

***Directorate of Distance and Continuing Education
Manonmaniam Sundaranar University***



MANONMANIAM SUNDARANAR UNIVERSITY

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DIRECTORATE OF DISTANCE AND CONTINUING EDUCATION



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Corporate and Economic Laws

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Corporate and Economic Laws

UNIT I

Introduction to Foreign Exchange Management Act, 1999

Foreign Exchange Management Act, 1999: Introduction – Definitions – Current Account transactions – Capital Account transactions – Realization, repatriation and surrender of foreign currency – Remittance of assets – Possession and retention of foreign currency or foreign coins – Authorized person – Adjudication and Appeal.

UNIT II

Competition Act, 2002 and Consumer Protection Act, 2019- Competition Act, 2002: Objective – Prohibition of Agreements, Prohibition of Abuse of Dominant Position - Regulation of combinations - Competition Commission of India: Duties, Powers and Functions of Commission - Appellate Tribunal.

The Consumer Protection Act, 2019: Objects; Rights of consumers – Consumer Dispute Redressal Commissions - Consumer protection councils – Procedure for admission to complaints – Appeal against orders.

UNIT III

Law relating to intellectual property rights -Law relating to intellectual property rights: Introduction - The Copyright Act, 1957: Works in which copyright subsist - Ownership of copyright and the rights of the owner -Assignment of copyright - Disputes with respect to assignment of copyright- Term of copyright - Registration of copyright - Infringement of copyright.

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UNIT IV

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UNIT V

Real Estate (Regulation and Development) Act, 2016 -Real Estate (Regulation and Development) Act, 2016: Introduction - Salient features of theAct - Registration of Real Estate Project – Registration of Real Estate agents – Functionsand duties of promoter – Rights and duties of Allottees – Offences, penalties andadjudication – Specimen agreement for sale to be executed between the promoter and theallottee

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UNIT I

Introduction to Foreign Exchange Management Act, 1999

Foreign Exchange Management Act, 1999: Introduction – Definitions – Current Account transactions – Capital Account transactions – Realization, repatriation and surrender of foreign currency – Remittance of assets – Possession and retention of foreign currency or foreign coins – Authorized person – Adjudication and Appeal.

Foreign Exchange Management Act (FEMA), 1999: Introduction & Definitions

Introduction

The **Foreign Exchange Management Act (FEMA), 1999**, was enacted by the **Parliament of India** to regulate foreign exchange transactions and ensure smooth economic development. It replaced the earlier **Foreign Exchange Regulation Act (FERA), 1973**, which was considered restrictive and incompatible with the liberalized economic policies adopted in **1991**. FEMA was brought into force on **June 1, 2000**, and is administered by the **Reserve Bank of India (RBI)** and the **Central Government**.

Need for FEMA

Before 1991, India's foreign exchange reserves were limited, and the government imposed strict controls on foreign exchange transactions under **FERA, 1973**. However, after the **economic liberalization in 1991**, there was a need for a more **progressive, transparent, and market-friendly regulation**. FEMA replaced FERA to provide **a more flexible approach** to foreign exchange management, focusing on **facilitation rather than control**.

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Objectives of FEMA

FEMA was enacted to achieve the following objectives:

1. **Facilitate External Trade and Payments** – Encourage smooth transactions in international trade.
2. **Promote the Development of the Foreign Exchange Market** – Create a stable forex system in India.
3. **Encourage Foreign Investment** – Attract **Foreign Direct Investment (FDI)** and **Foreign Institutional Investment (FII)** through simplified regulations.
4. **Liberalize Foreign Exchange Controls** – Shift from a strict regulatory framework to a **facilitative and business-friendly** environment.
5. **Prevent Malpractices and Money Laundering** – Ensure compliance with international financial laws to avoid illegal forex transactions.

Key Features of FEMA

- **Applies to the Whole of India** – It also applies to all Indian companies, offices, agencies, and individuals operating abroad.
- **Two Categories of Transactions:**
 - **Current Account Transactions** (such as trade, travel, education, and medical expenses).
 - **Capital Account Transactions** (such as investment, property purchase, and loans).
- **Liberalization of Foreign Exchange Transactions** – Unlike FERA, FEMA promotes **free flow of foreign exchange** with minimal restrictions.
- **Civil in Nature** – FEMA offenses are **civil offenses** (as opposed to FERA, which treated them as criminal offenses).
- **Power of Enforcement** – The RBI regulates FEMA, while **adjudicating authorities** under FEMA handle violations and disputes.

Definitions under FEMA, 1999

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FEMA, under **Section 2**, provides clear definitions of various terms related to foreign exchange and financial transactions. Some of the most important definitions are as follows:

1. Authorized Person [Section 2(c)]

An "Authorized Person" is **any individual or entity permitted by RBI to deal in foreign exchange transactions**. This includes:

- **Authorized Dealers (ADs)** – Banks and financial institutions permitted to deal in foreign exchange.
- **Money Changers** – Entities licensed to convert currency.
- **Offshore Banking Units** – Indian banks located outside India that handle forex transactions.
- **Other Persons Authorized by RBI** – Includes specific businesses or organizations permitted by RBI.

□ **Example:** Banks like **State Bank of India (SBI), HDFC, ICICI, and foreign banks** in India are Authorized Dealers.

2. Capital Account Transaction [Section 2(e)]

A **capital account transaction** is any transaction that alters the assets or liabilities of an Indian resident outside India, or a non-resident in India. These include:

- **Investment in foreign companies or acquiring foreign assets.**
- **Borrowing or lending in foreign currency.**
- **Transfer of immovable property outside India.**
- **Foreign currency accounts maintained by residents outside India.**

□ **Example:** If an Indian company invests in a startup in the USA, this is a **capital account transaction**.

3. Current Account Transaction [Section 2(j)]

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A **current account transaction** is any transaction that does not alter the financial assets or liabilities of a person. These include:

- **Payments related to imports and exports.**
- **Educational expenses and medical treatment abroad.**
- **Foreign travel and remittances for living expenses.**
- **Interest payments on loans and trade-related services.**

□ **Example:** A student paying tuition fees for studying in the UK is conducting a **current account transaction**.

4. Foreign Exchange [Section 2(n)]

"Foreign Exchange" refers to **all forms of currency transactions involving a foreign country**. It includes:

- **Foreign currency, deposits, credits, and balances outside India.**
- **Drafts, travellers' cheques, and letters of credit in foreign currency.**
- **Securities issued outside India.**

□ **Example:** If a person in India holds **US dollars in a foreign bank account**, it falls under **foreign exchange**.

5. Foreign Security [Section 2(o)]

A "Foreign Security" refers to any security (such as shares, bonds, or debentures) issued outside India **but denominated in Indian or foreign currency**.

□ **Example:** If an Indian investor purchases **shares of Apple Inc. listed on NASDAQ**, it is considered **foreign security**.

6. Person [Section 2(u)]

The term "Person" under FEMA includes:

- **Individuals** – Any natural person (Indian citizen or foreigner).

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- **Hindu Undivided Family (HUF)** – Recognized under Indian law.
- **Company** – Includes both **private and public limited companies**.
- **Firm** – Includes **partnership firms, LLPs (Limited Liability Partnerships), and sole proprietorships**.
- **Associations of Persons, Trusts, and Agencies** – Any legally recognized entity.

□ **Example:** A **foreign company operating in India** is considered a "person" under FEMA.

7. Person Resident in India [Section 2(v)]

A person is considered a **resident in India** if they satisfy any of the following conditions:

- **Has resided in India for more than 182 days in the preceding financial year.**
- **A company or entity registered in India.**
- **A person in India for employment, business, or indefinite stay.**

□ **Example:** An **Indian citizen working in India for a company** is a **resident in India** under FEMA.

8. Person Resident outside India [Section 2(w)]

A person is considered a **non-resident (NRI/foreign national)** if they do not satisfy the **residency conditions under Section 2(v)**. This includes:

- **NRIs working abroad.**
- **Foreign investors and entities outside India.**

□ **Example:** An **Indian software engineer working in the USA** is a **person resident outside India**.

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FEMA, 1999, plays a **crucial role in India's economic growth** by regulating foreign exchange transactions. It ensures **smooth international trade, foreign investment, and forex market stability** while preventing illegal financial activities. With its **clear definitions and well-structured provisions**, FEMA has transformed India's foreign exchange regime into a **liberal, transparent, and globally aligned system**.

This Act not only facilitates economic progress but also aligns India's financial policies with **global best practices**.

Current Account Transactions vs. Capital Account Transactions under FEMA, 1999 ()

The **Foreign Exchange Management Act (FEMA), 1999**, governs all foreign exchange transactions in India. It classifies transactions into two broad categories:

1. **Current Account Transactions**
2. **Capital Account Transactions**

This classification ensures proper **foreign exchange management**, maintains **economic stability**, and promotes **international trade and investment**.

1. Current Account Transactions

Definition

A **Current Account Transaction** is a transaction that does **not alter the assets or liabilities** of a resident in India or abroad. These transactions relate to the **exchange of goods, services, and income between residents and non-residents**.

Key Characteristics of Current Account Transactions

1. Deals with **short-term trade and business operations**.
 2. Involves **day-to-day expenses, remittances, and payments**.
 3. No significant impact on the **net assets or liabilities** of a person or entity.
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4. Generally, these transactions are **freely permitted**, but some require **RBI or government approval**.
5. Includes payments for **imports, exports, travel, education, medical treatment, and dividends**.

Examples of Current Account Transactions

1. **Trade Payments** – Payments related to the **import and export of goods and services**.
2. **Foreign Travel Expenses** – Expenses incurred on **business travel, tourism, or personal visits abroad**.
3. **Education-Related Remittances** – Sending **tuition fees, living expenses, and examination fees** for students studying abroad.
4. **Medical Treatment Abroad** – Payments for **hospitalization, doctor consultations, and medical insurance** outside India.
5. **Remittances for Family Maintenance** – Sending money to **relatives residing abroad** for their living expenses.
6. **Interest Payments on Loans** – Paying **interest on external loans, trade credit, and deposits**.
7. **Dividend, Royalty, and Technical Fees** – Payments made to **foreign investors, licensors, or patent holders**.
8. **Payment for Foreign Services** – Hiring **consultants, legal advisors, IT services, or management services** from foreign companies.

Regulation of Current Account Transactions under FEMA

The **Foreign Exchange Management (Current Account Transactions) Rules, 2000**, issued under FEMA, regulate certain transactions.

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(A) Current Account Transactions That Are Freely Permitted

Most **current account transactions** can be conducted freely **without prior RBI approval**. These include:

- Payments for **exports and imports of goods and services**.
- Foreign travel expenses, except for restricted categories.
- Remittances for education, medical treatment, and family maintenance (within limits).

(B) Current Account Transactions That Require Prior RBI Approval

Some transactions require **prior approval** to **control foreign exchange outflows**.

Category	Approval Required
Sending money for purchasing lottery tickets, betting, or gambling	Prohibited
Remittance of earnings from racing, betting, or sweepstakes	Prohibited
Remittance of dividend or interest beyond specified limits	RBI Approval
Remittance for foreign education or medical treatment beyond set limits	RBI Approval
Sending money as gifts or donations exceeding the prescribed limit	RBI Approval

2. Capital Account Transactions

Definition

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A **Capital Account Transaction** is a transaction that results in a **change in the assets or liabilities** of an individual, business, or government **in India or abroad**. These transactions deal with **investments, loans, and asset acquisitions**.

Key Characteristics of Capital Account Transactions

1. **Long-term financial transactions** involving capital investment.
2. Affects **the net worth of individuals or businesses**.
3. Direct impact on **India's foreign exchange reserves**.
4. More **strictly regulated** than current account transactions.
5. Includes **Foreign Direct Investment (FDI), Foreign Institutional Investment (FII), and External Commercial Borrowings (ECBs)**.

Examples of Capital Account Transactions

1. **Investment in Foreign Businesses** – Indian companies or individuals acquiring shares in foreign companies.
2. **Foreign Direct Investment (FDI) in India** – Foreign companies investing in Indian businesses, startups, or real estate.
3. **Acquisition of Immovable Property** – Buying or selling **land, buildings, and real estate abroad**.
4. **External Commercial Borrowings (ECBs)** – Companies borrowing **money** from foreign banks or institutions.
5. **Hedging and Derivative Transactions** – Currency trading, risk management, and **foreign exchange hedging**.
6. **Deposits in Foreign Currency** – Indian residents **maintaining bank accounts in foreign currencies**.
7. **Equity and Debt Investments** – Investing in **foreign mutual funds, bonds, or global stock markets**.

Regulation of Capital Account Transactions under FEMA

Capital Account Transactions are more **strictly regulated** under FEMA because they impact **India's foreign exchange reserves**.

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(A) Permissible Capital Account Transactions for Individuals

1. **Investment in foreign securities** – Indian residents can **invest in stocks and mutual funds abroad** under the **Liberalized Remittance Scheme (LRS)**.
2. **Buying Property Abroad** – Indian residents can **buy real estate abroad** under FEMA regulations.
3. **Opening Foreign Bank Accounts** – Allowed under **specific limits** set by RBI.

(B) Permissible Capital Account Transactions for Businesses

1. **Foreign Direct Investment (FDI) & Foreign Institutional Investment (FII)**.
2. **Issuing shares to foreign investors**.
3. **Borrowing from foreign banks or financial institutions**.
4. **Trade-related long-term loans and credits**.

(C) Restricted or Prohibited Capital Account Transactions

Transaction	Regulation
Investment in crypto currency and speculative assets	Prohibited
Real estate transactions in certain foreign countries	Restricted
Borrowing or lending abroad beyond RBI limits	RBI Approval Required

Key Differences between Current Account & Capital Account Transactions

Feature	Current Account Transaction	Capital Account Transaction
Definition	Transactions for trade, services, and remittances	Transactions involving investments, loans, and asset transfers

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Feature	Current Account Transaction	Capital Account Transaction
Examples	Imports, exports, travel, education, medical expenses	Investments, FDI, FII, real estate purchases, foreign loans
Effect on Economy	No direct impact on capital structure	Affects foreign exchange reserves and asset-liability balance
Nature	Short-term, recurring transactions	Long-term, one-time investments
Regulation Under FEMA	Generally freely permitted , some need RBI approval	Strictly regulated , most require RBI/Government approval
Borrowing/Lending	Short-term trade credits allowed	External Commercial Borrowings (ECBs) regulated
Property Transactions	Rent, lease, and minor property transactions	Purchase, sale, and transfer of real estate abroad
Foreign Exchange Impact	Minimal impact on forex reserves	Direct impact on forex reserves

Understanding **Current Account Transactions and Capital Account Transactions** is crucial for individuals and businesses involved in foreign exchange. FEMA has **liberalized current account transactions**, while **capital account transactions remain regulated** to maintain **economic stability and foreign exchange control**.

Key Takeaways

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✓ **Current Account Transactions** involve trade, services, and day-to-day foreign remittances.

✓ **Capital Account Transactions** involve investments, loans, and asset purchases abroad.

✓ **RBI approval is required** for certain high-value transactions in both accounts.

✓ **FEMA ensures that foreign exchange is used efficiently and for productive purposes.**

By regulating these transactions, FEMA helps in **maintaining India's forex reserves, preventing money laundering, and encouraging economic growth.** [2]

Realization, Repatriation, and Surrender of Foreign Exchange

Foreign exchange transactions play a crucial role in the global economy, particularly in a country's **balance of payments** and **foreign exchange reserves**. To regulate these transactions, many countries have laws and policies that require residents to **realize, repatriate, and surrender** foreign exchange earned through exports, investments, remittances, or other means.

In India, these processes are governed under the **Foreign Exchange Management Act (FEMA), 1999**, and the **Reserve Bank of India (RBI)** plays a regulatory role.

1. Realization of Foreign Exchange

Definition:

Realization of foreign exchange refers to the process of **receiving foreign currency payments** from international transactions such as **exports of goods and services, foreign investments, remittances, or external borrowings**. It is an obligation under FEMA that foreign exchange earnings must be received within a specific period.

Key Aspects:

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- **Sources of Foreign Exchange Realization:**
 - **Exports of goods and services** (e.g., an Indian company exporting textiles to the U.S.).
 - **Foreign investments** such as Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI).
 - **Remittances from abroad** (e.g., an NRI sending money to India).
 - **External commercial borrowings (ECBs)** by Indian companies.
 - **Professional services rendered to foreign clients** (e.g., IT services provided to a European company).
 - **Royalties, license fees, or franchise payments from foreign entities.**
- **Time Limit for Realization of Export Proceeds:**
 - **Physical exports:** Export proceeds must be **realized within 9 months** from the date of export.
 - **Software and IT services exports:** Must be realized within **12 months.**
 - **Deferred payments:** If export payments are received in installments, they must be in accordance with FEMA-approved timelines.
- **Consequences of Non-Realization:**
 - If a company fails to realize export proceeds within the specified time, it must obtain RBI approval for an extension.
 - The exporter may face penalties under FEMA, including fines or restrictions on future exports.
- **Exceptions:**
 - If a foreign buyer **becomes insolvent** or if there is a legal dispute, the RBI may allow an extension for realization.
 - Service exporters may have relaxed conditions compared to physical goods exporters.

2. Repatriation of Foreign Exchange

Definition:

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Repatriation of foreign exchange refers to **bringing the foreign exchange earnings into the home country** and converting them into local currency through **authorized banking channels**.

Key Aspects:

- **Obligation to Repatriate Foreign Exchange:**
 - Any foreign exchange earnings must be **repatriated to India within 180 days** from the date of receipt.
 - This includes export proceeds, foreign consultancy payments, royalties, commissions, and any other foreign income.
- **Modes of Repatriation:**
 - Foreign exchange should be credited to an **Exchange Earners' Foreign Currency (EEFC) Account** (if eligible).
 - If not retained in an EEFC account, the amount **must be converted into INR** through an **authorized dealer (AD) bank**.
- **Consequences of Non-Repatriation:**
 - Non-repatriation of foreign exchange earnings within the prescribed time limit can lead to FEMA violations.
 - The RBI may impose fines and penalties, and the concerned person/entity may face restrictions on future foreign exchange dealings.
- **Exceptions:**
 - Some companies with **overseas operations** may retain their foreign exchange earnings for legitimate business expenses abroad.
 - Non-Resident Indians (NRIs) **are not required to repatriate** their foreign income to India.

3. Surrender of Foreign Exchange

Definition:

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Surrender of foreign exchange refers to the **mandatory conversion of foreign currency into local currency (INR in India) through an authorized dealer (AD) bank** within a specified period.

Key Aspects:

- **Time Limit for Surrendering Foreign Exchange:**
 - If a resident individual or company receives foreign exchange and **does not retain it in an EEFC account**, it **must be surrendered within 180 days**.
 - **Foreign currency in physical form (cash, travellers ' cheques, demand drafts, etc.) must be surrendered within 90 days** of receipt.
- **Surrender Process:**
 - The foreign exchange must be **deposited in an authorized bank and converted into INR**.
 - Businesses must ensure compliance through proper accounting and reporting of foreign exchange transactions.
- **Penalties for Non-Surrender:**
 - Holding foreign exchange beyond the permissible period **violates FEMA**, leading to **fines and penalties**.
 - The **RBI can take action** against individuals or businesses for non-compliance.
- **Exemptions from Surrender:**
 - Indian residents can **retain foreign exchange up to USD 2,000** for personal use.
 - NRIs can hold foreign income in **NRE (Non-Resident External) and FCNR (Foreign Currency Non-Resident) accounts** without surrendering it to Indian banks.

4. Regulatory Framework (FEMA & RBI Guidelines)

- The **Foreign Exchange Management Act (FEMA), 1999**, governs the realization, repatriation, and surrender of foreign exchange in India.

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- The **Reserve Bank of India (RBI)** monitors compliance and issues guidelines through **Master Directions on Foreign Exchange Transactions**.

Key Provisions:

- **Export proceeds must be realized within 9 months.**
- **Repatriation must be done within 180 days.**
- **Surrender of foreign exchange must be done within 90 days.**
- Non-compliance can lead to penalties, as prescribed under **Section 13 of FEMA**.

5. Consequences of Non-Compliance

If an entity fails to **realize, repatriate, or surrender foreign exchange**, they may face **severe penalties** under FEMA:

1. Monetary Penalties:

- Up to **three times the amount involved** in the violation.

2. Legal Action:

- The RBI can impose **restrictions on future forex transactions** for the violator.

3. Seizure of Assets:

- In extreme cases, the **government may seize** assets related to the violation.

6. Practical Example for Better Understanding

Scenario 1: Export of Goods

- An Indian exporter sells textiles to a U.S. buyer for **\$100,000**.
- The amount must be **realized within 9 months** from the date of shipment.
- Once received, the amount must be **repatriated to India within 180 days**.
- If not retained in an EEFC account, it must be **surrendered to an AD bank and converted into INR** within the prescribed period.

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Scenario 2: IT Services Export

- An Indian IT company provides software services to a UK-based client worth **\$50,000**.
- The company must realize the amount within **12 months**.
- If the amount is received in a foreign account, it must be repatriated within **180 days** unless retained in an EEFC account.

The realization, repatriation, and surrender of foreign exchange are essential for maintaining a **stable forex market** and ensuring compliance with FEMA regulations. Businesses and individuals must **adhere to RBI guidelines** to avoid penalties and ensure smooth international transactions.

Specific FEMA provisions or RBI circulars

Under the Foreign Exchange Management Act (FEMA), 1999, the Reserve Bank of India (RBI) has established specific regulations concerning the realization, repatriation, and surrender of foreign exchange. The primary regulation governing these aspects is the **Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015**, notified as **Notification No. FEMA 9(R)/2015-RB** on December 29, 2015.

Key Provisions of the 2015 Regulations:

1. Duty to Realize Foreign Exchange:

- Residents of India to whom foreign exchange is due must take all reasonable steps to realize and repatriate it to India. They must avoid actions that delay or reduce the receivable amount.

2. Manner of Repatriation:

- Upon realizing foreign exchange, individuals must:
 - Sell it to an authorized person in exchange for Indian rupees.
 - Hold it in an account with an authorized dealer, as specified by the RBI.

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- Use it to discharge a foreign exchange-denominated debt, as permitted by the RBI.

3. Period for Surrendering Realized Foreign Exchange:

- Entities (excluding individuals) must sell realized foreign exchange to an authorized person within:
- **Seven days** for remuneration, services rendered, or income on assets held outside India.
- **Ninety days** for other cases.

4. Unutilized Foreign Exchange:

- Residents who acquired foreign exchange for specific purposes but couldn't use it must surrender it to an authorized person within **sixty days** from acquisition.

RBI Circulars and Master Directions:

- **A.P. (DIR Series) Circular No. 46/2015-16** (February 4, 2016): This circular highlights the duty to realize foreign exchange, the manner of repatriation, and the periods for surrendering realized or unspent foreign exchange.
- **Liberalised Remittance Scheme (LRS)**: Under LRS, resident individuals can remit up to USD 250,000 per financial year for permitted transactions. Unspent or unutilized foreign exchange must be repatriated and surrendered to an authorized person within **180 days** from the date of return to India.

Exemptions:

Section 9 of FEMA provides exemptions from realization and repatriation in certain cases, such as:

- Possession of foreign exchange within limits specified by the RBI.
- Holding foreign currency accounts as permitted by the RBI.

For comprehensive details, refer to the **Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015** and related RBI circulars

Remittance of Assets: A Comprehensive Overview

1. Introduction

The **remittance of assets** refers to the transfer of financial or non-financial assets from one country to another, either by individuals, corporations, or other legal entities. This process is typically undertaken by expatriates, investors, multinational corporations, or individuals who inherit assets in a foreign country and wish to repatriate them.

Asset remittances involve legal, tax, and financial considerations, making regulatory compliance crucial to avoid penalties and legal complications. Countries regulate these transactions under foreign exchange laws, anti-money laundering (AML) policies, and taxation rules.

2. Types of Asset Remittances

Asset remittances can be classified based on the nature of assets being transferred:

A. Monetary Assets (Cash Transfers)

1. **Salaries & Wages** – Salaries earned by expatriates transferred to their home country.
2. **Bank Deposits & Savings** – Funds held in bank accounts being transferred internationally.
3. **Dividends & Interest** – Earnings from shares, stocks, or bonds sent overseas.
4. **Rental Income** – Income earned from properties located in one country and sent to another.
5. **Proceeds from Business Sales** – When a company sells its business assets and transfers the proceeds to another jurisdiction.

B. Non-Monetary (Physical & Investment) Assets

1. **Real Estate Proceeds** – Money received from selling property in a foreign country.
2. **Securities & Investments** – Sale of stocks, bonds, mutual funds, or other investment instruments.
3. **Inheritance & Gifts** – Transfer of inherited wealth or gifted assets across borders.
4. **Pension & Retirement Funds** – Pension benefits remitted by retirees residing in foreign countries.
5. **Intellectual Property Rights (IPR)** – Royalties from patents, copyrights, or trademarks sent to another country.

3. Key Reasons for Asset Remittance

The reasons for transferring assets vary depending on individual or corporate needs. Some common motives include:

- **Expatriates sending earnings home** – Employees working abroad often remit part of their income to support families.
- **Repatriation of foreign investments** – Investors who liquidate stocks, real estate, or businesses want to transfer profits.
- **Inheritance transfers** – Individuals inheriting assets in foreign countries wish to move them to their home country.
- **Business operations** – Companies repatriating profits from subsidiaries to their parent company.
- **Tax Optimization** – Moving assets to countries with favorable tax regimes.
- **Relocation or Retirement Planning** – Individuals selling properties and investments before relocating to another country.

4. Process of Asset Remittance

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The process of remitting assets involves multiple steps, depending on the jurisdictional regulations of both the sending and receiving country. The general process includes:

Step 1: Documentation & Verification

Before remitting assets, individuals or companies must provide:

- **Proof of ownership** (e.g., title deeds, stock certificates, or bank statements).
- **Tax clearance** proving all applicable taxes are settled.
- **Legal approvals** from regulatory bodies, such as a central bank's approval for large transfers.

Step 2: Compliance with Foreign Exchange Regulations

Many countries regulate remittance under foreign exchange laws, such as:

- **India** – The Foreign Exchange Management Act (FEMA) governs outward remittances.
- **USA** – The Office of Foreign Assets Control (OFAC) regulates asset transfers to prevent illegal transactions.
- **European Union** – The EU's Anti-Money Laundering Directives apply to asset remittances.

Step 3: Tax Assessment & Clearance

- Many jurisdictions levy **capital gains tax** on asset sales before permitting remittance.
- Some countries impose **withholding tax** on dividends and royalties sent overseas.
- Tax authorities may require a **Tax Residency Certificate (TRC)** to apply lower tax rates under Double Taxation Avoidance Agreements (DTAA).

Step 4: Financial Institution Processing

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- Banks or financial institutions process the remittance using international networks such as **SWIFT (Society for Worldwide Interbank Financial Telecommunication)**.
- Transactions may be flagged for anti-money laundering (AML) checks, requiring additional documentation.
- High-value transactions may need **central bank approval**, especially for amounts exceeding regulatory limits.

Step 5: Receiving Country Regulations

- The receiving country may impose **income tax** on incoming remittances.
- Some nations restrict large capital inflows to prevent economic instability.
- If the remittance exceeds reporting limits, authorities may investigate the source of funds.

5. Regulatory Framework & Compliance Requirements

Every country has distinct regulations governing the remittance of assets. Some key legal frameworks include:

A. India: Foreign Exchange Management Act (FEMA)

- Governed by the **Reserve Bank of India (RBI)**.
- Limits personal remittances to **\$250,000 per financial year** under the **Liberalized Remittance Scheme (LRS)**.
- Large remittances need prior approval from RBI.
- Tax Deducted at Source (TDS) may apply on certain remitted amounts.

B. USA: Office of Foreign Assets Control (OFAC)

- Restricts remittances to certain sanctioned countries.
- Enforces **Anti-Money Laundering (AML)** and **Counter-Terrorism Financing (CTF)** laws.

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- Requires U.S. citizens to report all foreign assets exceeding **\$10,000** via **FBAR (Foreign Bank Account Report)**.

C. UK: HM Revenue & Customs (HMRC)

- Applies **Capital Gains Tax (CGT)** on foreign asset disposals.
- Tax on foreign dividends depends on whether the individual is **UK domiciled**.
- The UK applies strict AML checks for high-value remittances.

D. European Union (EU)

- The **Common Reporting Standard (CRS)** requires financial institutions to report cross-border transfers.
- EU's **Fifth Anti-Money Laundering Directive (5AMLD)** ensures asset remittances are transparent.

6. Challenges & Risks in Asset Remittance

While remitting assets, individuals and businesses may face various challenges:

A. Regulatory & Compliance Issues

- **Legal restrictions** in countries with strict foreign exchange controls.
- **Delayed processing** due to excessive documentation requirements.
- **Sanctions & embargoes** preventing remittance to specific regions.

B. Taxation & Double Taxation

- **Capital gains tax, inheritance tax, and withholding tax** may reduce the remitted amount.
- Some individuals may be taxed **twice** (in the source and destination country) if no DTAA exists.

C. Currency Exchange Risks

- Foreign exchange fluctuations may result in financial losses.

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- Some countries impose **currency repatriation limits**, preventing immediate fund transfers.

D. Banking & Transaction Fees

- High transfer fees for large remittances.
- Some banks impose hidden charges or unfavorable exchange rates.

7.

The **remittance of assets** plays a crucial role in global financial movements, allowing individuals, businesses, and investors to transfer wealth efficiently. However, strict regulatory frameworks, tax obligations, and compliance requirements govern these transactions to prevent financial fraud and money laundering.

For seamless asset remittance, individuals should:

- ✓ Ensure compliance with **local and international regulations**.
- ✓ Understand **tax implications** to optimize the remitted amount.
- ✓ Use **trusted financial institutions** to avoid fraud.
- ✓ Monitor **foreign exchange rates** to minimize conversion losses.

The remittance of assets from India is governed by specific provisions under the Foreign Exchange Management Act (FEMA), 1999, and detailed in various Reserve Bank of India (RBI) circulars and notifications. Below is an overview of the key regulations and guidelines:

1. Foreign Exchange Management (Remittance of Assets) Regulations, 2016

These regulations, notified as **FEMA 13(R)/2016-RB** on April 1, 2016, outline the rules for remitting assets outside India by residents and non-residents.

Key Provisions:

- **Remittance by Non-Residents:** Non-Resident Indians (NRIs) and Persons of Indian Origin (PIOs) can remit up to **USD 1 million per financial year** (April-

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March) from their Non-Resident Ordinary (NRO) accounts or from the sale proceeds of assets in India. This is subject to the production of documentary evidence supporting the acquisition, inheritance, or legacy of assets, along with an undertaking by the remitter and a certificate from a Chartered Accountant, as prescribed by the Central Board of Direct Taxes (CBDT).

- **Remittance by Foreign Nationals of Non-Indian Origin:** Foreign nationals who have retired from employment in India, inherited assets from a resident, or are widows of Indian citizens resident in India, may remit up to **USD 1 million per financial year**, subject to similar documentation requirements.
- **Tax Compliance:** All remittances are subject to applicable Indian tax laws. Authorized Dealer (AD) banks must ensure that taxes are duly paid or provided for before processing any remittance.

2. Master Direction on Remittance of Assets

The RBI has consolidated instructions related to the remittance of assets in its **Master Direction No. 13 on Remittance of Assets**. This document provides comprehensive guidelines and supersedes previous circulars on the subject.

Highlights:

- **Eligibility and Limits:** Clarifies the categories of individuals eligible for remittance and the applicable limits.
- **Procedural Guidelines:** Details the documentation and procedural requirements for remitting assets, ensuring compliance with FEMA regulations.
- **Restrictions:** Specifies any restrictions, such as the ineligibility of citizens from certain countries (e.g., Pakistan, Bangladesh) to avail of these remittance facilities.

3. Master Circular on Remittance Facilities for Non-Resident Indians (NRIs)/Persons of Indian Origin (PIOs)/Foreign Nationals

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Issued to consolidate existing instructions, this Master Circular provides guidelines on various remittance facilities available to NRIs, PIOs, and foreign nationals.

Key Points:

- **Current Income Remittance:** NRIs/PIOs can remit current income like rent, dividend, pension, interest, etc., after paying applicable taxes, even if they do not maintain an NRO account.
- **Assets Acquired in India:** NRIs/PIOs can remit sale proceeds of immovable property in India, subject to the USD 1 million per financial year limit, without any lock-in period, provided the property was held for at least ten years cumulatively.
- **Foreign Nationals:** Foreign nationals of non-Indian origin can remit assets as mentioned earlier, with the provision that citizens of certain countries (e.g., Pakistan, Bangladesh) have specific restrictions.

4. Liberalised Remittance Scheme (LRS)

While the LRS primarily pertains to resident individuals, it's noteworthy that under this scheme, residents can remit up to **USD 250,000 per financial year** for permissible current and capital account transactions, which may include remittance of assets.

Important Considerations:

- **Documentation:** Proper documentation, including proof of source of funds, proof of acquisition or inheritance of assets, and tax clearance certificates, is essential for processing remittances.
- **Authorized Dealers (AD) Banks:** All remittances must be routed through AD banks, which are responsible for ensuring compliance with FEMA regulations and RBI guidelines.

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- **Tax Compliance:** Ensuring that all tax liabilities are settled before remittance is crucial. AD banks may require a certificate from a Chartered Accountant confirming that taxes have been paid or provided for

The possession and retention of foreign currency and foreign coins in India are governed by the **Foreign Exchange Management Act (FEMA), 1999**, and the subsequent **Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015**. These regulations delineate the conditions under which individuals and entities can hold foreign exchange within India.

1. Possession of Foreign Coins:

- **Unlimited Holding:** Any individual in India is permitted to possess foreign coins without any restriction or limit.

2. Retention of Foreign Currency Notes, Bank Notes, and Travellers ' Cheques:

- **General Limit:** Residents are allowed to retain foreign currency notes, bank notes, and travellers ' cheques up to an aggregate amount of **USD 2,000** or its equivalent.
- **Sources of Acquisition:** The retained foreign exchange should have been acquired through:
 - **Foreign Travel:** Obtained during a visit abroad as payment for services not related to any business or activities in India.
 - **Visitors to India:** Received from a non-resident visiting India, as honorarium, gift, for services rendered, or in settlement of a lawful obligation.
 - **Gifts or Honorarium Abroad:** Acquired as a gift or honorarium while on a visit outside India.
 - **Unspent Travel Exchange:** Represents unspent foreign exchange obtained from an authorized person for travel purposes.

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3. Special Provisions for Non-Permanent Residents:

- **Unlimited Retention:** Individuals residing in India but not permanently (e.g., foreign nationals on specific assignments) may retain foreign currency without any limit, provided:
 - The foreign exchange was acquired, held, or owned while they were residents outside India.
 - Such currency was brought into India following the applicable regulations.

4. Authorized Persons:

- **Scope of Authority:** Entities authorized by the Reserve Bank of India (RBI), such as banks and money changers, can possess foreign currency and coins without any limit, strictly within their authorized operational scope.

5. Surrender Requirements:

- **Mandatory Surrender:** Residents who acquire foreign exchange beyond the permitted retention limit are required to surrender the excess to an authorized person within a specified period, typically:
 - **180 days:** For unspent foreign exchange acquired for travel purposes.

6. Penalties for Non-Compliance:

- **Legal Consequences:** Holding foreign exchange in contravention of FEMA provisions can lead to penalties, including the confiscation of equivalent assets within India.

7. Practical Considerations for Travellers:

- **Foreign Exchange for Travel:** Travellers are permitted to purchase foreign currency notes/coins up to **USD 3,000** per visit. Amounts exceeding this should be carried in other forms such as prepaid forex cards or travellers' cheques.

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- **Exceptions:** Higher limits are applicable for specific countries; for instance, travellers to Iraq and Libya can carry foreign currency notes up to **USD 5,000** per visit.

Understanding and adhering to these regulations ensures compliance with Indian law and facilitates smooth financial transactions involving foreign exchange.

Authorized person

An **Authorized Person** under the **Foreign Exchange Management Act (FEMA), 1999**, is an individual or entity that the **Reserve Bank of India (RBI)** has authorized to deal in foreign exchange or foreign securities. This authorization is granted under **Section 10(1) of FEMA** and encompasses various roles such as authorized dealers, money changers, offshore banking units, or others permitted by the RBI.

Categories of Authorized Persons:

FEMA classifies Authorized Persons into four distinct categories, each with specific functions and permissions:

1. Category I – Authorized Dealers (AD-I):

- **Entities Included:** Commercial banks, state banks, urban cooperative banks.
- **Functions:** Permitted to undertake all current and capital account transactions as directed by the RBI.

2. Category II – Authorized Dealers (AD-II):

- **Entities Included:** Upgraded Full-Fledged Money Changers (FFMCs), select regional rural banks, cooperative banks.
- **Functions:** Authorized to handle specific non-trade-related current account transactions, including:
 - Remittances for private visits abroad.
 - Payment of international examination fees.
 - Remittances for medical treatment and studies abroad.
 - Emigration fees and employment processing charges.

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3. Category III – Select Financial Institutions:

- **Entities Included:** Certain financial institutions authorized by the RBI.
- **Functions:** Permitted to carry out specific foreign exchange transactions incidental to their business operations.

4. Full-Fledged Money Changers (FFMCs):

- **Entities Included:** Entities like the Department of Posts, urban cooperative banks.
- **Functions:** Authorized to purchase foreign exchange from residents and non-residents and to sell foreign exchange for specific approved purposes, such as business and private travel.

Application Process to Become an Authorized Person:

To be designated as an Authorized Person, an entity must:

1. **Submit an Application:** Provide a formal application to the RBI, accompanied by the necessary documentation.
2. **Meet RBI Criteria:** Demonstrate compliance with the RBI's eligibility criteria, which may include financial soundness, infrastructure adequacy, and adherence to regulatory guidelines.
3. **Obtain Authorization:** Receive written authorization from the RBI, detailing the scope and conditions of permitted activities.

Responsibilities and Compliance:

Authorized Persons must adhere to several obligations:

- **Regulatory Adherence:** Conduct foreign exchange transactions strictly within the confines of FEMA regulations and RBI directives.
- **Record Maintenance:** Keep detailed records of all foreign exchange dealings and furnish information to the RBI as required.
- **Reporting Obligations:** Regularly report transactions and other relevant data to the RBI to ensure transparency and compliance.

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- **Compliance with Limits:** Ensure that all transactions adhere to the limits and conditions set by the RBI for various types of remittances and exchanges.

Significance of Authorized Persons:

Authorized Persons play a crucial role in India's foreign exchange ecosystem by:

- **Facilitating Forex Transactions:** Providing residents and non-residents with access to foreign exchange services for permissible transactions.
- **Ensuring Regulatory Compliance:** Acting as intermediaries to ensure that all foreign exchange dealings comply with national laws and regulations.
- **Contributing to Economic Stability:** Aiding in the effective management of foreign exchange resources, thereby supporting the country's economic stability and growth.

By meticulously regulating and monitoring the activities of Authorized Persons, the RBI ensures a secure and efficient foreign exchange market in India.

Adjudication and Appeal under FEMA, 1999

The **Foreign Exchange Management Act (FEMA), 1999**, provides a structured **adjudication and appeal mechanism** to ensure compliance with foreign exchange laws in India. It defines how violations are investigated, penalties are imposed, and appeals are processed. The **Reserve Bank of India (RBI)** and the **Directorate of Enforcement (ED)** play crucial roles in enforcing FEMA.

1. Adjudication Process Under FEMA

1.1 Initiation of Adjudication Proceedings

- If any individual or entity violates FEMA provisions, an **investigation is initiated** by the **Directorate of Enforcement (ED)**.
- The investigation is typically based on:
 - **Complaints from regulatory authorities** (RBI, SEBI, etc.)
 - **Surveillance by ED or RBI**

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- **Reports from financial institutions**
- If the investigating officer finds evidence of a violation, they issue a **Show Cause Notice (SCN)** to the concerned party.

1.2 Issuance of Show Cause Notice (SCN)

- The **SCN** outlines the alleged violation(s) and requests the concerned party to explain why penalties should not be imposed.
- The notice specifies:
 - **Nature of the offense** (e.g., unauthorized foreign exchange transactions, non-repatriation of export earnings, etc.)
 - **FEMA sections violated**
 - **Timeframe for response** (usually 30 days)
- If no response is received within the deadline, the adjudication authority can proceed **ex parte** (i.e., without hearing the accused party).

1.3 Appointment of Adjudicating Authority

- **Section 16 of FEMA, 1999**, authorizes the Central Government to appoint Adjudicating Authorities to handle FEMA violations.
- The level of Adjudicating Authority is determined by the amount involved in the violation:

Amount Involved	Adjudicating Authority
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Up to ₹2 crore	Assistant Director
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₹2 crore - ₹5 crore	Deputy Director
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₹5 crore - ₹10 crore	Joint Director
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₹10 crore - ₹25 crore	Additional Director
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More than ₹25 crore	Special Director
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- The Adjudicating Authority conducts a **hearing**, where the accused can present their case through written statements, documents, and legal representation.

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1.4 Adjudication Proceedings

- The Adjudicating Authority examines:
 - Evidence presented by both parties
 - Witnesses and supporting documents
 - Expert opinions (if required)
- If required, additional hearings may be scheduled.
- The proceedings adhere to the **Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000**.

1.5 Penalties and Orders

- If the Adjudicating Authority finds a violation, penalties are imposed as per **Section 13 of FEMA**:
 - **Penalty Amount:** Up to **three times** the sum involved in the contravention or ₹2 lakh (whichever is higher).
 - **Ongoing Contraventions:** An additional penalty of **₹5,000 per day** may be imposed for continued violations.
- The order includes:
 - Findings and reasoning
 - Amount of penalty
 - Deadline for compliance (usually 30 days)
- If the accused is found **not guilty**, the case is dismissed.

2. Appeal Mechanism Under FEMA

If a party disagrees with the Adjudicating Authority's order, they can appeal to higher authorities.

2.1 Appeal to Special Director (Appeals)

- If the **Adjudicating Authority is an Assistant Director or Deputy Director**, appeals can be filed with the **Special Director (Appeals)**.
- The appeal must be filed **within 45 days** from the date of the order.

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- The Special Director (Appeals) reviews the case and may:
 - Uphold, modify, or set aside the penalty
 - Refer the matter for further inquiry

2.2 Appeal to the Appellate Tribunal for Foreign Exchange (ATFE)

- If an order is passed by a **higher-level Adjudicating Authority** (Joint Director, Additional Director, Special Director), appeals lie with the **Appellate Tribunal for Foreign Exchange (ATFE)**.
- The appeal should be filed **within 45 days** of receiving the Special Director's order.
- ATFE is an independent tribunal that reviews the case based on:
 - Merits of the original decision
 - Procedural compliance
 - Legal interpretations

2.3 Appeal to the High Court

- If the party is not satisfied with the **Appellate Tribunal's decision**, they can file an appeal in the **respective High Court** within **60 days**.
- The High Court may allow an extension if sufficient reasons are provided.
- The High Court examines:
 - Legal validity of the order
 - Procedural fairness
 - Constitutional aspects (if applicable)

2.4 Appeal to the Supreme Court

- If the High Court's decision is unfavorable, the last remedy is an appeal to the **Supreme Court of India**.
- The Supreme Court accepts appeals in cases involving:
 - **Substantial questions of law**
 - **Constitutional matters**
 - **Conflicting decisions from different High Courts**

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3. Enforcement of Penalties and Recovery of Dues

- **Section 14 of FEMA** allows the government to recover penalties if the defaulter does not comply.
- If the penalty is not paid:
 - The Enforcement Directorate can attach **movable and immovable property** of the defaulter.
 - If the defaulter continues non-compliance, further legal action may be taken.
- Authorities may also **restrict foreign exchange transactions** of the violator until compliance is ensured.

4. Role of the Reserve Bank of India (RBI)

- The **RBI monitors foreign exchange transactions** and reports suspected violations to enforcement agencies.
- It issues **guidelines and circulars** from time to time to prevent FEMA violations.
- It provides **regulatory clarity** for businesses, banks, and individuals dealing with foreign exchange.

5. Key Takeaways

- **FEMA adjudication is a structured legal process** that ensures compliance with India's foreign exchange laws.
- **Multiple appeal levels** exist, ensuring fair treatment and judicial review.
- **Strict penalties are imposed** for violations, but legal remedies are available through appeals.
- **The RBI and ED actively regulate and monitor** foreign exchange transactions.

This system ensures **transparency, accountability, and compliance** with India's foreign exchange management framework.

UNIT II

Competition Act, 2002 and Consumer Protection Act, 2019- Competition Act, 2002: Objective – Prohibition of Agreements, Prohibition of Abuse of Dominant Position - Regulation of combinations - Competition Commission of India: Duties, Powers and Functions of Commission - Appellate Tribunal.

The Consumer Protection Act, 2019: Objects; Rights of consumers – Consumer Dispute Redressal Commissions - Consumer protection councils – Procedure for admission to complaints – Appeal against orders.

Competition Act, 2002 and the Consumer Protection Act, 2019

The **Competition Act, 2002** and the **Consumer Protection Act, 2019** are two important laws in India aimed at ensuring fair market practices and safeguarding consumer interests. While the **Competition Act, 2002** focuses on promoting fair competition by preventing monopolistic behavior, the **Consumer Protection Act, 2019** is centered around protecting consumer rights against unfair trade practices and defective goods or services.

I. Competition Act, 2002

1. Introduction

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The **Competition Act, 2002** was enacted to promote healthy competition in the Indian economy by prohibiting anti-competitive practices, controlling abuse of market dominance, and regulating mergers and acquisitions.

1.1 Objectives

- **Prevent anti-competitive agreements** such as cartels and bid-rigging.
 - **Prohibit abuse of dominant position** to ensure fair market practices.
 - **Regulate mergers and acquisitions** that can harm competition.
 - **Encourage fair competition** to benefit consumers with better choices and prices.
 - **Ensure economic efficiency** and protect smaller businesses from unfair market practices.
-

2. Key Provisions

The **Competition Act, 2002** is primarily concerned with three major areas:

2.1 Anti-Competitive Agreements (Section 3)

The Act prohibits any agreement that leads to an **appreciable adverse effect on competition (AAEC)**. These include:

1. **Horizontal Agreements** (agreements between competitors):
 - **Cartels**: Agreements among competitors to fix prices, limit production, or allocate markets.
 - **Bid-Rigging**: Collusion between bidders to manipulate tenders.
 - **Market Allocation**: Dividing markets among competitors to avoid competition.
 2. **Vertical Agreements** (agreements between suppliers and buyers):
 - **Exclusive Supply Agreements**: Restricting the buyer from purchasing from other sellers.
-

- **Resale Price Maintenance:** A supplier dictating the price at which a product must be resold.

2.2 Abuse of Dominant Position (Section 4)

A company is in a **dominant position** if it can operate independently without being affected by competitors or consumers. The Act prohibits:

- **Unfair or discriminatory pricing** (including predatory pricing).
- **Refusal to deal**, denying market access to competitors.
- **Tying arrangements**, forcing buyers to purchase additional products.

2.3 Regulation of Combinations (Mergers & Acquisitions) (Sections 5 & 6)

- Any merger or acquisition that **significantly reduces competition** requires approval from the **Competition Commission of India (CCI)**.
- If CCI finds that a combination would create a monopoly, it can **block, modify, or allow** the transaction under certain conditions.

3. Competition Commission of India (CCI)

The **Competition Commission of India (CCI)** is the primary regulatory body enforcing the Act.

3.1 Functions of CCI

- Investigating anti-competitive agreements.
- Regulating abuse of dominance by market players.
- Monitoring mergers and acquisitions.
- Imposing penalties on violators.
- Conducting market research to promote competition.

3.2 Powers of CCI

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- **Fine companies** involved in anti-competitive practices (e.g., cartelization can result in a fine of **10% of the company's turnover**).
- **Order cease-and-desist actions** against dominant firms.
- **Modify or reject mergers** that harm market competition.

4. Penalties and Enforcement

- **Cartelization**: Fine of up to **three times the profits** or **10% of turnover**, whichever is higher.
- **Abuse of dominance**: Heavy penalties and restrictions on market conduct.
- **Non-compliance** with CCI orders: Penalties and possible imprisonment.

II. Consumer Protection Act, 2019

1. Introduction

The **Consumer Protection Act, 2019** replaced the **Consumer Protection Act, 1986** to enhance consumer rights and introduce stricter penalties for unfair trade practices.

1.1 Objectives

- **Protect consumer rights** by providing a robust grievance redressal mechanism.
- **Regulate e-commerce platforms** to ensure consumer-friendly policies.
- **Prevent unfair trade practices** such as misleading advertisements.
- **Introduce product liability** provisions holding manufacturers accountable.
- **Provide for alternative dispute resolution** through mediation.

2. Key Provisions

2.1 Six Consumer Rights

1. **Right to Safety**: Protection from hazardous goods and services.
 2. **Right to Information**: Access to accurate product details.
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3. **Right to Choose:** Freedom to select from various products and services.
4. **Right to be Heard:** Right to have grievances addressed.
5. **Right to Seek Redressal:** Compensation for unfair practices.
6. **Right to Consumer Education:** Awareness about rights and responsibilities.

2.2 Consumer Dispute Redressal Commissions

The Act establishes a **three-tier dispute resolution system**:

Forum	Jurisdiction
District Commission	Cases up to ₹50 lakh
State Commission	₹50 lakh to ₹2 crore
National Commission	Above ₹2 crore

- **Consumers can file complaints online**, making the process more accessible.
- **Appeals process:**
 - District Commission → State Commission → National Commission → Supreme Court.

2.3 Product Liability and Misleading Advertisements

- **Product Liability (Chapter VI):**
 - **Manufacturers, sellers, and service providers** can be sued for defective products.
- **Misleading Advertisements:**
 - **Celebrities** endorsing false claims can be held liable.
 - **Penalties:** Fines, bans, and imprisonment.

2.4 E-Commerce Regulation

- E-commerce platforms (like Amazon, Flipkart) must:

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- Display **full product information**.
- Allow **easy return and refund policies**.
- **Prevent price manipulation** and unfair trade practices.

3. Penalties and Enforcement

- **Unfair trade practices:** Fine up to ₹10 lakh or imprisonment for 2 years.
- **False/misleading advertisements:** Fine up to ₹50 lakh.
- **Failure to comply with Consumer Commission orders:** Penalty or jail time.

III. Comparison between the Competition Act, 2002 & Consumer Protection Act, 2019

Feature	Competition Act, 2002	Consumer Protection Act, 2019
Objective	Ensures fair market competition	Protects consumer rights
Focus	Regulates businesses and markets	Protects consumers from unfair trade
Regulatory Authority	Competition Commission of India (CCI)	Consumer Commissions (District, State, and National)
Key Provisions	Anti-competitive agreements, abuse of dominance, merger control	Product liability, misleading ads, e-commerce regulation
Penalty	Fines, cancellation of mergers, restrictions on dominant firms	Compensation to consumers, fines on manufacturers
Who Can File a Complaint?	Companies, businesses, government bodies	Consumers (individuals or groups)

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The **Competition Act, 2002** ensures **fair competition** and prevents market monopolies, thereby benefiting both businesses and consumers. Meanwhile, the **Consumer Protection Act, 2019** protects **individual consumers** from unfair trade practices, defective products, and misleading advertisements.

Objective of the Competition Act, 2002

Introduction

The **Competition Act, 2002**, was enacted by the Government of India to **promote competition, prevent anti-competitive practices, and protect consumer interests**. It replaced the **Monopolies and Restrictive Trade Practices Act (MRTP Act), 1969**, which was ineffective in dealing with modern-day market structures and globalization challenges.

This law aims to ensure **free and fair competition in markets**, prevent monopolistic behavior, and encourage economic efficiency. It is administered by the **Competition Commission of India (CCI)**, the regulatory body responsible for enforcement.

Key Objectives of the Competition Act, 2002

The primary objectives of the Act can be categorized into **seven key areas**:

1. Promote and Sustain Competition in Markets

- The Act seeks to **create a competitive market environment** where multiple players can operate freely without unfair restrictions.
- It **prohibits anti-competitive agreements** that could harm market competition.
- Businesses are encouraged to compete on the basis of **price, quality, and innovation**, leading to better products and services for consumers.

Examples:

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- ✓ **Encouraging multiple telecom operators** in India to compete on price and service quality instead of a single dominant company controlling the market.
- ✓ **Preventing monopolies in e-commerce**, ensuring smaller players can compete fairly with dominant platforms.

2. Prevent Anti-Competitive Agreements

The Act prohibits agreements between companies that result in **unfair trade practices**, including:

A. Horizontal Agreements (Between Competitors) – Section 3(3)

- **Cartels**: Competitors collude to **fix prices, limit production, or allocate markets** to eliminate competition.
- **Bid-Rigging**: Companies secretly agree on bid prices, leading to unfair competition.
- **Market Allocation**: Firms divide territories or customers among themselves, preventing competition.

B. Vertical Agreements (Between Different Levels of Supply Chain) – Section 3(4)

- **Resale Price Maintenance**: A manufacturer forces retailers to sell at a fixed price, restricting pricing freedom.
- **Exclusive Supply Agreements**: A supplier restricts a buyer from purchasing from other suppliers.

Example:

□ In 2018, the **CCI fined automobile companies** for restricting the supply of spare parts to independent repair shops, violating competition laws.

3. Prohibit Abuse of Dominant Position (Section 4)

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A company is considered **dominant** if it can operate independently without competition affecting its pricing or market behavior. The Act **prohibits the abuse of such dominance**, including:

- **Unfair pricing:** Charging excessive prices or **predatory pricing** (selling below cost to eliminate competitors).
- **Restricting supply** to create artificial shortages.
- **Exclusive dealing agreements** that block competition.
- **Refusal to deal:** Preventing competitors from accessing essential infrastructure or technology.
- **Tying arrangements:** Forcing customers to buy additional products/services unnecessarily.

Example:

☐ **Google was fined ₹1,337 crore by CCI in 2022** for abusing its dominant position in the Android mobile operating system market by forcing manufacturers to pre-install its apps.

4. Regulate Mergers, Acquisitions, and Combinations (Sections 5 & 6)

- The Act regulates **mergers, acquisitions, and joint ventures** that could **reduce competition** in a market.
- If a proposed merger results in **market dominance**, the **CCI has the power to approve, modify, or block** the transaction.
- The aim is to ensure that combinations do not create **monopolies** or **restrict competition**.

Thresholds for Regulation:

- If the **combined assets of merging companies exceed ₹1,000 crore** or **turnover exceeds ₹3,000 crore**, CCI approval is required.

Example:

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□ In 2018, the CCI blocked the **Sun Pharma-Ranbaxy merger** in certain segments to prevent a monopoly in the pharmaceutical sector.

5. Protect Consumer Interests

- The Act ensures that **consumers are not exploited** by monopolistic companies.
- It prevents **price-fixing, misleading claims, and unfair business practices**.
- By ensuring competition, consumers get access to **better products at lower prices**.

Example:

✓ The **entry of Jio into the telecom market** disrupted the monopoly of older telecom players, resulting in **cheaper data plans and better services** for consumers.

6. Encourage Economic Growth, Innovation, and Market Efficiency

- **Fair competition** leads to increased **innovation and better business practices**.
- Businesses must focus on **improving product quality, efficiency, and technology** rather than relying on unfair practices.
- The Act promotes **foreign investment** by ensuring that India has **transparent and predictable competition laws**.

Example:

✓ The **rise of e-commerce startups in India**, like Flipkart, Zomato, and Paytm, has been supported by competition policies that encourage fair play.

7. Compliance with International Best Practices

- The Act aligns India's competition laws with **global standards**, making Indian businesses more competitive internationally.

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- It follows principles similar to those in **the USA's Sherman Act and EU's Competition Law**.
- Ensuring fair competition in India helps **Indian companies compete in global markets**.

Example:

✓ The **CCI investigates global tech giants** like Google and Facebook for anti-competitive practices, ensuring India follows international norms.

Role of the Competition Commission of India (CCI)

The **CCI is the primary regulatory body** responsible for enforcing the Competition Act.

Functions of CCI:

- ✓ Investigates **anti-competitive practices**.
- ✓ Regulates **mergers and acquisitions**.
- ✓ Penalizes **companies for unfair trade practices**.
- ✓ Promotes **competition advocacy and awareness**.

Powers of CCI:

- **Impose penalties** of up to **10% of turnover** or **three times the profits** for violations.
- **Order businesses to stop anti-competitive practices**.
- **Modify or block mergers** if they harm competition.

Example of CCI's Actions:

□ In 2017, **CCI fined cement companies ₹6,700 crore** for cartelization and price-fixing, ensuring fair pricing for consumers.

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The **Competition Act, 2002**, plays a crucial role in ensuring free and fair competition in the Indian economy. It protects consumer interests, prevents anti-competitive practices, and regulates mergers and acquisitions. By fostering healthy competition, it contributes to economic growth, innovation, and efficiency while keeping markets open, fair, and transparent.

This law is essential for ensuring that India remains a competitive, consumer-friendly, and globally integrated economy. □

Prohibition of Agreements – A Comprehensive Analysis

1. Introduction

In a free market economy, fair competition is the cornerstone of economic growth, innovation, and consumer welfare. However, certain business practices, especially agreements between enterprises, can restrict competition and distort the market structure. Recognizing this, most legal systems, including India's, have laid down stringent provisions to prohibit anti-competitive agreements. In India, this is primarily governed by the **Competition Act, 2002**.

2. Legal Framework in India: The Competition Act, 2002

The **Competition Act, 2002**, aims to prevent practices having adverse effects on competition, promote and sustain competition in markets, protect consumer interests, and ensure freedom of trade. **Section 3** of the Act deals with anti-competitive agreements.

Section 3 – Anti-Competitive Agreements

- **Section 3(1):** No enterprise or association of enterprises shall enter into any agreement in respect of production, supply, distribution, storage, acquisition, or control of goods or provision of services, which causes or is likely to cause an **Appreciable Adverse Effect on Competition (AAEC)** within India.

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- **Section 3(2):** Such agreements shall be void.

3. Types of Prohibited Agreements

The Act categorizes agreements into two types:

A. Horizontal Agreements

(Agreements between enterprises operating at the same level in the market, i.e., competitors)

These are considered **per se anti-competitive**, meaning that their existence is enough to presume that they have an appreciable adverse effect on competition.

Key Types:

- Price** **Fixing**
Agreements to fix the sale or purchase price of goods or services.
 - *Example:* Two cement companies agreeing to sell cement at a fixed price.
- Limiting** **Production** **or** **Supply**
Agreements to control output or restrict supply in the market.
 - *Example:* Pharmaceutical companies agreeing to restrict the production of a life-saving drug to drive up prices.
- Market** **Allocation**
Dividing markets based on geographical areas, customer groups, or types of products.
 - *Example:* Cable TV operators dividing the city into zones and agreeing not to compete in each other's territories.
- Bid** **Rigging** **or** **Collusive** **Bidding**
Pre-determined bidding processes that eliminate competition.
 - *Example:* Construction companies pre-arranging tender bids in government contracts.

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Legal Presumption: All these practices are **presumed to have AAEC** and are **automatically void** under law.

B. Vertical Agreements

(Agreements between enterprises at different stages or levels of production or distribution)

These are not presumed to be anti-competitive per se but are evaluated on the “**rule of reason**”—i.e., whether the agreement **actually** causes AAEC in the market.

Key Types:

1. **Tie-in** **Arrangement**
Purchase of one product is conditioned upon the purchase of another.
 - *Example:* A printer manufacturer forcing buyers to also purchase ink cartridges from them.
2. **Exclusive** **Supply** **Agreement**
Supplier is restricted from selling goods to other buyers.
 - *Example:* A wholesaler is allowed to supply only to one retail chain.
3. **Exclusive** **Distribution** **Agreement**
Distributor is restricted from dealing with competing brands.
 - *Example:* A beverage company giving exclusive rights to a distributor in a region.
4. **Refusal** **to** **Deal**
Restricting or refusing to deal with certain customers or groups.
 - *Example:* A software company refusing to supply products to a particular reseller.
5. **Resale** **Price** **Maintenance**
Imposing fixed or minimum resale prices on resellers.
 - *Example:* A smartphone company mandating that retailers cannot sell below a certain price.

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These agreements are **examined for their impact on competition**, and only those that cause significant harm are prohibited.

4. Exceptions under the Act

Certain agreements are excluded from the purview of prohibition:

- **Joint Ventures:** If a joint venture promotes efficiency, innovation, or market development, it may not be considered anti-competitive.
- **Statutory Exemptions:** Activities mandated by law or government policy may not be penalized.
- **Reasonable Restrictions:** Agreements having legitimate business justifications and that do not harm competition may be permitted.

5. Role of the Competition Commission of India (CCI)

The **CCI** is the key regulatory body to investigate and take action against anti-competitive agreements. Its powers include:

- Conducting inquiries and investigations.
- Imposing penalties up to 10% of average turnover or 3 times the profit.
- Issuing cease and desist orders.
- Granting interim relief.
- Approving settlements or modifications.

6. Landmark Cases

A. Builders Association of India v. Cement Manufacturers

- Allegation: Price fixing by cement manufacturers.
- Outcome: CCI found cartel behavior and imposed heavy penalties.

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B. Auto Parts Case

- Allegation: 14 car manufacturers were accused of restricting access to spare parts in the open market.
- Outcome: CCI penalized manufacturers for engaging in anti-competitive practices.

7. International Perspective (Brief Overview)

Jurisdiction	Law	Regulator	Approach
United States	Sherman Antitrust Act, 1890	FTC / DOJ	Horizontal agreements: <i>per se illegal</i>
European Union	Article 101 of TFEU	European Commission	Focus on “object or effect” on competition
India	Competition Act, 2002	CCI	Mixture of <i>per se</i> and <i>rule of reason</i>

8.

The prohibition of anti-competitive agreements is vital for a healthy, competitive market structure. India’s Competition Act, 2002, strikes a balance between **restricting unfair practices** and **allowing legitimate collaboration**. While **horizontal agreements** are treated more severely due to their inherently harmful nature, **vertical agreements** are evaluated carefully to ensure they don’t stifle market freedom. As markets evolve with digital commerce and global trade, competition law continues to be a dynamic and essential part of corporate and economic governance.

Prohibition of Abuse of Dominant Position

(Under Corporate & Economic Law – As per the Indian Competition Act, 2002)

□ **1. Introduction**

In any competitive economy, it is normal for businesses to grow and gain dominance in the market due to superior products, efficient services, or innovative practices. However, when such dominance is **misused to eliminate competition or exploit consumers**, it becomes a matter of legal concern. This is referred to as the “**Abuse of Dominant Position**”, which is **prohibited under Section 4 of the Competition Act, 2002** in India.

The rationale is not to prevent firms from becoming dominant, but to ensure they **do not use their position of strength to stifle competition or engage in unfair trade practices**.

□ **2. Legal Provision – Section 4 of the Competition Act, 2002**

□ **Section 4(1):**

“No enterprise or group shall abuse its dominant position.”

□ **Section 4(2):**

Enumerates the specific acts that are considered abuse of dominance, including:

- Imposing unfair/discriminatory conditions or prices.
- Limiting production or technical development.
- Denying market access.
- Using dominance in one market to protect another.
- Making contracts conditional on supplementary obligations.

□ **3. What is a Dominant Position?**

□ **Definition [Explanation (a) to Section 4]:**

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Dominant position refers to a **position of strength** enjoyed by an enterprise in the relevant market in India, which enables it to:

- Operate independently of competitive forces, OR
- Affect its competitors or consumers in its favor.

✓ **Key Points:**

- Dominance is **not illegal**.
- **Abuse** of that dominance is what the law prohibits.
- Not all large firms are dominant — dominance must be **assessed case by case**.

□ **4. Determination of “Relevant Market”**

Before identifying dominance, the **relevant market** must be defined.

□ **Relevant Product Market:**

Includes products/services that are regarded as **interchangeable or substitutable** by the consumer due to characteristics, price, and intended use.

□ **Relevant Geographic Market:**

The area in which conditions of competition are **distinctly homogeneous**, and can be distinguished from other areas.

CCI considers factors like regulatory barriers, consumer preferences, and availability of substitutes to determine this.

□ **5. Factors for Assessing Dominance (Section 19(4))**

The CCI evaluates the following:

- Market share of the enterprise
- Size and resources (financial, technical)

- Economic power
- Vertical integration
- Dependence of consumers
- Access to important inputs or technology
- Entry barriers
- Countervailing buyer power
- Market structure and size

☐ **6. Forms of Abuse (Section 4(2))**

☐ **A. Exploitative Abuses**

i. Imposing Unfair Conditions or Prices

- Charging unfair prices (too high or predatory low pricing)
- Discriminatory treatment among buyers

Example: Charging different rates to different customers without justification.

ii. Predatory Pricing

- Selling goods/services below cost to eliminate competition.
- After driving out competitors, the firm increases prices.

Case Reference: Ola/Uber pricing cases — where allegations of predatory pricing were examined.

☐ **B. Exclusionary Abuses**

i. Limiting Production or Technical Development

- Deliberately restricting output to manipulate prices or control innovation.

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ii. Denial of Market Access

- Preventing other players (competitors or new entrants) from entering or surviving in the market.

Example: A payment gateway denying services to competitors.

iii. Tying and Bundling

- Selling one product only if the consumer also buys another (non-related) product.

Example: Forcing consumers to buy software with operating systems.

iv. Leveraging Dominance in One Market to Enter Another

- Using power in one market to gain control in another.

Example: A dominant online marketplace using seller data to launch and promote its own competing products.

□ 7. Role of the Competition Commission of India (CCI)

The **CCI** is the statutory authority that enforces the Competition Act and investigates cases of abuse of dominance.

□ Powers of CCI:

- Conduct **investigations** through the Director General (DG).
- **Impose penalties** up to **10% of average turnover** for the last three years.
- **Direct discontinuation** of abusive practices.
- Recommend **structural remedies** (e.g., division of enterprise in extreme cases).

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□ **8. Landmark Case Laws in India**

□ **Case 1: DLF Ltd. v. CCI (2011)**

- **Issue:** DLF imposed unfair terms in buyer agreements for apartments.
- **Finding:** CCI found DLF abused its dominant position in the Gurgaon market.
- **Penalty:** ₹630 crore imposed.
- **Significance:** First major case where CCI examined dominance in the real estate sector.

□ **Case 2: Google India (2022)**

- **Issue:** Allegations of leveraging dominance in Android OS market to restrict competition.
- **Finding:** Google forced OEMs to pre-install its suite of apps and restricted forks of Android.
- **Outcome:** CCI imposed a ₹1,337 crore penalty.
- **Direction:** Behavioral changes required by Google.

□ **Case 3: Fast Track Call Cab v. ANI Technologies (Ola)**

- **Issue:** Allegations of predatory pricing.
- **Finding:** CCI ruled that predatory pricing needs to be backed by proof of dominance.
- : Since Ola's dominance wasn't proven, no abuse was found.

□ **9. International Perspective**

Country Law	Authority	Focus
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Country	Law	Authority	Focus
USA	Sherman Antitrust Act (Section 2)	DOJ & FTC	"Monopolization" and intent
EU	Article 102, TFEU	European Commission	Abuse of dominance by "undertakings"
India	Section 4, Competition Act, 2002	CCI	Abuse of "dominant position"

□ **10. Emerging Issues: Digital & Tech Markets**

The digital economy has introduced **new dimensions of dominance**, such as:

- **Data dominance** (Google, Facebook)
- **Platform neutrality** (Amazon, Flipkart)
- **Algorithmic pricing** and **AI-based manipulation**

CCI is actively addressing concerns around **gatekeeping**, **self-preferencing**, and **walled gardens** in digital ecosystems.

□ **11.**

The **prohibition of abuse of dominant position** under Section 4 of the Competition Act, 2002, plays a pivotal role in promoting **fair competition**, **protecting consumer interests**, and **ensuring market efficiency**. While dominance is not inherently bad, **misusing it to suppress competition, exploit customers, or block innovation** is strictly prohibited.

Regulation of combinations

□ 1. Introduction

In the globalized business environment, mergers, acquisitions, and amalgamations have become common strategic tools for growth and consolidation. These transactions, collectively referred to as "**combinations**", can improve efficiency and competitiveness. However, they can also **reduce competition, create monopolies, or abuse market power**.

To **prevent the adverse effects of anti-competitive combinations**, the **Competition Act, 2002** provides a regulatory framework under **Sections 5 and 6**, ensuring that combinations do not harm the structure of competition in India.

□ 2. What is a "Combination"?

As per **Section 5 of the Competition Act, 2002**, the term "*combination*" refers to:

- **Acquisition of control, shares, voting rights or assets** of one or more enterprises by one or more persons or enterprises.
- **Merger or amalgamation** of enterprises.

Combinations are subject to **financial thresholds** and **prior approval** of the **Competition Commission of India (CCI)** if the value of assets or turnover exceeds the prescribed limits.

□ 3. Statutory Framework

□ Section 5 – Definition of Combinations

The law identifies three broad categories of combinations:

A. Acquisition (Section 5(a)):

When one enterprise acquires:

- Shares,
- Voting rights, or

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- Control over another enterprise.

B. Acquisition of Control by a Person over Another Enterprise (Section 5(b)):

Especially when both are engaged in similar or substitutable businesses.

C. Mergers and Amalgamations (Section 5(c)):

When two or more enterprises merge or one enterprise is absorbed into another.

☐ **Thresholds for Notification (as of recent updates)**

For a combination to be reportable, **assets or turnover** must exceed the following thresholds (subject to periodic revision):

Individual Level:

- **Assets in India** > ₹2,000 crores OR
- **Turnover in India** > ₹6,000 crores

Group Level:

- **Assets in India** > ₹8,000 crores OR
- **Turnover in India** > ₹24,000 crores

These thresholds are higher when considering **global operations**.

☐ **Section 6 – Regulation of Combinations**

- **Section 6(1):** No person or enterprise shall enter into a combination that causes or is likely to cause **an appreciable adverse effect on competition (AAEC)** within the relevant market in India.
- **Section 6(2): Mandatory notification** to CCI before effecting the combination if it crosses the thresholds.
- **Section 6(2A):** The combination **cannot take effect for 210 days** from the date of notification or until the CCI approves it—whichever is earlier.

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□ **4. Process of Regulation by the CCI**

✓ **Step 1: Filing of Notice (Form I or II)**

The parties to the combination must file a notice with the CCI along with details of the transaction.

✓ **Step 2: Prima Facie Scrutiny (Phase I)**

Within **30 working days**, the CCI will decide:

- Whether the combination is likely to cause AAEC.
- If not, it grants approval.

✓ **Step 3: Detailed Investigation (Phase II)**

If needed, the CCI may:

- Call for additional information.
- Conduct hearings.
- Invite objections from stakeholders.

✓ **Step 4: Final Order**

CCI may:

- **Approve** the combination.
- **Disallow** the combination (if it causes AAEC).
- **Suggest modifications** to eliminate anti-competitive concerns.

□ **5. What is "Appreciable Adverse Effect on Competition" (AAEC)?**

The CCI evaluates the following factors under **Section 20(4)**:

- Market share post-combination
- Potential elimination of competitors

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- Impact on barriers to entry
- Accrual of benefits to consumers
- Nature and extent of vertical integration
- Contribution to economic development

The objective is to **balance competitive concerns** with **efficiency gains** and **public interest**.

□ **6. Exemptions from Notification**

Certain combinations are **exempted** from notification requirements:

- **Small Target Exemption:** Combinations where the target company has assets < ₹350 crores or turnover < ₹1,000 crores in India.
- **Certain categories of transactions** (like intra-group restructuring, investment-only acquisitions without control, etc.) are also exempt.

□ **7. Landmark Cases by CCI**

□ **1. Sun Pharma – Ranbaxy Merger**

- The CCI approved the merger **subject to divestment of overlapping brands** to prevent market concentration.

□ **2. Walmart – Flipkart Acquisition**

- CCI approved the acquisition despite concerns about deep discounting, as it did not cause AAEC at the time.

□ **3. Zomato – Uber Eats (India) Acquisition**

- The CCI cleared the acquisition, noting that the market would still remain competitive due to the presence of Swiggy and others.

□ **4. PVR – INOX Merger**

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- Under review due to concerns about market concentration in cinema exhibition. Conditional clearance was expected based on city-wise market analysis.

□ **8. International Practices**

Country	Regulator	Law	Pre-merger Notification?
USA	FTC/DOJ	Hart–Scott–Rodino Act	Yes
EU	European Commission	EU Merger Regulation	Yes
India	CCI	Competition Act, 2002	Yes

India's regime is **ex-ante**, i.e., prior approval is mandatory for large combinations.

□ **9. Recent Trends and Developments**

- **Digital economy mergers:** Increasing scrutiny on data-driven mergers.
- **Killer acquisitions:** Where big firms buy startups to eliminate potential threats.
- **Gun-jumping penalties:** CCI penalizes parties for not notifying combinations (e.g., Bharti Airtel-Telenor deal).
- **Green Channel route:** Introduced for faster clearance of combinations with no overlaps.

□ **10.**

The **regulation of combinations** under the Competition Act, 2002 is a vital mechanism to **safeguard market competition**, **protect consumers**, and **prevent monopolistic practices**. While combinations can lead to efficiency, innovation, and

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scale, they must be carefully scrutinized to ensure they do not harm the competitive dynamics of the market.

The **CCI's proactive approach** in evaluating combinations and evolving jurisprudence reflects India's commitment to a **healthy, competitive, and investor-friendly economy**.

Competition Commission of India

1. Introduction

The **Competition Commission of India (CCI)** is the **regulatory authority** established under the **Competition Act, 2002** to **prevent practices having an adverse effect on competition, promote and sustain market competition, protect consumer interests, and ensure freedom of trade** in India.

The need for a modern competition law arose in response to **India's liberalization in 1991**, where market forces were given greater play and monopolistic practices required a new regulatory approach, replacing the earlier **Monopolies and Restrictive Trade Practices (MRTP) Act, 1969**.

☐ **2. Statutory Basis**

- **Established under:** Section 7 of the **Competition Act, 2002**
- **Effective from:** October 14, 2003
- **Functional from:** March 2009 (after notification of enforcement provisions)
- **Administrative Ministry:** Ministry of Corporate Affairs, Government of India

☐ **3. Composition of the CCI**

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As per **Section 8 of the Act**, the CCI consists of:

- **1 Chairperson**
- **Minimum 2 and maximum 6 Members**

✓Qualifications:

Members must have expertise in:

- Economics
- Law
- Commerce
- Accountancy
- Industry
- Public affairs or Competition matters

They are appointed by the **Central Government** and must act independently without any bias or conflict of interest.

□ 4. Objectives of the CCI

The primary objectives of the CCI are:

1. **Prevent anti-competitive practices.**
2. **Promote and sustain competition** in markets.
3. **Protect the interests of consumers.**
4. **Ensure freedom of trade** among market participants.
5. **Advocate competition** and spread awareness.

□ 5. Powers and Functions of the CCI

(As per Sections 18 to 39 of the Competition Act, 2002)

□ A. Prevent Anti-Competitive Agreements (Section 3)

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- CCI investigates agreements that may restrict competition (like price-fixing, bid-rigging, market allocation).
- Can declare such agreements void and impose penalties.

□ **B. Prevent Abuse of Dominant Position (Section 4)**

- If a company exploits its dominant market power (e.g., through predatory pricing, denial of market access), CCI can take action.

□ **C. Regulation of Combinations (Sections 5 & 6)**

- Review mergers, acquisitions, and amalgamations to prevent combinations that adversely affect competition.
- Can approve, modify, or block a proposed combination.

□ **D. Conduct Inquiries (Section 19)**

- CCI can **initiate inquiries** suo motu, or based on complaints by individuals, companies, or the government.

□ **E. Investigation through Director General (Section 26)**

- The CCI may direct the **Director General (DG)** to investigate and submit a report.

□ **F. Power to Impose Penalties (Section 27)**

- Can impose penalties up to **10% of the average turnover** or **3 times the profit** of the enterprise involved in anti-competitive behavior.

□ **G. Power to Grant Interim Relief**

- CCI may issue temporary orders restraining parties from continuing anti-competitive practices.

□ **H. Power to Modify or Approve Combinations**

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- May approve, disapprove, or suggest modifications to proposed combinations.

□ **I. Power of Advocacy (Section 49)**

- CCI promotes awareness about competition and advises government bodies on policies that affect competition.

□ □ **6. Judicial Powers of the CCI**

- CCI has **quasi-judicial powers**.
- It can **summon witnesses, demand documents**, and examine evidence on oath.
- Its orders are appealable to the **National Company Law Appellate Tribunal (NCLAT)**, and further to the **Supreme Court of India**.

□ **7. Recent Landmark Cases**

□ **Google Android Case (2022)**

- CCI imposed a fine of **₹1,337 crore** on Google for abusing dominance in the Android mobile ecosystem.
- Found guilty of forcing OEMs to pre-install Google apps and restricting forks of Android.

□ **DLF Case (2011)**

- DLF abused its dominant position by imposing unfair terms in buyer agreements.
- CCI fined DLF **₹630 crore**.

□ **Amazon and Future Group Deal (2021)**

- CCI suspended its approval of Amazon's investment in Future Coupons, citing **misrepresentation and suppression of material facts**.

□ **8. International Collaboration and Advocacy**

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CCI collaborates with:

- **OECD**
- **UNCTAD**
- **International Competition Network (ICN)**

It also engages in **competition advocacy** to educate stakeholders including:

- Businesses
- Lawmakers
- Judiciary
- Students
- Consumers

☐ **9. Penalties and Enforcement**

Violation	Penalty
Anti-competitive agreements	Up to 10% of turnover
Abuse of dominance	Up to 10% of turnover or 3x profit
Gun-jumping (implementing a combination before approval)	Up to ₹1 crore
Failure to comply with CCI directions	Fine and prosecution

☐ **10.**

The **Competition Commission of India** plays a **vital role in ensuring a level playing field** in the Indian market. It safeguards the economy from anti-competitive practices and promotes consumer welfare by ensuring that markets remain **open, fair, and efficient**.

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In the era of digital economies, mergers of tech giants, and rising cross-border business operations, the CCI's proactive approach is essential in maintaining the **integrity of market structures** and **protecting economic freedom**.

Duties, Powers and Functions of the Competition Commission of India (CCI)

□ 1. Introduction

The **Competition Commission of India (CCI)** was established under the **Competition Act, 2002** to **prevent practices having an adverse effect on competition, promote and sustain competition in markets, protect consumer interests, and ensure freedom of trade**.

✓Legal Basis:

- **Constituted under:** Section 7 of the Competition Act, 2002
- **Main Functions Covered Under:** Sections 18 to 39 of the Act

□ 2. Primary Duties of the CCI (Section 18)

The **overarching duty** of the Commission is:

“To eliminate practices having adverse effects on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in markets in India.”

Specific Duties Include:

- Preventing abuse of market power.
- Promoting competitive practices among enterprises.
- Ensuring consumer welfare and fair trade.
- Encouraging healthy market development through competition advocacy.

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□ **3. Statutory Powers and Functions**

□ **A. Power to Inquire into Anti-Competitive Agreements (Section 19(1)(a))**

- CCI can inquire into agreements like **cartels, price-fixing, bid-rigging**, etc.
- Can declare such agreements **void** under **Section 3**.

□ **B. Power to Inquire into Abuse of Dominance (Section 19(1)(b))**

- Investigate if a dominant firm is **exploiting its market position**.
- Examples: predatory pricing, denying market access, unfair trade conditions.

□ **C. Regulation of Combinations (Sections 5 & 6)**

- **Merger control**: CCI examines whether mergers, acquisitions, or amalgamations cause **Appreciable Adverse Effect on Competition (AAEC)**.
- CCI can **approve, disallow, or modify** combinations.

□ **4. Investigation-Related Powers**

□ **A. Power to Order Investigation (Section 26)**

- CCI can **suo motu**, or upon information or government reference, order a **Director General (DG)** to investigate.

□ **B. Search and Seizure (Section 41)**

- With approval of a magistrate, CCI can conduct **search and seizure** operations to gather evidence.

□ □ **5. Adjudicatory Powers**

□ **A. Power to Pass Orders and Impose Penalties (Section 27)**

If CCI finds violation of Sections 3 or 4, it can:

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- Direct discontinuation of practices.
- Impose penalties up to **10% of average turnover** of the last three years.
- Direct modification of agreements.
- Pass any order it deems fit.

☐ **B. Power to Modify Combinations (Section 31)**

CCI can:

- Approve a combination.
- Suggest changes or modifications.
- Reject the deal if it causes AAEC.

☐ **6. Power to Grant Interim Relief (Section 33)**

- CCI may issue **temporary injunctions** during proceedings to prevent ongoing anti-competitive acts.

☐ **7. Power to Recover Penalties (Section 39)**

- CCI has powers to recover monetary penalties like arrears of land revenue.

☐ **8. Power of Competition Advocacy (Section 49)**

CCI plays an advisory and educational role by:

- **Advising government** on policy that affects competition.
- **Conducting training and seminars.**
- **Promoting awareness** among businesses, lawyers, consumers, and students.

Though advisory in nature, CCI's opinions on policies help align government strategies with competition norms.

☐ ☐ **9. Quasi-Judicial Powers**

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- CCI has the power to:
 - Summon and enforce the attendance of any person.
 - Examine on oath.
 - Receive evidence on affidavit.
 - Issue commissions for examination of witnesses/documents.

CCI functions like a civil court while conducting inquiries.

☐ **10. Appellate and Enforcement Structure**

- **Orders of the CCI** can be appealed before the **National Company Law Appellate Tribunal (NCLAT)**.
- Further appeal lies with the **Supreme Court** of India.

☐ **11. Notable Use of Powers – Case Examples**

✓ **Google Android Case (2022)**

- Abuse of dominant position in the Android OS market.
- ₹1,337 crore penalty imposed by CCI.

✓ **DLF Case (2011)**

- Imposed ₹630 crore penalty for exploiting home buyers with one-sided apartment agreements.

✓ **Walmart-Flipkart Deal**

- Approved under merger regulation after assessing competition concerns in online retail.

☐ **12.**

The **Competition Commission of India** plays a central role in ensuring that markets in India remain **free, fair, and competitive**. Its powers and functions are broad-

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ranging—from investigating unfair trade practices to regulating mergers and promoting awareness.

The CCI ensures:

- **Protection of consumer interests**
- **Transparency in business practices**
- **A level playing field for all market players**
- **Harmonization of policy with market-friendly competition principles**

The Consumer Protection Act, 2019:

1. Introduction

The **Consumer Protection Act, 2019** is a significant legislation passed by the Parliament of India to replace the **Consumer Protection Act, 1986**, aiming to provide **timely and effective administration and settlement of consumer disputes**.

✓	Date	of	Enactment:	9th	August	2019
✓	Came	into	Force:	20th	July	2020
✓	Administered by: Ministry of Consumer Affairs, Food and Public Distribution					

□ 2. Objectives of the Act

- To **protect the rights of consumers**.
- To establish **authorities for timely and effective redressal** of consumer grievances.
- To ensure **fair trade practices**.
- To **promote and enforce consumer rights**.
- To introduce **new-age consumer rights protection** in e-commerce, online transactions, etc.

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□ **3. Who is a Consumer? (Section 2(7))**

A **consumer** is a person who:

- Buys goods or hires/avails services for consideration.
- Includes **online and offline transactions**.
- Excludes anyone obtaining goods/services for **resale or commercial purposes**.

□ **4. Consumer Rights (Section 2(9))**

The Act defines six consumer rights:

1. **Right to Safety** – protection against hazardous goods and services.
2. **Right to be Informed** – about quality, quantity, purity, standard, and price.
3. **Right to Choose** – access to a variety of goods and services at competitive prices.
4. **Right to be Heard** – consumer interests considered in appropriate forums.
5. **Right to Redress** – against unfair trade practices.
6. **Right to Consumer Education**.

□ **5. Key Features of the Consumer Protection Act, 2019**

A. □ Establishment of Central Consumer Protection Authority (CCPA)

- **Objective:** Promote, protect, and enforce consumer rights.
- Can **initiate class-action suits**, order **recalls**, **refunds**, and **discontinue misleading ads**.
- Can **impose penalties** on endorsers and manufacturers.

B. □ Inclusion of E-Commerce and Online Transactions

- First-time inclusion of **e-commerce platforms** and **digital transactions**.
- Mandatory **disclosure of seller information**, **grievance redressal mechanisms**, and **consumer-friendly return policies**.

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C. □ Simplified Dispute Resolution Process

- **Three-tier Consumer Dispute Redressal Commissions (CDRCs):**
 - **District Commission** – up to ₹50 lakh
 - **State Commission** – ₹50 lakh to ₹2 crore
 - **National Commission** – above ₹2 crore

D. □ Product Liability (Chapter VI)

- A consumer can claim **compensation for harm** caused by **defective product** or **deficient services**.
- **Manufacturers, sellers, and service providers** can be held liable.

E. □ Penalty for Misleading Advertisements

- CCPA can fine manufacturers/endorsers:
 - Up to **₹10 lakh for first offense**.
 - **Ban endorsement** for up to 1 year (first offense), 3 years (repeat offense).

F. □□ Alternate Dispute Resolution via Mediation

- **Consumer Mediation Cells** established.
- Promotes **voluntary settlement** of disputes.

□ 6. Filing of Complaints – Simplified Process

- Complaints can be filed:
 - **Online or offline**
 - From **place of residence or work**
- **No requirement of lawyer** – consumer-friendly mechanism
- **Time Limit:** Within **2 years** from cause of action

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☐ 7. Penalties under the Act

Offense	Penalty
Misleading advertisement	₹10 lakh (1st time); ₹50 lakh (repeat); Ban up to 3 years
Sale of unsafe goods	₹1 lakh – ₹5 lakh and up to 7 years imprisonment
Non-compliance with orders	₹25,000 – ₹1 lakh fine and/or imprisonment

☐ 8. Important Case Examples

- **E-commerce cases:** Refund disputes from platforms like Flipkart or Amazon have been adjudicated under the Act.
- **Medical negligence, real estate delays, and misleading ads** have also been dealt with successfully under this Act.

☐ 9. Comparison with 1986 Act

Feature	1986 Act	2019 Act
E-commerce coverage	✗No	✓Yes
Product liability	✗No	✓Yes
Mediation	✗No	✓Yes
CCPA	✗No	✓Yes
Jurisdiction value	Low	Increased

☐ 10.

The **Consumer Protection Act, 2019** is a **landmark reform** in India's consumer rights framework. It empowers consumers by ensuring faster redressal, transparency in e-commerce, stricter penalties for violators, and wider coverage of consumer grievances.

It marks a shift from **caveat emptor (buyer beware)** to **consumer empowerment** in India's growing digital economy.

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Objects;

Objectives of the Consumer Protection Act, 2019

The **Consumer Protection Act, 2019** was enacted to **strengthen consumer rights**, provide a **robust framework** for grievance redressal, and address the **challenges of the digital and modern marketplace**.

✓ **Main Objectives**

1. To Protect Consumer Rights

- Safeguard the **rights of consumers** against unfair trade practices, defective goods, and deficient services.

2. To Provide Speedy and Effective Redressal

- Establish **three-tier Consumer Disputes Redressal Commissions (District, State, National)** for fast, affordable, and efficient resolution of consumer disputes.

3. To Empower Consumers

- Enable consumers to **make informed choices** through the right to be informed and educated.
- **Empower consumers** to file complaints from their place of residence or online, without needing a lawyer.

4. To Regulate E-Commerce and Digital Transactions

- Include **e-commerce, online shopping, and digital service providers** within the legal framework.
- Ensure **accountability** of online sellers and platforms.

5. To Establish the Central Consumer Protection Authority (CCPA)

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- A central authority to **promote, protect and enforce consumer rights**.
- Empowered to act **against misleading advertisements, unfair trade practices, and unsafe products**.

6. To Introduce Product Liability

- Consumers can claim compensation for **harm caused by defective products or deficient services**, holding **manufacturers, sellers, and service providers** accountable.

7. To Promote Mediation and Alternate Dispute Resolution (ADR)

- Introduce **mediation cells** for **amicable settlements** of disputes and reduce litigation burden.

8. To Enhance Penalties and Deterrence

- Impose **stricter penalties** on offenders to prevent recurrence of unfair practices and ensure **corporate responsibility**.

The Act aims to ensure that the Indian market is **consumer-centric, transparent, and fair**. It provides a comprehensive mechanism to safeguard consumers in a rapidly evolving **digital and globalized economy**.

Rights of consumers

Rights of Consumers under the Consumer Protection Act, 2019

The **Consumer Protection Act, 2019**, defines and safeguards a set of six key rights to empower and protect consumers in the marketplace. These rights are in line with international best practices and provide a strong legal backing to Indian consumers.

☐ **1. Right to Safety**

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“Protection against the marketing of goods and services which are hazardous to life and property.”

✔Key Points:

- Applies to **goods and services**, especially **healthcare, pharmaceuticals, electrical appliances, vehicles**, etc.
- Ensures that products meet **safety standards** and manufacturers follow **safety norms**.
- Includes protection from **defective products** and **unsafe service practices**.

□ 2. Right to be Informed

“Right to be informed about the quality, quantity, potency, purity, standard, and price of goods or services.”

✔Key Points:

- Consumers should have access to **accurate and complete product information**.
- Mandatory for manufacturers and sellers to display:
 - Ingredients
 - Price
 - Manufacturing and expiry dates
 - Usage instructions
- Helps consumers **compare products** and **make informed choices**.

□ 3. Right to Choose

“Right to access a variety of goods and services at competitive prices.”

✔Key Points:

- Protects against **monopolistic and restrictive trade practices**.
- Ensures availability of **genuine choices** in the market.

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- Prevents **coercion or manipulation** by sellers.
- Relevant in **e-commerce and online retail**, where algorithms may limit visibility of options.

□ 4. Right to be Heard

“Right to be heard and assured that consumer interests will receive due consideration at appropriate forums.”

✓Key Points:

- Consumers have the **right to voice complaints** and **expect redressal**.
- Covers:
 - Feedback and suggestions
 - Complaints against unfair trade practices
- Recognized by:
 - **Consumer Grievance Redressal Commissions**
 - **Central Consumer Protection Authority (CCPA)**
 - **Mediation cells**

□ 5. Right to Seek Redressal

“Right to seek redressal against unfair trade practices, defective goods or deficient services.”

✓Key Points:

- Consumers can file complaints for:
 - Defective goods
 - Deficient services
 - Overcharging
 - Misleading ads
- Disputes can be taken to:
 - **District, State, or National Commission**

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- **Online portals** like E-Daakhil
- Consumers can claim:
 - **Replacement**
 - **Refund**
 - **Compensation**

☐ **6. Right to Consumer Education**

“Right to acquire knowledge and skill to be an informed consumer.”

☒ **Key Points:**

- Consumers should be aware of:
 - Their **rights and duties**
 - **Legal remedies** available
 - How to **avoid exploitation**
- Promoted through:
 - School/college curriculum
 - Media campaigns (e.g., **Jago Grahak Jago**)
 - Training and awareness programs

☐ **Additional Rights (Notified under Consumer Policy)**

Although not explicitly listed in the Act, the following are often recognized under **consumer policies**:

- **Right to Healthy Environment:** Clean surroundings and sustainable consumption.
- **Right to Basic Needs:** Access to essential goods and services.

The rights under the Consumer Protection Act, 2019 aim to create a **consumer-friendly market ecosystem** that ensures **transparency, accountability, and fairness** in both physical and digital marketplaces. Consumers must be aware of these rights to **actively assert them** and protect themselves against exploitation.

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Consumer Dispute Redressal Commissions

☐ **Consumer Dispute Redressal Commissions (CDRCs)**

Established under the Consumer Protection Act, 2019 to provide speedy and effective redressal of consumer disputes.

Introduction

The **Consumer Dispute Redressal Commissions (CDRCs)** are quasi-judicial bodies at **three levels** – **District, State, and National** – that handle complaints filed by consumers regarding **defective goods, deficient services, unfair trade practices**, and other grievances.

These bodies aim to provide **simple, inexpensive, and timely justice** to consumers.

☐ **Three-Tier Structure of CDRCs**

Level	Forum Name	Jurisdiction (Monetary)	Appeal Lies To
1	District Commission	Up to ₹50 lakh	State Commission
2	State Commission	₹50 lakh – ₹2 crore	National Commission
3	National Commission	Above ₹2 crore	Supreme Court of India

☐ **1. District Consumer Disputes Redressal Commission (DCDRC)**

- Jurisdiction: Complaints **up to ₹50 lakh**.
- Composition: **President** (qualified as a District Judge) + at least **two members**.
- Filing: Can be filed **where consumer resides or works** (easier than 1986 Act).

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- Time Frame: To resolve complaints within **3 months** (without testing) and **5 months** (with product testing).

☐ **2. State Consumer Disputes Redressal Commission (SCDRC)**

- Jurisdiction: Appeals from DCDRC + complaints **between ₹50 lakh and ₹2 crore**.
- Composition: **President** (qualified as a High Court Judge) + **at least four members**.
- Power: Can review orders passed by the District Commission if necessary.

☐ **3. National Consumer Disputes Redressal Commission (NCDRC)**

- Jurisdiction: Appeals from SCDRC + complaints involving **value above ₹2 crore**.
- Composition: **President** (must be or have been a Supreme Court Judge) + **members** as notified.
- Located in: **New Delhi**.
- Final appeals lie to the **Supreme Court**.

☐ **Key Features of CDRCs under 2019 Act**

☒ **E-Filing of Complaints**

- Consumers can file complaints **online** via the **E-Daakhil Portal**: <https://edaakhil.nic.in>
- Saves time, travel, and cost.

☒ **Mediation Mechanism**

- If both parties agree, disputes can be referred to **mediation cells**.
- Encourages **amicable settlement** and reduces court burden.

☒ **Summary Procedure**

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- Commissions can adopt **summary trials** for simple cases.
- Aims for faster resolution (3–5 months max).

✓Review & Appeal

- Commissions have powers to **review their orders**.
- Appeal period: **45 days** from the date of order.

✓Penalties for Non-Compliance

- Non-compliance with commission orders may lead to **imprisonment up to 3 years** or **fine up to ₹1 lakh**, or both.

□ Types of Complaints Handled

- Defective goods
- Deficiency in services
- Unfair/restrictive trade practices
- Overcharging or deceptive pricing
- Hazardous goods/services
- Misleading advertisements
- E-commerce complaints

□ Comparison: 1986 Act vs 2019 Act (CDRC Provisions)

Feature	1986 Act	2019 Act
Jurisdiction	Lower	Increased
E-Filing	✗Not available	✓Available

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Feature	1986 Act	2019 Act
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Mediation	✗ Not available	✓ Introduced
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Filing Location	Where seller is located	Where consumer resides or works
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Product Liability	✗ Not included	✓ Included
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The Consumer Dispute Redressal Commissions under the Consumer Protection Act, 2019, are designed to make **consumer justice accessible, time-bound, and technology-friendly**. With increased jurisdiction, simplified procedures, and the use of online platforms, these commissions serve as **powerful tools** for consumer empowerment in India.

Consumer protection councils

Consumer Protection Councils –

1. Introduction

The **Consumer Protection Councils (CPCs)** are **advisory bodies** established under the **Consumer Protection Act, 2019** at the **central, state, and district levels**. Unlike consumer commissions, these councils do not deal with consumer complaints directly. Instead, they **formulate policies, raise awareness, and advocate for the protection of consumer rights**. Their function is to **guide the government and regulatory bodies** in promoting the welfare of consumers and ensuring justice in the marketplace.

□ 2. Objectives of Consumer Protection Councils

The core aim of Consumer Protection Councils is to:

- **Promote and protect the six rights of consumers** as enshrined in the Act.

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- Encourage and support initiatives to **educate consumers** about their rights and responsibilities.
- Advocate for **stronger consumer-centric policies** at every level of government.
- Collaborate with industry and civil society to **monitor and regulate market practices**.
- Provide a **platform for dialogue** between consumers, businesses, and regulatory authorities, ensuring **transparency and accountability** in trade practices.

□ **3. Structure and Composition**

The Consumer Protection Act, 2019, mandates the formation of three types of councils. Each council has a unique structure and operates at a different administrative level:

□ **A. Central Consumer Protection Council (CCPC)**

- The **Central Government** is responsible for establishing this council.
- It is **headed by the Union Minister of Consumer Affairs**, who acts as the **President of the Council**.
- The council includes:
 - Ministers and Secretaries from various ministries
 - Representatives from State Governments
 - Experts from consumer organizations, academia, and industry
 - Women representatives and professionals from healthcare, agriculture, and law
- The CCPC serves as a **national advisory body**, reviewing major consumer policies and suggesting reforms. It holds at least **one meeting per year**.

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□ **B. State Consumer Protection Council (SCPC)**

- Each **State Government** forms the SCPC to address **consumer issues specific to that state**.
- Chaired by the **State Minister for Consumer Affairs**.
- Includes:
 - District-level officials
 - Representatives of consumer forums
 - Experts from business and agriculture sectors
- The SCPC's role is to **implement central policies at the state level**, recommend **state-specific consumer protection strategies**, and **monitor the performance of district councils**.

□ **C. District Consumer Protection Council (DCPC)**

- Formed by the **District Collector** or appropriate district authority.
- The **District Collector** acts as the **Chairperson**.
- Members include:
 - Local body representatives
 - NGOs and consumer groups
 - Grassroots-level service providers
- This council addresses **local consumer issues**, promotes awareness in rural areas, conducts **education drives**, and acts as a **first point of contact** between the public and consumer protection authorities.

□ **4. Consumer Rights Promoted by the Councils**

Consumer Protection Councils are responsible for promoting the **six key consumer rights** defined under **Section 2(9)** of the Act:

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1. **Right to Safety:** Protection from hazardous goods and services.
2. **Right to be Informed:** Right to accurate information regarding products/services.
3. **Right to Choose:** Access to a variety of products at competitive prices.
4. **Right to be Heard:** Opportunity to voice complaints and suggestions.
5. **Right to Seek Redressal:** Legal remedies in case of exploitation.
6. **Right to Consumer Education:** Awareness of rights, laws, and remedies.

The councils ensure these rights are **disseminated through campaigns, seminars, advertisements, and awareness programs.**

☐ **5. Nature and Powers of the Councils**

- The councils are **not judicial bodies** and **do not have the power to adjudicate or enforce orders.**
- Their primary function is **policy advisory and consumer advocacy.**
- They **monitor government schemes** from the consumer's perspective and **recommend improvements.**
- They also **review the performance of redressal commissions** and propose measures for better governance.

☐ **6. Importance of Consumer Protection Councils**

Consumer Protection Councils play a crucial role in:

- **Bridging the gap** between the government, industry, and consumers.
- Facilitating **cooperation among stakeholders** to build a fair marketplace.
- Helping in **policy-making and legislative reform** based on feedback from ground-level issues.
- Supporting **consumer movements** by empowering NGOs and educational institutions.
- **Encouraging transparency and ethical business practices**, especially in digital markets and e-commerce.

□ 7.

The **Consumer Protection Councils**, although **advisory in nature**, serve as the **backbone of the consumer rights ecosystem in India**. Their ability to **guide policy, promote education, and build public awareness** makes them a vital instrument for the **evolution of a consumer-centric economy**. As markets evolve with technology, the role of these councils becomes even more relevant in **protecting consumer interests** at every level.

□ **Procedure for Admission of Complaints**

Sections 35 to 38 of the Consumer Protection Act, 2019

□□ **1. Meaning of Complaint**

A **complaint** is a formal allegation made by a consumer seeking relief for:

- Defective goods
- Deficient services
- Unfair/restrictive trade practices
- Overcharging
- Hazardous products or services

Under the 2019 Act, a complaint **need not be confined to physical documents**; it can also be submitted **electronically**, which enhances accessibility and convenience.

□♂ **2. Who Can File a Complaint? (Eligibility)**

The Act allows the following persons or bodies to file a complaint:

1. **Individual consumer** who has purchased goods or hired services for personal use (not for resale or commercial purpose).
2. **Consumer group or association**, even if the affected person is not a member.

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3. **Multiple consumers** with the same interest (class action).
4. **Central or State Government** agencies.
5. **Legal heir or representative** of a deceased consumer.
6. **Parent or guardian** of a minor consumer.

3. Jurisdiction of Consumer Commissions

The complaint must be filed in the appropriate forum based on **monetary value** of goods/services:

Forum	Monetary Jurisdiction
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District Commission	Up to ₹50 lakhs
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State Commission	₹50 lakhs to ₹2 crores
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National Commission	Above ₹2 crores
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Geographical Jurisdiction:

- Where the **consumer resides or works**, or
- Where the **opposite party carries on business**.

Note: The 2019 Act allows complaints to be filed where the **complainant resides**, a major consumer-friendly reform.

□ 4. Mode of Filing a Complaint

A complaint can be filed in the following ways:

A. Physical Submission

- In person at the appropriate Commission office.
- Along with supporting documents and prescribed fee.

B. Electronic Filing (E-Daakhil)

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- Through <https://edaakhil.nic.in>
- Facilities include uploading of documents, e-notices, and video hearings.
- It allows **convenient filing** without the need for a lawyer.

☐ **5. Contents of a Valid Complaint**

A proper complaint must include:

1. **Details of the complainant** (name, contact, address).
2. **Details of the opposite party** (supplier/service provider).
3. **Facts** of the case in a logical sequence:
 - Purchase details (date, place, invoice, etc.)
 - Nature of defect or deficiency
 - Communication with the seller/service provider
4. **Evidence:** Copies of bills, warranty cards, emails, photographs, test reports, etc.
5. **Relief claimed:** Refund, replacement, damages, interest, compensation, etc.
6. **Affidavit** affirming that statements made are true.
7. **Filing Fee** as per rules.

☐ **6. Scrutiny of Complaint & Admission Process**

After receiving the complaint:

- The Commission **scrutinizes** whether the complaint is:
 - **Within jurisdiction**
 - **Maintainable under the law**
 - **Properly documented**

Admission Timeline:

- The Commission must decide on **admission within 21 days**.
- If not decided within that time, it is **deemed to be admitted** (auto-admission rule).

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Rejection of Complaint:

- If the complaint is **frivolous, vexatious**, or not maintainable, it may be **rejected**.
- The Commission must **record reasons in writing** and give the complainant an opportunity to be heard before rejection.

☐ **7. Service of Notice to Opposite Party**

Once admitted:

- The Commission issues a **notice** to the opposite party.
- The opposite party must submit a **written version within 30 days**, extendable by **15 more days**.
- If the opposite party fails to respond, the Commission may proceed **ex parte** (without their presence).

☐ **8. Reference to Laboratory (in case of defective goods)**

If the complaint involves a **product defect**, the Commission may:

1. **Draw a sample** and seal it.
2. Send it to an **accredited laboratory** for testing.
3. Require the lab to submit its **report within 45 days**.
4. Give both parties a chance to **examine or dispute** the report.
5. If needed, allow **retesting** at the request of either party.

The cost of testing is **borne by the complainant initially**, but may later be recovered from the opposite party if found at fault.

☐ ☐ **9. Hearing and Evidence**

- Both parties are heard.
- The Commission may:
 - Call witnesses.

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- Examine documents.
 - Permit expert testimony.
- Proceedings are **summary in nature**—intended to be fast, consumer-friendly, and less technical.

☐ **10. Option for Mediation**

Under Chapter V of the Act:

- The Commission may refer the case for **mediation** if:
 - It sees a scope for settlement.
 - Both parties give written consent.
- If successful, a **written agreement** is signed and **ratified** by the Commission.
- If mediation fails, the case returns to the Commission for regular hearing.

☐ **11. Time Limits for Resolution**

- **3 months**: If no product testing is involved.
- **5 months**: If analysis/testing is required.

These timelines promote **speedy justice** in the spirit of the Act.

☐ **12. Final Order by Commission**

The Commission may:

- **Allow** the complaint and grant relief (refund, replacement, compensation).
- **Dismiss** the complaint with reasons.
- Impose **penalty or costs** for frivolous complaints or unethical conduct.

☐ **13. Communication of the Order**

- A **copy of the final order** is provided to both parties.
- Orders are also uploaded on the official portal for transparency.

□ 14. Appeal Process

If dissatisfied:

- A party may **appeal to the next higher Commission** within **30 days**.
 - District → State
 - State → National
 - National → Supreme Court
- Appeals must be accompanied by a **certified copy of the order** and **grounds of challenge**.



The procedure for admission of complaints under the Consumer Protection Act, 2019, is:

- **Simple**, consumer-friendly, and **efficient**.
- Encourages **self-representation** without legal complexity.
- Emphasizes **quick disposal**, **digital access**, and **justice at doorstep**.
- Reflects a **pro-consumer legislative approach**, particularly in the era of e-commerce and online services.

Appeal against Orders

Under the Consumer Protection Act, 2019

□ 1. Introduction

The **Consumer Protection Act, 2019** provides a systematic mechanism for **appealing against the decisions** of Consumer Dispute Redressal Commissions. Appeals ensure that **justice can be sought at a higher forum** if any party is **aggrieved by the order** of a lower commission. The appeal process reinforces the principles of **natural justice**, **fairness**, and **accountability** in consumer redressal.

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□ **2. Forums and Hierarchy of Appeals**

From	Appeal To	Time Limit
District Commission	State Commission	30 days
State Commission	National Commission	30 days
National Commission	Supreme Court of India	30 days

- The appeal must be filed **within 30 days** from the date of receiving the order.
- A **delay may be condoned** by the appellate authority if there is a **sufficient cause**.

□ **3. Conditions for Filing an Appeal**

To file an appeal:

1. The **appellant** must be **aggrieved by the order**.
2. A **copy of the order** against which the appeal is made must be attached.
3. An **affidavit** explaining the grounds of appeal must be submitted.
4. A **statutory deposit** is required in certain cases:
 - If appealing a **compensation order**, the appellant must **deposit 50%** of the ordered amount or **₹25,000 (whichever is less)** before the **State Commission**.
 - For appeals to **National Commission**, **50% of the amount** or **₹50,000**, whichever is less.
 - This ensures **seriousness and prevents frivolous appeals**.

□□ **4. Procedure for Appeal**

1. **Filing the Memorandum of Appeal:**
 - State the facts, grounds, and relief sought.

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- Attach necessary documents including certified copy of the order, evidence, and affidavits.
- 2. **Preliminary Scrutiny:**
 - The appellate forum will verify the maintainability, documents, and filing timeline.
- 3. **Hearing:**
 - Both parties are given a chance to be heard.
 - Fresh evidence is generally **not allowed**, unless specifically permitted.
- 4. **Interim Relief:**
 - The appellate forum may grant **interim stay** or injunction until the final decision is made.
- 5. **Final Decision:**
 - The appeal may be **allowed**, **dismissed**, or the **order may be modified** or **remanded back** to the lower commission for reconsideration.

! 5. Important Provisions

- **No appeal** shall lie if the order is passed **with the consent of both parties** (i.e., in settlement cases).
- Appeals must be filed with the **prescribed fee**.
- The **appellate authority** may **review or modify** the lower commission's findings based on law and facts.

□ 6. Limitation and Condonation of Delay

- Appeals must be filed **within 30 days** of receiving the certified copy of the order.
- The appellate forum has the **discretion to condone delay** if the appellant shows **sufficient cause**.
- No condonation is automatic; it must be supported by a written **application for condonation**.

□ **7. Significance of Appeal Provision**

- Upholds the **principle of natural justice**.
- Prevents **miscarriage of justice** through proper scrutiny.
- Offers **multiple opportunities** to both parties to argue their case.
- Acts as a **check on the functioning** of lower consumer commissio

✓**8.**

The appeal mechanism under the Consumer Protection Act, 2019 provides a **multi-tiered approach** for grievance redressal. It:

- **Empowers consumers and sellers** to challenge decisions they find unjust.
- Reinforces **accountability of forums**.
- Encourages **legal scrutiny** and fairness.

The system balances **efficiency, accessibility, and justice**, ensuring that every party has a fair chance to present their case even after the initial verdict.

□ **Additional Notes:**

- Appeals must be filed within **30 days** from the date of the order.
- **Condonation of delay** is possible if there is sufficient cause.
- **Deposit of 50%** of the compensation amount or a fixed maximum (₹25,000/₹50,000) is required when appealing.
- **No appeal** is allowed against **consent orders**.

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Law relating to intellectual property rights -Law relating to intellectual property rights:
Introduction - The Copyright Act, 1957: Works in which copyright subsist - Ownership of copyright and the rights of the owner - Assignment of copyright - Disputes with respect to assignment of copyright- Term of copyright - Registration of copyright - Infringement of copyright.

The Patents Act, 1970: Inventions not patentable - Applications for patents – Publication and examination of applications - Grant of patents and rights conferred - Register of patents. Trademarks Act, 1999: Conditions for registration - Procedure for and duration of registration - Effect of registration - Collective marks.

□ Law Relating to Intellectual Property Rights (IPR) in India –

□ 1. Introduction to IPR

Intellectual Property Rights (IPRs) are **legal entitlements** that allow creators and inventors to control the use of their **creations of the mind**. These include inventions, literary and artistic works, designs, symbols, names, images, and business secrets. IPR provides **exclusive rights** to the owner to **use, sell, license, or transfer** the intellectual asset for a specific period.

India's IPR framework has evolved significantly, aligning with international norms under the **TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights)** administered by the **World Trade Organization (WTO)**.

□ 2. Objectives of IPR Law

The primary goals of IPR legislation include:

- ✓ Encouraging **innovation**, creativity, and scientific advancement.
- ✓ Ensuring **economic rewards** and recognition for inventors and creators.
- ✓ Providing **legal tools** for preventing the misuse or unauthorized use of IP.
- ✓ Promoting **fair competition** in markets.
- ✓ Fostering **investment in R&D and branding**.

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- ✓ Protecting **public interest** by balancing monopoly rights and societal benefits.

□ **3. Types of Intellectual Property Rights and Relevant Laws in India**

India has enacted specific statutes for the different categories of IPR. Below is a comprehensive overview:

□ **A. Patent**

- **Governing Law:** The Patents Act, 1970 (amended in 2005).
- **Definition:** A patent is an **exclusive right granted for an invention**, which must be new, non-obvious, and industrially applicable.
- **Validity:** 20 years from the date of filing.
- **Rights of Patentee:** Right to exclude others from making, using, or selling the invention without consent.

□ **B. Trademark**

- **Governing Law:** The Trade Marks Act, 1999.
- **Definition:** A **distinctive sign or symbol** used by a business to identify its goods/services.
- **Examples:** Brand names (e.g., Nike), logos (e.g., Apple), taglines (e.g., "Just Do It").
- **Validity:** 10 years (renewable indefinitely).
- **Registration Benefits:** Legal protection, exclusive usage, brand value, and goodwill.

□ **C. Copyright**

- **Governing Law:** The Copyright Act, 1957 (amended in 2012).
- **Definition:** Protection granted to **original literary, dramatic, musical, artistic, cinematographic works, and software**.
- **Validity:** Lifetime of the author + 60 years.

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- **Key Rights:** Reproduction, distribution, adaptation, public performance, and communication to the public.

□ **D. Designs**

- **Governing Law:** The Designs Act, 2000.
- **Definition:** Legal protection for the **visual design of objects** that are not purely utilitarian.
- **Validity:** 10 years + extension of 5 years.
- **Examples:** Unique shapes of bottles, furniture, patterns on fabrics.

□ **E. Geographical Indications (GI)**

- **Governing Law:** The Geographical Indications of Goods (Registration and Protection) Act, 1999.
- **Definition:** A GI identifies a product as originating from a specific place, possessing **qualities, reputation, or characteristics** due to its geography.
- **Examples:** Darjeeling Tea, Kanchipuram Silk, Banarasi Sarees.
- **Validity:** 10 years (renewable).

□ **F. Plant Variety Protection**

- **Governing Law:** The Protection of Plant Varieties and Farmers' Rights Act, 2001.
- **Objective:** Protects the rights of **breeders** and **farmers** who develop new varieties of crops.
- **Special Feature:** Recognizes traditional knowledge and farmers' contribution.

□ **G. Semiconductor Integrated Circuit Layout Design**

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- **Governing Law:** The Semiconductor Integrated Circuits Layout-Design Act, 2000.
- **Definition:** Protects the **design of the layout** of integrated circuits used in electronic devices.
- **Validity:** 10 years.

□ **H. Trade Secrets / Confidential Information**

- **Legal Status:** Not governed by a specific statute but protected under **common law, contract law, and equity principles**.
- **Protection Method:** Through **non-disclosure agreements (NDAs)** and employment contracts.
- **Examples:** Coca-Cola formula, client lists, manufacturing techniques.

□ **4. India's Participation in International IPR Agreements**

India is a signatory to several international IPR conventions that harmonize Indian laws with global standards:

Treaty	Purpose
TRIPS Agreement	Sets minimum standards for IP protection worldwide.
Berne Convention (1886)	Protects literary and artistic works.
Paris Convention (1883)	Protects industrial property like patents and trademarks.
WIPO Treaties	India is a member of WIPO, which promotes IP protection globally.

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Treaty	Purpose
Madrid Protocol	Facilitates international trademark registration.
Patent Cooperation Treaty (PCT)	Allows a unified patent application to seek protection in multiple countries.

□ **5. Enforcement Mechanisms in India**

The protection of IPRs in India is enforced through:

□ **A. Civil Remedies**

- Injunctions (to stop ongoing infringement).
- Damages or account of profits.
- Seizure or destruction of infringing goods.

□ **B. Criminal Remedies**

- Imprisonment and fines for offenses like copyright piracy or trademark counterfeiting.
- Police action for search and seizure.

□ **C. Administrative Remedies**

- Customs authorities can **block imports/exports** of infringing goods.
- Cancellation or rectification of wrongly granted IPRs.

□ **6. Procedure for Registration**

Each type of IPR has a dedicated office under the **Office of the Controller General of Patents, Designs and Trademarks** (CGPDTM), Ministry of Commerce and Industry.

Registration Process (e.g., Patents or Trademarks):

1. Filing the application.
2. Formal examination.
3. Publication for opposition.
4. Hearing (if required).
5. Grant/Registration.

All filings can now be done through the **e-filing portal**

□ **7. Recent Developments and Policy Framework**

- **National IPR Policy (2016):** Aims to create a **holistic ecosystem** for IPR awareness, generation, commercialization, enforcement, and human capital development.
- **Start-up India Initiative:** Offers **fast-track IPR filing**, fee rebates, and legal assistance to startups.
- **Digital Copyright and Software Patents:** Increasing relevance with the growth of IT, AI, and blockchain technologies.

✓**8.**

The legal framework of IPR in India is **comprehensive, modernized, and globally aligned**. It promotes the **creation and protection** of intellectual assets, boosts the **knowledge economy**, and ensures the **rights of creators and innovators** are respected. In an era of rapid innovation and global competition, robust IPR laws are crucial for fostering **research, investment, and economic growth**.

Introduction to Intellectual Property Rights (IPR)

In the modern knowledge-driven economy, **ideas, creativity, and innovation** have become the most valuable assets. The concept of **Intellectual Property Rights (IPR)** is designed to recognize and **legally protect the creations of the human**

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mind — such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce.

Intellectual Property (IP) differs from physical property because it is **intangible**, yet it carries significant **economic and moral value**. The legal mechanisms for protecting intellectual property aim to **encourage innovation and creativity** by ensuring that creators and inventors enjoy **exclusive rights** to exploit their work for a limited period. These rights provide them with an incentive to invest in research, design, branding, and artistic expression.

In India, the evolution of IPR law has been driven by both **domestic legislation** and **international commitments**, particularly through the **TRIPS Agreement** under the **World Trade Organization (WTO)**. The country has developed a **comprehensive legal framework** that includes statutes for patents, copyrights, trademarks, designs, geographical indications, and plant varieties.

The Indian Constitution, under Article 27 of the **Universal Declaration of Human Rights (UDHR)**, supports the protection of moral and material interests resulting from intellectual creation. Furthermore, Article 300A of the Indian Constitution indirectly supports IPR protection as part of the right to property.

Thus, the **law relating to IPR** serves two vital purposes:

1. **Protecting the interests of creators and investors.**
2. **Balancing public interest** by preventing monopolistic abuse and promoting access to innovation and culture.

As technology and globalization continue to transform business models and content distribution, IPR laws remain central to ensuring **legal certainty, economic growth, and cultural development**.

The Copyright Act, 1957: Works in Which Copyright Subsists

(As per Section 13 of the Act)

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□ Introduction

The **Copyright Act, 1957** is the primary legislation in India that governs the **protection of original works of authorship**. It provides legal rights to creators for a wide range of creative, intellectual, and artistic works. The Act ensures that creators have **exclusive control** over how their work is used, reproduced, distributed, and displayed.

One of the foundational aspects of the Act is **Section 13**, which outlines the **types of works** in which copyright can subsist. This section forms the basis for understanding **what kinds of creative works are legally protected** under Indian copyright law.

✓ **Section 13(1): Works Protected under Copyright Law**

Copyright subsists throughout India in the following classes of works:

□ **A. Literary Works**

- **Definition:** Includes works expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the medium.
- **Examples:**
 - Novels, poems, stories
 - Textbooks, articles, reports
 - Computer programs and software codes
 - Databases and compilations
- **Key Condition:** The work must be **original** — not copied and must involve a minimum degree of creativity.
- **Note:** Software and source code are specifically protected under the category of literary works.

□ **B. Musical Works**

- **Definition:** A musical composition, irrespective of the lyrics or accompanying words.

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- **Examples:**
 - Sheet music
 - Instrumental scores
 - Melodies and harmonies
- **Not Included:** The performance or recording of the music (this is separately protected as a sound recording).
- **Rights Granted:** Reproduction, public performance, arrangement, and communication to the public.

□ **C. Dramatic Works**

- **Definition:** Includes compositions intended for performance such as plays, scripts, and screenplays.
- **Examples:**
 - Theatrical plays
 - Screen dialogues and stage directions
 - Choreographic works and mime performances
- **Key Aspect:** Dramatic works often contain literary and artistic elements and are protected independently.

□ **D. Artistic Works**

- **Definition:** Includes works of visual art, whether or not they possess artistic quality.
- **Examples:**
 - Paintings, sketches, and drawings
 - Photographs (even digital)
 - Sculptures and installations
 - Architectural designs and maps
 - Logos, patterns, and decorative designs
- **Note:** Even simple logos and product packaging can be protected if they have original artistic expression.

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□ **E. Cinematograph Films**

- **Definition:** Any work of visual recording on any medium produced through a process from which a moving image may be produced, including the sound accompanying such visual recording.
- **Examples:**
 - Movies, documentaries
 - Music videos and animation films
 - Short films, advertisements
- **Key Protection:** The film as a whole, not its individual components (which may have separate copyrights).

□ **F. Sound Recordings**

- **Definition:** A recording of sounds from which such sounds may be reproduced, regardless of the medium.
- **Examples:**
 - Audio tracks
 - Podcasts
 - Recorded speeches
 - Audio books
- **Producer's Rights:** The person who initiates the recording holds the copyright.

□ **Section 13(2): Territorial Scope of Copyright**

Copyright will subsist if:

- The work is **first published in India**, or
- The **author is a citizen of India**, or
- The work is first published outside India but the author is an **Indian resident**,
or
- The work is published in a country that is a member of an **international treaty** to which India is a signatory (e.g., Berne Convention, TRIPS).

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☐ **Section 22–29: Duration of Copyright**

Type of Work	Duration of Copyright
Literary, musical, dramatic, and artistic works	Lifetime of the author + 60 years
Anonymous or pseudonymous works	60 years from publication
Cinematograph films and sound recordings	60 years from publication
Government and public undertakings' works	60 years from first publication

✗ Works Not Eligible for Copyright

According to the Act and judicial precedents, **copyright does not subsist** in the following:

- Mere ideas, themes, procedures, or methods
- Official texts of laws, judgments, government notifications
- News of the day or current events without original literary expression
- Names, titles, slogans, or symbols that lack originality
- Works in the public domain or where the copyright term has expired

☐ **Importance of Copyright Protection**

- Provides **economic rights** to the creator
- Prevents **unauthorized use, reproduction, or adaptation**
- Encourages **innovation and cultural development**
- Offers legal remedy in case of infringement
- Promotes international **recognition and trade** of creative assets

The **Copyright Act, 1957** provides robust protection to a wide variety of original works. The classification of works where copyright subsists reflects the broad and evolving nature of creativity — from traditional literary works to modern digital

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creations. Understanding these categories is essential for creators, publishers, businesses, and users to respect the legal rights associated with creative content.

☐ **Ownership of Copyright and Rights of the Owner**

(Under the Copyright Act, 1957 – Sections 14 to 22)

☐ **Introduction**

Copyright is a **legal protection granted to the creator** of an original work. The creator (often referred to as the “author”) gets a **bundle of exclusive rights** over the use, reproduction, distribution, and adaptation of their work. However, **ownership of copyright** does not always lie with the creator — it can change based on **employment status, commissioning, contracts, or statutory exceptions**.

The **Copyright Act, 1957**, particularly **Section 17**, lays down the rules for determining the **ownership of copyright**, while **Section 14** details the rights conferred upon the copyright holder.

☐ **I. Who is the Owner of Copyright? (Section 17)**

☐ **General Rule**

"The author of a work is the first owner of the copyright."

This applies to:

- Literary works (e.g., books, articles)
- Musical works (e.g., compositions)
- Artistic works (e.g., drawings, paintings)
- Dramatic works (e.g., plays, scripts)
- Cinematograph films and sound recordings

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☐ II. Exceptions to the General Rule

In certain **specific cases**, the author is **not** the first owner. These include:

Scenario	Copyright Owner
Employment under a contract of service (e.g., journalist writing for a newspaper)	Employer , unless agreed otherwise
Commissioned Works (e.g., someone hires a photographer for a wedding photo)	The person who paid for the work
Government Works (work done under the direction/control of the government)	Government of India
Public Undertakings (e.g., PSUs like Doordarshan)	The public undertaking
Works created by employees of educational institutions	The institution , if the work is related to assigned duty
International Organizations (e.g., UNO, WHO)	The organization , unless stated otherwise in a contract

✓ **Note:** These rules apply **unless there is a contract to the contrary**.

☐ III. Who is the 'Author' According to Work Type?

Work Type	Author (First Owner)
Literary work	The writer or creator
Musical work	The composer
Artistic work	The artist or creator

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Work Type	Author (First Owner)
Cinematograph film	The producer (not the director or actors)
Sound recording	The producer
Photograph	The photographer
Computer program	The programmer/developer , or the employer in case of employment

□ **IV. Rights of the Copyright Owner (Section 14)**

The copyright owner enjoys **exclusive rights**, which vary based on the nature of the work.

✍ **A. For Literary, Dramatic, Musical, and Artistic Works**

1. **Right to reproduce** the work in any form (printing, copying, etc.)
2. **Right to issue copies** to the public
3. **Right to perform or communicate** the work to the public (e.g., concerts, readings)
4. **Right to make cinematograph films** or sound recordings
5. **Right to translate or adapt** the work
6. **Right to license or assign** the above rights to others

□ **B. For Cinematograph Films**

1. **Right to make copies**
2. **Right to sell or rent copies**
3. **Right to communicate the film to the public** (e.g., screening in theatres, TV)

□ **C. For Sound Recordings**

1. **Right to make other sound recordings**
2. **Right to sell, rent or distribute**
3. **Right to broadcast or communicate to the public**

V. Moral Rights of the Author (Section 57)

Even if the copyright is transferred or assigned, the **author retains moral rights**, which include:

1. **Right to Claim Authorship** – To be recognized as the creator of the work.
2. **Right of Integrity** – To object to any **distortion, mutilation, or modification** of their work that may harm their reputation or honor.

□ *Moral rights continue even after the author's death and can be exercised by their legal representatives.*

□ **VI. Assignment and Transfer of Copyright (Section 18-19)**

Copyright is a **transferable property**. It can be **assigned** (sold or licensed) wholly or partially to others through a **written agreement**.

□ **Key Requirements of a Valid Assignment:**

- **In writing** and signed by the assignor
- Clearly mention:
 - The **rights being assigned**
 - The **duration** of assignment (default = 5 years)
 - The **territory** (default = India)
- **Royalties or consideration** to be paid, if any

□ If duration or territory is not specified in the agreement:

- Duration is assumed to be **5 years**

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- Territory is assumed to be **India**

☐ **VII. Legal Remedies for Copyright Owners**

If someone infringes the copyright (i.e., uses the work without permission), the owner can:

☐ **A. Civil Remedies**

- **Injunction** (order to stop the infringement)
- **Damages or compensation**
- **Seizure and delivery** of infringing copies

☐ **B. Criminal Remedies**

- **Imprisonment** (up to 3 years)
- **Fine** (up to ₹2 lakhs)
- **Seizure of infringing goods**

☐ **VIII. Duration of Copyright (Sections 22–29)**

Type of Work	Duration
Literary, artistic, musical, dramatic works	Lifetime of author + 60 years
Cinematograph films and sound recordings	60 years from publication
Anonymous or pseudonymous works	60 years from publication
Government/public undertakings' works	60 years from publication

The **Copyright Act, 1957** establishes a robust framework to determine **who owns the copyright** in a given work and what rights are granted to the **copyright holder**. While the default position favors the creator, there are **statutory exceptions** where ownership may shift due to employment, commissioning, or government involvement. The **economic and moral rights** granted to copyright holders help to

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protect both their **financial interests** and **creative identity**, promoting innovation and safeguarding intellectual creativity.

Assignment of Copyright

(Under Sections 18, 19 & 19A of the Copyright Act, 1957)

☐ **Introduction**

Assignment of copyright refers to the **transfer of ownership rights** from the original copyright owner (the assignor) to another person or entity (the assignee). This is different from a license, which merely allows someone to use the copyright without transferring ownership.

The **Copyright Act, 1957**, provides a legal framework for the **assignment of rights**, the **procedure to be followed**, and **remedies in case of disputes**.

☐ **I. What is Assignment of Copyright? (Section 18)**

Assignment means **the transfer of one or more rights** (either wholly or partially) by the copyright owner to another person.

☒ **Key Points:**

- The assignee becomes the **legal owner** of the rights assigned.
- Assignment can be for **all or specific rights** (e.g., only reproduction rights, only digital distribution).
- Assignment can be for **a limited period** or **for perpetuity**.
- It must be in **writing** and **signed** by the assignor.

☐ **II. Essentials of a Valid Assignment (Section 19)**

As per **Section 19**, an assignment must include the following essential elements:

1. Written Agreement

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- The assignment **must be in writing**.
- It must be **signed by the assignor** or their authorized agent.

2. Clear Specification of Rights Assigned

- The agreement should specify which **rights** are being assigned (e.g., reproduction, broadcasting, public performance, etc.).

3. Duration of Assignment

- The period for which the rights are assigned must be stated.
- **Default** duration: 5 years, if not specified.

4. Territorial Scope

- The **geographical area** for which the assignment is applicable must be mentioned.
- **Default**: If not specified, it is assumed to be **within India**.

5. Royalty/Consideration

- The agreement should state the **royalty** payable (if any) and other **consideration** for the assignment.

☐ **III. Implied Conditions (Section 19(8))**

Even after assignment, the author retains the **right to claim authorship** of the work unless explicitly waived.

☐ **IV. Dispute Resolution – Revocation of Assignment (Section 19A)**

If there is a **dispute** between the assignor and assignee regarding:

- Compliance with terms,
- Royalty payments, or
- Abuse/misuse of rights,

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Then, either party can apply to the **Copyright Board** (now merged with Intellectual Property Appellate Board).

The Board may:

- Order the assignee to fulfill obligations,
- Revoke the assignment partially or wholly,
- Grant further directions based on the nature of the dispute.

☐ **V. Types of Assignment**

Type	Explanation
Total Assignment	Transfer of all rights in the work
Partial Assignment	Transfer of some specific rights (e.g., only publishing rights)
Exclusive Assignment	Rights transferred to only one assignee , even the assignor cannot use
Non-exclusive Assignment	Rights given to multiple persons , including the assignor

☐ **VI. Format of Assignment Agreement (Sample Clauses)**

1. The Assignor hereby assigns to the Assignee, the following rights in the work titled "XYZ":

- a. Right to reproduce and publish in India.
- b. Right to translate the work into regional languages.

2. The rights are assigned for a period of 10 years from the date of this agreement.

3. The Assignor shall be paid a royalty of ₹25,000 per year.

4. The assignment is valid for the territory of India only.

5. The Assignor retains the moral rights as per Section 57.

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☐ VII. Judicial Interpretation – Case Law

☐ *Pine Labs Pvt Ltd vs Gemalto Terminals India Pvt Ltd* (Delhi HC)

Held that assignment must be **clearly defined**, especially in software-related copyright; mere usage of software doesn't imply assignment.

☐ *Najma Heptulla v. Orient Longman Ltd.*

The court held that **exclusive rights must be explicitly stated** in the assignment deed; ambiguity leads to non-exclusive rights.

☐ VIII. Registration of Assignment (Optional)

While **registration of the assignment** with the Registrar of Copyrights is **not mandatory**, it can:

- Provide **legal backing**,
- Be used as **evidence** in disputes,
- Avoid **conflict of ownership** in the future.

☐ IX. Difference Between Assignment and License

Aspect	Assignment	License
Ownership	Transferred to assignee	Remains with the licensor
Rights	Assignee can act as owner	Licensee can only use as per terms
Registration	Recommended	Usually not necessary
Revocation	Difficult unless specified	Can be revoked per contract



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The **assignment of copyright** is a **crucial legal mechanism** that helps creators **commercialize** their intellectual property. By transferring specific rights through a legally enforceable contract, copyright holders can generate **royalty income** or **outsourcing rights** while retaining other parts of the copyright. However, the assignment must be **clear, written, and legally compliant**, with proper specifications of rights, duration, territory, and consideration to avoid disputes in the future.

☐ **Disputes with Respect to Assignment of Copyright**

(As per Section 19A of the Copyright Act, 1957)

☐ **1. Introduction**

The **assignment of copyright** allows the transfer of rights from a copyright holder (assignor) to another party (assignee) for use, publication, or commercialization. While such arrangements are legally binding, disputes often arise when the terms are **vague, violated, or unfulfilled**.

To address such situations, the Copyright Act, 1957, under **Section 19A**, lays out a **dedicated dispute resolution mechanism** through the **Appellate Board** (formerly the Copyright Board, now under IPAB jurisdiction).

☐ **2. Legal Framework for Dispute Resolution**

☐ **Section 19A – Key Provision**

Section 19A empowers either party in an assignment contract to approach the **Appellate Board** for relief in case of:

- Breach of contract,
- Non-payment of royalties,
- Unfair use of rights,
- Lack of clarity in assignment terms.

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This provides a **statutory right** to seek modification, enforcement, or **revocation** of the assignment.

☐ **3. Types of Disputes in Copyright Assignment**

☐ **A. Non-Compliance with Agreement**

- The assignee does not adhere to terms such as the **scope of use, media, or purpose**.

☐ **B. Non-Payment or Delay in Royalty**

- The assignor is **deprived of rightful income** agreed upon in the assignment deed.

☐ **C. Use Outside Territorial Limits**

- The work is exploited in regions not covered under the agreement (e.g., international streaming when only Indian rights were granted).

☐ **D. Use Beyond Time Period**

- Assignee continues to use the work even after the assignment has expired.

☐ **E. Unauthorized Sub-Assignment**

- The assignee transfers rights to a third party **without consent** of the original copyright owner.

☐ **F. Distortion of Work / Moral Rights Violation**

- The author's **moral rights** are infringed by altering, mutilating, or using the work in a derogatory manner.

☐ **4. Role and Powers of the Appellate Board (Section 19A(2))**

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Under the law, the **Appellate Board** has wide discretionary powers to resolve disputes.

☐ **Remedial Powers of the Board:**

Power	Explanation
✓ Examine Validity	Determine whether the assignment is legally enforceable.
✓ Interpret Terms	Clarify ambiguities and determine the true scope of rights assigned.
✓ Order Fulfilment	Direct the defaulting party to fulfill pending obligations.
✗ Assignment	Revoke the assignment fully or partially in case of severe breach.
<input type="checkbox"/> Fix Royalty	Determine and enforce payment of royalty to the assignor.
<input type="checkbox"/> Fix Duration	Set or adjust the term of assignment if not clearly mentioned.
<input type="checkbox"/> Specify Territory	Clarify or limit the geographical scope of the assignment.

☐ **5. Limitation Period for Filing Dispute**

- A dispute must be raised within **3 years** from the date:
 - The cause of action arises, or
 - The dispute is discovered (e.g., non-payment of royalty or misuse of work).

☐ **6. Procedure to File Complaint Before Appellate Board**

☐ **Step-by-Step Process:**

1. **Prepare Petition:** Draft a written petition mentioning:
 - Nature of dispute

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- Grounds of violation
- Relief sought
- Supporting evidence (assignment deed, communication, invoices)
- 2. **File with Appellate Board:** Submit the petition under Section 19A.
- 3. **Notice to Other Party:** The Board sends notice to the opposite party for their response.
- 4. **Hearing & Evidence:** Parties submit arguments, evidence, and documents.
- 5. **Order by Board:** After hearing, the Board issues an order which may:
 - Revoke assignment,
 - Modify terms,
 - Grant monetary compensation,
 - Direct further compliance.
- 6. **Appeal:** If aggrieved by the Board's decision, an appeal may lie with the **High Court**.

☐ 7. Judicial Precedents (Case Laws)

✓ *Najma Heptulla v. Orient Longman Ltd.*

- Dispute over the rights to publish a book. Court held that assignment terms must be **clear and precise**. Ambiguities favor the original author.

✓ *Eastern Book Company v. D.B. Modak*

- Clarified the **ownership rights** in compilations and stressed the importance of clear contractual terms.

✓ *Caterpillar Inc. v. Jorange*

- The use of copyright beyond the territorial scope was held as **unauthorized** and a **valid ground** for legal action.

☐ 8. Best Practices to Avoid Disputes

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✓Practice

□ Why It Helps

Draft detailed assignment deeds	Prevents ambiguity in rights, duration, and territory
Specify royalty amounts and timelines	Reduces chances of disputes over payments
Include dispute resolution clause	Enables alternate methods (e.g., arbitration)
Register the assignment	Though optional, helps in evidentiary support
Regular royalty tracking/reporting	Maintains transparency

□ 9.

Disputes regarding the **assignment of copyright** can have serious **economic and legal implications** for both the creator and the assignee. Section 19A of the Copyright Act offers a well-defined and legally sound process for addressing such disputes.

A carefully drafted agreement, awareness of legal rights, and access to the Appellate Board's remedies can help creators protect their intellectual property and ensure rightful use and compensation.

Term of Copyright

(As per the Copyright Act, 1957 – Chapter V, Sections 22 to 29)

□ 1. Introduction

The term of copyright refers to the duration for which the creator or the copyright holder enjoys exclusive rights over their original work. After the expiry of this term, the work enters the public domain, where it can be freely used by anyone without needing permission or payment.

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The duration varies depending on the type of work and whether the author is known or anonymous, or created jointly or by government/institutions.

☐ **2. Literary, Dramatic, Musical and Artistic Works (Section 22)**

These works enjoy copyright for:

☐ **Lifetime of the Author + 60 Years**

The 60-year period begins after the end of the year in which the author dies.

☐ **Example:** If an author dies in 2020, the copyright lasts till 31st December 2080.

☐ **3. Joint Authorship**

If a work is created by multiple authors, the term is calculated from the death of the last surviving author.

☐ **Example:** If two authors die in 2015 and 2020, the 60 years will be calculated from 2020.

☐ **4. Anonymous and Pseudonymous Works (Section 23)**

If the author's identity is not disclosed, the copyright lasts:

☐ **60 Years from the Year of First Publication**

However, if the identity becomes known during this period, then the term changes to Life of the Author + 60 Years, starting from the end of the year of death.

☐ **5. Posthumous Works (Section 24)**

For works published after the author's death:

60 Years from the Year of First Publication

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❑ Example: An author dies in 2000, and the work is published in 2010 – copyright lasts till 2070.

❑ **6. Cinematograph Films (Section 26)**

For films (audio-visual content):

60 Years from the Year of First Publication

❑ **7. Sound Recordings (Section 27)**

For music recordings or audio-only works:

60 Years from the Year of First Publication

❑ **8. Government Works (Section 28)**

For works created or published by the government:

60 Years from the Year of First Publication

❑ **9. Public Undertaking Works (Section 28A)**

If the copyright belongs to a public undertaking (e.g., a PSU):

60 Years from the Year of First Publication

❑ **10. International Organizations (Section 29)**

For works created under the direction of international bodies (e.g., UN, WHO):

60 Years from the Year of First Publication

❑ **11. How the 60-Year Term is Calculated**

The term starts from January 1 of the next calendar year after the event (death or publication).

❑ **Example: If a work is published on March 15, 2000, the 60 years are counted from 1st January 2001, ending on 31st December 2060.**

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☐ **12. Copyright Is Important**

Purpose	Explanation
---------	-------------

<input type="checkbox"/> Encourages Creativity	Ensures that creators benefit economically from their work.
--	---

<input type="checkbox"/> Protects Moral Rights	Maintains author's control and integrity of their work.
--	---

<input type="checkbox"/> Public Access After Term	After expiration, works enter the public domain, benefitting society.
---	---

☒ **13. Summary Table**

Type of Work	Term of Copyright
--------------	-------------------

Literary, Musical, Dramatic, Artistic	Life of Author + 60 years
---------------------------------------	---------------------------

Cinematograph Film	60 years from first publication
--------------------	---------------------------------

Sound Recording	60 years from first publication
-----------------	---------------------------------

Anonymous / Pseudonymous Work	60 years from first publication (unless identity known)
-------------------------------	---

Posthumous Work	60 years from first publication
-----------------	---------------------------------

Government Work	60 years from first publication
-----------------	---------------------------------

Public Undertaking Work	60 years from first publication
-------------------------	---------------------------------

International Organisation Work	60 years from first publication
---------------------------------	---------------------------------

☐

The term of copyright balances the creator's rights with public interest. It ensures creators can monetize their efforts, while eventually allowing society to freely access the works once the term ends. It is a key part of ensuring intellectual property protection and cultural dissemination.

☐ **Registration of Copyright**

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(As per Chapter X of the Copyright Act, 1957 and Copyright Rules, 2013)

☐ 1. Introduction

Copyright registration is the process of officially documenting ownership of a creative work with the Copyright Office under the Government of India. Though copyright exists automatically upon the creation of an original work, registration provides legal proof and strengthens the owner's ability to enforce rights in case of infringement.

☐ **Note:** Copyright is not mandatory to own rights, but registration is strongly recommended for legal and commercial purposes.

☐ 2. Statutory Provision

The provisions regarding registration are laid out in:

Section 44 to 50A of the Copyright Act, 1957

Copyright Rules, 2013

The Copyright Office functions under the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry.

☐ 3. Eligible Works for Registration

The following categories of works can be registered:

Type of Work	Examples
<input type="checkbox"/> Literary works	Books, articles, poems, computer programs
<input type="checkbox"/> Dramatic works	Plays, scripts, screenplays
<input type="checkbox"/> Musical works	Songs, notations, compositions
<input type="checkbox"/> Artistic works	Paintings, drawings, logos, designs
<input type="checkbox"/> Cinematograph films	Feature films, short films, documentaries

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☐ Sound recordings Music albums, podcasts, audio files

☐ 4. Procedure for Registration

☐ Step-by-Step Process:

Application Filing

File Form XIV with prescribed fees.

Include details of the applicant, work, category, language, year of creation, etc.

Must be filed separately for each work.

Submission of Work

A copy of the work must be submitted with the application.

Power of Attorney

If filed by an agent, Power of Attorney is required.

Diary Number Issued

Upon submission, a diary number is allotted to the applicant.

Waiting Period (30 Days)

A 30-day period is provided for objections to be raised by any third party.

Examination by Registrar

If no objection is received, the Registrar examines the application.

If an objection is filed, a hearing is scheduled.

Registration Certificate Issued

If everything is in order, the work is entered into the Register of Copyrights, and a registration certificate is issued.

☐ 5. Fee Structure (Indicative)

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Work Type Fee (INR)

Literary / Dramatic / Musical ₹500 per work

Artistic Work ₹500 per work

Cinematograph Film ₹5,000 per work

Sound Recording ₹2,000 per work

Software ₹500 + source code

(Fees may change based on official notification.)

☐ **6. Register of Copyrights (Section 45)**

The Registrar of Copyrights maintains a Register containing the names of authors, titles of works, owners of copyright, and changes in ownership.

It serves as evidence in legal proceedings.

☐ **7. Benefits of Copyright Registration**

☒ **Benefit ☐ Explanation**

☐ **Legal Ownership Provides prima facie evidence of ownership.**

☐ **Protection from Infringement Enables easier litigation and enforcement.**

☐ **Commercial Exploitation Facilitates licensing, royalty agreements, and sale.**

☐ **Public Record Work is entered in a government record.**

☐ **International Recognition Helps in claiming rights under international treaties.**

☐ **8. Related Judicial Case Law**

☐ **Midas Hygiene v. Sudhir Bhatia (2004)**

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The Supreme Court upheld the importance of registration in enforcing intellectual property rights.

- Eastern Book Company v. DB Modak (2008)

Emphasized the evidentiary value of registered copyrights in disputes.

- 9. Duration of Registration

Once granted, the registration lasts for the term of the copyright (e.g., Life of author + 60 years).

No need to renew separately.

- 10. Limitations of Registration

! Limitation □ Explanation

□ Not a Proof of Originality It proves ownership, not necessarily originality.

□ Cannot Prevent Similar Works Other similar works can exist if independently created.

□ Formality Only It is a legal formality, not a substitute for legal action.

- 11. Online Registration Portal

To simplify the process, the Copyright Office has an online portal:

- <https://copyright.gov.in>

Applicants can:

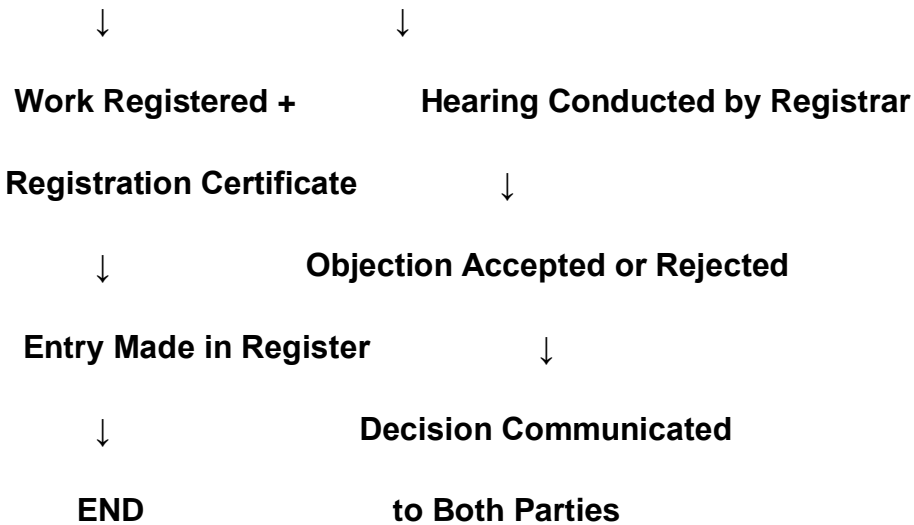
Create login,

Fill online forms,

Pay fees,

Track application status.

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□ **Infringement of Copyright**

(As per Sections 51 to 63 of the Copyright Act, 1957)

□ **1. What is Copyright Infringement?**

Copyright infringement occurs when someone **uses or exploits** a copyrighted work **without the permission** of the copyright owner, and such use **violates the exclusive rights** granted under the Copyright Act, 1957.

These exclusive rights include:

- Reproduction,
- Distribution,
- Public performance,
- Translation,
- Adaptation,
- Broadcasting, etc.

□ **2. Legal Definition (Section 51)**

A person is said to have **infringed copyright** if:

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☐ **(a) Unauthorized Use**

They do any act, which only the copyright owner is authorized to do **without a license or written permission**.

☐ **(b) Enabling Infringement**

They knowingly **permit a place** (like a hall or theater) to be used for an infringing performance.

☐ **(c) Dealing in Infringing Copies**

They **sell, distribute, import, or exhibit** infringing copies for commercial purposes.

☐ *Note:* Making **temporary or personal copies** for private use may be permitted under "fair use" exceptions.

☐ **3. Acts that Constitute Infringement**

Act	Example
Reproducing a book without permission	Photocopying and selling copies of a novel
Uploading a movie online	Sharing a pirated movie on a torrent website
Performing a song publicly without license	Singing copyrighted songs at a concert without license
Making copies of software and selling	Pirating software like MS Office and distributing CDs
Broadcasting a song without license	Radio station playing music without paying royalties

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☐ **4. What is NOT Infringement? (Fair Use - Section 52)**

Certain uses of copyrighted work are **exempted** and do **not constitute infringement**:

- Private use, including research or study
- Criticism or review
- Reporting current events
- Reproduction by teachers for instruction
- Use in judicial proceedings
- Making accessible copies for the disabled

☐ *Example:* A teacher showing a short clip of a movie in class for educational purposes is **not infringement**.

☐ **5. Types of Infringement**

Type	Description
<input type="checkbox"/> Primary	Directly copying, selling, or distributing a work
<input type="checkbox"/> Secondary	Encouraging or enabling others to infringe
<input type="checkbox"/> Digital	Uploading, downloading, streaming pirated content

☐ **6. Remedies for Copyright Infringement (Section 55)**

The copyright owner can approach the **civil or criminal courts** for the following remedies:

☒ **Civil Remedies**

- **Injunction** – Stop the infringing act
- **Damages** – Monetary compensation
- **Accounts of profits** – Share of profits made by the infringer

- Delivery of infringing copies

✓ **Criminal Remedies (Section 63)**

- **Imprisonment** (minimum 6 months to 3 years)
- **Fine** (₹50,000 to ₹2,00,000)
- **Seizure of infringing copies**

□ **7. Case Laws**

□ ***Eastern Book Company v. D.B. Modak (2008)***

Reproduction of judgments by copying formatting and headnotes was held as **partial infringement**.

□ ***R.G. Anand v. Delux Films (1978)***

Merely copying the **idea** is not infringement unless the **expression** is copied.

□ **8. Infringing Copy Defined (Section 2(m))**

An **infringing copy** is a reproduction made or imported **without the permission** of the copyright owner, which would have otherwise violated their rights.

□ **9. Infringement in the Digital Era**

With the rise of the internet and digital platforms, infringement occurs through:

- Torrent downloads
- Unauthorized streaming platforms
- YouTube uploads without license
- Use of pirated software

India's IT Act, 2000, also deals with digital piracy in tandem with copyright laws.

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□ 10. Prevention Measures

- Use of **digital rights management (DRM)**
- **Watermarking** and encryption
- **Licensing agreements**
- Educating the public on **IPR awareness**
- Strict enforcement and monitoring

✓ 11. Summary Table

Aspect	Explanation
Definition	Unauthorized use of a copyrighted work
Key Section	Section 51 of Copyright Act
Civil Remedies	Injunctions, damages, delivery of infringing goods
Criminal Remedies	Jail (6 months – 3 years), fine (₹50k – ₹2L)
Fair Use Exceptions	Education, research, review, reporting, etc.
Digital Infringement	Online piracy, torrents, streaming, software

Copyright infringement undermines the efforts of original creators and artists. It is essential to **respect intellectual property rights** to ensure innovation, creativity, and fair compensation. Legal mechanisms in India offer both **preventive and punitive measures** to deal with infringement effectively.

□ The Patents Act, 1970 – Elaborate Overview

□ 1. Introduction

The **Patents Act, 1970**, is a legislation enacted by the Indian Parliament to provide **legal protection to inventions** and regulate the **grant, use, and enforcement of**

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patent rights in India. It encourages innovation and technological development by granting inventors an **exclusive monopoly** over their creations for a fixed duration.

It came into force on **20 April 1972**, replacing the earlier Indian Patents and Designs Act, 1911. Major **amendments** were made in **1999, 2002, and 2005** to comply with India's obligations under the **TRIPS Agreement (WTO)**.

☐ **2. Objectives of the Act**

- To **encourage scientific research and innovation**.
- To ensure that inventors get a **limited monopoly** over their inventions.
- To make the patented products and technologies **available at reasonable prices**.
- To promote the **working of inventions in India**.
- To strike a balance between **public interest and inventor's rights**.
- To align Indian patent law with **international IPR standards (TRIPS)**.

☐ **3. Important Definitions (Section 2)**

Term	Meaning
Patent	An exclusive right granted for an invention, valid for 20 years.
Invention	A new product or process involving an inventive step and capable of industrial application.
Patentee	A person or entity to whom a patent is granted.
Inventive Step	A feature of an invention that involves technical advancement over existing knowledge.

☒ **4. Criteria for Patentability**

An invention is patentable in India if it fulfills **all three essential criteria**:

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1. **Novelty** – It must be **new** and not disclosed in prior art (any publication or usage worldwide).
2. **Inventive Step** – It must show **non-obviousness** or technical advancement.
3. **Industrial Applicability** – It must be **capable of being used in industry** (agriculture, manufacturing, etc.).

✕5. Non-Patentable Inventions (Section 3 & 4)

Certain inventions are **explicitly excluded** from patent protection in India:

Clause Description

- 3(a) Frivolous or contrary to natural laws (e.g., perpetual motion machine)
- 3(b) Injurious to public health or morality
- 3(c) Mere discovery of a scientific principle
- 3(d) New forms of known substances without enhanced efficacy
- 3(e) Mere admixtures resulting in aggregation of properties
- 3(f) Arrangements or duplication of known devices
- 3(h) Methods of agriculture or horticulture
- 3(i) Medical, surgical, or curative methods
- 3(j) Plants, animals, or biological processes (except microorganisms)
- 4 Inventions related to atomic energy

□ 6. Patent Application Process (with Flow)

Step 1: Filing the Application (Form 1) with complete/ provisional specification (Form 2)

Step 2: Publication of the Application (18 months from filing or earlier on request)

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Step 3: Filing of Request for Examination (Form 18) – within 48 months

Step 4: First Examination Report (FER) issued with objections (if any)

Step 5: Reply to FER and/or hearing

Step 6: Grant of Patent (if accepted)

Step 7: Post-grant publication in Patent Journal

☐ **Types of Applications:**

- **Ordinary:** Filed directly with the Indian Patent Office.
- **Convention:** Claims priority from a patent filed in another country.
- **PCT National Phase:** Filed under the Patent Cooperation Treaty.

☐ **7. Term and Maintenance of Patent**

- Validity: **20 years** from the date of filing.
- Annual renewal fees must be paid from the **3rd year onwards** to maintain the patent.

☐ **8. Rights of Patentee (Section 48)**

- **Exclusive rights** to make, use, sell, offer for sale, and import the invention.
- Right to license, assign, or transfer patent rights.
- Right to **sue for infringement** and claim damages or injunctions.

☐ **9. Licensing and Assignment**

- **Voluntary License:** Granted by the patentee on mutual terms.
- **Compulsory License (Section 84):** Can be issued by the government if:
 - The invention is not **reasonably affordable**.
 - It is **not worked in India**.
 - It is in the **interest of the public**.

☐ *Notable Case:* Natco Pharma v. Bayer Corp – first Indian compulsory license for cancer drug "Nexavar".

□ **10. Revocation of Patent (Section 64)**

Grounds include:

- Invention lacks novelty/inventive step.
- Patent obtained by fraud/misrepresentation.
- Not disclosed or worked properly.
- Public interest is harmed.

□ **11. Infringement and Remedies (Section 104-115)**

What is Infringement?

Use of a patented invention without the permission of the patentee during the term of the patent.

Remedies Available:

- **Injunction** (to stop use)
- **Damages or profits earned by infringer**
- **Seizure/destruction** of infringing goods

Cases are tried in **district courts or high courts**.

□ **12. International Obligations (TRIPS Compliance)**

India, as a **WTO member**, amended its Patent Act to conform to **TRIPS** standards:

- Full product patent protection in all fields (including pharma & agriculture).
- 20-year patent term.
- Introduction of mail-box applications and EMRs (transitional arrangements).
- Stronger enforcement mechanisms.

□ **13. Notable Case Law**

□ ***Novartis AG v. Union of India (2013)***

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- Patent denied to cancer drug "Glivec".
- Supreme Court upheld **Section 3(d)**, stressing **enhanced efficacy** as a condition for patentability.

□ **14. Summary Chart**

Feature	Details
Enactment Year	1970 (effective from 1972)
Administering Authority	CGPDTM – Controller General of Patents, Designs, Trademarks
Term of Patent	20 years
Application Mode	Online via IP India Portal
Non-patentable Items	Plants, animals, algorithms, traditional knowledge
Remedies for Infringement	Injunction, damages, seizure
Key Amendments	1999, 2002, 2005 (TRIPS compliant)

□ **15.**

The **Patents Act, 1970** has evolved into a **modern, globally-aligned legal framework** that protects innovations while maintaining public interest. It encourages **indigenous R&D**, allows **fair competition**, and aligns India with global IPR regimes. By balancing the interests of inventors and society, it plays a crucial role in **India's innovation ecosystem**.

X Inventions Not Patentable Under the Patents Act, 1970

The **Patents Act, 1970** lays down clear restrictions on **what cannot be patented in India**. These limitations are primarily contained in **Section 3 and Section 4** of the Act. They are designed to **protect public interest, morality, environment**, and to **discourage trivial innovations or mere discoveries**.

□ Section 3: What Are Not Inventions

According to Section 3, the following are **not considered inventions** and hence, **not patentable**:

1. Section 3(a): Frivolous Inventions

“An invention which is frivolous or which claims anything obviously contrary to well established natural laws.”

Example: A machine claiming to produce perpetual motion or free energy – which defies laws of thermodynamics.

2. Section 3(b): Inventions Contrary to Public Order or Morality

“An invention whose primary or intended use or commercial exploitation could be contrary to public order or morality, or which causes serious prejudice to human, animal or plant life or health or to the environment.”

Example: A device for cloning humans or biological weapons.

3. Section 3(c): Mere Discovery

“The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature.”

Example: Discovering a new microorganism or a DNA sequence found in nature.

4. Section 3(d): New Forms of Known Substances

“The mere discovery of a new form of a known substance which does not result in enhancement of the known efficacy of that substance.”

This clause prevents “**evergreening**” of patents in pharmaceuticals.

Example: A new crystalline form of a known drug without better therapeutic effect.

Landmark Case: *Novartis AG v. Union of India (2013)* – Supreme Court denied a patent for Glivec, a cancer drug, as it was only a modified version of a known substance without increased efficacy.

5. Section 3(e): Mere Admixture

“A substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substances.”

Example: Mixing two known chemicals without any synergistic effect.

6. Section 3(f): Rearrangement or Duplication

“The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way.”

Example: A fan with an attached light, functioning independently.

7. Section 3(h): Methods of Agriculture or Horticulture

“A method of agriculture or horticulture.”

Example: A new method of growing paddy or a technique of grafting.

8. Section 3(i): Medical or Surgical Methods

“Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or animals.”

Note: **Medical devices** may be patentable, but **methods of treatment** are not.

9. Section 3(j): Plants and Animals

“Plants and animals in whole or any part thereof other than microorganisms, but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals.”

Note: Only **microorganisms** are patentable, not plants, seeds, or animals.

10. Section 3(k): Mathematical or Business Methods & Algorithms

“A mathematical or business method or a computer program per se or algorithms.”

Example: A software code or a banking method alone cannot be patented.

☐ *Note:* Some **embedded software**, when linked to a hardware invention, may be considered patentable.

11. Section 3(l): Literary, Dramatic, Musical or Artistic Works

“A literary, dramatic, musical or artistic work or any other aesthetic creation including cinematographic works and television productions.”

These are protected under the **Copyright Act, 1957**, not the Patents Act.

12. Section 3(m): Mere Scheme or Rule or Method

“A mere scheme or rule or method of performing mental act or method of playing a game.”

Example: A new card game or board game rule.

13. Section 3(n): Presentation of Information

“A mere presentation of information.”

Example: Charts, diagrams, or display formats.

14. Section 3(o): Topography of Integrated Circuits

“Topography of integrated circuits.”

These are protected under **semiconductor layout design laws**, not patent law.

15. Section 3(p): Traditional Knowledge

“An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known components.”

Example: Use of turmeric or neem for healing – already known and documented.

☐ **Section 4: Inventions Relating to Atomic Energy**

“No patent shall be granted in respect of an invention relating to atomic energy.”

These are barred from patent protection under the **Atomic Energy Act, 1962**, for **national interest and security** reasons.

☐ **Summary Table: Non-Patentable Inventions**

Section Not Patentable If...	Example
3(a) Frivolous or violates natural laws	Perpetual motion machine
3(b) Against morality/public health	Human cloning device
3(c) Mere discovery	DNA structure found in nature
3(d) No enhanced efficacy	Modified known drug
3(e) Mere admixture	Salt + sugar mixture
3(f) Simple rearrangement	Pen with torch

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Section Not Patentable If...	Example
3(h) Agricultural/horticultural method	Technique to grow tomatoes
3(i) Medical/surgical methods	Method to treat diabetes
3(j) Plants and animals	Genetically modified rice
3(k) Software/business methods	Loan processing software
3(l) Artistic/literary works	Music compositions
3(m) Game rules or schemes	New chess strategy
3(n) Presentation of information	Graphs or dashboards
3(o) Integrated circuit layout	Chip design
3(p) Traditional knowledge	Use of neem as pesticide
Atomic energy related inventions	Nuclear fusion reactor design

The **non-patentable inventions** listed under **Section 3 and 4** act as **gatekeepers** to ensure that patents are granted only to **genuine, novel, and socially acceptable inventions**. These exclusions safeguard:

- **Public health**
- **Environmental integrity**
- **Moral values**
- **Prevent monopolization of traditional and natural knowledge**

They are vital for **balancing innovation with public good**.

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☐ **Applications for Patents –**

Under the **Patents Act, 1970 (as amended)**, an individual or legal entity seeking a patent must file a **patent application** with the appropriate authority, primarily the **Indian Patent Office (IPO)**. The process is governed by the **Patents Act, 1970** and the **Patent Rules, 2003** (as amended).

☒ **Who Can Apply for a Patent?**

As per **Section 6** of the Patents Act, the following persons can apply for a patent:

1. **True and First Inventor** (not the one to whom it was first communicated).
2. **Assignee** of the inventor (e.g., employer, company).
3. **Legal Representative** of a deceased inventor.

☐ **Types of Patent Applications**

Type of Application	Description
1. Ordinary Application	Filed when there are no prior applications (priority claim).
2. Convention Application	Filed if priority is claimed from a foreign application filed in a convention country. Must be filed within 12 months .
3. PCT National Phase Application	Filed in India after filing under the Patent Cooperation Treaty (PCT) .
4. Divisional Application	Arises when the main application contains more than one invention.
5. Patent of Addition	For improvements or modifications of the already patented invention.

☐ **Contents of a Patent Application**

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A patent application must include the following:

1. **Form 1** – Application for grant of patent.
2. **Form 2** – Provisional or complete specification.
3. **Form 3** – Statement and undertaking regarding foreign applications.
4. **Form 5** – Declaration of inventorship.
5. **Form 18/18A** – Request for examination/expedited examination.
6. **Drawings/Diagrams** – If applicable.
7. **Abstract** – Brief summary of invention.
8. **Fee Payment** – Based on entity type (individual/startup/small entity/large entity).

☐ **Provisional vs. Complete Specification**

Feature	Provisional Specification	Complete Specification
Purpose	To secure an early filing date	To fully describe the invention
Content	Brief description	Detailed description + claims
Time for Completion	12 months to file complete spec	Must be filed at the time (if provisional not used)
Claims	Not included	Must include detailed claims

☐ **Procedure for Filing a Patent Application**

1. Patent Search (Optional but Recommended)

- Conducted to check the **novelty and originality** of the invention.
- Can be done via **Indian Patent Advanced Search System (InPASS)** or WIPO databases.

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2. Drafting the Specification

- Prepare **provisional** or **complete** specification.
- Include description, working example, and **claims** (very critical).

3. Filing the Application

- Submit online or in-person at the relevant Patent Office (Mumbai, Chennai, Delhi, Kolkata).
- Upload required forms and documents.

4. Publication

- Application is **published after 18 months** from filing date or priority date (can request early publication via **Form 9**).

5. Examination

- Request for examination via **Form 18** must be made within **48 months**.
- Application is examined for **novelty, inventive step, and industrial applicability**.

6. First Examination Report (FER)

- Controller issues **FER** mentioning objections, if any.
- Applicant must respond within **6 months** (extendable by 3 months).

7. Grant of Patent

- If all objections are resolved, the patent is granted and published in the Patent Journal.

☐ **Timeline Overview**

Step	Time Limit
-------------	-------------------

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Step	Time Limit
Filing of Provisional Spec Optional (start point)	
Filing Complete Spec	Within 12 months of provisional
Publication	18 months from filing
Request for Examination	Within 48 months of priority date
Response to FER	6 months + 3 months (extension)
Grant of Patent	After acceptance of application

☐ **Fee Structure (Indicative)**

Applicant Type Filing Fee (Form 1 + Form 2)

Individual/Startup ₹1,600

Small Entity ₹4,000

Large Entity ₹8,000

Additional fees apply for examination, extra pages, or extra claims.

☐ **Jurisdiction of Indian Patent Offices**

There are four patent offices in India. Jurisdiction depends on:

- Residence/business location of the applicant
- Location of origin of invention

Office	Location	Jurisdiction
--------	----------	--------------

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Office	Location	Jurisdiction
Kolkata	Head Office	Eastern States
Chennai	Regional Office	Southern States
New Delhi	Regional Office	Northern States
Mumbai	Regional Office	Western States

Filing a patent application in India is a **systematic legal process** involving multiple stages such as **drafting, filing, examination, and grant**. Ensuring accurate and well-drafted specifications and **compliance with legal requirements** increases the chances of obtaining a **valid, enforceable patent**.

Publication and Examination of Patent Applications in India

Once a patent application is filed with the Indian Patent Office, it undergoes **two important post-filing stages**:

1. **Publication of the application**
2. **Examination of the application**

These stages are crucial to determine **novelty, patentability, and compliance with legal standards**.

☐ 1. **Publication of Patent Application**

☐ **Legal Basis: Section 11A of the Patents Act, 1970**

☐ **When is the Application Published?**

- Every patent application is published **automatically** after **18 months** from:
 - The **date of filing**, or
 - The **priority date**, whichever is earlier.

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☐ **Early Publication (Optional)**

- The applicant can request **early publication** by filing **Form 9** with a prescribed fee.
- If accepted, the application is published **within 1 month** from the date of request.

☒ **Effects of Publication**

- After publication, the **applicant gets rights** similar to those of a patentee (e.g., right to sue for infringement), but **enforceable only after the patent is granted**.
- It allows the **public, researchers, and competitors** to review the invention.

☒ **Non-Publication Cases**

An application **will not be published** if:

- It is **withdrawn** within 15 months of filing/priority date.
- The invention **relates to defense or atomic energy** and is ordered to be kept confidential (under Sections 35–37).

☐ **2. Examination of Patent Application**

☐ **Legal Basis: Section 11B and Rule 24B of the Patents Rules, 2003**

☒ **Request for Examination (RFE)**

- A patent application is **not examined automatically**.
- The applicant must file a **Request for Examination (RFE)** using **Form 18**.
- The request must be filed **within 48 months** from the **filing date or priority date**, whichever is earlier.

☐ **Expedited Examination (Form 18A) is available for:**

- Startups

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- Applicants selecting India as the International Searching Authority (ISA) or International Preliminary Examining Authority (IPEA)
- Female applicants
- Government agencies and others as notified

□ Steps in the Examination Process

1. Allocation to Examiner

- The application is assigned to a **Patent Examiner** by the Controller of Patents.

2. Search and Review

- The examiner conducts a **thorough search** to assess:
 - **Novelty** (newness)
 - **Inventive Step** (non-obviousness)
 - **Industrial Applicability**
 - **Sufficiency of disclosure**
 - Patentability under **Sections 3 & 4**.

3. First Examination Report (FER)

- The examiner prepares and issues the **First Examination Report (FER)**, which includes:
 - **Objections**, if any
 - **Suggestions** for compliance
 - **Clarification requirements**
- The FER is usually issued **within 1–2 years** from the date of RFE.

4. Response to FER

- The applicant must respond to the FER **within 6 months**, extendable by **3 months**.
- If objections are satisfactorily resolved:

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- The application proceeds to **grant**.
- If objections are not resolved:
 - The application is **rejected** or may proceed to **hearing**.

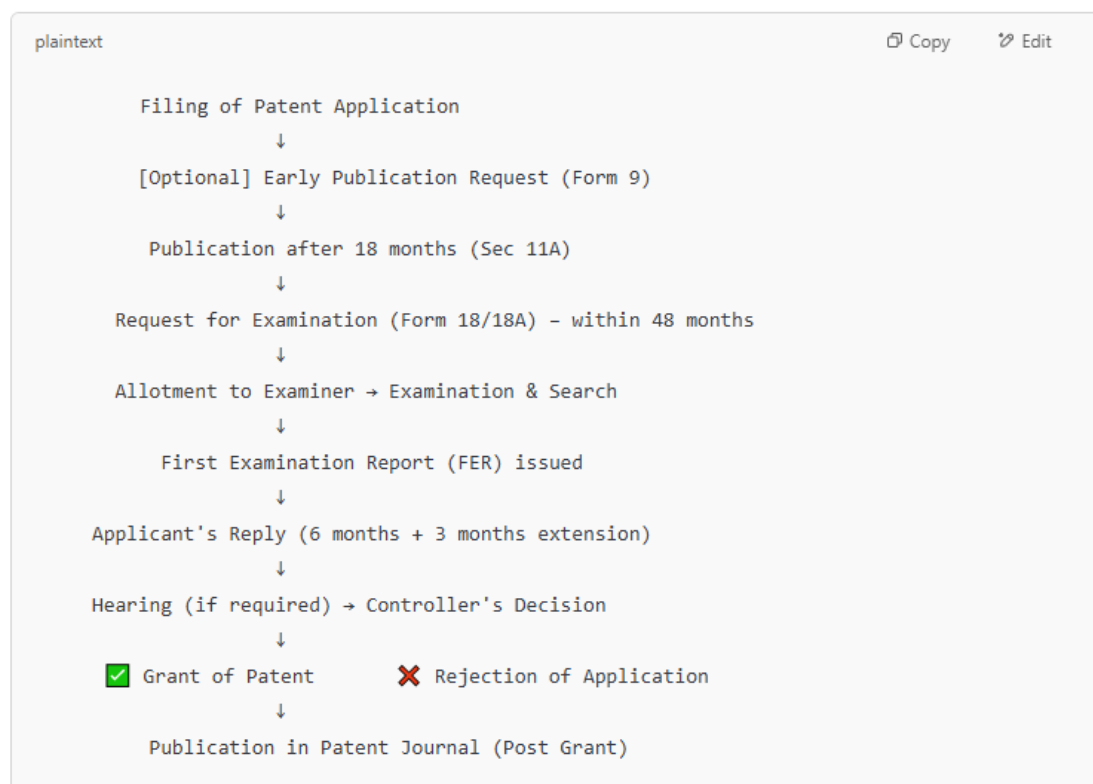
5. Hearing (if required)

- If the Controller is not satisfied with the response, a **hearing** may be offered before final decision.

6. Grant or Refusal

- Upon compliance with all formalities and requirements:
 - The patent is **granted and published** in the **Patent Journal**.
 - The **date of grant** is recorded in the register.

□ Flowchart: Publication and Examination Process



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☐ **Key Notes & Takeaways**

Aspect	Details
Publication Timeline	18 months from filing/priority date
Early Publication	Optional via Form 9
Request for Examination	Form 18 (within 48 months)
FER Response Deadline	6 months (extendable by 3 months)
Rights After Publication	Provisional protection begins (but enforceable after grant)

The **publication and examination** process ensures that the patent system remains **transparent, efficient, and legally sound**. It provides **protection to innovators**, allows **public scrutiny**, and maintains **quality and originality** in the granted patents.

☒ **Grant of Patents and Rights Conferred in India**

The **grant of a patent** marks the final stage in the patent prosecution process and formally confers exclusive legal rights to the inventor or applicant. It transforms a mere application into a **legally enforceable right**.

☐ **Legal Basis**

- **Section 43** of the **Patents Act, 1970** deals with the **grant of patents**.
- **Sections 47–53** define the **scope, extent, and limitations** of the rights conferred by a granted patent.

☐ **1. Conditions for Grant of a Patent**

A patent is granted **only after**:

1. The applicant has filed **complete specifications**.
2. A **Request for Examination (RFE)** has been made.

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3. The patent application has been **examined**.
4. All **objections in the First Examination Report (FER)** are resolved.
5. The Controller of Patents is **satisfied** that the invention:
 - Is **new** (novel)
 - Involves an **inventive step**
 - Is **industrially applicable**
 - Is **not excluded** under Sections 3 or 4
6. ☐ **2. Grant of Patent – Process**
7. ☐ **Step-by-Step Flow:**



- The **patent is recorded** in the Register of Patents.
- A **certificate of grant** is issued by the **Indian Patent Office**.
- The granted patent is then **published** in the **Patent Journal**.

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□ **3. Rights Conferred to the Patentee**

Once a patent is granted, the patentee gets **exclusive rights** to:

Right	Description
Right to Prevent Others	From making, using, selling, offering for sale, or importing the patented invention without consent.
Right to Exploit Commercially	The patent holder can produce and sell the invention in the market.
Right to License or Assign	The patent can be licensed to third parties or assigned (sold/transferred).
Right to Sue for Infringement	The patentee can initiate legal action against infringers in District Court or High Court .
Right to Royalty	If licensed, the patentee receives royalty payments .

□ **4. Term and Maintenance of Patent**

Aspect	Detail
Term	20 years from the filing date (for both ordinary and PCT applications)
Maintenance	An annual renewal fee must be paid from the 3rd year onwards till expiry.
Lapse	If fees are not paid, the patent lapses , but can be restored within 18 months under certain conditions.

□ **5. Limitations on Rights (Section 47)**

Certain conditions limit the exclusive rights granted:

1. **Government Use** – The invention may be used by the **government** for its own use without the consent of the patentee.
2. **Research Use** – Any person can use the invention for **experimental or research purposes**.

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3. **Medicine & Drugs** – Patents granted for medicines can be **imported by the government** for distribution in public health programs.
4. **Compulsory Licensing** – After 3 years, patents may be subjected to compulsory licensing if:
- Reasonable public requirements are not met,
 - The invention is not available at a reasonable price, or
 - The invention is not worked in India.

□ **6. Post-Grant Obligations**

Obligation	Detail
Form 27	Statement of working of patent in India (to be submitted annually).
Renewal Fee	Must be paid annually to keep the patent in force.
Disclosure of Any license/assignment	must be reported to the Controller within prescribed time.
Licensing	

□ **Comparison: Pre-grant vs. Post-grant Status**

Feature	Before Grant	After Grant
Legal Rights	No enforceable legal rights	Full legal enforceability
Right to Sue	Not available	Available
Licensing/Assignment	Possible but not fully binding	Legally recognized and enforceable
Public Rights	Only publication gives provisional rights	Full rights commence

□

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The **grant of a patent** is a **critical milestone** that provides the patentee with the **exclusive monopoly** over their invention for **20 years**, subject to certain conditions and exceptions. This legal recognition not only protects innovation but also facilitates **commercial exploitation, licensing, and technology transfer**.

Register of Patents

The **Register of Patents** is an official public document maintained by the **Controller General of Patents, Designs and Trade Marks (CGPDTM)** under the **Patents Act, 1970**. It serves as the **primary legal record** of all patent-related matters in India.

☐ **Legal Provision:**

- **Section 67** of the **Patents Act, 1970** mandates the **maintenance of the Register of Patents**.
- The Register is maintained in **electronic format** as per current practice, but it can also exist in written form.

☐ **Contents of the Register of Patents**

The Register contains the following details:

☐ **Entry Type**

☐ **Description**

Patent Number

Unique number assigned upon grant

Title of the Invention

The subject/title of the patent

Date of Application

Date when the application was filed

Date of Grant

The date on which the patent was granted

Name and Address of Patentee(s) Full details of the owner(s)

Name and Address of Inventor(s) Details of the original inventors (if different)

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<input type="checkbox"/> Entry Type	<input type="checkbox"/> Description
Classification of Invention	Scientific/technical classification
Address for Service in India	For legal communications
Assignments & Licenses	Any changes in ownership or licensing agreements
Renewal Fee Details	Annual fee payments and due dates
Working of Patent (Form 27)	Declaration of commercial exploitation in India
Legal Proceedings	Information on court disputes, revocation, or opposition
Surrender, Revocation, or Invalidation	Notes on expiry, lapse, or revocation of the patent

☐ **Who Maintains It?**

- The Register is maintained by the **Indian Patent Office**, under the **Controller of Patents**.

☐ **Public Accessibility**

- The **Register of Patents is open to the public** for inspection.
- Any person can:
 - **Inspect** the Register (on request and payment of a fee).
 - **Obtain certified copies** of entries from the Register.

Online

assess:

☐ <https://ipindiaservices.gov.in/PublicSearch>

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☐ **Amendments in the Register**

The Register is **not static**. It may be **updated or amended** in the following cases:

- Change in **ownership** (assignment, transfer)
- Addition of a **licensee**
- Record of **court orders** or **revocation**
- Record of **change in name/address** of patentee or agent

Application for correction can be made by filing **Form 16**.

☐ **Evidentiary Value of the Register**

- Under **Section 72**, entries in the Register are **prima facie evidence** in legal proceedings.
- Certified copies of entries can be submitted in **court as evidence**.

☐ **Importance of the Register of Patents**

1. ✓ **Proof of Ownership** – Establishes legal title to a patent.
2. ☐ **Transparency** – Allows public scrutiny of inventions and their status.
3. ☐ **Legal Enforcement** – Helps in identifying rightful owners in infringement cases.
4. ☐ **Licensing/Commercialization** – Facilitates transfer or licensing by publicly documenting ownership.
5. ☐ **Renewal Monitoring** – Ensures the patentee keeps track of annual fee payments.

☐ **Sample View of Patent Register Entry**

Field	Sample Entry
Patent No.	412345
Title of Invention	Solar-Powered Water Purifier

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Field	Sample Entry
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Application Date	15-June-2020
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Date of Grant	10-Jan-2023
---------------	-------------

Name of Patentee	ABC Pvt Ltd
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Name of Inventor	Dr. S. Rajan
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Status	Active
--------	--------

Renewal Paid Up To Year 5

The **Register of Patents** is a **critical public document** under Indian patent law. It offers **transparency, accountability, and enforceability** of patent rights and plays a vital role in the **legal protection and commercial utilization** of inventions.

Register of Patents

The **Register of Patents** is the official legal record of all granted patents in India. It is maintained by the **Patent Office** under the supervision of the **Controller General of Patents, Designs and Trade Marks (CGPDTM)**. This register serves as a centralized repository of key information about patents and is crucial for ensuring **transparency, legal clarity, and public access** to patent-related data.

☐ Legal Provision

- **Section 67** of the **Patents Act, 1970** deals with the **maintenance of the Register of Patents**.
- The **Register is maintained in both physical and electronic formats** and is kept at the Patent Office.

☐ Contents of the Register of Patents

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The Register includes the following **comprehensive details** for each patent:

Entry Type	Description
Patent Number	Unique identification number of the granted patent
Date of Application	When the patent application was filed
Date of Grant	When the patent was officially granted
Title of Invention	Name or subject of the invention
Name & Address of Patentee	Current holder(s) of the patent rights
Name of Inventor(s)	Original inventor(s), even if not the patentee
Classification of Invention	Technical classification per international standards
Address for Service in India	Address for receiving legal notices
Assignment and Licensing Info	Details of any transfer or licensing of patent rights
Renewal Payment Details	Status of annual maintenance fee payments
Statements under Form 27	Working of the patent in India (mandatory annually)
Legal Disputes or Revocations	Information on court orders, disputes, or revocation actions
Surrender or Expiry	Notes on voluntary surrender, lapsing, or expiry of patents

☐ **Who Maintains It?**

The Register is maintained by the **Patent Office**, specifically under the oversight of the **Controller of Patents**. The office is part of the **Office of the Controller General**

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of Patents, Designs & Trade Marks, which functions under the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India.

☐ **Public Access and Inspection**

- The Register is a **public document** and is **open for inspection** upon request and payment of prescribed fees.
- The **online version** can be accessed freely through the **IP India website**:
 - ☐ <https://ipindiaservices.gov.in/PublicSearch>
- Anyone can:
 - **Search for patents** using keywords, inventor name, application number, or classification.
 - **Download public information.**
 - **Request certified copies** of entries or documents.

☐ **Updates & Amendments in the Register**

The entries in the Register can be **amended** or **corrected** to reflect current legal status. Typical updates include:

Update Type	Description
Assignment	When a patent is transferred (assigned) to another party
Licensing	Entry of exclusive or non-exclusive license
Change in Name or Address	Patentee or legal representative updates their contact details
Court Orders	Entries regarding court decisions, injunctions, or revocation

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Update Type	Description
Surrender of Patent	Voluntary relinquishment by the patentee
Restoration after Lapse	If a lapsed patent is restored due to non-payment of fees

☐ **Form 16** is used to request **correction or modification** of entries.

☐ **Evidentiary Value of the Register**

- As per **Section 72** of the Act:

"The entries in the Register of Patents shall be prima facie evidence of the matters contained therein."

- This means it has **legal standing in courts**. A **certified copy** of an entry can be used as evidence in **litigation, licensing disputes, or infringement cases**.

☐ **Importance of the Register of Patents**

Purpose	Relevance
Legal Proof	Establishes ownership and title to a patent
Public Notice	Notifies the public of existing patent rights and limitations
Facilitates Licensing	Potential licensees or buyers can verify ownership
Dispute Resolution	Crucial in infringement suits and revocation proceedings
Regulatory Transparency	Helps governments and corporations monitor technological trends



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☐ **Sample View of Register Entry**

Field	Example
Patent Number	IN345612
Title of Invention	AI-Enabled Agricultural Drone
Applicant	GreenTech Solutions Pvt. Ltd.
Inventor(s)	Dr. Priya Menon & Team
Filing Date	15-April-2021
Date of Grant	28-January-2023
Renewal Paid Till	5th Year
Assignment	Assigned to AgriFuture Ltd. in 2024
Legal Status	Active

☐ **Flowchart: Maintenance of Patent in Register**

plaintext

 Copy  Edit

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↓ Patent Granted
↓ Details Entered in Register of Patents (Section 67)
↓ Annual Renewal → Updated in Register
↓ Assignment / Licensing → Record Changes via Form 16
↓ Working of Patent (Form 27) → Filed Annually
↓ Court Orders / Disputes → Noted in Register
↓ Patent Lapse or Revocation → Updated in Register
```



The **Register of Patents** is a vital tool that provides legal clarity, public transparency, and protection to both patent holders and the public. It is an indispensable part of the Indian patent system, helping enforce intellectual property rights while facilitating innovation, licensing, and commercialization.

☐ **Trade Marks Act, 1999 –**

The **Trade Marks Act, 1999** is the primary legislation that governs trademarks in India. It provides for **registration, protection, and legal remedies** for infringement of trademarks, and ensures that the **goodwill associated with a brand or logo is legally safeguarded**.

☐ **Objective of the Act**

The key objectives of the **Trade Marks Act, 1999** are:

1. ✓ To **provide protection** to trademarks used in trade and commerce.
2. ☐ To **facilitate the registration** of trademarks for goods and services.
3. ☐ To **prevent fraudulent use or infringement** of registered trademarks.
4. ☐ To help **consumers identify and distinguish** goods or services based on their brand origin.
5. ☐ To align Indian law with **TRIPS Agreement** under WTO obligations.

☐ **Definition of Trade Mark (Section 2(1)(zb))**

A **trade mark** means:

“A mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others.”

This includes:

- Words

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- Names
- Letters
- Numerals
- Shapes
- Logos
- Colors
- Slogans
- Sound marks (e.g., jingle tones)
- Packaging or combinations thereof

☐ **Types of Trademarks**

Type of Mark	Description
Product Mark	Applied to goods (e.g., Nike shoes)
Service Mark	Applied to services (e.g., Uber, Airtel)
Collective Mark	Used by a group/association (e.g., CA for Chartered Accountants)
Certification Mark	Indicates product meets standards (e.g., ISI, Agmark)
Well-Known Mark	Recognized by a large section of the public (e.g., Coca-Cola)
Trade Dress	Includes packaging, color combination, etc.

☐ **Registration of Trade Marks**

☐ **Procedure:**

1. **Search** – Conduct a trademark search to ensure the mark is unique.
2. **Application** – File TM-A with the Trademark Registry (online or offline).

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3. **Examination** – The Registrar examines the application.
4. **Objection (if any)** – Registrar may raise objections (Section 9 or 11).
5. **Publication** – Trademark is published in the **Trademark Journal**.
6. **Opposition** – Any third party can oppose registration within 4 months.
7. **Hearing (if opposed)** – The parties may be called for a hearing.
8. **Registration** – If no opposition or opposition fails, registration is granted.
9. **Certificate** – A Registration Certificate is issued.

☐ **Validity:** 10 years (renewable indefinitely every 10 years).

☐ **Rights of a Registered Proprietor**

Once a trademark is registered, the owner has:

- **Exclusive right** to use the mark in relation to specified goods/services.
- **Right to sue** for infringement.
- **Right to license/assign** the trademark.
- **Right to stop misuse**, counterfeiting or unauthorized use.
- **Right to use ® symbol** (indicating registration).

☐ **Infringement and Remedies**

☐ **Infringement Includes:**

- Using an identical or deceptively similar mark.
- Using a mark in a way that causes confusion or misleads consumers.
- Dilution or unfair advantage from a well-known mark.

☐ **Legal Remedies:**

- **Injunction** (restraining order).
- **Damages or accounts of profits**.
- **Delivery/destruction** of infringing goods.
- **Criminal prosecution** (in some cases).

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□ **Marks That Cannot Be Registered (Section 9 & 11)**

- Generic or descriptive terms.
- Marks that hurt religious sentiments.
- Scandalous or obscene marks.
- Deceptive or confusing marks.
- Identical or similar marks already registered.
- Government emblems, flags, etc.

□ **Authorities under the Act**

1. **Registrar of Trade Marks** – The key authority responsible for registration.
2. **Trademark Registry** – Located in Mumbai, Delhi, Kolkata, Chennai, and Ahmedabad.
3. **Intellectual Property Appellate Board (IPAB)** – [Now merged with High Court IP benches]
4. **High Courts** – For appeals and enforcement.

□ **Assignment and Licensing of Trade Marks**

- A trademark can be **assigned** (with or without goodwill) or **licensed** to third parties.
- The assignment must be **recorded with the Registrar** for legal enforceability.

□ **Important Sections at a Glance**

Section Provision

Sec. 2 Definitions

Sec. 9 Absolute grounds for refusal

Sec. 11 Relative grounds for refusal

Sec. 18 Application for registration

Section Provision

Sec. 28 Rights conferred by registration

Sec. 29 Infringement of registered trademark

Sec. 30 Limits to trademark rights

Sec. 39 Assignment and transmission

Sec. 47 Removal on grounds of non-use

Sec. 57 Rectification of register

The **Trade Marks Act, 1999** plays a crucial role in protecting brand identity and consumer trust. By offering a **legal framework for the registration and enforcement** of trademarks, it encourages fair competition, protects creativity, and enables businesses to grow by safeguarding their intangible assets.

✓ Conditions for Registration of a Trademark (Under the Trade Marks Act, 1999)

To be eligible for registration, a trademark must satisfy **certain legal and procedural conditions**. These conditions are broadly classified into:

1. **Substantive Conditions** – Relating to the nature and characteristics of the trademark.
2. **Procedural Conditions** – Relating to the filing and processing of the application.

□ I. Substantive Conditions for Registration

These are the **core legal requirements** laid out under **Sections 9 and 11** of the Act:

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□ **1. Distinctiveness (Section 9(1)(a))**

- The trademark **must be capable of distinguishing** the goods/services of one person from those of others.
- This can be **inherent** (e.g., invented words like “Kodak”) or acquired through **use** over time.

✓ **Example:** “Zomato” for food delivery — invented word with inherent distinctiveness.

□ **2. Graphical Representation**

- The trademark **must be capable of being represented graphically** in the application.
- This ensures the mark is identifiable and recordable in the trademark register.

✓ This includes words, logos, shapes, color combinations, sound marks (with musical notation), etc.

□ **3. Non-descriptive & Not Generic (Section 9(1)(b) & (c))**

- The mark **must not describe the kind, quality, quantity, intended purpose, or geographical origin** of the goods/services.
- Common/generic terms are **not eligible** unless they have acquired distinctiveness.

✗ Example: “Sweet” for chocolates is descriptive and cannot be registered.

□ **4. Not Deceptive or Confusing (Section 11)**

- The mark **must not be identical or deceptively similar** to an earlier registered trademark.

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- It must **not cause confusion** among the public.

✗ Example: “Pums” for shoes could be refused due to similarity with “Puma”.

□ **5. Not Contrary to Law or Morality (Section 9(2))**

- Marks that are **scandalous, obscene, offensive, or contrary to public morality or order** are not registrable.

✗ Any mark with vulgar language or offensive religious references.

□ **6. Not Prohibited by Emblems Act (Section 9(2)(d))**

- The mark must not contain **government symbols, national flags, or official emblems** protected under the **Emblems and Names (Prevention of Improper Use) Act, 1950**.

□ **7. Not Likely to Hurt Religious Sentiments (Section 9(2)(b))**

- A mark that may **offend the religious beliefs** of any class or section of citizens is not allowed.

✗ Example: Religious deities’ names used in alcohol branding.

□ **8. Not Functional in Nature**

- A functional feature (like shape of a product required for technical purpose) is **not registrable**.

✗ The shape of a bottle that’s essential for its use cannot be trademarked.

Procedural Conditions for Registration

Besides legal conditions, the following **procedural steps and requirements** must be fulfilled:

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□ **1. Application Filing (Section 18)**

- An application must be filed with the **Trademark Registry** using **Form TM-A**.
- It should contain:
 - Trademark representation.
 - Class of goods/services.
 - Applicant's name & address.
 - Power of attorney (if agent files it).

□ **2. Classification of Goods & Services**

- The trademark must be filed under the **correct class** (as per **Nice Classification** – 45 classes total).
- Each class covers a specific category of goods or services.

□ **3. Examination & Reply to Objection**

- The Registrar examines the mark for compliance with Sections 9 & 11.
- If objections are raised, the applicant must **respond within 30 days**.

□ **4. Publication in the Trademark Journal**

- If the Registrar accepts the application, it is **published for opposition** in the official journal.
- Third parties can **oppose registration within 4 months**.

□ **5. Hearing and Final Decision**

- If opposed, both parties may be called for a hearing before a decision is made.

□ **6. Grant and Certificate of Registration**

- If no opposition (or opposition fails), the trademark is **registered**, and a **certificate is issued** under the seal of the Registrar.

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☐ **Validity and Renewal**

- ✓ Valid for **10 years** from the date of application.
- ☐ Can be **renewed indefinitely** every 10 years by paying prescribed fees.

☐ **Summary Chart – Conditions for Registration**

Category	Condition
-----------------	------------------

Legal	Distinctiveness (inherent or acquired)
-------	--

Legal	Non-deceptive / Non-confusing
-------	-------------------------------

Legal	Not offensive, scandalous, or immoral
-------	---------------------------------------

Legal	Not prohibited under other laws
-------	---------------------------------

Legal	Capable of graphical representation
-------	-------------------------------------

Procedural Correct classification (Nice)

Procedural Timely response to objections

Procedural Publication and no successful opposition

Procedural Application filed in Form TM-A with required details

TRADEMARK REGISTRATION UNDER THE TRADE MARKS ACT, 1999: PROCEDURE & DURATION

☐ **Introduction**

A **trademark** is a recognizable sign, design, expression, or symbol that distinguishes the products or services of a particular source from those of others. In India, trademark registration is governed by the **Trade Marks Act, 1999** and administered

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by the **Office of the Controller General of Patents, Designs & Trade Marks** under the Ministry of Commerce and Industry.

The purpose of registering a trademark is to grant the owner **exclusive rights** over the use of the mark and prevent unauthorized usage by others. Trademark registration also plays a crucial role in branding, business identity, and consumer trust.

□ **PROCEDURE FOR REGISTRATION OF A TRADEMARK**

1. Preliminary Step: Trademark Search (Not Mandatory but Advised)

Before filing an application, it is advisable to perform a **preliminary trademark search** to ensure that the proposed mark is not already registered or similar to existing marks. This avoids possible legal disputes or rejection during the registration process.

- The search can be conducted online at: <https://ipindia.gov.in>
- The classification of goods and services follows the **Nice Classification** (internationally accepted).

2. Filing of Trademark Application [Section 18 of the Act]

The process begins with the filing of an application for registration with the **Trademark Registry**.

✓ **Who Can Apply:**

- Individuals
- Companies
- Partnerships
- Trusts or Associations

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✓Application Form:

- **Form TM-A**

✓Mode of Filing:

- **Online** through the [IP India website](https://ipindia.gov.in)
- **Offline** at one of the five Trademark Registry offices located in Mumbai, Delhi, Kolkata, Chennai, and Ahmedabad.

✓Details Required:

- Name and address of the applicant
- Representation of the trademark (word/logo/device/label, etc.)
- Class of goods or services
- Date of first use of the trademark (if any)
- Description of the goods/services
- Power of Attorney (if using a trademark agent)
- Government fee:
 - ₹4,500 (Individuals/startups/small entities)
 - ₹9,000 (Others)

Once the application is filed, an **application number** is allotted, which can be used to track the status of the application.

3. Examination of the Trademark Application [Section 18(4)]

The application undergoes scrutiny by the **Trademark Examiner**, who checks whether:

- The application complies with formal requirements.
- The trademark is **distinctive** and not barred by:
 - **Absolute grounds of refusal** (Section 9): e.g., devoid of distinctive character, descriptive, generic terms.

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- **Relative grounds of refusal** (Section 11): e.g., similar or identical to existing marks, likely to cause confusion.

✓ **Examination Report:**

- Issued within **1 to 3 months** after filing.
- If no objections, it proceeds to publication.
- If objections are raised, a detailed report is issued to the applicant.

4. Response to Examination Report

The applicant must respond to the objections **within one month** from the date of the report.

- The response should address all objections, supported with legal arguments, precedents, and evidence (if applicable).
- If the response is accepted, the application moves to publication.
- If not accepted, a **Show Cause Hearing** is scheduled before a Registrar.

5. Advertisement in the Trademark Journal [Section 20]

Upon successful examination or hearing, the trademark is published in the **Trademark Journal**.

✓ **Purpose of Publication:**

- To give the public an opportunity to file objections or opposition against the trademark registration.
- The journal is published weekly on the IP India website.

6. Opposition Proceedings [Section 21]

Any third party may file a **Notice of Opposition** within **four months** of the publication.

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✓Opposition Process:

1. **Notice of Opposition** (Form TM-O) is filed.
2. **Counterstatement** must be filed by the applicant within **2 months**.
3. Both parties are given opportunities to submit **evidence** in support of their claims.
4. **Hearing** is conducted before the Registrar.
5. The Registrar passes an order either accepting or rejecting the opposition.

If no opposition is filed within the stipulated time, or the opposition is rejected, the trademark proceeds to registration.

7. Registration of the Trademark [Section 23]

If the application is accepted post-opposition or if there is no opposition, the trademark is **registered** and a **Registration Certificate** is issued under the **seal of the Trademark Registry**.

- The registered mark is recorded in the **Trademark Register**, which contains details of the trademark, the name and address of the proprietor, class, date of application, and duration.

□ DURATION OF TRADEMARK REGISTRATION [Section 25]

✓Initial Validity:

- The registration is valid for a period of **10 years** from the **date of application** (not from the date of registration).

✓Renewal:

- Trademark can be renewed indefinitely for **successive periods of 10 years**.
- **Renewal Application:** Form TM-R
- **Timeframe for Renewal:**
 - Renewal can be filed within **one year before expiry** of registration.

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- A grace period of **6 months after expiry** is provided, subject to payment of a **surcharge**.

If not renewed even after the grace period, the mark is liable to be **removed from the register**. It can be **restored** within **1 year** of removal (with penalty).

☐ **Advantages of Trademark Registration**

- Provides **legal protection** against infringement.
- Grants **exclusive rights** to use the mark in relation to goods/services.
- Enhances brand recognition and goodwill.
- Acts as an intangible **business asset**.
- Facilitates **international registration** through the **Madrid Protocol**.
- Helps in building **consumer trust** and market reputation.

☐ **Timeframe Summary**

Stage	Estimated Duration
Filing to Examination	1 – 3 months
Response to Examination	Within 1 month
Show Cause Hearing (if any)	1 – 2 months
Publication in Journal	After acceptance (depends on Registry schedule)
Opposition Period	4 months
Final Registration (if no opposition)	1 – 2 months post-publication
Total Estimated Time	6 – 12 months (if smooth)
Initial Validity	10 years

The registration of a trademark under the Trade Marks Act, 1999 is a **systematic legal process** aimed at providing protection to the intellectual property rights of individuals and businesses. Though the process may seem elaborate, it is critical for **safeguarding brand identity**, ensuring **exclusive commercial use**, and deterring infringement.

✓EFFECT OF TRADEMARK REGISTRATION

Trademark registration under the **Trade Marks Act, 1999** provides a trademark owner with various legal rights and protections. Once a trademark is registered, it acquires a **legal status** that enhances its commercial and strategic value.

□ 1. Exclusive Right to Use [Section 28(1)]

- The registered proprietor obtains the **exclusive right to use** the trademark in relation to the goods or services for which it is registered.
- If the mark is registered in more than one class, exclusive rights apply **class-wise**.
- The proprietor can prevent others from using an identical or deceptively similar mark.

□ 2. Right to Sue for Infringement [Section 27(1) & Section 29]

- **Registered trademarks** enjoy statutory protection.
- The proprietor can file a **civil or criminal case** against any person who uses the mark **without authorization**.
- Legal remedies include:
 - Injunction (to stop usage)
 - Damages or account of profits
 - Seizure and destruction of infringing goods

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□ **Note: Unregistered trademarks** cannot sue for infringement under the Act but can seek remedy under common law for **passing off**.

□ **3. Use of ® Symbol [Section 24(2)]**

- Only a **registered trademark** is entitled to use the ® (Registered) symbol.
- Unauthorized use of this symbol without registration is a punishable offence under the Act.

□ **4. Prima Facie Evidence of Ownership [Section 31]**

- The certificate of registration serves as **prima facie evidence** in court regarding:
 - Validity of the trademark
 - Ownership by the registered proprietor
- This eases the burden of proof during litigation.

□ **5. Facilitates International Protection (Madrid Protocol)**

- Registered trademarks can be extended for protection in **other countries** that are members of the **Madrid Agreement/Protocol**.
- It simplifies the process of securing international trademark rights.

□ **6. Adds Commercial Value to the Brand**

- A registered trademark becomes a **valuable intangible asset**.
- It can be:
 - **Sold**
 - **Licensed**
 - **Franchised**
 - **Used as a security** for loans or business transactions

□ **7. Deterrent Against Infringement**

- Registration acts as a **public notice** of ownership.

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- Helps deter potential infringers or counterfeiters, as the details of the trademark are available in the public domain.

☐ **8. Right to Assign and Transmit [Section 37-45]**

- A registered trademark can be **assigned** (with or without goodwill) or **transmitted** to another person.
- This flexibility increases its **transferability and value**.

☐ **9. Business Identity and Market Goodwill**

- Helps consumers identify the source and quality of goods/services.
- Builds **trust, recognition, and loyalty** in the market.
- Provides a **competitive advantage** in branding and positioning.

☐ **10. Legal Protection for 10 Years (Renewable)**

- Trademark registration grants **legal protection for 10 years**, renewable indefinitely.
- Ensures **long-term protection** and brand security.

☐ **Summary Table:**

Effect	Description
Exclusive right to use	Only the registered owner can use the trademark
Right to sue for infringement	Legal action can be taken against unauthorized use
Use of ® symbol	Indicates that the mark is registered and protected
Evidentiary value in court	Proof of ownership and validity
Global brand expansion	Facilitates international trademark registration via Madrid Protocol

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Effect	Description
Brand value and commercial benefits	Enhances business credibility, enables licensing and franchising
Deterrent effect	Public notice helps prevent infringement or misuse
Transferability	Can be assigned, sold, or inherited
Builds goodwill and consumer trust	Essential for long-term brand success
Long-term protection	Registered for 10 years, renewable indefinitely

Trademark registration is more than a legal formality—it offers a **robust legal shield** and **strategic business advantages**. The **effects of registration** empower a business to secure its brand, expand its market, and protect its intellectual property effectively. It is a crucial step for any enterprise serious about building a strong, trustworthy identity in a competitive marketplace.

COLLECTIVE MARKS UNDER THE TRADE MARKS ACT, 1999

□ Definition [Section 2(1)(g)]

A **Collective Mark** is defined under Section 2(1)(g) of the Trade Marks Act, 1999 as:

“a trademark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932) which is the proprietor of the mark from those of others.”

✓Key Features of Collective Marks

- Used by **members of an association** to indicate their affiliation.
- The **association or group** owns the trademark.

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- The mark is used to **maintain quality, origin, or other standards** of the products/services of its members.
- It serves both as a **mark of origin** and a **badge of membership**.

Purpose of Collective Marks

- To **promote common business interests** of members.
- To **assure consumers** about quality, origin, or other attributes.
- To **differentiate products/services** of members from non-members.
- To **build collective brand reputation** in the market.

☐ **Examples of Collective Marks**

Collective Mark	Organization	Industry/Use
CA	Institute of Chartered Accountants	Chartered accountancy services
CPA	Certified Public Accountants	Professional accounting services
FICCI	Federation of Indian Chambers of Commerce and Industry	Trade and commerce
Khadi	Khadi and Village Industries Commission	iles and rural products

☐ **Registration of Collective Marks [Sections 61 to 68]**

✓1. Application Form:

- Must be filed using **Form TM-A** with a declaration that the mark is a **Collective Mark**.

✓2. Additional Requirements:

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- Along with the application, the **regulations governing the use** of the collective mark must be submitted. This includes:
 - Purpose of the mark
 - Conditions of membership
 - Standards and conditions for use of the mark
 - Penalties for misuse

✓3. **Examination & Publication:**

- The mark is examined like any other trademark.
- Upon clearance, it is published in the **Trademark Journal** for public opposition.

✓4. **Opposition & Registration:**

- If no opposition is filed within 4 months, or opposition is resolved, the mark is registered.
- The association becomes the **registered proprietor**, and members are **authorized users**.

☐ **Rights Conferred by Registration**

- **Exclusive right** to use the mark by the members.
- **Legal remedy** against infringement or unauthorized use.
- **Maintenance of uniformity and quality** across members' offerings.

☐ **Grounds for Refusal or Removal**

- If the mark is likely to **deceive the public**.
- If the association is unable to **maintain control** over the use of the mark.
- If the **regulations are not followed** or are misused.
- If the mark becomes **misleading or generic** over time.

☐ **Difference Between Collective Mark, Certification Mark, and Trademark**

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Aspect	Collective Mark	Certification Mark	Trademark
Ownership	Association of persons	of Certifying authority	Individual/business entity
Usage	Members of the association	Anyone meeting the certification standards	Owner or licensee
Purpose	Indicate membership and origin	Certify quality, origin, and method, etc.	Distinguish goods/services of a trader
Examples	CA, FICCI	ISI, AGMARK	Nike, Apple, TATA

□ **Case Law Example:**

➤ ***British Sugar v. James Robertson (1996)***

Although not Indian, this case clarifies the importance of **distinctiveness** and **clarity** in collective marks. The court held that a mark must **clearly convey** its association and purpose to the consumer, else it risks being deceptive.

Collective marks play a vital role in empowering **associations, unions, cooperatives, and groups of professionals or producers**. They foster **trust, quality control, and shared reputation**, helping small or niche producers compete with larger corporations. Registration under the Trade Marks Act, 1999, ensures **legal protection** and **brand integrity** for the collective.

UNIT IV

Prevention of Money Laundering Act, 2002 -Prevention of Money Laundering Act, 2002: Offence of money laundering –Punishment formoney laundering –Attachment, adjudication and confiscation - Obligations of BankingCompanies, Financial Institutions and Intermediaries –Summons, Search and Seizure–Appellate Tribunal.

Prevention of Money Laundering Act, 2002 (PMLA) – In-depth Explanation

☐ **Background and Con**

Money laundering involves disguising illegal sources of money to make it appear legitimate. In India, due to increasing concerns about black money, corruption, drug trafficking, terrorism financing, and organized crime, the need for a comprehensive anti-money laundering law became evident.

Hence, the **Prevention of Money Laundering Act, 2002** was enacted and came into force on **1st July 2005**.

It gives effect to India's obligations under:

- **The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)**
- **Basel Norms**
- **Financial Action Task Force (FATF) Recommendations** on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT)

☐ **Objectives of the Act**

1. **Prevent and control money laundering**
2. **Confiscate and seize property** derived from laundered money
3. Deal with **connected offences** and facilitate prosecution
4. Promote **international cooperation** in anti-money laundering enforcement

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5. Strengthen financial transparency and accountability

☐ **Understanding Money Laundering**

☐ **Three Stages of Money Laundering:**

Stage	Description
Placement	Introduction of illegal money into the financial system (e.g., depositing cash in banks, using it to buy assets).
Layering	Creating complex layers of transactions to hide the origin of money (e.g., shell companies, foreign transfers).
Integration	Introducing laundered money into the economy as clean money (e.g., investments, real estate, business ventures).

☐ **Important Definitions [Section 2]**

Term	Definition
Attachment: Prohibition of transfer, conversion, disposition or movement of property by an appropriate legal order.	Any property derived directly or indirectly as a result of criminal activity relating to a scheduled offence.
Proceeds of Crime	
Scheduled Offence	The predicate offence listed in the Schedule of PMLA, which triggers applicability of the Act.

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Term	Definition
Money Laundering	Any process involving proceeds of crime including concealment, possession, acquisition, or use and projecting it as untainted property.
Reporting Entity	Includes banks, financial institutions, intermediaries, real estate agents, accountants, lawyers, etc., as notified.
Payment System:	A system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. It includes the systems enabling credit card, debit card, smart card, money transfer or similar operations.

☐ **Salient Features of the Act**

1. Punishment for Money Laundering [Section 4]

The Act prescribes that any person found guilty of money-laundering shall be punishable with [rigorous imprisonment](#) from three years to seven years and where the proceeds of crime involved relate to any offence under paragraph 2 of Part A of the Schedule (Offences under the Narcotic Drugs and Psychotropic Substance Act, 1985), the maximum punishment may extend to 10 years instead of 7 years.^[9]

- Fine: No upper limit (subject to judicial discretion)

2. Attachment and Confiscation of Property [Sections 5 & 8]

- ED can provisionally **attach property** suspected to be involved in money laundering.

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- Confirmation by **Adjudicating Authority** within 180 days.
- Final **confiscation** after trial and conviction.

3. Search, Seizure, and Arrest Powers [Sections 17, 18, 19]

- Empower ED officers to:
 - Enter and search premises
 - Seize books, documents, assets
 - Arrest suspects without warrant with proper authorization

4. Burden of Proof [Section 24]

- Reverses the burden of proof in certain cases.
- The accused must prove that proceeds of crime are not involved in money laundering.

5. Obligations of Reporting Entities [Section 12]

- Maintain records of transactions
- Verify and maintain records of clients (KYC compliance)
- Furnish information to **Financial Intelligence Unit – India (FIU-IND)**

Powers of attachment of tainted property

- The director or officer above the rank of deputy director with the authority of the director, can *provisionally* attach property believed to be "proceeds of crime" for 180 days. Such an order is required to be confirmed by an independent *Adjudicating Authority*

Adjudicating Authority

- The Adjudicating Authority is the authority appointed by the central government through notification to exercise jurisdiction, powers and authority

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conferred under PMLA. It decides whether any of the property attached or seized is involved in money laundering.^[11]

- The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of PMLA. The Adjudicating Authority shall have powers to regulate its own procedure.^[12]

Presumption in inter-connected transactions

Where money laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money laundering, then for the purposes of adjudication or confiscation, it shall be presumed that the remaining transactions form part of such inter-connected transactions.^[13]

Appellate Tribunal

An Appellate Tribunal is the body appointed by [Govt of India](#). It is given the power to hear appeals against the orders of the Adjudicating Authority and any other authority under the Act. Orders of the tribunal can be appealed in appropriate [High Court](#) (for that jurisdiction) and finally to the [Supreme Court](#).

Special Court

Section 43 of Prevention of Money Laundering Act, 2002 (PMLA) says that the Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under Section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

FIU-IND

Financial Intelligence Unit – India (FIU-IND) was set by the Government of India on 18 November 2004 as the **central national agency** responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is

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an independent body reporting directly to the [Economic Intelligence Council \(EIC\) Archived](#) 1 November 2015 at the [Wayback Machine](#) headed by the Finance Minister.

□□ Authorities under the Act

Authority	Role
Directorate of Enforcement (ED)	Investigates money laundering offences, conducts searches, seizures, attachments.
Adjudicating Authority	Confirms attachment and determines if property is involved in money laundering.
Appellate Tribunal	Hears appeals against the Adjudicating Authority's orders.
Special Court	Established under PMLA to try money laundering offences (designated Sessions Court).
FIU-IND	Collects and analyzes financial information for detecting suspicious transactions.

□ Schedule to PMLA – Predicate Offences

The Schedule contains offences under various laws, such as:

- Indian Penal Code (IPC)
- Narcotic Drugs and Psychotropic Substances Act, 1985
- Prevention of Corruption Act, 1988
- Arms Act, 1959
- Wildlife (Protection) Act, 1972
- SEBI Act, 1992
- Explosive Substances Act, 1908

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Only when the offence is included in the **Schedule** and proceeds of that crime are laundered, the provisions of PMLA are attracted.

☐ **Procedural Aspects**

1. **ECIR (Enforcement Case Information Report)** is registered by ED (not publicly available like FIR).
2. **Provisional Attachment** of assets.
3. **Summons and Investigation** under Sections 50 and 54.
4. **Complaint filed** before Adjudicating Authority.
5. **Trial** before the Special Court (Sessions Court).
6. **Appeals** lie with Appellate Tribunal, High Court, and finally Supreme Court.

☐ **Recent Amendments and Developments**

☐ **1. Widened Definition of Money Laundering**

- 2019 amendment clarified that even the **attempt to indulge** in money laundering is an offence.
- **Possession** of proceeds of crime is sufficient to trigger offence.

☐ **2. Obligation for Virtual Assets**

- Crypto currencies, NFTs, and related service providers now fall under **reporting entities**.

☐ **3. Supreme Court Judgment (2022) – *Vijay Madanlal Choudhary v. Union of India***

- Upheld the constitutionality of various PMLA provisions.
- Recognized ED's powers for investigation, arrest, and attachment.
- Reaffirmed **reverse burden of proof** and strict bail provisions.

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❑ **Criticism and Challenges**

Issue	Description
Stringent Bail Conditions	Bail is difficult under PMLA. Twin conditions under Section 45 are hard to satisfy.
Reverse Burden of Proof	Accused must prove innocence—a deviation from standard criminal jurisprudence.
Wide Discretion to ED	Search, arrest, and attachment powers are extensive and open to misuse.
Low Conviction Rates	Though many investigations and attachments take place, few result in conviction.
Lack of Transparency	ECIR is not made public or given to the accused at the time of arrest.

❑ **International Cooperation**

- PMLA facilitates bilateral and multilateral **Mutual Legal Assistance Treaties (MLATs)**.
- Enables sharing of information and extradition of offenders.
- Recognition of **foreign attachment or confiscation orders**.

❑ **Summary Table**

Feature	Details
Enacted	2002
Came into Force	1st July 2005
Implementing Agency	Directorate of Enforcement (ED)

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Feature	Details
Nature of Offence	Cognizable and non-bailable
Punishment	3–7 years (10 years for NDPS cases)
Reporting Authority	FIU-IND
Predicate Offences	Listed in Schedule to PMLA
Appeal Forum	Appellate Tribunal → High Court → Supreme Court

The **Prevention of Money Laundering Act, 2002** is a cornerstone in India's financial regulatory and anti-corruption framework. It plays a critical role in preventing the conversion of black money into white by targeting and criminalizing the laundering of proceeds of crime.

While it empowers authorities to act swiftly against financial crimes, **concerns about due process and civil liberties** call for a balanced and constitutionally sound implementation.

Offence of Money Laundering under PMLA, 2002

□ Introduction

Money laundering refers to the process by which individuals or organizations conceal the illicit origin of wealth and integrate it into the legal financial system, making it appear legitimate. The **Prevention of Money Laundering Act (PMLA), 2002**, criminalizes such activities to combat the menace of financial crimes, organized crime, and terrorist financing.

The **Offence of Money Laundering** is defined under **Section 3 of the PMLA** and is central to the functioning of the Act.

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☐ Legal Provision – Section 3 of PMLA

Section 3 states:

*“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.”*

☐ Key Elements of the Offence (Deconstructed)

To constitute the offence of money laundering, the following **essential ingredients** must be present:

1. Proceeds of Crime

- Any property derived or obtained, directly or indirectly, by any person as a result of **criminal activity** relating to a **Scheduled Offence**.
- Can be tangible (money, real estate) or intangible (shares, securities, rights).

2. Involvement in Process or Activity

The process may involve:

- **Concealment**
- **Possession**
- **Acquisition**
- **Use**
- **Projection as untainted**
- **Claiming as untainted**

These activities aim to **hide the illegal origin** of the proceeds and give them a **legitimate appearance**.

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3. Mens Rea (Mental Element)

The Act mentions terms like:

- **“Knowingly assists”**
- **“Knowingly is a party”** Indicating that **knowledge or intent** to facilitate the laundering of illicit proceeds is crucial.

☐ **Stages of Money Laundering**

The offence often unfolds in three classic stages:

Stage	Description	Example
Placement	Introducing illicit money into the financial system	Depositing cash into multiple bank accounts
Layering	Creating complex financial transactions to obscure origin	Transferring funds through shell companies
Integration	Reintroducing laundered money into the economy	Buying luxury assets, investments, or businesses

☐ **Punishment under Section 4 of PMLA**

- **Imprisonment:** Not less than **3 years**, which may extend up to **7 years**.
- **Enhanced Punishment:** **Up to 10 years** if proceeds of crime relate to offences under the **Narcotic Drugs and Psychotropic Substances Act, 1985**.
- **Fine:** No statutory cap; imposed as per court's discretion.

☐ **Judicial Interpretation**

☐ **Vijay Madanlal Choudhary v. Union of India (2022)**

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- Landmark case where the **Supreme Court upheld the constitutional validity** of PMLA provisions.
- Reaffirmed:
 - **Broad scope of Section 3**
 - **Independent nature** of money laundering offence (even without a conviction in the scheduled offence)
 - ED's power to **attach property, conduct search and seizure, and arrest without FIR**
 - Validity of **reverse burden of proof**

☐ **Kartar Singh v. State of Punjab**

- Though not under PMLA, this case upheld the constitutionality of laws dealing with serious economic and national security crimes involving **reverse burden clauses**.

☐ **Burden of Proof – Section 24**

- Under normal criminal law, **prosecution must prove the guilt**.
- However, under PMLA, once the authorities establish the possession of **proceeds of crime**, the burden shifts to the **accused to prove** that the property is **not connected to any criminal activity**.

This **reverse onus clause** makes the law more stringent.

☐ **Scheduled Offences – Foundation of the PMLA Offence**

A **Scheduled Offence** is a **predicate offence** listed in the **Schedule** to the Act. The PMLA applies only if the money or property is derived from such offences.

The Schedule is divided into:

- **Part A** – Offences under IPC, Arms Act, NDPS Act, etc.
- **Part B** – Offences involving ₹30 lakh or more (now largely merged with Part A).

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- **Part C** – Trans-border crimes and international conventions.

Examples of predicate offences:

- Corruption (Prevention of Corruption Act)
- Drug trafficking (NDPS Act)
- Human trafficking
- Terrorism financing
- Fraud and cheating (IPC)

Investigative Process

Step	Description
1. Registration of ECIR	ED registers an Enforcement Case Information Report (not publicly available like FIR)
2. Search and Seizure	ED conducts searches and seizes suspicious assets and documents
3. Provisional Attachment	Suspected assets can be provisionally attached for 180 days
4. Adjudication	Adjudicating Authority confirms attachment if property is linked to crime
5. Trial	Special PMLA court conducts trial; punishment awarded upon conviction

International Obligations and PMLA

PMLA ensures India's compliance with:

- **Financial Action Task Force (FATF) Recommendations**
 - **United Nations Convention Against Corruption (UNCAC)**
 - **UN Convention Against Transnational Organized Crime (UNTOC)**
-

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- **Basel Committee Guidelines**

India is a member of the **Asia Pacific Group on Money Laundering (APGML)** and adheres to international reporting obligations.

□ **Criticism of the Offence Structure**

Concern	Explanation
Harsh Bail Provisions	Bail is governed by twin conditions under Section 45, making it hard to obtain
No Need for Scheduled Offence Conviction	A person may be prosecuted under PMLA even if not convicted for the predicate offence
Reversal of Burden	Places a heavy burden on the accused
Expansive Interpretation	Broad definitions of proceeds and involvement increase ED's discretionary power
Low Conviction Rate	Despite large number of cases, actual convictions under PMLA remain few

The **offence of money laundering** under the PMLA, 2002 is comprehensive and stringent. It is designed to disrupt the cycle of crime by targeting the **financial foundation** of criminal enterprises. By criminalizing not only the use of illegal money but also its **concealment and projection as legitimate**, the Act covers the entire laundering cycle.

However, this aggressive framework, while effective in principle, must be balanced with **constitutional protections** and **judicial oversight** to prevent arbitrary use and safeguard individual liberties.

Punishment for Money Laundering under the Prevention of Money Laundering Act, 2002 (Section 4) – Fully Elaborated Answer

□ **1. Introduction**

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The **Prevention of Money Laundering Act (PMLA), 2002** is a central legislation enacted to combat **money laundering**, a process where illegally acquired wealth is disguised as lawful. The Act aims to prevent the use of illicit funds in the formal economy and uphold the integrity of financial institutions and systems.

The core **penal provision** is contained in **Section 4** of the Act, which prescribes **punishment** for the offence defined under **Section 3**.

□ **2. Section 4 – Statutory Framework**

Section 4 – Punishment for money-laundering:

*"Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term **not less than three years**, but which may extend to **seven years** and shall also be liable to fine:*

***Provided** that where the proceeds of crime involved in money-laundering relate to any offence specified under the **Narcotic Drugs and Psychotropic Substances Act, 1985**, the maximum punishment may extend to **ten years**."*

□ **3. Elements of Punishment Under Section 4**

✓ **3.1 Rigorous Imprisonment**

- Minimum imprisonment: **3 years**
- Maximum imprisonment: **7 years**, extendable to **10 years** in NDPS cases
- **Rigorous** nature implies compulsory **hard labor**, indicating the gravity of the offence

✓ **3.2 Fine**

- No **upper monetary limit** is prescribed
- The **Special Court** has discretion to impose fines depending on:
 - Value of **proceeds of crime**
 - **Impact** of the offence on society
 - Role and culpability of the accused

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✓3.3 Enhanced Punishment in NDPS Cases

- Where the property laundered is derived from offences under the **NDPS Act**, punishment is stricter—up to **10 years**
- Reflects India's stance against **drug trafficking and narco-terrorism**

□ 4. Nature of the Offence

Factor	Details
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Type of offence	Cognizable and non-bailable
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Court	Tried by Special Court designated under PMLA
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Bail conditions	Governed by strict conditions under Section 45
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Burden of proof	Lies on the accused to prove that the property is not linked to a crime (Section 24)
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Compoundable? No – the offence is **non-compoundable**

□ 5. Section 45 – Conditions for Bail

Originally struck down in *Nikesh Tarachand Shah v. Union of India* (2017), **Section 45** was later **amended** and **upheld** by the Supreme Court in *Vijay Madanlal Choudhary v. Union of India* (2022). The bail provision now states:

1. **Public Prosecutor** must be given an opportunity to oppose bail.
2. The court must be satisfied that:
 - The accused is **not guilty**
 - The accused is **not likely to commit any offence** while on bail

This provision makes **getting bail highly difficult**, especially during investigation.

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☐ **6. Procedural Implications of Punishment**

☐ **Enforcement Directorate (ED)**

- Responsible for investigation and enforcement of PMLA
- Can arrest without FIR and conduct **searches, seizures, and attachments**

☐ **Attachment of Property (Section 5)**

- Proceeds of crime can be **provisionally attached** for 180 days
- Can become permanent after adjudication

☐ **Trial by Special Court (Section 43)**

- Special courts are constituted under **Section 43** for expeditious trial
- ED files a **prosecution complaint** akin to a charge sheet

☐ **7. Judicial Interpretation and Important Case Laws**

✓ **Vijay Madanlal Choudhary v. Union of India (2022)**

- **Upheld constitutionality** of PMLA provisions including Sections 3 and 4
- Stated that **money laundering is a separate and independent offence**
- Supported the **reverse burden** and stringent punishment

✓ **Nikesh Tarachand Shah v. Union of India (2017)**

- Originally struck down bail provisions, calling them **unconstitutional**
- This led to an **amendment** of Section 45

✓ **Mohan Lal Chabria v. ED**

- Court held that rigorous imprisonment and high fines are **justified** in view of the **international obligation** to curb laundering and terror funding

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☐ **8. Comparative and Global Con**

India is a **member of the Financial Action Task Force (FATF)** and implements its **40 recommendations**. Most global jurisdictions have stringent punishment provisions for money laundering:

Country Maximum Punishment

USA 20 years + \$500,000 fine

UK 14 years

Australia 25 years

Canada 10 years

India 7–10 years (PMLA)

India's punishment is **aligned with international best practices** to maintain compliance with FATF norms.

☐ **9. Corporate and Individual Liability**

Under PMLA:

- **Companies, firms, and associations** can be prosecuted
- **Directors, partners, managers** are liable if offence committed with **knowledge or connivance**
- Companies can face **attachment of assets, reputational damage, and blacklisting**

☐ **10. Possible Defenses by Accused**

Defense	Explanation
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Defense	Explanation
Lack of Mens Rea	No intention or knowledge of laundering
No Link to Scheduled Offence	Proceeds are not connected to any offence in the PMLA Schedule
Lawful Acquisition	Property acquired through legitimate sources
No Role in Transaction	Mere association with accused does not imply guilt

□ 11.

The **punishment for money laundering** under the PMLA is **stringent, proportional, and necessary** in view of the global rise in economic offences. The Act imposes **rigorous imprisonment, unlimited fines, and tough bail conditions** to deter offenders. It provides the Enforcement Directorate with vast powers to ensure recovery, seizure, and trial of laundered assets.

Though the Act has faced **constitutional challenges**, the courts have largely upheld its **validity and need**, considering the threat posed by money laundering to India's **economic sovereignty, national security, and rule of law**.

Attachment, Adjudication and Confiscation under PMLA, 2002 –

□ 1. Introduction

One of the core objectives of the PMLA, 2002 is to **prevent and control money laundering by identifying, tracing, and depriving the offender of illegally acquired assets**, known as “**proceeds of crime**”.

To achieve this, the Act provides a three-step process:

1. **Provisional Attachment** of property
2. **Adjudication** by an Adjudicating Authority

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3. **Confiscation** by the Special Court

Each step is governed by its own procedural safeguards and timelines.

☐ **2. Attachment of Property (Section 5 of PMLA)**

☐ **Meaning of Attachment**

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

☐ **Provisional Attachment under Section 5(1)**

- The **Director or an authorised officer** (not below the rank of Deputy Director of ED) can provisionally attach property if:
 - **Proceeds of crime** are likely to be concealed, transferred, or dealt with
 - The person is **in possession of such property**
 - **Scheduled offence is committed**, and investigation under PMLA is initiated

☐ **Time Period**

- **Provisional attachment is valid for 180 days** from the date of the order.
- This period excludes any time during which the proceedings are stayed by a court.

☐ **Procedure**

- A **copy of the attachment order** and **material evidence** must be sent to the **Adjudicating Authority** in a **sealed envelope**.
- Within 30 days, a **complaint must be filed** before the Adjudicating Authority (Section 5(5)).

☐ **Rights of the Person**

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- The person can still **enjoy possession and use** of the property, but **cannot sell, transfer, or mortgage it**.
- He/she will have an opportunity to represent his case before the Adjudicating Authority.

□ □ **3. Adjudication (Sections 8(1) to 8(5))**

□ **Adjudicating Authority (AA)**

- A quasi-judicial body established under **Section 6** of PMLA.
- Composed of a **Chairperson** and **two other members** (with expertise in law, administration, or finance).

□ **Notice for Hearing (Section 8(1))**

- Within 30 days of receiving the complaint, the AA shall issue a **notice of not less than 30 days** to the:
 - Person whose property is attached
 - All persons holding interest in the attached property
- The notice will ask for:
 - **Source of income**
 - **Evidences of ownership**
 - Explanation on **why the property should not be declared as involved in money laundering**

□ **Inquiry and Findings (Section 8(2)–(3))**

- After hearing the parties and examining the evidence:
 - If the AA finds that the property is involved in money laundering, it will **confirm the attachment** in writing.
 - If not, the property is **released immediately**.

□ **Post Confirmation (Section 8(3))**

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- Upon confirmation, the **attachment continues during the trial** in the Special Court.

☐ **Important Safeguards**

- The procedure follows principles of **natural justice**
- The accused is given a **fair opportunity** to present evidence
- **Appeal** can be filed to the **Appellate Tribunal** under Section 26

☐ **4. Confiscation of Property (Section 8(5)–(7))**

☐ **What is Confiscation?**

“Confiscation” means **permanent deprivation of ownership** of the property and **vesting it in the Central Government**.

☐ **When Does It Happen?**

After trial by the **Special Court**, if it finds:

- The person is **guilty of money laundering**, and
- The property is **proceeds of crime**, then:
 - It shall **order confiscation** of such property to the Central Government (Section 8(5)).

☐ **If the Person is Acquitted**

- If the Special Court finds the person **not guilty**, it **orders release of the property** to the person (Section 8(6)).

☐ **If Trial cannot be Conducted (Section 8(7))**

- If the trial **cannot be conducted or concluded** due to:
 - Death of the accused
 - Declaring the accused as a **proclaimed offender**
 - Other valid reasons

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Then, on the basis of **Adjudicating Authority's findings**, the Special Court may still order **confiscation**.

□ □ **5. Special Court (Section 43–44)**

- **Designated courts** under PMLA are called **Special Courts** (usually Sessions Courts).
- They are empowered to:
 - Try the offence of money laundering
 - Order **confiscation or release of attached properties**
- Confiscated property **vests in the Central Government**, free from encumbrances.

□ **6. Appeal Mechanism**

Forum	Provision	Timeline
Appellate Tribunal	Section 26	Within 45 days of Adjudicating Authority's order
High Court	Section 42	Within 60 days of Appellate Tribunal's decision

□ **7. Judicial Interpretation**

□ ***Vijay Madanlal Choudhary v. Union of India (2022)***

- Supreme Court upheld the **validity of Sections 5 and 8**, stating that the procedure of attachment and adjudication is **fair and constitutional**.

□ ***J. Sekar v. Union of India (2018)***

- Reaffirmed that the **right to property is not absolute**, and attachment under PMLA is a **legitimate restriction** in public interest.

□ ***Aslam Merchant v. Competent Authority (2008)***

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- Emphasized the **quasi-criminal nature** of the adjudication proceedings and the importance of adhering to **principles of natural justice**.

□ 8. International Compliance

- PMLA's provisions for attachment and confiscation are in line with:
 - **FATF Recommendations**
 - **UN Convention Against Corruption**
 - **Basel Committee on Banking Supervision**

□ 9. Summary Table

Stage	Authority	Legal Basis	Time Limit
Attachment	ED (Director/Deputy Director)	Section 5	Valid for 180 days
Adjudication	Adjudicating Authority	Section 8(1–3)	Within 30 days from complaint
Confiscation	Special Court	Section 8(5–7)	Post-trial or under special conditions

✓10.

The process of **attachment, adjudication, and confiscation** under PMLA serves as a **powerful legal mechanism** to trace and deprive offenders of illicit wealth. While the law is stringent, it incorporates **procedural fairness, judicial oversight, and appeal mechanisms** to protect individual rights.

It reflects India's commitment to eradicating money laundering and upholding international standards on financial integrity and criminal justice.

Obligations of Banking Companies under PMLA, 2002 –

□ 1. Introduction

Banking companies play a pivotal role in the financial system. They are also **prime targets for money laundering**, as money launderers often try to pass illicit funds through formal banking channels. Hence, the **Prevention of Money Laundering Act (PMLA), 2002**, imposes **mandatory obligations** on banking companies to detect and prevent money laundering activities.

The key provision governing these responsibilities is **Section 12** of the PMLA.

□ 2. Legal Framework

The term “**Banking Company**” is defined under **Section 2(1)(e)** of the PMLA and includes:

Any company which transacts the business of banking in India.

It includes:

- Scheduled commercial banks
- Co-operative banks
- Foreign banks operating in India
- NBFCs (in some cons)

□ 3. Statutory Obligations under Section 12

✓3.1 Maintenance of Records (Section 12(1)(a))

Banking companies must maintain a record of:

- All **transactions** (cash, wire, etc.) of a **prescribed nature and value**, and
- Ensure that these records are **sufficient to reconstruct individual transactions**

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Examples:

- Cash transactions above ₹10 lakh
- Series of connected transactions that aggregate to ₹10 lakh or more
- Suspicious or unusual transactions, regardless of value

✓**3.2 Furnishing of Information (Section 12(1)(b))**

Banks are required to **report such transactions** to the **Financial Intelligence Unit – India (FIU-IND)**.

Types of reports include:

- **CTR (Cash Transaction Report)**
- **STR (Suspicious Transaction Report)**
- **NTR (Non-Profit Transaction Report)**

Time Frame: Generally, within **7 to 15 days** from the occurrence or detection of the transaction.

✓**3.3 Verifying Identity of Clients (Section 12(1)(c))**

Banks must verify:

- Identity of clients using **Know Your Customer (KYC)** norms
- Source of funds
- Beneficial ownership, especially in the case of legal persons or entities

KYC Norms are governed by RBI's Master Directions & PMLA (Maintenance of Records) Rules, 2005.

✓**3.4 Identification of Beneficial Owner (Section 12(1)(d))**

Where a transaction is carried out by someone **on behalf of another**, the bank must identify and verify the **real beneficial owner**.

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For example:

- A company account operated by a director on behalf of shareholders
- A trust account operated by trustees for beneficiaries

✓3.5 Maintenance and Retention of Records (Section 12(2))

Banks are obligated to **maintain records for 5 years**:

- From the **date of transaction**, or
- From the **date of end of business relationship**, whichever is later

□ 4. Additional Obligations Under PML Rules

According to the **PMLA (Maintenance of Records) Rules, 2005**, banking companies are also expected to:

□ Customer Due Diligence (CDD)

- Obtain information regarding the purpose and intended nature of the business relationship
- Update KYC periodically
- Classify customers into **low**, **medium**, and **high risk** profiles

□ Enhanced Due Diligence

Required for:

- High-risk customers (e.g., PEPs – Politically Exposed Persons)
- Large or complex transactions
- Clients from high-risk jurisdictions

□ Record Keeping of Transactions

- Maintain records of all documents collected during client onboarding
- Ensure that data is **accessible to enforcement agencies**

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☐ **5. Regulatory Authority**

☒ **RBI Guidelines**

The Reserve Bank of India (RBI) issues **Master Directions** on KYC and AML (Anti-Money Laundering), which banks must strictly follow.

☒ **Financial Intelligence Unit – India (FIU-IND)**

- Under the Ministry of Finance
- Receives CTRs, STRs, etc., from banking companies
- Analyzes and disseminates financial intelligence to enforcement agencies

☐ **6. Penalties for Non-Compliance (Section 13)**

If a banking company:

- Fails to maintain or report records
- Does not comply with KYC norms
- Obstructs investigation

Then the **Director (PMLA)** may:

- **Issue a warning**
- **Direct to take corrective steps**
- Impose a **penalty of ₹10,000 to ₹1,00,000 per failure**

☐ **7. Judicial Perspective and Case Law**

☐ ***State Bank of India v. Directorate of Enforcement (2021)***

The tribunal emphasized that **non-reporting of suspicious transactions** can attract penal consequences under PMLA, and banks must have robust internal systems.

☐ ***Bank of India v. FIU***

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Established that **negligence in monitoring high-value transactions** could lead to action under both PMLA and RBI regulations.

□ **8. International Compliance**

These obligations also help India comply with **FATF (Financial Action Task Force)** recommendations. FATF requires financial institutions to:

- Perform **customer due diligence**
- Maintain and report records
- Identify and report **suspicious transactions**

□ **9. Summary Table**

Obligation	Provision	Entity Involved
Maintain Records	Section 12(1)(a)	Banking Company
Report Transactions	Section 12(1)(b)	To FIU-IND
Verify Client Identity	Section 12(1)(c)	Through KYC
Identify Beneficial Owners	Section 12(1)(d)	Especially for legal entities
Retain Records	Section 12(2)	For 5 years
Penalty for Default	Section 13	₹10,000 to ₹1,00,000

✓**10.**

The obligations of banking companies under PMLA are **extensive and critical** in preventing financial systems from being misused for money laundering. By enforcing **KYC norms, monitoring transactions, and reporting to authorities**, banks serve as the **first line of defense** against economic crime. These obligations also help India maintain its **global credibility and FATF compliance**.

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Financial Institutions and Intermediaries under PMLA, 2002 –

☐ **1. Introduction**

The **Prevention of Money Laundering Act (PMLA), 2002** is a key legislation aimed at combating money laundering and ensuring that financial systems are not exploited for illicit purposes. Under this Act, **Financial Institutions (FIs)** and **Intermediaries** are classified as "**reporting entities**" and are required to comply with strict **anti-money laundering (AML)** and **know your customer (KYC)** norms.

Their obligations are detailed mainly under:

- **Section 2(1):** Definitions
- **Section 12:** Obligations of Reporting Entities
- **PMLA (Maintenance of Records) Rules, 2005**

☐ **2. Definitions**

☐ **A. Financial Institution – Section 2(1)(I)**

It means:

“A financial institution as defined in clause (c) of Section 45-I of the RBI Act, 1934.”

Examples include:

- Non-Banking Financial Companies (NBFCs)
- Housing finance companies
- Insurance companies
- Chit fund companies
- Nidhi companies
- Payment system operators
- Microfinance institutions

☐ **B. Intermediary – Section 2(1)(n)**

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Means:

“A stockbroker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser, and any other intermediary associated with the securities market as may be notified by SEBI.”

Examples include:

- Mutual fund distributors
- Depository participants
- Venture capital fund managers
- Wealth managers
- Crypto exchanges (as per recent amendments)

☐ **3. Role as Reporting Entities (Section 2(1)(wa))**

Under **Section 2(1)(wa)**, *banking companies, financial institutions, and intermediaries* are collectively referred to as "**reporting entities**". They are under legal obligation to:

- **Verify identity of clients**
- **Maintain records of transactions**
- **Furnish information to Financial Intelligence Unit – India (FIU-IND)**

☐ **4. Key Obligations under Section 12 of PMLA**

☒ **A. Maintain Records of Transactions**

- All **cash transactions** \geq **₹10 lakh** or its equivalent in foreign currency
- **Series of transactions** below threshold but connected
- **Suspicious transactions**, regardless of value

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✓ **B. Furnish Reports to FIU-IND**

- **CTR (Cash Transaction Reports)**
- **STR (Suspicious Transaction Reports)**
- **Foreign Inward Remittance Reports**
- **High-value transaction reports** (based on prescribed thresholds)

✓ **C. KYC and Customer Due Diligence**

- Obtain **valid documents** for client identification
- **Verify beneficial ownership**
- Conduct **enhanced due diligence** for high-risk customers

✓ **D. Retention of Records (Section 12(2))**

- Maintain records and identity documents for a **minimum of 5 years**:
 - From the date of transaction, or
 - From the date of end of business relationship

□ **5. PMLA (Maintenance of Records) Rules, 2005**

These rules expand the framework and specify **how records should be kept, formats, and reporting timelines.**

□ **Record Types**

- Account opening forms
- KYC documents
- Transaction logs
- Internal alerts and risk assessments

□ **Reporting Timelines**

- **CTR: By the 15th of the next month**
- **STR: Within 7 working days** from identification

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- **Account-based reports:** On a periodic basis as directed

☐ **6. Regulatory Supervision**

Each reporting entity is regulated by its respective financial regulator:

Type	Regulator
NBFCs, Payment Banks	RBI
Insurance Companies	IRDAI
Mutual Funds, Stock Brokers	SEBI
Housing Finance Companies	NHB

Cryptocurrency Exchanges (select cases) FIU-IND (Direct registration)

Regulators issue **AML/CFT (Combating the Financing of Terrorism)** guidelines based on PMLA.

7. Penalty for Non-Compliance (Section 13)

The **Director (PMLA)** can:

- **Issue warnings**
- **Order corrective measures**
- **Impose monetary penalty up to ₹1 lakh per failure**

Repeated violations may attract **stricter regulatory action** or **loss of license/registration**.

☐ **8. Judicial Interpretations**

- ☐ ***J Sekar v. Union of India (2018)***

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- The Supreme Court upheld the validity of **Section 12 obligations**, stating they are necessary to protect the integrity of the financial system.

□ **PMLA Tribunal Cases**

- Emphasize **timely filing of STRs and CTRs** by financial institutions and penalize gross delays or negligence.

□ **9. Global Standards**

These obligations align with **FATF Recommendations**, especially:

- **Recommendation 10:** Customer Due Diligence
- **Recommendation 20:** Reporting of Suspicious Transactions
- **Recommendation 22:** AML obligations of DNFBPs and intermediaries

□ **10. Summary Table**

Obligation	Applies to		Law/Rule	Details
KYC & CDD	All FIs	Intermediaries	& Section 12(1)(c), At PMLA Rules	onboarding and ongoing
Record Keeping	All Entities	Reporting	Section 12(1)(a)	Maintain transaction & identity data
STR/CTR Filing	All Entities	Reporting	PMLA Rules	To FIU-IND
Penalty Default	for All		Section 13	₹10,000 – ₹1,00,000 per failure

✓11.

Financial Institutions and Intermediaries are **critical stakeholders** in India's fight against money laundering. Their strict compliance with the PMLA ensures:

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- **Transparency in financial transactions**
- **Identification of suspicious behavior**
- **Support for enforcement agencies**

As gatekeepers of the financial system, their role is not just regulatory but **integral to national and global financial security**.

Summons, Search, and Seizure under the PMLA, 2002 –

1. Introduction

The Prevention of Money Laundering Act, 2002 was enacted to prevent the process of converting illegally obtained proceeds into legitimate assets. For effective enforcement, the Act empowers authorities with various investigative tools, such as **summons, search, and seizure**. These powers ensure that **evidence is secured, proceeds of crime are traced, and money laundering activities are disrupted**.

□ 2. Summons – Section 50

✓Legal Provision:

Section 50 of the PMLA empowers the following officers:

- **Director**
- **Additional Director**
- **Joint Director**
- **Deputy Director**
- **Assistant Director**

to exercise the **powers of a civil court** under the Code of Civil Procedure, 1908 during proceedings.

✓Scope of Powers:

These officers can:

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1. **Summon any person** to appear before them.
2. **Require attendance**, either in person or through an authorized agent.
3. **Examine such person under oath**.
4. **Call for records, books of accounts, or other documents** relevant to the proceedings.

✓Admissibility of Evidence:

Statements made under oath during such proceedings are **legally admissible in court**, and refusal to comply attracts **punishment under Section 63**.

Example: If a financial intermediary is suspected of assisting in laundering activities, they may be summoned to submit client details, KYC records, and transaction reports.

□ 3. Search and Seizure of Premises – Section 17

✓Who Can Conduct a Search?

The power under Section 17 can be exercised by:

- **Director**
- Any officer **not below the rank of Deputy Director, authorized in writing**.

✓Prerequisites:

The officer must have:

- **Reason to believe**, based on material in possession,
- That a person possesses **proceeds of crime**, or **evidence** related to money laundering.

□ The "reason to believe" must be **recorded in writing**, making the action subject to **judicial scrutiny**.

✓Scope of Search:

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- Enter and search any building, vehicle, or place.
- Break open locks if access is denied.
- Search and seize any **record, money, bullion, jewellery, or property** suspected to be involved in money laundering.
- **Make a note or inventory** of the items found.
- **Place marks of identification** on documents.

✓ **Recent Amendments (2019):**

- **FIR or prior registration of an offence is not required** before conducting a search under PMLA.
- PMLA officers can act **independently**, based on material collected under the Act.

□ **4. Search of Persons – Section 18**

✓ **Authority:**

Only an officer **not below the rank of Assistant Director**, authorized by the Central Government, can conduct a search of a person.

✓ **Conditions:**

- Must have **reason to believe** (and record such reason in writing) that the person is **carrying concealed records or proceeds of crime**.

✓ **Procedure to Ensure Fairness:**

1. Inform the person of their **right to be searched before a Magistrate or a Gazetted Officer**.
2. Conduct the search **in the presence of two or more witnesses**.
3. Prepare a **search list (Panchnama)** signed by witnesses and the person searched.
4. **Provide a copy** of the list to the person.

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□ This ensures compliance with **Articles 20(3) and 21** of the Constitution of India (protection against self-incrimination and personal liberty).

□ **5. Retention of Seized Property – Section 20**

✓ **Provision:**

If documents, records, or properties are seized under Section 17 or 18, they may be **retained for up to 180 days**.

✓ **Conditions:**

- Officer must forward the list and material to the **Adjudicating Authority**.
- Within 30 days, an application must be made for **approval of continued retention**.
- The Adjudicating Authority, after giving an opportunity to be heard, may permit retention if satisfied.

□ **6. Retention of Records – Section 21**

Similar to Section 20, records obtained during investigation can be retained:

- For **180 days** initially.
- Beyond that, only with **approval of the Adjudicating Authority**.

This ensures that the data and evidence are preserved throughout the legal process.

□ **7. Constitutional and Procedural Safeguards**

Even though PMLA grants powerful tools, they are **subject to safeguards**:

- **"Reason to believe"** must be genuine, objective, and recorded in writing.
- Searches must follow **due process** and **not infringe on personal dignity**.
- The presence of **independent witnesses** ensures transparency.
- **Right to appeal** and **judicial review** of the search and seizure orders.

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□ **8. Judicial Interpretations**

□ **Vijay Madanlal Choudhary v. Union of India (2022)**

- Supreme Court upheld that **search, seizure, and arrest under PMLA** are constitutional.
- Emphasized that PMLA is **not dependent on registration of FIR**.

□ **J Sekar v. Union of India (2018)**

- Reiterated that **powers under Section 50** are not arbitrary.
- Summons and examination under oath are valid legal tools for gathering evidence.

□ **9. Differences Between Sections**

Provision Focus		Applies To	Officer Rank	
Section 17	Search of premises	Property & Records	Deputy Director & above	
Section 18	Search of person	Individuals	Assistant Director & above	
Section 20	Retention of seized property	Physical property	With AA approval	
Section 21	Retention of records	Documents & books	With AA approval	
Section 50	Summons & evidence	Persons institutions	& Assistant Director & above	

□ **10. Importance in Combating Money Laundering**

These powers are vital to:

- Trace illicit wealth
- Prevent destruction of evidence
- Establish money trail
- Support prosecution under PMLA

Without search and seizure, it would be almost impossible to detect sophisticated financial crimes that often involve **layering and placement techniques**.

✓11.

The powers of **Summons, Search, and Seizure** under the PMLA, 2002 are **integral to enforcing anti-money laundering laws**. They empower investigating officers to gather relevant evidence, prevent concealment of proceeds of crime, and ensure that offenders are brought to justice.

However, these powers come with the **responsibility of fairness, transparency, and accountability**, and they are governed by **judicial oversight and legal safeguards** to maintain the **rule of law** and **protect individual liberties**.

Appellate Tribunal under PMLA, 2002 –

□ 1. Introduction

The **Appellate Tribunal** under the **Prevention of Money Laundering Act, 2002** is a **quasi-judicial authority** established to hear appeals against the orders passed by the **Adjudicating Authority** and other authorities under the Act.

It plays a critical role in ensuring **fairness, transparency, and accountability** in proceedings under the PMLA, and acts as a **check on the powers of enforcement agencies**.

□ 2. Statutory Provision: Section 25 to Section 42 of PMLA

The provisions relating to the Appellate Tribunal are contained in:

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- **Section 25** – Establishment of Appellate Tribunal
- **Section 26 to 29** – Appeals, procedures, powers
- **Section 40 to 42** – Jurisdiction and further appeals to High Court

☐ **3. Establishment of the Appellate Tribunal – Section 25**

- The Central Government **establishes the Appellate Tribunal** for hearing appeals against orders passed by:
 - **Adjudicating Authority**
 - **Other authorities** under PMLA
- It is a **statutory body** and operates independently of the Enforcement Directorate (ED) or any investigative agency.

☐ **4. Composition and Appointment**

☐ **Chairperson:**

- The Tribunal is headed by a **Chairperson** who is usually a **retired or serving High Court Judge**.

☐ **Members:**

- May include **Judicial Members** and **Administrative Members**, appointed by the Central Government.

☐ **Tenure:**

- The Chairperson and Members hold office **for a term of 5 years** or until the age of **65 years**, whichever is earlier.

☐ **Note:** Appointments are made in consultation with the **Chief Justice of India**, ensuring judicial independence.

☐ **5. Jurisdiction of the Appellate Tribunal**

The Appellate Tribunal hears **appeals** against:

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- Orders passed by the **Adjudicating Authority** under Section 8 (confirmation of attachment, confiscation).
- Orders of the **Director** or other officers under Sections 26 and 27.
- Orders related to **penalties, confiscation, freezing of property**, etc.

✓ **Any person aggrieved** by an order under the Act may file an appeal before the Tribunal.

☐ **6. Procedure for Filing Appeal – Section 26**

- Appeal must be filed **within 45 days** from the date of receipt of the order.
- The Tribunal may **condone delay**, if sufficient cause is shown.
- Appeals must be **in prescribed form and manner** with supporting documents and fee.

☐ **Hearing Process:**

- Notice is issued to the respondents.
- Both parties are heard.
- Tribunal passes a **reasoned order** after hearing both sides.

☐ The Tribunal is **not bound by the Civil Procedure Code (CPC)** but guided by **principles of natural justice** and may regulate its own procedure.

☐ **7. Powers of the Appellate Tribunal – Section 28**

The Tribunal has powers akin to a civil court, such as:

- Summoning and enforcing the attendance of witnesses.
- Requiring discovery and production of documents.
- Receiving evidence on affidavits.
- Issuing commissions for examination of witnesses.
- Reviewing its own decisions.
- Dismissing an appeal for default or deciding ex-parte.

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☐ The Tribunal's orders are **binding**, unless appealed to the High Court.

☐ **8. Orders by the Tribunal – Section 30**

- The Tribunal may **confirm, modify, or set aside** the order appealed against.
- A copy of the decision is sent to:
 - **Parties involved**
 - **Adjudicating Authority**
 - **Director, Enforcement**

☐ **9. Further Appeal – Section 42**

If aggrieved by the decision of the Appellate Tribunal, a person may file an appeal to the **High Court**:

- Within **60 days** of the decision.
- On **questions of law** (not on questions of fact).
- The High Court may extend the period by **additional 60 days** for sufficient cause.

☐ **10. Importance of Appellate Tribunal in PMLA**

- **Judicial oversight** over executive actions.
- **Ensures natural justice** by giving a hearing to affected parties.
- **Corrects errors** of law or fact made by lower authorities.
- Acts as a **balance between investigation and rights of individuals**.

☐ ☐ **11. Important Case Laws**

☐ ***Aslam Merchant v. Competent Authority (2020)***

The Bombay High Court observed that the Appellate Tribunal plays a **vital role in ensuring justice** in cases involving attachment of properties under PMLA.

☐ ***Abdul Nazar Madani v. State of T.N. (2000)***

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Although not directly under PMLA, this case emphasizes the **importance of speedy justice** and the duty of Tribunals to deliver judgments without unnecessary delay.

□ **12. Summary Table**

Feature	Details
Established under	Section 25 of PMLA
Appellate Jurisdiction Over orders by Adjudicating Authority and PMLA officers	
Time to file appeal	Within 45 days (extendable)
Headed by	Chairperson (High Court Judge)
Further appeal	Lies to High Court (on questions of law)
Powers	Equivalent to Civil Court (Section 28)

✓**13.**

The **Appellate Tribunal under the PMLA** serves as a **key judicial safeguard** in the anti-money laundering framework. It ensures that actions taken by enforcement authorities such as **provisional attachment, seizure, or penalties** are subject to **review and legal scrutiny**. By balancing **effective enforcement with the rule of law**, it upholds both **justice and due process**.

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UNIT V

Real Estate (Regulation and Development) Act, 2016 -Real Estate (Regulation and Development) Act, 2016: Introduction - Salient features of the Act - Registration of Real Estate Project – Registration of Real Estate agents – Functions and duties of promoter – Rights and duties of Allottees – Offences, penalties and adjudication – Specimen agreement for sale to be executed between the promoter and the allottee

Real Estate (Regulation and Development) Act, 2016 – Comprehensive Explanation

□ **1. Background and Need for the Act**

Before the enactment of RERA, India's real estate sector was plagued with multiple systemic issues:

- **Lack of transparency and irregular practices**
- Builders frequently **delayed possession** of properties
- No mechanism for **grievance redressal** for homebuyers
- Misuse of funds by developers on multiple projects
- **Disparity in carpet area and super built-up area**
- **No legal definition** of key terms like carpet area, promoter, etc.

There was a **strong demand for a central law** that would regulate real estate transactions and provide confidence to buyers.

Hence, the **Real Estate (Regulation and Development) Act, 2016** was enacted by the **Parliament of India** and came into force on **1st May 2017**.

□ **2. Objectives of the Act**

The Act aims to:

- Establish a **Regulatory Authority** in each State
- Bring **transparency and accountability** in real estate projects

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- Protect the interests of **consumers** in the real estate sector
- Standardize practices such as project registration, disclosures, contract formats
- Ensure **timely completion and delivery** of projects
- Reduce **disputes and litigation**

□ 3. Salient Features of the Act

1. Mandatory Registration of Projects (Section 3 & 4)

- All residential and commercial real estate projects **above 500 sq. meters** or **more than 8 apartments** must be registered.
- Promoters must upload all relevant project details on the RERA website including:
 - Layout and sanctioned plans
 - Schedule for completion
 - Legal title deed
 - Details of real estate agents

2. Definition of Carpet Area (Section 2(k))

- Defined as the **net usable floor area**, excluding external walls, balconies, and common areas.
- Standardization avoids **deceptive practices** in property measurement.

3. Advance Booking Limit (Section 13)

- Promoter cannot accept more than **10%** of the total cost as advance before entering into a **written agreement for sale**.

4. Use of Funds and Escrow Account (Section 4(2)(I)(D))

- At least **70% of the collected funds** must be deposited in a **separate bank account**.

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- These funds can only be used for the **land and construction** of that specific project.

5. Project Delays and Compensation (Section 18)

- Homebuyers can:
 - Seek **refund** with interest, or
 - Stay invested and receive **compensation** for delay
- Builder is liable to pay interest every month for the period of delay.

6. RERA Authority in Every State (Section 20)

- State Governments must establish a **Real Estate Regulatory Authority**.
- Functions include:
 - Registration of projects and agents
 - Redressal of consumer complaints
 - Monitoring compliance with the Act

7. Real Estate Appellate Tribunal (Section 43)

- Appeals against decisions of RERA can be made to the **Appellate Tribunal**.
- The Tribunal must dispose of appeals **within 60 days**.

8. Real Estate Agents (Section 9 & 10)

- Real estate agents must register with RERA and obtain a **registration number**.
- Agents must:
 - Maintain records
 - Not mislead buyers
 - Facilitate transparent dealings

9. Legal Sanctions and Penalties

- **Non-registration of project:** Up to 10% of the estimated cost

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- **False information:** 5% of the estimated cost
- **Violation of Tribunal orders:** Imprisonment up to **3 years** or fine

□ □ 4. Rights and Duties of Homebuyers (Allottees)

Rights:

- Obtain project information from RERA
- Possession of property as per agreement
- Refund, interest, and compensation for delay
- Access to title documents and plans

Duties:

- Make timely payments
- Participate in the formation of society or association
- Pay interest for any delay in payment

□ □ 5. Promoter's Obligations

- Adherence to approved plans
- Refund money with interest in case of failure to deliver
- Not to advertise without registration
- Execute **registered sale agreement** before taking more than 10% of the cost

□ 6. Impact on Real Estate Sector

Stakeholder Impact

Buyers Greater protection and legal recourse

Builders Must operate more transparently

Government Improved tracking and regulation

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Stakeholder Impact

Investors Better data availability, lower risk

Agents Accountability and professionalism

☐ **7. Judicial Interpretations**

☐ ***Neelkamal Realtors v. Union of India (2017)* – Bombay HC**

Upheld the constitutional validity of RERA. Stressed that the Act balances the interests of promoters and consumers.

☐ ***Newtech Promoters v. State of UP (2021)* – Supreme Court**

Buyers can seek refund even if they choose not to take possession. Emphasized that consumer protection is a **core objective** of RERA.

☐ **8. Implementation across States**

- While RERA is a **central legislation**, it is implemented **by States/UTs** with individual **RERA portals**, e.g.:
 - **MahaRERA** – Maharashtra
 - **TNRERA** – Tamil Nadu
 - **UP-RERA** – Uttar Pradesh

Some states are lagging in:

- Timely disposal of complaints
- Establishing independent tribunals

☐ **9. Challenges in Implementation**

- **Delays in setup** of State RERAs and Tribunals
- **Builders lobbying** to dilute provisions

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- **Low consumer awareness**
- **Inconsistent rules** across states
- **Backlog of complaints** due to lack of manpower

□ **10. Suggestions for Effective Implementation**

- **Strengthening State RERAs** with resources
- Launching **consumer awareness campaigns**
- Ensuring **strict penalty enforcement**
- **Digital integration** of approvals and project monitoring
- Bringing **ongoing and plotted development projects** fully under purview

□ **11.**

The **Real Estate (Regulation and Development) Act, 2016** is a landmark reform in the Indian real estate sector. It aims to:

- Restore consumer trust
- Standardize industry practices
- Ensure time-bound delivery
- Provide a strong legal framework for dispute resolution

While challenges remain in **uniform implementation**, RERA has significantly empowered buyers, enhanced transparency, and restructured how real estate transactions are carried out in India.

Introduction to the Real Estate (Regulation and Development) Act, 2016

The **Real Estate (Regulation and Development) Act, 2016**, commonly known as **RERA**, is a landmark legislation enacted by the **Parliament of India** to regulate the real estate sector, protect the interests of homebuyers, and enhance transparency and accountability among real estate developers.

Prior to the enactment of this law, India's real estate sector was **highly unregulated**, plagued by widespread delays in project completion, lack of clear title to land,

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diversion of funds, and absence of an effective consumer grievance redressal mechanism. These issues created a trust deficit between buyers and developers.

Recognizing the need for a robust legal framework to reform this critical sector of the economy, the **RERA Bill was passed in March 2016**, and the Act came into full effect from **1st May 2017**. It mandates the **registration of all real estate projects and real estate agents** with the respective State Real Estate Regulatory Authority before any advertisement or sale. The Act also lays down provisions for the **timely delivery of projects, maintenance of a dedicated escrow account, and penalties for non-compliance**.

RERA has brought in **transparency, accountability, efficiency, and fair practices** to the real estate industry, which is a major contributor to India's GDP and employment. It empowers consumers, ensures legal compliance from builders, and establishes specialized adjudicating authorities for the speedy resolution of disputes.

Thus, the Real Estate (Regulation and Development) Act, 2016, represents a **paradigm shift** in the real estate market—making it more **consumer-centric, structured, and reliable**.

Salient Features of the Real Estate (Regulation and Development) Act, 2016

The **Real Estate (Regulation and Development) Act, 2016**, popularly known as **RERA**, was enacted with the primary objective of ensuring **transparency, accountability, and efficiency** in the real estate sector. It introduced significant reforms to address issues that homebuyers and investors were facing due to delayed possession, misleading advertisements, and lack of grievance redressal.

Below are the **key salient features** of the Act:

❑ 1. Mandatory Registration of Real Estate Projects

- Every residential and commercial real estate project where:
 - The land area exceeds **500 square meters**, or

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- The number of apartments is more than **eight**,

must be registered with the respective **State Real Estate Regulatory Authority** before any advertisement, marketing, or sale.

- Promoters are required to provide detailed disclosures about:
 - Land title and approvals
 - Schedule of project completion
 - Layout plans and sanctioned plans
 - Financial and legal details

□ **2. Registration of Real Estate Agents**

- Real estate agents who facilitate the sale or purchase of properties in registered projects must also **register** with RERA.
- They are given a **registration number**, which must be mentioned in every transaction they facilitate.
- Agents must maintain books of accounts and comply with ethical standards.

□ **3. Escrow Account Provision – 70% Rule**

- Promoters are required to **deposit 70% of the project funds** received from buyers into a **separate escrow account**.
- This amount can only be used for:
 - **Construction expenses** of the same project
 - **Cost of land acquisition** for that project
- This prevents **diversion of funds** to other projects and ensures financial discipline.

□ **4. Timely Delivery of Projects**

- Promoters are bound to complete the project **within the timeline** mentioned at the time of registration.
- In case of **delay**, the buyer has the right to:

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- Withdraw and claim a **full refund with interest**, or
- Continue with the project and receive **monthly compensation** for the delay

□ **5. Defined “Carpet Area”**

- RERA clearly defines "carpet area" as the **net usable floor area** of an apartment, excluding external walls, balconies, and common areas.
- This eliminates **misleading sales tactics** based on super built-up areas and brings uniformity.

□□ **6. Establishment of State Real Estate Regulatory Authorities (RERA)**

- Every State and Union Territory is required to set up its own **Real Estate Regulatory Authority**.
- The Authority is responsible for:
 - Registration of projects and agents
 - Maintaining a public database
 - Ensuring compliance
 - Addressing consumer grievances

□ **7. Establishment of Real Estate Appellate Tribunal**

- An **Appellate Tribunal** is set up for hearing appeals against orders passed by RERA or the adjudicating officer.
- It ensures speedy dispute resolution and must dispose of appeals **within 60 days**.

□ **8. Protection of Buyer’s Interest**

- Buyers are now entitled to:
 - **Full information** about the project
 - **Stage-wise progress updates**
 - **Legal title** of the land and project status

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- **Timely possession**

- In case of violations, buyers can lodge complaints directly with RERA or approach the Appellate Tribunal.

□ **9. Penalties for Non-Compliance**

- Strict penalties are prescribed under the Act:
 - Non-registration of a project: Up to **10% of the project cost**
 - Providing false information: **5% of the project cost**
 - Failure to comply with orders of RERA: Daily fines or **imprisonment up to 3 years**
- Agents and promoters are both liable for punitive action for violations.

□ **10. Restriction on Advertisement Without Registration**

- Promoters are **prohibited from advertising or marketing** any real estate project without registering it with the respective RERA.
- Misleading advertisements are punishable under the Act.

□ **11. Formation of Residents' Association**

- Promoters are required to enable the **formation of a Residents' Welfare Association (RWA)** or society within a specified time.
- This ensures smooth management and maintenance of the property after possession.

□ **12. Transparency Through Online Portal**

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- Each State RERA maintains an **online platform** for:
 - Public access to project details
 - Status of approvals and completion
 - Complaints and legal actions
- This enhances transparency and public trust.

□ 13. Adjudicating Mechanism for Dispute Resolution

- A designated **Adjudicating Officer** is appointed to settle disputes related to compensation, refunds, and delays.
- This mechanism ensures **speedy and efficient justice** for both buyers and developers.

The Real Estate (Regulation and Development) Act, 2016, is a **game-changer** in the Indian real estate sector. It promotes **professionalism, ethical practices, and accountability**, ensuring that consumers are no longer at the mercy of unregulated developers. By enforcing project disclosures, mandating registration, and establishing authorities for grievance redressal, the Act ensures **balanced development** and **consumer-centric governance** in the real estate industry.

Registration of Real Estate Project under RERA – A Comprehensive Explanation

The **Real Estate (Regulation and Development) Act, 2016** (commonly known as **RERA**) was enacted to bring transparency, accountability, and efficiency in the real estate sector. One of its cornerstone provisions is the **mandatory registration** of real estate projects with the respective **State Real Estate Regulatory Authority**. This is to ensure that buyers are protected and that developers are held legally accountable for project delays, financial irregularities, and misinformation.

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☐ **Legal Foundation – Section 3 to 5 of the RERA Act**

☐ **Section 3: No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building without registering the real estate project with the RERA authority.**

☐ **Section 4: Deals with the application process, documents, and declarations required for registration.**

☐ **Section 5: Provides the procedure for granting or rejecting registration.**

✓Applicability – Which Projects Must Be Registered?

Every real estate project must be registered **before any marketing or sale** if:

- The land to be developed exceeds **500 square meters**, or
- The number of apartments to be constructed exceeds **eight**, inclusive of all phases.

☐ **Note:**

Even if a project is to be developed in **phases**, **each phase is treated as a standalone project**, and must be **individually registered**.

✗Exemptions from Registration

A project need not be registered under RERA in the following cases:

1. **Small Projects:** Land area less than 500 sq. meters or number of apartments less than 8.
2. **Completed Projects:** Where **completion certificate or occupancy certificate** has already been issued before the Act came into force.

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3. **Renovation or Repair:** Projects not involving new bookings, advertising, or sale.

□ **Registration Process – Step-by-Step**

□ **Step 1: Prepare Documents and Information**

The promoter must prepare the following:

- Legal title of land and ownership documents
- Details of encumbrances, if any
- Plan approvals and layout plans
- Timeline for project completion
- Developer's background, PAN, Aadhaar, contact details
- Draft agreement for sale
- Project cost estimates and funding plan
- Declaration in **Form B** under Section 4(2)(I)(D)

□ **Step 2: File Application with RERA Authority**

- Submit the application **online or offline** (as per State RERA rules)
- Pay the prescribed **registration fees**

□ **Step 3: Evaluation by Authority**

- The Authority examines all documents, title ownership, legal clearances, and promoter background.

□ **Step 4: Grant or Rejection of Registration (within 30 days)**

- If the application is found to be **complete**, registration is **granted** with a unique project registration number.

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- If incomplete or improper, the Authority may **reject** the application after giving an opportunity to be heard.

□ **Documents Required (As per Section 4)**

A promoter must submit the following documents:

1. **PAN Card and Aadhaar** of promoter
2. **Photographs and contact details** of promoter
3. **Details of land** (legal title deed)
4. **Encumbrance certificate**
5. **Approved layout plans and building plans**
6. **Number, type, and carpet area** of apartments
7. **Details of common areas** and amenities
8. **Timeline for completion**
9. **Details of contractors, architects, and engineers**
10. **70% Escrow declaration**
11. **Form B:** Affidavit-cum-declaration of compliance and financial integrity

□ **Escrow Account Requirement – Section 4(2)(I)(D)**

- Promoters must open a **dedicated project bank account** in a scheduled bank.
- **70% of the money** received from allottees must be deposited in this account.
- It can only be withdrawn **in proportion to the completion of the project**, certified by an engineer, architect, and CA.
- This provision ensures **no diversion of funds** and timely completion.

□ **Grant of Registration – Section 5**

- The Authority issues a **unique registration number** within **30 days** of receiving the application, if all requirements are met.
- Along with login credentials to update the project's progress on the RERA portal.

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☐ **Mandatory Public Disclosure on RERA Website**

Once registered, the project details must be made publicly available online:

- Legal documents
- Construction status
- Completion milestones
- Sales status
- Any default or legal disputes

This provision ensures **transparency**, and allows buyers to make **informed decisions**.

☐ **Consequences of Non-Registration**

If a promoter does not register a project that is required to be registered:

1. **Penalty up to 10%** of the project cost
2. On continued default: **Imprisonment up to 3 years**, or further fines, or both
3. The buyer can also file a **complaint** and seek redressal for refund, interest, or compensation

☐ **Benefits of Registration to Buyers**

1. **Legal assurance** of project approval
2. Access to real-time information about the project
3. Protection against delays or fraud
4. Refunds and interest on failure to deliver
5. Binding agreements and legal remedy through RERA

The registration of real estate projects under the RERA Act is a **revolutionary step** towards formalizing and regulating the real estate industry in India. It brings transparency, instills buyer confidence, and enforces strict financial discipline on the part of developers. The provision ensures that projects are **legally sound, financially protected, and timely executed**.

Registration of Real Estate Agents under RERA

☐ **Introduction**

The Real Estate (Regulation and Development) Act, 2016 aims to regulate the real estate sector and bring accountability to all stakeholders — not only promoters and developers but also **real estate agents**. Section 9 and Section 10 of the Act prescribe a **mandatory registration process** for all real estate agents intending to deal in **registered real estate projects**.

This ensures **ethical conduct**, prevents **misleading marketing**, and protects the interests of homebuyers and investors.

☐ **Legal Basis**

- **Section 9** – Registration of Real Estate Agents
- **Section 10** – Functions and Duties of Registered Real Estate Agents
- **Applicable Rules** – Each State's RERA authority lays down specific rules, procedures, and fee structures.

☐ ☐ **Who is a Real Estate Agent?**

According to Section 2(zm) of the Act, a **real estate agent** means **any person** who negotiates or acts on behalf of one party in a real estate transaction and receives **remuneration or fees** for his services. This includes:

- Brokers
- Property dealers
- Middlemen or facilitators

☐ **Requirement for Registration**

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A real estate agent cannot facilitate the sale or purchase of a property in a registered real estate project **without registration** with the RERA authority.

Applicability:

- Individual agents
- Firms or companies involved in real estate brokerage
- Online property platforms (if involved in transaction facilitation)

☐ **Procedure for Registration**

☐ **Step 1: Application Submission**

The agent must apply to the **State/UT RERA Authority** with:

- **Application Form 'G'** (or as prescribed)
- Prescribed **registration fee**

☐ **Step 2: Documents to be Submitted**

1. **Name, address, contact details** of the agent
2. **Type of entity** – individual, firm, partnership, LLP, or company
3. **Registration details of firm** (if applicable)
4. **PAN Card** and **Aadhaar Card**
5. **Photographs of individuals/proprietor/partners/directors**
6. **Address proof of business premises**
7. **Income Tax Returns** for the last three years
8. Any other documents prescribed by State RERA

☐ **Step 3: Payment of Fees**

- Varies from **₹10,000 to ₹1,00,000**, depending on the State and type of applicant (individual vs. company)

☐ **Step 4: Grant of Registration**

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- The Authority issues a **registration certificate** with a **unique registration number**
- Must be issued **within 30 days**
- Validity: **5 years** (subject to renewal)

☐ **Obligations of Registered Real Estate Agents (Section 10)**

Once registered, the agent must:

1. **Avoid unfair trade practices**, misrepresentation, or false advertising
2. **Not facilitate sale of unregistered projects**
3. Maintain and preserve **books of accounts, records, and documents**
4. **Assist buyers and promoters** in exercising their rights and obligations
5. Disclose all relevant project details to the buyer
6. Comply with all rules, regulations, and orders of the RERA Authority

☐ **Renewal of Registration**

- Application for renewal must be submitted **at least 60 days before expiry**
- Renewal fees and updated documents must be submitted
- Renewal period: **another 5 years**

✕ **Revocation or Suspension of Registration**

The RERA Authority may **revoke or suspend** the registration if:

- The agent is found guilty of **fraud, misrepresentation, or breach of duty**
- Involved in promoting **unregistered projects**
- Violates provisions of RERA or fails to comply with Authority's orders

Before revocation, the agent must be **given an opportunity to be heard**.

☐ **Consequences of Non-Registration**

An unregistered real estate agent found operating in a registered project may face:

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- **Penalty of ₹10,000 per day**, up to a maximum of **5% of the cost of the property involved in the transaction**
- Legal action or blacklisting

☐ **Benefits of Registration**

For agents:

- Builds **credibility and trust** among clients
- Allows legal facilitation in **registered projects**
- Offers protection against fraudulent developers

For buyers:

- Ensures interaction with **qualified and accountable** agents
- Legal recourse in case of misrepresentation or malpractice
- Access to **transparent property information**

☐ **Digital Disclosure**

Many state RERA authorities maintain a **public portal** where registered agents' names, contact details, and disciplinary actions (if any) are published — ensuring **public awareness** and **buyer security**.

☐ **Example: Registration Fee Structure in Selected States**

State	Individual Agent Fee	Firm/Company Agent Fee
Maharashtra	₹10,000	₹1,00,000
Tamil Nadu	₹25,000	₹50,000
Karnataka	₹25,000	₹2,00,000
Delhi	₹10,000	₹50,000

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The **mandatory registration of real estate agents** under RERA has added a layer of **professionalism, transparency, and accountability** in the real estate ecosystem. It empowers consumers, discourages fraudulent practices, and strengthens the regulatory framework of India's housing and real estate industry.

By bringing real estate agents under the purview of the Act, **RERA ensures a fair and reliable environment** for all stakeholders.

Functions and Duties of a Promoter under RERA

□ Introduction

The **Real Estate (Regulation and Development) Act, 2016** was enacted to regulate and promote the real estate sector with transparency, accountability, and efficiency. One of the central stakeholders under the Act is the **promoter** – defined as the individual or organization responsible for developing, constructing, marketing, and selling real estate projects.

Under **Chapter III** (Sections 11 to 18) of the Act, the **functions and duties** of promoters have been clearly laid out to safeguard the interests of homebuyers and bring accountability to real estate development.

□□ Who is a Promoter?

As per **Section 2(zk)** of RERA, a "promoter" includes:

- A person who **constructs or causes construction** of a building or apartment for sale
- A developer or builder
- A landowner who markets the project under joint development
- A company, society, firm, or any other association of persons involved in the construction or sale of the property

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✓Key Functions and Duties of a Promoter

1. □ Mandatory Registration of Project (Section 3)

Before advertising, booking, or selling, a promoter must:

- Register the project with the State/UT RERA
- Disclose all necessary information, including project layout, approvals, timelines, and financials

2. □ Disclosure of Project Details (Section 4 & 11)

The promoter must provide **true and accurate information** in the application and ensure continuous disclosure on the RERA website, including:

- Project layout plans
- Approvals and land title status
- Carpet area, amenities, and timeline for completion
- Legal encumbrances, if any
- Quarterly updates on construction status and sales

3. □ Maintenance of 70% Escrow Account (Section 4(2)(I)(D))

- 70% of the amounts collected from buyers must be deposited in a **separate escrow account**
- Funds can only be withdrawn in **proportion to the completion** of the project, certified by an engineer, architect, and CA
- Ensures **no diversion of funds** to other projects

4. □ Adherence to Sanctioned Plans (Section 11(4))

The promoter must:

- Execute the project as per **approved plans and specifications**

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- Not make any alterations without prior consent of at least **two-thirds of allottees**

5. □ Execution of Agreement for Sale (Section 13)

- Promoter must enter into a **registered agreement for sale** with the allottee before accepting more than 10% of the cost
- The agreement must include terms related to carpet area, possession date, payment schedule, and penalties for delay

6. □ Timely Possession and Delivery (Section 11(4)(a))

- It is the **duty of the promoter** to complete the project **on time**
- Deliver **possession of property** and common areas to the allottees and the association of allottees respectively

7. □ Title of the Land (Section 11(5))

- The promoter must provide **legal title of the land** and prove ownership
- Shall be liable to compensate allottees for **defective title**, with **no limitation period** for claims

8. □ Repair of Structural Defects (Section 14(3))

If any **structural defect or poor workmanship** is reported within **5 years** of possession:

- Promoter must **rectify it free of charge** within **30 days**
- Failing which, buyer is entitled to compensation

9. □ Responsibility for Refund with Interest (Section 18)

If the promoter:

- Fails to complete or handover the project
- Revokes the allotment

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- Does not deliver as per agreement

Then the promoter must:

- Refund the amount received from the buyer
- Pay **interest** and **compensation** for delay or breach

10. □ Formation of Association of Allottees (Section 11(4)(e))

- Promoter must facilitate the **formation of society/association/owners' group** within the prescribed time or before possession
- Handover common areas and documentation to the association

11. □ Handover of Documents (Section 17)

- Upon handing over possession, the promoter must give:
 - **All legal documents**
 - **Plans and approvals**
 - **Insurance documents**
 - **Service infrastructure details**

12. □ No False Advertising (Section 12)

- Promoter is **prohibited from making false/misleading statements or advertisements**
- Any loss incurred due to false claims must be **compensated or refunded** by the promoter

13. □ Responsiveness and Grievance Redressal

Promoters must:

- Address queries and complaints of allottees
- Respond to notices from the Authority or Appellate Tribunal
- Ensure professional and ethical conduct

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✕Consequences of Breach of Duties

If a promoter fails to comply with the provisions of RERA:

- **Penalty up to 5% to 10% of project cost**
- **Interest liability for delayed possession**
- **Imprisonment up to 3 years** in severe cases
- Buyer can file complaint with **RERA Authority or Adjudicating Officer**

The RERA Act has **transformed the landscape** of real estate development by holding promoters accountable for timely delivery, financial transparency, and legal compliance. These duties ensure a **buyer-centric market** and aim to restore **trust and integrity** in the real estate sector.

By mandating strict responsibilities and continuous disclosure, the Act empowers homebuyers and creates a regulated and structured framework for developers.

Rights and Duties of Allottees under the RERA Act, 2016

□ Introduction

The **Real Estate (Regulation and Development) Act, 2016 (RERA)** was enacted to bring reform, accountability, and transparency in the real estate sector. While it imposes regulatory responsibilities on promoters and real estate agents, **Section 19** of the Act specifically recognizes and protects the **rights of allottees (buyers)**, while also outlining their **duties** to ensure effective compliance and balance in contractual relationships.

□ Who is an Allottee?

As per **Section 2(d)** of the Act, an “*allottee*” refers to:

A person to whom a plot, apartment, or building has been allotted, sold (whether as freehold or leasehold), or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment.

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Thus, an allottee is essentially the **buyer or holder of a real estate unit** in a registered project.

✓ **Rights of Allottees [Section 19]**

1. □ Right to Obtain Project Information [Section 19(1)]

The allottee has the right to obtain **complete and accurate information** relating to:

- Sanctioned plans, layout plans
- Project specifications and stage-wise completion schedule
- Name and addresses of real estate agents, contractors, architects, and structural engineers
- Legal title of the land and status of approvals

This ensures **transparency** before and after the booking or purchase.

2. □ Right to Know Construction and Progress Updates [Section 19(1)]

The allottee can access **regular updates** on the project including:

- Quarterly development status
- Details uploaded by the promoter on the RERA website
- Fund utilization and stage-wise execution

3. □ Right to Sanctioned Documents and Approvals [Section 19(1)]

An allottee is entitled to the **legal documents** related to the project, such as:

- Commencement Certificate
- Completion Certificate
- Occupancy Certificate
- Approved floor plans and layout plans
- Encumbrance certificate

4. □ Right to Possession [Section 19(3)]

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Every allottee has the legal right to:

- Obtain possession of the **unit/apartment/plot** as per the sale agreement
- Possession of **common areas** (through the Association of Allottees)

5. ⌘ Right to Timely Delivery [Section 19(4)]

The allottee is entitled to:

- **Timely delivery** of their unit by the promoter
- In case of delay, the right to **refund with interest and compensation** as per **Section 18**

6. □ Right to Rectification of Structural Defects [Section 14(3)]

If within **five years of possession**, any **structural defect or deficiency in services** is found, the promoter must:

- **Rectify such defects within 30 days** free of cost
- If the promoter fails to do so, the allottee can **claim compensation**

7. □□□ Right to Form Association or Society [Section 19(9)]

Allottees have the right to:

- **Form a legal body** (like RWA, society, cooperative)
- Participate in decision-making about project maintenance
- Receive handover of documents and common facilities

8. □ Right to Complain and Seek Redressal [Section 31]

Allottees can lodge complaints against:

- Promoter or agent
- Delays, misrepresentation, or breach of agreement
- Violation of any provisions of RERA

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They may approach:

- RERA Authority
- Adjudicating Officer
- Real Estate Appellate Tribunal

9. ☐ Right Against False Advertisements [Section 12]

If a promoter gives **false or misleading advertisements**, the allottee is entitled to:

- **Refund of amount paid**
- **Interest and compensation**

☐ Duties of Allottees [Section 19]

1. ☐ Duty to Make Timely Payments [Section 19(6)]

Allottees must:

- Make payments as per the **agreed schedule** in the sale agreement
- Pay for **registration, stamp duty, maintenance charges**, etc.

2. ☐ Duty to Pay Interest on Delayed Payments [Section 19(7)]

If an allottee delays payment beyond the due date:

- They are liable to pay **interest** at a prescribed rate
- The rate is usually **State RERA prescribed** (often SBI MCLR + 2%)

3. ☐ Duty to Take Possession Timely [Section 19(8)]

Upon receiving the **occupancy certificate**, the allottee must:

- **Take possession within 2 months**
- Delay may result in liabilities like maintenance charges

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4. □ Duty to Participate in Association Activities [Section 19(9)]

Allottees should:

- Join the Association/Society of Allottees
- Cooperate in managing the common areas
- Pay maintenance fees as required

5. □ Duty to Act Responsibly

Allottees must:

- Avoid damaging common areas or property
- Not use the unit for unlawful or commercial purposes (unless permitted)
- Comply with project rules, by-laws, and community guidelines

□ Comparison Table – Rights vs. Duties of Allottees

Rights of Allottees	Duties of Allottees
Right to information on project details	Pay consideration and taxes timely
Right to possession of unit and common areas	Take possession within 2 months
Right to refund or compensation	Pay interest on delayed payment
Right to defect-free construction	Participate in association activities
Right to form a housing society/RWA	Abide by community rules and conduct
Right to complain and seek redressal	Maintain decorum and protect property

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The **RERA Act, 2016** acknowledges that **homebuyers are central stakeholders** in real estate transactions. Their rights have been strengthened with guaranteed access to information, timely delivery, financial safeguards, and legal remedies. However, these rights are accompanied by essential duties to ensure cooperation, financial discipline, and community living.

By balancing these rights and duties, **RERA creates a more transparent, trustworthy, and fair real estate ecosystem**, fostering confidence for both buyers and developers.

Offences, Penalties and Adjudication under RERA Act, 2016

☐ **Introduction**

The **Real Estate (Regulation and Development) Act, 2016** was enacted to regulate the real estate sector, ensuring **transparency, efficiency, and accountability**. To enforce compliance, RERA lays down a strict framework for:

- Identifying **offences** by promoters, agents, and allottees
- Imposing **penalties and punishments**
- Establishing a fair system of **adjudication and appeal**

These are primarily covered under **Chapters VIII and IX** of the Act (Sections **59 to 72**).

☐ **Offences under the RERA Act**

The Act recognizes the following **key offences** committed by promoters, real estate agents, and allottees:

☐ **Offences by Promoters**

1. **Non-registration of project** under Section 3
2. **Providing false information or misrepresentation** (Section 4)
3. **Failure to comply with RERA's orders**

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4. **Diverting funds** from one project to another
5. **Failing to complete or hand over possession** as promised
6. **Refusing to refund** the amount after default
7. **Not rectifying structural defects** within the specified time

☐ **Offences by Real Estate Agents**

1. **Operating without registration**
2. **Inducing sale of unregistered projects**
3. **Misleading the buyers**
4. **Failing to maintain proper records**
5. **Violating RERA's directions**

☐ **Offences by Allottees**

1. **Non-payment of dues** to the promoter
2. **Failure to take possession** without valid reason
3. **Creating nuisance or using property for unlawful purposes**

☐ **Penalties and Punishments (Sections 59–68)**

RERA prescribes **monetary fines, imprisonment, or both** for non-compliance. Below is a section-wise summary of penalties.

☐ **For Promoters**

Offence	Section	Penalty
Non-registration of project	Sec 59(1)	Fine up to 10% of estimated cost of the project
Continued non-compliance	Sec 59(2)	Imprisonment up to 3 years and/or further fine up to 10%
False information	Sec 60	Fine up to 5% of project cost

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Offence	Section	Penalty
Violation of orders of RERA	Sec 61	Fine up to 5% of project cost
Violation of orders of Appellate Tribunal	Sec 63	Imprisonment up to 3 years , or fine, or both

☐ **For Real Estate Agents**

Offence	Section	Penalty
Non-registration or contravention of Act	Sec 62	₹10,000 per day (up to 5% of property cost)
Failure to comply with RERA orders	Sec 65	Fine up to 5% of property cost
Failure to comply with Appellate Tribunal	Sec 66	Imprisonment up to 1 year , or fine, or both

☐ **For Allottees**

Offence	Section	Penalty
Failure to make payments	Sec 67	Interest on unpaid amount as per prescribed rate
Failure to comply with orders of Authority	Sec 68	Fine up to 5% of plot/apartment cost

☐ **Adjudication Mechanism (Sections 71–72)**

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To provide a quick and efficient redressal system, the Act establishes a 3-tier adjudication structure:

☐ 1. Real Estate Regulatory Authority (RERA)

- Receives **complaints** related to:
 - Non-registration
 - Delays in project
 - Misinformation by promoters or agents
- Can **conduct inquiries**, summon witnesses, and impose **penalties**

☐ 2. Adjudicating Officer (AO)

- Appointed under **Section 71**
- Handles matters related to **compensation**, such as:
 - Delayed possession
 - Refund requests
 - Structural defects
- Has powers of a **civil court** (summoning, evidence, etc.)

☐ 3. Real Estate Appellate Tribunal (REAT)

- Under **Section 43**, hears appeals from:
 - RERA Orders
 - Adjudicating Officer decisions
- Must dispose of appeals within **60 days**
- Can confirm, modify, or reverse decisions

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☐ **4. Further Appeals**

- Any party aggrieved by the Appellate Tribunal may file an appeal to the **High Court** within **60 days** on **questions of law**

☐ **Compounding of Offences (Section 70)**

Certain offences under the Act are **compoundable**, meaning:

- The accused can pay a monetary fine instead of undergoing imprisonment
- Compounding is permitted at any stage before or after the institution of prosecution
- The fine should not exceed the **maximum penalty prescribed**

☐ **Important Points to Remember**

- **Penalties are severe**, especially for promoters who fail to register or mislead buyers
- **Authority has suo motu powers** to initiate inquiry and impose penalties
- The Act **discourages frivolous delays**, ensuring speedy justice and compliance
- Promoters, agents, and allottees must **cooperate with the Authority** and **fulfil their obligations** to avoid penalties

The **Real Estate (Regulation and Development) Act, 2016** is not merely a regulatory framework but a powerful legal instrument to discipline errant players in the real estate sector. With clearly defined **offences**, **strict penalties**, and a **three-tier adjudication system**, the Act ensures justice, accountability, and protection for all stakeholders — especially the consumers.

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Specimen Agreement for Sale

(Under the Real Estate (Regulation and Development) Act, 2016)

This Agreement for Sale is made and executed on this ____ day of _____ 20__ at _____

BETWEEN

M/s. [Name of the Promoter],
a company incorporated under the Companies Act, 2013, having its registered office
at _____,
(hereinafter referred to as the “**Promoter**”, which expression shall, unless repugnant
to the con or meaning thereof, include its successors and permitted assigns)
OF THE FIRST PART

AND

Mr./Ms./M/s. [Name of the Allottee],
son/daughter/wife of _____, aged about ____ years, residing at _____
(hereinafter referred to as the “**Allottee**”, which expression shall, unless repugnant
to the con or meaning thereof, include his/her/their heirs, executors, administrators
and _____ successors)
OF THE SECOND PART

WHEREAS:

1. The Promoter is the absolute and lawful owner of the land situated at _____, admeasuring ____ sq. meters, and has obtained all necessary approvals, sanctions, and permits from the competent authorities to develop a real estate project known as “[**Project Name**]”.

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2. The Promoter has registered the project with the **[State] Real Estate Regulatory Authority** under Registration No. _____.
3. The Allottee has agreed to purchase and the Promoter has agreed to sell an apartment/unit/plot bearing No. ____ on the ____ floor, having a carpet area of ____ sq. meters, with exclusive balcony/terrace/utility area and proportionate share in common areas, in the said project.

1. Total Price

The total price for the unit/apartment is ₹_____ (Rupees _____ only), which includes:

- Cost of construction
- Proportionate cost of common areas
- Development charges
- Clubhouse and amenities charges
- GST or other applicable taxes

The Allottee shall pay the price in instalments as per the **payment plan/schedule** attached as Annexure A.

2. Schedule for Payment

- The Allottee agrees to pay the amount as per the progress of construction linked milestones.
- Payments shall be made via cheque/DD/online transfer to the designated account of the Promoter.

3. Possession

- The Promoter shall hand over possession of the unit on or before ____ [date], subject to Force Majeure events.

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- In case of delay, the Promoter shall pay interest to the Allottee at the prescribed rate.

4. Defects Liability

- If the Allottee brings to the notice of the Promoter any **structural defects or poor workmanship** within 5 years of possession, the Promoter shall rectify it free of cost within 30 days.

5. Formation of Association of Allottees

- The Promoter shall facilitate the formation of an Association/Society of allottees within 3 months of majority of allottees taking possession.

6. Maintenance

- The Allottee agrees to pay maintenance charges as determined by the Association.
- The Promoter shall maintain the common areas until it is handed over to the Association.

7. Right to Cancel Booking

- The Allottee may cancel the booking before possession. If cancelled without default of the promoter, the promoter may forfeit the booking amount (usually up to 10%).

8. Events of Default and Consequences

i. By Promoter:

- Delay in delivery
- Failure to comply with building standards or specifications

Remedy: Allottee entitled to withdraw and claim full refund with interest.

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ii. By Allottee:

- Default in payments for 3 consecutive demands

Remedy: Promoter may cancel the allotment after 15 days' notice and deduct booking amount.

9. Dispute Resolution

- All disputes shall be referred to the **RERA Authority** or **Adjudicating Officer**.
- Appeals shall lie with the **Real Estate Appellate Tribunal (REAT)**.

10. Miscellaneous

- This agreement shall not be transferred or assigned without mutual consent.
- All communications shall be in writing and delivered via post/email to the respective addresses.

IN WITNESS WHEREOF

The parties have executed this Agreement for Sale on the date mentioned above.

Promoter

(Authorized

Signatory)

Name:

Designation:

Allottee(s)

Signature(s):

Name(s):

Witnesses

1. _____

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2. _____

□ **Annexures:**

- Annexure A – Payment Schedule
- Annexure B – Copy of Approved Plan and Specifications
- Annexure C – Allotment Letter (if issued)
- Annexure D – Project Registration Certificate

This format is compliant with **Section 13(2)** of the RERA Act and ensures transparency and mutual obligations.

Summary

Corporate and Economic Laws form the legal backbone of a nation's business environment. They govern the lifecycle of business entities, regulate financial and capital markets, protect investors and consumers, and ensure fair trade practices. Through statutes such as the **Companies Act, 2013, Insolvency and Bankruptcy Code, 2016, SEBI Act, 1992, Competition Act, 2002, FEMA, 1999, and Real Estate (Regulation and Development) Act, 2016**, India has created a dynamic framework to support economic growth and corporate governance.

These laws not only promote **transparency, accountability, and compliance**, but also help balance the interests of various stakeholders — including promoters, creditors, investors, employees, and consumers. Their relevance has grown with increasing globalization, digitalization, and evolving business models. Moreover, economic laws such as the **Prevention of Money Laundering Act, 2002** and **Consumer Protection Act, 2019** play a critical role in upholding ethical standards and fostering trust in commercial transactions.

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In a developing economy like India, **effective implementation and timely reforms** in corporate and economic laws are crucial to attract investments, enhance ease of doing business, and ensure inclusive development. Going forward, with the convergence of law and technology, these legal frameworks must continue to evolve to address emerging challenges such as data privacy, ESG (environmental, social, governance) compliance, digital currencies, and global tax regulations.

Thus, a robust understanding of Corporate and Economic Laws is essential for professionals, entrepreneurs, and policymakers alike — as these laws are not just instruments of control but enablers of sustainable economic transformation.