

# ALLIED LAWS FOR LIMITED INSOLVENCY EXAM

PPT Presentation

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24<sup>th</sup> May, 2021

# Amendments to Acts pursuant to IBC

A. Section 245 to 255 speak of amendments to 11 legislations. There are 11 schedules to the IBC wherein these amendments have been specified.

B. The following 11 acts have been amended:

1. Indian Partnership Act, 1932
2. The Central Excise Act, 1944
3. The Income Tax Act, 1961
4. The Customs Act, 1962
5. The Recovery of Debts due to B & FIs.1993
6. The Finance Act, 1994
7. The SARFAESI Act, 2002
8. The SICA Repeal Act, 2003
9. The Payment and Settlement Systems Act, 2007
10. The LLP Act, 2008
11. The Companies Act, 2013

# Possible Questions

1. Which of the following enactments is not amended as part of IBC, 2016.
2. Which Act is amended in the fifth schedule
3. How many Acts have been amended as part of IBC, 2016.
4. \_\_\_\_ is the schedule showing amendment in Companies Act, 2013.
5. Which sections deal with amendments of 11 acts as part of IBC, 2016

# OTHER ALLIED ACTS

1. The Code of Civil Procedure, 1908(sections 9-11, 26-32, 38-45, 60-64, 73, 75-78, 89 and order 21)
2. Indian Contract Act, 1872
3. The Negotiable Instruments Act, 1881
4. The Transfer of Property Act, 1882
5. Sale of Goods Act, 1930
6. The Limitation Act, 1963
7. The Prevention of Corruption Act, 1988(definition of Public Servant, section 7-16 read with section 29A of IBC)
8. The Prevention of Money Laundering Act, 2002(sections 2-8, 48, 63, 67, 71 and 72)
9. The Arbitration and Conciliation Act, 1996
10. The MSME Development Act, 2006(classification of enterprises, Advisory Committee, Memorandum of MSMEs, Delayed payment to Micro and Small Enterprises)
11. RERA, 2016 (sections 2,4,5,11,17,18,20,23,31,34,36,37,38,40,41, 42,58,59,69,70,71,79,80,85,86,88,89&90)
12. SCRA, 1956(Contracts and Options in Securities, Listing of Securities, Offences, Penalties and Adjudication)
13. SEBI(ICDR) Regulations, 2009
14. SEBI(SAST) Regulations, 2011
15. SEBI(LODR) Regulations, 2015

# Code of Civil Procedure

1. Sections 9 to 11 deal with Res sub judice and Res judicata.
2. Sections 26-32 deal with institution and process followed in civil suits.
3. Sections 38 to 45 deal with execution of orders and decrees.
4. Sections 60 to 64 deal with attachment of properties.
5. Section 73 deals with distribution of proceeds of execution sale among decree-holders rateably.
6. Sections 75 to 78 deal with issue of commissions by court to examine any person, make an investigation etc.
7. Section 89 deals with out of court settlement (arbitration, conciliation, mediation, lok adalat etc)
8. Order XXI deals with execution of decrees and orders.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## (introductory points)

1. CPC is a procedural law or adjective law dealing with procedures in suits and civil proceedings in India.
2. CPC consolidates and amends the law relating to the procedure of the Courts of Civil Jurisdiction.
3. Where there is a conflict between the code and special law, the special law prevails.
4. The CPC comprises :
  - a. 158 sections
  - b. 51 Orders in Schedule I of the code.
5. While main principles are contained in the sections, the detailed procedures with regard to the matters dealt with by the sections are specified in the orders.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## (introductory points)

### DEFINITIONS:

1. Decree(section 2(2)) means
  - a. Formal expression of an adjudication
  - b. Conclusively determining the rights of the parties
  - c. With regard to all or any matters in controversy in the suit (preliminary or final)
  - d. Including “rejection of plaint”, and determination of any question within sec.144.
  - e. Does not include “adjudication from which an appeal lies as an appeal from an order” or “any order for dismissal for default”.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC) (introductory points)

## DEFINITIONS:

1. Judgment (section 2 (9)) means

- a. A statement given by a judge
- b. On the grounds of a decree or order.

1. Order (section 2(14)) means

- a. Formal expression of any decision of a Civil Court;
- b. Which is not a decree.



# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## APPEALABLE ORDERS (SECTION 104) read with Order XLIII (43)

1. an order under section 35A(for compensatory costs in respect of false or vexatious claims within pecuniary jurisdiction of the court)
2. An order under section 91 or section 92 refusing leave to institute a suit for “public nuisances” and for “alleged breach of trust created for public purposes”
3. An order under section 95 ( compensation for obtaining arrest, attachment or injunction on insufficient grounds.
4. An order under CPC imposing fine or directing arrest of any person or detention in civil prison
5. An order made under rules from which an appeal is expressly allowed by the rules.
6. No appeal shall lie from any order passed in appeal under this section.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## LIMITATION ON JURISDICTION:

A Limitation on jurisdiction of a civil court is of 4 kinds:

- a. Jurisdiction over subject matter
- b. Place of suing or territorial jurisdiction
- c. Jurisdiction over persons
- d. Pecuniary jurisdiction

Further classification of Jurisdiction:

- a. Original Jurisdiction
- b. Appellate Jurisdiction
- c. Original and Appellate Jurisdiction.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## Res subjudice and Res judicata

1. Section 10 provides for res subjudice(RS) and section 11 provides for res judicata(RJ).
2. RS is stay on proceeding on with the trial of suit while RJ is a stay on repetition of trial of the suit.
3. The common conditions are :
  - a. Issues are directly or substantially the same in both the suits.
  - b. Parties are the same
  - c. Litigation is under the same title
2. The second suit or the trial is not maintainable.
3. The findings in the RS will act as RJ in the subsequent suit.
4. The doctrine of res judicata prevails over the doctrine of lis pendens
5. Wings pharmaceuticals V Swan Pharmaceuticals (res subjudice)
6. Gouri Naidu V Thandrothu Bodemma(res judicata)

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## SET-OFF / COUNTER CLAIM / EQUITABLE SET-OFF

1. SO is a reciprocal acquittal of debts between the plaintiff and defendant. (**ORDER 8 RULE 6**)

### Conditions:

1. Suit for recovery of money by p'ff.
2. Defendant claims to set-off an ascertained sum of money recoverable by the defendant from the p'ff
3. The amount is not exceeding the pecuniary jurisdiction of the court
4. The parties are the same as in the p'ff suit
5. Defendant should claim at the first hearing vide written statement containing the set-off amount.

CC is a Claim against the claim of p'ff , in respect of a cause of action accruing to the defendant either before or after filing of the suit but before defence is placed (**ORDER 8 RULE 6A**)

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## **TEMPORARY INJUNCTION (Order XXXIX Rule 1 & 2)**

1. Suit is pending for disposal.
2. Property in dispute is likely by the parties to be
  - a. damaged, alienated, wasted, or wrongfully sold in execution of a decree
  - b. Defendant is likely to dispose off the property to defraud creditors
  - c. Defendant is likely to dispossess or cause injury to the p'ff .
3. Plaintiff may bring in temporary injunction on the aforesaid acts through court of law.
4. Court may order interim sale through interlocutory order of property likely to be decayed or other just and reasonable cause exists.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## 1.INSTITUTION OF SUIT

1. THE OPPOSING PARTIES

2. THE CAUSE OF ACTION

3. THE SUBJECT MATTER OF THE SUIT

4. THE RELIEF(S) CLAIMED

2. Every breach of contract gives rise to a cause of action and a suit may be instituted to secure the proper relief in the place:

a. Where the contract was made

b. Where the breach has occurred

c. The place where the money is payable.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## **Important stages in proceedings of a suit:**

1. Institution of suit
2. Summons issued by the court to the defendant., through courier, speed post or regd post at the expense of the plaintiff.
3. Written statement to be filed within 30 days but in any case not more than 90 days alongwith documents and claims by the defendant.
4. Appearance of the defendant in person or through advocate.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## Important stages in proceedings of a suit:

5. Ex parte decree is passed if defendant fails to appear despite summons.
6. Remedies against ex parte decree are
  - a. File an appeal against ex parte decree
  - b. File an application for review of the judgment( **Order 47 rule 1**)
  - c. Apply for setting aside the ex parte decree
  - d. Suit may be filed to set aside an ex parte decree obtained by fraud.
7. Discovery of interrogatories and documents
8. Settlement of Issues /admission by parties /framing of issues
9. Hearing of the suit(evidence, examination,crossexamination, arguments.
10. Judgment in the open court after due notice to the parties or their pleaders within 30 days ( maximum 60 days) from the conclusion of the hearing.(**order XX rule 1**)



# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## Appeals:

1. There are four kinds of appeals provided by CPC
  - a. Appeals from original decrees(sec.96-99; O41)
  - b. Second Appeals(sec100-103; O42)
  - c. Appeals from Orders (sec 104-106; O43)
  - d. Appeals to the Supreme court (109 and 112; O45 & Articles 132 to 134A and 136 of the Constitution of India)
2. Second Appeal lies to the High court from every decree passed in appeal by the subordinate court if the High court is satisfied that the case involves “substantial question of law”.
3. Appeal to the Supreme Court lies from any judgement, decree, final order or sentence of a High court, in a criminal, civil or other proceeding,
  - a. If the High Court certifies that it involves substantial question of law (relating to interpretation of Constitution /of general importance)
  - b. If the Supreme Court, on its discretion, allows Special Leave Petition from any of the above decision of any court or tribunal.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## REFERENCE, REVIEW AND REVISION:

1. Any court, can make a reference about a suit before it, to the High Court for its opinion and the High Court can make such order as it thinks fit under section 113, O46 RULE 1.
2. Any aggrieved person because of a decree or order, may apply to the court making that decree or order and request for review in light of new evidence which was by mistake or any other sufficient reason could not be produced at the time when the decree was made. (sec 114 O47 RULE 1)
3. Section 115 deals with revision.  
If the lower court has
  - a. exercised jurisdiction in excess
  - b. failed to exercise jurisdiction vested
  - c. acted illegally or with material irregularity in the exercise of jurisdiction; then High Court can call for the record and revise by making such order as it deems fit.

# THE CODE OF CIVIL PROCEDURE, 1908(CPC)

## SUIT BY OR AGAINST CORPORATION:

In suits by or against a corporation, any pleading may be signed by secretary, director or other principal officer to whom summons may be served and require personal attendance.

## SUIT BY OR AGAINST MINORS:

- a. A minor is a person < 18 years or <21 years in case of representation by guardian.
- b. A suit shall be instituted in the name of minor by a person who will be called the next friend who shall be a major of sound mind.
- c. Court will appoint a person as guardian if it is satisfied that the defendant is a minor, who shall continue to represent the minor until removed, retired, or dead.
- d. On attaining the majority, minor may elect to continue with the case or not.

## SUMMARY SUITS:

Summary suits applies to suits upon bill of exchange, PN or suits for recovery of debt or liquidated damages, when the plaintiff decides to proceed under O37. Which prevents unreasonable obstruction by the defendant.

# THE CODE OF CIVIL PROCEDURE, 1908(Exam Questions)

1. Aggrieved person may apply for review of judgment to the “Court which passed the decree or order”.
2. Every breach of contract gives rise to a cause of action and a suit may be instituted to secure proper relief at the place
  - a. Where the contract was made;
  - b. Where money is payable;
  - c. Where the breach has occurred.
3. The definition of decree.
4. The definition of decree includes rejection of plaint under order 7 rule 11.
5. Doctrine which underlines the general principle that no one shall be vexed twice for the same cause in civil cases is “Res Judicata”.

## THE CODE OF CIVIL PROCEDURE, 1908(Exam Questions)

7. Temporary injunction is granted under order xxxix of the CCP.
8. A fresh suit is barred for the same cause of action under sections 10 and 11 of the CCP.
9. The application of revision under the provisions of the CCP is made to HIGH COURT.
10. The statement given by the court on the grounds of a decree or order as defined in section 2(9) of the CCP is known as Judgment.
11. The pendency of a suit in a foreign court does not preclude the courts in India from trying a suit founded in the same cause of action.
12. The exceptions to the general rule that “orders passed by the court under the CCP are not appealable” are laid down by section 104 and Order 43 Rule 1 of the CCP.
13. Decree is a formal expression of an adjudication, whereas an order is the decision of the court.
14. Special law will prevail over the CCP.
15. Temporary Injunction; Interlocutory Orders; permanent injunction.
16. Define res judicata and state the conditions of its application.
17. Distinguish the terms, Judgment, Decree and Order.
18. Distinguish the terms, set-off, counter claim, and equitable set-off.
19. Distinguish the terms, Appeal, Revision and Review.
20. Distinguish “res judicata” and “stay of suits”.

## THE CODE OF CIVIL PROCEDURE, 1908(Exam Questions)

Elaborative :

1. Provisions relating to reference, review and revision.
2. Res judicata
3. Ex parte decree, time limit and grounds for making an application to set aside the ex parte decree.
4. Res subjudice
5. Powers of the Court to grant temporary injunction.
6. Appealability of the orders made by courts under CC.

# THE CODE OF CIVIL PROCEDURE, 1908(problems)

1. Ram and Shyam sell rice for Rs. 25000/-  
Sohan and Mohan. Sohan sells cloth  
worth Rs. 25000/- to Shyam.

Sohan files a suit against Shyam for  
recovery of price of cloth. Shyam claims  
set-off of the cost of rice in this suit.

**Will he succeed?**

# THE CODE OF CIVIL PROCEDURE, 1908(solution)

1. As per Order VIII, Rule 6(1) ;

In a suit for recovery of money

- a. If the defendant claims to set-off against the plaintiff's demand for recovery of money
- b. Any ascertained sum of money legally recoverable by the defendant from p'ff
- c. And both fill the same character as they fill in the p'ff's suit
- d. The defendant may at the first hearing of the suit
- e. but not afterwards unless permitted by the court
- f. Present a written statement containing the particulars of the debt to be set off.

In the present case, characters are not the same. Hence Sohan will not succeed.



## THE CODE OF CIVIL PROCEDURE, 1908(problems)

2. Mohan filed a suit against Sohan and Rohan for partition of coparcenary property “P1”.

The suit has been decided. Mohan files another suit against Sohan and Rohan for the partition of coparcenary “P2”, which was in existence at the time of filing of the first suit.

**Discuss and decide**

# THE CODE OF CIVIL PROCEDURE, 1908(solution)

2. Order II Rule 2 provides that :
  - a. In a suit filed by the plaintiff, the whole claim or all the remedies should be included in the suit.
  - b. If not included, for the rest, the second suit is barred.

Mr. Mohan should have included “P2” property also and hence the second suit cannot be filed which is barred by law.

## THE CODE OF CIVIL PROCEDURE, 1908(problems)

3. Anil was a trustee of a trust. After Anil's death Brij wrongfully takes the possession of the trust property. Chandan the son of Anil, files a suit for recovery of possession of the property against Brij as the legal heir of Anil in his individual capacity. But Chandan did not succeed. Then Chandan files another suit for recovery of trust property against Brij in the capacity of trustee as he was appointed as trustee after Anil's death.

**Whether the second suit is barred by RES JUDICATA"**

## THE CODE OF CIVIL PROCEDURE, 1908(solution)

3. The present problem pertains to the doctrine of “res judicata” as provided in section 11 of CPC.

The doctrine applies only when the parties of both the suits are same and litigating under the same title.

Since in the second suit the title is different of Chandan as a trustee, the second suit is not barred by “res judicata”

## THE CODE OF CIVIL PROCEDURE, 1908(problems)

4. A suit was instituted by the plaintiff company alleging infringement by the defendant company for using trade name of medicine and selling the same in wrapper and carton of identical designs with same color combination, etc as that of plaintiff company. A subsequent suit was instituted in a different court by the defendant company against the plaintiff company with similar allegations.

**What is procedure adopted by courts in such a situation?**

# THE CODE OF CIVIL PROCEDURE, 1908(solution)

4. The problem is based on the case of  
“WINGS PHARMACEUTICALS P LTD AND OTHERS  
Vs  
SWAN PHARMACEUTICALS AND OTHERS“

Subsequent suit should be stayed because simultaneous trial of similar suits might lead to conflicting decisions in identical issues.

## THE CODE OF CIVIL PROCEDURE, 1908(problems)

5. In a case, Hamid was terminated from the police service. Hamid filed a writ petition against the termination order on the ground that a reasonable opportunity of being heard was not given to him by the government. The writ petition was dismissed by the court as the government proved that reasonable opportunity of being heard had been given to the petitioner. Afterwards, Hamid filed another writ petition on the ground that as he was appointed by the DGP, termination by DGP was in violation of Art. 311(1) of COI.

**Decide the validity of the second petition**

# THE CODE OF CIVIL PROCEDURE, 1908(solution)

5. The following provisions are relevant in this case.

1. The relevant case law is “State of UP Vs Nawab Hussain”.
2. The matter relates to explanation IV to section 11.
3. As per this provision, in case of similar suits, a plea which could have been taken in the first suit, cannot be permitted in a subsequent proceeding with reference to the same issue.

In the present case, the plea of violation of constitutional provision should have been taken in the first writ petition by Hamid.

Hence he is not allowed to raise the issue in the subsequent proceeding.



THE CODE OF CIVIL PROCEDURE, 1908(problems)

6. A transport company has its head office at Mumbai and branch offices at Allahabad, Patna and Bhopal. A dispute cropped up between Sameer and the company in respect of a transaction through Allahabad office. Sameer files a suit in respect of this dispute against the company in a court at patna.

**How will the court decide?**

## THE CODE OF CIVIL PROCEDURE, 1908(solution)

### 6. The relevant provision is Explanation 2 to section 20

As per this provision, in case of corporation, suit has to be filed in the principal place of business or regd office.

or

at the place where the cause of action arose.

Hence, the case should have been filed in Allahabad where the cause of action of arose

# Indian Contract Act, 1872 at a glance

Chapter No.	Heading of the Chapter	Sections Range
	Title and Interpretation Clause	1-2
I	Of the Communication, Acceptance and Revocation of Proposals	3-9
II	Of Contracts, Voidable Contracts and Void Agreements	10-30
III	Of Contingent Contracts	31-36
IV	Of the Performance of Contracts	37-67
V	Of certain relations resembling those created by Contract	68-72
VI	Of the consequences of Breach of Contract	73-75
VII	Sale of Goods (repealed by Sale of Goods Act, 1930)	76-123
VIII	Of Indemnity and Guarantee	124-147
IX	Of Bailment and Pledge	148-181
X	Agency	182-238
	Of Deposits (repealed by Depositories Act, 1928)	239-266

# Negotiable Instruments Act, 1881

Chapter No.	Heading of the Chapter	Sections Range
I	Preliminary	1-3
II	Of notes, bills and cheques	4-25
III	Parties to notes, bills and cheques	26-45A
IV	Of <b>Negotiation</b>	46-60
V	Of <b>Presentment</b>	61-77
VI	Of <b>Payment</b> and Interest	78-81
VII	Of discharge from liability on notes, bills and cheques	82-90
VIII	Of Notice of Dishonor	91-98

# Negotiable Instruments Act, 1881 at a glance

Chapter No.	Heading of the Chapter	Sections Range
IX	Of Noting and Protest	99-104A
X	Of Reasonable Time	105-107
XI	Of <b>Acceptance</b> and Payment for Honor	108-116
XII	Of Compensation	117
XIII	Special Rules of Evidence	118-122
XIV	Of crossed Cheques	123-131A
XV	Of bills in sets	132-133
XVI	Of International Law	134-137
XVII	<b>Of Penalties in case of Dishonor of certain cheques for insufficiency</b>	138-147

# Important points in NI Act

1. Promissory Note, Bill of Exchange and Cheque
2. Negotiation (delivery, endorsement)
3. Presentment (for acceptance, for payment)
4. Dishonor (by non-acceptance, by non-payment)
5. Noting and Protest
6. Acceptance for honour
7. Payment for honour
8. Drawee in case of need
9. Presumptions as to Negotiable Instruments
10. Crossing of Cheques and Bills in Sets

## **Important Points on Transfer of Property Act, 1882**

1. Immovable property does not include standing timber, growing crops or grass.
2. Transfer intervivos – between two living persons.
3. Condition restraining alienation is void.
4. Where there is transfer for benefit of unborn person, any prior interest should get complete interest in the property of the transferor.
5. Rule against perpetuity
6. Conditions precedent and subsequent
7. Doctrine of Election
8. Principle of Estoppel(ostensible owner)
9. Transfer of property lis pendens (pending suit)
10. Fraudulent Transfer (to defeat any creditor)
11. Part Performance

# Prevention of Corruption Act, 2018

1. Definition of Public Servant
2. Offences relating to Public servant being bribed, taking undue advantage etc.
3. Relevance of section 29A of the IBC code to the offences under this Act.



# Prevention of Corruption Act, 1988 (Amended in 2018)

## **Meaning of Corruption:**

- Derived from Latin word “Corrupts” meaning corrupted
- Refers to dishonest or deceitful behavior on account of persons possessing power including govt officials
- Includes, gifts, bribe, money laundering etc

# Background:

- Initially dealt by IPC
- Then, PCA, 1947 enacted
- Amended in 1952 and 1964 on recommendation of Santhanam Committee
- PCA 1988, came into force – 09.09.1988 aimed at making anti-corruption law more effectively widening coverage and strengthening provisions
- Amended in 2018 to strengthen further
- Section 29A(d) bars anyone from being RA if convicted for 2 years or more – Schedule XII – PCA 1988 or 7 years or more under any law.
- Clause does not apply if 2 years elapsed from date of imprisonment

# Statement of Object/Reasons for enactment

- intended to make the existing anti-corruption laws more effective
- The bill seeks to incorporate all provisions with modifications so as to make the provisions more effective in combating corruption among public servants.
- The bill, inter alia, envisages widening the scope of the definition of the expression ‘public servant’, enhancement of penalties, order of the trial court upholding the grant of sanction for prosecution would be final, prohibitory provisions with regard to grant of stay

# Salient Features of PCA 1988

1. It incorporates the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1952, and Sec. 161 to 165-A of the Indian Penal Code with certain tweaks in the original provisions.
2. It has enlarged the scope of the definition such as Public Duty and Public Servant under the definition clause, Section 2, of the act.
3. It has shifted the burden of proof from the prosecution as mentioned in the CrPC to the accused who is charged with the offense.
4. The provisions of the Act clearly state that the investigation is to be made by an officer, not below the rank of Deputy Superintendent of Police.
5. The 1988 Act enlarged the scope of the term 'public servant' which now includes employees of the central government, union territories, nationalized banks, employees of the University Grants Commission (UGC), vice-chancellors, professors, and the like.
6. The Act covers 'corrupt' acts as bribe, misappropriation, obtaining a pecuniary advantage, possessing assets disproportionate to income and the like.

# Constitutional Provision relating to PCA

- The Constitution has empowered the Apex Court to safeguard the fundamental rights enshrined in Part III of the Constitution
- Under Art. 32 and 226 of Indian Constitution following —Writs are provided as well as facility of Public Interest Litigation (PIL) available
- Writs - Powers in Hands of Judiciary to control the Administrative discretion
- Art. 311 of the Constitution of India and judicial Reform process aims to eradicate corruption from the society.

# Some Key Acts

- **Indian Penal Code, 1860:**
- **The Benami Transactions (Prohibition) Act, 1988**
- **The Prevention of Money Laundering Act, 2002**
- **The Prevention of Corruption Act, 1988**
-

# Key Features of PCA 1988

- ◆ In addition to the categories included in the IPC, the definition of “public servant” includes office bearers of cooperative societies receiving financial aid from the government, employees of universities, Public Service Commission and banks.
- ◆ If a public servant takes gratification other than his legal remuneration in respect of an official act or to influence public servants is liable to minimum punishment of six months and maximum punishment of five years and fine. The Act also penalizes a public servant for taking gratification to influence the public by illegal means and for exercising his personal influence with a public servant.
- ◆ If a public servant accepts a valuable thing without paying for it or paying inadequately from a person with whom he is involved in a business transaction in his official capacity, he shall be penalized with minimum punishment of six months and maximum punishment of five years and fine.
- ◆ It is necessary to obtain prior sanction from the central or state government in order to prosecute a public servant.

# WHO IS A “PUBLIC SERVANT” AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES “PUBLIC DUTY”?

## **Section 2(b): Public Duty:**

*It means a duty in the discharge of which the State, the public or the community at large has an interest.*

In ***State of Gujarat v. Mansukhbhai Kanjibhai Shah, 2020 (2) RCR (Criminal) 544,***

the Supreme Court observed that evidently, the language of Section 2(b) of the PC Act indicates that any duty discharged wherein State, the public or community at large has any interest is called a public duty



# WHO IS A “PUBLIC SERVANT” AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES “PUBLIC DUTY”?

## **Section 2(c): Public Servant:**

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

# WHO IS A “PUBLIC SERVANT” AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES “PUBLIC DUTY”?

## **Section 2(c): Public Servant:**

- *any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court*
- *any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;*
- *any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;*
- *any person who holds an office by virtue of which he is authorised or required to perform any public duty;*

# WHO IS A “PUBLIC SERVANT” AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES “PUBLIC DUTY”?

## Section 2(c): Public Servant:

- *any person who is the **president, secretary or other office-bearer of a registered co-operative society** engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956*
- *any person who is a **chairman, member or employee of any Service Commission or Board**, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;*
- *(xi) any person who is a **Vice-Chancellor or member** of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations*

# WHO IS A “PUBLIC SERVANT” AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES “PUBLIC DUTY”?

## Section 2(c): Public Servant:

- *any person who is an **office-bearer or an employee** of an educational, scientific, social, cultural or other institution, in whatever manner established, **receiving or having received any financial assistance from the Central Government or any State Government** or local or other public authority*
- **Explanation 1.** — *Persons falling under any of the above sub-clauses **are public servants, whether appointed by the government or not.***
- **Explanation 2.** — *Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.*

# WHO IS A “PUBLIC SERVANT” AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES “PUBLIC DUTY”?

In ***State of Maharashtra & Anr. v. Prabhakar Rao & Anr.*, (2002) 7 SCC 636**, the Supreme Court held that the definition of ‘Public Servant’ U/s 21 of IPC is of no relevance under the Prevention of Corruption Act, 1988.

In ***Manish Trivedi v. State of Rajasthan*, (2014) 14 SCC 420**, the Supreme Court held that a member of the Municipal Board or a Municipal Councillor per se may not come within the definition of —public servant as defined U/s 21 of IPC but this does not mean that they cannot be brought in the category of public servant by any other enactment. In the present case, the Municipal Councillor or the Member of the Board does not come within the definition of —public servant U/s 21 of IPC, but in view of the legal fiction created by section 87 of the Rajasthan Municipalities Act, 1959 they come within its definition.

# WHO IS A “PUBLIC SERVANT” AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES “PUBLIC DUTY”?

- In ***C.B.I. v. Ramesh Gelli*, (2016) 3 SCC 788**, the managing director and chair of a private banking company were held to be —public servants for the purposes of prosecution under the Prevention of Corruption Act 1988.
- In ***P.V. Narsimha Rao v. State*, 1998 CriLJ 2930**, the Supreme Court held that MLA is public servants U/s 2(c)(viii) of Prevention of Corruption Act, 1988, as it states any person who holds an office by virtue of which he is authorized or required to perform any public duty’.
- In ***M. Karunanidhi v. Union of India*, AIR 1979 SC 898**, the Supreme Court held that a Chief Minister or a Minister are in the pay of the Government and are, therefore, public servants

# WHO IS A “PUBLIC SERVANT” AS PER THE PREVENTION OF CORRUPTION ACT AND WHAT CONSTITUTES “PUBLIC DUTY”?

- In ***Ashok Kumar Badola v. State of Rajasthan, (2011) 4 RLW 3606***, the Rajasthan High Court held that the definition of —public servant has been expanded including holders of public office, who discharge public duties. The Chairman of Municipal Council holds a public office and discharges public duties, therefore, he would fall under the definition of term —public servant as defined U/s 2(c) of the Act.
- In ***Shankardas Swami v. State of Rajasthan, (2018) 3 RLW 1881***, the Rajasthan High Court held that the protection U/s 197 CrPC is available to the public servants even after their retirement. The offence complained of is attributable to discharge of public duty or has a direct nexus therewith, therefore, obtaining sanction is pre-requisite.

## Section 7 - Offence relating to public servant being bribed

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



## Section 7 - Offence relating to public servant being bribed

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

### **Explanation 2**-- *For the purpose of this section--*

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

## Section 7 - Offence relating to public servant being bribed

- It was observed by the Supreme Court in ***Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86***, that words like —accepts and obtains has been especially used by the legislature in Sections 7 and 13(1)(a) and (b) of the Act but in Section 13(1)(d) there is withdraw of the word —accepts and put importance on the word —obtains. *It is enough, if by abusing his position as a public servant, a man obtains for himself any pecuniary advantage entirely, irrespective of motive or reward for showing favour or disfavor*
- In ***P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152***, it has been settled by the Supreme Court that to convict the accused it is necessary to have adequate proof of demand and acceptance of illegal gratification by the public servants U/s 7 and 13 of the Prevention of Corruption Act, 1988

## Section 8: Offence relating to bribing of a public servant

- Any person who gives or promises to give an undue advantage to another person or persons, with intention--
  - (i) to induce a public servant to perform improperly a public duty; or
  - (ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to **seven years or with fine or with both:**

## Section 8: Offence relating to bribing of a public servant

- **Provided** that the provisions of this section **shall not apply where a person is compelled** to give such undue advantage:
- **Provided** further that the **person so compelled shall report the matter to the law enforcement authority** or investigating agency within a period of seven days from the date of giving such undue advantage:
- **Provided** also that when the offence under this section has been committed by **commercial organisation, such commercial organisation shall be punishable with fine.**
- **Explanation.--** It shall **be immaterial** whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be **immaterial** whether such undue advantage is given or promised to be given by the person **directly** or through a **third party.**

**(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.**

## Section 8: Offence relating to bribing of a public servant

- In *Parkash Singh Badal v. State of Punjab*, (2007) 1 SCC 1, the Supreme Court held that —**Gratification is not restricted to pecuniary gratification.** It has been further held that the opening word of Sections 8 and 9 is —whoever. The expression is very wide and would also cover public servants accepting gratification as a motive or reward for inducing any other public servant by corrupt or illegal means. Restricting the operation of the expression by curtailing the ambit of Sections 8 and 9 and confining to private persons would not reflect the actual legislative intention.

## Section 9:

Bribing a public servant by a commercial organization: If a person is said to give promises to give undue advantage to a public servant if he has alleged to have committed an offence U/S 8 irrespective of whether or not he has been prosecuted for such offence. Any person who is associated with the commercial organization gives promises to give undue advantage to a public servant to retain the business of the commercial organization.

## Section 9: Offence relating to bribing of a public servant

- The Amendment Act has defined 'commercial organisation' to mean not just a company or partnership incorporated in India and carrying on business in India or outside India, but also a body or partnership incorporated or formed outside India but carrying on business in India. Section 9 of the PC Act has been substituted by the Amendment Act to provide for a specific provision for offences committed by commercial organisations and persons associated with it. It provides that if a commercial organisation commits any of the offences listed out in the PC Act with the intention to obtain or retain business or obtain or retain an advantage in the conduct of its business, then such commercial organisation shall be punishable with fine, quantum of which is not prescribed in the Amendment Act.

## Section 9: Offence relating to bribing of a public servant

- The Amendment Act mandates the Central Government to formulate and prescribe guidelines to prevent persons associated with commercial organisations from bribing any public servant. A commercial organisation can defend itself when accused of any offence under the PC Act, if it proves that it had adequate procedures in place to ensure compliance with such guidelines issued by the Central Government to prevent persons associated with the commercial organisation from undertaking such conduct. The corporate sector in India will have to be swift in enacting its internal guidelines and ensure that its employees are well informed and abide by these guidelines to protect itself from any kind of prosecution under the PC Act, in the event of any associated person charged with the act of giving a bribe.
- Further, if such an offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the organisation, then such person shall also be prosecuted under the PC Act.



## Section 11: Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant

Whoever, being a public servant, **accepts or obtains or attempts** to obtain for himself, or for any other person, any **undue advantage without consideration**, or for a consideration which he knows to be **inadequate**, from any person whom he knows to have been, or to be, or to be likely to be concerned in **any proceeding or business transacted or about to be transacted by such public servant**, or having any connection with the official functions or **public duty of himself or of any public servant to whom he is subordinate**, or from any person whom he knows to be interested in or related to the person so concerned, **shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.**

## Section 12: Punishment for abetment of offences

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

## Section 13: Criminal Misconduct by a Public Servant

*(1) A public servant is said to commit the offence of criminal misconduct, —*

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

## Section 13: Criminal Misconduct by a Public Servant

- ***Explanation 1-- A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.***
- ***Explanation 2-- The expression “known sources of income” means income received from any lawful sources.”.***

***(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.***

## Section 13: Criminal Misconduct by a Public Servant

- In ***Rajiv Kumar v. State of U.P., (2017) 8 SCC 791***, the Supreme Court held that a perusal of Sections 13(1)(d)(i), (ii) and (iii) (prior to substitution) makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of criminal misconduct' under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive

## Section 13: Criminal Misconduct by a Public Servant

In *M. Krishna Reddy v. State, Deputy Superintendent of Police, Hyderabad*, AIR 1993 SC 313, the Supreme Court held that to substantiate a charge U/s 13(1)(e) of the P.C. Act 1988 (prior to substitution), the prosecution must prove the following ingredients:

- i. the prosecution must prove that the **accused is a public servant**;
- ii. the **nature and extent of the pecuniary resources** or property which are found in his possession;
- iii. it must be proved as **to what were his known sources of income** i.e. known to the prosecution;
- iv. it must prove quite objectively that the resources or property found in possession of the accused were **disproportionate** to his known source of income.

## Section 13: Criminal Misconduct by a Public Servant

In ***Om Prakash Gupta v. State of U.P.*, AIR 1957 SC 458**, the Supreme Court held that the offence of criminal misconduct punishable U/s 5 (2) of the Prevention of Corruption Act, 1947 (which is equivalent to sec. 13(1)(e) of the Prevention of Corruption Act, 1988, prior to substitution) **is not identical in essence, import and content with an offence U/s 409 of the Indian Penal Code. The offence of criminal misconduct is a new offence created by that enactment and it does not repeal by implication or abrogate s. 409 of the Indian Penal Code**

In ***Hindustan Petroleum Corporation Ltd. v. Sarvesh Berry*, AIR 2005 SC 1406**, the Supreme Court held that where a public servant was being tried for offence U/s. 13 of the P.C. Act, 1988 and a departmental enquiry was also going on against him in respect of the same act, it has been held by the Supreme Court that **the departmental enquiry and the criminal trial can go on simultaneously except where departmental enquiry would seriously prejudice the delinquent in his defence at the criminal trial and no strait-jacket formula can be laid down in this behalf as each case has to be decided on its facts.**

## Section 13: Criminal Misconduct by a Public Servant

In *Vasant Rao Guhe v. State of M.P.*, (2017) 14 SCC 442, the Supreme Court held that a **public servant facing charge of criminal misconduct, cannot be comprehended to furnish any explanation in absence of the proof of the allegation of being in possession by himself or through someone else, of pecuniary resources or property disproportionate to his known sources of income.** The bench held that the **primary burden to bring home the charge of criminal misconduct is indubitably on the prosecution** to establish beyond reasonable doubt that the public servant either himself or through anyone else had at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income and it is only on the discharge of such burden by the prosecution, if he fails to satisfactorily account for the same, he would be in law held guilty of such offence.



## Section 14: Punishment for habitual offender

Whoever convicted of an offence under this Act **subsequently** commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall not be less than **five years but which may extend to ten years and shall also be liable to fine**

## Section 15: Punishment for attempt

Whoever attempts to commit an offence referred to in [clause (a)] of sub-section (1) of section 13 shall be punishable with imprisonment for a term **which shall not be less than two years but which may extend to five years and with fine**

## Section 16: Matters to be taken into consideration for fixing fine

Where a sentence of fine is imposed under section 7 or section 8 or section 9 or section 10 or section 11 or sub-section (2) of section 13 or section 14 or section 15, the court in fixing the amount of the fine **shall take into consideration the amount or the value of the property**, if any, which the accused person has **obtained** by committing the offence or where the conviction is for an offence referred to in clause (b) of sub-section (1) of section 13, the **pecuniary resources or property** referred to in that clause for which the **accused person is unable to account satisfactorily**.

# Prevention of Money Laundering Act, 2002 (Amended 2019)

- There is interesting history behind the word. *“laundering”*  
Al Capone, the notorious mafia in USA, obtained lot of money from criminal activities. He invested that money into establishing laundries all over USA. Since laundry business is mainly cash business, he was able to convert his cash into legitimate money.
- The term Money Laundering is used for the disguising or concealing of illicit income in order to make it appear legitimate.
- Money Laundering is being employed by launderers worldwide to conceal criminal activity associated with it such as drugs / arms trafficking, terrorism and extortion.

# Meaning

- Money Laundering means the act of procuring, concealing, and **turning illegally obtained funds into legitimate proceeds**. It comes under the same branch as other more serious smuggling crimes such as drug trafficking, human trafficking, robbery, etc.
- This money is generated by investing in the black market and under-the-table crimes such as drug trafficking, illegal arms sale, and terrorist funding. Even operating prostitution rings, bribery, and computer fraud schemes produce large amounts of capital for them

# Modus Operandi

## There are four basic stages of money laundering

- The first step is **procuring** the money through numerous illicit activities.
- The second step is known as **Placement**. In this step, the money obtained is then turned from black to white and injected into legitimate finances.
- The third step is known as **Layering**, in which small accounting tricks are used to spread this money over numerous transactions to remove the trail back to its actual source.
- The fourth step is **Integration**, in which the now-clean money is taken out to be used for normal transactions or to further invest in illegal activities which brings the cycle back to square one.

# Several Forms of Money Laundering

- **Structuring also called Smurfing** - is when someone breaks up a transaction involving a large amount of money into smaller transactions below the reporting threshold to evade scrutiny
- **Bulk Cash Smuggling** - This is when a huge amount of money is physically smuggled in cash to faraway places such as off-shore banks, that do not have money laundering checks in place or cater to clients in an especially secretive manner.
- **Cash Intensive Businesses** -These businesses conduct dealing mainly in cash and thus can sneak in illicit money along with the legitimate money earned into their account books. Service-based businesses easily conduct these kinds of dealings as no variables are involved in it. For example parking structures, strip clubs, restaurants, car washes, bars, casinos, arcades, etc.
- **Trade-based Laundering** - This is one of the most complex ways of money laundering as it involves under and overvaluing invoices for concealing the movement of money.

# Several Forms of Money Laundering

- **Shell companies** - Trusts and shell companies disguise their true owners.
- **Round tripping** - Money is transferred to off-shore CFC with minimal records and then is transferred back as an investment and thus evades taxation.
- **Gambling** - Small bets with large returns and negligible losses are made and the money is recorded as gambling wins.
- **Black Salaries** - A company may have a number of unregistered employees with written contracts to whom salaries are paid using illicit money.
- **Tax amnesties** - Legalizing unreported cash and assets in tax havens, a place where there are low tax rates for foreign investors.
- **Transaction laundering** - When a merchant unknowingly processes illicit money for other businesses.



# Object of PMLA 2002

- The law's three main objectives are :
  - To prevent and control money laundering.
  - To confiscate and seize property obtained from laundered money.
  - To deal with any other matters that are connected with or arise because of money-laundering in India

Under the PMLA Act, the Enforcement Directorate is the body that has the right to conduct a Money Laundering investigation

# Agency

## Enforcement Directorate

- Directorate of Enforcement (ED) is a specialized financial investigation agency under the Department of Revenue, Ministry of Finance, Government of India. Earlier called 'Enforcement Unit' was formed, in the Department of Economic Affairs, for handling Exchange Control Laws violations under Foreign Exchange Regulation Act, 1947. ED enforces the following laws:
  1. Foreign Exchange Management Act, 1999 (FEMA)
  2. Prevention of Money Laundering Act, 2002 (PMLA)

# Prominent Cases of Money Laundering in India

The most well known and high profile money laundering cases in India were:

- Commonwealth Games Scam 2010: 70,000 Crore Scam
- Group financial scandal 2013: A 4000 Crore Scam
- Indian coal allocation scam 2012: 185,591 Crore Scam
- 2G scam 2008: 176,000 Crore Scam

# Offences under PMLA?

Offences mentioned under Part A and C of the Schedule of this Act will attract its provisions.

- Part A includes offences under acts namely:
  - Indian Penal Code, Prevention of Corruption Act, Narcotics Drugs and Psychotropic Substances Act, Antiquities and Art Treasures Act, Trademark Act, [Wildlife Protection Act](#), Copyright Act and Information Technology Act.
- Part B includes offences that are mentioned in Part A, but are of a value of Rs 1 crore or more.
- Part C includes **trans-border crimes**.

# Penalties

Various actions can be initiated against persons found to be guilty of money laundering, such as:

- Freezing or seizing of property and records, and/or attachment of property obtained through crime proceeds.
- Money laundering is punishable with:
  - Rigorous imprisonment for a **minimum of 3 years and a maximum of 7 years.**
  - Fine.
- If the crime of money laundering is involved with the Narcotic Drugs and Psychotropic Substances Act, 1985, the punishment **can go up to 10 years**, along with fine.

## Section 2 - Definition

- (a) “Adjudicating Authority” means an Adjudicating Authority appointed under sub-section (1) of section 6; - CG will appoint with chairman and 2 members
- (b) “Appellate Tribunal” means the Appellate Tribunal referred to in section 25 (constituted under section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976)
- (c) “attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III
- (d) “beneficial owner” means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person

# Section 2 - Definition

- e) “financial institution” means a financial institution as defined in clause (c) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India
- f) “**money-laundering**” has the meaning assigned to it in section 3 –
- g) “**proceeds of crime**” means any **property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence** or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];

[Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property **not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence;**

## Section 2 - Definition

- h) “**property**” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
- i) “**value**” means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person
- j) “**scheduled offence**” means—
- the offences specified under Part A of the Schedule; or
  - the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more;
  - The offences specified under Part C of the Schedule.



## Section 3 – Offence of ML

Whosoever **directly or indirectly** attempts to **indulge or knowingly assists or knowingly is a party** or is **actually involved** in any process or activity **connected with the proceeds of crime** including its **concealment, possession, acquisition or use** and **projecting or claiming it as untainted property shall be guilty of offence of money-laundering**

# Section 3 – Offence of ML

For the removal of doubts, it is hereby clarified that,—

- (i) a person **shall be guilty of offence of money-laundering** if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—
  - (a) concealment; or
  - (b) possession; or
  - (c) acquisition; or
  - (d) use; or
  - (e) projecting as untainted property; or
  - (f) claiming as untainted property,**in any manner whatsoever**

## Section 3 – Offence of ML

The process or activity connected with proceeds of crime is a **continuing activity** and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever

## Section 4 – Punishment

- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine
- Paragraph 2 – Part A of Schedule - If NDPS Act – 10 years Imprisonment instead of 7 years

# Section 5 – Attachment

- Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—
  - (a) any person is in possession of any proceeds of crime; and
  - (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, **provisionally attach such property for a period not exceeding one hundred and eighty days** from the date of the order, in such manner as may be prescribed:

# Section 5 – Attachment

- for the purposes of computing the period of one hundred and eighty days, the period during which the **proceedings under this section is stayed by the High Court, shall be excluded** and a **further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted**
- No attachment without report to DM u/s 173 of CrPC
- Attachment possible, if otherwise proceeding frustrated
- After attachment, forward copy of order to Adj Authority
- **Validity of Order** – As specified in section or Order u.s 8(3), whichever earlier
- **Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment**
- The Director or any other officer who provisionally attaches any property under sub-section (1) shall, **within a period of thirty days from such attachment, file a complaint** stating the facts of such attachment before the Adjudicating Authority

# Section 6 – Adjudicating Authority

- CG Appoints, with chairperson and 2 members with experience in law/accounts/admin
- Benches to constituted by AA – ordinarily at Delhi
- Term of Member – 5 years / Age 65
- Only CG can remove
- The Adjudicating Authority **shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908)**, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall **have powers to regulate its own procedure**

# Section 7 – Staff of AA

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



# Section 8 – Adjudication

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

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

# Section 8 – Adjudication

- Where the Adjudicating Authority decides under sub-section (2) that any property **is involved in money-laundering**, he shall, by an order in writing, confirm the attachment of the property made under subsection (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, **whereupon such attachment or retention or freezing** of the seized or frozen property] or record shall—
- (a) continue during investigation for a period **not exceeding three hundred and sixty-five days** or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and
- (b) **become final after an order of confiscation** is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;]

Explanation.—For the purposes of **computing the period of three hundred and sixty-five days under clause (a)**, the period during which the investigation is **stayed by any court under any law** for the time being in force shall be excluded.]

# Section 8 – Adjudication

- Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of **money-laundering has been committed, it shall order that such property involved in the moneylaundersing or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government**
- Where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering **has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it**
- Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, **may also direct the Central Government to restore** such confiscated property or part thereof of a claimant with a legitimate interest in the property, **who may have suffered a quantifiable loss** as a result of the offence of money laundering

# Section 48 – Authorities under Act

- There shall be the following classes of authorities for the purposes of this Act, namely:—
  - (a) Director or Additional Director or Joint Director,
  - (b) Deputy Director,
  - (c) Assistant Director, and
  - (d) such other class of officers as may be appointed for the purposes of this Act

## Section 63 – Punishment for false information or failure to give information, etc

- Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for **imprisonment for a term which may extend to two years or with fine** which may extend to fifty thousand rupees or both
- If any person (a) **being legally bound to state the truth** of any matter relating to an offence under section 3, **refuses** to answer any question put to him by an authority in the exercise of its powers under this Act; or (b) **refuses to sign any statement made by him** in the course of any proceedings under this Act, which an authority may legally require to sign; or (c) **to whom a summon** is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, **omits to attend or produce books of account or documents** at the place or time, he shall pay, by way of **penalty**, a sum which shall not be less than five hundred rupees but which may **extend to ten thousand rupees for each such default or failure**

## Section 67 - Bar of suits in civil courts

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

# Section 71 - Act to have overriding effect

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

However, IBC Section 238 to be noted and the Judgement on PMLA – Bhushan Steel Case – Section 32A introduction

# Section 72 - Continuation of proceedings in the event of death or insolvency

- Where— (a) any **property** of a persons has been **attached** under section 8 and **no appeal** against the order attaching such property has been preferred; or (b) **any appeal has been preferred to the Appellate Tribunal**, and—
- (i) in a case referred to in **clause (a)**, such **person dies** or is adjudicated an **insolvent** before preferring an appeal to the Appellate Tribunal; or
- (ii) in a case referred to in **clause (b)**, such person **dies** or is adjudicated an **insolvent** during the pendency of the appeal,

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

Same for HC proceedings (After Order of Appellate, no appeal to HC or appeal pending in HC)

The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be



# Recovery of Debt due to Banks and FI's Act, 1993 (Amended in 2016)

An Act to provide for the establishment of Tribunals for expeditious adjudication and **recovery of debts** due to banks and financial institutions , insolvency resolution and bankruptcy of **individuals and partnership firms** and for matters connected therewith or incidental thereto

The Recovery of Debts Due to Banks and Financial Institutions Act contains total number of **37 sections and 6 chapters**. The act was established on 27th of August 1993.

# Background

- The narasimhan and tiwari committee had the same point of view in 1991 , to set up special tribunals for matters related to debt recovery . Their recommendation resulted in the enactment of an act known as “The Recovery of Debts Due to Banks and Financial Institutions Act (1993)” . under this act 2 types of tribunals were created
  - “Debt recovery tribunals”
  - “Debt recovery appellant tribunals”

And they were given powers for arbitration and adjudication on the matters related to recovery of debts. The first Debt recovery tribunal was opened at Kolkata in 1994

# OBJECTS AND PURPOSE OF THIS ACT

- *Overcome problems which were being faced by banks from a long time.*
- *Easy recovery of loans given .*
- *Speedy justice on specific matters.*
- *Unblock the money which is blocked*

# Threshold

The provisions of this Code Act shall **not apply** where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is **less than ten lakh rupees or such other amount, being not less than one lakh rupees**, as the Central Government may, by notification, specify

# Definitions

**“debt”** means any liability (inclusive of interest) which is **claimed as due** from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, **whether secured or unsecured**, or assigned or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and **legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days** served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities

# Definitions

“property” means—

(a) immovable property;

(b) movable property;

(c) any debt or any right to receive payment of money, whether secured or unsecured;

(d) receivables, whether existing or future;

(e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, as may be prescribed by the Central Government in consultation with Reserve Bank;

# Definitions

**“secured creditor”** shall have the meaning as assigned to it in clause (zd) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

# Definitions

“**security interest**” means mortgage, charge, hypothecation, assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of any bank or financial institution and includes—

- (a) such right, title or interest upon tangible asset, retained by the bank or financial institution as owner of the property, given on hire or financial lease or conditional sale which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible asset; or
- (b) such right, title or interest in any intangible asset or licence of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit extended to enable the borrower to acquire the intangible asset or licence of intangible asset



# DRT

They are constituted under **section 3** of the act , The matters under it are **adjudicated under 180 days and appeal can be filled under DRAT under 30 days**

A total of 39 Debt recovery tribunal are their currently present in India and 5 Debt Recovery Appellate Tribunal

**Section 4** of the act states about the composition of DRT

- It includes one presiding officer and other staff members.

## **ROLE/OBJECTIVE OF DRT**

- The first aim of DRT is to Recovery of money/loan from borrowers which is due to banks and other financial institutions.
- They provide speedy trial to ensure that the money is reached in the hands as soon as possible .

**Section 18** of the act bars/prohibits all the courts except high courts and supreme court to adjudicate the matters related to recovery of debts.

# Application

**Chapter 4** of the recovery of debt due to banks and financial institutions act (1993) deals with the process followed by DRT while adjudicating the cases "Filing of application" **Section 19**– The banks and financial institutions can fill the applications in the DRT which are within their jurisdiction.

- The application should be filled along with proper requisite fees.
- "Issue of summon/Notice" shall be made by the bank after considering the application and getting the proper prescribed fees.
- "Filing of reply" – the defendant shall present a written statement for his defence within 30 days along with proper documents of his defence. If he fails the DRT can extend time of not more than 15 days .
- Claim for counterclaim can be made on first hearing
- If the defendant admits its liability then the order to be made and the amount to be paid within 30 days.
- The DRT can also pass interim orders (injunction , stay order) to restrict or transfer the property further .
- The tribunal after hearing both the parties shall give final judgement.

# Appeal

Section 20 - Any person aggrieved from the order of DRT can file an appeal to the DEBT RECOVERY APPELANT TRIBUNAL within 30days of the order passed by DRT and appeal can be made to High court and supreme court for the order passed by DRAT ( Debt recovery appeallate tribunal).

# Appeal

Where an **appeal** is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such **appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal [fifty per cent.]** of the amount of debt so due from him as determined by the Tribunal under section 19

Axis Bank Vs SBS – SC case

# Section 25 – mode of recovery

The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:—

- (a) attachment and sale of the movable or immovable property of the defendant;
- (aa) taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;]
- (b) arrest of the defendant and his detention in prison;
- (c) appointing a receiver for the management of the movable or immovable properties of the defendant;
- (d) any other mode of recovery as may be prescribed by the Central Government

# Section 30A – Appeal against Recovery Office to Tribunal

Where an appeal is preferred against any order of the Recovery Officer, under section 30, by any person from whom the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall not be entertained by the Tribunal unless such person **has deposited with the Tribunal fifty per cent. of the amount of debt due as determined by the Tribunal**

# Section 31B – Priority to Secured Creditors

Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which **security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.**

**Explanation.**—For the purposes of this section, it is hereby clarified that on or **after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code**

# SARFAESI Act, 2002(important provisions)

1. It was enacted to enable banks and FIs to recover their NPAs without the intervention of court.
2. Two methods of recovery: a. taking the possession of secured assets b. take over the management till recovery of NPAs.
3. It also provides for sale of assets to ARCs.
4. It provides for 60 days notice to be served on the borrower for enforcement of security interest.
5. It provides for approaching DRTs for recovery of unrecovered amounts.
6. Outstanding amount has to be above Rs. 1 lac and it must be an NPA.
7. No Transfer of property can take place after 60 days notice is served.
8. 60% consent is required where there are multiple creditors.
9. Borrower can approach DRT if aggrieved by action of secured creditor within 45 days of the action taken by the creditor.
10. An appeal shall lie to the DRAT within 30 days of the receipt of DRT order after depositing 50% of the amount due or as determined by DRT whichever is less.



## Arbitration and Conciliation Act, 1996(important provisions

1. UNCITRAL adopted in 1985 the model law on International Commercial Arbitration.
2. Conciliation Rules were adopted by UNCITRAL in 1980.
3. The General Assembly of the UN has recommended that all countries give due consideration to the said Law and Rules.
4. In consonance with the Model Law and Rules, the Arbitration and Conciliation Act, 1996 was passed.
5. A arbitration agreement or a clause in a contract to refer to arbitration should be there.
6. Statement of Claim and defence, hearings and written proceedings.
7. Arbitral Award shall be in writing and shall be signed by the members of the arbitral tribunal.
8. Application for setting aside the award may be made within 3 months of the receipt of the award.
9. An arbitral award shall be final and binding on the parties and will be enforced in the same manner as if it were a decree of the Court.
10. There are four parts in the Act; a. arbitration b. enforcement of certain foreign awards (New York Convention, Geneva Convention) c. Conciliation d. Supplementary provisions.

# MSMED Act, 2006 (important provisions)

1. The object of the Act is to promote and develop and enhance the competitiveness of Micro, Small and Medium Enterprises.
2. There is a National Board for MSME.
3. A memorandum of MSME as applicable has to be filed with relevant authority for establishing a unit.
4. They contribute to GDP and employment in a large measure.
5. All MSME suppliers are to be paid within 45 days from the due date or else a compound interest with monthly rests at the rate of 3 times the bank rate notified by RBI.
6. Any dispute regarding the amount to be paid shall be referred to MSME FACILITATION COUNCIL.
7. MSME returns have to be filed by all companies on MCA website half yearly regarding delayed payments.
8. Section 7 deals with classification of enterprises w.e.f. 01/07/2020.

CLASS	MICRO	SMALL	MEDIUM
Mfg & services	Investment <1crore; Turnover <5crores	Investment <10crores; Turnover <50crores	Investment <50crores Turnover <250crores

# RERA, 2016(Important Points)

1. The Act comprises 10 chapters and 92 sections for promotion and regulation of the real estate sector, protecting the interests of the consumers in real estate sector, ensure sale of apartment, building, plot or any real estate project in an efficient and transparent manner and to establish speedy dispute redressal.
2. Every promoter should apply for registration of the real estate project enclosing all relevant documents and within 30 days registration is granted or rejected. Extension not exceeding 1 year and revocation of registration is also provided in the Act.
3. Quarterly Reports have to be submitted by the promoter regarding status of the project.
4. The Act provides for transfer of title and possession in time or else refund the money to the consumer.
5. The real estate regulatory authority is established and the members hold office for a term not exceeding 5 years subject to a limit of 65 years of age.
6. Aggrieved parties can make complaint to the authority.
7. Provision for Central Advisory Council is in the Act for advising CG on all matters relating to the implementation of the Act and policy matters.
8. Any person aggrieved by the order of the authority can appeal to the appellate tribunal and in case of promoter appealing, he should deposit 30% of the penalty or the total amount to be paid to the allottee including interest.
9. Aggrieved by the order of the appellate tribunal, party may prefer an appeal before high court within 60 days of the receipt of the order.
10. Punishment for non-registration is upto 10% of the estimated cost of the project

# Securities Laws (important provisions)

The following laws and regulations are covered:

1. Securities Contracts Regulation Act, 1956
2. SEBI(Issue of Capital and Disclosure Requirements) Regulations, 2009
3. SEBI(delisting of equity shares) Regulations, 2009
4. SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011
5. SEBI(Listing of Obligations and Disclosure Requirements) Regulations, 2015

## **Securities Contracts Regulation Act, 1956**

1. Recognition and withdrawal of recognition of stock exchanges
2. Corporatization and Demutualization of Stock Exchanges
3. Contracts and Options
4. Listing and De-listing of Securities
5. Appeal to SEBI Appellate Tribunal(SAT) against refusal to listing
6. Appeal to Supreme Court against order of SAT within 60 days of the order of SAT.
7. The Act shall not apply to govt. and to convertible or share warrant.

## **SEBI(Issue of Capital and Disclosure Requirements) Regulations, 2018**

1. The regulations are applicable to IPO, Rights Issue of 50 crores or more, FPO, Preferential Issue by listed issuer, QIP by a listed issuer, IPO of IDR, rights issue of IDR, IPO by small and medium enterprise, listing on innovators growth platform with or without an issue, bonus issue by a listed issuer.
2. Eligibility to make an IPO
  - a. Net tangible assets of 3 crores in each of the preceding three years out of which not more than 50% are held in monetary assets.
  - b. Average operating profit of 15 crores in the preceding three years with operating profit in each of the preceding three years.
  - c. Net worth of atleast 1 crore in each of the 3 preceding years.
3. Without satisfying the above criteria, issuer can make IPO provided the issue is through book building process and issuer undertakes to allot 75% of the net offer to QIPs.
4. Application should have been made for listing on SE.
5. Agreement with depository for dematerialization
6. Offer for sale can be made only of shares which are held by promoters atleast for one year prior to filing of draft offer document.
7. Promoters should hold at least 20% of the post issue capital.
8. Lock in period for minimum promoter contribution shall be 3 years and excess shall be for 1 year.
9. The entire pre-issue capital held by non-promoters shall be locked in for 1year.
10. Minimum subscription to be received shall be 90% of the offer through offer document

# SEBI(LODR) Regulations, 2015

1. The corporate governance(CG) provisions shall not apply to listed companies with PUC not exceeding 10 crores and NW not exceeding 25 crores as on the last of the previous FY.
2. The CG provisions are not applicable to SME listed company and company undergoing CIRP.
3. CG provisions are as governed by reg. 17:
  - a. Optimum combination of executive and non-executive directors with non-executive directors not less than 50% of the Board with atleast one woman director.
  - b. There should be atleast 1/3<sup>rd</sup> independent directors where there non-executive chairperson is there and 50% in case there is none.
  - c. The top 1000 companies (w.e.f. 01/04/2019) and top 2000 companies (w.e.f. 01/04/2020) shall comprise of 6 directors.
  - d. Companies with SR shares, independent directors shall be 50%
  - e. The quorum for BM of top 1000 and top 2000 as above, shall be 1/3 rd or 3 whichever is higher.
  - f. Maximum no. of directorships shall not be more than 7 listed entities w.e.f. 01/04/2020.
  - g. An audit committee shall have atleast 3 directors as members. 2/3 rd of the audit committee shall be independent directors and in case of SR shares, all shall be independent.
  - h. Nomination and Remuneration Committee shall comprise of 3 directors and 50% shall be independent directors. All directors should be non-executive directors.

## **SEBI(SAST) Regulations, 2011**

1. No person shall acquire more than 25% of the shares of target company without making open offer.
2. Subsequently in no FY can he acquire more than 5% without making open public offer.
3. For the FY 2020-21 he can acquire up to 10% if it is by way of preferential issue to a promoter.
4. 25% will become 49% in case innovators growth platform.
5. The open offer shall be for at least 26% of the total shares of the target company.



## SEBI (Delisting of Equity Shares) Regulations, 2009

1. No delisting can be done
  - a. Pursuant a buy back
  - b. Pursuant a preferential allotment
  - c. Unless 3 years have elapsed from issue
  - d. of any outstanding convertible instruments
  - e. If sale of shares by promoter or group has taken place in the preceding 6 months
  - f. Delisting of convertible securities not permitted
2. Delisting can be from all or any of the SEs
3. Application for delisting shall be disposed off by SEs within 30 working days.

Delisting can be voluntary or compulsory (under section 21A of the SCRA, 1956).

# Comparative statement of Companies Acts 1956 & 2013

CRITERION OF DIFFERENCE	COMPANIES ACT, 1956	COMPANIES ACT, 2013
PARTS/CHAPTERS	XIII PARTS DIVIDED IN TO 38 CHAPTERS	29 CHAPTERS
SECTIONS	658 SECTIONS	470 SECTIONS
SCHEDULES	15 SCHEDULES	7 SCHEDULES

# 29 CHAPTERS OF COMPANIES ACT, 2013

S NO	PARTICULARS	SECTIONS
1	PRELIMINARY	1 & 2(1) to 2(95)
2	INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO	3 to 22
3	PROSPECTUS AND ALLOTMENT OF SECURITIES	23 to 42
4	SHARE CAPITAL AND DEBENTURES	43 to 72
5	ACCEPTANCE OF DEPOSITS BY COMPANIES	73 to 76
6	REGISTRATION OF CHARGES	77 to 87
7	MANAGEMENT AND ADMINISTRATION	88 to 122
8	DECLARATION AND PAYMENT OF DIVIDEND	123 to 127
9	ACCOUNTS OF COMPANIES	128 to 138
10	AUDIT AND AUDITORS	139 to 148

# 29 CHAPTERS OF COMPANIES ACT, 2013

S NO	PARTICULARS	SECTIONS
11	APPOINTMENT AND QUALIFICATION OF DIRECTORS	149 to 172
12	MEETING OF BOARD AND ITS POWERS	173 to 195
13	APPOINTMENT AND REMUNERATION OF M. PERSONNEL	196 to 205
14	INSPECTION, INQUIRY AND INVESTIGATION	206 to 229
15	COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS	230 to 240
16	PREVENTION OF OPPRESSION AND MISMANAGEMENT	241 to 246
17	REGISTERED VALUERS	247
18	REMOVAL OF NAMES FROM REGISTER OF COMPANIES	248 to 252
19	REVIVAL AND REHABILITATION OF SICK COMPANIES	253 to 269
20	WINDING UP	270 to 365

# 29 CHAPTERS OF COMPANIES ACT, 2013

S NO	PARTICULARS	SECTIONS
21	PART I - COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT	366 to 378
22	COMPANIES INCORPORATED OUTSIDE INDIA	379 to 393
23	REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES	394 to 395
24	REGISTRATION OFFICES AND FEES	396 to 404
25	COMPANIES TO FURNISH INFORMATION OR STATISTICS	405
26	NIDHIS	406
27	NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL	407 to 434
28	SPECIAL COURTS	435 to 446
29	MISCELLANEOUS	447 to 470

# 7 SCHEDULES TO COMPANIES ACT, 2013

S NO	PARTICULARS
I	<b>TABLE A to TABLE J (SECTIONS 4 &amp; 5)</b>
TABLE A	MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES
TABLE B	MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL
TABLE C	MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL
TABLE D	MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY LIMITED AND NOT HAVING A SHARE CAPITAL
TABLE E	MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY LIMITED AND HAVING A SHARE CAPITAL
TABLE F	ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES
TABLE G	ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL
TABLE H	ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL
TABLE I	ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY LIMITED AND HAVING A SHARE CAPITAL
TABLE J	ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY LIMITED AND NOT HAVING A SHARE CAPITAL

# 7 SCHEDULES TO COMPANIES ACT, 2013

S NO	PARTICULARS	SECTION
II	USEFUL LIVES TO COMPUTE DEPRECIATION	123
III	GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY GENERAL INSTRUCTIONS	129
IV	CODE FOR INDEPENDENT DIRECTORS	149(8), 168 & 169
V	APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL WITHOUT GOVT. APPROVAL - (DETAILS IN THE NEXT SLIDE)	196 & 197
VI	MEANING OF TERMS INFRASTRUCTURAL PROJECTS OR FACILITIES	55 & 186
VII	ACTIVITIES FOR INCLUDING IN CORPORATE SOCIAL RESPONSIBILITIES	135

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL WITHOUT GOVT. APPROVAL - (SCHEDULE V)

<b>PART I</b>	<b>CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT</b> <u>APPOINTMENTS</u>
<b>PART II</b>	<u>REMUNERATION</u>
Section I	<b>Remuneration payable by companies having profits:</b>
Section II	<b>Remuneration payable by companies having no profit or inadequate profit without Central Government approval:</b>
Section III	<b>Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:</b>
Section IV	<b>Perquisites not included in managerial remuneration:</b>
Section V	<b>Remuneration payable to a managerial person in two companies:</b>
<b>PART III</b>	<b>Provisions applicable to Parts I and II of this Schedule</b>
<b>PART IV</b>	<b>The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.</b>



# List of Forms filed during incorporation

S.NO	FORM NO.	PARTICULARS
1	INC – 1	APPLICATION FOR RESERVATION OF NAME
2	RD - 1	APPLICATION FOR LICENCE
3	INC – 7	APPLICATION FOR INCORPORATION
4	DIR-12	PARTICULARS FOR APPOINTMENT OF DIRECTORS
5	INC- 22	NOTICE OF SITUATION OF REGD. OFFICE
6	INC-13	MODEL MEMORANDUM OF ASSOCIATION
7	INC-14	DECLARATION BY PROFESSIONAL
8	INC-15	DECLARATION BY SUBSCRIBERS
9	INC-16	LICENCE BY ROC

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (**READY RECKONER**) –

**PROSPECTUS AND ALLOTMENT OF SECURITIES – 23 TO 42 (CHAPTER III)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
1	Public offer and private placement	67	23
2	Power of SEBI to regulate issue and transfer of securities	55A	24
3	Documents containing offer of securities for sale to be deemed prospectus	64	25
4	Matters to be stated in prospectus	55,56,57,58,59,60, Sch. II	26
5	Variation in terms of contract or objects in prospectus	61	27
6	Offer of sale of shares by certain members of company	nil	28
7	Public offer should be in de materialised form	68B	29
8	Advertisement of prospectus	66	30
9	Shelf Prospectus	68	31
10	Red herring prospectus	60B	32
11	Issue of application forms for securities	56 (3)	33
12	Criminal liability for misstatements in prospectus	63	34

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (**READY RECKONER**) –

**PROSPECTUS AND ALLOTMENT OF SECURITIES – 23 TO 42 (CHAPTER III)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
13	Civil liability for misstatements of prospectus	62	35
14	Punishment for fraudulently inducing persons to invest money	68	36
15	Action by affected persons	nil	37
16	Punishment for personation for acquisition	68A	38
17	Allotment of securities by company	69, 75	39
18	Securities to be dealing within stock exchanges	73, 76	40
19	Global Depository Receipt	nil	41
20	Offer or Invitation for subscription of securities on private placement	67	42

# TOPICS AT A GLANCE (sections 23 to 42)

1. The 20 topics of the Chapter III can be recalled using the following:

a. DAMP

b. PROSPECTAS

c. DMADV

d. PGF

# List of Forms under Chapter III

S.No.	Form No	PARTICULARS
1	PAS - 1	<b>Advertisement giving details of notice of special resolution for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued</b>
2	PAS - 2	<b>Information Memorandum</b>
3	PAS - 3	<b>Return of Allotment</b>
4	PAS - 4	<b>Private Placement Offer Letter</b>
5	PAS - 5	<b>Record of a private placement offer to be kept by the company</b>

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (**READY RECKONER**) –  
**SHARE CAPITAL AND DEBENTURES – 43 TO 72 (CHAPTER IV)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
23	Restrictions on purchase by company of its shares	77	67
24	Power of company to purchase its Own securities	77A	68
25	Transfer of certain sums to CRR account	77AA	69
26	Prohibition for buy back in certain circumstances	77B	70
27	Debentures	117,117A,117B,117C,118,119,122 Except 117B(4) and 117C(4) and (5)	71
28	Power to nominate	109A,109B	72

# TOPICS AT A GLANCE (sections 43 to 72)

1. The 25 topics of the Chapter IV can be recalled using the following:

- a. KINDS OF SHARE CAPITAL
- b. REDUCTION (of share capital)
- c. PAID UP (Share capital)

# TOPICS AT A GLANCE (sections 43 to 72)

- **k** – Kinds of share capital
- **I** – Issue of shares
- **N** – Numbering of Shares
- **D** - Debentures
- **O** – To purchase its own securities
- **F** – Issue of Further Shares
- **S** –
- **H** –
- **A** – Application of share premium
- **R** – Voting Rights
- **E** – Issue of Sweat equity
- **C** – Calls on same class of Shares
- **A** – Appeal for refusal of Registration of shares
- **P** – Publication of Authorised, subscribed and paid up capital
- **I** - Issue of Bonus shares
- **T** – Transfer & Transmission shares
- **A** – Alteration of Share Capital
- **L** -



# TOPICS AT A GLANCE (sections 43 to 72)

- R – Rectification of ROM
- E –
- D – Prohibition on issue of shares at a Discount
- U – Unlimited co. to provide for reserve share  
Capital on conversion into a limited co.
- C – Certificate of Shares
- T – Transfer of money to CRR account
- I -
- O –
- N – Nature of Shares & Debentures.

# TOPICS AT A GLANCE (sections 43 to 72)

- P - Punishment for personation of shareholder
- A – Notice of Alteration Of share capital
- I –
- D – Payment of Dividend in proportion
- U –
- P - Restrictions on purchase by company of its shares

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (**READY RECKONER**) –  
**ACCEPTANCE OF DEPOSITS BY COMPANIES – 73 TO 76 (CHAPTER V)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
1	PROHIBITION ON ACCEPTANCE OF DEPOSITS FROM PUBLIC	58A, 58AA, 58AAA, 58B, 59	73
2	REPAYMENT OF DEPOSITS ACCEPTED BEFORE COMMENCEMENT OF THE ACT	187C	74
3	DAMAGES FOR FRAUD		75
4	ACCEPTANCE OF DEPOSITS FROM PUBLIC BY CERTAIN COMPANIES	58A	76

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (**READY RECKONER**) –  
**REGISTRATION OF CHARGES – 77 TO 87 (CHAPTER VI)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
1	DUTY TO REGISTER CHARGES	125 TO 145	77
2	APPLICATION FOR REGISTRATION OF CHARGE	134	78
3	SECTION 77 TO APPLY IN CERTAIN MATTERS	127, 135	79
4	DATE OF NOTICE OF CHARGE	126	80
5	REGISTER OF CHARGES TO BE KEPT BY ROC	130	81
6	COMPANY TO REPORT SATISFACTION OF CHARGE	138	82
7	POWER OF REGISTRAR IN THE ABSENCE OF INTIMATION FROM THE COMPANY	139, 140	83
8	INTIMATION OF APPT OF RECEIVER OR MANAGER	137	84
9	COMPANY'S REGISTER OF CHARGES	131, 136, 143, 144	85
10	PUNISHMENT FOR CONTRAVENTION	142	86
11	RECTIFICATION BY CG IN REGISTER OF CHARGES	141	87

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (READY RECKONER) –

**MANAGEMENT & ADMINISTRATION – 88 TO 122(CHAPTER VII)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
1	REGISTER OF <u>M</u> EMBERS	150,151,152,152A,153, 153A, 153B, 157, 158	88
2	<u>D</u> ECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE	187C	89
3	INVESTIGATION OF BENEFICIAL <u>O</u> WNSHIP OF SHARES IN CERTAIN CASES	187D	90
4	POWER TO <u>C</u> LOSE REGISTER OF MEMBERS OR DEBENTUREHOLDERS OR OTHER SECURITY HOLDERS	154	91
5	<u>A</u> NNUAL RETURN	159,160,161,162,Sch V	92
6	<u>R</u> ETURN TO BE FILLED WITH REGISTRAR IN CASE PROMOTERS STAKE CHANGES	NIL	93

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (**READY RECKONER**) –

**MANAGEMENT & ADMINISTRATION – 88 TO 122(CHAPTER VII)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
7	<u>P</u> LACE OF KEEPING AND INSPECTION OF REGISTERS ,RETURNS,ETC	163	94
8	REGISTERS,ETC TO BE <u>E</u> VIDENCE	164	95
9	<u>A</u> NNUAL GENERAL MEETING	165,166, 170	96
10	POWER OF <u>T</u> RIBUNAL TO CALL AGM	167	97 (NYN)
11	POWER OF <u>T</u> RIBUNAL TO CALL MEETING OF MEMBERS,ETC	186	98 (NYN)
12	<u>P</u> UNISHMENT FOR DEFAULT IN COMPLYING WITH PROVISION <u>OF 96 TO 98</u>		99 (NYN)
13	CALLING <u>E</u> XTRA ORDINARY GENERAL MEETING	169(9)	100
14	<u>N</u> OTICE OF MEETING	171,172	101

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (**READY RECKONER**) –

**MANAGEMENT & ADMINISTRATION – 88 TO 122(CHAPTER VII)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
15	STATEMENT TO BE ANNEXED TO NOTICE (formerly <u>E</u> xplanatory St.)	173	102
16	<u>Q</u> UORUM FOR MEETING	174	103
17	<u>C</u> HAIRMAN OF MEETING	175	104
18	<u>P</u> ROXIES	176,SCHEDULE IX	105
19	RESTRICTION ON <u>V</u> OTING RIGHT	181,182,183	106
20	VOTING BY SHOW OF <u>H</u> ANDS	177,178	107
21	VOTING THROUGH <u>E</u> LECTRONIC MEANS	NIL	108
22	DEMAND FOR <u>P</u> OLL	179,180,184,185	109

Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (READY RECKONER) –

**MANAGEMENT & ADMINISTRATION – 88 TO 122(CHAPTER VII)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
23	POSTAL <b>B</b> ALLOT	192A	110
24	<b>C</b> IRCULATION OF MEMBERS RESOLUTION	188	111
25	REPRESENTATIOIN OF PRESIDENT AND <b>G</b> OVERNORS IN MEETING	187A, 187B	112
26	<b>R</b> EPRESENTATIONS OF CORPORATIONS AT MEETING OF COMPANY AND OF CREDITORS	187	113
27	<b>O</b> RDINARY AND SPECIAL RESOLUTIONS	189	114
28	RESOLUTIONS REQUIRING <b>S</b> PECIAL NOTICE	190	115
29	RESOLUTIONS PASSED AT <b>A</b> DJOURNED MEETING	191	116



Re-engineering of section 1 to 197 of Companies Act, 1956 under  
the Companies Act, 2013 (READY RECKONER) –

**MANAGEMENT & ADMINISTRATION – 88 TO 122(CHAPTER VII)**

S NO.	TOPIC UNDER SYLLABUS	C A, '56	C A, '13
30	<b>R</b> ESOLUTIONS AND AGREEMENTS TO BE FILED	192	117
31	<b>M</b> INUTES OF PROCEEDINGS OF GM , BM AND OTHER MEETINGS AND RESOLUTIONS PASSED BY POSTAL BALLOT	193,194,195,197	118
32	<b>I</b> NSPECTION OF MINUTE BOOKS OF GENERAL MEETING	196	119
33	MAINTENANCE AND INSPECTION OF DOCUMENTS IN <b>E</b> LECTRONIC FORM	NIL	120
34	REPORT ON <b>A</b> NNUAL GENERAL MEETING	NIL	121
35	APPLICABILITY OF THIS CHAPTER TO <b>O</b> NE PERSON COMPANY	NIL	122

## TOPICS AT A GLANCE (sections 88 to 122)

1. The 35 topics of the Chapter VII can be recalled using the following:
  - a. REPEAT
  - b. BOARD MEETING
  - c. SHOW
  - d. MPC / ACP / QC / VP

# Details of forms under chapter VII

S NO	FORM NO	PARTICULARS
1	MGT - 1	REGISTER OF MEMBERS
2	MGT - 2	REGISTER OF DEBENTURE HOLDERS / OTHER SECURITY H'S
3	MGT – 3	NOTICE OF SITUATION OF OFFICE WHERE FOREIGN REGISTER SHALL BE KEPT
4	MGT – 4	DECL. BY REGD. OWNER WHO IS NOT B. OWNER OF SHARES
5	MGT – 5	DECL BY B. OWNER OF SHARES WHO IS NOT REGD OWNER
6	MGT – 6	RETURN IN RESPECT OF DECL. RECEIVED BY THE COMPANY
7	MGT – 7	ANNUAL RETURN FOR THE FINANCIAL YEAR ENDED....
8	MGT – 8	CERTIFICATE BY PCS RELATING TO ANNUAL RETURN
9	MGT – 9	EXTRACT OF ANNUAL RETURN
10	MGT - 10	CHANGE IN PROMOTERS AND TOP TEN SHARHOLDERS STAKE
11	MGT – 11	PROXY FORM
12	MGT – 12	POLLING /BALLOT PAPER
13	MGT - 13	REPORT OF SCRUTINIZERS
14	MGT - 14	FILING OF RESOLUTIONS AND AGREEMENTS TO THE ROC
15	MGT - 15	FORM FOR FILING REPORT ON AGM

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