been converted into a gambling den.

**(f) Acts of Nuisance:**

What the Act requires under this section is either the tenant is guilty of such acts and conducts which are sources of nuisance to those who occupy other portions in the building, a portion of which he himself occupies as a tenant, or such acts and conduct amount to nuisance to the occupiers of the building in the neighborhood.

**(g) Non-Occupation of the Building:**

Section 10(2) (vi) depicts that if a tenant fails to occupy the demised premises for more than four months without assigning any bonafide reason, he is liable to be evicted on that ground alone.

**(h) Denial of Title**

When a tenant denies the title of the landlord without any bonafides, then that itself is a ground for eviction. But any bonafide denial of title would not render a tenant liable for eviction.

**(i) Personal Occupation:**

Section 10 (3) (a) deals with the ground of personal occupation for eviction. This section consists of three clauses namely clause (i) which deals with the residential buildings, clause (ii) deals with buildings used for keeping vehicles and clause (iii) deals with the non residential buildings. Under this section a landlord can ask for his owner's occupation only if he has no other building of his own.

**(j) Additional Accommodation:**

The ground of additional accommodation for eviction is embodied under section 10 (3) (c). The purpose of this sub-section would be that if the landlord is in occupation of a portion o a residential or non-residential building he would be entitled to the other portion and there is no warrant in the section restricting his right to activities which are commercial in nature. The expression "as the case may be" occurring in the section has only one meaning that is the requirement of additional accommodation may be for residential or for non-residential purpose.

### (k) Demolition and Reconstruction:

Section 14 deals with the demolition and reconstruction as aground for eviction. This section stipulates that the landlord can ask for eviction of the tenants on the ground of demolition and reconstruction. For this section the condition of the building, then the age of the building etc., are to be taken into consideration for passing a decree for eviction. It is not necessary that the building should be very old and descript to enable the landlord to claim that the immediate purpose was for demolition of the building. While the age and condition of the building are relevant factors to be taken that there is an imminent threat of the same crumbling down in the near future and only in such a contingency, the landlord could resort to the process under Section 14 (1) (b) of the Act.

### Execution:

The decree of eviction passed by the rent controller can be executed as laid down in the Section 18 of the Act. Section 18 deals with the execution of the order of eviction. The executing court has no right to go into the question whether the finding reached by the Rent Controller on the question whether the need o the landlord was bonafide or not, its duty is to execute the order of eviction as it stands.

### Appeal and Revision:

Any person aggrieved by the order of the Rent Controller can prefer an appeal under Section 23 and from any order of the Appellate Authority a revision under Section 25 can be preferred. The appeal has to be preferred within a period of 15 days from the date of order. The revision has to be preferred within a period of 30 days from the date of order.

### Tamil Nadu Apartment Ownership Act, 1994

An Act to provide for the ownership of an individual apartment in a building and to make such apartment heritable and transferable immovable property.

### Definitions:

Sec.3 of the Act defines Apartment, Association of Apartment Owners, Building, Bye-laws, Competent Authority, Ownership of Apartment, Deeds of Apartment, Society, etc.

Chapter II, Sec. 4 to 9 of the Act deals with the Ownership, Heritability and Transferability of Apartment.

Chapter III, Sec. 10 & 11 of the Act deals with Deeds of Apartment and its Registration.

Chapter IV, Sec.12 to 18 of the Act deals with the Societies or Association of Apartment Owners, its Bye-laws and Functions.

## CASE LAWS

### T.N. LAND REFORMS (FIXATION OF CEILING ON LAND) ACT: -

1) Vavallevvai Maricar Dharamam – v. – State of Tamil Nadu

   Held that trust created for running a madarasa i.e. place where religious instructions are imparted to Muslim boys and girls is a public trust of religious instructions and come under the exemption of Section 2.

2) Ramakrishnan – v. – State of Madras

   Held, for the purpose of this Act Stridhana land refers only to the land held by a female on the date of commencement of the Act and nothing else.

3) State of Tamil Nadu – v. – Narendra Dairy Farms (P) Ltd.,

Held, though Section 7 of the Act prohibits a person from holding land in excess of ceiling area, the surplus land shall vest with the Govt. only on publication of notification under Section 18(1)

4) M.K. Harihara Iyer – v. – Authorised Officer, Land Reforms

S.C. Held that Under Section 10 for preparation of draft statement the Authorised Officer has to take into account only the members of the family as defined in Section 3 (14)

5) Syed Rabia Beevi – v. – Authorised Officer

Held that Section 15 applies to mistakes in the correctness not of the merits, but of the form of entry in the final statement.

6) Lakshmi Ammal – v. – Assistant Commissioner

Held that the Section 50 is not void for vagueness, merely because no specified period has been prescribed for fixation of final compensation.

## T.N. OCCUPANTS OF KUDIYIRUPPU (CONFERMENT OF OWNERSHIP) ACT:-

1) T.K. Narayana Pillai – v. – Naganatha Iyer

Held that conferment of ownership under Section 3 will be applicable only if the person proves he is an occupant. And also held an agriculturist can claim his site in occupation as Kudiyiruppu only if he is a tenant or a licensee in respect of the site alone.

2) Kalyanasundaram Udayar – v. – Pazhaniayya Udayar:-

Held that in respect of disputes referred under Section 4, the Authorised Officer alone is entitled to decide and civil court jurisdiction is ousted.

3) R. Veerappan – v. – Shanmugavelu

Held that the questions to be determined under Section 3-B are within the exclusive jurisdeiction of the Authorised Officer and not with the Civil Court.

## T.N. CULTIVATING TENANTS PROTECTION ACT: -

1) Ramaswamy Gounder – v. – Kaliappa Gounder

Held Lesse was not entitled to the protection of the Act in case where the lease of agricultural land was from a guardian under the directions of court.

2) Sudailaimuthu – v. – Palaniyandavan :-

S.C. Held that the contribution of his own physical labour by one member of a joint family is sufficient for that joint family to the protection under the Act.

3) P. Somasundaram – v. – M. Govindasamy

Held that the members of the Armed Forces are entitled to the special privilege under Section 4AA only, if they were landlords at the time of joining the Armed Forces.

4) Chinnamuthu Gounder – v. – Perumal Chettiar

S.C. Held that the civil court has to transfer the pending suit for possession or for injunction to the Revenue Division Officer for disposal, if it is a satisfied before the civil court by the defendant that he is a Cultivating Tenant and entitled to the benefits of the Act.

5) Baluchamy – v. – Thayammal

Held that the eviction order passed by the Revenue Court cannot be set aside on the ground that the arrears are paid on the direction by the High Court.

6) Rama Iyer – v. – Sundaresa Ponnapoondar

S.C. Held that the decision of the Tribunal pursuant to the enquiry Summarily is also subject to revisional power of the High Court.

7) Ramaswamy Gounder – v. – Perianna Moopan

Held that the Revenue Court has no power to remit the rent due on the ground of failure of crop.

**T.N. CULTIVATING TENANTS (PAYMENT OF FAIR RENT) ACT:**

1) N.S.S. Sivanu Mudaliar – v. – Sivapakaia Nadar

Held that in what circumstances remission could be claimed under Section 5.

2) Govinda Gounder – v. – Deenappa Gounder

Held the pendency of proceedings for fixation of fair rent before Rent Tribunal is no bar to the Rent Court to decide application under Section 6(2) of the Act.

**T.N. AGRICULTURAL LANDS RECORD OF TENANCY RIGHTS ACT:**

1) Palanisami Gounder – v. – Bhattammal

Held Authorities functioning under the Act cannot eschew from consideration the decisions of Civil Court in adjudicating the rights of parties under the provisions of the Act.

2) Muniyandi – v. – Rajangan Iyer

Held that jurisdiction of the civil court is expressly excluded in matters to be determined by Record Officer, Collector by the Act.

3) Govindarajan – v. – K.A.N. Srinivasa Chetty

Held, Civil Court's Jurisdiction is not ousted in pending matters and Bar of Cilvil Court's jurisdiction is only prospective and not retrospective.

**T.N. BUILDING (LEASE AND RENT CONTROL) ACT :-**

1) Raval & Company – v. –Ramachandran

Held that the fixation of fair rent means fair rent for the building and not fair rent payable by the tenant to the landlord who applies to court for fixation.

2) S. Sundaram Pillai – v. – V.R. Pattabiraman

Held that Wilful default appears to indicate that default in order to be willful must be intentional, deliberate, calculate and conscious, with full knowledge of legal consequences flowing therefrom.

3) V.K.C. Choultry – v. – Veeraswamy

Held that the tenant cannot without the written consent of the landlord transfer his right under the lease or sub-let the entire or any portion thereof and if he does so would be a ground for eviction.

4) T.M. Ramaswamy Gounder – v. – Ranganayaki

Held the tenant cannot without the written consent of the landlord transfer his right under the lease or sub-let the entire or any portion thereof and if he does so would be a ground for eviction.

5) Mohideen Sahib – v. – Mohammed Habibullah Sahab

Held that such acts which are prejudicial to the interest of the landlord in so far as the premises is concerned and would physically and demonstrably lessen the utilitarian value of the building would amounts to acts of waste.

6) Subramania Chettiar – v. – Manivannan

Nuisance alleged must be caused to the occupiers of other portions in the same building or of buildings in the neighbourhood.

7) Masilamani – v. – Balaiah

The plea of tenant if the landlord is occupying a building outside the city concerned and is therefore not entitled to maintain an eviction petition is rejected as the section requires only that the landlord should not be occupying a building of his own in the city, town or village concerned.

8) P.Orr and Sons Pvt. Ltd., – v. – Associated Publishers

Held that the condition of the building is a basic and essential requirement for eviction of a tenant on the ground of demolition and reconstruction.

9) Shanmugham – v. – Sathyanarayana Prasad

Held the executing court has no right to go into the question whether the finding reached by the Rent Controller on the question whether the need of the Landlord was bonafide or not. Its duty is to execute the order of eviction as it stands.

10) Abdul Jameel – v. –Simson & Machonochy Ltd.,

Held that when the landlord has got a right to evict the lessee is tenant and recover possession of the premises, the sub-lease, will have no independent right or superior rights on the basis of the Sub-lease.

## TAMIL NADU APARTMENT OWNERSHIP ACT, 1994:-

1. C.B.S. Property Development (P) Ltd. vs District Consumer Disputes Forum

It is held that under the Tamil Nadu Apartment Ownership Act, 1994, the common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof and any covenant to the contrary shall be null and void

2. Spencer Plaza Owners & Occupants Association vs Southern Car Parkings Ltd.,

The Court held that the defendant, being an association of Spencer Plaza owners formed as per the requirement of the Tamil Nadu Apartment Ownership Act, 1994, it is their obligation to maintain the entire building, such as open space, common space, electricity, water supply and drainage, including car park area.

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# 3. INTERNATIONAL LAW

Public international law concerns the structure and conduct of sovereign states and also holy sea. It also some times concerns multinational corporations and individuals. Public international law has increased in use and importance vastly over the twentieth century, due to the increase in global trade environmental deterioration on a worldwide scale, awareness of human rights violations, rapid and vast increases in international transportation and a boom in global communications.

Public international law combines two main branches:

1. The law of nations (Jus gentium) and

2. The international agreements and conventions (Jus inter gentes)

Private international law is concerned with the resolution of conflict of laws international law "consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and with their relations with persons, whether natural or legal or juristic.

**International legal theory**

International legal theory comprises a variety of theoretical and methodological approaches used to explain and analyse the content, formation and effectiveness of public international law.

Some approaches center on the question of compliance:

**Why states follow international norms in the absence of a coercive power that ensures compliance?**

Other approaches focus on the problem of the formation of international rules:

**Why states voluntarily adopt international law norms, that limit their freedom of action, in the absence of a world legislature?**

While other perspectives are policy oriented: they elaborate theoretical frameworks and instruments to criticize the existing norms and to make suggestions on how to improve them.

Some of these approaches are based on domestic legal theory some are interdisciplinary, and others have been developed expressly to analyze international law.

Classical approaches to International legal theory are:

**1. The natural law**

The natural law approach argues that international norms should be based on axiomatic truths.

**2. The Eclectic**

In 1625 Hugo Grotius argued that nations as well as persons ought to be governed by universal principle based on morality and divine justice while the relations among polities ought to be governed by the law of peoples, the jus gentium, established by the consent of the community of nations on the basis of the principle of pacta sunt servanda, that is, on the basis of the observance of commitments.

## 3. The legal positivism schools of thought

- The early positivist school emphasized the importance of custom and treaties as sources of international law.
- The early positivist school emphasized the importance of custom and treaties as sources of international law.
- 16th century the historical examples showed the positive law (jus voluntarium) was determined by general consent.
- Bynkershoek asserted that the bases of international law were customs and treaties commonly consented to by various states,
- Moser emphasized the importance of state practice in international law.
- The positivism school narrowed the range of international practice that might qualify as law, favouring rationality over morality and ethics.
- The 1815 Congress of vienna marked the formal recognition of the political and international legal system based on the conditions of Europe.
- Modern legal positivists consider international law as a unified system of rules that emanates from the states' will. International law, as it is, an "objective" reality that needs to be distinguished from law "as it should be." Classic positivism demands rigorous tests for legal validity and it deems irrelevant all extralegal arguments.

### International law is the vanishing point of jurisprudence

According to Holland International law is the vanishing point of jurisprudence. By using the words "vanishing point" in relation to international law and jurisprudence, he meant that international law and jurisprudence are parallel to each other, and they there fore are distinct and separate though it might be appearing that they are one and the same at vanishing point.

Vanishing point is a point at which parallel lines in the same plane appears to meet. Thus international law cannot be kept in the category of law mainly because there is neither any sovereign authority nor exists sanctions if its rules are violated. In the light of above discussions the analytical jurist, Holland ,remarks that international law is the vanishing point of jurisprudence.

He has stated therefore that international law can be described as law only by courtesy, since the right with which it is concerned cannot properly be described as legal.

While his view was perhaps correct at his time but at present the same is subjected to severe criticism and therefore, it is not tenable in the changed character of International law, due to treaties the obligation of states and other social environmental and humanitarian characteristics of international law.

## SOURCES OF INTERNATIONAL LAW

Formal sources: sources from which a law derives its authority or sanction. Material sources: sources from which the law derives its subject matter.

Art 38 of the ICJ Statute contains the sources of int law

1. International conventions or treaties
2. International customs
3. General principles of law recognized by civilized nations
4. Judicial decisions. Arbitral tribunals and juristic works
5. Decisions of international institutions (Resolutions )

## 1. International conventions or treaties

Int convention and treaties are important sources of international law

Convention means meeting or conference when more number of countries meets to formulate certain rules of international law it is called general convention.

Treaty is an agreement whereby two or more states establish or seek to establish relationship between them governed by international law. They may be bilateral treaties, trilateral or multilateral treaties.

**Treaties are of 2 kinds**

1. Law making treaties
2. Treaty contracts

## 2. International customs

Customs are oldest sources of international law

Custom is a long practice of usage. It is a rule of conduct recognized by civilized states. Custom is valid only if it is satisfies the essential requirements vis long duration, uniformity and consistency, Generality of practice, opinion jurist necessitates.

## 3. General principles of law recognized by civilized nations.

General principles of laws are recognized and accepted by almost all the states principles of natural justice. Res judicata, estoppel, good faith, prescription are few examples.

The word civilized nations faced several criticism ..

## 4. Judicial decisions. Arbitral tribunals and juristic works

Judicial decisions, Arbitral tribunals and juristic works are most important and indirect sources on int law. Art 59 of ICJ Statute says the decisions of the court shall be binding only between the parties and in respect of that particular case.

## 5. Decisions of international institutions (Resolutions)

The resolutions of GA and the contribution of specialized agencies have influenced the formulation of rules of international law . Other slogan of int law, writing of jurists and commutators, judicial decisions of international and municipal county and Certain norms of international law achieve the binding force of peremptory norms (jus cogens) as to include all states with no permissible derogations.

## RELATION BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

International law governs the relationship between states and other subjects international law whereas municipal law results the conduct of the individuals within the states.

Some times international law becomes part of municipal law. Transformation of international law into municipal law may take place as per the constitutional provisions of the state. international law cannot be applied without the cooperation of the national legal system. international law is not law above but between the states and is therefore weaker than municipal law.

### Monism

Law is a unified branch of knowledge. Both municipal and int law are parts of one universal legal system.

There is only one legal system called domestic legal order serving the needs of human community in one way or the other. Int law and municipal law are intimately connected with each other.

### Dualism

Law is not a unified branch of knowledge.  international law and municipal law are two distinct and separate laws.

international law result in common will of the sovereign states. Municipal law result of the will of the people of that particular states.

### Specific adoption theory:

International law cannot be directly enforced in the field of municipal law the state must specifically adopt the rules of international law for the purpose of enforcing them in the field of municipal law. This theory is propounded by positivists.

### Transformation theory

International law has to be transformed into municipal law, unless the rules of treaty are substantially transformed they cannot be enforced in the sphere of national law. International law cannot find place in the national or municipal law unless the latter allows its machinery to be used for the purpose.

### Delegation theory

The rules of international law are applied in the field of state law in accordance with the procedure laid down in its constitution. It; is the state to decide for itself when the provisions of a treaty or convention are to come into effect and in what manner they are to be incorporated in the municipal law. There is no need of transformation of a treaty into national law.

## SUBJECTS OF INTERNATIONAL LAW:

International law deals with the rights and duties of the state and also it appeals to individuals and certain non state entities.

Theories regarding the subject of international law:

**Realistic theory:**

Only states are the subjects of international law-Oppenheim

**Fictional theory:**

Only individuals are the subjects of international law - Kelson, Westlake, the duties and rights of the states are only the duties and rights of men who compose them. There is no difference between international law and state law.

**Functional theory:**

States, individuals and certain non state entities are the subjects of international law. This theory is mixture of the above two theories. UN is treated as an international person under international law.

## INDIVIDUALS AS THE SUBJECT OF INTERNATIONAL LAW

Gradually individuals are occupying place of importance under international law as a subject of international law in some occasions.

Some points to understand that international law recognized individual as subject -

1. The universal declaration of Human rights 1948 recognized a broad spectrum of human rights of an the individual and thus upholds human dignity.
2. Every state is entitled to apprehend and punish the pirates,
3. State can punish harmful individuals and criminals.
4. International law regulates the conduct of the foreigners,
5. Espionage is a crime and spies can be punished,
6. Aggrieved persons can claim damages against states
7. UN enables individuals to file petitions

## STATE RESPONSIBILITY OR DUTIES

State responsibility means liability or accountability of the state. It is an obligation towards the nations and their citizens.

State responsibility means of various fields -

1. State responsibility for international delinquency
2. State responsibility for injury to aliens
3. State responsibility for the act of Govt organs
4. State responsibility for contracts with foreigners
5. State responsibility for breach of treaty or contracts
6. State responsibility in respect of expropriation of property
7. State responsibility for the acts of multinational corporations

## STATE SUCCESSION

Succession means substitution or replacement. Succession means the substitution of one state by another state over a territory. It indicates transfer of rights and duties from one international person to another in consequence of a territorial exchange. The state which replaces is called successor state or new state. The state which has been replaced by another state is called predecessor state or parent state.

Methods of succession

1. Universal succession
2. Partial succession

### Universal succession

When the personality of the predecessor state is completely destroyed and is absorbed by another state it is called as universal or total succession. State looses its legal identity here. Generally it takes place by annexation or conquest or subjugation or voluntary merger.

### Partial succession

When a part of the territory is severed or detached from the parent state and personality is effected only to the extent by which the territory is transferred it is called a partial succession.

Here the parent state looses its legal identity. Partial succession takes place by succession or cession or conquest and annexation of a part or dismemberment.

## TERRITORIAL SOVEREIGNTY, MODES OF ACQUISITION AND LOSS OF TERRITORY

Acquisition of a territory by a state means acquisition of sovereignty over such territory.

### Mode of acquisition

1. By occupation
2. By prescription
3. By accretion
4. By cession
5. By conquest
6. By award
7. By plebiscite

### 1. By occupation

Occupation means the control of country by military force of a foreign power. This is an act of appropriation by a state over a territory which does not belong to any other state.

### 2. By prescription

Prescription means using a property for a long period. It is the acquisition of territory by an adverse holding continued for a certain length of time peacefully. Three essentials are to be fulfilled for this method of acquisition

- possession of territory must be peaceful
- it must be continuous without interruption
- it must be held fairly for a long time

### 3. By accretion

Accretion means increase or growth of land by rivers naturally. It is an act of rivers or sea which modifies the existing state and the same is considered to be the part of geographical process.

### 4. By cession

Cession means give over or surrender to the physical control of another state. State transfers some portion of its territory to another sovereign state with or without compensation.

### 5. By conquest

Conquest means takeover or invasion through military force in times of war.

### 6. By award

Award mean decision or judgement. A territory may be acquired by a state through a judgement by international court of justice, ad hoc arbitral tribunals or conciliation commissions.

### 7. By plebiscite

Plebiscite means vote by the electorate determining public opinion on a question of national importance. The inhabitants of a given territory wish to merge it with another state.

### Modes of Loss of Territory

### 1. By cession:

Cession is a formal separation from an alliance or federation. After separation the state acquires new and separate international personality. In this process the state which gives up the part losses its territory.

### 2. By operation of nature

A state may lose its territory by operation of nature, by earthquake a coast of the sea or an island may disappear.

### 3. By subjugation

Subjugation means forced submission to control by others. A state may acquire territory through annexation, the other state may loose it through subjugation ,but is not recognized as valid mode.

### 4. By prescription

Prescription means using a property for a long period. A state may lose its territory by using it for a long period, on the contrary the state which had occupation over it earlier may lose it.

### 5. By revolt

A state may lose its territory by means of revolt. In the process revolt a state may lose its territory.

### 6. By dereliction

Dereliction means negligence or carelessness. When a state neglects a territory that may be acquired by a state through occupation.

### 7. By grant of independence

The newly emerged state acquires territorial sovereignty and international personality. Thus the state which grants freedom looses that territory.

## EXTRADITION

Extradition means delivery of criminals or surrender of escapee. Sometime a person who commits crime in his own country runs away to another country, in such situation the country affected finds itself helpless to exercise jurisdiction to punish the fugitive. In order to punish such escapee international cooperation is necessary. Extradition is a legal process by which one government may obtain custody of individuals from another govt in order to put them on trial or imprison them.

### Principles and rules of extradition

1. There must be a bilateral extradition treaty between states
2. The act should be crime in both states under extradition
3. There must be prima facie evidence against the criminal
4. The formalities prescribed should be fulfilled
5. The treaty terms and proper trial should be followed
6. The accused must be prosecuted only for the specific crime.
7. Generally persons charged with political crimes are not extradited.

### Rule of speciality

The prosecution of the accused only for the crime for which he was extradited is known as rule of speciality. The requesting state in under a duty to try or punish the fugitive criminal only for the offence for which he has been extradited.

### Double criminality

The crime for which extradition is claimed should be crime in both countries is known as double criminality. Generally a list of crimes are embodied in the treaty and extradition is limited to such listed crimes only.

## ASYLUM

Asylum means a place offering protection and safety. In latin the word asylum means unbreakable place. Asylum is a protection given to an escapee by a state on its territory under its control. Asylum is therefore an extension of hospitality and protection to a fugitive and the place where such protection is offered.

Asylum has two elements

1. Shelter; and
2. Active protection

### Types of asylum

1. Territorial asylum
2. Extra territorial asylum

### 1. Territorial asylum:

Asylum granted by a state in its own territory is known as territorial asylum. It is purely discretion of the state either to grant or not to grant.

### 2. Extra territorial asylum:

Asylum granted by a state outside its territory is known as extra territorial asylum. The state gives protection at legations, consular premises and war ships etc. extra territorial asylum is further classified in to the following categories. They are:

1. Asylum in legation
2. Asylum in consulates
3. Asylum in warships
4. Asylum in merchant vessels
5. Asylum in the premises of international institutions

## LAW OF THE SEAS

The United Nations Convention on the Law of the Sea (UNCLOS), also called Law of the Sea treaty, The Law of the Sea Convention defines the rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine Natural resources. Unclos concluded in 1982 it replaced four 1958 treaties.

The UNCLOS replaces the older and weaker freedom of the seas' concept, dating from the 17th century: national rights were limited to a specified belt of water extending from a nation's coastlines, usually 3 nautical miles, according to the 'cannon shot' rule developed by Bynkershoek. All waters beyond national boundaries were considered international waters: free to all nations, but belonging to none of them (the mare liberum principle promulgated by Grotius).

The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes, exclusive economic zones (EEZs), continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes.

The convention set the limit of various areas, measured from a carefully defined baseline. (Normally, a sea baseline follows the low-water line, but when the coastline is deeply indented, has fringing islands or is highly unstable, straight baselines may be used.) The areas are as follows:

**Internal waters:** It Covers all water and waterways on the landward side of the baseline.

The coastal state is free to set laws, regulate use, and use any resource. Foreign vessels have no right of passage within internal waters.

**Territorial waters:** Out to 12 nautical miles (22 kilometers; 14 miles) from the baseline, the coastal state is free to set laws, regulate use, and use any resource. Vessels were given the right of innocent passage through any territorial waters, with strategic straits allowing the passage of military craft as transit passage, in that naval vessels are allowed to maintain postures that would be illegal in territorial waters. “Innocent passage” is defined by the convention as passing through waters in an expeditious and continuous manner, which is not “prejudicial to the peace, good order or the security” of the coastal state.

Fishing, polluting, weapons practice, and spying are not “innocent”, and submarines and other underwater vehicles are required to navigate on the surface and to show their flag. Nations can also temporarily suspend innocent passage in specific areas of their territorial seas, if doing so is essential for the protection of its security.

**Archipelagic waters:** The convention set the definition of Archipelagic States in Part IV, which also defines how the state can draw its territorial borders. A baseline is drawn between the outermost points of the outermost islands, subject to these points being sufficiently close to one another. All waters inside this baseline are designated Archipelagic Waters. The state has full sovereignty over these waters (like internal waters), but foreign vessels have right of innocent passage through archipelagic waters (like territorial waters).

**Contiguous zone:** Beyond the 12 nautical mile limit, there is a further 12 nautical miles from the territorial sea baseline limit, the contiguous zone, in which a state can continue to enforce laws in four specific areas: customs, taxation, immigration, and pollution, if the infringement started within the state’s territory or territorial waters, or if this infringement is about to occur within the state’s territory or territorial waters. This makes the contiguous zone a hot pursuit area.

**Exclusive economic zones (EEZs):** These extend from the edge of the territorial sea out to 200 nautical miles (370 kilometers; 230 miles) from the baseline. Within this area, the coastal nation has sole exploitation rights over all natural resources. In casual use, the term may include the territorial sea and even the continental shelf. The EEZs were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important.

**Continental shelf:** The continental shelf is defined as the natural prolongation of the land territory to the continental margin’s outer edge, or 200 nautical miles from the coastal state’s baseline, whichever is greater. A state’s continental shelf may exceed 200 nautical miles until the natural prolongation ends. However, it may never exceed 350 nautical miles (650 kilometers; 400 miles) from the baseline; or it may never exceed 100 nautical miles (190 kilometers; 120 miles) beyond the 2,500 meter isobath (the line connecting the depth of 2,500 meters). Coastal states have the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others. Coastal states also have exclusive control over living resources “attached” to the continental shelf, but not to creatures living in the water column beyond the exclusive economic zone. Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and

protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International seabed Authority and the Common heritage of mankind principle. Land locked states are given a right of access to and from the sea, without taxation of traffic through transit states.

## FREEDOMS OF THE AIR

The freedoms of the air are a set of commercial aviation rights granting a country's airlines the privilege to enter and land in another country's airspace it is formulated as a result of disagreements over the extent of aviation liberalization in the Convention on International civil aviation of 1944, known as the Chicago Convention.

The convention was successful in drawing up a multilateral agreement in which the first two freedoms, known as the International Air Services Transit Agreement or "Two Freedoms Agreement", were open to all signatories.

While it was agreed that the third to fifth freedoms shall be negotiated between states, the International Air Transport Agreement (or "Five Freedoms Agreement") was also opened for signatures, encompassing the first five freedoms.

Several other "freedoms" have since been added; although most are not officially recognised under international bilateral treaties, they have been agreed by a number of countries

1. the right to fly over a foreign country, without landing there.
2. the right to refuel or carry out maintenance in a foreign country on the way to another country
3. the right to fly from one's own country to another
4. the right to fly from another country to one's own
5. the right to fly between two foreign countries during flights while the flight originates or ends in one's own country
6. the right to fly from a foreign country to another one while stopping in one's own country for non-technical reasons
7. the right to fly from a foreign country to another one while stopping in one's own country for non-technical reasons
8. the right to fly between two or more airports in a foreign country while continuing service to one's own country
9. the right to fly inside a foreign country without continuing service to one's own country

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# 4. CLINICAL COURSE - II

## THE ARBITRATION AND CONCILIATION ACT, 1996

### HISTORY OF ARBITRATION

Arbitration has a long history in India. In ancient times, people often voluntarily submitted their disputes to a group of wise men of a community-called the panchayat - for a binding resolution.

Modern arbitration law in India was created by the Bengal Regulations in 1772, during the British rule. The Bengal Regulations provided for reference by a court to arbitration, with the consent of the parties, in lawsuits for accounts, partnership deeds, and breach of contract, amongst others.

Until 1996, the law governing arbitration in India consisted mainly of three statutes:

(i) Arbitration (Protocol and Convention) Act, 1937
(ii) Indian Arbitration Act, 1940
(iii) Foreign Awards (Recognition and Enforcement) Act, 1961.

General law governing arbitration in India along the lines of the English Arbitration Act of1934, and both the 1937 and the 1961 Acts were designed to enforce foreign arbitral awards (the 1961 Act implemented the New York Convention of 1958).

The government enacted the Arbitration and Conciliation Act, 1996 (the 1996 Act) in an effort to modernize the outdated 1940 Act. The 1996 Act is a comprehensive piece of legislation modeled on the lines of the UNCITRAL Model Law. This Act repealed all the three previous statutes (the 1937 Act, the 1961 Act and the 1940 Act). Its primary purpose was to encourage arbitration as a cost-effective and quick mechanism for the settlement of commercial disputes. The 1996 Act covers both domestic arbitration and international commercial arbitration.

### The Arbitration Act, 1940

The Arbitration Act, 1940, dealt with only domestic arbitration. Under the 1940 Act, intervention of the court was required in all the three stages of arbitration, i.e. Prior to the reference of the dispute to the arbitral tribunal, in the duration of the proceedings before the arbitral tribunal, and after the award was passed by the arbitral tribunal. Before an arbitral tribunal took cognizance of a dispute, court intervention was required to set the arbitration proceedings in motion. The existence of an agreement and of a dispute was required to be proved. During the course of the proceedings, the intervention of the court was necessary for the extension of time for making an award. Finally, before the award could be enforced, it was required to be made the rule of the court.

While the 1940 Act was perceived to be a good piece of legislation in its actual operation and implementation by all concerned - the parties, arbitrators, lawyers and the courts, it proved.

### THE ARBITRATION AND CONCILIATION ACT, 1996
### PRELIMINARY

The Arbitration and Conciliation Act, 1996 was enacted with a view to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.

The Act is in four parts. Part I relates to arbitration, Part II deals with enforcement of certain foreign awards namely the New York and Geneva Convention awards, Part III provides for conciliation as an alternative dispute resolution mechanism and Part IV consists of supplementary provisions.

The Act extends to the whole of India. However, Parts I, III and IV of the Act shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

Arbitration is an alternative means of dispute resolution by a domestic tribunal who is chosen by the parties themselves or appointed with their consent.

It is a popular means of settling disputes in international, national and commercial spheres and an arbitration clause is usually incorporated in almost all business transactions and employment contracts. The Indian equivalent for arbitration is 'panchayat.'

Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person (who is called an arbitrator), so that the actual decision of the dispute rests with the arbitrator, who is considered to be the ultimate judge of the law and facts involved in the dispute.

The underlying principle of this branch of law is to encourage parties to settle their disputes amicably through a tribunal of their own choice instead of carrying it to the established courts of justice.

Salient Features of the Arbitration and Conciliation Act, 1996

1) In addition to arbitration, conciliation has also been recognized as a means of settling commercial disputes.
2) The arbitration award and the settlement arrived at during conciliating proceedings have been treated at par with the decree of the Court.
3) Powers of the Court have been considerably curtailed.
4) The Act contains a salutary provision making it mandatory for the arbitrator to give reasons for the award.
5) The Act no longer requires the parties to make an application to the Court to make the award and this provision helps in saving considerable time of the litigants in execution of arbitral award.
6) The Act contains the provision relating to the interim measures which empower the arbitrator or arbitral tribunal to pass interim orders in respect of the subject-matter of the dispute at the request of the party.
7) The Act is more exhaustive and it deals with arbitration, conciliation, enforcement of foreign Arbitral awards basing on the Model Law of Arbitration and Rules of Conciliation of the UNCITRAL and deals with both Geneva Convention awards and New York Convention Awards.
8) The Act specifically defines the term 'international commercial arbitration' as an arbitration relating to disputes arising out of legal relationship whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties whether an individual, body corporate or a company is having business or residing abroad and in case of Government, the Government is of a foreign country.
9) The Act has abolished the Umpire system.
10) The Act insists on the qualification of the arbitrators who are really competent and well versed in such matters.
11) The Act contains a provision that an arbitral award which Is in conflict with the public policy in India shall not be valid in law being null and void.
12) The Act provides for enforcement of certain foreign awards made under the New York Convention and the Geneva Convention respectively.

13) There is a standard arbitration clause in the Act which is more useful for the parties entering into international commercial transactions.

14) The Act is a comprehensive legislation on domestic as well as international or inter-State Arbitrations.

15) The Act provides detailed procedure for conduct of Arbitrations and awards.

16) Arbitrators have been given more powers and the arbitral tribunals have been assigned better competence to rule on their jurisdiction.

17) As the Act has provisions for applicability of Foreign Arbitral Tribunal's awards, it has international applicability.

18) The role of institutions in promoting and organizing arbitration has been recognized.

19) The power to nominate arbitrators has been give (failing agreement between the parties) to the Chief Justice or to an institution or person designated by him.

20) The time limit for making awards has been deleted. The Act after amendment provides Fast Track Arbitration for quick disposal of disputes.

21) The Provisions relating to arbitration through intervention of Court when there is no suit pending or by order of the Court where there is a suit pending, have been removed.

22) The importance of transnational commercial arbitration has been recognized and it has been specifically provide that even where the arbitration is held in India, the parties to the contract would be free to designate the law applicable to the substance of the dispute.

**Permanent arbitral institution**

The parties may themselves directly appoint arbitrators and arrange for the necessary facilities for conduct of the arbitration (whether it be commercial or non-commercial arbitration) in such cases there is no intermediary. However, it is a common practice in commercial arbitration to entrust arbitration to institutions which administer arbitrations but do not arbitrate on disputes. By use of the words 'whether or not administered by a permanent arbitral institution' the definition in sec. 2(1) (a) has given legal recognition to arbitrations administrated by an institution thus removing the risk of administered arbitrations being declared unlawful.

The expression 'permanent arbitral institution' has not been defined in the Act nor does the Model Law on which this Act is based define the term. It may be taken to mean an institution which has acquired legal permanency by way of registration under some Act or by incorporation under a statute.

The role or function of such an institution as defined by sec. 6 is to arrange for administrative assistance to facilitate the conduct of arbitration proceedings.

**What matters may be referred to arbitration?**

All matters of controversy or litigation, unless they are forbidden by a statute or public policy can be submitted to arbitration. It is generally held that the following matters can be referred to arbitration:

i. All matters of civil nature, which may form the subject of civil litigation affecting private rights, may be referred to arbitration. Sec. 9 of the Civil Procedure Code refers to matters of civil nature.

ii. Even disputes which are not of a civil nature may be referred to arbitration provided they are not disputes of criminal nature .

iii. It is open to the parties to refer a pure question of law or facts or questions of territorial jurisdiction involving questions of law and fact to arbitration.

**Matters which cannot be referred to arbitration:**

i. Criminal proceedings – If the criminal proceedings involve a dispute which is purely criminal and which cannot be the subject of a civil action, such matter cannot be referred to arbitration.

ii. Illegal transactions – Where the subject matter of a reference is illegal, no award can be binding.

iii. Matrimonial matters – A suit for divorce cannot be referred to arbitration.

iv. Testamentary matters – The question of genuineness or otherwise of a will cannot be referred to arbitration as the Probate Court is the only Court to determine whether a Probate of an alleged will shall be issued.

v. Insolvency Proceedings- Insolvency proceedings cannot be referred to arbitration.

vi. Lunacy proceedings – Lunacy proceedings are not the subjects of arbitration as it is the prerogative of Government to protect lunatics.

**Difference between arbitration and judicial adjudication**

1. Nature of the tribunal – In case of arbitration the private tribunal or arbitrators are generally chosen by the parties themselves. The arbitral tribunal is a quasi-judicial body in whom the parties have confidence. The decision of the arbitral tribunal is called arbitral award and it is final and binding and cannot be corrected by any appeal but may be set aside in certain exceptional circumstances. Whereas, in litigation the tribunal is a Court of compulsory and competent jurisdiction, a judicial body. The judgement of the Court is subject to correction by way of appeal, revision or review.

2. Procedure and evidence – An arbitrator is not bound by the technical and strict rules of evidence and procedure but he must conform to the rules of natural justice. The proceedings before him are of a quasi-judicial nature. He need not record separate findings to the various issues raised before him. All that he is required to do is to give an intelligent decision which determines the rights of the parties. The courts are bound by the technical and strict rules of procedure and evidence contained in the Code of Civil procedure and The Indian Evidence Act.

3. Basis of decision – An arbitrator is generally expected to determine a dispute according to law, but he may depart from the rules of law and decide equitably. But the Courts of law cannot depart from the mandatory provision of law when the law is clear and rules of law exist. The major advantages of arbitration are there is no publicity as it maintains privacy. It is speedier than litigation, it is less format and affords flexibility in procedure. But the parties have to bear the cost of arbitration which may at times be substantially heavy and be more expensive than litigation.

**Secs. 2-43**

**SCOPE AND APPLICABILITY Secs. 2(2) to (5) & Sec. 1(2) proviso**

Part I shall apply to all arbitrations and all proceedings relating thereto subject to the following. It shall –

1. apply where the place of arbitration is in India;

2. not affect any other law which prohibits submission of certain disputes to arbitration;

3. except for the provisions relating to non-discharge of arbitration agreement upon death of any party thereto [sec. 40(1)], provisions in case of insolvency [sec. 41], and limitations [sec. 43], Part I of the Act shall apply to statutory arbitrations to the extent it is not inconsistent with that other enactment or rules made the reunder;

4. apply to statutory arbitration and arbitrations under an international agreement only in so far as here is nothing otherwise provided in that particular statute, law or agreement;

5. apply to the state of Jammu and Kashmir only in so far as it relates to international commercial arbitration.

**DEFINITIONS Sec. 2(1), sec. 2(7) and sec. 7**

Sec. 2(1) In this part unless the context otherwise requires-

a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution.

b) "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship whether contractual or not.

The arbitration agreement is required to be in writing, it may be in the form of an arbitration clause in a contract or in the form of a separate agreement or may arise where parties by reference import the arbitration clause contained in an earlier document into a subsequent contract so as to incorporate it.

The arbitration agreement shall be deemed to be in writing if it is contained in –

i. a document signed by the parties;

ii. an exchange of leteres, telex, telegrams or other means of telecommunication which provide a record thereof; or

iii. an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other. Sec. 2(1) (b) read with sec. 7;

c) "arbitral award" includes an interim award;

d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators.

e) "court" means a District Court and a High Court exercising original Jurisdiction but does not include any court inferior to the District Court or any Court of Small Causes

f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is –

i. if an individual, a national of, or habitually resident in any country other than India; or

ii. if a body corporate, is incorporated in any country other than India; or

iii. if a company or an association or a body of individuals, the central management and control thereof is exercised in any country other than India, or

iv. the Government of a foreign country,

"international commercial conciliation' shall have the same meaning as assigned to the expression "international commercial arbitration" subject to substitution of word conciliation in place of arbitration. Sec. 1(2) Expln.;

g) "Legal representative" means a person who in law represents the estate of the deceased, and includes any person who intermeddles with the estate person on whom the estate devolves on the death of the party so acting;

h) "party" means a party to an arbitration agreement.

Sec. 2 (7) "Domestic award" an arbitral award made under this Part shall be considered as a domestic award.

## ESSENTIAL INGREDIENTS OF ARBITRATION AGREEMENT

In order that an arbitration agreement be regarded as valid in law it must comply with the special statute on Arbitration and like all contracts it must be legally valid under the law of contract.

The essentials of a valid contract under the provisions of Chapter II of the Indian Contract Act briefly stated are :-

1. Contractual capacity – Parties must be legally competent to enter into a contract under secs. 11 and 12
2. Free mutual consent – Free consent not tainted by coercion, fraud etc., as provided by secs. 13 to 22. The parties to the agreement must be ad idem. There should be consensus between the parties they must agree upon the same thing in the same sense.
3. Lawful object and consideration – The subject or class of subjects to which the dispute relates must be lawful under secs. 23 to 27 and 30.
4. Certainty – There should be no uncertainly in the agreement. The meaning of the agreement must be certain or capable of being made certain as required by sec. 29. The rule is id certum est quod certum redid potest meaning that what is capable of being ascertained is certain, not uncertain.

The essential ingredients of an arbitration agreement as provided by sec. 2 (b) read with sec. 7 are –

1. Written agreement.
2. Intention to submit to arbitration.
3. Disputes present or future justiciable in civil action, in respect of defined legal relationship whether contractual or not.
4. Parties.

## CONSTRUCTION OF REFERENCES Sec. 2(6) – 2(9)

Freedom of parties to determine a certain issue conferred by Part I, except in relation to rules applicable to substance of dispute under sec. 28 shall include the right of parties to delegate the determination of that issue to any person or institution. [Sec. 2(6)].

Where in any agreement a reference is made to any arbitration rules those rules shall be deemed to be incorporated in the agreement and the parties shall be deemed to have agreed to the contents of those rules. [Sec. 2(8)].

The expression claim shall also apply to a counter-claim and defence shall apply or include defence to claim and counter-claim except for the purposes of sec . 25(a) and 32(2) (a) where reference to claim means claim by claimant only. [Sec. 2(9)].

An arbitral award made under Part I of the Act shall be considered as a domestic award. [Sec. 2(7)].

## RECEIPT OF WRITTEN COMMUNICATIONS Sec. 3.

Unless otherwise agreed by the parties, any written communication is deemed to have been received –

a) if it is delivered to the addressee personally, or at his place of business, habitual residence or mailing address; and

b) where none of the places referred to above can be found after making a reasonable inquiry, if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

The communication is deemed to have been received on the day it is so delivered. The deeming provisions of this section apply to arbitral tribunal and not to written communication in respect of proceedings of any judicial authority.

**WAIVER OF RIGHT TO OBJECT Sec. 4.**

A party who knowingly fails to object the non-compliance of any non-mandatory provisions of Part I or any requirement under the arbitration agreement by the other party without undue delay or within the specified period of time limit, is deemed to have waived his right to so object.

**EXTENT OF JUDICIAL INTERVENTION. Sec. 5.**

Irrespective of anything contained in any other law, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

**ADMINISTRATIVE ASSISTANCE Sec. 6.**

To facilitate the conduct of arbitral proceedings administrative assistance by a suitable institution or person may be arranged by the parties or by the arbitral tribunal with the consent of the parties.

**POWER TO REFER PARTIES TO ARBITRATION. Sec. 8.**

A judicial authority before which an action is brought in respect of a matter which is the subject of an arbitration agreement shall refer the parties to arbitration if a party makes an application for this purpose, which must be accompanied by the original arbitration agreement or a duly certified copy thereof, not later than when submitting his first statement on the substance of the dispute.

Inspite of the fact, that an application as above has been made and the issue is pending before a judicial authority an arbitration may be commenced or continued and an arbitral award made.

**POWER OF COURT TO GRANT INTERIM MEASURES. Sec. 9.**

A party to the arbitration agreement may either before commencement of, or during arbitration proceedings or at any time after the making but before enforcement of the arbitral award apply to a court for-

i. the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

ii. an interim measure of protection in respect of any of the following matters, namely –

   a) the preservation, interim custody or sale of any goods forming the subject-matter of the arbitration agreement;

   b) securing the amount in dispute;

   c) the detention, preservation or inspection of any property or thing and authorizing the taking of all necessary steps which are expedient for the purpose of obtaining full information or evidence in this behalf;

   d) interim injunction or the appointment of a receiver;

   e) such other interim measure of protection as appears just and convenient to the court.

While dealing with an application for and granting interim measures of protection the court shall have the same powers as it has for the purpose of or in relation to any proceedings before it.

**COMPOSITION OF ARBITRAL TRIBUNAL Secs. 10-15**

Number of arbitrators. –The parties are free to determine the number of arbitrators but such number shall not be an even number. Where they do not so determine, the arbitral tribunal shall consist of a sole arbitrator. [Sec. 10].

Appointment of arbitrators – may be made by the parties themselves or upon request of the parties by the Chief Justice or any person or institution designated by him. In case of international commercial arbitration the reference to Chief Justice shall be construed as a reference to the Chief Justice of India and in case of any other arbitration it shall be construed as a reference to the Chief Justice of High Court. The High Court which would have had jurisdiction if the questions forming the subject matter of arbitration had arisen in a suit.

A person of any nationality may be appointed as an arbitrator, unless otherwise agreed by the parties. However, in case the parties in an international commercial arbitration belong to different nationalities, the Chief Justice of India or the person or institution designated by him may appoint the sole or third arbitrator of a nationality other than the nationalities of the parties.

The parties are at liberty to mutually agree upon a procedure for appointment of arbitrators. If a procedure has been agreed upon appointment shall be made in accordance therewith.

Where the parties have agreed that the number of arbitrators shall be three but no procedure is laid down or agreed upon, the procedure laid down in sec.11(3) shall apply. Accordingly, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

Power of Chief Justice or person or institution designated by him to appoint arbitrators-In an arbitration with three arbitrators when the procedure prescribed by Sec. 11(3) fails –

i. either because one of the parties fails to appoint an arbitrator; or

ii. because the two arbitrators appointed by the parties –

   a) fail to appoint, or

   b) fail to agree upon, the third arbitrator within the specified period of thirty days, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

In an arbitration with a sole arbitrator, where there is a failure to agree on procedure or where the parties fail to agree on appointment of the sole arbitrator within thirty days of receipt of a request by one party from the other party to so agree, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

Where despite there being an agreement on procedure to appoint there is failure in acting upon it on the part of either, a party or the parties or the two appointed arbitrators or a person or the institution to whom the Chief Justice delegated his power, unless the agreement on the appointment procedure provides other means for securing the appointment, a party may request the Chief Justice or any person or institution designated by him to take the necessary measures.

While appointing an arbitrator in exercise of powers vested under this section, the Chief Justice or the person or institution designated by him shall have due regard to the following considerations –

a) any qualifications required of the arbitrator by the agreement of the parties;

b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

Where more than one request has been made under this section to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made shall alone be competent to decide on the request.

A decision on a matter entrusted to the Chief Justice or the person or institution designated by him is final.

The Chief Justice may make such Scheme as he may deem appropriate for dealing with matters entrusted to him by his section. [Sec. 11].

### Grounds for challenging the appointment of arbitrator

A duty is cast upon a prospective arbitrator (i.e., a person approached in connection with his possible appointment as an arbitrator) when approached and an arbitrator, from the time of his appointment and throughout the arbitral proceedings, to disclose, without delay to parties in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality, unless the parties have already been informed of them by him.

The appointment of a person as an arbitrator can be challenged by a party who has appointed him or participated in his appointment only on two grounds that is circumstances exist which raise justifiable doubts as to his independence or impartiality or he does not possess the qualifications agreed to by the parties and only for reasons of which the party becomes aware after the appointment has been made. [Sec. 12].

**Procedure for challenging the appointment**

The parties are free to agree on a procedure for challenging the arbitrator. However, if no procedure has been agreed the following procedure shall apply. The party intending to challenge an arbitrator shall send written statement of the reasons for the challenge to the arbitral tribunal within fifteen days after becoming aware of the constitution of the arbitral tribunal or of the existence of any circumstances giving rise to justifiable doubts as to the independence or impartiality of the arbitrator or the fact that the arbitrator does not possess the qualifications agreed to by the parties.

The arbitral tribunal shall decide on the challenge on merits except where the challenged arbitrator withdraws from office or the other party agrees to the challenge.

If the challenge is unsuccessful the arbitral tribunal shall continue the proceedings and make an arbitral award. However, the party who challenged the appointment of the arbitrator may apply for setting aside of the award under sec. 34. In case the award is set aside for wrongful rejection of the challenge the court may decide as to whether the arbitrator whose appointment was challenged is entitled to any fees. sec. 13.

**Termination of mandate of arbitrator sec 13, 14 and 15.**

Termination of mandate or authority of an arbitrator takes place in the following circumstances-

1) where the challenged arbitrator withdraws from office or the other party agrees to the challenge; [sec. 13(3)], or
2) upon failure or impossibility to act, that is if-
   a) the arbitrator becomes de jure or de facto unable to perform his functions; or
   b) for some other reasons fails to act without undue delay; or
   c) the arbitrator withdraws from his office; or
   d) the parties agree to the termination of his mandate.

   If there is any dispute between the parties as to whether either in law or factually the arbitrator is incapacitated from performing his functions or has for other reasons failed to act without undue delay a party may apply to the court to decide on the termination of the mandate, unless the parties have agreed otherwise.

   The withdrawal of the arbitrator from his office or an agreement between the parties to terminate his mandate shall not ipso facto imply acceptance of the validity of any of the grounds referred to in this sec. or sec. 12(3). [Sec. 14].
3) Where the arbitrator withdraws from office for any reason or the parties by mutual agreement terminate his mandate. [Sec 15(1)].

**Substitution of arbitrator.**

Where the mandate of an arbitrator terminates, the vacancy is to be filled by a substitute arbitrator who shall appointed by following the same procedure as was applicable to the appointment of the arbitrator being replaced.

Unless the parties to the arbitration otherwise agree, where an arbitrator is replaced –

a) any hearings previously held may be repeated at the discretion of the arbitral tribunal;
b) the change in composition of arbitral tribunal shall not render invalid any order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under sec. 15. [Sec. 15]

## JURISDICTION OF ARBITRAL TRIBUNAL secs. 16-17.

Competence of arbitral tribunal to rule on its own jurisdiction.

The arbitral tribunal is competent to rule on its own jurisdiction. It can also decide ay objections with respect to the existence or validity of the arbitration agreement. While deciding these questions it shall take into account the following factors –

a) an arbitration clause shall be treated as an agreement independent of the other terms of the contract; and

b) a decision by the arbitral tribunal that the contract is null and void shall not ipso jure (by the mere operation of law) result in the automatic invalidity of the arbitration clause.

The plea of lack of jurisdiction of the arbitral tribunal shall be raised not later than the submission of the statement of defence. However, a party shall not be precluded from raising such a plea merely because he has appointed or participated in the appointment of an arbitrator.

Similarly, a plea that the arbitral tribunal is exceeding the scope of its authority may be raised during the course of arbitral proceedings.

The arbitral tribunal shall decide on any such plea and where it takes a decision rejecting the plea, it shall continue with the arbitral proceedings and make an arbitral award.

A party aggrieved by such an arbitral award may apply for having it set aside under sec. 34. [sec. 16].

Interim measures ordered by arbitral tribunal

In the absence of any agreement to the contrary the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection in respect of the subject-matter of the dispute. It may also require a party to provide appropriate security for carrying out the interim measures ordered by it. [sec. 17].

## CONDUCT OF ARBITRAL PROCEEDINGS secs. 18-27.

*Commencement of arbitral proceedings*

In the absence of any agreement between the parties providing otherwise, the arbitral proceedings in respect of a particular dispute commence on the date on which the respondent receives a request for reference of the dispute to arbitration. [Sec. 21].

*Place of arbitration*

The parties are free to agree on the place of arbitration. If they fail to do so the arbitral tribunal shall determine the place of arbitration having regard to the circumstances of the case and the convenience of the parties.

Notwithstanding the above provisions, if there is no agreement to the contrary, the arbitral tribunal may meet at any place it considers appropriate for consultation among its members, hearing witnesses, experts or the parties, or inspection of documents, goods or other property. [Sec. 20].

*Language to be used in arbitral proceedings*

The parties are given the liberty to decide by mutual agreement what language or languages are to be used in the arbitral proceedings. In the event of there being no such agreement the arbitral tribunal shall determine the language or languages to be used. The language agreed or determined shall, unless otherwise specified, apply to any written statement, hearing, arbitral award, decision or other communication by the arbitral tribunal, and the arbitral tribunal may order that any documentary evidence shall be accompanied by the translation into such language. [Sec. 22].

*Determination of rules of procedure*

The arbitral tribunal shall not be bound by the code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

Subject to the provisions contained in Part I of this Act the parties are free to agree on the procedure to be followed in the conduct of arbitral proceedings, and in the absence of any such agreement the arbitral tribunal may follow the procedure it considers appropriate. This power of arbitral tribunal to determine the procedure includes the power to determine the admissibility, relevance, materiality and weight of any evidence. [Sec. 19].

*Equal treatment of parties*

The arbitral tribunal must mete out equal treatment to the parties and it must give each party a full opportunity to present his case. [Sec. 18].

*Statements of claim and defence*

Statements of claim and defence are required to be made within the period of time as agreed upon by the parties or determined by the arbitral tribunal. All documents considered relevant or a reference to the documents or other evidence they will submit should accompany such statements.

The claimant shall state the facts supporting his claim, the points at issue and the relief and remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of these statements.

Unless otherwise agreed by the parties, they may amend or supplement the statements of claim or defence and the arbitral tribunal has power at his discretion to allow amendment of pleadings and may refuse it on grounds of delay. [Sec. 23].

*Hearings and written proceedings*

Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or conduct the proceedings on the basis of documents or other materials. He shall hold oral hearings on request of a party except where the parties have agreed against it.

The arbitral tribunal shall give sufficient advance notice of any oral hearing and of any meeting for the purposes of inspection of documents, goods or other property. All statements, documents or other information supplied to or applications made and any expert report or evidentiary documents which the arbitral tribunal may rely on in making its decision shall be communicated to the parties. [Sec. 24].

**Default of a party**

Unless otherwise agreed by the parties, where, without showing sufficient cause-

a) the claimant fails to file his statement of claim as required by sec. 23(1), the arbitral tribunal shall terminate the proceedings;

b) however, where the respondent fails to submit his statement of defence as per sec. 23(1), the arbitral tribunal shall continue the proceedings ex parte without treating that failure as admission of claimant's allegations;

c) where after filing the statements one of the parties fails to appears at the oral hearing or produce any documentary evidence in support of his statement, the arbitral tribunal may continue the proceedings ex parte and make the award on the evidence before it. [Sec. 25].

**Expert appointed by arbitral tribunal**

In the absence of any agreement to the contrary between the parties –

a) the arbitral tribunal may appoint one or more experts to report on any specific issue and require a party to give the expert any relevant information or to produce, or to provide access to any relevant documents, goods or other property for his inspection;

b) if a party requests and the arbitral tribunal considers it necessary the expert shall participate in an oral hearing where he may be examined and cross examined;

c) upon request of a party the expert shall make available to him for examination all relevant documents, goods or property in possession of the expert on the basis of which he prepared his report. [Sec. 26].

**Court assistance in taking evidence**

An application may be made by the arbitral tribunal or by a party with the approval of the arbitral tribunal to the court for assistance in taking evidence. The following particulars must be specified in such application –

a) the names and addresses of the parties and the arbitrators;

b) the general nature of the claim and the reliefs sought;

c) the evidence to be obtained in particular –

   i. the name and address of any person to be heard as witness or expert witness and statement of the subject-matter of the testimony required;

   ii. the description of any document to be produced or property to be inspected.

The court on hearing the application may execute the request by ordering that the evidence be provided directly to the arbitral tribunal. While passing the necessary order the court may issue process or summons to witness as in suits tried before it. Where a witness fails to comply with the order and, or process, t will amount to contempt of arbitral tribunal and he will be subject to and incur the same disadvantages, penalties and punishments by order of the court on the request of the arbitral tribunal as he would incur for like offences in suits tried before the Court.

The expression processes used in this section includes summonses and commissions for the examination of witnesses and summonses to produce documents. [Sec. 27].

**MAKING OF ARBITRAL AWARD & TERMINATION OF PROCEEDINGS**

Rules applicable to substance of dispute Where the place of arbitration is situated in India –

a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute in accordance with the substantive law of India.

b) in international commercial arbitration –

   i. the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties. Any such designated law of a country shall, unless otherwise expressed, be construed as directly referring to the substantive law of that country and not to its conflict of laws rules.

   ii. failing any designation of the law by the parties the arbitral tribunal shall apply the rules of law it considers appropriate under the circumstances surrounding the dispute.

The arbitral tribunal shall decide ex aequo et bona or as amiable compositeur only if expressly authorized by the parties to do so.

In all cases the arbitral tribunal shall decide in accordance with the terms of the contract and by taking into account the usages of the trade applicable to the transaction. [Sec. 28].

*Decision making by panel of arbitrators*

In the absence of any agreement providing otherwise, where there is more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. However, questions of procedure may be decided by the presiding arbitrator where the parties or all the members authorises him to do so. [Sec. 29].

*Encouraging settlement not incompatible with arbitration agreement*

It is not incompatible for an arbitral tribunal to encourage settlement of the dispute, and with the agreement of the parties he may use mediation, conciliation or other procedures at any time during arbitral proceedings to encourage settlement.

If parties settle the dispute during arbitral proceedings the arbitral tribunal shall terminate the proceedings and record the settlement in the form of an arbitral award on agreed terms made in accordance with sec. 31 and stating that it is an arbitral award. Such an award has the same status and effect as any other arbitral award on the merits of the dispute. [Sec. 30].

### Form and contents of arbitral award

The requirements as to form and contents of an arbitral award are –

1. An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal. In proceedings with more than one arbitrator signatures of the majority shall suffice if the reasons for any omitted signature is stated.
2. Reasons upon which the award is based must be stated except where parties agree otherwise or it is an award on agreed terms under sec. 30.
3. The arbitral award shall state the date and place of arbitration.
4. A signed copy of the award shall be delivered to each party.
5. The arbitral tribunal may make an interim arbitral award.
6. Unless the parties otherwise agree, where an arbitral award is for payment of money, interest at a reasonable rate (on whole or part of the money for the whole or any part of the period between the date of arising of the cause of action and the date of making of the award) may be included in the sum for which the award is made.

   Interest at the rate of eighteen per centum per annum from the date of the award till date of payment is payable on the sum directed to be paid by an arbitral award unless the award otherwise directs.
7. The costs of an arbitration shall be fixed by the arbitral tribunal who shall specify the amount of costs or method for determining that amount, the manner of paying the costs, the party entitled to and the party who shall pay the costs.

   The term costs for this purpose means reasonable costs relating to the fees and expenses of the arbitrators and witnesses, legal fees and expenses, any administration fees of supervising institution, any other expenses incurred in connection with the arbitral proceedings and the arbitral award. [Sec. 31].

### Termination of Proceedings

The arbitral proceedings shall be terminated –

1. by the final arbitral award; or
2. by an order of the arbitral tribunal for termination of arbitral proceedings. Such an order can be passed in the following circumstances –
   a) where the claimant withdraws his claim, however, no order for termination of arbitral proceedings shall be passed where the respondent objects to such withdrawal and the arbitral tribunal recognizes that the respondent has a legitimate interest in obtaining a final settlement of the dispute;
   b) where the parties agree on the termination of the proceedings; or
   c) where the arbitral tribunal finds that the continuation of the proceedings has for any other reason become either unnecessary or impossible.

The mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings except, where proceedings for correction or interpretation of the award or making of arbitral award have been initiated under sec. 33 or where an application under sec. 34(1) for setting aside an arbitral award is adjourned by the court to enable the arbitral tribunal to resume the arbitral proceedings or to take any other action for eliminating the grounds for setting aside the award. [Sec. 32].

**Correction and interpretation of award' additional award**

Although an award has been made it may require correction, interpretation or additional award.

Correction of any computation, clerical or typographical or any other errors of a similar nature occurring in the arbitral award.

Interpretation of a specific point or part of the award.

Additional award as to claims presented in arbitral proceedings but omitted from the award.

The provisions of sec. 31. relating to form and contents apply also to correction, interpretation and additional award.

Correction may be made suo motu by arbitral tribunal within thirty days from the date of the award but not thereafter.

A request may be made by a party with notice to the other party within thirty days from receipt of arbitral award unless other period is agreed upon in this regard –

a) for correction of errors of the nature specified above;

b) for interpretation as stated above, where there is an agreement between the parties for so doing;

c) for additional award if there is no contrary agreement between the parties.

If the request of a party is felt justified by the arbitral tribunal it is to take action, that is make the correction, give interpretation within thirty days from the receipt of such notice and in case of a request for additional award it is to be made within sixty days from receipt of such notice unless the time if felt necessary is extended by the arbitral tribunal himself. [Sec. 33].

**RECOURSE AGAINST ARBITRAL AWARD**

*Application for setting aside arbitral award*

Recourse against an arbitral award may be had only by an application to a Court for setting it aside on the following grounds –

1) The party making an application for having it set aside furnishes proof that –
   - i. a party was under some incapacity; or
   - ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
   - iii. no proper notice of the appointment of an arbitrator or of the arbitral proceedings was served on the applicant, or he was otherwise unable to present his case; or
   - iv. the arbitral ward deals with a dispute not contemplated by or not falling within the terms of the submission, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that if the good part is severable from the bad part of the arbitral award only the bad part of the decision may be set aside; or
   - v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; or

2) the Court finds that –
   - a) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
   - b) the arbitral award is in conflict with the public policy of India. Without prejudice to the generality of the expression, an award is said to be in conflict with the public policy of India if it was induced or affected by fraud or corruption or it was in violation of ther obligations of confidentiality of matters relating to conciliation proceedings imposed by sec. 75 or the bar on admissibility of evidence of conciliation proceedings placed under sec. 81 of the Act.

The time limit prescribed for making an application for setting aside an arbitral award is three months from the date of receipt of arbitral award or from the date of the disposal of the request for correction, interpretation or additional award under sec. 33. where such a request had been made. The

Court is empowered to extend this time limit by a further maximum period of thirty days, but not thereafter on being satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed time.

On receipt of an application for setting aside of an arbitral award the Court may, where it is appropriate and is so requested by a party, instead of adjudicating on the grounds raised, adjourn the proceedings for a period of time to be determined by the Court to enable the arbitral tribunal to deal with the grounds and to eliminate them to the extent possible either by resuming the arbitral proceedings or taking other suitable action. [Sec. 34].

## FINALITY AND ENFORCEMENT OF ARBITRAL AWARDS

### Finality of arbitral awards

Subject to the provisions of Part I, an arbitral award is final and binding on the parties and the persons claiming under them respectively. [Sec. 35]. In other words, it cannot be considered as final and binding until the time limit prescribed therein for correction, interpretation, or additional award and setting aside, as the case may be, has expired.

### Enforcement of award

Where no application for setting aside an arbitral award is made or it has been refused, or the period of limitation prescribed, for appealing against an order refusing to set it aside has expired, it can be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 as if it were a decree of the Court. [Sec. 36].

## APPEALS AND MISCELLANEOUS

Appealable orders

An appeal shall lie from the following orders ( and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely –

a) an order of a Court granting or refusing to grant an interim measure of protection under sec. 9;

b) an order of a Court setting aside or refusing to set aside an arbitral award under sec. 34;

c) an order of the arbitral tribunal accepting the plea that the arbitral tribunal does not have jurisdiction [sec. 16(2)], or that it is exceeding the scope of its authority. [sec. 16(3)];

d) an order of the arbitral tribunal granting or refusing to grant an interim measure of protection under sec. 17.

No second appeal shall lie from an order passed in appeal under this section, but this bar against second appeals shall not affect or take away any right to appeal to the Supreme Court. [Sec. 37].

The miscellaneous provisions relate to

1) Deposits [Sec. 38].

2) Lien on arbitral award and deposits as to costs [Sec. 39].

3) Arbitration agreement not discharged by death of party thereto [Sec. 40].

4) Provisions in case of insolvency [Sec. 41].

5) Jurisdiction [Sec. 42].

6) Limitations [Sec. 43].

## Deposit of costs in advance

The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs likely to be incurred in arbitral proceedings in terms of sec. 31(8) in respect of the claim submitted to it and order a separate amount of deposit for the counter-claim submitted by the respondent. The parties are required to deposit this amount of advance in equal shares. Where a party fails to pay his share the other party may pay that share, where the other also does not pay the share of the defaulting party, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of the claim or counter-claim of the defaulting party.

Upon termination of the arbitral proceedings, the arbitral tribunal shall render accounts of the deposits received to the parties and return the unexpended balance, if any, to the party or parties, as the case may be. [Sec. 38].

## Lien on arbitral award

The arbitral tribunal shall have a lien on the arbitral ward for any unpaid costs of the arbitration, this is, however, subject to any contrary provision in the arbitration agreement and the power of Court to release the lien under this section.

Where an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, a party may make an application to the Court. The Court may order the arbitral tribunal to deliver the arbitral award to the applicant on payment into court of the costs demanded and after an inquiry pass further order as to a reasonable sum of costs to be paid to the arbitral tribunal out of the amount deposited in court and refund of balance to the applicant.

The arbitral tribunal is entitled to appear and be heard on any such application. No such application can be made where the fees demanded have been fixed by written agreement between the party and the arbitral tribunal.

The Court may make orders regarding costs of arbitration where any question relating to it arises and there is no sufficient provision concerning it in the arbitral award. [Sec. 39].

## Effect of death

Arbitration agreement not to be discharged by death of party thereto – An arbitration agreement shall not be discharged nor shall the mandate of an arbitrator be terminated by the death of any party thereto, but shall in such event be enforceable by or against the legal representative of the deceased provided the right of action survives.

Where under any law any right of action is extinguished by the death of a person the operation of that law will remain unaffected by the provisions of this section. [Sec. 40].

## Provisions in case of insolvency

Where a party to a contract containing an arbitration clause later became insolvent and the receiver adopts the contract, the arbitration clause will be enforceable by or against the receiver in respect of all such matters as are covered by the contract. In case of contracts, not adopted by the receiver any other party or the receiver may apply to the judicial authority having jurisdiction in the insolvency proceedings requesting for an order that any matter to which the arbitration agreement applies which is required to be determined in connection with or for the purposes of the insolvency proceedings be referred to arbitration. The judicial authority will exercise its discretion, and if having regard to all the circumstances of the case it is of the opinion that the matter ought to be determined by arbitration, it may make an order accordingly. The expression receiver used in this section includes an Official Assignee. [Sec. 41].

**Jurisdiction**

Effective and exclusive jurisdiction of single Court over arbitral proceedings – where with respect to an arbitration agreement any application is made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising in that matter shall be made in that Court and in no other Court. The provisions of this section override and shall prevail over Part I and any other law. [Sec. 42].

**Limitations**

Limitation Act, 1963 is applicable to arbitration – Provisions of the limitation Act shall apply to arbitrations. For the purposes of reckoning the prescribed period of limitation an arbitration shall be deemed to have commenced on the date referred to in sec. 21.

Where an arbitration agreement for submission of future disputes to arbitration contains a time bar clause providing that any claim would be barred unless some step is taken to commence arbitration proceedings within a time fixed, and a dispute arises to which the agreement applies then notwithstanding that the time so fixed has expired the Court has discretionary power to extend time for such period as it thinks proper where just cause exists if undue hardship would otherwise be caused.

Where an award is eventually set aside by the Court, the period between the commencement of the arbitration proceedings and the date of the setting aside order of the Court shall be excluded in computing the period of limitation prescribed under the Limitation Act for commencement of any proceedings with respect to the disputes so submitted. [Sec. 43].

**Enforcement of Foreign Awards**

The foreign awards which can be enforced in India are as follows: - (a) New York convention award (made after 11 the October, 1960) (b) Geneva convention award - made after 28th July, 1924, but before the concerned Government signed the New York convention. Since most of the countries have signed New York convention, normally, New York convention awards are enforceable in India. New York convention was drafted and kept in United Nations for signature of member countries on 21 st December, 1958. Each country became party to the convention on the date on which it signed the convention.

Foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India. The foreign awards which can be enforced in India are as follows: -

- New York convention award - made after 11 the October, 1960
- Geneva convention award - made after 28th July, 1924.

**Conciliation Procedure**

Part III of the Act makes provision for conciliation proceedings. In conciliation proceedings, there is no agreement for arbitration. In fact, conciliation can be done even if there is arbitration agreement. The conciliator only brings parties together and tries to solve the dispute using his good offices. The conciliator has no authority to give any award. He only helps parties in arriving at a mutually accepted settlement. After such agreement they may draw and sign a written settlement agreement. It will be signed by the conciliator. However after the settlement agreement is signed by both the parties and the conciliator, it has the same status and effect as if it is an arbitral award. Conciliation is the amicable settlement of disputes between the parties, with the help of a conciliator.

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**Offer for Conciliation**

The conciliation proceedings can start when one of the parties makes a written request to other to conciliate, briefly identifying the dispute.

The conciliation can start only if other party accepts in writing the invitation to conciliate. Unless there is written acceptance, conciliation cannot commence. If the other party does not reply within 30 days, the offer for conciliation can be treated as rejected

Appointment of Conciliator: There shall be one conciliator unless the parties agree that there shall be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

- In conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
- In conciliation proceedings with two conciliators, each party may appoint one conciliator;
- In conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

**Conciliation Proceedings**

**Submission of statements to conciliator -** The conciliator, upon his appointment, may request each party to submit to him a brief written statement of his position and the facts and grounds in support thereof, supplement by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

The conciliator may request a party to submit to him such additional information as he deems appropriate.

The conciliator is not bound by the Code of Civil Procedure, 1908 (5 of 1908)or the Indian Evidence Act, 1872.

**Role of conciliator:-** (The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party to hear oral statements, and the need for a speedy settlement of the dispute.

The conciliator may, at any stage make proposals for a settlement of the dispute. Such proposals need not be writing or need not be accompanied by a statement of the reasons therefor.

### Administrative assistance

In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator, may arrange for administrative assistance by a suitable institution or person.

### Communication between conciliator and parties

The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

### Disclosure of information

When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

- Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, conciliator shall not disclose that information to the other party.

### Co-operation of parties with conciliator-

The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

### Suggestions by parties for settlement of dispute

Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

### Settlement agreement

(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

### Status and effect of settlement agreement

The settlement agreement shall have the effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

### Confidentiality

The conciliator and the parties shall keep confidential all matter relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

### Termination of conciliation proceedings

The conciliation proceedings shall be terminated

(a) by the signing of the settlement agreement by the parties; on the date of the agreement;

(b) by a written declaration of the conciliator, after consultation with the parties, in the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

### Resort to arbitral or judicial proceedings

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject- matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings, where, in his opinion, such proceedings are necessary for preserving his rights.

### Costs

Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and given written notice thereof to the parties. “costs” means reasonable costs relating to-

(a) the fee and expenses of the conciliator and witnesses requested by the conciliator, with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

The costs shall be borne equally by the parties unless the settlement agreement provides for a different appointment. All other expenses incurred by a party shall be borne by that party.

### Supplementary Provisions

- The High Court has the power to make rules under this act.
- Removal of difficulties by Central Government through provisions made under the Act.
- Rules made by Central Government subject to approval by parliament.
- The present Act overrules the previous Acts.

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