



**DHHM/BHHM 05**

**VARADHAMAN MAHAVEER OPEN UNIVERSITY, KOTA**

**Contemporary  
Hospitality Industry &  
Hospitality Law**



# Vardhaman Mahaveer Open University, Kota

## CONTENTS

### BHHM-15

Unit No.	Name of Unit	Page No.
Unit 1	Introduction to Hospitality	1
Unit 2	Understand the current structure of the hospitality industry	15
Unit 3	Growth of hospitality Industry	32
Unit 4	Positive and negative impact of Hospitality Industry	45
Unit 5	Domestic and international tourism	59
Unit 6	Hospitality and Tourist Product	74
Unit 7	Tourist Attractions	86
Unit 8	Introduction to Law & Legal Sources	105
Unit 9	Law of Contract	122
Unit 10	Hotel Restaurant Licenses	147
Unit 11	Adulterant	162
Unit 12	Consumer Protection Act 1986	179
Unit 13	Contract of Insurance & Hotel Insurance	201
Unit 14	Labour Laws	216
Unit 15	Pollution Control Act,	231
Unit 16	Sale of Goods	241

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# Unit 1 : Introduction Hospitality

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## Structure

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Introduction to Tourism
- 1.3 Origin of Hospitality & Its Growth
- 1.4 Hoteliering & Pioneers of Hospitality Industry
- 1.5 Summary
- 1.6 Glossary
- 1.7 Review Questions
- 1.8 Check your Progress-1 Answer
- 1.9 Check your Progress-2 Answer
- 1.10 Suggested Reading

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## 1.0 Objectives

After studying this unit, the student must know:

- Understand the origin and growth of Tourism Industry.
- Trace the development of Hospitality Industry and its origin.
- Understand the importance of various leaders of Hospitality Industry
- Learn about the various leading hotel chains of the country

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## 1.1 Introduction

Travel is as old as mankind on the earth. Man at the beginning of his existence roamed about the surface of the earth in search of food, shelter, security and better habitat. The hospitality Industry is among the oldest commercial activities in the world. It is in fact, an integral part of the larger business enterprise known as travel and tourism, which provides a wide range of travel related services, such as modes of travel, accommodation, food and drinks, recreational activities, and other facilities required by modern-age traveller. This unit is aimed at providing an insight into the evolution and growth of tourism, hospitality and hotel industry and the core areas of hotel with reference to front office.

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## 1.2 Introduction to Tourism

Tourism is one of the world's fastest growing industries and a major source of foreign exchange and employment generation for many countries Tourism may be defined as the processes, activities and outcomes arising from the relationships and the interactions among tourists, tourism suppliers, host governments, host communities, and surrounding environments that are involved in the attracting and hosting visitors.

Four different perspectives of tourism can be identified:

- 1. The Tourist:** The tourist seeks various psychic and physical experiences and satisfactions. The nature of these will largely determine the destinations chosen and the activities enjoyed.

2. **The businesses providing tourist goods and services:** Business people see tourism as an opportunity to make a profit by supplying the goods and services that the tourist market demands.

3. **The Government of Host Community or area:** Government perspective is related to the incomes their citizens can earn from this business. Government also considers the foreign exchange receipts from international tourism as well as the tax receipts collected from tourist expenditures, either directly or indirectly.

4. **The host community:** Local people usually see tourism as a cultural and employment factor. Of importance to this group, for example, is the effect of the interaction between large numbers of international visitors and residents.

The word **‘tour’** is derived from the Latin word *tornus*, meaning ‘a tool for making a circle’. Tourism may be defined as the movement of people from their normal place of residence to another place (with the intention to return) for a minimum period of twenty-four (24) hours to a maximum of six months for the sole purpose of leisure and pleasure.

The **UNWTO** defines tourists as ‘people who travel to and stay in places outside their usual environment for not more than their one consecutive year for leisure, business and other purposes not related to the exercise of an activity remunerated from within the place visited’.

The evidence of tourism can be traced back to the ancient civilization of Greece. Although participation in tourism was constrained by the difficulties and dangers of travelling any distance, and also by a lack of financial resources to do so, there was evidence of travel by the Ancient Greeks for the purposes of oracles, festivals and game competitions. In 776 BC visitors from all over the Hellenic world attended the first Olympic Games at Olympia. In the Roman Empire, the next major civilization of Europe, travel was facilitated by a sophisticated road system stretching 4,500 miles, the need to use only one currency, and a common language of Latin. The Roman Empire extended from Britain in the west to Armenia and Syria in the east, lasting for nearly 500 years in the west (c.31 BC–AD 476) and for 1,500 years in the east (c.31 BC–AD 453), necessitating the building of an extensive road network to administer and maintain order. A further point of consideration about tourism in Roman times was that similar to Ancient Greece, Roman society encompassed slavery. Hence, travel for the purpose of pleasure was restricted to a class who had both the available leisure time and disposable income to participate in it. It is not unrealistic to expect that this elite class of society would have been conspicuous by its ability to participate in tourism, a situation that existed until the nineteenth century, when the marked economic and Social changes associated with the Industrial Revolution would eventually permit a wider social participation in tourism.

## **MEDIEVAL TOURISM**

During this period of approximately 1,000 years c.500–1500 AD, often referred to as the ‘Middle Ages’, travel was arduous and mostly being undertaken out of a necessity to trade or for religious pilgrimage rather than for recreation. Throughout the middle Ages, religion played an important part in folk culture, and the celebrating of ‘holy days’, from which the

word 'holiday' eventually developed, presented opportunities for a change from the typical employment in agriculture and cottage industries.

## **THE GRAND TOUR**

The catalyst for the movement of a larger number of the wealthy beyond national boundaries was associated with the Renaissance, a period of revived interest during the sixteenth and seventeenth centuries in the classical civilizations of Rome and Athens. During Queen Elizabeth's reign, as a refined form of education, a school to "finish" patricians by giving them firsthand experience of classical lands. Others in the upper class of society copied this practice, and travel to Italy for the purposes of teachings in classical civilization eventually became a part of a gentleman's education. This upper-class travel dating from the Renaissance period became known as the '**Grand Tour**', as it expanded beyond Italy into a circuit of Western Europe. As the eighteenth century progressed, more people could afford to participate in the Grand Tour as a consequence of an expansion in mercantile trade and subsequent increased wealth. With the increase in the numbers of participants in the Grand Tour came a widening of the variety of types of people and a diversification of themes. Progressively through the eighteenth century, the middle classes began to form the majority of tourists rather than the aristocracy, which led to a significant rise in family and women travelers. The Industrial Revolution is significant for marking a period of change from an agricultural based economy to an industrial one. Its origins lie in the mechanization of cotton and wool production in the north of England in the last two decades of the eighteenth century. Although the Industrial Revolution began in Britain, other countries have followed similar patterns of change. Urbanization caused the separation of people from nature and the land for the first time in human history. The workforce was also required to work in a manner that was suited to the needs of industry and factories rather than the natural rhythms of the seasons. Factory work required a regular unbroken daily routine, as life became structured around the need to keep industrial production functioning, with men, women and children often working six-days. The folk culture of village communities was also lost as people were forced to live in poor conditions, similar to the ones described by Engels, creating social tensions that had never been experienced before. This pattern of separate spatial and time zones for work and leisure is reflected in contemporary tourism, as we take defined periods of time away from work, and travel away from our home environment to other places and destinations. An outcome of major significance of the Industrial Revolution was the level of productivity that was established in the economy. People began to have disposable income, i.e. extra income left over after spending on essential items such as housing and food, to spend on leisure activities.

A consequence of the availability of income to spend on leisure was the development of the tourism industry. Political pressures, including the heightened profile of the Trade Union movement, the founding of the socialist Labour Party in England, the social fallout from the First World War and a consequent demand for rights for workers, were contributory factors to the passing of the 1938 Holiday with Pay Act in the UK. Similarly in France, government legislation was passed in 1936, making 12 days of paid vacation mandatory in all enterprises. The significance of these acts is that it marks recognition of holidays as being beneficial for individuals and society.

## **TRANSPORT REVOLUTION**

A further essential element of contemporary tourism is reliance upon fast and efficient transport. The Industrial Revolution was characterized by a technological advancement in travel, notably the invention of the steam engine by James Watt in 1784, which led to the development of the railway and steamship. Until the nineteenth century, travel was dependent, as it always had been, upon horse and wind power. The development of the railway network in the nineteenth century had a marked significance for both society and tourism. By the 1840s the potential of the railways for tourism was already being realized by Thomas Cook, a wood turner by trade. The seminal event in the beginning of the use of the railways for recreational tourism was the organization of a trip for 570 temperance workers from Leicester to a temperance rally near Loughborough by train in 1841. This trip demonstrated the potential demand for group travel, while Cook also realized the potential of his own power as a bargaining agent to capture reduced group prices with the railways and other suppliers of travel services. By 1845 he was arranging similar excursions on a full commercial basis using chartered trains. Cook's efforts represented the beginnings of the development of the tourism industry. The efforts of Cook can certainly be equated with a revolution in travel, simplifying, popularizing and cheapening travel, to bring it within the reach of the working classes. By the 1860s, Cook had already developed tours to Europe and America, and in 1869 offered the first escorted tour to the Holy Land. In his first nine years of business, he handled more than one million customers. By the beginning of the twentieth century, Cook and Son had started to make arrangements for travellers all around the world. The destinations available for recreation began to increase and diversify as the railways made possible regular and safe journeys for the first time in history.

## **MASS TOURISM**

The development of coastal areas was encouraged by changing landscape tastes of Romanticism during the eighteenth century, referred to earlier. The impact of urbanization was also influential in encouraging a seaside culture. During the eighteenth century coastal resorts began to rival spa towns as fashionable places for the growing middle classes in Europe and America to visit. The combination of health, natural and created attractions, and the use of the railways for transport helped make coastal areas popular as resorts. In terms of developing a popular seaside culture, it was particularly the development of the railway network from the cities to the coast, which permitted a middle- and working-class holiday boom during the late nineteenth century and early twentieth century. Villages and towns on the coastlines of industrializing centers were transformed with promenades and piers, providing profits from previously economically redundant areas of cliffs and bays. The coast seemed to exercise an allure that eventually permeated all the social classes. The changing economic, social and technological societies that have created mass tourism continue to drive its demand. Just as the numbers of people participating in tourism increased continuously through the twentieth century, the peripheries of tourism have also been extended progressively. There are few places in the world that remain untouched by tourism and with the development of space tourism; the periphery is now set to be expanded beyond the boundaries of the planet.

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## **1.3 Origin of Hospitality & Its Growth**

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Oxford dictionary defines hospitality as ‘Reception and entertainment of guests, visitors, or strangers, with liberality and goodwill’ Wikipedia encyclopedia explains hospitality for and in depth understanding of the term from the starting point i.e. etymology of the word itself. The word hospitality derives from the Latin of **hospes**, which is formed from hostis, which originally meant ‘stranger’ and come to take on the meaning of enemy of ‘hostile stranger’ (hostills) + pets(polis, poles, potential) to have power. The Latin word ‘Hospitalitas’ means to maintain mutual understanding between the public and an organization, similarly the French word ‘hospice’ means to provide care/shelter for travellers. In view of the above hospitality can be defined as ‘Reception and Entertainment of Guests, visitors or strangers with liberty and goodwill comprised of business which practice act of being hospitable.

Hospitality has main four features:

- A host on a guest, away from home, confers it.
- It is interactive, involving the coming together of a provider and receive.
- It comprises a blend of tangible and intangible factors.
- The host provides for the guest’s security, psychological & physiological comfort.

The main components of this industry are hotels, motels, inns, resorts and Restaurants. The hospitality industry is an umbrella term for a broad variety of service industries, including, but not limited to, hotels, restaurants, casinos, catering enterprises, resorts and clubs. The industry is very diverse and global, and is greatly impacted by fluctuations within the economy as also by various happenings across the world. The primitive lodging houses or inns originated essentially to cater to these needs of the travelers. Throughout the world they were known by different names like **Dharamshala** and **Sarai** in India, **Ryokans** in Japan, **Paradors** in Spain, **Pousadas** in Portugal, **Coffee houses** in America, **Taverns** and **Inns** in Europe, **Cabarets** and **Hostelries** in France, **Mansionis** and **Hospitia** in Switzerland, **Phatnal** in Greece and **Relay Houses** in China.

The hospitality has not merely flourished in a particular sector but also supporting the travel and tourism trade. Ministry of Tourism, Govt. of India report agrees to the fact “**No Hotels- No Tourism**”. Due to diverse nature of services the hospitality has a support function as well. Almost all the multinational companies in India are catered by hospitality industry in terms of their food service for employees. Similarly in flight’s menu, rail meals and other such provisions are also taken care by hospitality industry. Similarly support functions in terms of service, food, beverages, accommodation comfort and care being provided in meetings, conferences, exhibitions and other such major areas. In a nut shell a society remains incomplete without hospitality.

**“A hotel is defined as a place where a bonafide traveller can receive food and shelter, provided he is in a position to pay for it, and is in a fit condition to be received.”** The hotel industry originated in the 6<sup>th</sup> Century BC and is perhaps one of the oldest endeavors. The earliest inns were just large halls where travellers slept on the floor along with the animals on which they traveled. These conditions prevailed for hundred of years until the mode of travel changed.

The improvement of roads and the building of carriages also increased the number of people on the move. To provide accommodation and food for this increasing number of travellers, many types of inns were set up along the frequently travelled roads and pathways. Thus, inn-keeping began its steady growth and became more popular as time progresses. In earlier

times, working in an inn was skill-oriented, and these inns were normally run by a husband and wife team. Inns provided shelter and stabling facilities. Some of them also provided wholesome food & wine.

The lead in a hoteliering was taken by several nations of Europe, especially France and Switzerland. **Chalets**-small cottages with an overhanging roof found in the Swiss Mountains and small hotels, which provided a variety of services, were mainly patronized by the aristocracy of the day.

Inns in America were patterned after those in England. Samuel cole of Boston opened the first American tavern, the Coles ordinary, in Boston in 1634. Taverns and Inns became informal gathering places where patrons could discuss politics and community gossip over ale and food. In 1740, the first stage coaches began travelling from Boston and made roadside inns even more accessible and popular. The American Revolution ended the reign of the roadside inns as they went out of fashion along with the British. French cuisine became popular in government and society circles, with even presidents Washington and Jefferson serving French dishes to their guests.

Around 1760, a type of establishment that became common in Paris, called Hotel Garni came into vogue. It was a large house with a number of rooms or apartments available for rent by the day, week or month. Its advent signified a more luxurious and organized way of providing lodging quite different from the basic requirements met by the inns of that period. In France the first restaurant where customer could choose from a selection of items presented on a menu was opened in 1765 by **A. Boulanges**. The City Hotel in New York was the first building meant solely for use as a hotel. It was built in the year 1794. In the 1820s the first American restaurant opened in New York with these establishments began the era of 'fashionable' restaurants where dining was a social event and an indulgence in fine food surrounded by lush decor, some featuring nightingales and elaborate fountains. In the year 1827, the Delmonico brothers, who were immigrants from Switzerland, opened a pastry shop and café in New York City.

The big boom in the hotel industry came in the 1920s, when the concept of chain hotels was born, under the stewardship of **Ellsworth steatler**. He was the **hotel man of the century**. He has given statements like **"Life is Service"**.and **"Guest is always right"**.However, during the Great Depression of the 1930s, there was a considerable decrease in business thereby affecting the growth of the hotel industry. Immediately after the Second World War, the hotel industry regained its prominence and registered a steady growth. In 1950s, Motels and International hotel chains gave a big boost to the industry. These chains either bought up smaller individually owned properties, or built their own hotels. Many individual hotel operators merged with these international hotel chains, as it increased their ability to cope with the growing competition.

Thus the main functions of hotel include:

- Providing living accommodation.
- Supplying food, drink, for immediate consumption.
- Having transportation
- Recreational, entertainment facilities

- Any other functions incidental or ancillary to these functions.

## 1.4 Hoteliering & Pioneers of Indian Hospitality Industry (Great Indian Hospitality Tycoons)

India's historical past, its cultural heritage and its varied landscape and terrain have attracted travellers from time immemorial. People from different parts of the world have been attracted to India for its natural endowments, religious and spiritual heritage. The first Indian owned hotel was the one built by Jamshedji Tata in Bombay in 1903 called the 'The Taj Mahal'. M.S. Oberoi was the first man to think of running hotels. The oberoi chain of hotels in India is known after his name. The first Oberoi international in New Delhi was started in 1965. The spencer group were another famous group of pioneers who started the Blue Mountain hotel at Kotagiri in 1942 and Savoy Hotel at Ootacamund in 1943. But still when India became independent there were only a few hotels in India operated by the British and Swiss families. After independence, the government of India realized the importance of hotels for the development of tourism business. But not many business men in India were willing to invest money in hotel keeping which was often considered not a respectable profession by the business community. Since the private sector was reluctant in hotels, the government of India stepped into building hotels where ever needed. The Ashok hotel in New Delhi was the first one to built in 1956 in the public sector. The hotel was built in a record time of one year; this included a convention hall to seat 2000 people. The classification process helped in standardizing the services of the hotels. Till recently the government of India fixed the tariff of approved hotels on the basis of their standards. The practice has since been given up and now the market forces of demand and supply determine the price of a room in a hotel. The better hotels in India have high occupancy by foreign visitors who pay in foreign exchange, which is good for the economy of the country. The growth of any sector involves not only its own growth and establishment, but the significant benefits it provides to the economy as a whole. The hotel industry in that way has provided manifold benefits to the economy. These benefits are contribution in the economy, employment and balance of payment.

### **ITC/ Sheraton Corporation**

ITC's Hotel division was launched on October 18, 1975, with the opening of its first hotel-Chola Sheraton in Chennai. ITC –Welcomgroup Hotels, Palaces and Resorts, is today one of the finest hotel chains with its distinctive logo of hands folded in the traditional Namaste is widely recognized as the ultimate in Indian Hospitality. Each of the chain's hotels pays architectural tribute to ancient dynasties, which ruled India from time to time. The design concept and themes of these dynasties play an important part in their respective style and décor. The group has joined hands with the Sheraton Corporation to strengthen its international marketing base and now have currently 10 ITC – Welcomgroup Sheraton Hotels, and more in pipeline.

Indian has 5000 years of history, culture, religion and alternative medicine fascinate both luxury and budget travelers. Focus of the industry is on the tradition of “Atithi Devo

Bhavah” or Guest is God. Tourism is a significant sector of the Indian economy and contributes 2.5% of Gross Domestic Product (GDP) and 8.78% of total employment in the country. Tourism in India is the third largest foreign exchange earner and also provides employment opportunities and has significant linkages with agriculture, horticulture, handicrafts and infrastructural development in the country. According to the World Travel and Tourism Council (WTTC) India and China are the most growing industries for the next 10-15 years. According to World Economic Forum Competitive Report 2011, the Indian tourism industry has out performed globally and holds 12<sup>th</sup> position in Asia and 68<sup>th</sup> position in the list of the world’s most attractive tourist destination.

The increasing numbers of both domestic as well as international tourists have been very encouraging for the Indian travel and Hospitality industry which has nearly doubled during the last three years. Indian travel and Hospitality industry experienced a healthy growth trend of 24.6% during 2009-10. According to the Market Research Division of Ministry of Tourism, the total number of foreign tourists in the country in 2010 was 5.58 million as compared to 5.17 million in 2009, representing a rise of 8.1% and approximate 562 million domestic tourists. The growth rate of Foreign exchange earning were INR 60000 million in June 2011 over June 2010 (INR 50000 million) was 18.9% to the growth of 28.1% in June 2010 over June 2009 (INR 47000 million).

#### ***Government Initiatives***

The Ministry of Tourism has made various efforts to expand the tourism infrastructure at various destinations in India. According to the 11<sup>th</sup> Five Year Plan, a total of INR 2350 billion is planned to be invested in upgrading and modernizing civil amenities like bridges, ropeways, roads, telecom services, ports and other forms of transport according to report by the Planning Commission. All efforts are judicious blend of traditions, legacy, religion and eco tourism projects that intend to offer the tourists a holistic experience. The Government has allowed 100% foreign investment under the automatic route in the hotel and tourism related industry. Government of India has announced a scheme of granting tourist Visa on arrival (T-VoA) for the citizens of Finland, Japan, Luxembourg, New Zealand, and Singapore. Scheme is strictly on single entry for the purpose of tourism and for a short period of up to a maximum of 30 days. Identification and development of 37 destinations within last two years and execution of 600 projects for 300 tourist spots across the country with an investment of over INR 1200 million are some projects taken by Government to boost the travel industry and create awareness for the sector.

***The term tourism related industry*** includes:

- Travel agencies, tour operating agencies and tourist transport operating agencies.
- Units providing facilities for cultural, adventure and wildlife experience to tourists.
- Transport facilities: surface (road and rail), water and air facilities for tourists.
- Convention / seminar units and organization.

***The term hotel*** includes restaurants, beach resorts and other tourism complexes providing accommodation and / or catering and food facilities to tourists.

Prior to 1980s, the Indian hotel industry was a slow growing industry consisting of single hotel companies and after the *Asiad* held in New Delhi in 1982, and subsequent liberalization of the Indian economy generated tourism interest in India. Growth in demand for hotels was particularly high during the early 1990s and most of the most of the international chains and new entrants came in this period. Ministry of Tourism, Government of India classified all the hotels into three types of:

- **Star categories:** 1 star, 2 star, 3 star, 4 star, 5 star, and 5 star deluxe
- **Heritage categories:** heritage Grand, Heritage Classic and Heritage
- **Apartment hotels:** 3 star, 4 star, 5 star, and 5 star deluxe

**Market segments:** All the categories of hotels have their market segment such as high end 5 star deluxe and 5 star hotels cater to the **business and up market foreign leisure travelers** and offer a high quality and range of services. Average foreign, middle level business travelers and domestic leisure traveler approach to 3 star and four star hotels and highly price conscious segment of the domestic and foreign leisure travelers appreciate to avail the facilities and services 1 star and 2 star hotel. 1 and 2 star hotels neither do nor offer as many facilities as the other star category of hotels. Major players of the hotel industry are:

- Hotel chains: TAJ, Oberoi, ITC, ITDC.
- Small chains: Hotel Leela Venture, Asian Hotels, Jaypee, DLF Universal, Bharat Hotels, Sahara, Viceroy Clarks.
- Public sector chains: ITDC, HCI, IRCTC
- International hotel chains: Marriott, Starwood, Berggruen, Emmar MGF,
- Localized hotel companies

***My life has been achievement-oriented. I started off as a coal clerk at the Cecil Hotel in Simla. But I always had dreams and I worked my way at fulfilling those dreams."***

- MS Oberoi, the Founder of the Oberoi Group

***"I have great respect for the professionalism of Oberoi Hotels. To me, both the hardware and software components are equally important in a complete hotel product and the Oberoi brand excels in both. P R S Oberoi stands for uncompromising quality like his late father and in this country at least, there isn't anyone who is equal to them on that strength."***

- Sunil Mathur, Director, International Development, Wyndham Hotel Group.

### **BHARAT RATNA Jehangir Ratanji Dadabhoy TATA**

Born on July 29, 1904 in Paris and his mother was a French lady and father was Parsi and JRD Tata was popularly known as Jeh. JRD Tata was educated in France, Japan and England. JRD had great interest in flying and had the honor of being India's first pilot. JRD joined Tata & Sons in the year 1925 and was chairman of Tata & Sons for 50 years. JRD Tata was one of the most enterprising Indian entrepreneurs and awarded Bharat Ratna in 1992. Contributions of JRD Tata:

- Built largest industrial house of India.
- Launched Air India International as India's first international airline in 1948.
- Became chairman of Tata & Sons and started 14 enterprises under his leadership and when he left Tata & Sons having more than 95 enterprises.
- JRD Tata was the Trustee of Sir Dorabji Tata Trust from its inception 1932 and established Asia's first cancer hospital, The Tata Memorial center for Cancer,



Research and Treatment. Trust also founded Tata Institute of Social Sciences, Tata Institute of Fundamental Research and National Center for Performing Arts.

- Started principles of eight –hour working day , free medical aid, worker’s provident fund, workmen’s accident compensation schemes and all these were adopted as statutory requirement in India.

**Awards :**

- Received Padma Vibhushan in 1957 on the eve of silver jubilee of Air India.
- Guggenheim Medal for aviation in 1988.
- United Nation Population Award for successfully implementing the family planning movement in India.

JRD Tata died in Geneva, Switzerland on November 29, 1993 at the age of 89 and Indian Parliament was adjourned in his memory –an honor not usually given to persons who are not Members of Parliament.

**PADAM BHUSHAN M.S.OBEROI**

**Profile of Grand Old Man of the Indian Hospitality Business  
Rai Bahadur Mohan Singh Oberoi**

Born: 15<sup>th</sup> August 1888 in Bhaun in undivided Punjab.

Died: 3rd May. 2002

Father’s name: Attar Singh Oberoi.

Education: Matriculate from DAV School, Rawalpindi.

Intermediate from Lahore

Stenography course from Amritsar

First job: As a supervisor in shoe factory

First job in the hotel: As a clerk in Hotel Cecil Simla and promoted as a cashier and stenographer by Mr. Clarke Manager of the luxurious hotel Cecil.

Route of success:

1924: Taken a catering contract for the elite Delhi club and leased Simla hotel and renamed as Clarke Hotel and it was the first of hotels that Mr. M.S.Oberoi acquired.

1938: Leased Hotel Grand in Calcutta for a sum of Rs. 7000 per month and completely furnished the hotel and set up facilities to accommodate 1500 beds and then offered to the British Army for a sum of Rs. 10 each.

1943: Took over Associated Hotels of India Limited and gained control over hotels located in Delhi, Lahore and Rawalpindi and added more hotels to the group.

Contributions and achievements:

- Pioneer in using old palaces and heritage monuments as hotels.
- Founder of Oberoi Centre of Learning and Development.
- Oberoi group was one of the first companies to have women employees in the hospitality sector.
- Elected to the Rajya Sabha twice in 1962 and 1972.
- Elected Member of Parliament in the year 1968.
- Awarded Elite winner in 1978 by Newsweek Magazine .
- Honored by the Government of India with the Padam Bhushan in 2001.

### Vision of Oberoi Hotels

- We see an organization which aims at leadership in the Hospitality Industry by understanding its guest and designing and delivering products and services which enable it to expect their expectations. We will always demonstrate care for our customers through anticipation of their needs, attention to detail, distinctive excellence, warmth and concern.
- We see a lean, responsive organization where decision making is encouraged at each level and which accepts change. It is committed and responsive to its guests and other stakeholders.
- We see a multi-skilled workforce, which consists of team players who have pride of ownership, translating organizational vision into reality.
- We see an organization where peoples are nurtured through permanent learning and skill improvement, and are respected, heard and encouraged to do their best. Oberoi is recognized as best practice for training and developing its people.
- We see a more multinational workforce which has been exposed to different cultures, problems and situations and can use its experiences to enrich the local employees whether in India or overseas.
- We see the world dotted with hotels of The Oberoi group, in strategic commercial and resort locations.
- We see user friendly technology enhancing value for our customers and helping our personnel by making information more accessible.
- We see an organization which is conscious of its role in the community, supporting social needs and ensuring employment from within the local community.
- We see an organization which is committed to the environment, using natural products and recycling items, thus ensuring proper use of diminishing natural resources.

**Source: [www.oberoihotels.com](http://www.oberoihotels.com)**

### The Taj Group of Hotels

#### Mission Statement

*The Taj Group of Hotels must always be the leader in the Hospitality and Food service industry in India. With our traditional commitment To serve, we will strive endlessly to ensure totally guests satisfaction and customer loyalty. We will lead and empower a motivated workforce to achieve the highest levels of performance in meeting the needs of our customers, shareholders and community. We will perpetuate our established goodwill through continued commitment to integrity humanness and concern for social causes and the environment.*

The Tata Group Facts file: the Indian Hotels Company and its subsidiaries are collectively

known as Taj Hotels Resorts and Palaces, recognized as one of the Asia's largest and finest hotel company. Incorporated by the founder of the Tata Group, Jamsetji. N.Tata, the company opened its first property, The Taj Mahal Palace Hotel, Bombay , in 1903.

- Ranked amongst the World's top 100 brands by Business week magazine and placed in 13<sup>th</sup> among the 25 Most innovative companies.
- Well known for its business ethics, strong values new technologies and innovation.
- Asia's largest and finest group of hotels.
- 65 hotels in 45 locations across India with an additional 17 International hotels in USA, UK, Africa, the Middle East, Mauritius, Bhutan , Sri Lanka, Maldives, Sri Lanka, Bhutan, Malaysia and Australia.

### **Facilities at a glance**

#### **The Oberoi Cecil, Shimla**

**Colonial architecture, centrally heated in winters and air conditioned in summer, wood floors, crackling fires, well furnished rooms, colonial style furniture, TV, DVD Player, satellite television, wired internet broadband, direct dial telephone with voice mail, 24 hrs personal bar and butler service, heated swimming pool, billiards rooms, bridge tables, board games, children's activity centre with multimedia equipment, heated swimming pool, spa therapy, steam rooms and saunas, aromatherapy, Ayurvedic, Balinese, Hawaiian and Thai Massage, Gymnasium, golfing, horse riding, ice skating, trekking, and skiing.**

## **CHECK YOUR PROGRESS- 1**

Q-1 Define Tourism Industry.

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.....

Q-2 Define the Hotel in short.

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## 1.5 Summary

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Tourism industry is the major revenue earning enterprises in the world. Tourism contributes to the economic growth of a country by causing employment generation, foreign exchange earnings, and infrastructure development. The rapid growth in the movement of people, both domestically and internationally, has brought about an industry of vast proportions and diversity. Hospitality business tends to satisfy human needs and also play an important role in the satisfaction of social needs such as belongingness, longingness, love, esteem and status. Hospitality and Tourism are not only dependent on external factors but Hospitality and Tourism Industry is directly responsible for the health of other industries.

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## 1.6 Glossary

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**Front office:** - The department which takes care of reservation, reception, registration, and final settlement of guests' bill.

**Hotel:-** A place where a bonafide traveller can receive food and shelter, provided he is a position to pay for it and is in a fit condition to be received.

**Housekeeping:** - This department is responsible for the proper upkeep and maintenance of the hotel.

**Tourism:** - Movement of people from their normal place of residence to another place (with the intention to return) for a minimum period.

**Hospitality:-** A Contemporaneous human exchange, which is voluntarily entered into, and designed to enhance the mutual well being of the parties concerned through provision of accommodation, and/or food, and/or drink.

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## 1.7 Review Questions

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- 1- Give the definition of hotel?
- 2- What are the main functions of the hotel?
- 3- Trace the origin and growth of the hotel industry in India?
- 4- Define tourism and enumerate the importance of tourism with respect to the hotel industry?
- 5- Write Short note on the contribution of the following in Indian Hospitality Industry
  - a. J R D TATA
  - b. M S OBEROI

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## 1.8 Check your progress- 1 Answers

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**Ans-1** Tourism is one of the world's fastest growing industries and a major source of foreign exchange and employment generation for many countries. Tourism may be defined as the processes, activities and outcomes arising from the relationships and the interactions among tourists, tourism suppliers, host governments, host communities, and surrounding environments that are involved in the attracting and hosting visitors.

**Ans-2** A place where a bonafide traveller can receive food and shelter, provided he is in a position to pay for it, and is in a fit condition to be received.

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## 1.9 Check your progress- 2 Answers.

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**Ans-1-** Front office is the first department of the hotel with which guests come in contact at the time of their arrival and is also the last department they interact with when they depart from the hotel. This department performs various functions like reservation, reception, registration, room assignment, and settlement of bills of a resident guest.

**Ans-2-** The security department of a hotel is responsible for the overall security of the hotel building, in-house guests, visitors, day users, and employee of the hotel, and also their belongings.

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## 1.10 Further References

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## UNIT 2

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### Structure of Hospitality Industry

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- 2.0 Objective
- 2.1 Introduction
- 2.2 Historical Evolution & Development
- 2.3 Hospitality as an Industry
- 2.4 History of Hotels
- 2.5 History of Indian Catering Industry
- 2.6 Facts – Indian Hospitality Industry
- 2.7 Hospitality Organization
- 2.8 Major Players In Industry
- 2.9 Summary
- 2.10 Reference and Review Questions

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#### 2.0 Objective

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The learner will be able to:-

- Define Who the tourist is
- Understand the origin of Hospitality Industry
- List various important stake holders in the Hospitality industry
- Identify leading hospitality chains operating in the country

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#### 2.1 Introduction

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Tourists are people who for a variety of reasons travel to destinations, where they stay at least one night. Excursionists are also visitors that do not make an over-night stop, such as day trippers or people on cruises.

There are several basic types of tourists:

- People who travel to another country simply for pleasure/leisure or to pursue specialist activities, e.g. cultural tourism, visit to historical sites or for business purposes.
- People who attend international conferences and meetings or to study.
- People who visit their friends and relatives in another country or to search of their ancestral roots.
- People who travel for religious reasons, e.g. pilgrimages to Mecca.

Tourism may be described as the activities of tourists and those who cater for them. It is a highly diversified business with many component parts ranging from airlines to hotels. Tourism is concerned with providing:

- Travel and transport facilities

- ☐ Accommodation
- ☐ Food and drink
- ☐ Entertainment/recreation
- ☐ Information and assistance
- ☐ Souvenirs

Above all, tourism is a hospitality industry providing a service to visitors in a warm and welcoming way

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## 2.2 Historical evolution and development

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### Origins of Hospitality Industry

Early travelers were either warriors or traders or people in search of knowledge and there were no hotels. Warriors and conquerors pitched their tents for accommodation while traders and persons traveling for knowledge placed a high value on hospitality and sometimes traded their merchandise for lodging. Inn keeping can be said to be the first commercial enterprise and hospitality one of the first service for which money was exchanged. Inns of the Biblical times offered only a cot or a bench in the corner. Guests stayed in large communal rooms with no sanitation and privacy. The rates were, of course, reasonable. The company was rough. Travelers shared the same quarters with their horses and animals.

King James Version of Bible mentions that a Bethlehem innkeeper turned Mary and Joseph away, because there was "no room at the inn". According to Biblical scholars the innkeeper may have meant that the room was unsuitable for a woman about to give birth to a child. At that time, and probably for several centuries after that, men and women shared the same accommodation accompanied by their horses and livestock. The stable where Mary and Joseph spent the night was probably almost as comfortable as an inn and at the same time certainly more private than the inn itself.

In the 3rd century AD, the Roman Empire, developed an extensive network of brick paved roads throughout Europe and Asia Minor, and a chain of roadside lodges was constructed along the major thoroughfare from Spain to Turkey.

Till the Industrial Revolution of the 1700s, no significant improvement was made in the inns, and taverns and they were not very suitable for aristocrats. To accommodate wealthy travelers, luxurious structures were constructed with private rooms, individual sanitation and comforts of a European castle. These elegant new establishments adopted the French word for mansion-'Hotel'. Their rates were beyond the reach of an ordinary person.

In America early inns were modeled after European taverns with sleeping quarters shared by two or more guests.

Herman Melville in his novel Moby Dick has mentioned about a seaman who checked into a room of a nineteenth century inn and next morning woke up to find out that he was sharing the bed with a cannibal. Sharing beds was a very common practice in early American and

European inns. Throughout the 1800s American innkeepers improved their services and continued to build larger and more amply equipped properties and most of these properties were located near seaport towns.

The tendency of Americans to travel more provided an inspiration to lodging operators. The nation's democratic spirit also led to the development of comfortable and sanitary lodging within the reach of an ordinary person.

### **Nature of the Hospitality Industry**

Basically for all those who are away from their home, hospitality industry provides services. Hospitality industry consists of those businesses and institutions and (provide food, and lodging-such as hotels, motels, lodges) inns, cruise ships and restaurants etc. To some extent it also includes the air lines industry. In a broad sense, any group engaged in tourism, entertainment, transportation and lodging are covered under hospitality.

Hospitality industry is a part of travel and tourism industry. Early travelers were mostly warriors, businessmen, and scholars in search of knowledge or people in search of occupation. Mostly warriors would pitch their tents for accommodation while businessmen would look for a comfortable and safe place; and would often pay through their merchandise or cash to people providing them accommodation and food. The poor people traveling to far off places in search of job or occupation were provided the facilities of food and accommodation free of charges. As per some authentic sources, to facilitate travel throughout Western Europe a highway was constructed in 312 BC. Travel could be done on this highway by chariots. Later in 117 AD this roadway was reconstructed and covered a distance of nearly 50,000 miles.

Hospitality business now is both profits making as well as non-profit making. For example, commercial hotels are profit making while canteens, cafeterias and religious catering outlets such as langars and bhandaras are non-profit making.

Hospitality industry provides services, which are need oriented, and the services vary with the needs. For example, the needs of a business executive shall be a business hotel while the needs of a student are generally a youth hostel.

Traditional ways of providing hospitality in our country varies from place to place. In Jammu and Kashmir, Kashmiri Pandits, who are very God-fearing people, consider guests as epitome of God almighty Himself and welcome the-guest by a rangoli called Vyog patterned on their door-steps out of flowers and leaves. When the guests come, the host takes a glass of water and touches it on their forehead, so as to drive all evil spirits away from them. A special herb called Isbandh is also touched on the forehead and then burnt in the Kangri. The head of the Dogri family, another community of Jammu, goes to the door of the house to welcome the guest. The head female member of the family performs aarti of the guest and puts up a Tilak on the forehead of the guest. Every day in the southern part of the country, ladies make rangoli of rice, flowers and flour etc. It is believed that by doing so they are inviting guests and giving a message that the house is open to welcome guests. Greeting guests with folded hands, touching their feet in respect, aarti, puja, garlanding, applying tilak and ringing of bells, are numerous other ways of providing warm reception and welcome- and hence hospitality-in various parts of our country. Beating of drums, dhols, blowing of

trumpets, exotic dances and shows such as puppetry etc. are all different ways of expressing warm hospitality in our country.

In different parts of the world, traditional style hospitality is provided. For example, ladies decorated with flowers greet the guests in Honolulu. In some countries, local people gather to welcome visitors -at airports. Providing shoeshine service for every guest in the morning in a hotel in Bangkok is a part of welcome to the guests. In one of the hotels in Mauritius, after the dinner service is over the staff collects in the dining area and sings local songs in the honor of the guests. Memorizing the names of the guests and addressing them by their names is another way of providing

### **Traditional Style Hospitality for Visitors**

Hospitality in one of the hotels in France is shown by Singing melodious songs at the time of departure of a guest are done in one of the resorts in Fiji.

All the above-mentioned examples along with many others reflect the concept of hospitality provided by highly trained and experienced staff. Through their sincere efforts every guest feels like a VIP and a welcome syndrome is generated.

The past, present and future of the hospitality industry are linked together. Comfortable and sanitary lodging was once considered the exclusive privilege of the wealthy only, but with the rise of industry and democracy, hospitality has now become available to common men also. Hospitality has both influenced and is being influenced by cultural, social and economical changes in society. Hospitality business tends to satisfy human needs and also play an important role in the satisfaction of social needs such as belongingness, longing, love, esteem and status.

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## **2.3 Hospitality as an Industry**

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### **Hospitality Market**

Hospitality has a very vast market. All those who have stayed in hotels or have plans to stay in hotels or any other lodging establishment can be put under hospitality market. Hence all travelers including tourists, visitors, businessmen, leisure travelers, pilgrims and company executive's etc- can be the hospitality market. Depending upon the purpose of travel people can be classified under either commercial hospitality market or leisure hospitality market.

### **Hotel**

Common Law states that a "Hotel is a place where all who conduct themselves properly, and who being able to pay and ready to pay for their entertainment, are received, if there be accommodation for them, and who without any stipulated engagement as to the duration of their, stay or as to the rate of compensation, are while there, supplied at a reasonable cost with their meals, lodging and other services and attention as are necessarily incident to the use as a temporary home."

A hotel may be called as an establishment where primary business is to provide to the general public lodging facilities and which may also furnish one or more of the various services such as food: beverage, laundry, uniformed services etc. Hence, hotel can also be called as home multiplied by commercial activities.

As per the Reader's Digest Dictionary the term 'Hotel' refers to 'a house of entertainment of travelers'.

According to the Encyclopedia Britannica the word 'Hotel' is of ancient origin, but its use in English for a house offering lodging and food for travelers is recent. The Hostlers of London took the name of Inn keeping in 1473. The word 'Hostler' or 'Ostler' having come to mean an inn servant.

The term 'Hotel' was used in England in about 1760. British law as a —place where a bonafide traveler can receive food and shelter, provided he is in a position to pay for and is in a fit condition to be received|| defines hotel or inn.

**Convention Hotels.** Convention hotels provide meeting and banquet facilities for large groups (usually five hundred or more) booked in their guest rooms. Because they target groups, these hotels need large lobbies to accommodate group arrivals. They also have a high percentage of double-occupancy rooms and emphasize food and beverage services. Convention hotels may also offer concierge floors to cater to individual guests' needs.

#### **Luxury Hotels and Resorts.**

Traditionally, independent hotels offer the finest accommodations money can buy. Luxury properties are descendants of the grand hotels, featuring expensive, lavishly decorated public areas and the high levels of customer service. They offer the finest cuisine and the full range of amenities from shampoos and hair dryers to private Jacuzzis and fireplaces. Whether parking your car, carrying your luggage, or delivering room service, staff members — including concierges, bell persons, front desk attendants, and wait staff — are well-trained and efficient. Luxury resorts offer the finest entertainment and recreational facilities available.

#### **Full-Service Properties.**

Featuring properties operated by Hilton, Hyatt, Westin, and Marriott, this category of hotels attempts to offer a wide range of services at lower rates than luxury hotels. Full-service hotels generally offer clean, well-decorated hotels with meeting and restaurant facilities, a limited room-service menu, and a variety of recreational activities. Although not as extravagant as the luxury properties, full-service hotels generally have large, attractive public areas. The ratio of service of the concierge or other staff may be limited to designated VIP floors.

Some all-suite and extended-stay hotels with good-sized public areas also fit into the full service category, with amenities like in-room coffeemakers, microwave ovens, and refrigerators.

#### **Limited-Service Properties.**

Lodging establishments like Days Inn, Hampton Inn, and Quality Suites & Inns were once considered limited-service facilities. Usual offerings included simple, clean rooms with a telephone, free cable television, swimming

but some offered a few extra amenities such as complimentary shampoo and lotion to distinguish themselves from the economy properties. The remaining all-suite hotels fit into this category because of their limited services and amenities, and small public areas. The



Days Inn in Fort Pierce, Florida, has a guest mix of 50 percent business and 50 percent leisure.

### **Economy Properties.**

Once offering only the basic bed and bath facilities, economy properties focus on —more values for the dollar|| with clean and low-priced lodging. Economy properties generally did not offer meeting and recreational facilities or food and beverage services, with the possible expectation of a vending area featuring prepackaged snacks and video games. Staff was limited to only those required to provide basic front office services, security, and housekeeping services. Generally, the smaller guest rooms of the economy hotels offered one or two double beds and a separate bathroom equipped with no more than towel and soap. Properties in this category include Econo Lodge, Motel 6, and Daystop. Economy Lodging Systems management company has positioned Knights Inns as —the lodging choice of Middle America.|| According to President Gregory P. Terrel, —The target is traveling salesmen, senior citizens, and people with a family income of \$30,000 a year.

**Recreation Facilities** (ex: Fitness Center, Tennis Courts, and Cinema Saloons...) These facilities may be operated by an independent operator who would pay either a flat fee, a minimum fee and a percentage of the gross receipts or simply a percentage of gross sales. The revenue earned from this is called a **Concessions**

### **Conference Centers**

#### **Casinos**

Hotels may be paid a fee by suppliers that are located outside the hotel but provide a service to hotel guests e.g. car rentals and photographers. The revenue earned from this is **Commission**

### **Fitness/Recreation**

This department includes services and facilities to enhance the well-being and health of our guests by offering Tennis, Golf, Massage, Swimming and a Fitness Center among other activities

#### **Golf**

Some of our hotels offer golf facilities to our guests. This department ensures that all the guests' needs with regard to playing golf are met. This includes the management of the landscaping, irrigation, golf buggies, golf retail store etc.



### **Meetings & Special Events**

The Meetings/Special Events Department coordinates all details involved with group bookings, working closely with meeting planners to arrange all rooming, food and beverage details, meeting facility specifications, and any additional requirements of the group. The Meetings & Special Events Managers partner with company event planners prior to their arrival to understand, manage, record and coordinate the details of each event and to communicate these to the relevant departments. The role of the Meetings & Special Events manager is to be the liaison between the planner and the hotel operational departments. The team works to ensure the guest's utmost satisfaction with the event. The Meetings & Special Events department is responsible for accurate forecasting of group rooms, banquet food and beverage and for achieving overall hotel budgeted revenue.

### **Spa**

The Spa department operates almost like a hotel with a hotel. It offers separate services such as reservations, housekeeping, front desk and concierge. It may be joined to a fitness center or a Golf Club or a Resort Hotel, and will operate as a profitable business unit. In addition to the services mentioned above, the Spa department employs certified massage therapists, nutrition consultants, wellness coordinators, nail technicians, and hair stylists

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## **2.4 History of Hotels**

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Early history of accommodation for travelers can be traced back to the Greek word 'Xenia', which not only meant hospitality but also the protection given to a traveler from discomforts. The city was bound to offer hospitality. In Sparta city, although due to rigorous customs visitors were not encouraged, yet goddess Athena was considered as protector of strangers and hence her name was 'Xenia Athena'.

In this period travelers were mainly diplomats, philosophers; intellectuals and researchers. Guests were invited to stay with noblemen. In ancient Olympia, buildings constructed with the aim to accommodate strangers can be seen. They were called 'Leonidio' and were, built in 4th century B.C. The concept of hospitality can also be drawn back to ancient times. Homer finds mention of it in 'Iliad' and 'The Odyssey'.

Hotel keeping can also be traced back to many centuries and its evolution through the ages has been brought about by Britain's economical and industrial changes and developments. During the seventh and eighth centuries, it was the monasteries that applied hospitality to strangers and, as no charge was made for the accommodation, travelers were expected to contribute according to their means to the Abbey funds. As more people began to travel they grouped themselves together not only for company but for mutual protection from highway and robbers. Consequently travelers arrived in groups at a monastery and it was often difficult to accommodate them all. To overcome this, separate lodging houses, called 'Inns' (a Saxon word) were built. The word 'inn' came to mean a 'Lodging House' and until the passing of the Hotel proprietors Act in 1956, it was the legal term for 'Hotel' and hotel proprietors were legally referred to as 'Common innkeepers'. 'Common' in this sense referred to Common Law.

In the thirteenth and fourteenth centuries, manor houses, being hospitable 'places; willingly gave accommodation to travelers. As no payment was expected, travelers tipped the servants as a 'thank you' for the generous hospitality received-thus the practice of tipping was born. When high taxes crippled the generosity and hospitality of the owners of the manor houses, many became commercial inns. During Elizabeth the First's reign, posting houses were established and travelers, in addition to getting refreshment were able to change horses before continuing their journey.

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## 2.5 HISTORY OF INDIAN CATERING INDUSTRY

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- Indian cooking has the history of 4000 years and versatile nature of Indian cooking is due to various rulers and travelers but not lost its original identity and become richer with the assimilation of the myriad influences.
- Indian cuisine is sub divided into sub-continental or regional cuisine and mostly known by the name of the region such as Punjabi, Maharashtrian, Goan, Bengali, Hyderabad, Avadhi and so on.
- 2000 B.C. Indian cooking was carrying a great impact of Ayurvedic tradition and according to an old saying, “jaisa khao anna, vaisa hoga mun (means whatever you will eat it will reflect through your habits, body and soul), In *Madbhagvada Geeta* it is very clearly stated that your food or eating habits transmit into the next generation so food should be properly cooked, pious, hygienic and combination of all six tastes Sweets, Sour, Salty, Pungent, Bitter and Astringent. If you are habitual to enjoy only one or two tastes then there are chances for illness, fatigue and laziness. All six tastes are related to the attributes of Essence and Effect.
- 1000 B.C. At the time of Mohenjodaro civilization most of the people of southern part of the country was vegetarian and still most of them are vegetarian.
- Eating habits of Indian people was totally based on caste system at this time as Brahmins were vegetarian and Khatriya were non vegetarian.
- In 600 B.C. due to emergence of Buddhism and Jainism: Jain food become very popular and as per the philosophy of Jainism (strong believers of non violence) food was vegetarian and without onion and garlic.
- We have the evidence of 400 B.C. at the time of King Ashok ( Mauryan Dynasty) to change in the food habits of India (grain cuisine) and found production of natural liquor that were consumed for recreation as Mauryan economy was agriculture driven.
- During the time of Gupta dynasty in A.D. 1200, number of travelers visited India and introduced culture of Tea and spices to the country. Country also observed significant changes especially on Goan cuisine at the same time due to Portuguese.

- During the era of Khilji Dynasty Indian food was rich by ghee, curd pickles and served in different courses and most of the sweets were prepared by milk.
- 1500-1800 A.D. Moghul Empire inducted various new seasonings, spices, herbs and techniques to Indian cuisine and during the British period ( 1800-1947 A.D.) Indian cuisine incorporated with Anglo cuisine and new Anglo Indian came into the existence and afternoon tea/ high tea party gained popularity.
- After the Independence Indian cuisine changed into regional cuisine since the Indian mass divided into several countries most notably Pakistan and Bangladesh.

### **Box 2.1**

#### **Mother of Indian Cookery**

##### **Padmashree Thangam E. Philip**

Some are born to make a mark in their chosen field of interest and if area of excellence is food then no body can forget the contributions of Padmashree Thangam E. Philip, a graceful lady from Kerala and Principal of first Institute of Hotel Management of the country and well known as Dadar Catering College in Mumbai. Ms. Philip a graduate from Irwin College Madras took a diploma in Home Science from Lady Irwin college New Delhi. Ms Philip has taken numerous teaching assignment including Lady Irwin college New Delhi, St.Thomas School, Calcutta, Southland Methodist College Sri Lanka where she was asked to set up a Home Economic Department and came back in the year 1950. Ms. Philip was assigned a task to run one of the Annapurna subsidized chain of cafeterias in New Delhi. Ms. Philip joined as a lecturer in the Institute of Hotel Management in the year 1955 and in 1958 it was the first time that the first batch of the three year diploma holders passed out from IHM Mumbai. Ms. Philip organized various cookery shows for television channels in US to popularize ethnic dishes of India. In 1961, she became the Principal of IHM Mumbai and contributed to the Indian as well as international hospitality world. She participated in the Young World Assembly in Athens, Rome for launching the Freedom from Hunger campaign of the UN's Food and Agriculture Organization. She was awarded FAO CERES medal for her valuable contribution to the International society in the year 1975. In the year 1976, she was awarded with Padmashree for her outstanding contribution to the development of hotel and catering education in India. In 1982, she was honored with the Knighthood of the Order of "Cordon Bleu Du Sant Esprit" from France. She retired from Dadar catering college in the year 1986. Ms Philip contributed and guided various international seminars, conferences, workshops and food up gradation program. She has penned several books and the Thangam Philip of baking and cuisine written for Ministry of Tourism are considered outstanding works. She also leaded several projects of UNDP, ITO, ILO, FAO and the Kuwait Ministry of Public Health. Ms. Thangam E.Philip is a persona par excellence in the field of Hospitality and catering industry.

(Courtesy: Department of Tourism, Government of Kerala)

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## 2.6 INDIAN HOSPITALITY AND CATERING INDUSTRY-FACTS

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- Hospitality business operates 24 x 7 x 365.
- Priests of Hindu temples were used to provide accommodation and catering facilities to the tourists at their residence and this traditional is still on in the country specially places Mathura, Vrindavan, Puri, Badrinath, Kedarnath, Dwarika, Pushkar ji, Varansi, Rameshwaram.
- Most of the ancient kings constructed Dharamshalas at the religious places and the same traditions was adopted Muslim rulers and they built Sarai at various places.
- British were the first to contribute to the establishment of hospitality services and British Hotel was built in Mumbai in 1840.
- Most of the famous beach resorts and hill resorts were built by British rulers.
- In 1902, Tata opened it first hotel Taj Mahal in Mumbai.
- The word hospitality covers hotels, restaurants, industrial or organized catering for offices, hospitals, educational institutions, private functions, defense services, railways, cruise ships and in-flight catering.
- There are about 20,000 hotels in India in the organized sector, accounting for about 5 lac hotel rooms. Currently there are some 1,900 hotels approved and classified by the Ministry of Tourism, with a total of approximately 1,07,000 hotel rooms. The star-category hotels are considered superior in terms of facilities, services and reputation. Most attract an upscale clientele, including international tourists.
- According to HVS International, around 10,586, hotel rooms in Delhi, 9,318 rooms in Mumbai, 7,794 rooms in Bangalore and 7,408 rooms in Hyderabad are expected to be added by 2011.
- Airport Authority of India owns 112 airports (11 international, 94 civil and 27 civil enclaves at defense airfields), 61 out of which are operational.
- According to the recent estimate more than two-million restaurants are now dominating the present scenario of the Indian catering industry.
- Catering industry is growing @15-20% per year.

- According to WTO (World Tourism Organization) Tourism industry is growing @12% per annum in India.
- As per first Indian Food and Beverage News Paper: Indian food market is approximately Rs. 2,50,000 crores.
- Food market of the country comprises of food processing, bakery, confectionary, dairy products, meat & poultry, fruits and vegetables, fisheries, food ingredients, grocery retail, packaging, alcoholic and non alcoholic beverages, fats and oils, frozen foods and flavor enhancers.
- Food market will be double by 2020 and expecting a large investment into food and food processing, technologies, skills and equipment.
- Food processing industry is growing @20% per annum and 300 million upper and middle class consumers used processed food in their daily life.
- Organized Restaurant market is expecting a business of 28,000 cores by the end of year 2015.
- Eating out is one of the life style of young Indian and main forms of leisure.
- More than 25 international fast food chains (Pizza Hut, McDonald, Dominos, Kentucky Fried) are operating their business successfully and Star Bucks, Hooters, Grand Canyon Coffee, Burger King are likely to enter into the fast food market of the country.
- There was a 70 percent increase in the total number of outlets in the year 2006 which is significantly higher than 29 percent of the previous year.
- Nirula's is India's oldest fast food restaurant chain based in North India and most popular in NCR Delhi started in 1977.
- Café concept in India is developed by Coffee café day (CCD) in the year 1996.
- Indian Coffee House (1940) has more than 400 coffee houses in India and operated by a series of worker co-operative societies.
- Indian restaurants offer 15 types of meals and home delivery is gaining popularity.
- Italian, Chinese, Mexican and Thai food is also served by Indian restaurants.
- **India spends only 0.97% of its GDP on Tourism against the International average of 3.8% but contributes 6.9% to our GDP.**
- Accor, the worldwide famous hotel group has plans to establish 200 new hotels in India within this decade (2010-2020).

- The US based Hyatt International Hotels and Resorts has planned to add another 15 five star and deluxe hotels and resorts in India over the next three to four years. Hyatt will set up two hotels each in Bangalore, Hyderabad and Chennai. It also has plans to expand its construction network in Mumbai, Ahmedabad, Chandigarh and Gurgaon. It is eyeing on Kerala and Goa as the prospective sites for resort construction.
- According to M.P Purushothaman , President South India Hotels & Restaurants Association, proposals have been made to launch 51 hotels in South India. Most of the hotels would be in the three star categories. The average investment per hotel would be in the range of Rs 20 lakhs per room.
- The Oberoi Group is planning to launch a luxury hotel in Goa. Goa is going to witness development of 12 new hotels over a period of 3-5 years, according to a survey by Federation of Hotel and Restaurant Associations Of India and HVS International. The Oberoi could be one of these 12 new hotels.
- World's leading hotel brands are planning to enter the Indian hospitality industry in joint venture with various domestic hotel majors of India. Even new brands such as Amanda, Satinwoods, Banana Tree, Hampton Inns, Scandium by Hilt and Mandarin Oriental are no more lagging behind in this matter.
- Cabana Hotel Management Pvt Ltd, the Indian master licensee for Best Western, the world's largest hotel group, will develop 100 hotels in India's emerging business centres over the next seven to eight years with an investment of \$1.2 million. Cabana has already made plans for making six hotels in Ooty, Bangalore, Jaisalmer, Kanyakumari and Jaisalmer and now is moving ahead to Delhi, Chandigarh, Hyderabad, Chennai, Surat, Patna, Aurangabad, and Nagpur.
- IRCTC has been floated tenders for 13 sites for budget hotel on a Build –Operate – Transfer arrangement for 30 year periods.
- DLF has tied up with Hilton International to develop 100 hotels in the country.
- Sahara group is ready to set up 102 hotels in 3 & 4 star category to be located within 217 Sahara cities planned across A, B and C-grade cities.
- Viceroy hotels is planning to spend INR 1000 million to set up hotels in Chennai, Bangalore, Virag and one more property in Hyderabad.
- Netherlands based Golden Tulip Hospitality Group and US –based Leyland Group plans to set up 50 hotels across 40 cities in the country on both management contracts or franchise system with the owners of existing properties.

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## 2.7 Hospitality organization

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To efficiently run their hotels, hotel managers organize them into various functional areas and then delegate responsibility and authority. The functional areas are divided into revenue



and cost (or support) centers. Divisions such as rooms and food and beverage are revenue centers; others, like engineering and accounting, are cost centers. The number of such centers (or divisions) depends on the size of the hotel.

### **Hospitality accommodation**

#### **Service Departments**

To provide lodging to guests, all hotels are organized around four basic functions:

- (1) front desk operation
- (2) housekeeping
- (3) building maintenance/engineering, and
- (4) security.

Beyond these common services, hotels and their departments can vary tremendously. For example, most luxury hotels include a restaurant and beverage department, while most budget facilities do not. The performance of these functions can also vary widely among different types of hotels. Business guests of a convention center may expect hi-tech front desk operations, and guests at a resort may prefer a more personal approach. At any rate, all hotels carry out these functions both behind the scenes and at the front of the house.

#### **Functional Areas:**

- There are two approaches to classify departments in typical hotels:

1. **Revenue Generating versus Cost Centers:** The first approach is trying to differentiate between departments revenue-wise. In fact, this approach entitles that if a department generates revenue to the hotel (ex. Rooms Division Department, F&B Department...), it is called a revenue generator. On the other hands, if a department incurs costs without directly contributing to hotel profitability, it is called a cost or support center (ex. Accounting Department, Maintenance and Engineering Department...).

2. **Front of the House versus Back of House:** This approach classifies departments according to department staff's frequency of communication with guests. If communication between staff and guest is frequent (ex. Front Office Department), then the department is said to be a front of the house department. On the other hand, if the communication between department staff and guests is nonexistent or on occasions, then the department is said to be back of the house department.

### **Different Departments:**

#### **Rooms Division:**

In a study conducted , it has been shown that the majority of hotels revenues (60.2 %) are generated from Rooms Division Department under the form of room sales. This very department provides the services guests expect during their stay in the Hotel. Lastly, the Rooms Division Department is typically composed of five different departments:

Front Office

Reservation

Housekeeping

Uniformed Services

Telephone

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## 2.8 Major players in the industry

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The major players in the Indian hotel industry can be broadly classified into private players and public players. The major private players include Indian Hotels Company limited, East India Hotels Limited (The Oberoi group), Asian Hotels and ITC Hotels. ITDC and Hotel Corporation of India are the major public sector players.

### The Top Players in Hospitality Sector

#### Public Sector Players:

- A. ITDC hotels
- B. Hotel Corporation of India

#### Private Sector Players:

- A. ITC Hotels
- B. Indian Hotels Company Ltd.(The Taj Hotels Resorts & Palaces)
- C. Oberoi Hotels(East India Hotels)
- D. Hotel Leela Venture
- E. Asian Hotels Ltd.
- F. Radisson hotels & Resorts

#### ➤ Hotel Corporation of India

The Hotel Corporation of India Limited is a public limited company wholly owned by Air India Limited and was incorporated on 8 July,1971 for providing in-flight catering services to the national carriers and for operating a chain of hotels, particularly near the airports. The company has a total of 3923 employees and its net worth is Rs. 55.40 crore. HCI has an authorized capital of Rs. 41 crores and a paid up capital of Rs. 40.60 crores. All the hotels of HCI operate under the name of "Centaur Hotels". Currently, HCI is operating two hotels in Delhi and Srinagar.

#### **Centaur Hotel Delhi Airport, Delhi**

The Centaur Hotel at Delhi Airport was commissioned in November 1982. It has 376 rooms, including 4 Deluxe Suites and 2 Presidential Suites, a 24 hour Coffee Shop, 2 Speciality Restaurants, Bar, Health Club, Swimming Pool, Beauty Parlor, Tennis Court and a Shopping Arcade. The hotel has a magnificent lobby and a fully automatic electronic Telephone Exchange. This is the only 5 Star Deluxe Hotel near the Indira Gandhi International Airport at Delhi. The hotel provides free Transport Facility into town and also offers facility for sight-seeing Tours, Hire of Cars and has an Air India Office situated within its premises. The hotel has now been upgraded to a 5 Star Deluxe Hotel.

#### **Centaur Lake View Hotel, Srinagar**



The Centaur Lake View Hotel at Srinagar was commissioned in December 1983 and is part of a Modern Convention Center Complex. It has 249 rooms including suites, Health Club, a 24 hour Coffee Shop, 2 Specialty Restaurants, a Bar, Shopping Arcade and other recreation facilities. The hotel was planned as a Holiday Resort and is located on the banks of Dal Lake. The hotel had been a popular venue for a large number of Conference and Convention but the business has suffered a lot on account of terrorism.

**Management:** Commodore D. Jena is the Managing Director of HCI.

➤ **ITC Hotels Limited**

ITC was founded on August 24, 1910 in Kolkata. ITC's hotel business operates over 60 hotels across more than 50 destinations in India. **Management: (Hotel Division)**

**Chairman:** Mr. Yogesh C Deveshwar

**Divisional Chief Executive:** Mr. Nakul Anand **Executive, Vice President(Operations):** Mr. Pawan Kumar Verma **Sr. Executive-VP(Projects, Growth & Development):** Mr. S C Shekhar **VP, Sales & Marketing:** Mr. B Hariharan

**ITC Hotels:**

A. ITC Hotel Maurya Sheraton & Towers, New Delhi

B. □ITC Hotel Grand Maratha Sheraton & Towers, Mumbai

C. ITC Hotel Sonar Bangla Sheraton & Towers, Kolkata

D. WelcomHotel Mughal Sheraton, Agra

E. WelcomHeritage ( These hotels are spread over all over india and are currently operating in Rajasthan, Punjab, Himachal Pradesh, Madhya Pradesh, Uttaranchal, Jammu & Kashmir, West Bengal, Tamil Nadu, Haryana and Karnataka.)

➤ **Indian Hotels Company**

The Indian Hotels Company (IHC) is the parent company of Taj Hotels Resorts and Palaces. It was founded by Jamsetji N. Tata on December 16, 1903. Currently the Taj Hotels Resorts and Palaces comprises 57 hotels at 40 locations across India. Additional 18 hotels are also being operated around the globe. During fiscal year 2006, the total number of hotels owned or managed by the Company was 75.

The Taj hotels are categorized as luxury, leisure and business hotels. The Taj Luxury Hotels offer a wide range of luxurious suites with modern fitness centres, rejuvenating spas, and well-equipped banquet and meeting facilities. The Taj Leisure Hotels offer a complete holiday package that can be enjoyed with the whole family. It provides exciting activities ranging from sports, culture, environment, adventure, music, and entertainment. The Taj Business Hotels provide the finest standards of hospitality, which helps the business trips to be productive. They offer well-appointed rooms, telecommunication facilities, efficient service, specialty restaurants and lively bars, well-equipped business centres, and other conference facilities.

**Management:** Chairman: Mr. Ratan N Tata

Managing Director & CEO: Mr. Raymond Bickson  
Chief Operating Officer, Leisure Hotels: Ms. Jyoti Narang  
Chief Operating Officer, Luxury Hotels: Mr. Abhijit Mukerji  
Chief Operating Officer, Business Hotels: Mr. Jamshed S. Daboo  
Vice President-Legal & Company secretary: Dev Bajpai  
Chief Financial Officer: Mr. Anil P Goe

➤ **Hotel Leela Venture Ltd**

The Leela palaces and resorts include a chain of five star luxury hotels and resorts. It was founded by Capt. C P Krishnan Nair in 1957. The Company's properties include The Leela Kempinski Mumbai, The Leela Palace Goa, The Leela Kempinski Kovalam Beach Kerala and The Leela Palace Kempinski Bangalore. The Leela properties will also enter into prime

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## **2.9 Summary**

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The hospitality and tourism industry is the largest and fastest growing industry of the world. Now is a great time to be considering a career in the hospitality and tourism industry because of the thousands of managers, supervisors and entry level positions are needed for this dynamic industry. Indian catering industry is growing higher in comparison to other industries and salary figures become double in last two years. Government of India is promoting tourism industry and spending thousands of crores rupees in infrastructure and manpower development. Keeping in view the requirement of manpower, the existing rate of supplying manpower to the industry is very low so it gives better career opportunities to young inspired catering students. Hospitality is not just about the facilities and attractions provided for visitors. It is about people and especially about the relationship between the customer and the individual providing service. Everybody employed in hospitality needs to have the knowledge, skills and attitudes to provide the standard of product and service that customers expect. Knowing about the tourism industry, its component parts and especially where you fit in is an important starting point to a successful career in tourism.

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## **2.10 Review Questions**

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- Q 1 Write a brief note of the origin of Hospitality Industry.  
Q2 List out the various purpose of travel for any person.  
Q 3 List various types of hotels .  
Q 4 Briefly discuss the Organization of Hospitality Industry.  
Q5 Write short note on the following
1. ITDC
  2. Centaur Group
  3. ITC Hotels
  4. Indian Hotel Corporation

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## **2.11 Reference & Suggested Reading**

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- Holden, Andrew(2005) Tourism studies and the social sciences, Routledge Publisher, Oxon pp 10-11

- Geoldnes, R. Charles, Ritchie, Brent J.R.(2006) Tourism Principles, Practices, Philosophies(10th edition), Wiley India,New Delhi pp24-25
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## Unit-3 Growth of Hospitality Industry

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### Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Role of various agencies in the growth of Hospitality
  - 3.2.1 Central, State Government, & Private Players
- 3.3 Introduction to Hospitality related Organizations
- 3.4 Introduction to HRAR
- 3.5 Introduction to FHRAI
- 3.6 Introduction to CII
- 3.7 Introduction to FICCI
- 3.8 International bodies- British Hospitality Association
- 3.9 Summary
- 3.10 Glossary
- 3.11 Check your Progress- Answers
- 3.12 Further References
- 3.13 Suggested Reading
- 3.14 Terminal Questions

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### 3.0 Objectives

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After studying this unit, the student must know:

- Understand the growth of Hospitality Industry.
- Identify the reasons for hospitality phenomenal growth.
- Learn about the contribution of Government, private players and hospitality organizations for the expansion of Hospitality Industry.
- Understand the importance of International Hospitality bodies

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### 3.1 Introduction

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Hospitality refers to the relationship between a guest and a host. And it also refers to the act or practice of being hospitable. It includes cordial reception and entertainment of guests, visitors, or strangers. Hospitality is also known as the act of generously providing care and kindness to whoever is in need. The hospitality industry is an umbrella term for a broad variety of service industries, including, but not limited to, hotels, restaurants, casinos, catering enterprises, resorts, and clubs. The industry is very diverse and global, and is greatly impacted by fluctuations within the economy by various happenings across the world. The origin and development of the hospitality industry is a direct outcome of travel & tourism. The Indian hospitality industry has emerged as one of the key industries driving the growth of the services sector and, thereby, the Indian economy.

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## **3.2 Role of various agencies in the growth of Hospitality**

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Tourism, directly and indirectly, supports the livelihoods of nearly 53 million of our fellow citizens, which is about 9.2 per cent of the total workforce. It is estimated that over the next five years, the sector has the capacity to generate 25 million additional jobs.

In 2012, tourism contributed 6.7 per cent to India's GDP and earned \$18 billion in valuable foreign exchange for the economy. Hotels & Tourism witnessed an astounding in Foreign Direct Investment and is now counted among the top 10 sectors attracting highest FDI equity inflows in the country. As a primary stakeholder in the tourism sector, the hospitality industry can justifiably take immense pride in being an integral part.

The total market size of Indian tourism and hospitality sector stood at US\$ 117.7 billion and is expected to touch US\$ 418.9 billion by 2022. The foreign direct investment (FDI) inflows in hotel and tourism sector during April 2000 to July 2013 stood at US\$ 6,754.49 million, as per the data released by Department of Industrial Policy and Promotion (DIPP). Foreign tourist arrivals (FTA) during the Month of August 2013 stood at 4.74 lakh as compared to FTAs of 4.46 lakh during August 2012, registering a growth of 6.4 per cent. Foreign exchange earnings (FEE) during the month of August 2013 were US\$1.294 billion as compared to FEEs of US\$1.306 billion during August 2012 and US\$ 1.264 billion in August 2011.

### **3.2.1 Central, State Government and Private Players**

#### **Central Government**

The government has stepped up various reforms to accelerate the industry growth with liberalization in the regulatory framework, investment friendly schemes, extensive support for creating a world class infrastructure, initiating better air and land connectivity, incentivising regional set-up in tier III and IV cities, exploring the untapped geographical resources. Currently 29 mega tourism projects are being initiated across 22 states. The government is focusing on the PPP and is looking beyond the traditional tourism avenues and on to new initiatives – medical tourism, sports and adventure tourism, religious circuit, wildlife safaris, rural tourism, eco tourism, cruise tourism and wellness tourism. But, still more concrete measures such as uniformity of state and municipal taxes, single window clearances, improvising lower bureaucracy in effective planning and execution, and safe and secure environment will be critical to the industry's growth. According to World Travel & Tourism Council, by 2020, travel and tourism investment is estimated to should reach US\$ 109.3 billion or 7.7 per cent of total investment. The future of the Indian markets and their ability to mature into destinations relies on concerted efforts, both by the relevant government bodies and the private sector players.

In terms of incentives, a five-year tax holiday is extended to organizations that set up hotels, resorts and convention centers at specific destinations. The government has also launched campaigns such as Incredible India!, Colors of India, Atithi Devo Bhavah and the Wellness Campaign to promote the Indian tourism and hospitality industry.

Understanding government plans for stimulating the growth of the Hospitality sector in India

- Hotel investment opportunities in India
- Energy and operational efficiency in hotels

- Exploring and investing in India's new locations
- Trends in hospitality technology

Construction of hotels is primarily a private sector activity which is capital intensive and has a long gestation period. A constraint being faced by the hotel industry, in addition to the high cost and limited availability of land, is the procurement of multiple clearances / approvals required from the Central and State Government agencies for hotel projects. In some cases, as many as 65 or more clearances/approvals are required by hotel projects, although this number varies from State to State. This often results in delay in the implementation of the project, cost escalation, etc. To obviate the above mentioned difficulties faced by the hospitality industry, Ministry of Tourism has set up a Hospitality Development and Promotion Board (HDPB). The multiplicity of clearances and the long time being taken for obtaining permissions and clearances would be curtailed by having a monitoring / facilitating mechanism in the form of the HDPB. It is expected that, as result of setting up of HDPB, hotel project approvals would be issued in a time-bound manner, and this will give a boost to expeditious implementation of hotel projects and growth of the hospitality industry infrastructure. While the concept of 'Single Window System' or 'One Stop Shop' system for clearance of proposals is prevalent in other industries, the HDPB is the first of its kind in India in respect of facilitating Hotel project approvals, both at the Central level and the State/UT level. The Ministry of Tourism has notified the setting up of the HDPB at the central level in January, 2011. The Ministry had also requested all the Union Territory Administrations and State Governments to set up a similar Board if such a Board did not exist.

### **State Government**

The rapid evolution of India's hospitality and tourism industry as well as its growing economic and strategic importance for the country has necessitated that the Government's role in the sector transform from being a regulator to that of a catalyst. Our policymakers are increasingly focussing on integrated tourism development and planning by forging effective partnerships with the private and social sectors. State government encourages hospitality industry for revenue generation through taxes and its helps employment for host community.

### **Private Players**

The hospitality industry plays a very important role in the service industry. This sector consists of various areas of services which include Lodging, Restaurants, etc. Many fields of Tourism industry are also a part of Hospitality Sector. This sector also comprises of several Theme parks, Transportation industry and also Cruise line. The share of population and the on-going development in the country itself leads to potentially a long-term growth. The middle class is emerging strong, so there will be growth in the mid-market and budget segments. As more international travellers arrive in India, all segments will witness growth, and most importantly the upscale or 5 star segment. The mid-market and the budget hotels in India have the maximum potential given the domestic demand from business and tourism sources. Luxury hotels call for a huge investment (per project) and have longer gestation periods, as compared to mid-scale budget hotels given the investments involved in projects. Some of the top companies in the hospitality sector are Ambient Hotels & Resorts, Incredible Indian Homes, Crystal Residency India Pvt Ltd, Fortune Resort Central, China

Garden India Pvt Ltd, Asian Hotels East Ltd, Fortune Hotel Galaxy, Celebrity Boutique Hotel, Gold Star Hospitality Pvt Ltd etc

### **3.3 Introduction to Hospitality related Organizations**

Organizations and associations play a vital role in any industry. They act as an interface between Industry and Academia. Industry and Government and not merely put forward current issues but also tend to provide or work upon solutions to the problem. Thus a proper interface is required in order to deal with human resources, technology, legal and regulatory and other such issues. Various Hospitality organizations and associations in India are mentioned below:

#### **Indian Tourism Corporation of India (ITDC)**

In 1964, three companies *Indian Tourism & Hotel Corporation*, *Indian Tourism Corporation*, and *Indian Tourism & Transport Corporation* were set up by Government of India (GOI) but on 24<sup>th</sup> September, 1966, the GOI decided to merge these corporations And issued “Indian Tourism Development Corporation Amalgamation Order 1966” and formed a new corporation-Indian Tourism Development Corporation (ITDC). ITDC came into existence in October 1966 and has been the prime mover in the progressive development, promotion and expansion of tourism in the country. Broadly, the main objectives of the Corporation are:

- To construct, take over and manage existing hotels and market hotels, Beach Resorts, Travellers' Lodges/Restaurants
- To provide transport, entertainment, shopping and conventional services
- To produce, distribute, tourist publicity material
- To render consultancy-cum-managerial services in India and abroad
- To carry on the business as Full-Fledged Money Changers (FFMC), restricted money changers etc
- To provide innovating, dependable and value for money solutions to the needs of tourism development and engineering industry including providing consultancy and project implementation

The Corporation is running hotels, restaurants at various places for tourists, besides providing transport facilities. In addition, the Corporation is engaged in production, distribution and sale of tourist publicity literature and providing entertainment and duty free shopping facilities to the tourists. The Corporation has diversified into new avenues/innovative services like Full-Fledged Money Changer (FFMC) services, engineering related consultancy services etc. The Ashok Institute of Hospitality & Tourism Management of the Corporation imparts training and education in the field of tourism and hospitality.

Presently, ITDC has a network of eight Ashok Group of Hotels, five Joint Venture Hotels, 1 Restaurant, 11 Transport Units, one Tourist Service Station, 9 Duty Free Shops at airports and seaports and two Sound & Light Shows. Besides, ITDC is also managing a hotel at Bharatpur and a restaurant at Kosi on behalf of the Department of Tourism. In addition, it is also managing catering services at Western Court, Vigyan Bhawan and Hyderabad House, New Delhi.



### **NRAI (The National Restaurant Association of India)**

The National Restaurant Association of India (NRAI) was set up in 1982 and is the leading association for stand alone and chain restaurants. They offer Individual and Corporate membership for all the restaurants. NRAI have five sub-committees on Communication, Government relations & Legal Issues, new membership & inspections, training & workshop, and FSSAI (Food Safety & Standard Authority of India).

#### **Objectives**

To promote, encourage, support and execute schemes for the maintenance of high standard in restaurants:

- To encourage ethical methods and practices in the restaurant industry.
- To provide an institutional forum for education & training of the members.
- To liaison with various local, state and central government about problems/issues that are being faced by our members.

### **Hotel Association of India (HAI)**

Established in 1996, the Hotel Association of India (HAI) is the apex organization of the Indian Hospitality industry. With its membership extending from the major hotel groups, boutique hotels, heritage hotels, large, medium sized and smaller hotels, it represents the entire spectrum of the industry. Its Executive Committee is a potent combination of the commitment of hotel owners on one hand and hard-core professionalism of hotel managers on the other. From Industry veterans to budding hoteliers, the committee is charged with experience and fresh ideas in its determination to shape a bright future for the Hotel Industry in India. The current membership of the association is about 300 hotels from across the length and breadth of the country. The membership includes 1-star to 5-star deluxe category hotels, heritage hotels as well as public sector and government owned hotels. To secure for the hotel industry its due place in India's economy; project its role as a contributor to employment generation and sustainable economic and social development; highlight its crucial role in the service to tourism industry as the largest net foreign exchange earner; help raise the standards of hoteliering and to build an image for this industry both within and outside the country. The HAI is committed to the attainment of following objectives:

- To create through a communication programme an awareness of the particular significance of the hotel Industry in contributing to general economic development and employment.
- To secure for the Industry its true status as a core infrastructure Industry.
- To serve the members by establishing a data bank to provide timely information data, advisory and research services.
- To formulate strategies in areas of land, finance, taxation, training procedures and legislation to accelerate growth.
- To interface with central and state government and other authorities on issues concerning to hotel Industry.

- To synergies with all segments of the hotel industry an apex bodies of the tourism sector in India and overseas and work for the creation of a common platform.

Hotel Association of India serves the following work:

- Provides information advisory, consultative and representative services to the industry and Government.
- Serves as a national point of reference for the industry in India.
- Functions through a federal three-tier structure at the National level, State level and City level through Voluntary Chapters.
- Acts as a catalyst for industry action in regard to quality, productivity and human resource development.
- It is represented on all major policy making bodies concerned with the industry.
- Organizes Seminar, Workshops, and Research studies in the interest of the industry.

### **Association of Hospitality Trainers (AHT)**

Association of Hospitality Trainers known as **Trainer Forum** is the largest online community of trainers in India and beyond. Established in year 2002, it has 2750 members with adding average of about 100 members every month. It started with a noble intention of bringing all trainers and educators together on one platform. The vision is to create a platform for all the trainers, educators and HR professionals from various industries and verticals, interact, share best practices, discuss & debate issues and concerns regarding learning, training, and development. Through the community is online it can be accessed in following cities via moderators at Mumbai, Chennai, Bangalore, New Delhi, Pune, Hyderabad, Ahmedabad, Bhubaneshwar, Indore and Cochin. About 900 messages are being posted in every month and free download facility is available to all the members via website.

### **Indian Federation of Culinary Associations (IFCA)**

India Federation of culinary association was established in year 2003 and has its office at Chennai. It is a member of World Association of Cook Societies. It has its regional and state chapters. The membership is open for all chefs or people having an attitude for culinary. The recent activities of Federation includes:

- Cheering of under-privileged children on the occasion of International chef's day.
- Annual awards for excellence in culinary art.
- Development of culinary profession.
- Showcasing Indian Culinary achievements.
- Encouraging talented and aspiring youngsters in the gastronomy field.
- Plans to publish a food magazine, a cook book and other such publications.
- Timely get together for charity for social cause.
- Celebrating International chefs Day

By promoting International Chefs Day it endeavours to create cooking awareness for healthy, happy nation.

### **Indian Housekeepers Club**

Indian Housekeepers club is an association of housekeepers in India and came into existence in January 2006 at Alwar in Rajasthan. It is having 1200 members and has its registered office at Agra. The idea behind the association is to allow communication between hotel housekeepers on a national and international-regardless of location of the participants. It aims at providing solutions to hotel housekeeping and related issues. Following are the activities in Indian Housekeepers Club:

- To bring maximum housekeepers/Asstt. Managers/Supervisors in the association to make them friendly with each other keeping the fact that there is hardly a time for social interaction in hotel industry this can bring a chance to get together for housekeepers.
- Inviting housekeeping companies to tell about new products and services.
- To enhance recruitment of housekeepers.
- To open an Institute on Housekeeping Management so as to teach poor students who had dreamed to work for hotel industry but failed to go for higher studies in this area due to heavy expenses.
- To facilitate distance education for those learners who are keen to enhance their qualification while on job.
- To arrange seminars and workshops for housekeepers annually.

### **Hospitality Educators and Recruiters Association (HERA)**

Hospitality Educators and Recruiters Association is an organization is an organization of Hospitality Educators, Human Resources and Training Professionals representing the finest hotels and hospitality institutions in India. The association came into existence in October, 2006 and has its head office at Chennai. The main objectives of the association are:

- To upgrade the industrial technology and advancements with hospitality institutions.
- To organize the training need for the hospitality educators and students.
- To streamline the industrial release scheme (IRS) and recruitment process.
- To create awards for best academic performer of the year, best institution of the year, best faculty of the year and grant scholarships to students.
- To conduct national & International Seminar in hospitality education.

### **Indian Hospitality Congress (IHC)**

Indian Hospitality Congress is an attempt to provide a common platform to hospitality educators, institutes, professionals and students. The IHC is a non-profit making organization. It was formally set up in September, 2007 (World Tourism Day) at HNB Garhwal University Campus. It is having its head office at CMTHS-HNB Garhwal University and five regional offices at Ambala, Ahmedabad, Bhopal, Pondicherry and Ranchi. It has 1100 members. The aims and objectives of the Congress are:

- Indian Hospitality Meet/Seminar (annually)
- Indian Hospitality Newsletter.
- Promotion of Indian Literature in Hospitality.
- Inviting Authors to develop Study Material on Hospitality in Indian Context.
- Promoting Research in Hospitality.
- Encouraging Hospitality Students.
- Industry-Institute Partnership.
- Offering Hospitality Youth Club.

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### 3.4 Introduction to HRAR

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Hotel & Restaurant Association of Rajasthan (HRAR) is state level chapter of Hotel and Restaurant Association of India. It is based out of Jaipur and has a committee which selects a President, and other office bearers through a democratic process .

It serves the following work:

- Provides information advisory, consultative and representative services to the industry and Government.
- Serves as a national point of reference for the industry in India.
- Functions through a federal three-tier structure at the National level, State level and City level through Voluntary Chapters.
- Acts as a catalyst for industry action in regard to quality, productivity and human resource development.
- It is represented on all major policy making bodies concerned with the industry.

Organizes Seminar, Workshops, and Research studies in the interest of the industry

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### 3.5 Introduction to FHRAI

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The FHRAI (The Federation of Hotel & Restaurant Association of India) founded in the year 1955 by the late Shri Rai Bhadur oberoi, is the apex body of the Hospitality Industry with four Regional Associations representing the Eastern, Northern, Western and Southern regions of India. THE FHRAI is the 3rd largest Hotel & Restaurant Association in the world. FHRAI provides an interface between the Hospitality Industry, Political Leadership, Academics, International Associations and other Stake Holders. FHRAI is committed to promote and protect the interests of the Hospitality Industry by actively seeking better privileges and more concessions for the Industry. FHRAI members are always kept abreast with the latest trade information and trends, statistical analysis and reports on various topics that have a direct impact on the Industry, Government notifications and circulars. FHRAI helps the Hospitality Industry to grow, prosper and keep in pace with the development in the International scenario. With more than 3824 members comprising of approximately 2484 hotels, 1204 restaurants, 132 associate members and the 4 regional associations, FHRAI is truly the voice of the Hospitality Industry that brings several million dollars to the exchequer and employs more than 17 million direct workers. The FHRAI has conducted about 50 training programmes in 16 cities for professional development of Industry Personnel. FHRAI voice of the Hospitality Industry and provides an interface between the Hospitality Industry, Political Leadership, Academics, International Associations and other Stake Holders. FHRAI is committed to the progress of the Industry through the various activities like education and training, research and publication, Annual Convention to promote interaction with Government officials, political leaders and stake holders of the Industry. FHRAI is managed by the Executive Committee headed by the elected President having tenure of one year. The day-to-day business is conducted by the Secretariat headed by the Secretary General.

The Executive Committee comprises of members from the four Regional Associations.

- South India Hotels & Restaurants Association (SIHRA)

- Hotel & Restaurant Association (Western India)-HRA-(WI)
- Hotel & Restaurant Association of Northern India (HRANI)
- Hotel & Restaurant Association of Eastern India (HRAEI)

The FHRAI Institute of Hospitality Management has evolved into a unique centre of excellence in hospitality education. This institute is located at Greater Noida.

### FHRAI Members Break up as on 31<sup>st</sup> August 2013

Category	East		North		South		West		Total	
	Nos	Rooms	Nos	Rooms	Nos	Rooms	Nos	Rooms	Nos	Rooms
5 Star Deluxe Hotel	9	1367	40	9225	37	7331	41	10443	127	28366
5 Star	3	322	45	5796	38	4870	42	4980	128	15968
4 Star	11	802	55	4418	56	4809	37	3255	159	13284
Heritage	0	0	34	1214	10	388	8	312	52	1914
3 Star	27	1415	101	4654	199	12529	129	7493	456	26541
2 Star	13	398	26	1023	31	1233	36	1479	106	4133
1 Star	1	42	3	57	6	225	5	217	15	541
Unclassified	210	8079	461	18046	341	18642	407	15905	1419	60672
Total	274	12425	765	44433	718	50027	705	44534	2462	151419
Restaurants	139	12251	556	46875	245	23507	209	15905	1169	98538
Associates	14		47		31		26		118	0
Associations	1	0	1	0	1	0	1	0	4	0
Grand Total	428		1369		995		961		3753	

## 3.6 Introduction to CII

The history of CII is the story of the transformation of a miniscule association, representing a small segment of industry, to the premier business association of modern India. The journey began in 1895 when 5 engineering firms, all members of the Bengal Chamber of Commerce and Industry, joined hands to form the Engineering and Iron Trades Association (EITA). In 1991, industrial licensing was abolished and economic reforms on a wide scale started taking shape. With effect from 1st January 1992, in keeping with the government's decision to opt for the liberalization of the Indian economy, the name of CEI was changed to Confederation of Indian Industry (CII). In a new policy environment, it was natural that there would be inter-sectoral integration through a process of diversification and expansion, where the engineering units would diversify into non-engineering units and vice-versa. Since 1992, through rapid expansion and consolidation, CII has grown to be the most visible business association in India.

The Confederation of Indian Industry (CII) works to create and sustain an environment conducive to the development of India, partnering industry, Government, and civil society, through advisory and consultative processes. CII is a non-government, not-for-profit, industry-led and industry-managed organization, playing a proactive role in India's development process. Founded over 118 years ago, India's premier business association has over 7100 members, from the private as well as public sectors, including SMEs and MNCs, and an indirect membership of over 90,000 enterprises from around 257 national and

regional sectoral industry bodies. CII charts change by working closely with Government on policy issues, interfacing with thought leaders, and enhancing efficiency, competitiveness and business opportunities for industry through a range of specialized services and strategic global linkages. It also provides a platform for consensus-building and networking on key issues. Extending its agenda beyond business, CII assists industry to identify and execute corporate citizenship programmes. Partnerships with civil society organizations carry forward corporate initiatives for integrated and inclusive development across diverse domains including affirmative action, healthcare, education, livelihood, diversity management, skill development, empowerment of women, and water, to name a few. CII advocacy will accord top priority to stepping up the growth trajectory of the nation, while retaining a strong focus on accountability, transparency and measurement in the corporate and social eco-system, building a knowledge economy, and broad-basing development to help deliver the fruits of progress to all. With 63 offices, including 10 Centres of Excellence, in India, and 7 overseas offices in Australia, China, Egypt, France, Singapore, UK, and USA, as well as institutional partnerships with 224 counterpart organizations in 90 countries, CII serves as a reference point for Indian industry and the international business community. Travel & tourism industry's contribution to Indian industry is immense. Tourism in India has registered significant growth in the recent years and India has tremendous potential to become a major global tourist destination. Travel and tourism industry is the second highest foreign exchange earner for India, and according to an estimate total direct employment in the tourism sector is around 20 million. India's tourism industry is thriving due to an increase in foreign tourist's arrivals and greater than before travel by Indians to domestic destinations. In the past few years the real growth has come from within the domestic sector as around 30 Million Indian travel within the country in a year. Foreign tourist arrivals to India have touched 5million this year. The aim now is to achieve 10 million tourists by 2012. Despite the slowdown in the economy, the Forex earnings from the tourism sector have increased from 7.6 % to 8.7 %. There is a need to bring the tourism industry on par with standards prevailing in other countries in Asia.

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### **3.7 Introduction to FICCI**

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**Federation of Indian Chambers of Commerce and Industry (FICCI)** is an association of business organizations in India. Established in 1927, on the advice of Mahatma Gandhi by G D Birla and Purushottam Das Thakurdas, it is the largest, oldest and the apex business organisation in India. It is a non-government, not-for-profit organisation. FICCI draws its membership from the corporate sector, both private and public, including SMEs and MNCs. The chamber has an indirect membership of over 2,50,000 companies from various regional chambers of commerce. It is involved in sector specific business policy consensus building, and business promotion and networking. It is headquartered in the national capital New Delhi and has presence in 11 states in India and 8 countries across the world.

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### **3.8 International bodies-British Hospitality Association**

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The British Hospitality Association (BHA), incorporating The Restaurant Association (RA), is a non-government representative body for hotels, clubs, restaurants, leisure outlets and



other hospitality-related organizations nationwide headquartered in London, UK. The association promotes the interests of the hospitality industry to the Government.

**History of British Hospitality Association (BHA):**

**1907:** BHA (British Hospitality Association) is born, originally called the Incorporated Hotel Keepers Association

**1920:** Merges with the Incorporated Association of Hotels and Restaurants, and takes on the new name

**1926:** Changes name to the Hotel and Restaurant Association of Great Britain

**1948:** Becomes the British Hotel and Restaurants Association

**1971:** Merges with the Caterers Association and becomes British Hotels, Restaurant and Caterers' Association of Great Britain

**1992:** Re-named the British Hospitality Association

**2003:** The Restaurant Association of Great Britain merges with the BHA. It retains its own identity as a trading division of the BHA.

BHA operates a number of committees. Committees gather on a regular basis to discuss current activities and '**to shape BHA policy**'. Typically, they consist of a chairman and between 20 and 25 company representatives. There are 16 additional committees working with specific issues, sector or a region.

**Sector Committees:**

Food and Service Management Forum

Local Hospitality Associations Committee

Restaurant Association National Committee

Motorway Services Area Operators' Committee

Clubs Panel

**Regional Committees:**

BHA Scotland Committee

BHA Wales Committee

Northern Regional Committee

Heart of England Regional Committee

Eastern Regional Committee

South East Regional Committee

South West Regional Committee

London

**Policy Led Committees:**

Employment Committee

Food and Technical Committee

Sustainability Committee

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## CHECK YOUR PROGRESS

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Q-1 Explain the importance of FHRAI?

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.....

Q-2 Define the role of Central Government in growth of Hospitality Industry?

.....  
.....



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### 3.9 Summary

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There is lot of potential for growth of hospitality and tourism industry in India and abroad due to worldwide Industrial development, increased earnings of Individuals, economic growth of tourist producing nations, improved transport and communication means etc. India – known the world over as the land of hospitality – is today in the defining stages of the business of hospitality. While the possibilities for growth are immense, it will take an earnest effort, both from the industry's key stakeholders in the private sector and the relevant government bodies to truly change the Indian hospitality's landscape in the years ahead.

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### 3.10 Glossary

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**Hospitality:-** A Contemporaneous human exchange, which is voluntarily entered into, and designed to enhance the mutual well being of the parties concerned through provision of accommodation, and/or food, and/or drink.

**Hotel:-** A place where a bonafide traveller can receive food and shelter, provided he is a position to pay for it and is in a fit condition to be received..

**Tourism:-** Movement of people from their normal place of residence to another place (with the intention to return) for a minimum period.

**Catering:-** The provision of food, supplies & services for specific function of particular dates and at given location.

**Globalization:-** It is a term under which prevailing models of social, economic, and political organization have popularly been collected, although the term itself has only seen widespread used since the 1980s.

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### 3.11 Check your progress- Answers

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**Ans-1** The FHRAI (The Federation of Hotel & Restaurant Association of India) founded in the year 1955 by the late Shri Rai Bhadur oberoi, is the apex body of the Hospitality Industry with four Regional Associations representing the Eastern, Northern, Western and Southern regions of India. THE FHRAI is the 3rd largest Hotel & Restaurant Association in the world. FHRAI provides an interface between the Hospitality Industry, Political Leadership, Academics, International Associations and other Stake Holders. FHRAI is committed to promote and protect the interests of the Hospitality Industry by actively seeking better privileges and more concessions for the Industry. FHRAI members are always kept abreast with the latest trade information and trends, statistical analysis and reports on various topics that have a direct impact on the Industry.

**Ans-2.** Ministry of Tourism has set up a Hospitality Development and Promotion Board (HDPB). The multiplicity of clearances and the long time being taken for obtaining permissions and clearances would be curtailed by having a monitoring / facilitating mechanism in the form of the HDPB. It is expected that, as result of setting up of HDPB, hotel project approvals would be issued in a time-bound manner, and this will give a boost to expeditious implementation of hotel projects and growth of the hospitality industry infrastructure. While the concept of 'Single Window System' or 'One Stop Shop' system for clearance of proposals is prevalent in other industries, the HDPB is the first of its kind in

India in respect of facilitating Hotel project approvals, both at the Central level and the State/UT level.

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### **3.12 Further References**

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- Geoldnes, R. Charles, Ritchie, Brent J.R.(2006) Tourism Principles, Practices, Philosophies(10<sup>th</sup> edition), Wiley India,New Delhi pp24-25
- Tewari, Jatashankar (2009) Food & Beverage Service, Oxford University Press, New Delhi.pp17-23
- Bhatnagar, Sunil(2002)Front Office Management, Franks Bros. & Co,New Delhi.pp 41-44

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### **3.13 Suggested Reading**

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- Tewari, Jatashankar (2009) Food & Beverage Service, Oxford University Press, New Delhi.
- Andrews, Sudhir(2008) Text book of Front office Management & operations, Tata McGraw Hill, New Delhi

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### **3.14 Terminal Questions**

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- 1- Explain the growth of the hospitality industry in India?
- 2- Give the importance of private players in hospitality industry.
- 3- Detail a note on FHRAI.
- 4- Write about the role of International bodies.

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## UNIT 4 Impacts from Tourism

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### Structure

- 4.0 Objective
- 4.1. Introduction
- 4.2. Positive Impacts of Tourism
  - 4.2.1. Tourism and Environment Conservation
  - 4.2.2. Alternate Tourism
  - 4.2.3. Other Positive Impacts
- 4.3. Negative Impact
  - 4.3.1. Change or loss of indigenous identity and values
  - 4.3.2. Negative Impact On Environment
  - 4.3.3. Physical Impacts
- 4.4. Summary
- 4.5. Review Questions
- 4.6. Reference and Suggested Reading

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### 4.0 Objective

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The learner will be able to understand the importance of tourism in day to day life. The chapter also highlights the various challenges faced by local population due to growth of tourism while it also brings in lot of positive impact on the population.

The learner will also understand the various facets of tourism and how a balanced approach is needed to reap all the benefits of tourism.

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### 4.1 Introduction

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The tourism industry has for time immemorial has been a rewarding industry, and it has provided travelers the opportunities to experience varied cultures and natural settings. However, because of lack of foresight and awareness, tourists are inadvertently accelerating the cultural and environmental degeneration of the places they visit. With the stupendous expected growth in the tourism, combined by social benefits it will cause in term of employment generation, and the kind of ecological resources we have to attract the tourist, tourism must be in as a priority area.

Tourism is one of the fastest growing industries, major source of foreign exchange, domestic product, income and employment. Within this sector, the trend getting importance is ecotourism. The prospect of expansion brings in a lot of responsibility also. The plight of the world's dwindling biological diversity has generated a reaction against mass tourism. The conservation of biological diversity, usually shortened to biodiversity, is now seen as a priority of national governments and the general community

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## 4.2 Positive Impact Of Tourism

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### 4.2.1 Tourism and Environmental Conservation

The tourism industry can contribute to conservation through:

#### Financial contributions

- **Direct financial contributions**

Tourism can contribute directly to the conservation of sensitive areas and habitat. Revenue from park-entrance fees and similar sources can be allocated specifically to pay for the protection and management of environmentally sensitive areas. Special fees for park operations or conservation activities can be collected from tourists or tour operators.

*The tour operator Discovery Initiatives, which is a member of the Tour Operators Initiative for Sustainable Tourism Development, makes an annual financial contribution to the Orangutan Foundation of some US\$ 45,000. The money is earned from only 5 tour groups of 10 people each visiting the Tanjung Puting National Park in Central Kalimantan. The park is under huge pressures from deforestation and river pollution from unrestricted gold mining. This money directly funds park staff and rangers, rehabilitation efforts for young orangutans, and the care center. It provides almost the only economic support for saving this park, where the park fees are officially only the equivalent of 12 pence a day.*

- **Contributions to government revenues**

The Indian government through the tourism department also collect money in more far-reaching and indirect ways that are not linked to specific parks or conservation areas. User fees, income taxes, taxes on sales or rental of recreation equipment, and license fees for activities such as rafting and fishing can provide governments with the funds needed to manage natural resources. Such funds can be used for overall conservation programs and activities, such as park ranger salaries and park maintenance.

*The Seychelles in the Indian Ocean is introducing a US\$ 90 tax on travelers entering the Seychelles. Revenue will be used to preserve the environment and improve tourism facilities. (UNEP, report to the CSD, 1999)*

*In West Virginia (US) a whitewater rafting tax is collected from everyone who participates in a commercial rafting trip. The fee goes toward studying the environmental impacts of rafting. In addition, the rafting companies participate in several river cleanup days each year. (EPA)*

*In Belize, a US\$ 3.75 departure tax goes directly to the Protected Area Conservation Trust, a Belizean fund dedicated to the conservation of the barrier reef and rainforest. (The*

For Costa Rica, for example, tourism represents 72% of national monetary reserves, generates 140,000 jobs and produces 8.4% of the gross domestic product. The country has 25% of its territory classified under some category of conservation management. In 1999, protected areas welcomed 866,083 national and foreign tourists, who generated about US\$ 2.5 million in admission fees and payment of services.

### **Improved environmental management and planning**

Sound environmental management of tourism facilities and especially hotels can increase the benefits to natural areas. But this requires careful planning for controlled development, based on analysis of the environmental resources of the area. Planning helps to make choices between conflicting uses, or to find ways to make them compatible. By planning early for tourism development, damaging and expensive mistakes can be prevented, avoiding the gradual deterioration of environmental assets significant to tourism.

Cleaner production techniques can be important tools for planning and operating tourism facilities in a way that minimizes their environmental impacts. For example, green building (using energy-efficient and non-polluting construction materials, sewage systems and energy sources) is an increasingly important way for the tourism industry to decrease its impact on the environment. And because waste treatment and disposal are often major, long-term environmental problems in the tourism industry, pollution prevention and waste minimization techniques are especially important for the tourism industry. A guide to sources of information on cleaner production (free) is available [here](#).

### **Environmental awareness raising**

Tourism has the potential to increase public appreciation of the environment and to spread awareness of environmental problems when it brings people into closer contact with nature and the environment. This confrontation may heighten awareness of the value of nature and lead to environmentally conscious behavior and activities to preserve the environment. For instance, Honduran schoolchildren from the capital city of Tegucigalpa are routinely taken to visit La Tigra cloud forest visitor center, funded in part by eco-tourist dollars, to learn about the intricacies of the rainforest.

### **Protection and preservation**

Tourism can significantly contribute to environmental protection, conservation and restoration of biological diversity and sustainable use of natural resources. Because of their attractiveness, pristine sites and natural areas are identified as valuable and the need to keep the attraction alive can lead to creation of national parks and wildlife parks.

In India, new laws and regulations have been enacted to preserve the forest and to protect native species. The coral reefs around the coastal areas and the marine life that depend on them for survival are also protected.

Grupo Punta Cana, a resort in the Dominican Republic, offers an example of how luxury tourism development and conservation can be combined. The high-end resort was established with the goal of catering to luxury-class tourists while respecting the natural habitat of Punta Cana. The developers have set aside 10,000 hectares (24,700 acres) of land as a nature reserve and native fruit tree garden. The Punta Cana Nature Reserve includes 11 fresh water springs surrounded by a subtropical forest where many species of unusual Caribbean flora and fauna live in their natural state. Guests can explore a "nature path" leading from the beach through mangroves, lagoons of fresh water springs and dozens of species of Caribbean bird and plant life. The Punta Cana Ecological Foundation has begun reforesting some parts of the reserve that had been stripped of their native mahogany and other trees in the past. Other environmentally protective policies have been put into effect at the resort, such as programs to protect the offshore barrier reefs and the recycling of wastewater for use in irrigating the grounds. The fairways of the resort's new golf course were planted with a hybrid grass that can be irrigated with sea water. The grass also requires less than half the usual amounts of fertilizer and pesticides. The resort has also established a biodiversity laboratory run by Cornell University.

Tourism has had a positive effect on wildlife preservation and protection efforts, notably in Africa but also in South America, Asia, Australia, and the South Pacific. Numerous animal and plant species have already become extinct or may become extinct soon. Many countries have therefore established wildlife reserves and enacted strict laws protecting the animals that draw nature-loving tourists. As a result of these measures, several endangered species have begun to thrive again.

*In the Great Lakes region of Africa, mountain gorillas, one of the world's most endangered great apes, play a critical ecological, economic and political role. Their habitat lies on the borders of northwestern Rwanda, eastern Democratic Republic of Congo and southwestern Uganda. Despite 10 years of political crisis and civil war in the region, the need for revenue from ape-related tourism has led all sides in the conflict to cooperate in protecting the apes and their habitat.*

*Establishment of a gorilla tracking permit, which costs US\$ 250 plus park fees, means that just three habituated gorilla groups of about 38 individuals in total can generate over US\$ 3 million in revenue per year, making each individual worth nearly US\$ 90,000 a year to Uganda. Tourism funds have contributed to development at the local, national and regional level. The presence of such a valuable tourism revenue source in the fragile afro-montane forests ensures that these critical habitats are protected, thus fulfilling their valuable ecological function including local climate regulation, water catchment, and natural resources for local communities.*

Source: UNEP Great Apes Survival Project and Discovery Initiatives

#### **4.2.2 Alternative employment**

Tourism can provide an alternative to development scenarios that may have greater environmental impacts. The Eco-escuela de Español, a Spanish language school created in 1996 as part of a Conservation International project in the Guatemalan village of San

Andres, is an example. The community-owned school, located in the Maya Biosphere Reserve, combines individual language courses with home stay opportunities and community-led eco-tours. It receives around 1,800 tourists yearly, mostly from the US and Europe, and employs almost 100 residents, of whom around 60% were previously engaged in mostly illegal timber extraction, hunting and *milpas*, or slash-and-burn agriculture. Careful monitoring in 2000 has shown that, among the families benefiting from the business, the majority has significantly reduced hunting practices, and the number and extension of "slash-and-burn" agricultural plots. Furthermore, as most families in the village benefit directly or indirectly from the school, community-managed private reserves have been established, and social pressure against hunting has increased.

**Awareness raising and alternative employment: the orangutan viewing centre at Bohorok, Indonesia**

*Observing wild and semi-wild orangutans in their natural habitat is a significant environmental education opportunity for large numbers of domestic visitors. To enhance this education experience, the existing station at Bohorok, North Sumatra is to be transformed from a rehabilitation center into an orangutan viewing center, thus offering another, crucial contribution to the sustainable conservation of the rainforest ecosystem. By developing ecotourism for orangutan viewing under the new project, all visitors will gain a rewarding personal experience from orangutans, wildlife and the rainforest ecosystem in general. This will increase their awareness of the importance of rainforest conservation. Moreover, tourism will continue to provide a major source of income for the local population, thus promoting sustainable forest utilization as a genuine alternative to timber exploitation and the poaching and trade of wildlife.*

Source: Sumatran orangutan conservation programme

**Regulatory measures**

Regulatory measures help offset negative impacts; for instance, controls on the number of tourist activities and movement of visitors within protected areas can limit impacts on the ecosystem and help maintain the integrity and vitality of the site. Such limits can also reduce the negative impacts on resources.

Limits should be established after an in-depth analysis of the maximum sustainable visitor capacity. This strategy is being used in the Galapagos Islands, where the number of ships allowed to cruise this remote archipelago is limited, and only designated islands can be visited, ensuring visitors have little impact on the sensitive environment and animal habitats.

**OTHER POSITIVE IMPACTS**

**1. Generating Income and Employment:** Tourism in India has emerged as an instrument of income and employment generation, poverty alleviation and sustainable human development. It contributes 6.23% to the national GDP and 8.78% of the total employment in India. Almost 20 million people are now working in the India's tourism industry.



**3. Source of Foreign Exchange Earnings:** Tourism is an important source of foreign exchange earnings in India. This has favourable impact on the balance of payment of the country. The tourism industry in India generated about US\$100 billion in 2008 and that is expected to increase to US\$275.5 billion by 2018 at a 9.4% annual growth rate.

**4. Preservation of National Heritage and Environment:** Tourism helps preserve several places which are of historical importance by declaring them as heritage sites. For instance, the Taj Mahal, the Qutab Minar, Ajanta and Ellora temples, etc, would have been decayed and destroyed had it not been for the efforts taken by Tourism Department to preserve them. Likewise, tourism also helps in conserving the natural habitats of many endangered species.

**5. Developing Infrastructure:** Tourism tends to encourage the development of multiple-use infrastructure that benefits the host community, including various means of transports, health care facilities, and sports centers, in addition to the hotels and high-end restaurants that cater to foreign visitors. The development of infrastructure has in turn induced the development of other directly productive activities.

**6. Promoting Peace and Stability:** Honey and Gilpin (2009) suggests that the tourism industry can also help promote peace and stability in developing country like India by providing jobs, generating income, diversifying the economy, protecting the environment, and promoting cross-cultural awareness. However, key challenges like adoption of regulatory frameworks, mechanisms to reduce crime and corruption, etc, must be addressed if peace-enhancing benefits from this industry are to be realized.

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## 4.3 Negative Impact Of Tourism

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### 4.3.1 Change or loss of indigenous identity and values

Tourism can cause change or loss of local identity and values, brought about by several closely related influences:

- **Commoditization:** - Tourism can turn local cultures into commodities when religious rituals, traditional ethnic rites and festivals are reduced and sanitized to conform to tourist expectations, resulting in what has been called "reconstructed ethnicity." Once a destination is sold as a tourism product, and the tourism demand for souvenirs, arts, entertainment and other commodities begins to exert influence, basic changes in human values may occur. Sacred sites and objects may not be respected when they are perceived as goods to trade.
- **Standardization** :- Destinations risk standardization in the process of satisfying tourists' desires for familiar facilities. While landscape, accommodation, food and drinks, etc., must meet the tourists' desire for the new and unfamiliar, they must at the same time not be too new or strange because few tourists are actually looking for completely new things. Tourists often look for recognizable facilities in an unfamiliar environment, like well-known fast-food restaurants and hotel chains.

- **Loss of authenticity and staged authenticity:** - Adapting cultural expressions and manifestations to the tastes of tourists or even performing shows as if they were "real life" constitutes "staged authenticity". As long as tourists just want a glimpse of the local atmosphere, a quick glance at local life, without any knowledge or even interest, staging will be inevitable.
- **Adaptation to tourist demands** :- Tourists want souvenirs, arts, crafts, and cultural manifestations, and in many tourist destinations, craftsmen have responded to the growing demand, and have made changes in design of their products to bring them more in line with the new customers' tastes. While the interest shown by tourists also contributes to the sense of self-worth of the artists, and helps conserve a cultural tradition, cultural erosion may occur due to the commodification of cultural goods.

*Creating molas, which are the blouses worn by Kuna women in Colombia, is an art that began with designs that reflected the conception of the world, of nature, and of the spiritual life of the Kuna Nation. Now it is increasingly being transformed, through tourism, into a commercial trade which causes loss of its spiritual value and quality. This is changing the designs of the molas to correspond to the interests of the tourists, while at the same time the Kuna women are losing their knowledge of the old designs and the interpretations and meanings of the mola designs.*

Source: [Eco-index](#)

### **Culture clashes**

Because tourism involves movement of people to different geographical locations, and establishment of social relations between people who would otherwise not meet, cultural clashes can take place as a result of differences in cultures, ethnic and religious groups, values and lifestyles, languages, and levels of prosperity.

The result can be an overexploitation of the social carrying capacity (limits of acceptable change in the social system inside or around the destination) and cultural carrying capacity (limits of acceptable change in the culture of the host population) of the local community.

The attitude of local residents towards tourism development may unfold through the stages of euphoria, where visitors are very welcome, through apathy, irritation and potentially antagonism, when anti-tourist attitudes begin growing among local people.

### **Physical influences causing social stress**

The physical influences that the increasing tourism flow, and its consequent developments, have on a destination can cause severe social stress as it impacts the local community. Socio-cultural disadvantages evolve from:

- Resource use conflicts, such as competition between tourism and local populations for the use of prime resources like water and energy because of scarce supply. Stress to local communities can also result from environmental degradation and increased

infrastructure costs for the local community - for example, higher taxes to pay for improvements to the water supply or sanitation facilities.

- Cultural deterioration. Damage to cultural resources may arise from vandalism, littering, pilferage and illegal removal of cultural heritage items. A common problem at archaeological sites in countries such as Egypt, Colombia, Mexico and Peru is that poorly paid guards supplement their income by selling artifacts to tourists. Furthermore, degradation of cultural sites may occur when historic sites and buildings are unprotected and the traditionally built environment is replaced or virtually disappears.
- Conflicts with traditional land-uses, especially in intensely exploited areas such as coastal zones, which are popular for their beaches and islands. Conflicts arise when the choice has to be made between development of the land for tourist facilities or infrastructure and local traditional land-use. The indigenous population of such destinations is frequently the loser in the contest for these resources as the economic value which tourism brings often counts for more.

As an example of how local people can suffer from tourism development, in coastal areas construction of shoreline hotels and tourist facilities often cuts off access for the locals to traditional fishing ground and even recreational use of the areas.

### **Ethical issues**

Partly due to the above impacts, tourism can create more serious situations where ethical and even criminal issues are involved.

- **Crime generation:** - Crime rates typically increase with the growth and urbanization of an area, and growth of mass tourism is often accompanied by increased crime.
- **Child labor:** - ILO studies show that many jobs in the tourism sector have working and employment conditions that leave much to be desired: long hours, unstable employment, low pay, little training and poor chances for qualification.

### **4.3.2 Negative Impact On Environment**

#### **Tourism's Three Main Impact Areas**

Negative impacts from tourism occur when the level of visitor use is greater than the environment's ability to cope with this use within the acceptable limits of change. Uncontrolled conventional tourism poses potential threats to many natural areas around the world. It can put enormous pressure on an area and lead to impacts such as soil erosion, increased pollution, discharges into the sea, natural habitat loss, increased pressure on endangered species and heightened vulnerability to forest fires. It often puts a strain on water resources, and it can force local populations to compete for the use of critical resources.

## Depletion of Natural Resources

Tourism development can put pressure on natural resources when it increases consumption in areas where resources are already scarce.

### Water resources

Water, and especially fresh water, is one of the most critical natural resources. The tourism industry generally overuses water resources for hotels, swimming pools, golf courses and personal use of water by tourists. This can result in water shortages and degradation of water supplies, as well as generating a greater volume of waste water.

In dryer regions like the Mediterranean, the issue of water scarcity is of particular concern. Because of the hot climate and the tendency of tourists to consume more water when on holiday than they do at home, the amount used can run up to 440 liters a day. This is almost double what the inhabitants of an average Spanish city use.

Golf course maintenance can also deplete fresh water resources. In recent years golf tourism has increased in popularity and the number of golf courses has grown rapidly. Golf courses require an enormous amount of water every day and, as with other causes of excessive extraction of water, this can result in water scarcity. If the water comes from wells, overpumping can cause saline intrusion into groundwater. Golf resorts are more and more often situated in or near protected areas or areas where resources are limited, exacerbating their impacts.

### Local resources

Tourism can create great pressure on local resources like energy, food, and other raw materials that may already be in short supply. Greater extraction and transport of these resources exacerbates the physical impacts associated with their exploitation. Because of the seasonal character of the industry, many destinations have ten times more inhabitants in the high season as in the low season. A high demand is placed upon these resources to meet the high expectations tourists often have (proper heating, hot water, etc.).

### Land degradation

Important land resources include minerals, fossil fuels, fertile soil, forests, wetland and wildlife. Increased construction of tourism and recreational facilities has increased the pressure on these resources and on scenic landscapes. Direct impact on natural resources, both renewable and nonrenewable, in the provision of tourist facilities can be caused by the use of land for accommodation and other infrastructure provision, and the use of building materials.

Forests often suffer negative impacts of tourism in the form of deforestation caused by fuel wood collection and land clearing. For example, one trekking tourist in Nepal - and area already suffering the effects of deforestation - can use four to five kilograms of wood a day.

## **Pollution**

Tourism can cause the same forms of pollution as any other industry: air emissions, noise, solid waste and littering, releases of sewage, oil and chemicals, even architectural/visual pollution.

### **Air pollution and noise**

Transport by air, road, and rail is continuously increasing in response to the rising number of tourists and their greater mobility. To give an indication, the [ICAO](#) reported that the number of international air passengers worldwide rose from 88 million in 1972 to 344 million in 1994. One consequence of this increase in air transport is that tourism now accounts for more than 60% of air travel and is therefore responsible for an important share of air emissions. One study estimated that a single transatlantic return flight emits almost half the CO<sub>2</sub> emissions produced by all other sources (lighting, heating, car use, etc.) consumed by an average person yearly. (Mayer Hillman, Town & Country Planning magazine, September 1996. Source: MFOE ).

Transport emissions and emissions from energy production and use are linked to acid rain, global warming and photochemical pollution. Air pollution from tourist transportation has impacts on the global level, especially from carbon dioxide (CO<sub>2</sub>) emissions related to transportation energy use. And it can contribute to severe local air pollution. Some of these impacts are quite specific to tourist activities. For example, especially in very hot or cold countries, tour buses often leave their motors running for hours while the tourists go out for an excursion because they want to return to a comfortably air-conditioned bus.

Noise pollution from airplanes, cars, and buses, as well as recreational vehicles such as snowmobiles and jet skis, is an ever-growing problem of modern life. In addition to causing annoyance, stress, and even hearing loss for humans, it causes distress to wildlife, especially in sensitive areas. For instance, noise generated by snowmobiles can cause animals to alter their natural activity patterns.

### **Solid waste and littering**

In areas with high concentrations of tourist activities and appealing natural attractions, waste disposal is a serious problem and improper disposal can be a major despoiler of the natural environment - rivers, scenic areas, and roadsides.

### **Sewage**

Construction of hotels, recreation and other facilities often leads to increased sewage pollution. Wastewater has polluted seas and lakes surrounding tourist attractions, damaging the flora and fauna. Sewage runoff causes serious damage to coral reefs because it stimulates the growth of algae, which cover the filter-feeding corals, hindering their ability to survive. Changes in salinity and siltation can have wide-ranging impacts on coastal environments. And sewage pollution can threaten the health of humans and animals.

### 4.3.3 Physical Impacts

Attractive landscape sites, such as sandy beaches, lakes, riversides, and mountain tops and slopes, are often transitional zones, characterized by species-rich ecosystems. Typical physical impacts include the degradation of such ecosystems.

An ecosystem is a geographic area including all the living organisms (people, plants, animals, and microorganisms), their physical surroundings (such as soil, water, and air), and the natural cycles that sustain them. The ecosystems most threatened with degradation are ecologically fragile areas such as alpine regions, rain forests, wetlands, mangroves, coral reefs and sea grass beds. The threats to and pressures on these ecosystems are often severe because such places are very attractive to both tourists and developers.

*In industrial countries, mass tourism and recreation are now fast overtaking the extractive industries as the largest threat to mountain communities and environments. Since 1945, visits to the 10 most popular mountainous national parks in the United States have increased twelve-fold. In the European Alps, tourism now exceeds 100 million visitor-days. Every year in the Indian Himalaya, more than 250,000 Hindu pilgrims, 25,000 trekkers, and 75 mountaineering expeditions climb to the sacred source of the Ganges River, the Gangotri Glacier. They deplete local forests for firewood, trample riparian vegetation, and strew litter. Even worse, this tourism frequently induces poorly planned, land-intensive development.*

Source: [People & the Planet](#)

Physical impacts are caused not only by tourism-related land clearing and construction, but by continuing tourist activities and long-term changes in local economies and ecologies.

Physical impacts of tourism development

- **Construction activities and infrastructure development**

The development of tourism facilities such as accommodation, water supplies, restaurants and recreation facilities can involve sand mining, beach and sand dune erosion, soil erosion and extensive paving. In addition, road and airport construction can lead to land degradation and loss of wildlife habitats and deterioration of scenery.

- **Deforestation and intensified or unsustainable use of land**

Construction of ski resort accommodation and facilities frequently requires clearing forested land. Coastal wetlands are often drained and filled due to lack of more suitable sites for construction of tourism facilities and infrastructure. These activities can cause severe disturbance and erosion of the local ecosystem, even destruction in the long term.

- **Marina development**

Development of marinas and breakwaters can cause changes in currents and coastlines. Furthermore, extraction of building materials such as sand affects coral reefs, mangroves, and hinterland forests, leading to erosion and destruction of habitats. In the Philippines and the Maldives, dynamiting and mining of coral for resort building materials has damaged fragile coral reefs and depleted the fisheries that sustain local people and attract tourists.

### **Physical impacts from tourist activities**

- **Trampling** :- Tourists using the same trail over and over again trample the vegetation and soil, eventually causing damage that can lead to loss of biodiversity and other impacts. Such damage can be even more extensive when visitors frequently stray off established trails.
- **Anchoring and other marine activities** :- In marine areas (around coastal waters, reefs, beach and shoreline, offshore waters, uplands and lagoons) many tourist activities occur in or around fragile ecosystems. Anchoring, snorkeling, sport fishing and scuba diving, yachting, and cruising are some of the activities that can cause direct degradation of marine ecosystems such as coral reefs, and subsequent impacts on coastal protection and fisheries.
- **Alteration of ecosystems by tourist activities** :- Habitat can be degraded by tourism leisure activities. For example, wildlife viewing can bring about stress for the animals and alter their natural behavior when tourists come too close. Safaris and wildlife watching activities have a degrading effect on habitat as they often are accompanied by the noise and commotion created by tourists as they chase wild animals in their trucks and aircraft. This puts high pressure on animal habits and behaviors and tends to bring about behavioral changes. In some cases, as in Kenya, it has led to animals becoming so disturbed that at times they neglect their young or fail to mate.

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## **4.4 SUMMARY**

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Tourism industry in India is growing and it has vast potential for generating employment and earning large amount of foreign exchange besides giving a fillip to the country's overall economic and social development. But much more remains to be done. Eco-tourism needs to be promoted so that tourism in India helps in preserving and sustaining the diversity of the India's natural and cultural environments. Tourism in India should be developed in such a way that it accommodates and entertains visitors in a way that is minimally intrusive or destructive to the environment and sustains & supports the native cultures in the locations it is operating in. Moreover, since tourism is a multi-dimensional activity, and basically a service industry, it would be necessary that all wings of the Central and State governments,



private sector and voluntary organisations become active partners in the endeavour to attain sustainable growth in tourism if India is to become a world player in the tourism industry

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## 4.5 Review Questions

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- Q 1. Discuss the positive impact of tourism on the environment.  
Q 2. Give your opinion on the impact of tourism on the local population  
Q 3. What in your opinion is the impact of tourism on the Indian economy?  
Q4/ What due you understand by the physical impact of tourism?

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## Unit 5 Types and Forms of Tourism

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### Structure of the Unit:

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Meaning and Nature of Tourism
  - 5.2.1 Defining Tourism
  - 5.2.2 Definition of Terms Traveller, Tourist, Visitor and Excursionist
- 5.3 Types and Form of Tourism
  - 5.3.1 Types of Tourism
  - 5.3.2 Forms of Tourism

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### 5.0 Objectives:

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1. To understand the definition of tourist and tourism.
2. Make differences between tourism terminologies like, Traveller, Tourists, Visitor and Excursionists.
3. Distinguish between the various forms of Tourism
4. To comprehend the types of Tourism.

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### 5.1 Introduction:

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Tourism denotes the temporary, short term movement of people to destinations outside the place where they normally live and work and their activities during their stay at these destinations. In other words, tourism is primarily a summation of movements of people to and their activities at places outside their normal 'beat area'. The destinations may lie within the national boundary of the country of the visitors or outside. Accordingly, their movements result in domestic tourism and foreign tourism.

The prime motive of tourists is 'pleasure and leisure'; but, normally this is supplement by business, educational, religious, cultural and/or social motives. As such, there are business tourism, educational tourism, religious tourism (pilgrimage), cultural tourism, social tourism, etc., within the framework of tourism in general. However, it may be pointed out that the motives vary from person to person in degree and importance.

The movement of tourists would be in groups or alone. It could also be according to a prearranged package programme or otherwise. On the basis of duration and timings, there are picnic tourism, excursion tourism, holiday tourism, weekend tourism and the like. There are also other kinds of tourism like ethnic tourism and regional tourism.

In the early days, tourism was associated with aristocracy because only the rich could afford this luxury. But, with the changing economic and social conditions, tourism has become almost a part of normal life, irrespective of social or economic status. As a consequence,

modern tourism has almost become a mass phenomenon and this era of mass tourism is already upon us.

Thus, the term tourism connotes different meanings depending on the context in which it is used. These meanings are not divergent as such, but are overlapping. There is hardly any single definition to cover all the aspects of the term.

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## **5.2 Meaning and Nature of Tourism**

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According to the World Tourism Organization, tourism is the movement of people away from their normal place of residence and work for a period of not less than 24 hours and not more than 1 year.

### **5.2.1 Defining Tourism**

Over the years the definition of tourism has undergone a change along with the historical changes.

In 1941, Hunziker and Krapf defined tourism as "the sum of the phenomena and relationships arising from the travel and stay of non-residents, insofar as they do not lead to permanent residence and are not connected with any earning activity."

In 1976, the Tourism Society of England's definition was: "Tourism is the temporary, short-term movement of people to destination outside the places where they normally live and work and their activities during the stay at each destination. It includes movements for all purposes."

In 1981, the International Association of Scientific Experts in Tourism defined "Tourism in terms of particular activities selected by choice and undertaken outside the home".

All the above definitions of tourism tell us that simple travel is not tourism. The above definitions of tourism have some common features in defining tourism. The common features are as follows.

1. There should be a travel from one place to another for the purpose of Recreation, Leisure and business. Here the purpose behind the travel is an important factor for defining tourism. Travel and stay in a place which is away from own place for other purposes like, Education, Employment, Research, training Etc. can't be considered as tourism.
2. Stays of more than one night and less than one consecutive year; means tourist should not establish any permanent residence in the place of visit.
3. Tourist has to spend money on buying certain services in destination place, which may be generating employment and income for the local community. Tourist should not involve in any types of earning activities.

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## 5.2.2 Definition of Terms Traveller, Tourist, Visitor and Excursionist

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### **Traveller**

Traveller is a person who travels or moves from one place to other place for several purposes. Human being is a social animal, in everyday life human beings has to travel from one place to other for several reasons. The purposes for travel may be Trade and Commerce, Business, Education, Health, Employment, Meeting friends and Relatives, Leisure. Etc. All Travellers are not necessarily Tourists but all Tourists are Travellers.

### **Tourist**

According to Oxford dictionary “The tourist is a person who makes a journey for the sake of curiosity, for the fun of travelling, or just to tell others that he has travelled”.

The World Tourism Organization defines **tourists** as people "traveling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes".

The purpose of travel and stay in a place of visit are important factors in defining the term Tourist. The purpose of travel are curiosity about a place or people and their culture, for fun or enjoyment in a place, relaxation, recreation, leisure, get away from busy urban life etc. in the simple sense tourist is one who makes tour or tours. Like a visit to Agra to see TajMahal. Also, a tourist will usually stay overnight and sleep in the location he/she is visiting.

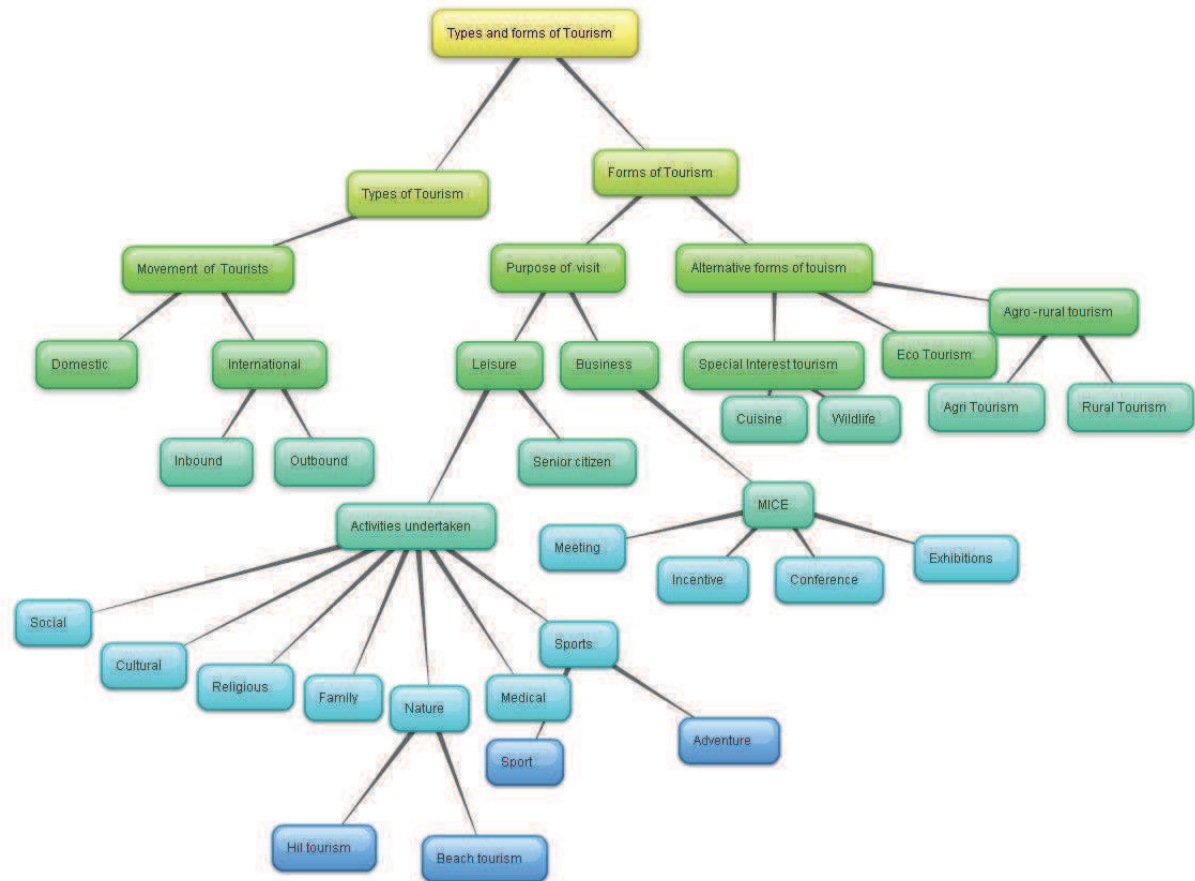
### **Visitor**

Visitor is a person visiting a person or place, especially socially or as a tourist. Most of the cases the term Visitor used to mention a person from one country visiting to other country or as international tourist. Sometimes member of a sports team on tour or playing away from home is also called as visitor. In other sense all tourists are visitors but all visitors are not necessarily tourists. They may be visiting to a place or person for purposes other than tourism also like, making a Business deal, participating in sports, etc.

### **Excursionist**

An excursion is a short trip or a day visit, just for pleasure. Like a hike in the woods or a walk in the park or a picnic to nearby place. “An excursionist is a person who will go for excursion and usually come back to his/her town or residence on the same day, when sleep/rest is needed”. It means excursionist will not spend a night or will not sleep in the place of visit. This is not considered as Tourism or tourist in tourism statistics of many countries, but countries like United Kingdom consider this type of visit also as excursion and its contribution for revenue generation.

## 5.3 Types and Form of Tourism



### 5.3.1 Types of Tourism:

The movement of tourists from the place of origin to the destination is described as:

1. **Domestic Tourism:** Residents of the given country travelling only within the country without crossing the international boundaries can be called as Domestic tourism

Ex: Indian nationals travelling within India can be called as Domestic tourism. Resident of Delhi travelling to Kanyakumari is domestic tourism in India.

2. **International Tourism:** When people travel to a country other than their own with different economic and political system, the movement becomes

international tourism. It involves preparation of several documents-passport, visa, etc.,- to cross the national boundaries of a foreign country. It also involves conversion of one's own currency to the currency of the country where one is travelling. It is also likely that the visitor may face the problems of a foreign language.

The size of a country determines the extent of international tourism, USA, for instance, is a very large country and has many domestic tourist attractions. Therefore, the extent of the international tourism is only 10 per cent of the total tourism in the country. The Netherlands, on the other hand, is a small country and international boundaries are not far from any city in the country. Therefore, the size of international tourism is over half of the total tourism of the Netherlands. So is that of Switzerland, Austria and Belgium.

Increasingly, distinctions between these two forms of tourism are diminishing as barriers to tourism are crumbling in several parts of the world. No passports and visas are needed between the members of the European Union (EU). Americans do not need a passport or a visa to travel to Canada and vice versa. The Japanese and citizens of some European countries no longer need a visa to enter USA.

International tourism comprises inbound and outbound tourism:

**Inbound Tourism:** Inbound tourism is a type of international tourism involving non-residents travelling in the given country.

Ex: Nationals of any foreign country entering or travelling to any Indian tourism destinations can be called as inbound tourism in India. A tourist from England visiting to historical city of Jaipur is inbound tourism to India.

**Outbound Tourism:** Outbound tourism is a type of international tourism involving residents travelling in another country.

Ex: Indian nationals travelling to tourism destination in other foreign country is outbound tourism in India.

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### 5.3.2 Forms of Tourism:

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Tourism can be classified into following categories according to the purpose of travel.

#### 1. Leisure Tourism

The words, 'Leisure', 'Recreation', and 'Tourism' are often used to express similar meanings. Leisure is a measure of time left over after work, rest, sleep and household chores. Leisure is the time when an individual can do what he likes to refresh his/her spirits. Recreation means a variety of activities which a person could choose to refresh



his/her spirit. It may include activities as diverse as a game of golf, watching television or travelling abroad. Tourism, therefore, is simply one of these activities which a person could undertake to refresh his/her spirit. It places tourism firmly as part of recreational activities spectrum of a person.

Tourists may travel to experience a change in climate and place and learn something new, enjoy pleasant scenery, or to know more about the culture of a destination. Tourists, who seek break from the stress of day to day life, devote their holiday to rest and relaxation, refresh themselves. These tourists prefer to stay in some quiet and relaxed destination preferably at a hill resort, beach resort or island resort. Nowadays tourists undertake various adventure sports activities for leisure and to refresh themselves after working hard.

This tourism includes following forms based on the activities undertaken:

#### **(a) Heritage Tourism**

People visiting cultural and historical resources are one of the largest, most pervasive and fastest growing sectors of the tourism industry today. In fact, heritage tourism appears to be growing much faster than all other forms of tourism, particularly in the developing world, and is thus viewed as an important potential tool for poverty alleviation and community economic development. Heritage tourism typically relies on living and built elements of culture and refers to the use of the tangible and intangible past as a tourism resource. It encompasses existing cultures and folkways of today, for they too are inheritances from the past; other immaterial heritage elements, such as music, dance, language, religion, food ways and cuisines, artistic traditions, and festivals; and material vestiges of the built cultural environment, including monuments, historic public buildings and homes, farms, castles and cathedrals, museums, and archaeological ruins and relics.

India is well known for its rich heritage and ancient culture. The country's rich heritage is amply reflected in the various temples, majestic forts, pleasure gardens, religious monuments, museums, art galleries and urban and rural sites which are citadels of civilisation. All these structures form the products of heritage tourism.

#### **(b) Religious Tourism**

It is also called as Pilgrimage tourism / Spiritual tourism. It is a form of tourism, where people travel individually or in groups for pilgrimage. The world's largest form of mass religious tourism takes place at the annual Hajj pilgrimage in Mecca, Saudi Arabia. Modern religious tourists are more able to visit holy cities and holy sites around the world. The most famous holy cities are Jerusalem, Mecca and Varanasi.

### **(c) Family Tourism**

Family tourism involves the family unit and their participation in diverse forms of tourism activity. This includes visiting one's relatives and friends for interpersonal reasons. Many people in India travel for visiting their friends and relatives. While visiting friends or relatives, people also visit tourists' attractions in and around the city.

### **(d) Health Tourism**

Health tourism is also called as Medical tourism. People have been travelling for centuries to improve and rebuild their health and stamina. Today, many people travel great distances to exotic locations or health care facilities in faraway countries, in search of medical treatment and care. Medical tourism is an age-old concept that has gained popularity in the recent times. Many developing countries are emerging as hot medical tourism destinations capitalizing on low cost advantages. Many hospitals have specially designed packages including resorts facilities. Thus health tourism covers one or more of the following aspects-

- Change of climate
- Alternative therapy- Ayurvedic treatment, hot Sulphur springs, Naturopathy and art of living
- Medical treatment

### **Wellness tourism**

Wellness tourism is regarded as a sub-segment of medical tourism. Here, the primary purpose is achieving, promoting or maintaining good health and a sense of well-being. India with widespread presence of Traditional therapies like, Ayurveda, Yoga, Siddha, and Naturopathy, complemented by its spiritual philosophy, is a well-known wellness destination. Wellness tourism includes ayurvedic therapies, spa visits, and yoga meditation.

### **Medical Tourism in India**

Medical tourism has done exceptionally well in India and the number of medical tourists coming into the country is increasing. Rising healthcare costs in the developed economies, especially the US and the UK, is forcing patients from the region to look for cost-effective and alternative forms of treatment. India, with its pool of highly trained and specialised doctors, good healthcare infrastructure facilities, relatively lower cost of treatment and availability of alternative forms of treatment such as Ayurveda, Yoga, Siddha, and Naturopathy is seeing strong growth in medical tourism.

Medical tourism is promoted through suitable packaging of identified best hospitals and price banding as per treatment requirements. The medical costs in India are much lower at around 25% of the costs in the European and US markets. Medical tourism has grown swiftly despite the economic slowdown. The industry is still at a nascent stage and holds immense potential.

The key benefits of medical treatment and medical tourism in India are:

- World-class treatment at fraction of the cost in western countries
- Patients from more than 55 countries availing treatment in India
- Medical technology, equipment, facilities and healthcare infrastructure in India at par with international standards
- The Indian doctors recognised among the best globally.

Various medical treatments that can be availed in India include knee replacement, hip replacement, cosmetic surgery, dental treatment, and cardiac care.

The government is also taking several measures to promote medical tourism in the country. This includes issuance of “Medical Visa” for patients and their attendants coming to India for treatment. It has also requested the state governments to promote healthcare packages. Under the Market Development Assistance Scheme, financial assistance would be provided to medical tourism service providers (MTSP), i.e. accredited hospitals and medical tourism facilitators (travel agents and tour operators approved by the Ministry of Tourism and engaged in medical tourism).

#### **(e) Sports Tourism**

Sports Tourism refers to travel which involves either viewing or participating in a sporting event staying apart from their usual environment. Sport tourism is a fast growing sector of the global travel industry. Sports tourism refers to people travelling to participate in a competitive sport event. Normally these kinds of events are the motivators that attract visitors to visit the events like Olympic Games, FIFA World Cup.

The focus on sport and spreading knowledge on the subject, especially more so recently, lead to the increase in the sport tourism. Most notably, the international event such as the Olympics caused a shift in focus in the audience who now realize the variety of sports that exist in the world. In the United States, one of the most popular sports that usually are focused on was Football. This popularity was increased through major events like the World Cups. In Asian countries, the numerous football events also increased the popularity of football. But, it was the Olympics that brought together the different sports that lead to the increase in sport tourism. The drastic interest increase in sports in general and not just one sport caught the attention of travel companies, who then began to sell flights in packages. Due to the low number of people who actually purchase these packages than predicted, the cost of these packages plummeted initially. As the number start to rise slightly the packages increased to regain the lost profits. With the certain economic state, the number of purchases decreased once again. The fluctuation in the number of packages sold was solely dependent on the economic situation, therefore, most travel companies were forced to set aside the plan to execute the marketing of any new package features.

Sports tourism can be adventurous also.

Adventure sport tourism is also called as **Adventure Tourism**. Adventure sport tourism is more challenging because it takes the tourists into regions which are less frequently visited and may not have easy access. Adventure tourism refers to performance of acts, which require significant efforts and some degree of risk or physical danger. The activities include mountaineering, trekking, bungee jumping, mountain biking, river rafting, and rock climbing. Adventure tourism is attracting more number of youth and adventure tourists.

Adventure sports tourism is a package of

- Recreation
- Enjoyment
- Education
- Thrills of participating in an adventure

Adventure tourism activities are broadly classified in to three types-

**1. Land based Adventure activities**

Ex: trekking, Climbing, Mountaineering, Jeep safari, ATB rides, Mountain biking etc.

**2. Water based Adventure activities**

Ex: Swimming, SCUBA diving, River rafting, Surfing, Boating, Kayaking etc.

**3. Air based Adventure activities**

Ex: Sky diving, Bungee jumping, Hot air balloons etc.

India with its diverse topography and climate offers tremendous scope for adventure tourism. The mountain regions offer lot of scope for mountaineering, rock climbing, trekking, skiing, skating, mount biking and safaris; rushing rivers provide opportunities for river rafting, canoeing and kayaking; and oceans provide tremendous opportunity for diving and snorkelling.

The government is undertaking measures such as financial assistance to governments of states and union territory for development of adventure tourism destinations. It has also provided financial assistance for organising mountain biking expedition. The Ministry of Defence has given permission for opening of 104 additional peaks in Leh area of Jammu & Kashmir for adventure tourism. National Institute of Water Sports, under the Ministry of Tourism, Govt. of India located in Goa, has been conducting training programmes for Boat operators, while customs duty on inflatable rafts, snow-skis, sail boards and other water sports equipment has been exempted.

## **(f) Educational tourism**

Educational tourism developed, because of the growing popularity of teaching and learning of knowledge and the enhancing of technical competency outside of the classroom environment. In educational tourism, the main focus of the tour or leisure activity includes visiting another country to learn about the culture, such as in Student Exchange Programs and Study Tours, or to work and apply skills learned inside the classroom in a different environment, such as in the International Practicum Training Program.

## **2. Business Tourism**

The most important travel segment is Business Travel. It constitutes over one third of the total travel business. Business travellers pay full fares and their demand is not subject to seasonality. The choice of destination is determined by the nature of business and not by its attractions.

Under the broad heading of business travel, we can include the staff of the companies rewarded for doing a good job-achieving or exceeding sales targets or owners of stores who sell the most for their principals. This reward is often given in shape of an all paid holiday and is called *Incentive Travel*. Another form of business travel is the *Convention/Conference Travel*, the people who travel on behalf of their companies for conventions, professional meetings, seminars, and conferences including large international gatherings of travel agents like the Americans Society of Travel Agents (ASTA), conferences of heart surgeons or a gathering of oil industry specialists. Thousands of such meetings take place every year in different parts of the world. The expenses are paid by the companies in most cases. For professionals like heart surgeons and others, travel expenses on professional gatherings are tax deductible in many countries. We have the category of the people who visit a country for business. Included among them are businessmen or professionals attending trade fairs, conventions and conferences, participants in the incentive travel offered by their companies and people coming to negotiate business deals and contracts.

Certain characteristics of the business traveller can be described as follows:

- The demand of business travel is mostly city-oriented. Business The demand of business travel is mostly city-oriented. Business travellers frequent visit cities which are often not tourist attractions.
- The journey is undertaken by the business traveller irrespective of weather or climatic conditions as and when required for doing work by their organization.
- Whereas leisure tourism is influenced by economic conditions, business travel is not affected by recession.
- Business travellers are frequent travellers. Their demands are price-inelastic.

### **Conferences, Conventions and Incentive Travel**

There are 33,000 international conferences and conventions held worldwide every year and generating revenue of US \$ 105 billion a year. The tourism industry has coined a special

acronym **MICE** for this business. MICE stands for Meetings, Incentives, Conferences and Exhibitions. With an average stay of 4.1 days, delegates spend over \$895 per event. Expenditure includes hotel, restaurant, taxis, and retail stores. Exhibitors spend on average of \$1186 per event.

Incentive travel is the reward given by business organisations to their best workers or top sales people for their achievements. In developed countries, people have little value or attraction for rewards and incentives like a TV or a refrigerator because they already have one. A nicely packaged all-paid holiday with spouse is considered a more attractive proposition. Several million people travel internationally on incentive trips every year. Besides, there are many more millions who go to travel on similar incentives domestically.

In India, over 10,000 people are estimated to travel overseas on incentive holidays every year-a growing segment.

Specialised travel organisations have been set up in developed countries to professionally deal with this segment of travel. They provide complete service to business houses-from developing an incentive product to its materialisation. Most organisations try to make these trips exciting and unique by organising theme parties and other interesting activities.

Indian travel agents have organised special rural 'Melas' as well as entertainment at exotic sites like forts and palaces for incentive groups from overseas. The guests are welcomed by caparisoned elephants on arrival.

Similarly, the business of conferences and conventions is handled by experts at both ends. Incentive travel was started by Americans but it has since spread to Europe, Japan and Australia. Indian enterprises are also in it now offered within India as well as nearby overseas destinations like Nepal, Singapore and Thailand.

In Indian Scenario, Tourism is growing on par with global standards and MICE is becoming a major part of its travel and promotional budgets. In the Indian context, incentives is at present the largest component of MICE but in a maturing market, it's only a matter of time before the entire gamut of MICE activities are undertaken by the Indian corporate world. India is easy to access from airports worldwide. It is also connected with a network of several domestic airlines, which provide convenient connectivity within India. In addition there is an elaborate network of surface transportation system. An excellent Railway system runs through the entire country. Special trains like Palace on Wheels and Royal Orient Express, comprising of air-conditioned cabins decorated in the old Maharaja style, equipped with world class amenities to enhance the pleasure of travelling. An excellent network of roads, national and state highways also makes it congenial to travel.

### **Prospective of India as a MICE Destination**

With the splendid Himalayan ranges in the north and an endless stretch of golden beaches in the south, India is a vivid kaleidoscope of landscapes, magnificent historical sites, royal cities, rich culture and incomparable hospitality. Being the oldest civilization of the world, India boasts a fascinating amalgamation of traditional & contemporary. In the recent years India has emerged as one of the most sought after MICE destination. India provides an

impressive combination of accommodation and other conference support facilities to hold a successful conference. High-tech facilities matching global standards are offered at conference and meeting venues in India. Apart from world class facilities India is also a perfect destination for leisure activities. As most of the MICE adjectives will always have a leisure component within itself, this will be another cutting edge for Indian Tourism. From world's highest mountain peak to some of the best beaches, from dry deserts to lush green forests, from the timeless Taj Mahal to bustling cities, from backwaters to snow peaked mountains India has it all. India is also home to a number of UNESCO World Heritage sites. For adventurous tourists attractions include river rafting, river crossing, trekking, bungee jumping, rock climbing mountaineering, Para- gliding, to name a few. Tourists can also explore world's best spas while in India. India's capabilities to host meetings, conferences and conventions have been proved through several events in the past.

### **3. Alternative forms of Tourism**

Alternative tourism aims at seeking a change from impersonal, traditional tourism to establishing cardinal rapport between visitors and the local community. Instead of using touristic commodities these tourists prefer to use or share the services of local people. The focus in these travels is the preserved natural environment, authentic atmosphere and cuisine, and local traditions. Alternative tourism is nowadays regarded as a key to sustainable development. It is also known as special interest tourism. It is of various types -

- Ecotourism
- Food tourism
- Agro-rural tourism
- Wild life tourism

#### **Ecotourism**

Ecotourism, also known as ecological tourism, is travel to natural areas to appreciate the cultural and natural history of the environment, while not disturbing the integrity of the ecosystem and creating economic opportunities that make conservation and protection of natural resources advantageous to local people. It involves travel to destinations where flora, fauna and cultural heritage are primary attractions. Ecotourism also minimises wastage and the environmental impact through sensitised tourists. It can be one of the medium to preserve local culture, flora and fauna and other natural resources.

Eco tourism can be defined as “Travel to Fragile, pristine and usually protected areas that strives to be low impact and small scale”.

According to The International Ecotourism society definition in 1990 Ecotourism is “Responsible travel to natural areas that conserves the environment and improves the well being of local people”.

The basic principles to be followed in ecotourism are:



- Minimise the impact
- Build environmental and cultural awareness and respect
- Provide positive experiences for both visitors and hosts
- Provide direct financial benefits for conservation
- Provide financial benefits and empowerment for local people
- Raise sensitivity to political, environmental, and social climate of the host country
- Support international human rights and labour agreements.

India, with its great geographical diversity, offers several eco-tourism destinations. It is home to a wealth of ecosystems which are well protected and preserved. These include:

- Biosphere reserves
- Mangroves
- Coral reefs
- Deserts
- Mountains and forests
- Flora and fauna
- Seas, lakes and rivers
- Caves

A few places for ecotourism include the Himalayan region, Western Ghats, Kerala, North East India, Andaman & Nicobar and Lakshadweep Islands. Thenmala in Kerala is the first planned ecotourism destination in India in the year 2002.

### **Rural tourism**

Rural tourism showcases rural life, art, culture and heritage of rural locations, benefitting the local community economically and socially as well as enabling interaction between the tourists and locals for a more enriching tourism experience. Rural tourism is multi-faceted and may entail farm/agricultural tourism, cultural tourism, nature tourism, adventure tourism, and ecotourism. Rural tourism has certain characteristics: it is experience oriented; locations are sparsely populated; it is predominantly in a natural environment; it meshes with seasonality and local events; and it is based on preservation of culture, heritage and traditions. India's rural geographical and cultural diversity enables it to offer a wide range of tourism products and experiences. Increasing levels of awareness, growing interest in heritage and culture, improved accessibility to rural areas, and environmental consciousness are playing an important role in promoting rural tourism. This form holds immense potential in India, where more than 70% of the population resides in villages.

The Ministry of Tourism along with UNDP undertook the "Explore Rural India" Campaign, to give tourists a chance to experience life in rural India. It is one of the most successful tourism campaigns so far. During the "Visit India Year 2009" campaign, 15 rural tourism sites were selected as rural eco-holiday sites.

### **Food tourism**

Culinary tourism or food tourism is experiencing the food of the country, region or area, and is now considered a vital component of the tourism experience. Dining out is common among tourists and "food is believed to rank alongside climate, accommodation, and scenery" in importance to tourists.

Culinary or food tourism is defined by the World Food Travel Association (WFTA) as the pursuit of unique and memorable eating and drinking experiences.

The market for culinary tourism to India is growing as the country's culinary traditions continue to garner increasing international attention. Cooking classes, both formal and included in home stays, is a favourite activity among foreign visitors. India's broad culinary culture reflects influences of Persian, Middle Eastern, Central Asian and Southeast Asian cuisines. India is home to a multidimensional and eclectic mix of cultures resulting in a variety of food traditions. There is no single dish that represents the country; rather, Indian culinary traditions vary greatly from region to region.

### **Wildlife tourism**

Wildlife tourism, one of the fastest segments of tourism, involves travel to different locations to experience wild life in natural settings. Due to its varied topography and distinctive climatic conditions, India is endowed with various forms of flora and fauna and it has numerous species of birds, mammals, reptiles, amphibians and plants and animals.

To tap the potential of wildlife tourism, the government has launched some wildlife packages for travellers. Wildlife Tourism in India includes wildlife photography, bird watching, jungle safari, elephant safari, jeep safari, jungle camping, ecotourism etc.

The country offers immense opportunities for wildlife tourism. The strong heritage of wildlife in India comprises more than 70 national parks and about 400 wildlife sanctuaries including bird sanctuaries. However, concrete steps by both the government and the private sector need to be taken to promote wildlife tourism.

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## **5.4 Summary**

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Tourism is the activity of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business or any other purpose. It is an industry concerned with attracting people to destination, transporting them there, housing, feeding and entertaining them upon arrival and returning them to their homes. A quarter of a century ago, travel was the privilege of a few rich, affluent and adventurous people. Today, with the rise in the standard of living of people in several developed and developing countries along with fast technological revolution in transportation industry, overseas holidays are within the reach of middle and working class. People may travel to escape from their daily environment or to seek information. Tourism is an amalgamation of different activities and businesses. Various Components and Elements together make tourism possible. There are various types of tourism classified based on purpose of visit. Every individual are differ in their interests and tastes. Several elements like, Pleasing and

salubrious weather, scenic beauty of a place, rich architecture, etc. acting as influencing factors to bring tourists to that place. People are visiting different places according to their interest. People who travel in relation to their work come under the category of business tourism. A change in motivation has brought in new trends in tourism like Special Interest or Alternative Tourism. Special interest travel is travel for people who are going somewhere because they have a particular interest that can be pursued in a particular region or at a particular destination.

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### **5.5 Self Assessment Questions:**

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1. Define the term Tourism.
2. Describe the various type of tourism based on purpose of visit.
3. Define in detail what is meant by Alternative Tourism.
4. Write a note on Business Tourism.

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## Unit 6 Hospitality & Tourism Products

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- 6.0 Objective
- 6.1 Introduction
- 6.2 Types and forms of tourism-
- 6.3 Heritages
- 6.4 Historical
- 6.5 Leisure Tourism
- 6.6 Business Tourism
- 6.7 Medical Tourism
- 6.8 Cultural Tourism
- 6.9 Adventures
- 6.10 Wellness Tourism
- 6.11 Eco Tourism
- 6.12 Sports
- 6.13 Religious Tourism
- 6.14 Wildlife Tourism
- 6.15 Summary
- 6.16 Review Questions
- 6.11 Reference & Suggested Reading

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### 6.0 Objective

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After going through this lesson, you will be able to :

- explain the types of tourism
- distinguish between domestic and international tourism
- explain the types of international tourism
- explain the process of transformation of travel of past into tourism of today;
- discuss various types and related purposes of tourism;
- explain the variety and value of tourist resources of India;
- explain the causes and factors responsible for the growth of tourism;
- analyse the area development through the promotion of tourism;

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### 6.1 Introduction

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Tourism in its modern form is not the same as travels of the early periods of human history. In the language of Jews, the word 'Torah' means study or search and 'tour' seems to have been derived from it. In 'Latin' the original word 'Tornos' stands close to it. 'Tornos' was a kind of round wheel-like tool hinting at the idea of a travel circuit or a package tour. In Sanskrit, 'Paryatan' means leaving one's residence to travel for the sake of rest and for seeking knowledge. 'Deshatan' is another word which means travelling for economic benefits. 'Tirthatan' is the third equivalent which means travelling for religious purposes. All the three words convey the meaning and concept of tourism much more appropriately. Since 1970, India collects statistics in regard to tourist traffic on the basis of following definition

given in United Nations Travel and Tourism paper : “A person who travels in India on foreign passport for a minimum period of 24 hours and the maximum period of 6 months is a tourist provided he or she does neither settles nor gets employed (or exciled) in this country.” It applies to international tourists. Tourism as a modern term is applicable to both international and domestic tourists. It is the temporary movement of people to destinations outside their normal place of work and residence. Such a pleasure-seeking tourist is a traveller moving from place to place or visiting the same place time and again. Tourism includes all economic activities which are organised around the needs of such travellers. Any travel for holidaying, business or professional trip becomes a part of tourism if it is temporary and is undertaken voluntarily, without an aim to earn any livelihood out of it. The conern of business or professional tourism is for exchanging views for seeking collaboration between different parties. It is an era of economic reforms within the prospective of globalised economy. It is bringing more and more business tourists to our metropolises and other growing centre of industry and commerce. The word ‘holiday’ is derived from the term ‘holy day’. The reason being that for long it was associated only with the day of religious observances. By 19<sup>th</sup> century, a number of other holidays have being fixed keeping in view the secular activities of the state. The concept of annual holidays allowed or taken by a citizen and their association with tourism is a very recent phenomenon. Tourism is travel for recreational, leisure, or business purposes, usually of a limited duration. Tourism is commonly associated with trans-national travel, but may also refer to travel to another location within the same country. The World Tourism Organization defines **tourists** as people "travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes". Tourism has become a popular global leisure activity. After slowly recovering from the contraction resulting from the late-2000s recession, where tourism suffered a strong slowdown from the second half of 2008 through the end of 2009, and the outbreak of the H1N1 influenza virus, international tourist arrivals surpassed the milestone 1 billion tourists globally for first time in history in 2012. International tourism receipts (the travel item of the balance of payments) grew to US\$1.03 trillion (€740 billion) in 2011, corresponding to an increase in real terms of 3.8% from 2010. In 2012, China became the largest spender in international tourism globally with US\$102 billion, surpassing Germany and United States. China and emerging markets significantly increase their spending over the past decade, with Russia and Brazil as noteworthy examples.

An International Tourist has been defined as a person visiting other country and staying at least for 24 hours and maximum for 6 months and the mean purpose of his visit is other than the exercise of an activity related to work at earnings or establishment of residence in the country visited. Such persons must carry a valid passport, visa, health certificates, amount of currency carrying and other essential information required by authorities of the concerned country from time to time.

A Domestic Tourist has been defined as a person who travels within the country to a place other than his normal place of residence and stays at hotels or other such establishments run on commercial basis like youth hostels, guest hostels, dharamshala, circuit houses etc are stays with friends and relatives and visits the places of attraction or pilgrimages for a

duration of not less than 24 hours and maximum of 6 months. Such persons do not require any document like passport or visa etc.

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## 6.2 Types and forms of tourism

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Tourism can be classified into the following types:

- **Inbound International tourism:** Non-residents traveling in the given country.
- **Outbound International tourism:** Residents traveling in another country.
- **Domestic tourism:** Residents of the given country traveling only within this country.

### **Most popular categories of tourism**

The Tourism industry has developed through the years and presently is one of the most diversified, customized and specialized industries. We would like to introduce some of the most popular types of tourism worldwide where tourists are categorized by the purpose of their visit.

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## 6.3 Heritage

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**Cultural heritage tourism** (or just **heritage tourism** or **diaspora tourism**) is a branch of tourism oriented towards the cultural heritage of the location where tourism is occurring. The National Trust for Historic Preservation in the United States defines heritage tourism as "travelling to experience the places and activities that authentically represent the stories and people of the past", and cultural heritage tourism is defined as "travelling to experience the places and activities that authentically represent the stories and people of the past and present." Culture has always been a major object of travel, as the development of the Grand Tour from the 16th century onwards attests. In the 20th century, some people have claimed, culture ceased to be the objective of tourism: tourism is now culture. Cultural attractions play an important role in tourism at all levels, from the global highlights of world culture to attractions that underpin local identities. (Richards, 1996)

According to the Weiler and Hall, culture, heritage and the arts have long contributed to appeal of tourist destination. However, in recent years 'culture' has been rediscovered as an important marketing tool to attract those travellers with special interests in heritage and arts. According to the Hollinshead, cultural heritage tourism defines as cultural heritage tourism is the fastest growing segment of the tourism industry because there is a trend toward an increase specialization among tourists. This trend is evident in the rise in the volume of tourists who seek adventure, culture, history, archaeology and interaction with local people.

Cultural heritage tourism is important for various reasons; it has a positive economic and social impact, it establishes and reinforces identity, it helps preserve the cultural heritage, with culture as an instrument it facilitates harmony and understanding among people, it supports culture and helps renew tourism (Richards, 1996). As Benjamin Porter and Noel B. Salazar have ethnographically documented, however, cultural heritage tourism can also create tensions and even conflict between the different stakeholders involved (Porter and

Salazar 2005). Cultural heritage tourism has a number of objectives that must be met within the context of sustainable development such as; the conservation of cultural resources, accurate interpretation of resources, authentic visitors experience, and the stimulation of the earned revenues of cultural resources. We can see, therefore, that cultural heritage tourism is not only concerned with identification, management and protection of the heritage values but it must also be involved in understanding the impact of tourism on communities and regions, achieving economic and social benefits, providing financial resources for protection, as well as marketing and promotion. (J. M. Fladmark, 1994)

Heritage tourism involves visiting historical or industrial sites that may include old canals, railways, battlegrounds, etc. The overall purpose is to gain an appreciation of the past. It also refers to the marketing of a location to members of a diaspora who have distant family roots there.

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## 6.4 Historical

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Historical tourism refers to a kind of tourism, where the tour or tour group focuses on the history; history of some place, people, thing, or events. They go, see, study, discuss and experience places where historical things occurred. The places will be a portrayal of history of that country or the region and tells about the past happenings. Tourists usually visit those places of historical importance to know about the culture, tradition, past happenings etc and get to know about the evolution and development in culture. This is an attempt to understand, the living environments and life – styles of ordinary people of the past, and present and interpret these in an interesting manner to the tourists. Places of important historical events, such as battlefields or sites where discovers and explorers landed, are also being promoted as tourist attractions.

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## 6.5 Leisure Tourism

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Leisure time can be defined as “*free time*”, not doing any work. It is that time to do things that you normally have no time for in your daily life. Leisure tourism includes a holiday with the following:

- Leisure activities
- Relaxation: Sleep, relax, reading, walk on the beach, taking a scenic drive
- Sport activities: hiking, swimming, surfing, running
- Visit places of interest and local **attractions**
- Visiting friends and relatives
- Shopping for goods that will be used by the tourist.






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## 6.6 Business Tourism

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**Business tourism** or **business travel** is when more limited and focused subset of regular tourism. During business tourism (traveling), individuals are still working and being paid, but they are doing so away from both their workplace and home.

Some definitions of tourism tend to exclude business travel. However, the World Tourism Organization (WTO) defines tourists as people "traveling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes". Primary business tourism activities include meetings, and attending conferences and exhibitions. Despite the term business in business tourism, when individuals from government or non-profit organizations engage in similar activities, this is still categorized as business tourism (travel).

Business tourism can be defined as "*travel for the purpose of business*". Business Tourism can be divided into three sections:

- Trading for goods to be resold on a wholesale basis
- Conduct business transactions e.g. visiting a client, contract negotiations
- Attending a conference, exhibition or event associated with their business.

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## 6.7 Medical Tourism

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**Medical tourism** (MT) is the travel of people to another country for the purpose of obtaining medical treatment in that country, commonly at a lower cost. Medical tourism is different from the traditional model of international medical travel where patients generally journey from less developed nations to major medical centers in highly developed countries for medical treatment that is unavailable in their own communities. Services typically sought by travelers include elective procedures as well as complex specialized surgeries such as joint replacement (knee/hip), cardiac surgery, dental surgery, and cosmetic surgeries. Individuals with rare genetic disorders may travel to another country where treatment of these conditions is better understood. However, virtually every type of health care, including psychiatry, alternative treatments, convalescent care and even burial services are available.

Over 50 countries have identified medical tourism as a national industry. Medical Tourism involves people who travel to a different place to receive treatment for a disease, health condition, or a surgical procedure, and who are seeking lower cost of healthcare and higher quality of care. Favourite procedures in medical tourism include Cardiology, Cardiothoracic, Cosmetic Surgery, Plastic and Reconstructive Surgery, Weight Loss, Neuron, Eye, Orthopaedic Surgery, as well as Organ Transplants (kidney).

Medical Tourism services include medical facilitation, travel arrangements, accommodation, transportation and tour packages.

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## 6.8 Cultural Tourism

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**Cultural tourism** (or **culture tourism**) is the subset of tourism concerned with a country or region's culture, specifically the lifestyle of the people in those geographical areas, the history of those people, their art, architecture, religion(s), and other elements that helped shape their way of life. Cultural tourism includes tourism in urban areas, particularly historic or large cities and their cultural facilities such as museums and theatres. It can also include tourism in rural areas showcasing the traditions of indigenous cultural communities (i.e. festivals, rituals), and their values and lifestyle. It is generally agreed that cultural tourists spend substantially more than standard tourists do. This form of tourism is also becoming generally more popular throughout the world, and a recent OECD report has highlighted the role that cultural tourism can play in regional development in different world regions.

Cultural tourism has been defined as 'the movement of persons to cultural attractions away from their normal place of residence, with the intention to gather new information and experiences to satisfy their cultural needs'. These cultural needs can include the solidification of one's own cultural identity, by observing the exotic "other".

Cultural tourism or sometimes referred to as heritage tourism is the division of tourism concerned with the region's culture, specifically the lifestyle and history of the people, their art, architecture, religion and other elements. Cultural tourism includes cultural facilities such as museums, theatres and festivals. This is one of the most popular types of tourism and attracts tourists from different parts of the world.

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## 6.9 Adventure Tourism

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**Adventure travel** is a type of tourism, involving exploration or travel with perceived (and possibly actual) risk, and potentially requiring specialized skills and physical exertion. Adventure tourism is rapidly growing in popularity, as tourists seek different kinds of vacations. According to the U.S. based Adventure Travel Trade Association, **adventure travel** may be any tourist activity, including two of the following three components: a physical activity, a cultural exchange or interaction and engagement with nature.

Adventure tourists may be motivated to achieve mental states characterized as rush or flow, resulting from stepping outside of their comfort zone. This may be from experiencing culture shock or through the performance of acts, that require significant effort and involve some degree of risk (real or perceived) and/or physical danger (See extreme

sports). This may include activities such as mountaineering, trekking, bungee jumping, mountain biking, rafting, zip-lining, paragliding, and rock climbing. Some obscure forms of adventure travel include disaster and ghetto tourism. Other rising forms of adventure travel include social and jungle tourism.

Access to inexpensive consumer technology, with respect to Global Positioning Systems, flash packing, social networking and photography, have increased the worldwide interest in adventure travel. The interest in independent adventure travel has also increased as more specialist travel websites emerge offering previously niche locations and sports. Adventure tourism is an outdoor activity that generally takes place in an unusual, remote or a wilderness area. This adventurous activity can take place in the sea, in rivers, in the air, in mountains and is associated with low or high levels of physical activity. There are many types of products and services that fall within the Adventure Tourism category such as: bungee jumping, mountaineering expeditions, rafting, rock climbing, diving, wind surfing, paragliding and many more.

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## 6.10 Wellness Tourism

**Wellness tourism** is travel for the purpose of promoting health and well-being through physical, psychological, or spiritual activities. While wellness tourism is often correlated with medical tourism because health interests motivate the traveler, wellness tourists are proactive in seeking to improve or maintain health and quality of life, often focusing on prevention, while medical tourists generally travel reactively to receive treatment for a diagnosed disease or condition. Wellness tourism is one of the fastest growing forms of international and domestic tourism. This form of tourism involves people who travel to a different place to pursue activities that maintain or enhance their personal health and wellness, and who are seeking unique, authentic or location-based experiences. **Wellness** tourism include massages, body treatments, facial treatments, exercise facilities & programs, **weight loss programs**, nutrition programs, pre- and post-operative Spa treatments and mind/body programs.

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## 6.11 Eco Tourism

**Ecotourism** is a form of tourism involving visiting fragile, pristine, and relatively undisturbed natural areas, intended as a low-impact and often small scale alternative to standard commercial (mass) tourism. Its purpose may be to educate the traveler, to provide funds for ecological conservation, to directly benefit the economic development and political empowerment of local communities, or to foster respect for different cultures and for human rights. Since the 1980s ecotourism has been considered a critical endeavor by environmentalists, so that future generations may experience destinations relatively untouched by human intervention. Several university programs use this description as the working definition of ecotourism.

Generally, ecotourism deals with living parts of the natural environments.<sup>[3]</sup> Ecotourism focuses on socially responsible travel, personal growth, and environmental sustainability. Ecotourism typically involves travel to destinations where flora, fauna, and cultural heritage are the primary attractions. Ecotourism is intended to offer tourists insight into the

impact of human beings on the environment, and to foster a greater appreciation of our natural habitats.

Responsible ecotourism programs include those that minimize the negative aspects of conventional tourism on the environment and enhance the cultural integrity of local people. Therefore, in addition to evaluating environmental and cultural factors, an integral part of ecotourism is the promotion of recycling, energy efficiency, water conservation, and creation of economic opportunities for local communities. For these reasons, ecotourism often appeals to advocates of environmental and social responsibility. Ecotourism is *“Responsible travel to natural (unspoilt) areas that conserves the environment and improves the well-being of local people.”* The purpose of ecotourism is to educate the traveler about natural destinations, to provide ecological conservation and awareness, to benefit economic development, the political empowerment of local communities and respect for the local culture. Here the traveler can experience the natural way of life surrounded by natural circumstances.

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## 6.12 Sports Tourism

**Sports tourism**, or more correctly, **Sport Tourism** refers to travel which involves either observing or participating in a sporting event staying apart from their usual environment. Sport tourism is a fast growing sector of the global travel industry and equates to \$600 billion a year.

Sports tourism refers to international travel either for viewing or participating in a sporting event. Examples include international sporting events such as the Olympics, world cup (soccer, rugby, and cricket), tennis, golf and Formula 1 Grand Prix. There are several classifications on sport tourism. Gammon and Robinsom suggested that the sports tourism are defined as *Hard Sports Tourism* and *Soft Sports Tourism*, while Gibson suggested that there are three types of sports tourism included *Sports Event Tourism*, *Celebrity and Nostalgia Sport Tourism* and *Active Sport Tourism*. Hard definition of sport tourism refers to the quantity of people participating at a competitive sport events. Normally these kinds of events are the motivation that attracts visitors visits the events. Olympic, FIFA World Cup, F1 Grand Prix and regional events such as NASCAR Sprint Cup Series could be described as hard sports tourism.

Soft definition is when the tourist travels to participate in recreational sporting, or signing up for leisure interests. Hiking, Skiing and Canoeing can be described as soft sports tourism..

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## 6.13 Religious Tourism

**Religious tourism**, also commonly referred to as faith tourism, is a type of tourism, where people travel individually or in groups for pilgrimage, missionary, or leisure (fellowship) purposes. The world's largest form of mass religious tourism takes place at the annual Hajj pilgrimage in Mecca, Saudi Arabia. North American religious tourists comprise an estimated \$10 billion of the industry.

Modern religious tourists are more able to visit holy cities and holy sites around the world. The most famous holy cities are Jerusalem, Mecca , Karbala and Varanasi. The most famous

holy sites are the Rauza of Imam Husain at Karbala, Church of the Nativity, The Western Wall, Brahma Temple at Pushkar and the Kaaba. Religious tourism has existed since antiquity. A study in 2011 found that 2.5 million people visited Karbala on the day of Arbaeen in 2013, pilgrims visited Jerusalem for a few reasons: to understand and appreciate their religion through a tangible experience, to feel secure about their religious beliefs, and to connect personally to the holy city.

Religious Tourism or faith tourism are people of faith who travel on their own or in groups to holy cities or holy sites for pilgrimages, crusades, conventions, retreats, religious tourist attractions or missionary work.

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## 6.14 Wildlife Tourism

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**Wildlife tourism** can be an eco and animal friendly tourism, usually showing animals in their natural habitat. Wildlife tourism, in its simplest sense, is watching wild animals in their natural habitat. Wildlife tourism is an important part of the tourism industries in many countries including many African and South American countries, Australia, India, Canada, Indonesia, Bangladesh, Malaysia and Maldives among many. It has experienced a dramatic and rapid growth in recent years world wide and is closely aligned to eco-tourism and sustainable-tourism.

Wildlife tourism is also a multi-million dollar industry offering customized tour packages and safaris.

Wildlife tourism is the observation of wild (non-domestic) animals in their natural environment or in captivity. It includes activities such as photography, viewing and feeding of animals. This form of tourism offer tourists customized tour packages and safaris and is closely associated with eco-tourism and sustainable-tourism.

Other minor forms of tourism include Slum tourism, Luxury tourism, Agritourism, Geo-tourism, Culinary tourism and many more.

Tourism is also a profitable industry for the following sectors: **accommodation** venues, tour guides, recreation, attractions, events and conferences, food and beverage, transportation and the travel trade.

Wildlife tourism can cause significant disturbances to animals in their natural habitats. The growing interest in traveling to developing countries has created a boom in resort and hotel construction, particularly on rain forest and mangrove forest lands. Wildlife viewing can scare away animals, disrupt their feeding and nesting sites, or acclimate them to the presence of people. In Kenya, for example, wildlife-observer disruption drives cheetahs off their reserves, increasing the risk of inbreeding and further endangering the species. The effect that wildlife tourism will have on wildlife depend on the scale of tourist development and the behavior and resilience of wildlife to the presence of humans. When tourists activities occur during sensitive times of the life cycle (for example, during nesting season), and when they involve close approaches to wildlife for the purpose of identification or photography, the potential for disturbance is high. Not all species appear to be disturbed by tourists even within heavily visited areas.

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## 6.15 Summery

The beauty of nature lies in its variety which indeed is endless. So is the timeless desire in the human beings to appreciate the nature from the bottom of their heart. This is why since ancient times explorers, discoverers and travellers undertook adventurous journeys in spite of all difficulties they came across. The underlying idea of visiting new places to appreciate their beauty, in course of time, has given birth to a modern industry called tourism. It is the job of tourism industry to spot such places of beauty and interest and bring people and places physically closer to one another by providing every facility and comfort. Thus natural scenery, favorable weather and climate and cultural heritage are used for area development through promotion of tourism. In this lesson, we will study the meaning of tourism, types of tourists and attraction for a variety of tourist places. Also we will answer question about the need for tourism and contribution of variety of tourist resources to the development of modern tourism.

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## 6.16 Question

1. Why is India called a prized tourist destination?
2. What is the name of Asia's largest fresh water lake and where is it situated?
3. In which period 'seven Delhi's' constructed?
- 4.. What is the definition and various forms of Tourism?
5. Who all are included in the definition of a tourist as per WTO?
6. What is the difference between:
  - Travel and Tourism
  - Domestic and International Tourist
  - A Tourist and an Excursionist

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## Unit 7 Tourist Attractions

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### Structure of Unit:

- 7.0 Objectives
- 7.1 Introduction
- 7.2 Tourist Attractions
- 7.3 Folk Dances of Rajasthan
- 7.4 Fairs and Festivals
- 7.5 National Parks and Sanctuaries
- 7.6 Adventure Sports
- 7.7 Eco Tourism in Rajasthan
- 7.8 Summary
- 7.9 Self Assessment Questions
- 7.10 References

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### Objectives:

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- Appreciate the rich culture and heritage of Rajasthan
- Understand the tourist destinations of Rajasthan
- Know the major folk dances of Rajasthan.
- Know about the categories of fairs and festivals
- Know about the year round celebrations of Rajasthan.
- Point out adventure tourism of Rajasthan
- Understand Eco tourism in Rajasthan

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### 7.1 Introduction:

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Rajasthan is the land of a people who are brave and chivalrous, people with a work lifestyle around whom grew the most amazing legends of romance and heroism. Everything in Rajasthan is breathtakingly beautiful, impressive and fascinating.

Everything about Rajasthan fascinates from miles of golden structure of sand to the kaleidoscopes of magnificent forts, opulent palaces and marvellous *havelis*, each a splendid architecture creation having a legend of its own. The beautiful laid out gardens and lakes contrasting perfectly with the hilly ranges are a sight to gladden the eyes of a tourist.

The cities of State still retain the medieval flavour keeping alive the timeless traditions in their rich art and crafts, colourful market with different varieties of commodities etc. grains to fruits and vibrant people wearing multi hued costumes and a bright smile. Here we can also find true blend of modernity and tradition like camel, oxen and elephants the common modes of transports with the new models of cars, buses, and other luxurious means of transportation.

The State is also known with livid exuberant folk dances and music, ballads and spectacular festivities that are an inseparable part of Rajasthan's culture. Especially enchanting are the evenings here, when melodious tunes echoing through the solitude of shimmering sands fill the air.

Many beautiful temples dating back over centuries dot the entire State, making it a popular pilgrim spot for people from many faiths. Even for wildlife enthusiasts the State is an excellent retreat with its arid zone of Thar Desert and the dry deciduous forests that offer a rich variety of flora and fauna. Some of the finest national parks and sanctuaries are found here.

Rajasthan is also renowned for exquisite miniature painting and frescoes not forgetting the incredibly fabulous Rajasthan fabrics and Jewellery along with a wide range of beautiful handicrafts.

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## 7.2 Tourist Attractions

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A place could become a tourist destination only if it has some attractions backed by an 'image' in the minds of the prospective tourists and has necessary supporting facilities. A tourist 'destination' is an area with sufficient attractions to provide primary motivation for tourist visits. Further, a destination will have a broad enough base of activities and interests to occupy the tourists for several days, possibly weeks. Tourist attractions are "those elements which determine the choice of the tourist to visit one destination rather than the other.

Tourist attractions could be of various nature and types. These may be beautiful or ugly, pleasant or unpleasant, aesthetic or otherwise, socially acceptable or unacceptable. One may cite many examples of attractions which are ugly or socially unacceptable, such as ghettos, prostitution and gambling; and yet these background tourism elements serve as major tourism attractions for many destinations. So the main element in the package every tourist buys is the attraction. This element could be referred to as 'tourism content factors' and serves as the prime 'motivators'. The supporting factors like accommodation transportation, catering, entertainment, etc., could be referred to as 'tourism context factors' which serve as 'satisfiers'. The experience of the tourists depends to a great extent on the existence, quality and quantity of a good combination of both the 'motivators' and 'satisfiers'. Motivators without satisfiers will only breed dissatisfaction among the tourists and such dissatisfaction acts as a negative factor in the long run.

### **Classification of Tourist Attractions:**

Tourist attractions can be classified differently. Firstly, from the point of view of primary users, tourist attractions can be classified according to the type of tourists frequenting them. There are tourist attractions which are largely visited by foreign tourists, domestic tourists or the local population. Secondly according to the origin of the attractions, these could be manmade or natural. Thirdly, from the point of view of seasonality, these could be perennial or seasonal. Fourthly, from the point of view of age these could be ancient or modern. The list could be extended further depending on various other points of view.

### **Rajasthan as a Tourist Attraction:**

Rajasthan is one of the most popular tourist destinations in India, for both domestic and international tourists. Rajasthan attracts tourists for its historical forts, palaces, art and culture. Every third foreign tourist visiting India also travels to Rajasthan as it is part of the

Golden Triangle for tourists visiting India consisting of Delhi, Jaipur and Agra, giving the tourist a quick trek into the fascinating cultural and historical world of this region. Endowed with natural beauty and a great history, Rajasthan has a flourishing tourism industry. The palaces of Jaipur, lakes of Udaipur, and desert forts of Jodhpur, Bikaner and Jaisalmer are among the most preferred destinations of many tourists, Indian and foreign. Tourism accounts for eight percent of the state's domestic product. Many old and neglected palaces and forts have been converted into heritage hotels. Tourism has increased employment in the hospitality sector.

Despite a harsh and often difficult climate, Tourism as an industry, has taken root in Rajasthan where it is actively promoted both by the Central and State Government agencies, public and private sector commercial organizations. However, due to the cooler months in the winter period October to March, the tourist season really takes off and peaks during this period.

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### 7.3 Folk Dances of Rajasthan

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People of Rajasthan live life to the hilt. After hard work in the harsh desert sun and the rocky terrain, whenever they take time off they let themselves go in gay abandon. There is dancing, singing, drama, devotional music, and puppet shows and other community festivals which transforms the hard working Rajasthani into fun loving and carefree individuals. Rajasthani tribes developed in some parts of Rajasthan into professional entertainer. In the western part of Rajasthan tribes such as the Bhats, Dholis, Mirasis, Nats, Sargadas and Bhandas are the professional, performing entertaining tribes. Perhaps the harsh desert climate have led the inhabitants of this region to concentrate on the business of living and leave entertainment to the nomadic professional tribes to provide entertainment.

Each region has its own folk entertainment. The dance styles differ as to the songs. Interesting enough, even the musical instruments are also different. These folk music and dances have great emphasis on the religious occasions. Some of the famous and renowned dances of the State are:

1. **Charee Dance:** The Charee dance so named after brass vessel-have womenfolk of the Mali community dance so as to welcome an honoured guest, especially a bridegroom and his party on their arrival at the bride's house. This dance is yet another colourful dance forming part of the social life of Rajasthan. In their bright colours the dancers have veils in front of their faces and they dance with brass vessels balanced on their heads- these vessels contain flaming cotton seeds.
2. **Tera Tali:** The Tera Tali Dance is restricted to the women of Kawed community and this dance gets its name through the dancer moving to synchronous pulse of terah (thirteen) cymbals. "Manjeera's or hollow metallic discs are tied on the hands and legs of the dancer. Two of these Manjeeras are held in between the fingers, and while beating them 13 different actions are performed. The foreign tourists are highly appreciative of Tera Tali dance.
  - a. **Bhavai Dance:** The Bhavai dance performed by the Bhavai community finds the dancer balancing seven or nine earthen or brass pitchers on the performer's head while barefeet dance on a sheath of words or bits of broken glass. This dance is

performed to the accompaniment of Rajasthani folk melodies. It is one of the most difficult dances to perform being fast, energetic and imaginative. It is performed with dexterity and sense of balance. The themes of these dances are based on the popular love stories, historical or special incidents.

3. **Gujari Dance:** Gujaries represent the unique village beauty. They sing and dance on the way to the temple of the esteemed deity-Bhaironji. They pray for the happiness of their family. T
4. **Fire Dance:** The Sidh-Naths of Bikaner are well known for their tantric feats and they are the ones who seem to have made the Fire dance not only a thrilling one but a popular one too. For this dance, there is a large platform raised above ground level on which a fire is prepared using wood or charcoal. At the start, there is a low humming tune accompanied by the playing of pipes and drums. As excitement rises, the dancers-the Sidh Naths men and even boys jump on the fiery platform dance on it as if they were a specially created dance area not covered by the fiery embers on which they really are dancing. And as regards the music, from a low humming start, it rises to a crescendo while the dancers exhibit greater vigour in their dance.
5. **Gauri Dance:** The Gauri is a dance made famous by the Bhil tribe wherein the life of Lord Shiva is depicted. One of the dancers takes the role of Shiva using a big mask while two others dress as Parvati and Uma; also, there are other dancers take on roles as followers of Shiva while in the centre is a Bhopa said to be possessed by Shiva. As part of the dance, Shiva fights the demon who ultimately surrenders .
6. **Kachchi Ghodi Dance:** The Kachchi Ghodi dance is one that is performed at weddings in and by members of the Bavaria, Kumhar and Sargara communities. This is a happy, amusing dance depicting a mock battle scene with the bridegroom's party. Four or five 'bridegrooms', on stage, depict the battle and ride imaginary horses, elegantly brandishing swords.
7. **Gair Dance:** The Gair dance is an exclusive men's dance with the dancers forming circle, using their sticks to create a rhythmic beat as the dancers' sticks strike each other.
8. **Ghumar or Jhumar:** This is the most popular folk dance of Rajasthan. Performed in all seasons, it is always accompanied by love songs, glory or defeat. Men and Women dance in a circle, one half made of men and the other half of women accompanied by instrumental and vocal music.
9. **Jhoria:** This is a marriage dance. The men form one circle, the women another and they perform a vivacious dance to the accompaniment of Nagara, Shahnai and Dhol.
10. **Raika:** This is martial folk dance. Men and women both take part. The men hold swords and sing invoking the gods to grant them strength. Men and women then form a circle and move in steps.

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## 7.4 Fairs and Festivals:

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Festivals and Fairs have their unique place in the State of Rajasthan. The habitants of Rajasthan organise several of them round the year, out of their laborious routine for leisure and entertainment. Since people of the State regard their cattle stock and the deities equally, they arrange such festivities to give importance to them. Later on, to attract the tourists and to make them understand Rajasthani culture, some special fairs and festivals are now being organised, besides traditional ones.

R.T.D.C. along with the Department of Tourism, art and culture and other organisation organises number of fairs and festivals backed with fun, frolic excitement and rituals are observed throughout the year across this sprawling State. Participants costumed in their traditional colourful finery whole heatedly partaking in these events as usual delight, colour, rhythm and melody blind the Rajasthan festivals in a unique manner providing a veritable feat. Events like turban competition, tug of war, camel race, horse race all are enchanting and delightful along with the rich music forms. Below is the list of festivals:

### 7.4.1 Religious Fairs

#### ❖ Pushkar Fair:

Kartik fair at Pushkar is regarded as the holiest of all religious fairs by the Hindus. Every November, the little town of Pushkar near Ajmer in Rajasthan, comes alive with colorful ambience and a frenzied burst of various activities reason being the occasion of the world famous Pushkar Fair. It is also known as 'lakhi mela', a fair which attracts more than one lakh people and also as Pushkar Fair of Rajasthan, which is regarded as the world's largest camel fair held in the holy town of Pushkar in Rajasthan.

Pushkar is situated in an enchanting valley some eleven kilometers north-west of Ajmer. It is a holy city with large number of temples and houses the great Brahma temple the only temple of Brahma in Rajasthan. Pushkar is also among the five main places of pilgrimage mentioned in the Hindu scriptures and Kartik month is revered as of great religious significance. As per mythology, Pushkar was once terrorized by a demon called Vijra Nabh, who murdered Brahma's children. On hearing this, the god appeared and killed Vijra with a lotus flower. The petals of the flower fell at three places where three lakes were formed; Pushkar Lake is one of them. Lord Brahma invited all the gods and sages to perform a yagna soon after this event and this yagna was performed in the month of kartik. Thousands of pilgrims come to Pushkar every year in this particular time to wash away their sins by taking a holy dip in the Pushkar Lake which is bounded by fifty two ghats. The dip is considered as a sure ticket to heaven after death. Devotees take dips in the holy "Sarovar" lake, as the sacred water is known to bestow salvation.

Very few fairs in the world can match the liveliness of Pushkar. Competitions such as the "Matka Phod", "moustache", and "bridal competition" are the main attractions of this fair which attract thousands of tourists. The Camel and Cattle trading is at its peak during the first half of festival period. During the later half, religious activities dominate the scenario. It is an occasion for villagers from far and

near to gather together, rejoice and take a break from their harsh and routine life of the desert. For the tourists, it is a mesmerizing and memorable experience to capture the vibrancy of the entire state of Rajasthan in one place.

❖ **Chandrabhaga Fair- Jhalrapatan:**

The Chandrabhaga fair is held every year at Jhalrapatan (6kms from Jhalawar) in the month of Kartik (October-November).

On the full moon night of 'Kartik Purnima', thousands of pilgrims take a holy dip in the river Chandrabhaga. The fair, held on the last day of Kartik, attracts devotees who bathe in the holy waters at this spot which is known as Chandravati.

Big cattle fair which blends religion with commerce is held here.

❖ **Urs Festival - Ajmer Sharif (May):**

Ajmer of Rajasthan is venerated as a holy place for both Hindus and Muslims; devotees of all communities call it 'Ajmer Sharif' (Holy Ajmer). It has the mausoleum of the Sufi saint, Khwaja Moinuddin Chishti, whose blessings are eagerly sought by pilgrims to his dargah known as the 'Dargah Sharif'. The saint's marble domed mausoleum is India's most important shrine for Muslims and receives an endless flow of visitors of all religions as the sick, the troubled and the childless come here seeking a boon, a blessing or just peace of mind. More than five lakh devotees belonging to different communities gather from all parts of the subcontinent to pay homage to the Khwaja on his Urs (death anniversary) during the first six days of Rajab (seventh month of the Islamic calendar.)

❖ **Shri Mahaveerji Fair:**

Shri Mahaveerji Fair is held from Chaitra Shukla Ekadasi to Baisakh Krishna Dwitiya (March-April) to commemorate the memory of Shri Mahaveer Swami, the 24th tirthankara (saint) of the Jains, in Chandangaon on the banks of the river Gambhiri in the Hindaun tehsil of Sawai Madhopur district. Chandangaon is one of the holiest places of Jains and attracts pilgrims throughout the year.

The major attraction is the Rath Yatra. The fair of Mahaveerji reaches its peak on Baisakh Krishna Dwitiya when the image of the deity is taken to the bank of river Gambhiri in a grand procession for Kalash Abhishek. The golden chariot (rath) is drawn by bullocks. It is believed that during the annual Rath Yatra the chariot does not move unless it is pushed by a male descendant of Kirpa Das.

This fair is visited not only by Jains but also by the Meenas and Gujjars.

❖ **Kaila Devi Fair:**

The annual fair of Kaila Devi, (Mahalakshmi or the goddess of wealth), is held at the village Kaila (24 kms to the south west of Karauli) in Karauli district in the month of Chaitra (Mar-Apr), lasting for a fortnight.

Approximately 2 lakh devotees gather during the fair. The ritual of Kanak-Dandotis is observed by staunch devotees. They cover a distance of 15 to 20 kms to reach the temple, not on foot but by lying posture. Rajputs, Meenas and



members of the some other scheduled castes are among the main devotees of Kaila Devi. Groups of Meena tribesmen arrive in a spirit of gaiety – dancing, singing and creating a lively atmosphere.

❖ **Sheetla Mata Fair- Chaksu:**

The Sheetla Mata fair is held in all villages and towns on Sheetla-ashtami day in honour of the goddess of small pox. The Fair is held in March-April, the month of Chaitra on Krishna Paksh, in village Seel-Ki-Doongri (Jaipur). The fair attracts hordes of visitors from far and wide. People believe that disease spread because of the wrath of Sheetla Mata and hence they worship her and make offerings so that she may be cooled down. The word 'sheetla' comes from 'sheetal' (calm and peaceful). A red stone represents the deity.

❖ **Karni Mata Fair- Deshnok:**

Karni Mata Fair is held twice a year at Deshnok, a small town near Nokha in Bikaner district. The first and larger fair is held in March-April during the Navratras from Chaitra Shukla Ekam to Chaitra Shukla Dashmi. The second fair is held in September-October, also during the Navratras, from Ashvin Shukla to Ashwin Shukla Dashmi.

A peculiar characteristic of the temple is that thousands of rats roam about in the temple. They are considered auspicious and the devotees make offerings. If anybody kills a mouse he has to present a silver mouse at the temple.

❖ **Kapil Muni Fair –Kolayat:**

The Kapil Muni Fair is the largest fair of Bikaner district held on Kartik Poornima at Kolayat - originally Kapilayatan - named after the sage Kapil who is believed to have done 'tapasya' (meditation) here for the redemption of mankind. A large number of people come to Kolayat to purify them by taking holy dips in the Kolayat lake throughout the year. However, it is considered very auspicious to take a dip on Kartik Poornima.

❖ **Banganga Fair:**

The Banganga Fair is held annually on the full moon day of Vaishakh (April-May) near a rivulet 11 kms from the historical township of Bairath in Jaipur district. Visiting the Banganga Fair, taking a holy bath and paying homage to the holy sites in the surrounding places at this time is considered very auspicious. Devotees gather at the Shri Radha Krishnaji's temple in the morning, they take a bath at the ghats (a flight of steps leading to the water) of the Banganga River with the belief that it has powers to purify the soul. The people then proceed to the nearby shrines of Hanuman and Ganga Bihari and also visit the Shiva temple and the 'math' of Goswamiji.

❖ **Jambheswar Fair:**

The Jambheswar Fair is held in the village Mukam of tehsil Nokha, Bikaner District, twice a year on Phalgun Budi Amavasya and Ashvin Budi Amavasya, in memory of the founder of the Bishnoi sect -Jambheswarji. The Bishnois consider

him to be an incarnation of Vishnu. A large fair is held in February-March on 'Phagun Budi Amavasya' every year. It is attended by people from the Punjab, Delhi, Rajasthan and Uttar Pradesh, apart from the local visitors. The second fair which is a smaller, localized affair, is attended by people coming in from neighbouring villages on camels, bullock carts and even on foot.

❖ **Sitabari Fair:**

The Sitabari Fair is held near village Kelwara in Baran District. The fair takes place from Baisakh Sudi Poonam to Jeth Budi Amavasya usually prior to the Dussehra. Sitabari is considered to be the place where Sita, the wife of Lord Ram, was left by Lakshman to serve the period of her abandonment after her return from Lanka. Legend says that a stream sprouted from the ground where Lakshman shot an arrow to fetch water for Sita. This stream is called 'Lakshman Babhuka'.

Apart from being a religious gathering, traders from nearby districts as well as neighboring States come to the fair to sell a variety of goods. Cattle breeders are also present at the fair selling popular breeds of cattle from Jhalawar, Aklera, Bundi, Kota, Bhilwara and Nagaur.

❖ **Urs at Galiyakot:**

Galiyakot is a small village of Tehsil Sagwara in Dungarpur District. It is located on the banks of the river Mahi and holds special significance for Dawoodi Bohras, a sect of the Ismaili Shia Muslims. They converge at Galiyakot for ziyarat (pilgrimage) at the memorial of the revered saint, Sayyed Fakhruddin. The mausoleum is called Mazar-e-Fakhri. The followers of the saint arrive here not only from the States of Madhya Pradesh, Gujarat and Rajasthan but also from abroad.

Urs, which is celebrated on the 27th day of Moharram is the first month of the Muslim calendar. Many devotees seek blessings of the saint to have their wishes fulfilled. This is called mannat and generally the devotees come to the shrine again to express their gratitude after their wishes are fulfilled. The ceremonies of the Urs are headed by the Dai-UI-Mutlaq, who is the religious head of the community.

❖ **Khatu Shyamji Fair:**

Khatu Shyamji is famous for its Shyamji temple. There is a steady flow of devotees all the year round, but almost a lakh of them gather at the annual fair from Phalgun Sudi Dashmi to Dwadashi. Apart from being a place of pilgrimage, a large number of people come for the Jadula ceremony (the first time all hair is shaved off the head) of their children.

**1.4.2 Tribal Fair**

❖ **Beneshwar Fair:**

The name Beneshwar is derived from the revered Shiva Linga which is kept in the Mahadev temple in Dungarpur. "Beneshwar" means the 'master of the delta' in the local Vagdi language and this name was given to Shiva Linga.

The Baneshwar fair is held at a small delta formed by the river Som and Mahi, from Magh Shukla Ekadashi to Magh Shukla Poornima during Shivratri. (January-

February). The Beneshwar fair is predominantly a tribal fair with more than half of the congregation consisting of Bhils. They worship Beneshwar Mahadev as well as Mavji. The majority of the gathering is from the districts of Dungarpur, Udaipur and Banswara.

### 1.4.3 Hero Worship Fairs

#### ❖ **Gogaji Fair:**

Gogaji Fair is held in the Gogamedi village in Ganganagar district in the memory of a popular hero of the area who is known as Goga Veer among the Hindus and Jahar Peer among the Muslims. The Kayam-Khani Muslims claim descent from him and regard him as a peer (saint). Staunch believers have faith that invoking Gogaji will help to cure a snake bite or other diseases. Many visit the Gogaji Fair to make a wish or for expressing their gratitude when their wishes come true. This annual fair lasts for 3 days in the month of Bhadrapada.

#### ❖ **Khetlaji Fair:**

The famous shrine of Shri Sonana Khetlaji in the village Sonana of district Pali is the site of the two-day Khetlaji fair, held every year during May-June. The fair attracts a large number of devotees who congregate here during the fair held in honour of the deity, Khetlaji. It is believed by many devotees that the deity has powers to grant wishes. Many devotees arrive to pray for fulfillment of their wishes or for thanksgiving, after their wishes have been granted.

The fair is a grand occasion for the local people from the adjoining area, who pour in, dressed in their best, right from daybreak. The troupes of Gair dancers add colour to the festive spirits. However, the hundreds of horses at the fair steal the show. Thoroughbred and well-trained 'Marwari' horses perform many a trick and even dance to the rhythms of local drums, much to the amazement of the onlookers.

#### ❖ **Mallinath Fair, Tilwara:**

Mallinath Fair is one of the largest cattle fairs of Rajasthan held annually near Tilwara, a village in Barmer District from Chaitra Budi Ekadashi to Chaitra Sudi Ekadashi (March-April). It lasts for a fortnight wherein the highly popular breeds of cows, camels, sheep, goats and horses attract people to Mallinath Fair.

#### ❖ **Ramdevra Fair:**

The village of Ramdevra situated about 12 kms to the north of Pokhran, is known after Baba Ramdev, a Tanwar Rajput and a saint who took Samadhi in 1458 AD.

A large fair is held here from Bhadon Sudi 2 to Bhadon Sudi 11 (August - September) for 10 days which is attended by lakhs of devotees who come in large groups from far and wide. Irrespective of their caste, creed or religious affiliations, these devotees visit the shrine dedicated to the saint. These groups organise night long singing of bhajans and kirtans to pay homage to Baba.

### 1.4.4 Animal Fairs & Festivals

#### ❖ **Nagaur Fair:**

The Nagaur Fair of Rajasthan is well known all over the state of Rajasthan and the special guests of honor at this fair are- Cattle. This eight-day fair held every year during the month of Magh, between late January and early February, is popularly known as the cattle fair and is the second largest in Rajasthan.

From shearing sheep to handsome marwari horses to spices all compiled in one fair. Attractions include the 'mirchi' bazaar (largest red chilly market of India), wooden items, iron-crafts and camel leather accessories. Sports like tug-of-war, camel races, bullock races and cockfights; jugglers; puppeteers, storytellers; and exciting campfire evenings are held to entertain the tourists. Folk music of the Jodhpur variation echoes the tranquil desert sand.

#### ❖ **Camel Festival- Bikaner:**

A lively and colorful event, the Camel Festival is organized by the Department of Tourism, Art and Culture, in Bikaner every year. January is just the right month for a desert tour, and Bikaner just the right place to see the ships of the desert.

The Camel Festival begins with a colorful procession of bedecked camels against the red sandstone backdrop of the Junagarh Fort, the festivity advances to the open sand-spreads of the grounds, followed by the best breed competition, the tug-of-war contest, camel dance, acrobatics, etc. The camels display amazing footwork, dancing gracefully to the slightest direction of their trainers. Hundreds of tourists and thousands of locals and dignitaries participate in this man-and-animal affair organized especially for the tourists.

#### ❖ **Elephant Festival – Jaipur:**

The Elephant Festival of Rajasthan is a unique event, one of the most popular festivals held annually in the famous Chaugan ground of Jaipur. Elephant festival of Rajasthan has its own charm and is celebrated every year in March on the occasion of Holi, the festival of colors. Groomed beautifully, rows of elephants do a catwalk before an enthusiast audience to make this festival an amazing one. The elephants move with poise in pageant, run races, play the regal game of polo, and finally participate in the spring festival of Holi.

Live Folk dances and music programs are also arranged for the overall entertainment of people. This festival of Elephants revives the royalty of Jaipur of Rajasthan, when people enjoy the glorious elephant ride in the ground. The Elephants are beautifully decorated with floral motifs, make ultimate attraction for the tourists. Being the time for Holi, tourists play Holi mounting on these painted elephants.

### 7.4.5 Seasonal Fairs

#### ❖ Gangaur Festival:

Gangaur is one of the most important local festivals in Rajasthan. In some form or the other it is celebrated all over Rajasthan. “Gan” is a synonym for Lord Shiva and “gauri” or “gaur” stands for Goddess Parvati, the heavenly consort of Lord Shiva. Gangaur celebrates the union of the two and is a symbol of conjugal and marital happiness.

Gangaur is celebrated in the month of chaitra (March-April), the first month of the Hindu calendar. This month marks the end of winter and the onset of spring.

This festival is celebrated especially by women, who worship clay idols of “Gan” & “Gauri” in their houses. These idols are worshiped by unmarried girls who seek the blessings of Gan and Gauri for a good husband, while the married women pray for the good health and long life of their husbands.

This worship which starts from the first day of the chaitra month culminates on the 18th day into Gangaur festival with a great religious fervour. The idols of Gan and Gauri are immersed in a pond or in a near by lake on the last day of the festival.

#### ❖ Sawan Teej Festival- Jaipur:

Teej Festival of Rajasthan is one of the most popular festivals of India. It is celebrated with great enthusiasm and devotion by the women in India. Since Teej fall at the outbreak of the monsoons, it is also popularly known as the 'Sawan Festival'. Teej is usually celebrated in the month of July-August. Swings, traditional songs and dancing are the unique features of Teej celebrations in Rajasthan. Women perform traditional folk dance dressed in green colored clothes and sing beautiful Teej songs while enjoying their sway on swings bedecked with flowers.

### 7.4.6 Other Festivals:

#### ❖ Desert Festival- Jaisalmer:

The festival is organised by the Rajasthan State Tourism Corporation. The Desert Festival is a colourful, joyous celebration of the rich heritage of Rajasthan. This festival of Rajasthan takes place in Jaisalmer in the month of February and lasts for three days. During the desert festival, the sands around Jaisalmer are decorated with joyous colours of music and dance, accompanied with sounds of laughter and joy of tourists. The Jaisalmer Fort provides an ethereal backdrop to the annual Desert Festival of Rajasthan celebrating the traditional performing arts and creative crafts of Rajasthan.

The high points of the festival are - puppeteers, acrobats, camel tattoo show, camel races, camel polo, traditional procession, camel mounted band, folk dances, etc. Tug of war, Panihari Matka race, turban tying and The Mr. Desert Competition are

the events where visitors to the fair can participate and enjoy the thrill and taste of traditions.

❖ **Kumbhalgarh Classical Dance Festival:**

Rajasthan tourism in an effort to promote Kumbhalgarh as a destination through arts started the Kumbhalgarh Classical Dance Festival. In line with the Maharana Kumbah's dedication in promoting the arts, the festival brings together many of India's finest performing artists with Classical Dance Recitals set against the backdrop of the glowing fort.

❖ **Marwar Festival- Jodhpur:**

The Marwar Festival is held every year in memory of the heroes of Rajasthan. The festival is held in the month of Ashwin (September-October) in Jodhpur, for two days during the full moon of Sharad Poornima.

Originally known as the Maand Festival, the major attraction is the folk music based on the romantic lifestyle of Rajasthan's rulers. This festival is devoted to the music and dance of the Marwar region.

Other attractions at the festival are the camel tattoo show and polo. The impressive Umaid Bhawan Palace, Mandore and Mehrangarh fort, which are symbols of might and valour, provide the ideal venue for the cultural extravaganza – an integral part of the festival.

❖ **Mewar Festival- Udaipur:**

The Mewar Festival is celebrated to welcome the advent of spring. The festival is organized by Department of Tourism. The Mewar Festival of Rajasthan is celebrated in the Hindu month of Chaitra (March-April). It coincides with the festival of Gangaur in Udaipur, and has a unique charm about it. Once the religious part of the festival is over, it is time for cultural events where Rajasthani culture is displayed through songs, dances and other programmes. The festival culminates with an impressive fireworks display.

❖ **Shekhawati Festival:**

The Shekhawati Festival held in February every year is organized jointly by the State Department of Tourism, District administrations of Sikar, Jhunjhunu and Churu. Shekhawati, already famous for its frescoes, is fast becoming a rural tourism destination too.

The programmes include a one day tour of the region, camel and jeep safaris, farm visits, rural games, cultural programmes, haveli competitions and fireworks. Nawalgarh is the central venue of the festival and boasts some of the finest frescoes of Shekhawati.

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## 7.5 National Parks and Sanctuaries:

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Rajasthan is a heaven for a wide spectrum of wildlife. The topography of State ranges from the barren desert, scrub-thorn, arid forests, rocks and ravines to wetlands and lush green forests and each of these areas have typical type of races of large variety of animals and birds. Some of them are very rare while some are endangered.

Rajasthan is the home of the tigers, black bucks, chinkara, the rare desert fox, the endangered Caracal, the great Indian bustard, gavia, monitor lizard, wild boars, porcupines, and migratory birds like the common crane, ducks, pelicans, and the rare Siberian cranes, imperial sand grouse falcons, buzzards Flock etc. to this State during the winter months.

Typical areas representing each of the ecosystems have been embarked as special areas for the protection and management of wildlife. Rajasthan boasts of two natural parks, over a dozen sanctuaries and two closed areas. Most of these areas are open to visitors round the year but are closed briefly during monsoon season.

1. **Behrorgarh Sanctuary:**

A fairly new sanctuary established in 1983 covering a total area of 229 sq.km. of scrub and dry deciduous forest. Lucky tourists can see here the Leopard, Chinkara, Sloth bear particularly in the month of October to May.

2. **Darrah Sanctuary:**

This sanctuary was previously known as the hunting ground of the Kota Maharaja. This sanctuary was established in 1955 covering 265 sq.km. to provide protection to rare wild animals like Wolf, Sloth Bear, Chinkara and Leopard.

3. **Desert National Park:**

This famous national park was established in 1980 having 3,162 sq.km. area. This closed park has shrubs and trees in addition to rolling sand dunes. The famous wildlife wealth comprises of fox, desert cat, hare, spiny-tail uromastix and sand fish. Thousands of sparrows, imperial sand grouse, bustards, falcons and eagles migrate here during the winter.

4. **Jaisamand Sanctuary:**

Established in 1957, this sanctuary is located beside the man-made lake of the same name. Covering a total area of 160 sq.km., it harbours sloth Bear, Leopard, Chital, Chinkara, wild board and number of birds. Some crocodiles and fish can also be spotted here. Best time to visit is between November and January.

5. **Keoladev Ghana National Park, Bharatpur:**

Declared as National Park in 1983, this 29 sq.km. park is one of the world's greatest henries. Its shallow, fresh water marsh attracts thousands of migratory birds. Over 10,000 nests of egrets, darters, cormorants, grey herons and storks hatch and nearly 20,000 to 30,000 chicks every year. There are an infinite variety



of migratory birds. Mammals like the Sambhar, Black Buck, Chital, Nilgai, Fishing Cat, Otter and Mongoose also roam freely here. Best time to visit is August to February.

6. **Kumbhalgarh Sanctuary:**

The majestic fort of Kumbhalgarh overlooks the 578 sq.km. sanctuary. The Aravali Hills, which remain barren for most of the year, turn green during rains and provide shelter to sloth bear, leopard, flying squirrel. It is also the only sanctuary where the Indian wolf is breeding successfully. Best time to visit is March to May and September to November.

7. **Mount Abu Sanctuary:**

The highest point of the Aravalis, the Guru Shikar lies in this 289 kms. Sanctuary. Established in 1960 this provides shelter to the common Langoor, wild Boar, Sambhar and Leopard. The Grey Jungle Fowl can also be spotted here besides a number of flowering trees enhance the beauty of this place. Best time to visit is March to June.

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## 7.6 Adventure Sports and Special Interests Tours:

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A whole new word of action and adventure has recently been introduced in Rajasthan. The visitors can now gain much more from his holiday in Rajasthan. Fast paced action to a little more from his holiday in Rajasthan. The bewitching sights with an equally thrilling sports activity promise an enthralling and unforgettable experience. Ballooning, Camel Safari, Horse Safari, Trekking and Rock Climbing, Hang Gliding, Cycling and Motor Cycling, Fishing, House Boats, Parasailing and Water Skiing are the important adventure sports in Rajasthan for both domestic and foreign tourists.

### 7.6.1 Safaris

- ❖ **Camel Safari in Rajasthan** : Camel Safari is the best safari option in the desert state of Rajasthan. In Rajasthan camels were domesticated thousands of years ago for the purpose of making journeys through the difficult route of Thar Desert, which are still in use. Camel Safari in Rajasthan are available in various options: a short journey through a small Rajasthani village or a long-distance expedition lasting a few days or a week. While you are on the camel back the sight en route will mesmerize you and become a part of your most treasured memories.
- ❖ **Horse Safari in Rajasthan** : Like camels, horses have also been an important part of the life and culture of the desert state of Rajasthan. Since the time of Rajput rulers, the horses have been admired and loved by the Rajasthani people and their significance can't be undermined even today. A journey on horseback is one of the best way to experience the unique flavour of Rajasthan's traditional hospitality.

Horse safari in Rajasthan takes you through scenic hilly territories, rugged mountain

terrains and picturesque forested plains and sandy and rocky fields. On the horseback, you will pass from one fort to another, small lovely villages, ruins of historical monuments and exquisite temples. As the evening progresses and the sun sets, a blazing bonfire and a lavish dinner awaits your arrival at the Safari Camp. In addition, a number of interesting cultural programmes of folk dances and music are performed by the local artists to enhance the pleasure of your memorable journey.

In Rajasthan Horse safaris are conducted in the plain areas near Udaipur, Ajmer or Samode as well as the sandy areas of Jaisalmer and Jodhpur.

- ❖ **Jeep Safari in Rajasthan** : A motorized safari, Jeep Safari is the fastest and convenient way to explore the tourist destinations of Rajasthan. Apart from a comfortable journey, Jeep Safari makes it possible to cover several towns and cities in a single day. An open jeep is considered ideal for Jeep Safari, as you will feel yourself attached with nature.
- ❖ **Wildlife Safari in Rajasthan** : In addition to 'Thar Desert' and Aravalli ranges, Rajasthan boasts of a rich wildlife population. Rajasthan has several national parks and sanctuaries. Most popular among them are the Sariska Wildlife Sanctuary, Ranthambore National Park and Keoladeo Ghana National Park. These sanctuaries and park can be explored either by a jeep or on an elephant back.



Wildlife Safari in Rajasthan is an exciting way to closely view a variety of wild animals and birds, both resident and migratory. On an adventurous wildlife trip one can see Tigers, Leopards, Wild boars, Jackals, Sambars, Nilgai, Spoonbills, Siberian Cranes and several other animal species in their natural habitat.

### 1.6.2 Aero Sports

- ❖ **Para Gliding in Rajasthan** : In Rajasthan Para Gliding trip may be organized in towns and cities where the runways and strips are available. Most popular Para Gliding sites are Jaipur, Jodhpur, Udaipur, Jaisalmer and Bikaner. Pushkar is another famous destination in Rajasthan where Para Gliding is possible. Whether you are a beginner or an experienced flier, you have to take prior permission from Civil Aviation authorities of Rajasthan. With permission from the concerned authorities you may go on a fly. While you fly high in the sky, you can get the bird eye view of the forts, palaces, temples and many other historical monuments.

- ❖ **Ballooning in Rajasthan** : In Rajasthan, the sand dunes are perfect place for ballooning enthusiasts. In fact, one can even travel short distances between two towns or historic monuments in the hot air balloons. Although there are several areas in Rajasthan where we can take up this adventure sport, but the best is ballooning over the Pushkar, Baneshwar or Nagaur.

### **7.6.3 Water Sports**

- ❖ **Boating in Rajasthan** : In Rajasthan, we can enjoy boating in most of the lakes of the state. Regular boating is offered at several places of the state, such as on the lakes of Udaipur or on the Siliserh lake near the town of Alwar.
- ❖ **Angling** : Boasting of several lakes and streams, Rajasthan offers plenty of opportunities for angling, but one has to carry his own rod and bait. Take appropriate angling licence from the concerned authority and head towards any of the lake in Rajasthan.

### **7.6.4 Trekking in Rajasthan**

Rajasthan, the home of the famous Aravalli hills offers many days of amazing trekking opportunities. Some of the popular areas where we can take up trekking include the Mewar-belt with the Udaipur-Kumbalgarh-Chittaur belt or the area around Mount Abu or the Sariska-Alwar-Amer combine.

### **7.6.5 Camping in Rajasthan**

With several established camps set in beautiful locations, Rajasthan offers you wonderful camping opportunities. In fact, Camping is a fine art in Rajasthan that provides a unique royal feel. Created especially for royalty, these camps have well-furnished bedrooms, a small hall or leisure area and attached bathrooms. Besides, the interiors of the camps are elegantly decorated with hand-block printed fabrics to create a rich ambience. We can find such tented camps at places like Samode Bagh, close to Jaipur, or at Pushkar town during the time of camel fair in the month of November.

### **7.6.6 Other Adventure Sports in Rajasthan**

Blessed with a varied terrain, Rajasthan provides endless opportunities to indulge in several other adventure sports. Golf, Kite-Flying and Bicycling are the famous adventure sports which you take up in leisurely style. Polo is another adventure sport which the state offers to the adventure buffs. The sport of Polo is available in various options such as Horse Polo, Camel Polo, Elephant Polo and Bicycle Polo. In addition to these, we can also enjoy local sports like Tonga races and Cart races.

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## **7.7 Eco Tourism:**

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Eco Tourism is a rather a newer concept in the travel industry meant for travellers who are ecologically and socially conscious. Very basically Eco- tourism involves volunteering, personal growth and learning new ways to live on the planet and enjoying company of nature without harming it. The primary attractions of Eco - tourism are travelling in the terrains where there is an abundance of flora and fauna along with cultural heritage.

The conceptual experience of Eco tourism is for the travellers who research and understand the environmental phenomena around them. It is the best option for us to relate with the natural entities and have a better apprehension of our influences as human beings. We will also have a considerable perception of our own natural dwellings.

### **Eco tourism in Rajasthan:**

Conforming to the principles of Eco Tourism, Rajasthan is a hot destination for Eco tours. Rajasthan is proud for being a responsible Eco Tourism place and it includes programs to minimize the negative aspects of traditional tourism on the environment and gives you immense possibilities to relate with the local people. Hence, in addition to environmental and cultural features, Eco Tourism in Rajasthan is also a promotion of recycling, energy efficiency, water conservation and creation of economic opportunities for the local communities. Travelling in sedating and quite terrains of Rajasthan also takes us to unpolluted natural places.

### **Famous Eco tours of Rajasthan:**

Set away from the hum drum of city life, the Eco Tours in Rajasthan are in sheer dedication to ecology and better living. In Rajasthan, you can enjoy the heritage of the state. Have encounters with the rural Rajasthan and understanding of a number of practices to save the ecological balance around. Perhaps, the state is popular for providing rendezvous with natural ambiances and traditional Rajasthani lifestyles along with visiting the legendary sites of forts and palaces and havelis.

The Eco Tours of Rajasthan also takes care of your other concerns. You will see solar panels for hot water provision, bio-gas and solar for cooking purpose. The clean ambiance, bio degradable utensils like leaf plates, glass bottles are some of the characteristics of Rajasthan Eco Tours. Besides, the tours can be designed and tailored as per the travellers choice and they club Eco tours with thematic tours ranging from yoga, textile, religions, music and dance, naturopathy, Rajasthani gastronomy.

### **Rajasthan Eco-Tours Destinations:**

Rich in terms of natural beauty and heritage, Rajasthan is an ideal place for Eco Tours. The hot destinations in Rajasthan for enjoying Eco Tours are much popular among travellers. Having Eco tours in the National Parks and Wildlife Sanctuaries besides visiting the heritage sites is a worth enjoying activity. The Eco Tours in Ranthambore National Park and Bharatpur Bird Sanctuary / Keoladeo Ghana National Park is very enjoyable. Here you can

come face to face to some of the spectacular elements of wildlife and Eco Tourism. Your trip will be memorable with some exciting experiences. Entertainment in natural environment is the mantra of Rajasthan Eco Tours. The destinations for Rajasthan Eco tourism are pregnant with natural pulchritude and fun multitude.

#### **Eco Parks of Rajasthan:**

The Eco Parks of Rajasthan are a measure to restore the Eco system of environment and for co- existence of wildlife and vegetation. The desert state of Rajasthan is a rich stock holder of plethora of flora and fauna. The number of Eco parks here are attraction for tourists and they also preserve and restore the endangered wildlife. The Eco Parks provide a natural habitat to a plentiful species of wild animals, birds, reptiles and floral kingdom.

The most notable Eco Parks of Rajasthan include:

Bharatpur Bird Sanctuary  
 Ranthambore Tiger Reserve  
 Sariska Tiger Reserve  
 Desert National Park  
 Keoladeo Ghana National Park  
 Arboretum Park  
 Amrita Devi Park

#### **Eco Resorts of Rajasthan:**

Going to the famous wildlife reserves and sojourning amidst natural environment is the greatest fantasy for all. These resorts give us an opportunity to know and relate with the wildlife more closely. The wildlife resorts also organize tourist activities that are Eco friendly. Enjoy trekking, bird watching or safaris organized by some of the Eco Resorts.

The famous Resorts of Rajasthan are:

<b>Ranthambore National Park</b>	<b>Bharatpur National Park</b>	<b>Sariska National Park</b>	<b>Mount Abu</b>
Sherbagh Resort	Chandra Mahal Haveli	Sariska Palace Hotel	Rising Sun Retreat
Tiger Den Resort	Laxmi Vilas Palace	Sariska Tiger Heaven	Hotel Cama Rajputana
Tiger Moon Resort	Bharatpur Forest Lodge		Hillock Hotel
Sawai Madhopur Lodge			Uttrayan Resort
Dev Vilas Resort			
Vanya Vilas Resort			
Ranthambore Regency			
Ranthambore Forest Resort			
Pugmark Resort Ranthambore			
Ranthambore Bagh			
Ranthambore Safari Lodge			
Hotel Raj Palace			

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## 7.8 Summary:

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Rajasthan has been famous for its glorious past, echo of immortal memories of its heroes, beautiful architectural buildings like forts, palaces, temples, *havelies*, colourful festivals, rites, rituals, traditions and attractively coloured dresses. For the tourists it is heaven. Each part of Rajasthan is well known for its unique sites, diversity and heart winning places. Festivals of Rajasthan in India are the occasions that add colour to life. Rajasthan Fairs and Festivals are inseparable element of the cultural identity of the state. Different fairs and festivals of Rajasthan in India have their own significance and offer a pleasurable break from the tight schedules of life. In addition to the festivals celebrated by the Hindus, Muslims and others, there are also the traditional fairs of Rajasthan in India. There are animal fairs, there are religious fairs and there are fairs to mark the changing seasons of Rajasthan in India. Other than the traditional fairs, recently established festivals which involve elephants, camel races, dance and music have been specially organized for the tourists of Rajasthan in India.

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## 7.9 Self Assessment Questions

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1. What is Eco-Tourism? What do you know about Eco-Parks of Rajasthan ?
2. What are the different categories of fairs and festivals?
3. Write short note on:
  - A) Pushkar fair
  - B) Urs festival Ajmer Sharif
  - C) Desert festival
  - D) Gangaur festival
  - E) Teej
4. Write a short note on Adventure tourism in Rajasthan.

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## 7.10 References

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## **Unit 8 Introduction to Hotel Law & Legal Sources**

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- 8.0 Objective
- 8.1 Introduction
- 8.2 Tenancy Agreement
- 8.3 Hotel Rights and Tenants
- 8.4 Laws Applicable and Criterion of Fixation
- 8.5 Municipal Hotel Occupancy Taxes
- 8.6 Summary
- 8.7 Review Questions
- 8.8 Reference and Suggested Reading

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### **8.0 Objective**

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The unit is designed to introduce learners to the various aspects of law to hospitality management students. Learner will be able to understand various taxes that are applicable to hotels and related hospitality businesses.

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### **8.1 Introduction**

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A Hotel is any building in which members of the public obtain sleeping accommodations for consideration of Rs. 1500.00 or more per day (Rs. 200.00 minimum for local) effective from Oct 1, 2003. Prior to that date the Rs. 200.00 or more charge was applied to both state and local tax. The term hotel includes:

- Hotels
- Motels
- Lodging houses
- Inns
- Rooming houses
- Tourist homes, houses or courts
- Bed & Breakfast
- Beach House
- Manufactured homes
- Skid mounted bunk houses



- Cabins
- Cottages
- Condominiums
- Rental Houses-Houses rented for less than 30 days

Other building where sleeping rooms are furnished in return for payment of money. Apartments, condominiums, and rent houses are not normally subject to hotel tax because they are usually rented for more than 30 days. When these are rented to a transient clientele they will be subject to hotel tax if they are occupied for less than 30 days. The definition of a hotel does not include:

- Hospitals
- Sanitariums
- Nursing homes
- Dormitory or other housing facility owned or leased and operated by an institution of higher education.
- Apartment building which only lease to permanent residents (Occupancy for at least 30 consecutive days) do not meet the definition of a hotel and their rental is not subject to hotel tax.

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## 8.2 Tenancy Agreement

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Agreements, whether written or oral, express or implied, having a predetermined expiry date or not occupation of a room or premises in a hotel. An agreement can be deemed to be in effect even before a tenant assumes occupancy. Includes a hotel tenant, the estate of a deceased tenant, and where the context requires, a former or prospective tenant. Otherwise "tenant", "persons in possession", and "occupants" are not defined in the RTA. Presumably, a tenant is a person entitled to exclusive possession, and while the definition of a tenant includes a hotel tenant, it does not include a common law licensee.

### Assisted and Supported Living Tenancies

Assisted and supported living tenancies are rental accommodation where hospitality or personal care services are provided by or through the landlord.

*Hospitality services are-*

Meal services, laundry services, social and recreational opportunities, 24 hour emergency response systems.

Personal care service are-

1. Regular assistance with the activities of daily living, including eating, mobility, dressing, grooming, bathing or personal hygiene, central storage of medication, distribution of medication, administering medication or monitoring the taking of

medication;

2. Maintenance or management of cash resources or other property; Monitoring of food intake or of adherence to therapeutic diets;
3. Structured behavior management and intervention; and
4. Psychosocial rehabilitative therapy or intensive physical rehabilitative therapy.

Hotel tenants are fully covered by the if the hotel is the tenants' primary

Tenant Act residence.

There are a few rules that apply only to tenants and landlords, namely: permits hotel tenant's room without notice for the providing maid service, as long as it is at time

hotel entry into a purposes of reasonable

1. Policy Guideline: Tenancy Agreements and Terms; and  
Permits an individual occupying a room in a hotel to apply to an arbitrator, without notice to party, for an interim order stating that this Act that living accommodation.

Licences

residential any other applies to

The Hotel Keepers Act, R.S.B.C. 1996, provides keeper has the right to distain (i.e. the right to seize without first getting a court order) the occupant's for non-payment of rent.

that a hotel belongings belongings

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### 8.3 Hotel Rights And Tenant

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1. As tenant, you may only be protected by rent if you become a "Permanent Tenant". A tenant is an individual who requests a lease for at months, or who continuously resides in the same at least six months, and a family member residing individual.
2. As tenant you have the right, upon registration, to request a lease to become a permanent tenant. right to ask the owner for a six month lease at after registering in the hotel, and the owner must with a lease within 15 days after such

stabilization permanent least six building for with such

immediately You have a any time provide you

3. request. Your request to become a permanent tenant automatically gives you the right to remain in occupancy as a permanent tenant and gives you the protection and benefits of rent stabilization.
4. As tenant your initial rent and the subsequent rentals charged thereafter are subject to regulation. As a permanent tenant, an owner may not charge you more than the most recent rent charged the prior permanent tenant, plus any lawful guidelines increase in effect at the time of your renting, as set for your hotel room/apartment by the Rent Guidelines Board. Such rent is required to be registered. You submit proof of residence in the hotel room/apartment. Hotel tenants may receive annual rent increases which are authorized by the Rent Guidelines Board, and the owner may apply for other increases, for building-wide or apartment improvements, or where an owner is not receiving a fair return on his or her investment after expenses.
5. As tenant you have the right to receive hotel services. Pursuant to the Rent Stabilization Law and Code, a hotel owner is required to provide hotel services such as maid and linen services. However, some hotels, rooming houses or SRO facilities may never have provided a full range of hotel services. In such instances, the owner must provide those Services offered to tenants when these buildings first became subjected to the Rent Stabilization Law in June, 1981.
  5. You have the right to keep your room. If you lived in your room for 30 days or longer, or if you have a lease, or if you have asked for a lease, you may not be evicted unless the owner obtains a Court Order granting such eviction. An owner may not harass you by doing anything intended to make you vacate your room/apartment.
  6. Where to go for assistance. If you feel your rights are being violated, you may contact one of the agencies listed in the Appendix attached This Notice generally informs hotel, rooming-house, and Single-Room ("SRO") facility occupants, permanent tenants, and owners about their basic rights and responsibilities as provided for under the Rent Stabilization Law (RSL) as implemented pursuant to the Rent Stabilization Code (Code). The RSL and Code regulate rents, services, and evictions. They also provide for rent increases to enable owners to meet increased maintenance costs, provide new services and equipment, and otherwise properly maintain the property. This notice does not contain every rule applicable to stabilized housing accommodations located in hotels, rooming-houses, and SRO's. This notice is only informational. It does not replace or modify the RSL, the Code, any order of the Division of Housing and Community Renewal (DHCR), or any order of the Rent Guidelines Board. The appendix lists organizations which can provide assistance to hotel, rooming house, and SRO occupants, permanent tenants, and owners who have inquiries, complaints or requests relating to subjects covered in this notice. A hotel occupant or permanent tenant should keep a copy of this notice and of any lease he or she may sign.

### **Jurisdiction**

For a hotel to be subject to the Code, it must have been constructed on or before July 1, 1969,

and contain six or more housing accommodations. Rentals for the individual hotel housing accommodations must have been less than Rs.15000 per month or Rs.4400.00 per week on May 31, 1968. The Code defines a hotel as any class A or B multiple dwelling which provides basic hotel services such a maid, linen, use and upkeep of furniture, and switchboard and other desk-type facilities. This full range of hotel services may not necessarily be required to qualify as a hotel in certain Class B multiple dwellings, such as rooming-houses and some SRO's.

A hotel occupant may only be protected by rent stabilization if he or she becomes a "permanent tenant". A permanent tenant is an individual or his or her family member residing with such individual, who:

1. has continuously resided in the same building as a principal residence for a period of at least six months; or
2. who requests a lease of six months or more; or
3. who is in occupancy pursuant to a lease of six months or more even if actual occupancy is less than six months.

Upon notification by a hotel occupant of his or her intent to reside at the premises on a long term basis, the owner shall not, through any action or inaction, prevent such occupant from becoming a permanent tenant. In addition, no owner shall compel any person to rent as a hotel occupant, or require a hotel occupant upon registration to represent or agree that the housing accommodation will not be used as a principle residence, or will be used for commercial or professional purposes when in fact the housing accommodation is to be used solely for residential purposes.

### **First Lease**

A hotel occupant, who has never had a lease, may become a permanent tenant by requesting a first lease for a term of at least six months at any time after commencing occupancy, and the owner must provide such lease within fifteen days after such request. The six month term is the minimum lease period mandated by the Code. However, unlike owners of rent stabilized apartment buildings, which are required to offer rent stabilized tenant's renewal leases for one or two years at the tenants' option, hotel owners are not required to provide renewal leases to permanent tenants. A permanent tenant has the right to remain in occupancy, whether or not the lease is renewed by the owner. Permanent tenants are subject to annual guidelines increases set by the Rent Guidelines Board, whether or not they have leases.

### **Security Deposit**

A hotel owner may collect a security deposit no greater than one month's rent, provided the hotel occupant is granted a first lease. When the rent is increased if the lease is renewed or the permanent tenant chooses to remain in occupancy after the lease expires, the owner may charge an additional amount to bring the security deposit up to the full amount to which the

owner is entitled. Security deposits must be deposited in an interest bearing trust account in a bank. Owners may deduct an annual service fee of 1% of the security deposit, and must, at the permanent tenant's option, apply the balance of the interest paid by the bank to the rent, hold it in trust until repaid, or pay it annually to the permanent tenant. When a hotel occupant who commenced occupancy after August 15, 1983, becomes a permanent tenant, there is a restriction upon the amount of rent that may be charged. An owner may not charge such permanent tenant more than the most recent lawful rental amount paid by the most recent prior permanent tenant plus any lawful guidelines increase and/or vacancy allowance then in effect as set for hotel housing accommodations by the Rent Guidelines Board. Such rent is required to be registered with the DHCR. You may obtain this information by writing to the DHCR, provided you submit proof of residence in the hotel room/apartment. In addition to guidelines increases, the rent may be permanently increased by the verified cost of new services, equipment or improvements, furniture or furnishings provided to the individual housing accommodation; the cost of a completed major capital improvement; or for a hardship where the rent is not sufficient to enable the owner to obtain a fair return on his or her investment after expenses.

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## 8.4 Laws Applicable and Criterion of Fixation

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### Tax Rates and State

#### Hotel, Inn, Club and Guest House Service

(A) **Date of Introduction:-** 01.05.2011 vide Notification No.29/2011-ST dated.25.04.2011

#### (B) Definition and scope of Service:

—**Taxable service**, means any service provided or to be provided to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months.

[

#### Section 65(105)

(C) Rate of Tax & Accounting Code:		Accounting Code
Rate of Tax		
Service Tax	10% of the value of services	00441070
Education Cess	2% of the service tax payable	00440298
Secondary and Higher Education cess	1% of the service tax payable.	00440426

Other Penalty/interest	–	As levied or applicable	00441071

**( D ) Classification of Taxable Services:**

(1) The classification of taxable services shall be determined according to the terms of the sub-clauses (105) of section 65;

(2) When for any reason , a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-

(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;

(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;

(c) When a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration. **(Sec.65A of Finance Act,1994)**

**(E) Valuation of taxable services for charging Service tax**

(1) Service tax chargeable on any taxable service with reference to its value shall,—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, as with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

**Short-term Accommodation service** – In accordance with the budget announcement, the levy will be applicable on short-term accommodation with a declared tariff of Rs.1000 per day or above. A suitable exemption has been given below this amount vide Notification No. 31/2011-ST dated 25/04/2011. Declared tariff has been defined within the notification as charges for all amenities provided in the unit of accommodation. Thus it will include cost of all electronic gadgets installed in the room and any other facility normally provided by a hotel as part of the stay. Cost of extra bed will not form a part of the declared tariff. No further exclusions are provided from the declared tariff e.g. on account of breakfast or any other meal whose cost is included in the declared tariff including any discount given to the customs. However an exemption @ 50% has been given by amending the Notification No. 1/2006-ST dated 01/03/2006 vide Notification No. 34/2011-ST, dated 25/04/2011 provided no cenvat credit is availed either of inputs or inputs service.  
**(As per vide M. F. (D.R.) letter F. No. 334/3/2011-TRU, dated 25/04/2011)**

**Exemption & Exclusion:**

**1. Exemption to short-term accommodation service provided or to be provided, to any person, by a hotel, inn, guest house, club or campsite, by whatever name called, in relation to providing of accommodation for a continuous period of less than three months.**

Vide Notification No. 1/2006-ST dated 01/03/2006 as amended by Notification No. 34/2011-ST dated 25/04/2011 exemption of 50% of gross value charged have been provided for this service on condition that no cenvat credit is availed either on inputs or inputs service. (for details, the relevant notification may be referred).

**2. Exemption to short-term accommodation service when declared tariff is less than Rs.100 per day.**

Exempts when the declared tariff for providing such accommodation is less than rupees 1000 per day  
**(Notification No.31/2011 ST dated 25/4/2011)**

**3. Exemption to Small Scale Service Providers:**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding **Ten lakh\* rupees** in any financial year from the whole of the service tax leviable thereon under section 66 of the said Finance Act:



Provided that nothing contained in this notification shall apply to,- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

The exemption contained in this notification shall apply subject to the following conditions, namely:-

(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;

(iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received in the premises of provider of such taxable service during the period in which the service provider avails exemption from payment of service tax under this notification;

(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees \*ten lakhs in the preceding financial year.

For the purposes of determining aggregate value not exceeding ten\*lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 for which the person liable for paying service tax is as specified under subsection (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be take

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## **8.5 Municipal Hotel Occupancy Taxes**

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Municipality may impose, by ordinance, a Hotel occupancy tax on the rental of a room in a Hotel that costs Rs. 1200 or more per day and is ordinarily used for sleeping. Municipal hotel tax, therefore, is not due on the rental of meeting or banquet rooms.

### **Tax Rates**

- (a) Except as provided by this section, the tax authorized by may be imposed at any rate not to exceed seven percent of the price paid for a room in a hotel.
- (b) The rate in an eligible central municipality may not exceed nine percent of the price paid for a room.
- (c) The rate in a municipality that borders on the Gulf Mexico and has a population of more than 2,50,000 or in a municipality with a population of less than 5,000 adjacent to a home-rule city with a population of less than 80,000 may not exceed nine per cent of the price paid for a room.
- (d) A general-law municipality that borders on the Gulf of Mexico and has a boundary that is within 30 miles of Mexico may by ordinance increase the rate of the tax under Subsection by a maximum rate of 7.2 per cent in the increase is approved by a majority of the registered voters of the municipality voting at an election held for that purpose.

### **Hotel Occupancy Taxes**

The commissioner's courts of certain counties are authorized to impose, by order or resolution, a hotel occupancy tax on a hotel room that costs 120 or more per day and is ordinarily used for sleeping. Hotel tax, therefore, is not due on the rental of meeting or banquets rooms.

### **Sports and Community Venues**

The Legislature authorizes counties and municipalities to established, by resolution, sports and community venue projects. Venue projects may be funded by one or more types and require voter approval. The venue district tax, which must be used to support stadiums, arenas, or other community facilities like convention centers, is in addition to the city and region hotel tax. For example, the city impose a seven percent city hotel tax and a two percent Convention Center/The Taj Project hotel tax.

**Tax Rate**

Tax authorized may be imposed by a municipality or region at any rate not to exceed two percent of the price paid for a room in a hotel. The ballot proposition at the election held to adopt the tax must specify the maximum rate of the tax to be adopted. With a population of more than two million that is adjacent to a region with a population of more than one million may impose the tax at any rate not to exceed three percent of the price paid for a room in a hotel.

From the, requires that when a hotel collects a sports and community venue tax, each hotel bill or receipt must include a statement that lists the entities that impose hotel and their rates.

The Current and prior law as follows:

**Current Law**

1. Each bill or other receipt for a hotel charge subject to the tax imposed must contain a statement in a conspicuous location stating the applicable hotel occupancy tax rate collected by the hotel from the customer for the State and the tax rate and identity of each other taxing authority that has imposed a hotel occupancy tax for the room night.
2. If a hotel charge is subject to any additional hotel occupancy, the statement required must be modified to state each additional entity that imposes a hotel occupancy tax and the rate of that tax.

**Prior Law**

Each bill or other receipt for a hotel charge subject to the tax imposed must contain a statement in a conspicuous stating the name of taxing municipality requires that an additional tax of some percent say 6 percent be imposed on each hotel charge for the purpose of financing a venue project.” Restrictions to the authorized uses of sports and community venue hotel tax revenue.”

**Personal Services Charges**

Personal services (Which are unrelated to the cost of the actual occupancy of the room) or charges to use a telephone are not subject to the hotel occupancy tax if they are separately stated. This includes charge represents an amount that would be subject to sales tax on stand alone basis (and the charges are separately stated) then are subject to sales tax. In these instances, the hotel should obtain a sales and use tax permit and charge and collect the appropriate.

For example a hotel collects a separate charge for a pick and drop service to and from any where. The charge is a separate line item on the guest folio identified about charges. The room card key folder informs each guest that this service charge be subject to the hotel occupancy tax? Would it be subject to the limited sales and use tax?

A separately stated charge for items or services not directly related to occupying or cleaning and readying a room or space in a hotel for occupancy is not subject to the state hotel occupancy tax. The separately stated service charge is not subject to hotel occupancy tax because it is a personal service and not related to occupying a room. The shuttle service charge is also not subject to the limited sales and use tax.

### **Service Exempted From Hotel Occupancy Tax**

- Messenger service
- Room service
- Valet service (Personal services)
- Use of a telephone
- Baby sitting service
- Pick and drop service

### **Service Charged in Hotel Occupancy Tax**

Some other charges that, when connected with the actual occupancy of the room, are subject to the Hotel Occupancy Tax whether or not they are separately stated. Such charges include but are not limited to:

1. Equipment rentals
2. Use of a television
3. Rental of audio visual equipment.
4. When a separately stated charge is provided with a banquet room rental charge and the hotel is the caterer, the rental charge is subject to the limited sales tax.
5. When provided in conjunction with the rental of a banquet or meeting room. and the hotel is not the caterer, the rental charge is subject to state hotel tax.

### **ADDITIONAL CHARGES**

- Pet Charges
- Pet Cleaning Charges
- Reservation Fees
- In-room safe rental charges
- Microwave and refrigerator rentals

### **ENERGY CHARGE**

A separate charge for energy is directly related to the occupancy of the room. An example of equipment rental could be as follows: The fitness equipment is furnished in connection with the occupancy of the room would be subject to Hotel Occupancy tax. All charges for items or services, other than personal services or charges for the use of a telephone, which are furnished in connection with the actual occupancy of a hotel room are subject to hotel occupancy tax, whether separately stated or not. Like a rollaway bed, television,

microwave, or other room furnishing, hotel tax should be collected on a charge for fitness equipment in a hotel occupant's room. Hotels would then owe sales to suppliers on the purchase or rental of this equipment. A charge for the use of fitness equipment not located in the occupant's room and the same is a charge for an amusement service and would be subject to the limited sales and use tax. An example would be a separately stated charge for the use of an off-premises exercise room.

## SALES AND USE TAX

1. Mandatory gratuities on food and beverages not distributed to qualifying employees. However, if mandatory gratuities are based on sale or service of alcoholic beverages, the charges are subject to the mixed beverage gross receipts tax when the hotel has a mixed beverage permit.
2. Room service: Charges for ready to eat food are subject to sales . Charges for alcoholic beverages are subject to mixed beverage tax or sales depending on the TABC permit held.

Delivery charges: For sales tax, delivery charges associated with the sale of a taxable item (e.g., food) are taxable. For mixed beverage tax, delivery charges associated with the sale or service of alcoholic beverages are taxable mixed beverage receipts.

Phone charges: Fax and phone charges are taxable telecommunication services and are subject to sales tax. The hotel is also responsible for the Telecommunication Infrastructure Fund assessment on its receipts from charges for taxable phone calls and faxes.

Fax transmittal **service**: This represents a taxable telecommunications **charge**. The charge to send a fax is subject to Telecommunications Infrastructure Tax - the charge to receive a fax is taxable. If the hotel does not retain the documentation to show the origination of the fax - then the hotel should charge tax for the receipt of faxes.

- Swim/athletic club fees.
- Parking fees including Valet Parking Service.
- Charges to store a motor vehicle.

Charges for **movies**: The rental of a movie in a hotel room is not subject to hotel occupancy. Movie rentals are subject to limited sales and use . The hotel should collect sales on separately stated charges for movies, whether provided on video cassette, DVD, or transmitted electronically.

Charges for internet access: Internet access services are subject to sales tax. The first 250 of the monthly fee is exempt. Because hotels often cannot track charges per guest, they may charge and collect tax on all services. The internet charges that do not exceed 250.00 would not be subject to tax - records must be retained to support these charges. If the internet charges are purchased tax-free from the Internet Service Provider, there may also

be tax due on the taxable use of these services by the hotel/management company employees.

➤ Rental/access charge for video games. Sales of toiletries.

Personal shopper charges for items that are subject to sales tax (as well as the sales price of the items) would be taxable. If the items are not subject to sales tax (such as groceries), the personal shopper charges would not be subject to tax. If the charge for these items represent a dollar for dollar reimbursements of their cost - the items would not be subject to sales tax again when resold (reimbursed by the customer).

### **Package Deals**

If a hotel includes meals, drinks, admission to tourist attractions, or any other unrelated benefit in the charge for lodging, the hotel occupancy tax must be paid on the total charge. In order to be deducted from the amount subject to hotel occupancy tax, these charges must be separately stated on the bill to the customer. These separately stated charges might be subject to the limited sales and use tax or the mixed beverage tax.

### **Charges for .Guaranteed Rooms**

A room charged to a customer who did not show is subject to Hotel Occupancy Tax. The definition of occupancy and occupant includes not only the use or possession but also the right to use or possess any room for any purpose.

A deposit that is not directly related to the room charge would not be subject to hotel tax because the deposit does not give the customer the right to use or possess the room. Guaranteed "no show" charge rates that are less than the room rate are not taxable, such as a percentage or sliding scale rate.

Example: A client has a contract to occupy 100 rooms. The client only occupies 80 rooms. The hotel bills the client for the 20 unoccupied rooms and should charge hotel occupancy . Attrition or cancellation charges are subject to hotel occupancy if by paying the fee the guest has paid the consideration necessary to achieve the right to occupy or use a room in a hotel. An attrition or cancellation fee is not subject to hotel tax if the charge is less than the reserved room rate, such as a percentage or sliding scale of the room rate.

### **Meeting Room and Banquet Charges**

The Hotel Occupancy Tax is due on the rental of meeting and banquet rooms if the room is located in the same building (under the same roof) as the rooms with sleeping accommodations. Hotel tax is not due on charges imposed on buildings owned by a hotel which are physically separate from the hotel and which are not used for the purpose of providing sleeping accommodations.

State hotel occupancy tax is due on lump-sum charges that include a banquet or meeting room, food and equipment. Local (city, region, and sports and community venues) are not due on banquet or meeting room charges - only the state tax is due.

When a hotel serves food, the hotel is considered a food service operator and should charge

sales on the entire charge for food preparation and service, including items used by the customer (e.g., tables, decorations, equipment).

When food is not provided, and the banquet room is located in the hotel (building with sleeping rooms), the 6% state (not local) hotel tax is due on charges for all items furnished with the room, other than charges for the use of a telephone or for personal services. Personal services do not include cleaning and readying a room for occupancy.

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## 8.6 Summary

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Taxes are an extremely important tool for nation building. It is one of the major revenue streams for any government.

The money collected is used for infrastructure, education, health, defense and other important activities. Even Chanakya had said “All experts shall fix revocation in such a way that neither the donor nor the receiver is harmed”

The various taxes levied on the hotel industry are utilized for the over all development of hotel industry.

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## 8.7 Review Question

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Q1 Define Hotel and discuss all the terms that are included in Hotel definition.

Q2 List terms which are not included in the definition of Hotel.

Q3 Write a short note of tenancy agreement.

Q 4 Write a short note on Personal Service Charges

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## 8.8 Review Question

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1. Weise, Elizabeth (April 24, 2007). "Food tests promise tough task for FDA" . USA Today. Retrieved 2007-04-29.
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4. Jeffrey M. Pilcher, Food in World History New York: Routledge, 2006, p. 59
5. Weston A.Price: Against the Grain, Section Bread to Feed the Masses
6. Satin, Morton, Death in the Pot: The Impact of Food Poisoning on History, 262 pages, Prometheus Books, (2007) , ISBN 1-59102-514-1 [1]



7. Juiceless baby juice leads to full-length justice|FDA Consumer
8. ConAgra Set to Settle Criminal Charges It Increased Weight and Value of Grain - New York Times

## SCHEDULE I

*(See sub-section (2) of section 5)*

Sr No.	Turnover of Receipts	Rate of Tax
(1)	(2)	(3)
(a)	Where the charge for the luxury provided in a hotel is not exceeding Rs. 500/- per room per day.	NIL.
(b)	Where the charge for the luxury provided in a hotel is exceeding Rs. 500/- but does not exceed Rs. 2000/- per room per day.	5%
(c)	Where the charge for the luxury provided in a hotel is exceeding Rs. 2000/- but does not exceed Rs. 5000/- per room per day.	8%
(d)	Where the charge for the luxury provided in a hotel is exceeding Rs. 5000/- per room per day.	12%
(e)	Where the hotel is a club or any other entity wherein luxury provided to its members/guests under time share agreement or any other similar system, and wherein the facility of availing residential accommodation by such members / guests during the given period in a year is allowed upon lumpsum payment against his/her membership.	Ten paise in a rupee, with a deemed room receipt of Rs. 2000/- per room per day.
(f)	Where any room in a hotel or guest house registered under the Goa, Daman and Diu Registration of Tourist Trade Act, 1982 (Act 10 of 1982) are leased by the hotelier to any company or a person on monthly basis to provide accommodation either as rest house or guest house and the charges for such room exceeds Rs. 500/- per day.	5%
<p style="text-align: center;"><b>These rates shall come into force with effect from 01-04-2013.</b></p> <p><b>Note</b> Luxuries provided in a hotel during the period from <u>1st June upto 30th September</u> of a calendar year are exempted to the extent of In excess of 40 paise in a rupee of the rate specified in Schedule I appended to the said Act provided</p> <p>(i) the hotelier should hold valid registration under the said Act.</p> <p>(ii) the hotelier should file the returns within the time prescribed under the said Act.</p> <p>(iii) the hotelier should pay the tax within the time prescribed under the said Act.</p> <p>(iv) the hotelier should not be in arrears of tax or in arrears of any outstanding dues at the time of claiming such exemption</p>		

## SCHEDULE II

*(See sections 9(2) and 9A)*

Sr No.	Category of hoteliers	Amount of registration charges/renewal charges.
	<b>HOTELIER</b>	
(1)	For hotels having upto 25 rooms including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 1,000/-
(2)	For hotels having rooms in excess of 25 but upto 50 including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 2,500/-
(3)	For hotels having rooms in excess of 50 but upto 100 including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 5,000/-
(4)	For hotels having rooms in excess of 100 but upto 200 including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 10,000/-
(5)	For hotels having rooms in excess of 200 including rent back accommodation, tourist home and any other accommodation required to be covered under the Goa Registration of Tourist Trade Act, 1982 (Act 10 of 1982).	Rs. 15,000/-
	<b>PROPRIETOR</b>	
(1)	Accommodation provided for commercial purposes.	Rs. 2,000/-
(2)	Accommodation with luxuries provided for other purposes.	Rs. 2,000/-
*****		

### SCHEDULE III

*(See section 5B)*

Sr No.	Turnover of Receipts	Rate of Tax
(1)	(2)	(3)
(1)	Where proprietor provides accommodation for commercial purposes.	5% of the receipt
(2)	Where proprietor provides accommodation with luxuries for other purpose:-	
	(i) Not exceeding Rs 10,000/- per day per event	Nil
	(ii) Exceeding Rs. 10,000/- per day per event	5% of the receipt
*****		

### SCHEDULE IV

*(See Sub-section (2A) of section 5)*

Sr. No	Turnover of receipts	Rate of Tax
1.	For providing services in beauty parlours, spa or health spa, health club, etc., having air-conditioning acility, whose turnover is above Rs. 5.00 lakhs per annum	10%

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## Unit: 9 THE LAW OF CONTRACT

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### Structure:

- 9.0 Objectives
- 9.1 Introduction
- 9.2 Definitions and Meaning of Contract.
- 9.3 Essential Elements of Contract
- 9.4 Kinds of Contract
- 9.5 Remedies for the Breach of Contract
- 9.6 Summary
- 9.7 Key Words
- 9.8 Self Assessment Tests
- 9.9 Suggested Readings

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### 9.0 OBJECTIVES:

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After going through this unit you will be able to Understand the:

- Meaning and Definitions of contract.
  - What are the essential Elements of the Contract?
  - Who can make a Contract?
  - Capacities of a person who can make a Contract.
  - Remedies in case of breach of Contract.
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### 9.1 Introduction:

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Man is a social animal. He interacts with other human beings in various ways in his society. With the development of the human civilization man started interacting with each other with more zeal and vigor in various activities of life. This interaction increased with development of society and the industrialization. In advance societies the interaction of human activities revolves around economic and commercial activities. That is why Anson in his Law of Contract has said that “The Law of Contract is Child of Commerce”<sup>1</sup>. Our day to day various activities revolve around the various contracts. Selling and Purchase of a thing or goods or tickets, taking loan, giving money and in many other transactions in which we involve in or enter into a contract knowingly or unknowingly.

In India the matter related with contract are governed by the Indian Contract Act, 1872. Section 1 to Section 75 deals with General Principles of Contract. The particular types of contract such as Indemnity and Guarantee; Bailment and Pledge; and Agency are provided in Chapter VIII, IX and X of the Act. In 1930, The Sale of Goods Act and in 1932 the Partnership Act was passed and provisions related with these were repealed from the Indian Contract Act, 1872. The provisions of the Act are applicable to whole of India

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<sup>1</sup> See Anson’s Law of Contract

except the State of Jammu and Kashmir. In *Punjab National Bank vs. Arura Lal Durga Das*<sup>2</sup> it was held that The Contract Act applies to all the contracts in India.

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## 9.2 Definitions and Meaning of Contract:

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**The Indian Contract Act, 1872** has defined Contract in Section 2(h) as

"An agreement enforceable by law".

In above definition we find that this definition is having two distinct characteristics. First, there must be an agreement. Secondly, such an agreement must be enforceable by law. To be enforceable, an agreement must be coupled with an obligation.

A contract therefore, is a combination of the two elements:

- (1) an agreement and
- (2) an obligation.

### **Agreement:**

An agreement occurs when two minds meet upon a common purpose, i.e. they mean the same thing in the same sense at the same time. The meeting of the minds is called *consensus-ad-idem*, i.e., consent to the matter.

Section 2(e) of the Indian Contract Act provides that "every promise and every set of promises forming the consideration for each other is an agreement."

There must be at least two parties in an agreement - one making the offer and the other accepting it. In such offer the acceptance must be valid. Thus in a contract there must be Proper Offer and Acceptance.

Second important point in an agreement is that those parties shall have Intention to Create Legal Relationship and should be enforceable by law.

**For Example:** X invited Y to a dinner. Y accepted the invitation. It is a social agreement. If X fails to serve dinner to Y, Y cannot go to the courts of law for enforcing the agreement. Similarly, if Y fails to attend the dinner, X cannot go to the courts of law for enforcing the agreement.

But even a business agreement may not be enforceable by law where the agreement so provides e.g. in *Rose & Frank Co. v. Crompton Bros.*<sup>3</sup>, the agreement entered into stated that it will not be subject to legal jurisdiction in the law courts, the agreement was not enforceable by law as the parties never agreed to create legal obligations despite being a business agreement.

### **Obligation:**

An obligation is the legal duty to do or abstain from doing what one has promised to do or abstain from doing. A contractual obligation arises from a bargain between the parties to the agreement who are called the promisor and the promisee. Section 2(b) says that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted; and "a proposal when accepted becomes a promise." In broad sense, therefore, a contract is an exchange of promises by two or more persons, resulting in an obligation to do or abstain from doing a particular act, where such obligation is recognized and enforced by

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<sup>2</sup> AIR 1960 Punj 632

<sup>3</sup> (1925) A.C. 445

law. Agreements in which the idea of bargain is absent and do not intend to create legal relations are not contracts.

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### 9.3 Essential Elements of the Contract:

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After review of the above definitions and various provisions of the Law of Contract we will find following essential elements in the contract.

**9.3.1 Minimum Two Parties:** At least two parties are required to enter into a contract. One party has to make an offer and other must accept it. The person who makes the 'proposal' or 'offer' is known as the 'promisor' or 'offeror'. While, the person to whom the offer is made is known as the 'offeree' or 'promisee' and the person who accepts the offer is called the 'acceptor'.

#### 9.3.2 Who can make Contract/Parties should be Competent Parties or Capacity of Parties:

Parties to an Agreement or a Contract are known as:-

*Promisor:* A person making the proposal (offer) is known as a promisor. He is also known as an offeror. Other can also recognize him as a proposer.

*Promisee:* A person accepting the proposal (offer) is known as a promisee. He is also known as an offeree. Other can also recognize him as an acceptor.

Every person is not competent to enter into a contract. Person who has attained the age of majority with a sound mind and not disqualified under any act is competent to enter into a contract.

In law, persons are either natural or artificial. Natural persons are human beings and artificial persons are corporations, firms and institutes. Contractual capacity or incapacity is an incident of personality.

The general rule is that all natural persons have full capacity to make binding contracts. But the Indian Contract Act, 1872 admits an exception in the case of:

- (i) minors,
- (ii) lunatics<sup>4</sup>, and
- (iii) persons disqualified from contracting by any law to which they are subject.

These persons are not competent to contract. Section 11 provides that every "person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

It is essential that the parties competent and must be legally capable of entering into a contract. The parties making the contract must be legally competent in the sense that each must be of the age of majority (The **Majority Act** of 1875 (*Indian Majority Act, 1875 earlier*)<sup>5</sup> states that every person domiciled in [India](#) shall attain the age of majority on completion of 18 years and not before and to conduct the Property Transactions age is above

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<sup>4</sup> (*Jugal Kishore v. Cheddu*, (1903) 1 All. L.J 43)

<sup>5</sup> Wikipedia.org

21 years ), of a sound mind, and not expressly disqualified from contracting. An agreement by incompetent parties shall be a legal nullity.

**9.3.3 Proposal or Offer and Acceptance:** - In every contract there must be an 'offer' and an 'acceptance' to the offer, resulting into an agreement. Both offer and acceptance should be lawful.

Section 2(a) Indian Contract Act, 1872 states that 'when one person signifies another person his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such an act or abstinence, he is said to make a proposal'. A Proposal is also known as an offer.

The communication of a proposal is complete when it becomes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete -as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

**Counter Offer:** The offeree must accept the exact terms and conditions as proposed by the offeror. If offeree changes the terms of offer or put some new terms, it is presumed that he is making **counter offer**. For example, in the case of Hyde Vs. Wrench<sup>6</sup> A offered to sale a land to B on 1000 pound. B said he would pay 950 Pound. A refused to sale. B again said that he is ready to pay 1000 Pound. It was held that no contract was made and there was counter offer.

There must be a definite, clearly stated offer to do something. For example: A quotation by sub-contractor to the main contractor and an offer to lease. An offer does not includes estimates, requests for proposals, expressions of interest, or letters of intent etc.

**Standing Offer:-** Sometimes an offer may be of a continuous nature and is known as Standing Offer. Agreement under which vendor allows buyer to purchase specified goods or services at a predetermined price for a set or certain period of time on an 'as and when' requirement basis are known as standing offer. It means that the offer will remain open during a specific period and that it will be accepted from time to time by replacing specific orders for the supply of goods. Thus each order placed creates a separate contract.

**Irrevocable offers:-** An option is a right that is purchased by a person in order to have an offer remain open at agreed-upon price and terms, for a specified time, during which it is irrevocable. It constitutes an exception to the general rule that an offer may be withdrawn prior to acceptance. The offeror may not withdraw this offer because that party is bound by the consideration given by the offeree. The offeree is free, however, to decide whether or not to accept the offer.

**Cross offer:-** In a contract cross offer means that the rejection of a standing offer in the form of a new offer. A counteroffer reverses the roles of the parties. The offeror (party making the

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<sup>6</sup> 1840 3 Beav. 334; 49 ER 132



initial offer) becomes the offeree (party receiving the counteroffer) and conversely, the initial offeree becomes the offeror.

A receives a bid for carpet cleaning services in the amount of three hundred dollars. Thinking he can get a better price, A makes a counteroffer, saying that he is willing to pay two hundred and fifty for the service. At that point, the carpet cleaning company can either accept or reject As' **cross offer**.

Offer must be made to obtain assent of the offeree. If offeree does not give final willingness and negotiate then he is not accepting offer, he is inviting the other party to make offer. In the case of Harvey Vs. Facey<sup>7</sup>, A telegraphed to B "will you sell your Bumper Hall Pen? Telegraph lowest price." B replied that lowest price is 900 Pound. A became ready to purchase but B refused. Privy Council held that B by stating lowest price was not making offer but supplying information to invite offer.

**Offer can be of two types:-**

**Specific Offer:-** An offer made to a definite or ascertained offeree is called specific offer. A makes an offer to sale a car to B for Rs.50000/-. It is specific offer to B.

**General Offer:-** A general offer is offer made to Public at Large by way of advertisement etc. Here contractual obligation will come into existence only when a person accepts it. As per Anson an offer need not to be made to an ascertained person but no contract can arise until it has been accepted by some ascertained person.

This point can be better understood by Carlill Vs. Carbolic Smoke Ball Company<sup>8</sup> case. In this case Carbolic Smoke Ball Company offered by an advertisement to pay 100 Pound to anyone who contract the increasing epidemic influenza or disease caused by the cold, after having used the ball three times daily according to the directions printed with each ball. Mrs. Carlill used them as directed and even than she was attacked by the influenza. She claimed for the 100 pound. Company claimed that it was a vague and puffery offer and was also not definite one. Justice Bowen rejected the argument of the company and held that offer was sufficiently definite.

A duty has been imposed upon offerer to, adequately; inform the all terms and conditions. If offeree is ignorant of the terms and conditions than he will not be bound by the terms and conditions. In the case of Henders Vs. Stevenson<sup>9</sup> it was decided that there should be reasonable notice to the offeree. For unusual terms and conditions court is of the opinion that party has a clear, fair and reasonable information. The notice should be contemporaneous with contract. The terms and conditions should be given before or at the time of contract.

**Rules Governing Acceptance are as under:**

- (a) Acceptance may be express i.e. by words spoken or written or implied from the conduct of the parties.
- (b) If a particular method of acceptance is prescribed then offer must be accepted in the prescribed manner. "
- (c) Acceptance must be unqualified and absolute and must correspond with all the terms of the offer.
- (d) A counter offer or conditional acceptance operates as a rejection of the offer and causes it to lapse, e.g., where a horse is offered for Rs. 1,000 and the offeree counter-offers Rs. 990,

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<sup>7</sup> 1893 A.C. 552

<sup>8</sup> (1893) 1 Q.B. 256

<sup>9</sup> 1875 32 LT 709; 1875 2 HL SC App. 470

the offer lapses by rejection.

(e) Acceptance must be communicated to the offeror, for acceptance is complete the moment it is communicated. Where the offeree merely intended to accept but does not communicate his intention to the offeror, there is no contract. Mere mental acceptance is not enough.

(f) Mere silence on the part of the offeree does not amount to acceptance. Ordinarily, the offeror cannot frame his offer in such a way as to make the silence or inaction of the offeree as an acceptance. In other words, the offeror can prescribe the mode of acceptance but not the mode of rejection

(g) If the offer is one which is to be accepted by being acted upon, no communication of acceptance to the offeror is necessary, unless communication is stipulated for in the offer itself.

(h) Acceptance must be given within a reasonable time and before the offer lapses or is revoked. An offer becomes irrevocable by acceptance.

### **Revocation of Proposals and acceptance:**

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but no afterwards.

A proposal can be revoked -

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

### ***An offer will lapse:***

When the time for acceptance expires;

If the offer is withdrawn before it is accepted; or

After a reasonable time in the typical circumstances (generally the greater the value of the contract, the longer the life of the offer).

Section 6 deals with various modes of lapse of an offer. It states that an offer lapses if

(a) it is not accepted within the specified time (if any) or after a reasonable time, if none is specified.

(b) It is not accepted in the mode prescribed or if no mode is prescribed in some usual and

reasonable manner, e.g., by sending a letter by mail when early reply was requested

- (c) the offeree rejects it by distinct refusal to accept it;
- (d) either the offerer or the offeree dies before acceptance;
- (e) the acceptor fails to fulfill a condition precedent to a acceptance.
- (f) the offeree makes a counter offer, it amounts to rejection of the offer and an offer by the offeree may be accepted or rejected by the offeror.

#### 9.3.4 Agreement:-

An agreement means a promise and a reciprocal set of promises forming consideration for each other—Section 2(e). This definition gives us three ingredients—promise and a consideration. We can understand it as under.

An agreement is formed when one party accepts the offer of another and this involves a "meeting of the minds" on the basis of offer made.

Where an agreement is approved ratified, confirmed and declared to be valid and binding on the parties thereto by an act of the Legislature, the effect of this statutory confirmation is to render every provision and stipulation of the agreement as obligatory and binding on the parties as if their provisions had been repeated in the form of statutory sections.

If a certain agreement is expressly declared to be void by the law of country then such an agreement, if entered into, shall not be enforceable by the court.

An agreement contains terms as decided by the parties. The terms of agreement must be certain and unambiguous. If the terms of an agreement are uncertain, it is not a valid contract.

Every agreement contains reciprocal promises. The promises under the contract must be possible to perform. If the parties have agreed on the contract which contains any promise not possible to perform in real life, the contract will not be considered as a valid contract. *Rose and Frank vs. J. R. Crompton & Bros*<sup>10</sup>.

When an agreement states that it is not a formal agreement, it shall not be subject to legal jurisdiction of any court. It was held that it is not a binding contract as there is no intention to create a legal relation.

The following agreements are void as being against public policy but they are not illegal:

(a) *Agreement in restraint of parental rights*: An agreement by which a party deprives himself of the custody of his child is void.

(b) *Agreement in restraint of marriage*: An agreement not to marry at all or not to marry any particular person or class of persons is void as it is in restraint of marriage.

(c) *Marriage brokerage Agreements*: An agreement to procure marriage for reward is void. Where a purohit (priest) was promised Rs. 200 in consideration of procuring a wife for the defendant, the promise was held void as opposed to public policy, and the purohit could not recover the promise sum.

(d) *Agreements in restraint of personal freedom are void*: Where a man agreed with his money lender not to change his residence, or his employment or to part with any of his property or to incur any obligation on credit without the consent of the money lender, it was held that the agreement was void.

(e) *Agreement in restraint of trade*: An agreement in restraint of trade is one which seeks to

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<sup>10</sup> [1923] 2 KB 261; [1925] AC 445,

restrict a person from freely exercising his trade or profession.

**9.3.5 Free Consent:-** A contract is made when one person makes an offer while another person accepts the offer. This acceptance of the offer should be made without any force or threat. It means that a consent given should be free and genuine.

**Example:** A has two cars—one black and the other white. He offers to sell one of his cars to B. A intends to sell the black one while B accepts the offer believing that it is for the white car. Here, A and B are not thinking in the same sense of a particular thing. In this situation, there is a mistake, so it cannot be said to be a free consent.

The contracting parties must give their consent freely. 'Consent' means that the parties must agree about the subject matter of the agreement in the same sense and at the same time. Consent is said to be free if it is not induced by coercion, undue influence, fraud, misrepresentation or mistake. The absence of free consent would affect the legal enforceability of a contract.

**9.3.6 Lawful object:-** The object of the agreement must be lawful. An agreement is unlawful, if it is:- (i) illegal (ii) immoral (iii) fraudulent (iv) of a nature that, if permitted, it would defeat the provisions of any law (v) causes injury to the person or property of another (vi) opposed to public policy.

Every agreement has some objects or purposes. The object of an agreement should not be illegal, immoral or opposed to the public policy. In simple words, we can say that the object of an agreement must be lawful.

Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is lawful unless it is

- (i) forbidden by law; or,
- (ii) it is of such nature that if permitted it would defeat the provisions of law; or
- (iii) is fraudulent; or
- (iv) involves or implies injury to the person or property of another; or
- (v) the Court regards it as immoral or opposed to public policy.

In each of these cases the consideration or object of an agreement is said to be unlawful. *Every agreement of which the object or consideration is unlawful is void.*

Examples:-

- (i) X, Y and Z enter into an agreement for the division among them of gains acquired by them by fraud. The agreement is void as its object is unlawful.
- (ii) X promises to obtain for Y an employment in the Government service and Y promises to pay Rs. 1,500 to X. The agreement is void, as the consideration for it is unlawful.

**9.3.7 Not expressly declared void:-** An agreement expressly declared to be void under the Contract Act or under any other law, is not enforceable and is, thus, not a contract. The Contract Act declares void certain types of agreements such as those in restraint of marriage, or trade, or legal proceedings as well as wagering agreements.

**9.3.8 Certainty and Possibility of performance:-** The terms of a contract must not be vague or uncertain. If an agreement is vague and its meaning cannot be ascertained, it cannot be enforced. Also, the terms of a contract must be such as are capable of performance. An agreement to do an impossible act is void and is not enforceable by law.

**9.3.9 Legal formalities:-** Generally, a contract may be oral or in writing. However, certain contracts are required to be in writing and may even require registration. Therefore, where law requires an agreement to be put in writing or be registered, the same must be complied with. For instance, the Indian Trusts Act requires the creation of a trust to be reduced to writing. The law of contract represents the constant endeavor of public authority or state. There is no standard form or mode of making of valid contract. It is not necessary that it should be in writing unless required by some statutory requirement.<sup>11</sup>

**Legal Formalities:-**In some cases, the document in which the contract is incorporated has to be stamped. In some other cases, a contract, besides being a written one, has to be registered. Thus, where there is a statutory requirement that the contract should either be made in writing or registered, the required formalities must be complied with.

The Contract Act never specifies that the contract to be valid should be in writing. It means an oral contract or a contract without any kind of writing is also valid. However, it is difficult to prove before the courtroom when the dispute arises.

The contracts are required to be in writing only if any other act specifically requires it to be so. Like the hire-purchase act requires that the hire-purchase agreement should be in writing.

**9.3.10 Legal Obligations: -** The purpose of the agreement must not be illegal or contrary to public policy. The parties must intend to create a legal obligation. The agreement sought to be enforced should contemplate legal relations between the parties to it.

**9.3.11 Consideration:-** Consideration is also one of the essential elements of a valid contract. The requirement of consideration stems from the policy of extending the arm of the law to the enforcement of mutual promises of parties. A mere promise is not enforceable at law. For example, if A promises to make a gift of Rs. 500 to B, and subsequently changes his mind, B cannot succeed against A for breach of promise, as B has not given anything in return. It is only when a promise is made for something in return from the promisee, that such promise can be enforced by law against the promisor. This something in return is the consideration for the promise.

**Definition of Consideration:** Sir Fredrick Pollock has defined consideration "as an act or forbearance of one party, or the promise thereof is the price for which the promise of the other is bought."

It is "some right, interest, profit, or benefit accruing to one party or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other" (*Currie v. Misa*<sup>12</sup>).

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<sup>11</sup> Tarsem Singh v. Sukhminder Singh, AIR 1998 SC 1400

<sup>12</sup> (1875) L.R. 10 Ex. 153

Section 2(d) of the Indian Contract Act, 1872 defines consideration thus: "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise" .

The fundamental principle is that consideration is essential in every contract, is laid down by both the definitions but there are some important points of difference in respect of the nature and extent of consideration and parties to it under the two systems of law.

### **Lawful consideration:-**

The lawful consideration means something in return. As a contract contains the reciprocal set of promises, a consideration is necessary. The consideration must be lawful and should have a commercial value.

### ***When Consideration' not Necessary:***

The general rule is that an agreement made without consideration is void. But Section 25 of the Indian Contract Act lays down certain exceptions which make a promise without consideration valid and binding. Thus, an agreement without consideration is valid:

1. If it is expressed in writing and registered and is made out of natural love and affection between parties standing in a near relation to each other; or
2. If it is made to compensate a person who has already done something voluntarily for the promisor, or done something which the promisor was legally compellable to do; or
3. If it is a promise in writing and signed by the person to be charged therewith, or by his agent, to pay a debt barred by the law of limitation.
4. Besides, according to Section 185 of the Indian Contract Act, consideration is not required to create an agency.
5. In the case of gift actually made, no consideration is necessary. There neednot be nearness of relation and even if it is, there need not be any natural love and affection between them.

The requirements in the above exceptions are noteworthy. The first one requires written and registered promise. The second may be oral or in writing and the third must be in writing.

### ***Illustrations***

- (a) A, for natural love and affection, promises to give his son B Rs. 10,000. A put his promise to B into writing and registered it. This is a contract.
- (b) A registered agreement between a husband and his wife to pay his earnings to her is a valid contract, as it is in writing, is registered, is between parties standing in near relation, and is for love and affection (*Poonoo Bibi v. Fyaz Buksh*).<sup>13</sup>  
But where a husband by a registered document, after referring to quarrels and disagreement between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence, it was held that the promise was unenforceable, as it was not made for love and affection (*Rajlucky Deb v.*

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<sup>13</sup> (1874) 15 80m LA. 57)



*Bhootnath*<sup>14</sup>.

- (c) A contract without consideration is void. The consideration may be in the form of money, services rendered, goods exchanged or a sacrifice which is of value to the other party. This consideration may be past, present or future, but it must be lawful.<sup>15</sup>

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## 9.4 Kinds of Contracts:

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**Contracts and Agreements can be classified as under:**

**1. On the Basis creation of Contract:**

- (a) **Express Contract:** A contract made by word spoken or written document. In an express contract, the parties state the terms, either orally or in writing, at the time of its formation. There is a definite written or oral offer that is accepted by the offeree (i.e., the person to whom the offer is made) in a manner that explicitly demonstrates consent to its terms. Express contract is one which is made by words spoken or written.

**Example :** X says to Y “Will you buy my house for Rs 5,00,000?” Y says to X” I am ready to buy your house for Rs 5,00,000.” It is an express contract made orally.

- (b) **Implied contract:** A contract made by physical or mental behavior of the person. Although contracts that are implied in fact and contracts implied in law are both called implied contracts, a true implied contract consists of obligations arising from a mutual agreement and intent to promise, which have not been expressed in words. An implied contract is one which is made otherwise than by words spoken or written. It is inferred from the conduct of a person or the circumstances of the particular case.

**Example :** A transport company runs buses to carry passengers. This is an implied offer by transport company. X boards the bus. This is an implied acceptance by X. Now, there is an implied contract and X is bound to pay the prescribed fare.

- (c) **Tacit contract:** Tacit refers to something done or made in silence, as in a tacit agreement. A tacit understanding is manifested by the fact that no contradiction or objection is made and is thus inferred from the situation and the circumstances. Tacit agreements are understood without being openly expressed or implied. A tacit contract is one which is inferred from the conduct of parties. **Example:** Withdrawing cash through ATM<sup>16</sup>.

**(d) Quasi Contract:**

A valid contract must contain certain essential elements, such as offer and acceptance,

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<sup>14</sup> (1900) 4 C.W.N. 488)

<sup>15</sup> [http://business.gov.in/manage\\_business/contracts\\_elements.php](http://business.gov.in/manage_business/contracts_elements.php)

<sup>16</sup> <http://www.bms.co.in/>



capacity to contract, consideration and free consent. But sometimes the law implies a promise imposing obligations on one party and conferring right in favour of the other even when there is no offer, no acceptance, no consensus ad idem, and in fact, there is neither agreement nor promise. Such cases are not contracts in the strict sense, but the Court recognises them as relations resembling those of contracts and enforces them as if they were contracts, hence the term quasi-contracts (i.e., resembling a contract).

A quasi-contract rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. In truth, it is not a contract at all. It is an obligation which the law creates, in the absence of any agreement, when any person is in the possession of one person's money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it, and which in justice and fairness belongs to another. It is the duty and not agreement or intention which defines it. A very simple illustration is money paid under mistake. Equity demands that such money must be paid back.

(e) **E- contract:** An e-contract is a contract made through the electronic mode

## **2. On the Basis Validity of Contract:**

**a. Valid contract:** A contract which satisfies all the conditions, prescribed by law is valid contract. An agreement enforceable at law is a valid contract.

**b. Void contract:**

Section 2(j) of the Indian Contract Act, 1872, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable." In other words, a void contract is a contract which was valid when entered into but which subsequently became void due to impossibility of performance, change of law or some other reason.

**Example:** X offers to marry Y. Y accepts X's offer. Later on Y dies. This contract was valid at the time of its formation but became void on the death of Y.

A void agreement is one which is destitute of all legal effects. It cannot be enforced and confers no rights on either party. It is really not a contract at all, it is non-existent. Technically the words 'void contract' are a contradiction in terms. But the expression provides a useful label for describing the situation that arises when a 'contract' is claimed but in fact does not exist. For example, a minor's contract is void.

A "void contract" is one where the whole transaction is regarded as a nullity. It means that at no time has there been a contract between the parties. Any goods or money obtained under the agreement must be returned. Where items have been resold to a third party, they may be recovered by the original Owner.

A contract which ceases to be enforceable by law is known as a void contract. A void contract is not enforceable by the court. Generally, a valid contract ceases to be enforceable on the change in circumstances or on the change of provisions of an act.

An agreement the meaning of which is not capable to being made certain is void.

In the case of *Jyoti Brothers vs. Shree Durga Mining Co*<sup>17</sup> it was held that an agreement to agree in future always remains only an agreement not enforceable by law.

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<sup>17</sup> AIR 1956 Cal 280, 60 CWN 420

The following types of agreements are void under Indian Contract Act:

- (a) Agreement by or with a minor or a person of unsound mind or a person disqualified to enter into a contract - Section 11;
- (b) Agreement made under a mistake of fact, material to the agreement on the part of the both the parties - Section 20.
- (c) An agreement of which the consideration or object is unlawful - Section 23.
- (d) If any part of a single consideration for one or more objects, or anyone or any part of anyone of several considerations for a single object, is unlawful, the agreement is void - Section 24.
- (e) An agreement made without consideration subject to three exceptions provided to Section 25.
- (f) An agreement in restraint of marriage - Section 26.
- (g) An agreement in restraint of trade - Section 27.
- (h) An agreement in restraint of legal proceedings - Section 28.
- (i) Agreements, meaning of which is not certain, or capable of being made certain - Section 29.
- (j) Agreement by way of wager - Section 30.
- (k) An agreement to do an act impossible in itself - Section 56

#### **(I) When contract becomes void**

An agreement not enforceable by law is *void ab initio* - Section 2(g).

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. (Section 20)

A contract becomes void when, by reason of some event which the promisor could not prevent, the performance of the contract becomes impossible, e.g., by destruction of the subject-matter of the contract after the formation of the contract.

A contract becomes void by reason of subsequent illegality. A in India agrees to supply goods to B in Pakistan. After the formation of the contract war breaks out between India and Pakistan and the supply of goods to Pakistan is prohibited by legislation. The contract becomes void.

A contingent contract to do or not do to anything if an uncertain future event happens becomes void if the event becomes impossible. An agreement is made to do a particular act and at the time of making of agreement, it is certain that such an act is impossible. Then the agreement entered into would be void. For Example A agrees with B to discover treasure by magic. Contract is void in eye of law because act is impossible.

**Voidable Contracts:** Where a contract is voidable at the option of the aggrieved party the contract becomes void when the option is exercised by him. It is not enforceable at law at the option of the other or others.

A contract is void when both parties to an agreement are:-

**Under a mistake of facts:** Mistakes are of two kinds: (i) mistake of law, and (ii) mistake of fact. If there is a mistake of law of the land, the contract is binding because everyone is deemed to have knowledge of law of the land and ignorance of law is no excuse (*ignorantia juris non-excusat*).

But mistake of foreign law and mistake of private rights are treated as mistakes of fact and are excusable.

#### **Mutual or Unilateral Mistake**

Mistake must be mutual or bilateral, i.e., it must be on the part of both parties. A unilateral mistake, i.e., mistake on the part of only one party, is generally of no effect unless (i) it concerns some fundamental fact and (ii) the other party is aware of the mistake. For this reason, error of judgment on the part of one of the parties has no effect and the contract will be valid.

### **Mutual or Common Mistake as to Subject-matter**

A contract is void when the parties to it assume that a certain state of things exist which does not actually exist or in their ignorance the contract means one thing to one and another thing to the other, and they contract subject to that assumption or under that ignorance. There is a mistake on the part of both the parties. Such a mistake may relate to the existence of the subject matter, its identity, quantity or quality.

**Mistake as to existence of the subject matter:** Where both parties believe the subject matter of the contract to be in existence but in fact, it is not in existence at the time of making the contract, there is mistake and the contract is void. *Couturier v. Hastie*.<sup>18</sup>

**Mistake as to identity of the subject matter:** Where the parties are not in agreement to the identity of the subject matter, i.e., one means one thing and the other means another thing, the contract is void; there is no consensus ad idem. *Raffles v. Wichelhaus*<sup>19</sup>.

**Mistake as to quantity of the subject matter:** There may be a mistake as to quantity or extent of the subject matter which will render the contract void even if the mistake was caused by the negligence of a third-party. *Henkel v. Pape*<sup>20</sup>.

**Mistake as to quality of the subject-matter or promise:** Mistake as to quality raises difficult questions. If the mistake is on the part of both the parties the contract is void. But if the mistake is only on the part of one party difficulty arises.

#### **Unilateral Mistake as to Nature of the Contract**

The general rule is that a person who signs an instrument is bound by its terms even if he has not read it. But a person who signs a document under a fundamental mistake as to its nature (not merely as to its contents) may have it avoided provided the mistake was due to either (a) the blindness, illiteracy, or senility of the person signing, or (b) a trick or fraudulent misrepresentation as to the nature of the document. In *Foster v. Mackinnon*<sup>21</sup>.

#### **Unilateral Mistake as to the Identity of the Person Contracted With:**

It is a rule of law that if a person intends to contract with A, B cannot give himself any right under it. Hence, when a contract is made in which personalities of the contracting parties are or may be of importance, no other person can interpose and adopt the contract. For example, where M intends to contract only with A but enters into contract with B believing him to be A, the contract is vitiated by mistake as there is no consensus ad idem.

Mistake as to the identity of the person with whom the contract is made will operate to nullify the contract only if:

- (i) the identity is for material importance to the contracts; and

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<sup>18</sup> (1856) 5 HL Cas 673

<sup>19</sup> 2 H. & C. 906, 159 Eng. Rep. 373 (Ex. 1864)

<sup>20</sup> (1870) 6 LR Exch 7 67

<sup>21</sup> (1869) LR 4 CP 704.

(ii) the mistake is known to the other person, i.e., he knows that it is not intended that he should become a party to the contract. *Cundy v. Lindsay*.<sup>22</sup>

**c. Voidable contract:**

According to Section 2(i) of the Indian Contract Act, 1872, “an agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others”, is a voidable contract. In other words, “A voidable contract is one which can be set aside or repudiated or avoided at the option of the aggrieved party.” Until the contract is set aside or repudiated by the aggrieved party, it remains a valid contract. For example, a contract is treated as voidable at the option of the party whose consent has been obtained by coercion or undue influence or fraud or misrepresentation.

Example: X threatens to kill Y if he does not sell his house for Rs 1,00,000 to X. Y sells his house to X and receives payment. Here, Y’s consent has been obtained by coercion and hence this contract is voidable at the option of Y, the aggrieved party. If Y decides to avoid the contract, he will have to return Rs 1,00,000 which he had received from X. If Y does not exercise his option to repudiate the contract within a reasonable time and in the meantime, Z purchases that house from X for Rs 1,00,000 in good faith, Y cannot repudiate the contract.

A voidable contract is one which a party can put to an end. He can exercise his option, if his consent was not free. The contract will, however be binding, if he does not exercise his option to avoid it within a reasonable time. The consent of a party is not free and so he is entitled to avoid the contract, if he has given misrepresentation, fraud, coercion or undue influence.

**d. Unenforceable Contract:**

An unenforceable contract is a valid contract but it cannot be enforced in the court of law if one of the parties refuses to carry out its terms. Items received under the contract cannot generally be reclaimed. A contract which satisfies all the requirements of the contract but has some technical defects is called an unenforceable contract. A contract is said to have a technical defect when it does not fulfil the legal formalities required by some other act. When such legal formalities are complied with later on, the act becomes enforceable.

**e. Illegal Contract:** An illegal agreement is one which is forbidden by law or the object of which is unlawful. All illegal agreements are void *ab initio*. It cannot be enforced by law or any court. Not only that any associated or collateral transaction to an illegal agreement is also void. No action is allowed on an illegal agreement. No action can be taken for the recovery of the money paid under illegal agreement or for the breach of the illegal agreement. The parties to an illegal agreement cannot get help from the court. No suit can be filled or any action taken in respect of the illegal agreement. **Example:** X agrees to pay Y Rs 1,00,000 if Y kills Z. Y kills Z and claims Rs 1,00,000. Y cannot recover from X because the agreement between X and Y is illegal as its object is unlawful.

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<sup>22</sup> (1878) 3 App Cas 459

### **(3) On the Basis Execution of Contract:**

**a. Executed contract:** An executed contract is one in which nothing remains to be done by either party. The phrase is, to a certain extent, a misnomer because the completion of performances by the parties signifies that a contract no longer exists.

In an executed contract both the parties have performed their promises under a contract. It is a contract where, under the terms of contract, nothing remains to be done by the parties.

*Example:* A sells his car to B for 5 lakh. A delivered the car and B paid the price. This is an executed contract.

**b. Executory contract:** An executory contract is one in which some future act or obligation remains to be performed according to its terms. In an executory contract both the parties are yet to perform their promises. In other words, it is a contract where parties have to still perform their obligation in the future.

*Example:* A sells his car to B for 5 lakh. If A is still to deliver the car and B is yet to pay the price, it is an executory contract.

c. Contracts may be Partly executed and partly executor also. In a partly executed and partly executory contract, one party has already performed his promise and the other party has yet to execute his promise.

*Example:* A sells his car to B. Though A has delivered the car, B has yet to pay the price. For A it is an executed contract, whereas it is an executory contract on the part of B since the price has yet to be paid.

### **(4) On the Basis Liability of Contract:**

#### **Bilateral and Unilateral Contracts**

##### **a. Bilateral contract**

A bilateral contract is one in which both the parties have to perform their respective promises or obligations to do or forbear. In bilateral contract a promise by one party is exchanged for a promise by the other. The exchange of promises is enough to render them both enforceable. Thus in a contract for the sale of goods, the buyer promises to pay the price and the seller promises to deliver the goods.

The exchange of mutual, reciprocal promises between entities that entails the performance of an act, or forbearance from the performance of an act, with respect to each party, is a Bilateral Contract. A bilateral contract is sometimes called a two-sided contract because of the two promises that constitute it. The promise that one party makes constitutes sufficient consideration for the promise made by the other.

##### **b. Unilateral Contract**

A unilateral contract is one sided contract in which one party has to perform his promise or obligation to do or forbear. A unilateral contract is one where one party promises to do something in return for an act of the other party, as opposed to a promise, e.g. where X promises a reward to anyone who will find his lost wallet. The essence of the unilateral contract is that only one party, X, is bound to do anything. No one is bound to search for

the lost wallet, but if Y, having seen the offer, recovers the wallet and returns it, he/she is entitled to the reward.<sup>23</sup>

A unilateral contract is also known as a one-sided contract. It is a contract where only one party has to perform his promise. In such a contract, the promise on one side is exchanged for an act on the other side. After the formation of a unilateral contract, only one party remains liable to perform his obligation because the other party has already performed his obligation.

**Example:** A promises to pay Rs.1000 to anyone who finds his lost car. B finds the car and returns it to A. From the time B found the car, the contract came into existence. Now A has to perform his Promise, i.e., the payment of Rs.1000.

### 5. Other Contracts:

- i. **Contracts by Deed:** A deed is a formal legal document signed, witnessed and delivered to effect a conveyance or transfer of property or to create a legal obligation or contract.
- ii. **Simple contract:** Contracts which are not through deeds are known as simple contracts. They are informal contracts and may be made in any way - in writing, orally or they may be implied from conduct.
- iii. **Unconscionable Contracts:** An Unconscionable contract is one that is unjust or unduly one-sided in favor of the party who has the superior bargaining power. The adjective *unconscionable* implies an affront to fairness and decency. An unconscionable contract is one that no mentally competent person would accept and that no fair and honest person would enter into. Courts find that unconscionable contracts usually result from the exploitation of consumers who are poorly educated, impoverished, and unable to shop around for the best price available in the competitive marketplace. It is a contract which is actually valid but cannot be enforced because of some technical defect (such not in writing, under stamped). Such contracts can be enforced if the technical defect involved is removed. Example: Oral agreement for arbitration is unenforceable because it requires that it should be in writing. Oral agreement is unenforceable.
- iv. **Adhesion Contracts:** Adhesion contracts are those that are drafted by the party who has the greater bargaining advantage, providing the weaker party with only the opportunity to adhere to (i.e., to accept) the contract or to reject it. (These types of contract are often described by the saying "Take it or leave it.") They are frequently employed because most businesses could not transact business if it were necessary to negotiate all of the terms of every contract. Not all adhesion contracts are unconscionable, as the terms of such contracts do not necessarily exploit the party who assents to the contract. Courts, however, often refuse to enforce contracts of adhesion on the grounds that a true meeting of the minds never existed, or that there was no acceptance of the offer because the purchaser actually had no choice in the bargain.



### **Difference between Fraud and Misrepresentation**

1. Fraud implies an intent to deceive, which is lacking if it is innocent misrepresentation.
2. In case of misrepresentation and fraudulent silence, the defendant can take a good plea that the plaintiff had the means of discovering the truth with ordinary diligence. This argument is not available if there is fraud (Section 19-exception).
3. Misrepresentation may lead to avoidance of contract. In fraud, the plaintiff can claim damages as well.
4. If there is fraud, it may lead to prosecution for an offence of cheating under the Indian Penal Code.

Coercion as defined in Section 15 means "the committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement". Simply stated, the doing of any act forbidden by the Indian Penal Code is coercion even though such an act is done in a place where the Indian Penal Code is not in force. If A at the point of a pistol asks B to execute a promissory note in his favour and B to save his life does so he can avoid this agreement as his consent was not free. Even a threat to third-party, e.g., where A compels B to sign a document threatening to harm C, in case B does not sign would also amount to coercion.

#### **v. Contract with Undue Influence:**

Under Section 16 of the Indian Contract Act, 1872, a contract is said to be produced by undue influence "where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other"

The elements of undue influence are (i) a dominant position, and (ii) the use of it to obtain an unfair advantage. The words "unfair advantage" do not limit the jurisdiction to cases where the transaction would be obviously unfair as between persons dealing on an equal footing. In the words of Lord Kingston, "the principle applies to every case where influence is acquired and abused where confidence is reposed and betrayed."

#### *Illustration*

A, having advanced money to his son B, during his minority, upon B's coming of age obtains, by misuse of parental influence a bond upon B for a greater amount than the sum due in respect of the advance. A employs undue influence.

A, a man enfeebled by disease or age is induced by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

A parent stands in a fiduciary relation towards his child and any transaction between them by which any benefit is procured by the parent to himself or to a third party, at the expense of the child will be viewed with jealousy by Courts of Equity and the burden will be on the parent or third-party claiming the benefit of showing that the child in entering into the transaction had independent advice, that he thoroughly understood the nature of transaction



and that he was removed from all undue influence when the gift was made (Marim Bibi v. Cassim Ebrahim (1939) 184 I.C. 171 (1939) A.I.A. 278).

Where there is a presumption of undue influence, the presumption can be rebutted by showing that

- (i) full disclosure of all material facts was made,
- (ii) the consideration was adequate, and
- (iii) *the weaker party was in receipt of independent legal advice.*

### **Void and Illegal Contracts:**

A void contract is one which is destitute of legal effects altogether. An illegal contract too has no legal effect as between the immediate parties to the contract, but has the further effect of tainting the collateral contracts also with illegality. For instance A borrows from B to Rs. 1,000 for lending to C a minor. The contract between A and C is void, but B can nevertheless recover the money from A. On the other hand, if A had borrowed Rs. 1,000 from B to buy a pistol to shoot C, the question whether B can recover the money hinges on whether B was aware of the purpose for which money was borrowed. If B had knowledge of the illegal purpose, he cannot recover. Therefore, it may be said that all illegal agreements are void but all void agreements are not necessarily illegal.

#### **Consequence of Illegal Agreements:**

- (i) an illegal agreement is entirely void;
- (ii) no action can be brought by a party to an illegal agreement. The maxim is '*Ex turpi cause non-oritur actio*' from an evil cause, no action arises;
- (iii) money paid or property transferred under an illegal agreement cannot be recovered. The maxim is *in parti delicto potior est conditio defendetis* - In cases of equal guilt, more powerful is the condition of the defendant;
- (iv) where an agreement consist of two parts, one part legal and other illegal, and the legal parts is separable from the illegal one, then the Court will enforce the legal one. If the legal and the illegal parts cannot be separated the whole agreement is illegal; and
- (v) any agreement which is collateral to an illegal agreement is also tainted with illegality and is treated as being illegal, event though it ,would have been lawful by itself (*Firm Pratapchand v. Firm Kotri Re*<sup>24</sup>).

### **DISCHARGE OR TERMINATION OF CONTRACTS**

- a. A contract is said to be discharged or terminated when the rights and obligations arising out of a contract are extinguished.
- b. Contracts may be discharged or terminated by any of the following modes:
- c. performance, Le., by fulfillment of the duties undertaken by parties or, by tender.
- d. mutual consent or agreement.
- e. lapse of time;
- f. operation of law;
- g. impossibility of performance; and
- h. breach of contract.

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<sup>24</sup> AIR (1975) S.C. 1223).

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## 9.5 REMEDIES FOR BREACH OF CONTRACT:

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Where a contract is broken, the injured party has several courses of action open to/ him. The appropriate remedy in any case will depend upon the subject-matter of the contract and the nature of the breach.

### (i) Remedies for Breach of Contract

In case of breach of contract, the injured party may:

- (a) Rescind the contract and refuse further performance of the contract;
- (b) Sue for damages;
- (c) Sue for specific performance;
- (d) Sue for an injunction to restrain the breach of a negative term; and
- (e) Sue on *quantum meruit*.

### (ii) Damages for Breach of Contract:

Under Section 73 of the Indian Contract Act, when a contract has been broken, a party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage, caused to him thereby, *which naturally arose in the usual course of things from such breach or which the parties knew, when they made the contract to be likely to result from the breach of it*. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

*Liquidated and Unliquidated damages:* Where the contracting parties agree in advance the amount payable in the event of breach, the sum payable is called *liquidated damages*.

Where the amount of compensation claimed for a breach of contract is left to be assessed by the Court, damages claimed are called *unliquidated damages*.

#### ***Unliquidated Damages***

Those are of the following kinds:

- (a) General or ordinary damages, (b) Special damages (c) Exemplary or punitive damages, and (d) Nominal damages

#### ***Ordinary Damages***

These are restricted to pecuniary compensation to put the injured party in the position he would have been had the contract been performed. It is the estimated amount of loss actually incurred. Thus, it applies only to the proximate consequences of the breach of the contract and the remote consequences are not generally regarded. For example, in a contract for the sale of goods, the damages payable would be the difference between the contract price and the price at which the goods are available on the date of the breach.

#### ***Special Damages***

Special damages are those resulting from a breach of contract under some peculiar circumstances. If at the time of entering into the contract the party has notice of special circumstances which makes special loss the likely result of the breach in the ordinary course of things, then upon his-breaking the contract and the special loss following this breach, he will be required to make good the special loss. For example, A delivered goods to the Railway Administration to be carried to a place where an exhibition was being held and told

the goods clerk that if the goods did not reach the destination on the stipulated date he would suffer a special loss. The goods reached late. He was entitled to claim special damages

### ***Exemplary Damages***

These damages are awarded to punish the defendant and are not, as a rule, granted in case of breach of contract. In two cases, however, the court may award such damages, viz.,

- (i) breach of promise to marry; and
- (ii) wrongful dishonour of a customer's cheque by the banker.

In a breach of promise to marry, the amount of the damages will depend upon the extent of injury to the party's feelings. In the banker's case, the smaller the amount of the cheque dishonoured, larger will be damages as the credit of the customer would be injured in a far greater measure, if a cheque for a small amount is wrongfully dishonoured.

### ***Nominal Damages***

Nominal damages consist of a small token award, e.g., a rupee of even 25 paise, where there has been an infringement of contractual rights, but no actual loss has been suffered. These damages are awarded to establish the right to decree for breach of contract.

### ***Liquidated Damages and Penalty***

Where the contracting parties fix at the time of contract the amount of damages that would be payable in case of breach, in English law, the question may arise whether the term amounts to "liquidated damages" or a "penalty"? The Courts in England usually give effect to liquidated damages, but they always relieve against penalty.

The test of the two is that where the amount fixed is a genuine pre-estimate of the loss in case of breach; it is liquidated damages and will be allowed. If the amount fixed is without any regard to probable loss, but is intended to frighten the party and to prevent him from committing breach, it is a penalty and will not be allowed.

In Indian law, there is no such difference between liquidated damages and penalty-Section 74 provides for "reasonable compensation" upto the stipulated amount whether it is by way of liquidated damages or penalty. For example, A borrows Rs. 500 from B and promises to pay Rs. 1,000 if he fails to repay Rs. 500 on the stipulated date, On A's failure to repay on the given date, B is entitled to recover from A such compensation, not exceeding Rs. 1,000 as the Court may consider reasonable. (*Union of India v. Raman Iron Foundry*<sup>25</sup>)

### **(iii) Specific Performance**

It means the actual carrying out by the parties of their contract, and in proper cases the Court will insist upon the parties carrying out this agreement. Where a party fails to perform the contract, the Court may, at its discretion, order the defendant to carry out his undertaking according to the terms of the contract. A decree for specific performance may be granted in addition to or instead of damages.

Specific performance is usually granted in contracts connected with land, e.g., purchase of a particular plot or house, or to take debentures in a company. In case of a sale of goods, it will only be granted if the goods are unique and cannot be purchased in the market, e.g., a particular race horse, or one of special value to the party suing by reason of personal or

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<sup>25</sup> AIR 1974 SC 1265).

family association, e.g., an heirloom.

Specific performance will not be ordered:

- (a) where monetary compensation is an adequate remedy;
- (b) where the Court cannot supervise the execution of the contract, e.g., a building contract;
- (c) where the contract is for personal service; and
- (d) where one of the parties is a minor.

#### **(iv) Injunction**

An injunction, is an order of a Court restraining a person from doing a particular act. It is a mode of securing the specific performance of a *negative term* of the contract, (Le., where he is doing something which he promises not to do), the Court may in its discretion issue an order to the defendant restraining him from doing what he promised not to do. Injunction may be prohibitory or mandatory. In prohibitory it is the order of the Court restraining the commission of a wrongful act whereas in mandatory, it restrains continuance of wrongful commission.

In *Lumley v. Wagner*<sup>26</sup> W agreed to sing at L's theatre and nowhere else W, in breach of contract with L entered into a contract to sing for Z. *Held*, although W could not be compelled to sing at L's theatre, yet she could be restrained by injunction from singing for Z.

#### **9.6 Summary:**

Human being enters into several types of contract daily, willingly or unwillingly. Contracts are nothing but agreements enforceable at law. There are various kinds of contracts. Disputes of contracts are decided by the provisions of the Indian Contract Act, 1872. An agreement occurs when two minds meet upon a common purpose, i.e. they mean the same thing in the same sense at the same time. This meeting of mind is done through offer and acceptance. Offer must be definite and effective. Acceptance to the offer must be absolute and unqualified. A contract is an agreement enforceable by law. All contracts are agreements but all agreements are not contract. It is essential that agreement must not be declared to be void.

For every contract some other terms and conditions are to be fulfilled. Parties entering into contract should be of sound mind or competent or capable enough to understand it and he should not have any disqualifications at the time of entering into the contract. Some persons are disqualified from entering into the normal contract. Contract made with child is void ab-initio. There is some exception to this also. Similarly contract entered by fraud, misrepresentation or undue influence are dealt in a different manner. They are contracts of different types.

Competent party should give their free consent and consideration and object of that contract should be lawful. Contract made by fraud, mistake, misrepresentation, undue influence or coercion are not consider normal contract consent in these types of contracts is not free. In these contracts some are void ab-initio and some are voidable. In voidable contracts if one of the parties wants to move further in that contract, it can do so.

Consideration is also an important part of contract. Without consideration agreement

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<sup>26</sup> (1852) 90 R.R. 125.

will not become contract. Consideration means that one party should do something or abstain from doing something in return of the promise. It may be some benefit or money confers or some detriment suffers of another. Consideration may be present, past or future also. Act done at the desire of third party is not consideration. Consideration must have some value in eye of law may not be adequate.

In case of breach of contract damages are decided as per the provisions of the Contract Act. Special Damages or Exemplary Damages are given depending special circumstance of the case. Specific Performance is usually granted with matter related with land. Injunction may also be obtained when required.

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## 9.6 Key Words:

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**Agreement** : Section 2(e) of the Act defines Agreement as "every promise and every set of promises, forming the consideration for each other."

**Promise** : Section 2(b) of the Act defines Promise as "When the person, to who the proposal is made, signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a Promise."

**Contract** : Section 2(h) of the Act defines Contract as "an agreement enforceable by law". There are two essentials of this act, Agreement and Enforceability at law.

Hence, it is said that, **all contract are agreement, but all agreement are not contract.**

Section 2(g) of the Act further states that 'an agreement not enforceable by law is said to be void'.

**Void contract:** Section 2(g) of the Act defines a void contract as a contract which ceases to be enforceable by law.

A contract when originally entered into may be valid and binding on the parties. It may subsequently become void. – There are many judgments which have stated that where any crime has been converted into a "Source of Profit" or if any act to be done under any contract is opposed to "Public Policy" under any contract—than that contract itself cannot be enforced under the law.

**Voidable contract:** Section 2(i) of the act defines the voidable agreement as an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of other or others, is a voidable contract.

If the essential element of free consent is missing in a contract, the law confers right on the aggrieved party either to reject the contract or to accept it. However, the contract continues to be good and enforceable unless it is repudiated by the aggrieved party.

**Quasi contract:** Quasi Contract is created by law. Thus, quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. It is legal obligation which is imposed on a party who is required to perform it. A quasi contract is based on the principle that a person shall not be allowed to enrich himself at the expense of another.

**Proposal/Offer:** Proposal is defined under section 2(a) of the Indian contract Act, 1872 as "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal/offer".

**Acceptance** : Section 2(b) of the Act defines Acceptance as "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."

**Consideration:** Section 2(d) of the Act defines consideration as When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or

abstains from doing, or promises to do or to abstain from doing, something, such Act or abstinence or promise is called a consideration for the promise.

**Free Consent:** Section 14 of the Act defines Free consent as “Consent is free when it is not caused by:

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21 and 22”.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

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## 9.7 Self Assessment Tests:

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1. **What is a contract?**
2. [What are the main elements of a contract?](#)
3. **Is it necessary to put a contract in writing?**
4. **What is a “breach of contract”?**
5. Explain the meaning of past, present and future consideration. Give examples of each of them. Examine the validity of these types of consideration on the parity of Indian Contract Act, 1872.
6. Explain the legal position of agreements with minors. While writing your essay you are required to analyze the statutory provisions together with leading cases decided by courts in the context.
7. What do you understand by breach of contract?
8. What do you understand by discharge of contract?

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## 9.8 Suggested Readings:

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1. Indian Contract Act, 1872(Student Edition), Mulla, Jain book agency, Delhi
2. Indian Contract Act, 1872, Bangia R K, Jain book agency, Delhi
3. Contract Law, Avtar Singh, Jain book agency, Delhi
4. Law of Contract, Bhandari,MC, Jain book agency, Delhi
5. Mercantile Law, Kapoor,ND, New Books Publication, Bangalore
6. [The Indian CONTRACT Act, 1872 \(Latest Bare Act\)](#)

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## Unit 10 : License and Permits Required to Operate Hotels Restaurant

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### Structure

- 10.0 Objective
- 10.1 Introduction
- 10.2 Types of Hotels
  - 10.2.1 Hotel Bar Agencies
  - 10.2.2 Restaurant Full Services
  - 10.2.3 Restaurants Limited Service
  - 10.2.4 On Premise Banquet and Catering
  - 10.2.5 Airport Lounges:
  - 10.2.6 Private Clubs:
  - 10.2.7 On-Premise Beer Retailers:
- 10.3 Permits
- 10.4 Manufacturing Licenses
- 10.5 Distribution Licenses
- 10.6 Licenses for Alcoholic Beverages
- 10.7 Temporary License for service in parties/functions etc
- 10.8 Pollution Licenses
  - 10.8.1 Competent Authorities
  - 10.8.2 Sources of Pollution
- 10.9 Summary
- 10.10 Review Questions
- 10.11 Reference and Suggested Readings

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### 10.0 Objective

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In the unit the learner would be able to :-

- Identify the various licenses needed for running the hotel/restaurant
- List various types of licenses
- Understand the various bylaws
- Elaborate on the importance of pollution control

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### 10.1. Introduction

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To promote tourism, Rajasthan Government has removed restriction for Restaurant Bars in accordance with the new Excise Policy 2004-05. The good quality Restaurant would be able to sell Beer, Wine and Ready to Drink Liquor.

Minimum Requirement for Standard Restaurant Bar would be as under:

1. Minimum Annual Turnover of Restaurant Bar should be Rs 10 Lac Taxable & Turnover Income Rs 5 Lac
2. Restaurant Bar should have A.C. Facility



3. Their should be a minimum space of 800 sq. feet and should have capacity of around 40 people to sit
4. Their should be Proper Toilet Facility available for Man and Woman
5. Restaurant Bar will sell only Beer
6. Restaurant Bar will not sell Beer/Wine/Ready to Drink to under 18 people

In the unit overview of various licenses needed in state of Rajasthan and NCR, it is important that the trainer/counsellor provides latest information to the student.

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## **10.2. Types of Hotels**

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### **10.2.1. Hotel Bar Agencies:**

Hotel bar agencies are issued to individuals and/or companies on a contract basis. These are liquor stores that offer a modest selection of products. They may be located in hotels, resorts and in the cities and communities of the state. The law permits one package agency for each 18,000 persons of the state population. Products are sold for consumption off of the agency premises and purchasers must be twenty-one years of age or older. Hours of operation vary to accommodate the specific needs of the area or location, but the general span of hours is from noon to 11:00 p.m. Hotel bar agencies are closed on state and federal holidays, and on days of state and national elections until after the polls are closed. Hotel bar agencies may also be closed until after the polls are closed on the days of some local elections if closure is required by local ordinance and local authority notifies the department at least 30 days in advance of the local election.

### **10.2.2 Restaurants Full Service:**

Restaurant liquor licenses are issued for the storage, sale, service, and consumption of alcoholic beverages on the premises of a restaurant that is engaged primarily in serving meals to the general public. Restaurant licenses run from November 1 to October 31. The total number of licenses allowed by law is one per 5000 people in the state.

Patrons may only purchase alcoholic beverages in conjunction with an order for food that is prepared, sold and served at the restaurant. Each restaurant must maintain at least 70% of its total restaurant business from the sale of food.

Licensed restaurants may sell liquor from 12 noon to midnight. The hours of beer sales are from 10 a.m. to 1 a.m. On a regular general, regular primary, or statewide special election day, liquor may not be sold until after the polls are closed. On the day of local municipal, special district, or school elections, restaurants may not sell liquor only if required by local ordinance. There are no statewide restrictions on election days for beer sales.

### **10.2.3 Restaurants Limited Service:**

Limited Restaurant liquor licenses are issued for the storage, sale, service, and consumption of wine, heavy beer, and beer on the premises of a restaurant that is engaged primarily in serving meals to the general public. Restaurant licenses run from November 1 to October 31. The total number of licenses allowed by law is one per 13,000 people in the state.

Patrons may only purchase alcoholic beverages in conjunction with an order for food that is prepared, sold and served at the restaurant. Each restaurant must maintain at least 70% of its total restaurant business from the sale of food.

Limited restaurant licensees may sell wine, and heavy beer from 12 noon to midnight. The hours of beer sales are from 10 a.m. to 1 a.m. On a regular general, regular primary, or statewide special election day, wine and heavy beer may not be sold until after the polls are closed. On the day of local municipal, special district, or school elections, restaurants may not sell liquor only if required by local ordinance. There are no statewide restrictions on election days for beer sales.

#### **10.2.4 On Premise Banquet and Catering:**

On-premise banquet license allows the storage, sale, service, and consumption of liquor, wine, heavy beer, and beer for contracted banquet activities on the premises of a hotel, resort facility, sports center, or convention center. It also allows for room service in hotels and resorts. Alcoholic beverages may be sold on any day from 10 a.m. until 1 a.m. The license year is November 1 to October 31. The total number of licenses allowed by law is one per 30,000 people in the state.

#### **10.2.5 Airport Lounges:**

Airport lounge liquor license is issued to a person for the storage, sale, service, and consumption of alcoholic beverages on the premises of a public airport lounge. Airport lounges may be established at international airports with Customs offices. The total number of airport lounge liquor licenses may not exceed one lounge per terminal plus one per concourse located beyond the security point. The license year is November 1 to October 31.

Alcoholic beverages may be sold from 8:00 a.m. until 12 midnight. On election days (regular general, regular primary, or statewide special), alcoholic beverages may not be sold until after the polls are closed. The liquor storage area must remain locked at times when liquor sales are not permitted.

#### **10.2.6 Private Clubs:**

There are four classes of private clubs: Class A includes equity clubs such as country clubs; Class B includes mutual benefit associations that are organized under a lodge system such as fraternal or patriotic clubs; Class C includes qualified dining clubs that maintain at least 50% of their club business from the sale of food and have adequate culinary facilities to serve full meals; and Class D includes any other club that does not qualify as a class A, B, or C club, such as a social drinking club that does less than 50% of its business from the sale of food. Licenses run from July 1 to June 30. The storage, sale, service, and consumption of alcoholic beverages are allowed on the premises of a licensed private club. The total number of licenses allowed by law is one per 7,000 people in the state.

Qualifications for membership are set in the club's bylaws or house rules. A club, in its discretion, may immediately admit an applicant and give him/her temporary membership privileges until the governing body of the club can meet to approve the membership. The applicant must pay an application fee which cannot be less than Rs. 400 and the governing body must act on the application within 31 days. If the governing body approves the applicant, the Rs. 400 application fee may be credited towards the

membership dues. The minimum dues required by law are Rs. 100 per month or Rs. 1200 per year. Members may host an unlimited number of guests based on a pre-existing business or personal relationship. Guests may use club facilities only when previously authorized and accompanied by the hosting member.

Non members, at the discretion of the club, may purchase a visitor card allows temporary use of club facilities for up to a three week period for urn fee of Rs 400. A visitor card holder (temporary member) may host a maximum of 7 guests who are known to the visitor based on a pre-existing business or personal relationship. Guests of visitors may use club facilities only when previously authorized and accompanied by the hosting member.

Liquor, wine, heavy beer and beer may be sold from 10:00 a.m. until 1:00 am. On a regular general, regular primary, or statewide special election liquor, wine and heavy beer may not be sold until after the polls are closed. On the day of local municipal, special district, or school elections, private clubs may not sell liquor only if required by local ordinance. There are no statewide restrictions on election days for beer sales.

#### **10.2.7 On-Premise Beer Retailers:**

State on premise beer retailer license is required for any business establishment that sells beer (not liquor) to public patrons for consumption on the premises. These establishments include restaurants, bowling center or golf course food ac beverage facilities, taverns, etc. "Taverns" are licensed as a separate or on-premise beer retailers. "Taverns" are defined as including beer bars , parlors, lounges, cabarets, and night clubs where the revenue from the sale of beer exceeds the revenue from the sale of food, although food need not be sold in such establishments. Minors may not be employed by or be on the premises of any "tavern" as defined.

A separate state beer license is not required for beer retailers that have a state restaurant, private club, or airport lounge liquor license. Only one state at-premise beer license and/or tavern license is required for each building or facility owned or leased by the same applicant.

On premises beer licenses that are not taverns are issued by the commission in numbers it considers proper (no quota). The tavern license quota is one per 22500 people in the state. Before being licensed by the commission, beer retailers must first obtain a license or other written consent issued by the local authority to sell beer at that location. The state beer license is required in addition to any issued by local governments.

The on-premise beer retailer must sell beer that has been lawfully purchased from a state licensed brewer or beer wholesaler who is authorized to sell beer in the geographical area in which the beer retailer's business is located.

Hours of beer sales for on-premise beer retailers are governed by state law, not local ordinance. The hours of sale are from 10:00 a.m. until 1:00 a.m. Liquor may not be stored or sold on the premises. Days of sale are governed by local ordinance.

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## 10.3 PERMITS

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### Special Use:

Special use permits are issued for the purchase, sale, storage, use, consumption, or manufacture of alcoholic products in limited types and quantities, and for limited purposes. Permits may be granted as follows:

1. **Religious wine permits to religious organizations:** Application Fee: none One time special use Fee: 1,000, Bond: none industrial or manufacturing use permits to persons or organizations involved in industrial or manufacturing pursuits: Application Fee: 5,000, One time special use Fee: 20,000, Bond: 10,000 scientific or educational use permits to persons or organizations involved in scientific or educational pursuits: Application Fee: none, One time special use Fee: 1,000, Bond: 10,000, Bond required for wine judging seminars only, health care facility use permits to hospitals or health care facilities: Application Fee: none One time special use Fee: 1,000, Bond: none, public service permits to operators of airlines, railroads or other public conveyances. The permit year runs from January 1 to December 31. Application Fee: 500, Annual Renewal Fee: 300, trip Bond: 10,000

2. **Single Event:** Single event permits are available for a group that wants to sell liquor, wine, beer or heavy beer (over 3.2%) at a temporary (up to five-day) event. These are available to a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association or to a recognized subordinate lodge, chapter or other local unit thereof that is conducting a civic or community enterprise or convention. The organization must have been in existence as a bona fide organization for at least one year prior to the date of application. Not more than four permits may be issued to the same organization in the same calendar year. The permit allows for cash bars and the sale of alcoholic beverages to the general public, or to the organization's own invited guests for the duration of the event. Application Fee: 1000, Annual Renewal Fee: none, Bond: 10,000.

3. **Temporary Special Event Beer Permit:** Temporary event permits for the sale of beer (3.2%) are issued by the Alcoholic Beverage Control Commission for on-premise consumption at a temporary event that does not last longer than 30 days. Permits are issued by the commission once a month. Application must be made by the 10th of each month. This permit is in addition to any that are required by a city, town, or region in which the event is held. Application Fee: 750, Annual Renewal Fee: none, Bond: 5000.

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## 10.4 Manufacturing Licenses

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### Winery

Winery license is required to manufacture, store, transport, import or export wines. Winery license holders may sell wine at wholesale to the department and to out-of-state-customers. The license year runs from January 1 to December 31. Bond: 1,00,000.

**Distillery**

Distillery license is required to manufacture, store, transport, import or export Distillery license holders may sell liquor to the department and to out-of state customers. The license year runs from January 1 to December 31. Bond 1,00,000

**Brewery**

A brewery license is required to manufacture, brew, store, transport, or export heavy beer. Brewery license holders may; 1) sell heavy beer to the military installations, and to out of state customers; 2) sell beer to ..holesalers; and 3) in the case of small brewers (less than 60,000 barrels/ inee- directly to licensed retailers. Bond: 1,00,000

**10.4.1 LOCAL INDUSTRY REPRESENTATIVE**

Industry representative means anyone who is compensated by any means for representing or selling the distilled spirits, wine or heavy beer of a manufacturer, supplier, or importer. A manufacturer, supplier, or importer is not required to use a local industry representative to represent its products in Utah. However, Utah residents who are employed as local industry representative must be licensed by the state.

Representative may assist the department in ordering, shipping, and merchandise. They may provide new product notification, listing and information, price quotations, product sales analysis, shelf management, and educational seminars, and may, for the purpose of acquiring new listings, solicit orders from the department and submit price lists and samples of their products to the department. Representatives may not sell or ship liquor, wine, or heavy beer to anyone within the state other than the department and military installations. Representatives may call on licensed retailers, permittees, and package agents, and provide them with informational material concerning the products they carry.

The license year runs from January 1 to December 31.

Fees: none, Bond: none

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**10.5 Distribution Licenses**

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**Liquor Warehouse**

Liquor warehousing licenses are issued for the warehousing, distribution, and transportation of liquor to wholesale and retail customers. Liquor warehouse licensees may transport liquor in full case lots, via sealed conveyances, to the Utah Department of Alcoholic Beverage Control, military bases, and out-of-state licensed wholesalers or retailers. The license year runs from January 1 to December 31.

Fees: none, Bond: 1,00,000

**Beer Wholesaler**

A beer wholesaler license is required to purchase and import beer into Utah; to store beer in approved warehouses; and to sell and distribute beer directly to licensed beer retailers and holders of single event permits and temporary beer permits. The license year runs from January 1 to December 31.

Fees: none, Bond: 1,00,000

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## 10.6 License For Alcohol Beverages

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### Grant of L-1 License:

Every year Government formulates the Excise Policy and in pursuance to this policy all the liquor Licences (L-1) are granted for the wholesale vending to a Company or a society or a partnership firm or proprietorship firm provided the applicant owns distillery / breweries / manufacturing units/bottling plants.

The applications for the grant of Licence are invited through the public notice published in some of the leading newspapers. An application for the grant of L-1 Licence is required to be made in response to the public notice in the prescribed format together with its Appendices ('B' and 'C') to the Collector of Excise. The prime job of L-1 Licensee is to supply liquor to the holders of L-2, L-3, L-4, L-5, L-19 and L-19 A, L-52, L-53 licences in the state.

The aspirants for the grant of L-1 Licences have to comply with the procedure as laid down in the terms and conditions for the grant of L-1 Licences which are made available in the Office during the notice period. The applicant has to submit the following documents alongwith the application on the prescribed format :

1. Solvency Certificate from SDM (except in case of a Public Ltd. Co.)
2. Income Tax Clearance Certificate
3. No Dues Certificate from Collector (Excise)
4. No Dues Certificate from Sales Tax Officer
5. Declaration of distillery on affidavit regarding sale and minimum ex-distillery prices and distance of distillery from capital.
6. Chartered Accountant's Certificate for sale and minimum ex-distillery prices.
7. Certificate from Excise Authority concerned regarding sale figure.
8. Power of Attorney
9. Registered partnership deed/memorandum and Article of association / (Distillery/Winery/Bottling Unit/Brewery).
10. Duly audited annual account and balance sheet of distillery.
11. Attested copy of the licence for establishment of distillery/winery/bottling unit/brewery.
12. Attested photocopies of export passes/EVCs verifying the sale figure of the whisky and rum brands for which distillery has applied.
13. Trade Mark Certificate.
14. Usership agreement under Trade & Merchandise Marks Act, 1958.
15. A certificate from a government authorized laboratory or other reputed private institutions regarding quality of brand.
16. An affidavit stating that there is nothing adverse or against the applicant in view of the provision of rule 7 of License and Sale Rule, 1976.
17. Documentary evidence to prove that the product is manufactured from natural alcohol (Double distilled) Extra natural alcohol.

The IMFL/beer brands proposed to be sold by applicant on L-1 Licence should be owned by the distillery and in respect of IMFL brands excluding wine, the applicant should be in possession of trade mark certificate in respect of these brands.



In addition, for approval of whisky and rum brands, such brands should have sold a prescribed minimum quantity in All India Market. For the year 2008-2009 the minimum sale criteria as per maximum retail price for each quart bottle are given below:-

#### WHISKY BRANDS

S.NO.	RETAIL PRICE SEGMENT	MINIMUM SALE REQUIRED
1.	Upto Rs. 100/-	50,000 cases
2	Rs. 101 to 250/-	75,000 cases
3.	Rs. 251 to 400/-	30,000 cases
4.	Rs. 401 and above	NIL

#### RUM BRANDS

S.NO.	RETAIL PRICE SEGMENT	MINIMUM SALE REQUIRED
1.	Upto Rs. 100/- (Cheaper Category)	30,000 cases
2	Rs. 101 to 250/-	40,000 cases
3.	Rs. 251 and above	NIL

#### BEER BRANDS

S.NO.	RETAIL PRICE SEGMENT	MINIMUM SALE REQUIRED
1.	With above 5% alcoholic strength	2,55,000 cases
2	With below 5% alcoholic strength	80,000 cases
3.	International Beer Brands	5,00,000 cases
4..	Diet Beer	NIL

NOTE : For Gin, Brandy, Vodka, Wine and Liqueur brands, no minimum sale criteria has been fixed.

Once the licence is approved, the applicant is required to have a Bonded Warehouse approved for storage of liquor. Broadly speaking the applicant immediately on the approval of L-1 Licence has to deposit Licence Fee, Brand registration fee and Brand Fee & apply for the following :-

1. Registration of Brands
2. Approval of Bonded Warehouse
3. Approval of Label
4. Fixation of ex-distillery price



### **Grant of L-2 Licence:**

L-2 Licence for retail vend of foreign liquor/beer are granted only to selected undertakings of the state government namely RTDC, RSIDC, and similar agencies. Any proposal in respect of premises for opening of a vend would come from above Corporations. As such an individual who wants to give his premises on rent for opening of vend has to approach any of these corporations, which after looking into suitability of the premises approach the office of the Commissioner of Excise for grant of L-2 licence in respect of the premises.

### **Grant of L-3/L-5 License in Hotels:**

#### **On site Consumption Licences :**

Department grants licence to hotels which are holding star classification and approval of Department of Tourism, Govt. of India which are considered necessary for grant of Licence in form L-3. L-3 license empowers the hotel for service of foreign liquor to the residents in their rooms.

These hotels can also seek separate Licence in form L-5 for service of liquor in exclusive bar and in the restaurant / bar in the hotel premises. The service of liquor is restricted to specified premises of bar and restaurant only. The hotel is required to submit application on its letter head accompanied by the following documents :-

- Documentary proof regarding legal status of the hotel i.e. whether it is a company, partnership firm etc.
- Whether the hotel is in legal possession of the plot.
- Completion certificate in respect of the hotel building.
- Trade licence from the Local Authority i.e. JDA/JMC as the case maybe
- Lodging House licence from the Local Authority.
- Certificate of registration of eating House licence issued by the DCP (Licencing).
- Documentary proof regarding applicant being an Income Tax Assessee and Sales Tax-Assessee.
- The applicant is required to submit lay out plan of the hotel, site plan of the licence outlets and the liquor stores
- proof of Department of Tourism. Govt of India indicating the project approval and also recommendation for grant of L-3/L-5 license
- NOC from State Fire Service

The applicant hotel is required to submit application to the Commissioner of Excise. After scrutiny of the papers submitted and the same having been found to be in accordance with the rules, the hotel premises is inspected by the concerned Excise Officer from the department who submits report to the licence granting authority. The inspection as above is to determine status of the premises under the Excise rules which provides that :-

"No liquor shop for consumption 'on' the premises shall be located within a distance of 75 metres from the following, namely :-

- (a) major educational institutions
- (b) religious places;

(c) hospitals with fifty beds and above

Explanation – I : For the purpose of clause (a) above, major educational institutions would mean middle and higher secondary schools, colleges and other institutions of higher learning recognized by the State Govt or the Government of India.

Explanation – II : For the purpose of clause (b) above, a religious place would imply a religious place having a pucca structure with a covered area of more than 400 square feet.

Explanation – III : The measurement of distance shall be from the mid-point of the actual main entrance/door of the premises proposed for licence to mid-point of the actual main door/entrance of the building of the places mentioned in clauses (a), (b) and (c) above.”

Once the hotel has been found to be suitable for grant of licence, the views of the public/residents are invited on the proposal giving them 7 days time in this regard to file objections before the licensing authority. This is done through pasting of notices and also through public announcement in the area. After no objection has been received, the competent authority proceeds with approval for grant of licence. After approval, the hotel is required to submit fees as prescribed under the rules. On deposit of the same, licence is issued to the hotel. L-5 Licence for exclusive bar/restaurant within the hotel is granted in conjunction with L-3 Licence only and requirements listed above also apply for grant of L-5 Licence.

### **L-3 License Fee**

L-3( Service of foreign liquor in a hotel to the residents in their rooms)

• Hotel having 10 to 25 rooms	Rs 40,000/-
• Hotel having 26 to 50 rooms	Rs 60,000/-
• Hotel having 51 to 100 rooms	Rs 1,20,000/-
• Hotel having 101 to 200 rooms	Rs 1,80,000/-
• Hotel having 201 to 300 rooms	Rs 2,50,000/-
• Hotel having 301 to 400 rooms	Rs 4,00,000/-
• Hotel having 401 and above rooms	Rs 4,50,000/-

### **L-5 License Fee**

(Service of foreign Liquor in a bar or restaurant attached to a hotel)

As per above stated Notification No the rate of L-5 License fee is as under

• 5 Star and above	Rs 8.50 Lacs P.A. per endorsement
• 4 Star	Rs 7.00 Lacs P.A. per endorsement
• 3 Star	Rs 6.50 Lacs P.A. per endorsement
• 2 Star	Rs 6.00 Lacs P.A. per endorsement
• 1 Star	Rs 5.00 Lacs P.A. per endorsement
• Budget Hotel	Rs 4.50 Lacs P.A. per endorsement

### **Grant of L-4 Licence in Independent Restaurant:**

L-4 Licence is granted to an independent restaurant approved by Department of Tourism, Govt. of India. Such restaurants can apply in the office of the Commissioner of Excise in prescribed form and submit documents as indicated in the application form. The restaurant should be situated in commercial area with adequate parking

space. The restaurant has to meet the requirement of rule as quoted in case of L-3/L-5 Licences conditions. Rest of the procedure for the grant of Licence is the same as indicated in case of L-3/L-5 Licence.

#### **LIST OF DOCUMENTS FOR L-4 LICENCE**

1. Approval of DOT, Govt. of India.
2. Memorandum and Articles of Association/Certificate of Incorporation/ Partnership deed etc.
3. Proof of lawful possession of the premises.
4. Copy of Income Tax Clearance
5. Copy of Sales Tax Registration./Latest Asst Order
6. Copy of Eating House License from DCP(Licensing)
7. Trade Licence issued by JDA/Municipality
8. NOC from Fire Department provided the height of the premises is more than 15 metres.
9. Affidavits in the prescribed proformas.

#### **Grant of L-19 Licence:**

L-19 licence is granted to a club registered with the Registrar of Firms/Registrar of Cooperative Societies, for service of foreign liquor to its members only subject to provisions of Punjab Excise Act, 1914 as extended to the National Capital Territory of Delhi and the rules framed thereunder and instructions issued from time to time.

Any eligible club can apply for grant of L-19 licence in the prescribed proforma with the required documents.

#### **LIST OF DOCUMENTS FOR GRANT OF L-19/L-19 A LICENCE FOR CLUB**

1. Memorandum and Articles of Association
2. Certificate of registration with the Registrar of firms or society
3. Copy of Resolution duly passed by managing committee to have L-19 licence in club premises.
4. Resolution regarding meeting of the liabilities of the Clubs
5. List of office Bearers and list of Members.
6. Specific site plan showing liquor service area and store
7. Fire safety certificate
8. Proof of lawful possession of the premises
9. Eating house licence from D.C.P(Licensing) of the area.

#### **Grant of L-19A License**

L-19A license is granted for service of Liquor/Beer at a club/mess whose membership is exclusively for Government Servants and is not run on commercial lines. The documents/procedure required for granting L-19A License is similar to the grant of L-19 licence.

#### **L-19 License Fee**

The following is the fee structure for L-19 License:-

- Club with membership upto 800 Rs 50,000/- per annum
- Club with membership from 801 to 1500 Rs 75,000/- per annum

- Club with membership more than 1500      Rs 1,50,000/- per annum

### **L-19A License Fee**

The license fee for L-19A license is fixed to Rs 5000/- p.a. irrespective of the number of members of the club.

Rest of the procedure with regard to the grant of Licence is the same as indicated in respect of L-3/L-5 Licence.

### **Possession limit for liquor:**

Liquor being an exciseable article can not be stored by a person like any general commodity. Possession limit has therefore been prescribed. Any individual person can possess at his residence alcoholic beverages within the prescribed limit for bonafide consumption by him and by members of his family or his guests. The present possession limit is given below: -

Foreign liquor whether imported or made in India	:	18 litres
Beer/wine (mild drinks) whether imported or made in India	:	36 litres
Cider	:	9 litres
Country liquor	:	3 litres

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## **10.7 Temporary Licence For Service Of Liquor In Parties/Functions/Conferences**

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### **I. AT RESIDENCE**

No Licence is required by an individual for serving liquor to his guests and family members at his residence provided the liquor served is within permissible possession limit

### **II. FOR LICENSEES ALLOWED FOR ONSITE CONSUMPTION (HOTELS/CLUBS/RESTAURANTS) – LICENCE (L-20)**

L-20 licence is granted to licenced hotels, restaurants and clubs for service of foreign liquor inside/outside their licensed premises on temporary basis for hosting a function on a specific day.

Any eligible hotel, restaurant and club can apply for grant of L-20 licence in the prescribed proforma after depositing Rs 3000/- as licence fee.

The prescribed proforma required for grant of L-20 licence ([click here](#)).

### **III. AT ANY OTHER PREMISES - LICENCE (L-49A)**

L-49 A licence can be obtained on payment of Rs. 3,000/- for service of liquor in any party, function, marriage etc. at a specific premises anywhere excluding public parks subject to the following conditions: -

- The area is screened off from public view;
- Liquor is served to adults above 18 years of age;
- Liquor is procured from authorized source in state. (the license holder must be having the bill in original issued by retail liquor vend in statehi from where the liquor has been procured).

An individual/organization can apply for grant of L-49 A licence in the prescribed Performa. This licence can be obtained from the window at the Excise Department or from the specified liquor vends.

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## 10.8 Pollution Licenses

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### **Categorization:**

Based on the pollution potential and sensitivity of the location/site of the project from environmental angle, the hotel/restaurants have been categorized by the State Board vide office order dated 21/12/2010 (Refer Board's website [www.rpcb.nic.in](http://www.rpcb.nic.in).) in the following manner:

#### **a) Orange Category:**

- I. Hotel, Motel, Guest House, lodging > 25 beds
- II. Restaurants  $\geq$  25 Seats

#### **b) Green Category:**

- I. All those hotels/restaurants which are not covered under orange category and are discharging waste water and/or air emission.

### **10.8.1 Competent Authorities:**

(A) The State Environment Impact Assessment Authority (SEIAA) is the competent authority for grant of Environmental Clearance, in case of hotel projects having area of construction  $\geq$  20000 Sqm built up area.

(B) As per delegations of powers by the State Board vide office order dated 21/12/2010 the competent authority to grant or refusal of consent to establish and consent to operate under the provisions of the Water Act & the Air Act are as under.

#### **a. Head Office**

- i. Hotel, Motel, Resorts > 50 Beds
- ii. Hotel, Motel, Resort located in water body or within 200 meters of High Flood Level (HFL) of Water Body

#### **b. Regional Office**

- i. Hotel, Motel, Resorts  $\leq$  50 Beds
- ii. All restaurants

### **10.8.2 Sources of Pollution:**

Water Pollution: The following are main sources of generation of water pollution from the hotels:

- 1. Utilities i.e. toilets, bathrooms, washrooms etc.
- 2. kitchen & dining hall
- 3. Laundry
- 4. Filtration plant backwash etc

5. Water softening plant backwash etc
6. Floor washing
7. Additional effluent due to marriage & other celebration parties

Air Pollution: The following are main sources of air emission from the hotels:

1. Boilers/Hot water generator
2. DG Sets
3. Kitchen exhaust

Solid Waste: The following are main sources of solid waste generation from the hotels:

1. Kitchen & Dining
2. Sweepings
3. Garbage & refuse

Hazardous Waste: The following are main sources of Hazardous waste generation from the hotels:

1. Spent/used oil of DG set

**Other licenses and Tax :-**

- a. Boiler and explosives
- b. Weight and Measures
- c. Foreign Exchange
- d. PF and ESI
- e. Luxury Tax
- f. Service Tax

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## 10.9 Summary

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Rajasthan is well known State not only in the country but around the world for its rich heritage and culture. Thousands & thousands tourists from all over the world visit the State to visualize and enjoy the traditional culture, art, architecture, wildlife sanctuaries & desert. The main places of tourists attraction are Jaipur, Jodhpur, Udaipur, Jaisalmer, Mount Abu, Bharatpur, Ranthambore, Sariska, Nathdwara, Ajmer & Pushkar etc.

To provide facilities to the tourist as well as for local temporary migration of people, there is significant growth in lodging & boarding services by establishments of Hotels, Guesthouse, Motels & Restaurants in all the major cities of the State and tourist spots. The large hotels specifically under five star categories, develops large area under construction. Besides, all the hotels & restaurants generate waste water and solid waste from their various activities. In few cases, such units also emit flue gases. Therefore, all these hotels and restaurants are under legal obligation to adopt and obtain all the necessary permissions and licenses for running their business legally and ethically.

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## 10.10 Review Questions

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- Q 1 List out the minimum requirements for operating a bar in the state of Rajasthan
- Q 2 Discuss various types of Hotel/restaurants .
- Q 3 Write short note on Manufacturing Licenses
- Q 4 Discuss LI, L2 and L5 licenses
- Q 5 Discuss pollution control guidelines for opening the new hotel.

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## 10.11 Reference and Suggested Readings

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- 1 "legislation: a look at U.S. air pollution laws and their amendments". American Meteorological Society. Retrieved 2012-08-27.
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- 10 Bhatnagar, Sunil(2002)Front Office Management, Franks Bros. & Co,New Delhi.pp 41-44



(राशि लाख रुपये में)

क. सं.	श्रेणी	वर्ष 2012-13 में वार्षिक लाईसेंस फीस	वर्ष 2013-14 के लिये निर्धारित वार्षिक लाईसेंस फीस		
			बेसिक लाईसेंस फीस	न्यूनतम स्पेशल वेण्ड फीस	कॉलम नं.4 एवं 5 का योग
1	2	3	4	5	6
1.	जयपुर व जोधपुर	11.00	6.00	7.50	13.50
2.	अन्य सम्भागीय मुख्यालय, माउण्ट आबू व जैसलमेर	9.00	5.00	6.00	11.00
3.	अन्य जिला मुख्यालय	6.00	3.30	4.20	7.50
4.	अन्य नगरपालिकाएँ	5.00	2.70	3.30	6.00

(राशि लाख रुपये में)

क. सं.	श्रेणी	लाईसेंस फीस वर्ष 2011-12	वर्ष 2012-13 के लिये निर्धारित लाईसेंस फीस		
			बेसिक लाईसेंस फीस	न्यूनतम स्पेशल वेण्ड फीस	कॉलम नं.4 एवं 5 का योग
1	2	3	4	5	6
1	पांच सितारा होटल	15.00	15.00	0.50	15.50
2	चार सितारा होटल	10.00	10.00	0.50	10.50
3	तीन सितारा होटल	8.00	8.00	0.50	8.50
4	लग्जरी ट्रेन	8.00	8.00	0.50	8.50

(राशि लाख रुपये में)

क. सं.	श्रेणी	लाईसेंस फीस वर्ष 2011-12	वर्ष 2012-13 के लिये निर्धारित लाईसेंस फीस		
			बेसिक लाईसेंस फीस	न्यूनतम स्पेशल वेण्ड फीस	कॉलम नं.4 एवं 5 का योग
1	2	3	4	5	6
1	वे होटल जो इन स्थानों पर और इनकी नगरीय सीमा के 5 किलोमीटर सीमा में स्थित हो				
	(अ) जयपुर/जोधपुर	7.50	7.50	0.50	8.00
	(ब) अन्य सम्भाग मुख्यालय, माउण्ट आबू एवं जैसलमेर	6.50	6.50	0.50	7.00
	(स) अन्य जिला मुख्यालय	5.50	5.50	0.50	6.00
	(द) अन्य नगरपालिका एवं भिवाड़ी	4.00	4.00	0.50	4.50
2	अन्य वे होटल जो उपरोक्त अ से द स्थानों में शामिल नहीं।	3.00	3.00	0.50	3.50

(राशि लाख रुपये में)

क. सं.	श्रेणी	लाईसेंस फीस वर्ष 2011-12	वर्ष 2012-13 के लिये निर्धारित लाईसेंस फीस		
			बेसिक लाईसेंस फीस	न्यूनतम स्पेशल वेण्ड फीस	कॉलम नं.4 एवं 5 का योग
1	2	3	4	5	6
1	वे रेस्टोरेन्ट जो इन स्थानों पर और इनकी नगरीय सीमा के 5 किलोमीटर सीमा में स्थित हो				
	(अ) जयपुर/जोधपुर	7.00	7.00	0.50	7.50
	(ब) अन्य सम्भाग मुख्यालय, माउण्ट आबू एवं जैसलमेर	5.00	5.00	0.50	5.50
	(स) अन्य जिला मुख्यालय	4.00	4.00	0.50	4.50
	(द) अन्य नगरपालिका एवं भिवाड़ी	3.50	3.50	0.50	4.00
2	अन्य वे रेस्टोरेन्ट जो उपरोक्त (अ) से (द) स्थानों में शामिल नहीं।	2.50	2.50	0.50	3.00

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## Unit 11 Adulterant

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- 11.1 Objective
- 11.2 Introduction
- 11.3 Definition –
- 11.4 Adulterer Food
- 11.5 Public Analyst –
- 11.6 Central Food Laboratory –
- 11.7 The Central Committee For Food Standards Food Inspector –
- 11.8 Their Power And Duties –
- 11.9 Procedure To Be Followed By Food Inspectors –
- 11.10 Report To Public Analyst –
- 11.11 Notification For Food Poisoning
- 11.12 Summery
- 11.13 Question
- 11.14 Reference

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### 11.1 Objective

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#### Introduction

Food is one of the basic necessities for sustenance of life. Pure, fresh and healthy diet is most essential for the health of the people. It is no wonder to say that community health is national wealth.

Adulteration of food-stuffs was so rampant, widespread and persistent that nothing short of a somewhat drastic remedy in the form of a comprehensive legislation became the need of the hour. To check this kind of anti-social evil a concerted and determined onslaught was launched by the Government by introduction of the Prevention of Food Adulteration Bill in the Parliament to herald an era of much needed hope and relief for the consumers at large.

Adulteration in food is normally present in its most crude form, prohibited substances are either added or partly or wholly substituted. In India normally the contamination/adulteration in food is done either for financial gain or due to carelessness and lack in proper hygienic condition of processing, storing, transportation and marketing. This ultimately results that the consumer is either cheated or often become victim of diseases. Such types of adulteration are quite common in developing countries or backward countries. However, adequate precautions taken by the consumer at the time of purchase of such produce can make him alert to avoid procurement of such food. It is equally important for the consumer to know the common adulterants and their effect on health. An adulterant is a substance found within other substances (e.g., food, beverages, fuels), although not allowed for legal or other reasons. The addition of adulterants is called adulteration. An adulterant is distinct from, for example, permitted food additives. There can be a fine line between adulterant and additive; chicory may be added to coffee to reduce the cost—this is adulteration if not

declared, but may be stated on the label. The term "contamination" is usually used for the inclusion of unwanted substances due to accident or negligence rather than intent.

Adulterants added to reduce the amount of expensive product in illicit drugs are called cutting agents. Deliberate addition of toxic adulterants to food or other products for human consumption is *poisoning*.

## 11.3 Definition

An adulterant is a substance found within other substances, although not allowed for legal or other reasons. The addition of adulterants is called adulteration. An adulterant is distinct from, for example, permitted food additives.

## 11.4 Adulterer Food

Arhar Pulse	Kesarri Pulse	Kesari Pulse has a characteristic wedge shape. Larger Kesari resembles Arhar (Tur). It can be separated by visual examination.
Asafoetida	Resin and colour	Take a little amount of small parts of the sample in test tube. Add 3 ml of distilled water and shake the tube gently. Pure asafoetida dissolves in water very quickly and produces a milky white colour, but in case of adulteration with a chemical colour the mixture turns to be coloured. The purity of asafoetida may also be examined by taking a little amount of it on the tip of a force and placing the same on the flame of a spirit lamp. Asafoetida burns quickly, producing bright flame and leaving the impurities behind.
Black Pepper	Papaya Seeds	Papaya seeds do not have any smell and are relatively smaller in size. Adulteration of papaya seed with Black Pepper may be detected by way of visual examination as also by way of smelling.
Coffee powder	Cereal starch	Take a small quantity (one-fourth of a tea-spoon) of the sample in a test tube and add 3 ml of distilled water in it. Light a spirit lamp and heat the contents to colourize. Add 33 ml of a solution of potassium permanganate and muratic acid (1:1) to decolourize the mixture. The formation of blue colour in mixture by addition of a drop of 1% aqueous solution of iodine indicated adulteration with starch.
Coffee powder	Powder of	Take a small quantity (1 tea-spoon) of the sample

	scorched persimmon stones	and spread it on a moistened blotting paper. Pour on it, with much care, 3 ml of 2% aqueous solution of sodium carbonate. A red colouration indicates the presence of powder of scorched persimmon stones in coffee powder.
Coriander powder	Saw Dust	Take a little amount (a half of tea-spoon) of the sample. Sprinkle it on water in a bowl. Spice powder gets sedimented at the bottom and saw-dust floats on the surface.
Cumin Powder	Saw Dust	Take a little amount (a half of tea-spoon) of the sample. Sprinkle it on water in a bowl. Spice powder gets sedimented at the bottom and saw-dust floats on the surface.
Dry red chilli	Rhodamine colour	B Take a red chilli from the sample and rub the outer surface with a piece of cotton soaked in liquid paraffin. The sample is adulterated if the cotton becomes red.
Dry turmeric root	Metanil yellow colour	Take a piece of dry turmeric root and rub the outer surface with a piece of cotton soaked in liquid paraffin. A yellow colouration of cotton indicates adulteration of turmeric root with metanil yellow colour.
Gram powder	Kesari powder	Take a little amount (a half of a tea-spoon) of the sample in a test tube with 3 ml of distilled water. Add 3 ml of muratic acid. Immerse the tube in warm water. Check the tube after 15 minutes. A violet colouration indicates the presence of Kesari powder in Gram powder.
Gram powder	Metanil yellow colour	Take a small quantity (a half of a tea-spoon) of the sample in a test tube. Add 3 ml of alcohol. Shake the tube to mix up the contents thoroughly. Add 10 drops of hydrochloric acid in it. A pink colouration indicates adulteration of gram powder with metanil yellow.
Green vegetables like Bitter Gourd, Green Chilli and others	Malachite Green	Take a small part of the sample and place it on a piece of moistened white blotting paper. The impression of colour on the paper indicates the use of malachite green, or any other low priced artificial colour.
Green	Malachite Green	Rub the outer green surface of a small part of the

vegetables like Bitter Gourd, Green Chilli and others		sample with a liquid paraffin soaked cotton. The sample is adulterated when the white cotton turns green.
Jaggery	Metanil yellow colour	Take a little amount (one-fourth of a tea-spoon) of the sample in a test tube. Add 3 ml of alcohol and shake the tube vigorously to mix up the contents. Pour 10 drops of hydrochloric acid in it. A pink colouration indicates the presence of metanil yellow colour in jaggery.
Jaggery	Sodium bicarbonate	Take a little amount (one-fourth of a tea-spoon) of the sample in a test tube. Add 3 ml of muratic acid. The presence of sodium carbonate or sodium bicarbonate effects effervescence.
Parched rice	Urea	Take 30 pieces of parched rice in a test tube. Add 5 ml of distilled water. Shake the tube to mix up the contents thoroughly. After 5 minutes, filter water contents and add to it a little amount (a half of a tea-spoon) of powder of arhar or soyabean. Wait for another 5 minutes and then dip a red litmus paper in the mixture. Lift the paper after 30 seconds and examine it. A blue colouration indicates the use of urea in parched rice.
Processed food, sweetmeat or syrup	Metanil Yellow	Take little amount (a half of a tea-spoon) of the sample in a test tube. Add 10 drops of muratic acid or hydrochloric acid in it. The appearance of rosy colour indicates adulteration of food with metanil yellow.
Processed food, sweetmeat or syrup	Rhodamine B colour	<p>The presence of this chemical colour in food is very easy to detect as it shines very brightly under sun. A more precise methods of detection is also there.</p> <p>Take a little amount (a half of a tea-spoon) of the sample in a test tube. Add 3 ml of carbon tetrachloride and shake the tube to mix up the contents thoroughly. The mixture becomes colourless and an addition of a drop of hydrochloric acid brings the colour back when food contains Rhodamine B colour.</p>
Rice	Earth, sand, grit, unhusked paddy,	These adulterants may be detected visually and removed by way of sorting, picking, and washing.

	rice bran, talc, etc.	
Sweet potato	Rhodamine B colour	Take a small part of the sample and rub the red outer surface with a piece of cotton soaked in liquid paraffin. The cotton adhering colour indicates the use of Rhodamine B colour on outer surface of the sweet potato.
Tea Leaves	Coal Tar Dye	Scatter a little amount (1 tea-spoon) of the sample on a moistened white blotting paper. After 5 minutes, remove the sample and examine the paper. A revelation of coloured spots indicates the use of the dye.
Tea Leaves	Iron Flakes	Spread a small quantity (2 tea-spoon) of the sample on a piece of paper. Draw a magnet over it. Iron flakes, if present, cling to the magnet. The same test may be carried out to trace iron flakes from tea half-dust and iron filings from tea dust.
Tea Leaves	Leather Flakes	Prepare a paper-ball. Fire the ball and drop a little amount of the sample on it. The presence of leather flakes emits an odour of burnt leather.
Turmeric powder	Metanil yellow colour	Take a little amount (one-fourth of a tea-spoon) of the sample in a test tube. Add 3 ml of alcohol. Shake the tube to mix up the contents thoroughly. Add 10 drops of muratic acid or hydrochloric acid in it. A pink colouration indicates the use of metanil yellow colour in turmeric powder.
Wheat	Earth, sand, grit, chopped straw, bran, unhusked grain, and seeds of weeds.	These adulterants may be detected visually and removed by way of sorting, picking, and washing.

## 11.5 Public Analyst

**Public Analysts** are scientists in the United Kingdom and Ireland whose principal task is to ensure the safety and correct description of food by testing for compliance with legislation. Most Public Analysts are also Agricultural Analysts who carry out similar work on animal feeding stuffs and fertilisers. While much of the work is done by other scientists and technicians in the laboratory, the Public Analyst has legal responsibility for the accuracy of the work and the validity of any opinion expressed on the results reported. There is an Association of Public Analysts, which includes members with similar roles if different titles in other countries.



## **Prevention of Food Adulteration Act, 1954**

### **Report of public analyst. –**

1[(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under subsection (1) to the effect that the article of food is adulterated the Local (Health) Authority shall, after the institution of prosecution against persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Sec. 14-A forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analyzed by the Central Food Laboratory.

2 (2-A) When an application is made to the Court under sub-section (2), the Court shall require the Local (Health) Authority to forward the parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the Court within a period of five days from the date of receipt of such requisition.

(2-B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2-A), the Court shall first ascertain that the mark and seal or fastening as provided in Cl. (b) of sub-section (1) of Sec. 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

(2-C) Where two parts of the sample have been sent to the Court and only one part of the sample has been sent by the Court to the Director of the Central Food Laboratory under subsection (2-B), the Court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the Court:

Provided that where the part of the sample sent by the Court to Director of the Central Food Laboratory is lost or damaged, the Court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the Court and on receipt thereof the Court shall proceed in the manner provided in sub-section (2-B).

(2-D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the Court shall not continue with the proceedings pending before it in relation to the prosecution.

(2-E) It, after considering the report, if any, of the Food Inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the parts of the



sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections(2) to (2-D)) shall, so far as may be, apply.]

(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2-B) shall supersede the report given by the public analyst under subsection (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory 2[under sub- section (2-B)] is produced in any proceeding under this Act or under Sees. 272 to 276 of the Indian Penal Code (45 of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Sees. 272 to 276 of the Indian Penal Code:

3[**Provided** that any document purporting to be a certificate signed by the Director of the Central Food Laboratory [not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub- section (I -A) of Sec. 161 shall be final and conclusive evidence of the facts stated therein.]

4[**Explanation**-In this section, and in Cl. (9 of sub-section (1) of Sec. 16, “Director of the Central Food Laboratory” shall include the officer I or the time being in charge of any Food Laboratory (by whatever designation he is known) recognized by the Central Government for the purposes of this section.

1. Subs. by Act 34 of 1976. Sec.10. for sub-section (1) and (2) (w.e.f. 1<sup>st</sup> April 1976).

2. Subs. by Act 34 of 1976. Sec.10 for under sub-section (2)” (w.e.f. 1<sup>st</sup> April 1976).

3. Subs. by Act 34 of 1976. Sec. 10 for proviso (w. e. f. 1<sup>st</sup> April 1976)

4. Ins. Ibid. (W.e.f. 1<sup>st</sup> April. 1976)

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## 11.6 Central Food Laboratory

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(1) The Central Government shall, by notification in the Official Gazette, establish one or more Central Food Laboratory or Laboratories to carry out the functions entrusted to the Central Food Laboratory by this Act or any rules made under this Act:

Provided that the Central Government may, by notification in the Official Gazette, also specify any laboratory or institute as a Central Food Laboratory for the purposes of this Act.

(2) The Central Government may, after consultation with the Committee, make rules prescribing—

(a) the functions of a Central Food Laboratory and the local area or areas within which such functions may be carried out;

(b) the procedure for the submission to the said Laboratory of samples of articles of food for analysis or tests, the forms of the Laboratory’s reports thereon and the fees payable in respect of such reports;

(c) such other matters as may be necessary or expedient to enable the said laboratory to carry out its functions.

The **Central Food Laboratory**, in terms of Section 13(2) of the Prevention of **Food** Adulteration Act, 1954, hereinafter called the 'Act', was defeated since the wheat taken as sample had become unfit for consumption by that time and, therefore, it did not remain possible for the petitioners to show that the wheat at the time of taking samples, was not adulterated. Applicability of PFA Act and Rules: 3. The first question which comes up for consideration in this case is as to whether the safeguards provided in Prevention of **Food** Adulteration Act and the Rules framed there under and the rights conferred by the Act on a person accused of having committed an offence punishable under that Act are available to a person who is accused of having committed an offence punishable under Section of the Essential Commodities Act. 4. The object behind making adulteration of **food** and foodstuff punishable with imprisonment was to prevent WP. (Crl.).No.1511/2009 Page 4 of 47 danger to human life and health by sale of unwholesome articles of **food**. The basic aim was to ensure purity in the articles of **food** meant for sale to others. The object which sample has to be taken for the purpose of ascertaining whether the **food** article in question is adulterated or not. The Order does not prescribe, what types of containers are to WP. (Crl.).No.1511/2009 Page 6 of 47 be used for the purpose of keeping the sample. It does not prescribe the method of sending the sample to the **laboratory**. Neither the Essential Commodities Act nor the Order issued there under confers any right such as the right given to an accused under Section 13.(2) of the PFA Act. Thus, neither the Essential Commodities Act nor the Order alleged to have been contravened by the petitioners prescribes either the machinery or the procedure for determining whether the essential commodity suspected to be adulterated was, in fact, adulterated, or not. On the other hand, the PFA Act and the Rules prescribe a comprehensive procedure for such matters, including the method of taking samples, sending the samples to the **laboratory** and analysis of that sample by the **laboratory**, besides conferring of statutory right upon the accused to get the second sample analysed by **Central Food Laboratory**. In the absence of the Essential Commodities Act and the Order issued there under sold through the Public Distribution System. Therefore, there is no escape from the conclusion that not only the procedure prescribed in the Act and the Rules made there under for the purpose of taking samples, including the containers to be used for keeping samples, packing and sealing of samples, sending of seal impression to the Public Analyst and comparison of those impressions by him with the impressions on the samples, but the right granted to the accused under Section 13.(2) of the Act to apply to the Court to get the sample of **food** article analysed by the **Central Food Laboratory** would also necessarily be applicable and available in a prosecution of this nature. In this regard, I may also refer to the decision of Madras High Court in —S.Arunachalam & Others Vs. State||, 1993 (2) PFAC 139 (Madras), and the decision of the Hon'ble Supreme Court in —State of Madhya Pradesh Vs. Swaropchandra, (1996) 11 SCC 175. In the case of S.Arunachalam(supra), the petitioner was alleged to have contravened Clause 11 of the Tamil Nadu Scheduled Articles (Prescription of Standard) Order, 1977 read with Section 7(1)(a)(ii) of Essential WP.(Crl.).No.1511 2009 Page 12 of 47 Commodities Act by selling adulterated gingili

oil and coconut oil. The petitioner filed an application under Sections 10,11 and 13(2) of the PFA Act read with Section 7(3)(b) of the of the Tamil Nadu Scheduled Articles (Prescription of Standard) Order, 1977, for forwarding second sample to the **Central Food Laboratory** for analysis. The Special Court rejected his application on the ground that Section 13(2) of the Act was not applicable as Section 7(3)(b) of the Tamil Nadu Scheduled Articles (Prescription of Standard) Order, 1977 made only the provisions of Section 10 & 11 of the Act applicable to such provisions. After noticing that the very object of obtaining three samples indicated that the legislature had preserved the right of the accused to have one of the samples analysed by **Central Food Laboratory**, the High Court held that if the right to have the second sample analysed from **Central Food Laboratory** was denied to the petitioner, the very object behind taking three samples would be defeated. While allowing the petition, the High Court, inter alia, observed as under: —In other words, proper sampling and the report of the Public

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## 11.7 The Central Committee For Food Standards Food Inspector

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### **The Central Committee for Food Standards —**

(1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act.

(2) The Committee shall consist of the following members, namely :—

- (a) the Director-General, Health Services, *ex-officio*, who shall be the Chairman;
- (b) the Director of the Central Food Laboratory or, in a case where more than one Central Food Laboratory is established, the Directors of such Laboratories, *ex-officio* ;
- (c) two experts nominated by the Central Government;
- (d) one representative each of the Departments of Food and Agriculture in the Central Ministry of Food and Agriculture and one representative each of the Central Ministries of Commerce, Defence, Industry and Supply and Railways, nominated by the Central Government;
- (e) one representative each nominated by the Government of each State;
- (f) two representatives nominated by the Central Government to represent the Union territories;
- (g) one representative each, nominated by the Central Government, to represent the agricultural, commercial and industrial interests;
- (gg) five representatives nominated by the Central Government to represent the consumers, interests, one of whom shall be from the hotel industry;
- (h) one representative of the medical profession nominated by the Indian Council of Medical Research;

(i) one representative nominated by the Indian Standards Institution referred to in clause (e) of section 2 of the Indian Standards Institution (Certification Marks) Act, 1952 (36 of 1952).

(3) The members of the Committee referred to in clauses (c), (d), (e), (f), (g), (gg), (h), and (i) of sub-section (2) shall, unless their seats become vacant earlier by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for renomination.

(4) The functions of the Committee may be exercised notwithstanding any vacancy therein.

(5) The Committee may appoint such and so many sub-committees as it deems fit and may appoint to them persons who are not members of the Committee to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Committee may impose, be delegated to them by the Committee.

(6) The Committee may, subject to the previous approval of the Central Government, make bye laws for the purpose of regulating its own procedure and the transaction of its business.

#### **Food Inspectors —**

(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be food inspectors for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be: Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a food inspector under this section.

(2) Every food inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860) and shall be officially subordinate to such authority as the Government appointing him, may specify in this behalf.

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## **11.8 Their Power and Duties**

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(1) A food inspector shall have power—

(a) to take samples of any article of food from—

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

(c) with the previous approval of the Local (Health) Authority having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food in the interest of public health.

**Explanation** — For the purposes of sub-clause (iii) of clause (a), "**consignee**" does not include a person who purchases or receives any article of food for his own consumption.

(2) Any food inspector may enter and inspect any place where any article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food for sale, or exposed or exhibited for sale or where any adulterant is manufactured or kept, and take samples of such article of food or adulterant for analysis:

Provided that no sample of any article of food, being primary food, shall be taken under this sub-section if it is not intended for sale as such food.

(3) Where any sample is taken under clause (a) of sub-section (1) or sub-section (2), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(4) If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided: and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst:

Provided that where the food inspector keeps such article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the food inspector deems fit and the vendor shall execute the bond accordingly.

(4A) Where any article of food seized under sub-section (4) is of a perishable nature and the Local (Health) Authority is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the said Authority may, after giving notice in writing to the vendor, cause the same to be destroyed.

(5) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale:

Provided that the power to break open the package or door shall be exercised only after the owner or any other person in charge of the package or, as the case may be, in occupation of the premises, if he is present therein, refuses to open the package or door on being called upon to do so, and in either case after recording the reasons for doing so: Provided further that the food inspector shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(6) Any adulterant found in the possession of a manufacturer or distributor of, or dealer in, any article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the food inspector, and any books of account or other documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the food inspector and a sample of such adulterant submitted for analysis to a public analyst: Provided that no such books of account or other documents shall be seized by the food inspector except with the previous approval of the authority to which he is officially subordinate.

(7) Where the food inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6), he shall call one or more persons to be present at the time when such action is taken and take his or their signatures.

(7A) Where any books of account or other documents are seized under sub-section (6), the food inspector shall within a period not exceeding thirty days from the date of seizure, return the same to the person from whom they were seized after copies thereof or extracts therefrom as certified by that person in such manner as may be prescribed have been taken:

Provided that where such person refuses to so certify, and a prosecution has been instituted against him under this Act, such books of account or other documents shall be returned to him only after copies thereof or extracts therefrom as certified by the court have been taken.

(7B) When any adulterant is seized under sub-section (6), the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized.

(8) Any food inspector may exercise the powers of a police officer under section 42 of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.

(9) Any food inspector exercising powers under this Act or under the rules made thereunder who—

(a) vexatiously and without any reasonable grounds of suspicion seizes any article of food or adulterant; or

(b) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty; shall be guilty of an offence under this Act and shall be punishable for such offence with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees.

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## **11.9 Procedure to Be Followed By Food Inspectors**

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(1) When a food inspector takes a sample of food for analysis, he shall—

(a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed under section 14A;

(b) except in special cases provided by rules under this Act, divide the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed:

Provided that where such person refuses to sign or put his thumb impression the food inspector shall call upon one or more witnesses and take his or their signatures or thumb impressions, as the case may be, in lieu of the signature or thumb impression of such person;

(c) (i) send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority; and

(ii) send the remaining two parts to the Local (Health) Authority for the purposes of sub-section (2) of this section and sub-sections (2A) and (2E) of section 13.



(2) Where the part of the sample sent to the public analyst under sub-clause (i) of clause (c) of sub-section (1) is lost or damaged, the Local (Health) Authority shall, on a requisition made to it by the public analyst or the food inspector despatch one of the parts of the sample sent to it under sub-clause (ii) of the said clause (c) to the public analyst for analysis.

(3) When a sample of any article of food or adulterant is taken under sub-section (1) or sub-section (2) of section 10, the food inspector shall, by the immediately succeeding working day, send a sample of the article of food or adulterant or both, as the case may be, in accordance with the rules prescribed for sampling to the public analyst for the local area concerned.

(4) An article of food seized under sub-section (4) of section 10, unless destroyed under sub-section (4A) of that section, and any adulterant seized under sub-section (6) of that section shall be produced before a magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the public analyst:

Provided that if an application is made to the magistrate in this behalf by the person from whom any article of food has been seized, the magistrate shall by order in writing direct the food inspector to produce such article before him within such time as may be specified in the order.

(5) If it appears to the magistrate on taking such evidence as he may deem necessary—

(a) That the article of food produced before him under sub-section (4) is adulterated or misbranded, he may order it—

(i) To be forfeited to the Central Government, the State Government or the local authority, as the case may be; or

(ii) To be destroyed at the cost of the owner or the person from whom it was seized so as to prevent its being used as human food; or

(iii) To be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name; or

(iv) To be returned to the owner, on his executing a bond with or without sureties, for being sold under its appropriate name or, where the magistrate is satisfied that the article of food is capable of being made to conform to prescribed standards for human consumption after reprocessing, for being sold after reprocessing under the supervision of such officer as may be specified in the order;

(b) That the adulterant seized under sub-section (6) of section 10 and produced before him is apparently of a kind which may be employed for purposes of adulteration and for the possession of which the manufacturer, distributor or dealer, as the case may be, is unable to account satisfactorily, he may order it to be forfeited to the Central Government, the State Government or the local authority, as the case may be.

(6) If it appears to the magistrate that any such—

(a) Article of food is not adulterated; or

(b) Adulterant which is purported to be an adulterant is not an adulterant, the person from whose possession the article of food or adulterant was taken shall be entitled to have it restored to him and it shall be in the discretion of the magistrate to award such person from such fund as the State Government may direct in this behalf, such



compensation not exceeding the actual loss which he has sustained as the magistrate may think proper.

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## **11.10 Report to Public Analyst**

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(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

(2C) Where two parts of the sample have been sent to the court and only one part of the sample has been sent by the court to the Director of the Central Food Laboratory under sub-section (2B), the court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court:

Provided that where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall proceed in the manner provided in sub-section (2B).

(2D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution.

(2E) If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply.

(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2B) shall supersede the report given by the public analyst under sub-section (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2B) is produced in any proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code (45 of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (45 of 1860):

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory [not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1A) of section 16 shall be final and conclusive evidence of the facts stated therein.

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## **11.11 Notification for Food Poisoning**

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The Central Government or the State Government may, by notification in the Official Gazette, require medical practitioners carrying on their profession in any local area specified in the notification to report all occurrences of food poisoning coming within their cognizance to such officer as may be specified in the notification.

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## **11.12 Summary**

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Food is the basic necessity of life. It should be pure, nutritious and free from any type of adulteration for proper maintenance of human health.

One works hard and earns to satisfy one's hunger. But at the end of the day, we are not sure of what we are eating. We might be eating a dangerous dye, sawdust, industrial starch or other contaminated foods which are a major source of diseases. And thus, we invite diseases rather than good health. Food adulteration is basically lowering the quality of food for sale either by the admixture or by the substitution of inferior substances or by the removal of some valuable nutritious ingredient.

Yesterday, i was watching news channel and horrified to see the adulteration going on in our country just for a few bugs. People do not bother for others' lives and health. . Since every consumer wants to get maximum quantity of a commodity at lower prices, the traders make use of this fact and quality of the product lowers through the addition of

toxic or harmful substances or removal of the nutritional one. Thus we ourselves create situations for the traders to make our health unfit. Such type of food is extremely dangerous as it may be toxic and can affect health and it may deprive nutrients essential for proper growth and development. What i saw was actually shocking, cucumber was injected with the oxytocin given to pregnant ladies during their labour pains just to increase its size. Taking that may lead to heart problem, high blood pressures and could even lead to death. Similarly,banana was treated with ethril containing ethylene that could lead to loss of memory or blindness. There are many more food items,even no fruit or vegetable has remained untouched of the adulteration. Some of the common adulterated foods are milk and milk products, atta, edible oils, cereals, pulses, tea, coffee and vinegar. The consequences of taking adulterated foods could be more than very dangerous, it could lead to Paralysis, anaemia, Vomiting, diarrhoea, Liver damage, cancer etc.

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### 11.13 Question

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1. Explain what is the food adulteration?
2. Define the role of public analyst?
3. Explain the power and duties of food inspector?
4. Which procedure to be followed by food inspector?

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### 11.14 Reference

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## **Unit 12 THE CONSUMER PROTECTION ACT, 1986**

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### **STRUCTURE:**

- 12.0 Objective
- 12.1 Introduction
- 12.2 Application and Jurisdiction of the Act
- 12.3 Object and Salient Features of the Act
- 12.4 Important Definitions of the Act
- 12.5 Consumer Protection Councils and their powers
- 12.6 Consumer Disputes Redressal Agencies
- 12.7 Appeals under the Act
- 12.8 Summary
- 12.9 Key Words
- 12.10 Self Assessment Tests
- 12.11 Suggested Readings

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### **12.0 Objectives**

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After going through this unit you will be able to Understand the:

- Application and jurisdiction of the Act.
- Various Definitions provided in the Act.
- Various Councils provided in the Act and their functions.
- Various consumer Redressal Machineries and their functions.
- Appeal provisions provided in the act in various Commissions.

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### **12.1 Introduction:**

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Man is a social animal. He cannot live in isolation. He interacted with other human beings in various ways. With the development of the human civilization human beings started interacting with each other. In advance societies the interaction of human activities revolves around economic activities. The interaction increased with industrialization. Human beings started economic activities with the principle of "Caveat Emptor" or "let the buyer beware". This principle was prevalent in the earlier societies. Doctrine of Caveat Emptor implies that the responsibility of identifying goods and finding defects in them lies with the buyer. Buyer has to remain very careful in his purchase transactions and has to rely on his knowledge and skill for that. In case of any problem or defect in goods the buyer was not having any remedy.

The origins of this principle lie in the fact that in mass production economy where there is little contact between the producer and consumer, often sellers make exaggerated claims and advertisements which they do not intend to fulfill, in such cases the buyer should remain careful. This left the buyer or consumer in a difficult position with very few avenues for redressal. This caused great losses to the buyer and the idea to protect the buyer evolved

which led to the development of the principle that consumer has to be protected from the clutches of mighty businessman. The onset on intense competition made producers and businessman aware of the benefits of customer satisfaction and hence by and large, the principle of “consumer is king” coined in the market.

Consumer rights have become an integral part of our lives and consumerism became the way of life. We all use of these rights daily several times in our lives. Market resources and influences are growing day by day and so is the awareness about consumer rights. These rights are well defined and agencies like the Government, Consumer Courts and Voluntary Organizations are working towards the protection and promotion of them.

The Growing urbanization and heavy industrialization resulted in proliferation of human needs for basic necessities and also of luxuries. Due to the shortage of certain necessities and even the non-availability of them at reasonable rates and growing menace of adulteration, it was necessary for consumer satisfaction that the Government should do something to control the production, quality, supply, and distribution of goods and services provided to the seller.

In order to provide for better protection of the interest of the Consumers the Consumer Protection Bill, 1986 was introduced in the Lok Sabha on December 5<sup>th</sup> 1986 and became the Act No. 68 OF 1986 on 24th December, 1986. The CPA 1986 was enacted to provide for better protection of the interest of consumer and for the purpose to make provisions for establishment of Consumers Councils and other authorities for settlement of consumer’s dispute and for matters connected therewith.

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## 12.2 Application and Jurisdiction of the Act:

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The title of present Act is “the Consumer Protection Act, 1986”. It clearly reflects that purpose of the Act is to protect the interest of consumer. It is Act No. 68 of 1986 and enacted on 24 Dec.1986. The Act was amended in 1991, 1993 and 2002.

Chapter I, II and IV of the Act came into force w.e.f. 15th April, 1987 and chapter III of the Act came into operation with effect from 1st July, 1987 in the whole India **except the state of Jammu and Kashmir**<sup>1</sup> since separate legislation has been enacted for the state of Jammu and Kashmir know as the Jammu and Kashmir Consumer Protection Act, 1987.

Thus the Act is not applicable to the State of Jammu and Kashmir and for the State of Jammu and Kashmir a separate Act Jammu and Kashmir Consumer Protection Act, 1987 was passed.

The Act has been so far amended three times as under:

1. The Consumer Protection (Amendment) Act, 1991 (34 of 1991).
2. The Consumer Protection (Amendment) Act, 1993 (50 of 1993).

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<sup>1</sup>The provisions of Chapters I, II and IV of this Act have come into force in the whole of India except the State of Jammu and Kashmir on 15-4-1987: vide Notification No. S.O. 390 (E), dated 15th April, 1987, published in the Gazette of India, 1987, Extra. Pt. II, Sec. (ii). The Provisions of Chapter III of this Act have come into force in the whole of India except the State of Jammu and Kashmir on 1-7-1987: vide Notification, No. S.O. 568 (E), dated 10th June, 1987, published in the Gazette of India, 1987, Extra. Pt. II, Sec. 3 (ii).

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## 12.3 Object and Salient Features of the Act

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### Object of the Act:

The Consumer Protection Act, 1986 (in short, 'the Act'), is a benevolent social legislation that lays down the rights of the consumers and provides there for promotion and protection of the rights of the consumers. The first and the only Act of its kind in India, it has enabled ordinary consumers to secure less expensive and often speedy redressal of their grievances. By spelling out the rights and remedies of the consumers in a market so far dominated by organized manufacturers and traders of goods and providers of various types of services, the Act makes the dictum, *caveat emptor* ('buyer beware') a thing of the past.<sup>2</sup>

The preamble to the Act states that the Act is legislated to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith.

*In brief Consumer Protection Act is an Act or Law which have provisions for the "better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith."*

(1) *Consumer Protection Act* seeks, inter-alia, to promote and protect the rights of consumers such as:

- a) The right to be protected against marketing of goods and services which are hazardous to life and property;
- b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumers against unfair trade practices;
- c) The right to be assured, wherever possible, of access to a variety of goods and services at competitive prices;
- d) The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- f) The right to consumer education.

### Salient Features of the Act:

1. The top most priority of the Act is to recognize the "Rights of the Consumer".
2. To provide speedy and simple redressal to consumer disputes, quasi-judicial machinery is sought to be setup at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate,



- compensation to consumers. Penalties for non compliance of the orders given by the quasi-judicial bodies have also been provided.
3. It provides for Consumer Protection Council at the Centre and States for promotion and protection of the consumer rights
  4. It provides for a 3-tier Redressal Mechanism (District Forum, State Commission and National Commission) for Consumer Disputes.
  5. The pecuniary claims at the District Forum can be made up to Rs 500,000/-. The State Commission is empowered to entertain claims from Rs 500,001 to Rs 20, 00,000/-. The National Commission entertains claims above Rs 20, 00,000/-.
  6. The Procedure of these Foura/Consumer Courts has been made very simple unlike complicated procedure applicable in Civil and Criminal courts.
  7. There is no need of an advocate to represent one's case before the Forum or the Commission. One can either appear in person or authorize any other person (not necessarily an advocate) to represent his case.
  8. The proceedings in these Forum/Commissions are based on the principles of "natural justice".
  9. There is no Court Fee or Stamp Fee payable by the consumer for the Complaint filed in these courts.
  10. The Complaints are normally to be disposed within 90 to 150 days from the date of admission.
  11. There is only one Appeal provided and no Appeal against Appeal is provided.
  12. The strict penalty of imprisonment up to 3 years is provided for non-compliance of the Orders of the Forum and the Commissions.
  13. Consumers filing frivolous or vexatious case are penalized.
  14. Adequate cost is also provided to the complainant for pursuing his complaint before the Forum/Commission.

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## 12.4 Important Definitions of the Act

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Section 2 of the Act provides different Definitions which are as under:

(1) In this Act, unless the context otherwise requires, meaning, and definition of the different words are as under: -

<sup>3</sup>[(a) "**Appropriate laboratory**" means a laboratory or organization-

(i) Recognized by the Central Government;

(ii) Recognized by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(iii) Any such laboratory or organization established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;]

<sup>4</sup>[(aa) "**branch office**" means-

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<sup>3</sup> Substituted by Act 50 of 1993, sec. 2 for clause (a) w.e.f. 18-6-1993.

<sup>4</sup> Ins. by Act 50 of 1993, sec. 2 (w.e.f. 18-6-1993).



- (i) any establishment described as a branch by the opposite party; or
- (ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;]
- (b) **“Complainant”** means -
  - (i) A consumer; or
  - (ii) Any voluntary consumer association registered under the companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or
  - (iii) The Central Government or any State Government, who or which makes a complaint;
  - <sup>5</sup>[(iv) One or more consumers where there are numerous consumers having the same interest;]
  - <sup>6</sup>[(v) in case of death of a consumer, his legal heir or representative.] Who or which makes a complaint;
- (c) **“Complaint”** means any allegation in writing made by a complainant that-
  - <sup>7</sup>[(i) An unfair trade practice or a restrictive trade practice has been adopted by <sup>7</sup>[any trader or service provider;]]
  - (ii)<sup>7</sup>[The goods bought by him or agreed to be bought by him] suffer from one or more defects;
  - (iii) <sup>8</sup>[Service hired or availed of or agreed to be hired or availed of by him] suffer from deficiency in any respect;
  - (iv) [a trader or the service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint, a price in excess of the price in excess of the price-
    - (a) fixed by or under any law for the time being in force;
    - (b) displayed on the goods or any package containing such goods;
    - (c) displayed on the price list exhibited by him by or under any law for the time being in force;
    - (d) agreed between the parties;
  - <sup>9</sup>[(v) goods which will be hazardous to life and safety when used are being offered for sale to the public:
    - (A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
    - (B) if the trader could have known with due diligence that the goods so offered are unsafe to the public;]

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<sup>5</sup>Ins. by Act 62 of 2002, sec.2 (w.e.f. 15-3-2003)

<sup>6</sup> Ins. by Act 62 of 2002, sec.2 (w.e.f. 15-3-2003)

<sup>7</sup> Subs. by Act 50 of 1993, sec. 2, for “the goods mentioned in the complaint” (w.e.f. 18-6-1993).

<sup>8</sup> Subs. by Act 50 of 1993, sec. 2, for “the services mentioned in the complaint” (w.e.f. 18-6-1993).

<sup>9</sup> Ins. by Act 50 of 1993, sec.2 (w.r.e.f. 18-6-1993) and subs. by Act 62 of 2002, sec. for sub-clause “(v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods,” (w.e.f. 15-3-2003)

<sup>10</sup>[(vi) service which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety.]

### **When the complaints can be made?**

Normally a complaint may be made in writing under the following circumstances:

- Loss or damage is caused to the consumer due to unfair trade practice of a trader.
- If the article purchased by a consumer is defective.
- If the services availed of by a consumer suffer from any deficiency.
- When the price paid by a consumer is in excess of the price displayed on the goods or when the price is in excess of the price fixed under any law in force.
- Goods, which will be hazardous to life and safety, when used are being offered for sale to the public in contravention of the provisions of any law.

### **How to register the complaints?**

Complaint can be registered within 2 years from the date on which the cause of action has arisen.

Stamp paper is not required for declaration

- Complaint can be registered, in person, by the complainant or through his authorized agent or by post addressed to the Redressal Agency.
- Presentation through Lawyers is not necessary.

### **What are the particulars that should be furnished along with the complaint?**

The complaint should contain the following particulars:

The name and complete address of the complainant

The name and complete address of the opposite party/parties

Date of purchase goods or services availed

Amount paid for the above purpose

- Particulars of goods purchases with numbers or details of services availed
- The details of complaint, whether it is against Unfair Trade Practice / supply of defective goods / deficiency in service provided / collection of excess price, should explicitly be mentioned in the complaint petition.
- Bills / receipts and copies of connected correspondence, if any,
- The relief sought for under this Act.<sup>11</sup>

(d) **“Consumer”** means any person who, -

(i) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person but does not include a person who obtains such goods for resale or for any commercial purpose; or

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<sup>10</sup> Sub-clause (vi) along with sub-clause (iv) and (v) subs. For the earlier clauses (iv) and (v) by Act 62 of 2002, sec. 2 (w.e.f. 15-3-2003). 11. Subs. By Act 50 of 1993, sec.2, for “hires” (w.e.f. 18-6-1993)

<sup>11</sup> <http://www.consumer.tn.gov.in/faq.htm>

(ii)<sup>12</sup>[Hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose];

<sup>13</sup>[Explanation: For the purposes of this sub-clause “commercial purpose” does not include use by a consumer of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood, by means of self-employment;]

(i) Persons buying goods either for re-sale or for use in large scale profit making activity will not be ‘consumers’ entitled to protection under the Act;<sup>14</sup>

(ii) The government servants and the staff of the Accountant General Office of the Comptroller and Auditor General maintains the records of provident fund of government servants, issue slips of deposits of fund and on retirement final payments are made to the subscribers. The government servants and the staff of the Accountant General in discharging their duties does not render any service for consideration, nor hiring of any service is involved hence, maintenance of General Provident Fund Accounts does not fall within the meaning of ‘service’;<sup>15</sup>

A lottery ticket holder is not "consumer" within the ambit of the definition of "consumer" under the Act;<sup>16</sup>

Applicant who merely applies for allotment of shares is not a consumer;<sup>17</sup>

(e) **“Consumer dispute”** means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

(f) **“Defect”** means any fault, imperfection or short coming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or <sup>18</sup>[under any contract express or implied or] as is claimed by the trader in any manner whatsoever in relation to any goods;

(g) **“Deficiency”** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

(h) **“District Forum”** means a Consumer Dispute Redressal Forum established under clause (a) of section 9;

(i) **“Goods”** means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);

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<sup>12</sup> Subs. By Act 50 of 1993, sec.2, for “hires” (w.e.f. 18-6-1993)

<sup>13</sup> Added by Act 62 of 2002, sec.2, (w.e.f. 15-3-1993).

<sup>14</sup> Raj Kumar v. S.C. Verma, 2001 (1) CPR 437

<sup>15</sup> Hari Vallabh Vijay v. Administration Officer, 2001 (1) CPR 529.

<sup>16</sup> Jagdish Chand v. Director, Sikkim State Lottery, 1994 (I) CPR213.

<sup>17</sup> HG Bhatia v. ABC Computers Pvt. Ltd., 1994 (I) CPR 316.

<sup>18</sup> Subs. by Act 62 of 2002, sec.2, for “Explanation.- for the purposes of sub-clause (i), “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.” (w.e.f. 15-3-2003).

(j) "**Manufacturer**" means a person who -

(i) makes or manufactures any goods or parts thereof; or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end- product to be goods manufactured by himself; or

(iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.  
Explanation.-- Where a manufacturer dispatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so dispatched to it are assembled at such branch office and are sold or distributed from such branch office;

(jj)<sup>19</sup> [ "**Member**" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;]

(k) "**National Commission**" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

(l) "**Notification**" means a notification published in the Official Gazette;

(m) "**Person**" includes,--

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a co- operative society;

(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860 ) or not;

(n) "**Prescribed**" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;

(nn) [ "**Restrictive Trade Practice**" means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services;]

(o) "**Service**" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, 1[ housing construction,] enter(1. Ins. by Act 50 of 1993, s. 2 (w. e. f. 18- 6- 1993 ).) entertainment, amusement or the purveying of news or other information, but does not

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<sup>19</sup> ns. by Act 50 of 1993, sec. 2 (w.e.f. 18-6-1993).

include the rendering of any service free of charge or under a contract of personal service;

(p) "**State Commission**" means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;

(q) "**Trader**" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

(r) 1[ "**Unfair trade practice**" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-

(1) the practice of making any statement, whether orally or in writing or by visible representation which,-

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re- built, second- hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof: Provided that where a defense is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defense shall lie on the person raising such defense;

(viii) makes to the public a representation in a form that purports to be--

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the

product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging goods, services or trade of another person.

Explanation.-- For the purposes of clause (1), a statement that is--

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation.-- For the purposes of clause (2), "bargaining price" means--

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits--

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

3. Act not in derogation of any other law. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.



**Consumer Disputes:** Because Consumer Disputes are the main bone of contention and point of understanding so some extra emphasis has been provided to this here for better understanding into the Act.

Section 2 (e) defines the “**Consumer Dispute**” as a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

The provisions of this Act cover ‘goods’ as well as ‘services’. The goods are those which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are in the nature of transport, telephone, electricity, housing, banking, insurance, medical treatment, etc. However disputes can be for various fields of services and goods related to them.

These disputes can be related to:

1 Banking services<sup>20</sup>

2 Financing services<sup>20</sup>

3 Insurance services<sup>21</sup>

The insurance company itself is not a consumer. Hence the consumer complaint by insurance company is not maintainable; Savani Road Lines v. Sundaram Textiles Ltd., AIR 2001 SC 2630

4 Transport and Carrier service<sup>22</sup>

5 Processing Agencies or services

6 Supply of electricity or other energy<sup>23</sup>

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<sup>20</sup> P.Nagbhushan Rao v. Union Bank of India, 1991 (1) CPR 197 (A.P.).

<sup>20</sup> Biratunga S.C.S. Ltd. (Mini Bank) v. Sangram Keshari Pati, AIR 2006 Orissa 97.

<sup>20</sup> 1991 91) CPR 148 (N.C.).

<sup>20</sup> 1999 (3) CPR 56 (S.C.).

<sup>20</sup> (1992) 1 CPJ 135 (Haryana).

<sup>20</sup> AIR 1999 S.C. 3119

<sup>20</sup> AIR 2005 S.C. 29.

<sup>20</sup> Bharat Trading Co. v. Punjab and Sind Bank, (1991) 1 comp.L.J. 306(N.C.).

<sup>20</sup> 1991 91) CPR 197 (St. C.).

<sup>20</sup> Ram Kumar v. Punjab National Bank (1997) III CPJ 428 (Delhi).

<sup>20</sup> K.B.Shetty v. Punjab National Bank, 1991 (1) CPR 125 (Mah.).

<sup>20</sup> Punjab National Bank v. Ashok Pipe Udyog, (1992) 1 C.P.J. 135.

<sup>21</sup> United India Insurance Co. Ltd. v. M/s Harchand Rai Chandan Lal 2000 AIR SCW 5481.

<sup>21</sup> National Insurance Co. Ltd. v. Public Type College 2001 (2) CPS 26 (N.C.) overruled.

<sup>21</sup> 2004 (1) CPR 1 (N.C.)

<sup>21</sup> Yattam Sessa Kumari v. L.I.C., (1991) 1 CPJ 12 (A.P.St.C.).

<sup>21</sup> Narangi Devi Sharma v. Divisional Manager, LIC (1992) 1 CPJ 405 (St.C.).

<sup>21</sup> (1992) 1 CPJ 439 (St.C.).

<sup>21</sup> Narendra Kumar Laxmanbhai Savsani v. National Insurance Co. 1993 (2) CPR 138 (Guj.St.C.).

<sup>21</sup> New India Assurance Co.Ltd. v. Smt.Pushpa Yashwant Ghatge 1996 (1) CPR 38 (N.C.).

<sup>21</sup> Oriental Insurance Co. v. Ashok 1995 (2) CPR 97 (N.C.).

<sup>21</sup> 1996 (1) CPR 129 (N.C.)

<sup>21</sup> L.I.C. of India v. K. Purushothama AIR 2007 (D.O.C.) 100 (N.C.C.)

<sup>21</sup> AIR 2004 S.C. 2070.

<sup>22</sup> Lucky Forwarding Agency v. Binder Devi AIR 2003 M.P. 261,266.

<sup>22</sup> Arvind Mills Ltd. v. M/s Associated Roadways, AIR 2004 SCW 5915; AIR 2004 S.C. 5147.

<sup>22</sup> Ishwar Iyyer & Sons v. Madras Bangalore Transport (1964) I.L.R. 1 mad. 1997; Indian Airlines Corporation v. Keshav lal, AIR 1962 Cal. 290.

<sup>22</sup> (1991) 1 C.P.J. 40 (N.C.).

<sup>22</sup> AIR 2004 S.C. 23 68.



7 Boarding, lodging or both

8 Entertainment Agencies or services

9 Housing construction Agencies or services<sup>24</sup>

10 Newspapers and other sources of information Agencies or services<sup>25</sup>

11 Medical services<sup>26</sup>

Medical services are covered under the definition of "service". Service includes rendering of consultation, diagnosis and treatment, both medical and surgical; Indian Medical Association v. VP. Shantha, 1995 SCALE 273.

A person who receives medical treatment in a Government hospital is not a consumer under the Act; Consumer Unity & Trust Society v. State of Rajasthan, (1991) I CPR 241.

Free Medical Services are not under the coverage of Consumer Protection Act.

12 Postal services<sup>27</sup>

13 Telephone Services<sup>28</sup>

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<sup>23</sup> 2000 (1) CPR 51 (St.C.).

<sup>23</sup> Consumer Protection Council v. Chairman, T.N. State Electricity Board 1992 (2) CPR 454.

<sup>23</sup> Punjab State Electricity Board v. Jetha Sing, 1999 (3) CPR 510.

<sup>23</sup> Krishna Cement Works v. Andhra Pradesh State Electricity Board, AIR 1979 A.P. 291.

<sup>23</sup> Akhil Bhartiya Grahak Panchayat v. Ahmedabad Electricity Board 1991(1) CPR 143 (N.C.).

<sup>23</sup> Govind Bhai Karamshibhai v. Gujaraat Electricity Board, (1992) 1 CPJ 258.

<sup>23</sup> S.Narayan Swamy v. T.N. State Electricity Board 1992 (2) CPR 73, P. Jagdishan v. T.N. State Electricity Board, 1997 (2) CPR 23.

<sup>23</sup> AIR 2006 S.C. 182.

<sup>24</sup> AIR 1994 SC. 787,794.

<sup>24</sup> AIR 2005 S.C. 4282.

<sup>24</sup> AIR 2000 SC 3573.

<sup>24</sup> AIR 2000 SC 380.

<sup>24</sup> AIR 2004 S.C. 4168.

<sup>24</sup> AIR 2004 S.C. 441.

<sup>25</sup> 1991 91) CPR 526.

<sup>25</sup> 1996 91) CPR 161.

<sup>26</sup> (1951) 2KB 343.

<sup>26</sup> Savita Garg v. Director, National Hear Institute, 2004 AIR SCW 5820; AIR 2004 S.C. 5088, 5094-95.

<sup>26</sup> Laxman Bal Krishnan Joshi v. Dr. Triambak Babu Godbole (1969) 1 SCR 206; AIR 1969 SC 128.

<sup>26</sup> AIR 1989 SC 1570.

<sup>26</sup> AIR 1996 SC 2377.

<sup>26</sup> (1957) 2 All E.R. 118 also see Sidaway v. Board of Governors of Bethlem Royal Hospital, (1985) 1 All ER 643 and Rogers v. Whitaker, (1992) 109 ALR 625; (1993) 67 Aus. L.J.R. 47.

<sup>26</sup> AIR 2001 SC 3914.

<sup>26</sup> Bholi Devi v. State of J&K, AIR 2002 J&K 65. Fakir Mohan Bhuyan v. G.C.Pothal 1999 (1) CPR 140 (St.C.Orissa) where it was held that services rendered by government hospital are not services for consideration.

<sup>27</sup> 1991 (1) CPR 299 (A.P.St.C.).

<sup>27</sup> T.K. v. Supdt. Telegram and Traffic 1991 (2) CPR 175.

<sup>27</sup> Ram Gopal v, Director, Postal Services, (1997) II CPJ 187.

<sup>27</sup> 1996 (1) CPR.444 (Haryana St.C.).

<sup>27</sup> 1991 (1) CPR 430 (Goa St.C.).

<sup>27</sup> Telegraph Master (o) Belgaum v. E.F.D'silve, 1991 (2) CPR 105 (Karnataka St.C.)

<sup>28</sup> Union of India v. Thakorebhai 1991 (2) CPR 221 (GujSt.C.).

<sup>28</sup> Telecom Div. Engineer v. Bhagwati Prasad (1991) 2 CPR 658 (M.P.St.C.).

<sup>28</sup> S.D.O. Telephone v. Premraj (1992) 11 CPJ 688.

<sup>28</sup> 1992 (1) CPR 179 St.C.).

14 Educational Institution etc.<sup>29</sup>

The student is a consumer of service of educational institute;<sup>30</sup>

Undue delay in declaration of examination result is obviously deficiency in service;<sup>31</sup>

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## 12.5 Consumer Protection Councils and their Powers

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Chapter II of the Act provides for the establishment of Consumer Protection Councils at the Centre as well as in each States and Districts, with a view to promoting consumer Awareness.

Initially the Act provided for Consumer Protection Councils at two levels only - one at the Central level called Central Consumer Council and the other at State level called State Consumer Council., There was no Consumer Council At the district level. By the Consumer Protection (Amendment) Act, 2002 provision has been made for constitution of a council at district level.

### **The Constitution of Central Consumer Protection Councils is as under:**

The Central Council shall consist of the following members, namely:-

(a) the Minister in charge of the <sup>32</sup>[consumer affairs] in the Central Government, who shall be its Chairman, and

(b) such number of other official or non-official members representing such interests as

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<sup>28</sup> AIR 1996 Bom.53. Also see Om Prakash Sharma v. T.D.M., O.C.J. No. 447 of 1993 decided on 5/4/93 and Panchanan Misra v. Union of India, O.C.J. No. 1886 of 1993 decided on 14/4/93.

<sup>28</sup> AIR 1993 A.P. 131. Also see Smt. Kishan Kumar v. Delhi Mahanagar Telephone Nigam Ltd., 1989 Rajasthan, L.R. 393 (D.B.)

<sup>28</sup> 1993 (3) CPR 437 (St.C.).

<sup>28</sup> AIR 1990 Gau.47.

<sup>28</sup> V.P.Mehta v. Mahanagar telephone Ltd. AIR 1990 Del. 169; Devinder Mittal v. G.M. Telecom. Faridabad (1994) 11 CPJ 356 (Har.St.C.).

<sup>28</sup> 1995 (2) CPR 510 (N.C.).

<sup>28</sup> (1999) II CPJ 29 (N.C.).

<sup>28</sup> 1992 (2) CPR 132 (N.C.).

<sup>28</sup> Dr. Sudha Parikh v. Union of India, 1992 (2) CPR 523 (St.C.).

<sup>28</sup> D.E.C.F., Calcutta Telephone v. Hari Prakash Gupta, 1992 (2) CPR 574;

<sup>28</sup> D.E.C.F. Calcutta Telephone v. Hari Prakash Gupta, 1992 (2) CPR 574.

<sup>28</sup> Vijaya Sethi v. Divisional Manager Telephone, 1997 1 CPR 103 (N.C.).

<sup>28</sup> P.K. Goel v. G.M. Telephone Jaipur (1992)1 CPJ 69 (Raj.St.C.).

<sup>28</sup> P.N. Shetty v. Bharti Cellular Ltd, AIR 2007 (D.O.C.) 115 (Kar.).

<sup>28</sup> 1994 91) CPR 705 (N.C.).

<sup>28</sup> (1991) 11 CPJ 373, 376 in appeal (1992) 1 CPJ 231, 232 National commission also accepted.

<sup>29</sup> Able Pacheco Gracias v. Principal Bhartiya Vidya Pith College of Engineering, (1992) 1 CPJ 105 (Mah.St.C.).

<sup>29</sup> (1992) 1 CPJ 76 (Har.St.C.).

<sup>29</sup> 1993 (1) CPR 274 (Har St.C.).

<sup>29</sup> (1993) II CPJ 647 (651).

<sup>29</sup> 1993 (1) CPR 595 (St.C.).

<sup>29</sup> Apeejay School v. M.K.Sangal, 1993 (2) CPR 62 (Del.St.C.).

<sup>29</sup> (1992) II CPJ 591 (Cal.H.Ct.).

<sup>29</sup> (1992) II CPJ 899 (Raj.St.C.). Also see Society of Civic Right v. Union of India, 1991 (1) CPR 104 (N.C.).

<sup>29</sup> (2001) I CPJ 74 (N.C.).

<sup>30</sup> Sushant Yuvaraj Rode v; Shri Ramdeobaba. Engineering College, 1993 (III) CPR 624.

<sup>31</sup> Secretary, Board of School Education, Haryana v. Mukesh Chand, 1994 (I) CPR 269.

<sup>32</sup> Subs. by Act 50 of 1993, sec. 3 (w.e.f. 18-6-1993).

may be prescribed.

Consumer Protection rules provides for (Central Council) following members not exceeding thirty five in number:

- (1) the Minister in charge of the consumer affairs in the Central Government, who shall be its Chairman, and;
- (2) The Minister of state, where he is not holding independent charge or deputy Minister in charge of Consumer Affairs in the Central Government shall be Vice-Chairman of the Council.
- (3) the Minister in charge of Consumer Affairs of two of the States from each of the five regions as mentioned in Schedule I to be Changed by rotation on expiration of the term of the Council on each occasion;
- (4) an Administrator (whether designated as Administrator or Lieutenant Governor) of Union Territory to represent a Union Territory as mentioned in Schedule II to be changed by rotation on expiry of the term of the Council on each occasion;
- (5) two members of Parliament- one from Lok Sabha and one from Rajya Sabha;
- (6) not exceeding five representatives of the Central Government Departments and autonomous organizations concerned with the consumer interests;
- (7) the Registrar, National Consumer Disputes Redressal Commission, New Delhi;
- (8) not exceeding six representatives of consumer organizations from amongst the Indian members of the International Organization namely, Consumer International to be nominated by the central Government;
- (9) one representative from each of the regions specified in I schedule with Proven expertise and experience. Their total number should not exceed five. They should be drawn from consumer organizations, consumer activists, women, farmers, trade and industry.
- (10) not exceeding three Secretaries in charge of Consumer Affairs in States to be nominated by the Central Government;
- (11) the Secretary in charge of the Consumer Affairs in the Central Government Shall be member -Secretary of the Central Consumer Council.

The term for the Central Consumer Protection Councils shall be three years.

**Section 6** of the Consumer Protection Act provides that the objects of the Central Consumer Protection Council shall be to promote and protect the rights of the Consumers such as-

- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) the right to be informed about the quantity, potency, purity standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate Forums;
- (e) the right to seek redressal against unfair trade practices [or restrictive trade practices] or unscrupulous exploitation of consumers; and

(f) the right to consumer education.

The use of the words "such as" indicates that the enumeration of these rights is only illustrative not exhaustive.

**Procedure for meetings of the Central Council:**

(1) The Central Council shall meet as and when necessary, but <sup>33</sup>[at least one meeting] of the Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

**The State Consumer Protection Councils:**

Section 7 of the consumer Protection Act Provides that the State Government shall by notification establish a Consumer Protection Council for every State with effect from the date specified in the notification. It may be referred to as State Council.

**Composition of State Council**

The State Council shall consist of the following members:-

(a) the Minister in -charge of consumer affairs in the State Government who shall be its Chairman;

(b) such number of other official or non-official members representing such interests as may be prescribed by the State Government;

(c) such number of other official or non-official members, not exceeding ten, as may nominated by the Central Government.

The State Council shall meet at such time and place as the Chairman think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

State Council shall meet as and when necessary but at least two meetings must be held every year. The procedure of the council for transaction of its business shall be such as may be prescribed by rules made by the State Government.

State council promotes the same objectives which central council promotes.

Section 8A provides for the District Consumer Protection Council.

The District Consumer Protection Council –

(1) The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.

(2) The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely –

(a) the Collector of the district (by whatever name called), who shall be its Chairman;

(b) such number of other official and non-official members representing such interests as

may be prescribed by the State Government.

(3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

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<sup>33</sup> Subs. by Act 50 of 1993, sec. 4 (w.e.f. 18-6-1993).

(4) The District Council shall meet as such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.)

(8.B) - Objects of the District Council - The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (a) to (f) of section 6.

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## 12.6 Consumer Disputes Redressal Agencies

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The Act provides for a 3-tier structure for redressal of Consumer Disputes. They are the National Commission and State Commissions and District Forums for speedy resolution of consumer Disputes.

Section 9 of the Act provides as under:

There shall be established for the purposes of this Act, the following agencies, namely:-

(a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government <sup>34</sup>[\* \* \*] in each district of the State by notification: <sup>35</sup>[Provided that the State Government may, if it deems fit, establish more than one **District Forum** in a district;]

(b) a Consumer Disputes Redressal Commission to be known as the "**State Commission**"

established by the State Government <sup>36</sup>[\* \* \*] in the State by notification; and

(c) a **National Consumer Disputes Redressal Commission** established by the Central Government by notification.

### **District Consumer Forum:**

Section 10 provides for establishment of District Consumer Forum which is as under:

<sup>37</sup> (I) Each District Forum shall consist of,-

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely :-

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognized university,

(iii) be persons of ability, integrity and standing, and have adequate problems relating to economics, law, commerce, accountancy, industry public affairs or administration:

Provided that a person shall be disqualified for appointment as a member, if he-

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an un-discharged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body

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<sup>34</sup> Omitted by Act 50 of 1993, sec. 7 (w.e.f. 18-6-1993).

<sup>35</sup> Ins. by Act 50 of 1993, sec. 7 (w.e.f. 18-6-1993).

<sup>36</sup> Omitted by Act 50 of 1993, sec. 7 (w.e.f. 18-6-1993).

<sup>37</sup> Subs. by Act 50 of 1993, sec. 8 (w.e.f. 18-6-1993).

corporate owned or controlled by the Government; or

(e) has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the State Government;)

<sup>38</sup>[(IA) Every appointment under sub-section (I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely :-

(i) the President of the State Commission - Chairman.

(ii) Secretary, Law Department of the State - Member.

(iii) Secretary, Incharge of the Department - Member.]

dealing with consumer affairs in the State.

Provided that where the President of the state Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman)

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier.

Provided that a member shall be eligible for re-appointment for another term of five years

or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee.

Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provision of sub-section (1A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

(Provided that the appointment of a member on whole-time basis shall be made by the state Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum).

Section 11 provides for Jurisdiction of the District Forum which is as under:

### **Jurisdiction of the District Forum:-**

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<sup>38</sup> Ins. by Act 50 of 1993, sec. 8 (w.e.f. 18-6-1993).



(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed <sup>39</sup>[ does not exceed rupees twenty lakhs].

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or <sup>40</sup>[carries on business or has a branch office or] personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or <sup>41</sup>[carries on business or has a branch office], or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or <sup>42</sup>[ carry on business or have a branch office], or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Objection & regarding territorial jurisdiction should be taken at the earliest opportunity or the same deemed to have been waived. <sup>43</sup>

A petition of complaint can be filed against corporation carrying on business within the territory of District Forum or Commission even though its sole or principal office is situated outside state limits. <sup>44</sup>

Section 12 Provides for the manners in which complaint can be made in District Forum. Consumer Forum proceedings are summary in nature. The endeavor is made to grant relief to the aggrieved consumer as quickly as in the quickest possible, keeping in mind the provisions of the Act which lay down time schedule for disposal of cases.

<sup>45</sup>**Manner in which complaint shall be made.-**

(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by-

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central or the State Government, as the case may be, either in its individual

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<sup>39</sup> Subs. by Act 50 of 1993, sec. 9 (w.e.f. 18-6-1993).

<sup>40</sup> *ibid*

<sup>41</sup> *ibid*

<sup>42</sup> *ibid*

<sup>43</sup> *Kurukshetra University v. Vinay Prakash Verma, II (1993) CPJ647.*

<sup>44</sup> *Consumer Education and Research Society v. Canara Bank, (1991) 1 I CPR 405.*

<sup>45</sup> Subs. by Act 50 of 1993, sec. 10 (w.e.f. 18-6-1993)



capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within Twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law

for the time being in force.

*Explanation.*-For the purpose of this section, "recognized consumer association" means any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.]

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## 12.8 Summary

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The Consumer Protection Act, 1986 was passed to protect the Consumers in the market. The act has been divided in five chapters and has 31 sections. The main object of the Act is to protect and educate consumers so that they are not exploited in the market by sellers and producers of goods and services.

The procedure followed in the various forums is summary procedure which is very different from the procedure followed in the civil and criminal courts. This is the reason that person can plead his own case without the help of an Advocate. There are provisions of appeal against the orders of various forums for dissatisfied complainants.

To provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies have been set up in each District and State and at the National level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively. At present, there are 629 District Forums and 35 State Commissions with the National Consumer Disputes Redressal Commission (NCDRC) at the apex. NCDRC has its office at The **National Commission** was constituted in the year 1988. It is headed by a sitting or retired Judge of the Supreme Court of India. The National Commission is presently headed by Hon'ble Mr. Justice Ashok Bhan, former Judge of the Supreme Court of India as President and has ten Members, viz. Hon'ble Mrs. Vineeta Rai, Hon'ble Mr. Vinay Kumar, Hon'ble Mr. Suresh Chandra, Hon'ble Mr. Justice V.B Gupta, Hon'ble Mr. Justice J.M. Malik, Hon'ble Mr. Justice K. S. Chaudhari, Hon'ble Mr. Justice Ajit Bharihoke, Hon'ble Mrs. Rekha Gupta, Hon'ble Dr. B. C. Gupta & Hon'ble Dr. S. M. Kanitkar.

A written complaint, can be filed before the District Consumer Forum for pecuniary value of up to Rupees twenty lakh, State Commission for value up to Rupees one crore and the National Commission for value above Rupees one crore, in respect of defects in goods and or deficiency in service. The service can be of any description and the illustrations given above are only indicative. However, no complaint can be filed for alleged deficiency in any service that is rendered free of charge or under a contract of personal Service.

The remedy under the Consumer Protection Act is an alternative in addition to that already available to the aggrieved persons/consumers by way of civil suit. In the complaint/appeal/petition submitted under the Act, a consumer is not required to pay any court fees but only a nominal fee.

If a consumer is not satisfied by the decision of a District Forum, he can appeal to the State Commission. Against the order of the State Commission a consumer can come to the National Commission.

In order to help achieve the objects of the Consumer Protection Act, the National Commission has also been conferred with the powers of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pendency of cases. The National Commission is empowered to issue instructions regarding (1) adoption of uniform procedure in the hearing of the matters, (2) prior service of copies of documents produced by one party to the opposite parties, (3) speedy grant of copies of documents, and (4) generally over-seeing the functioning of the State Commissions and the District Forums to ensure that the objects and purposes of the Act are best served, without interfering with their quasi-judicial freedom.

The Registry of the National Commission is at the Ground Floor, Upbhokta Nyay Bhawan, 'F' Block, GPO Complex, INA, New Delhi-110 023 which remains open on all working days. For any enquiry with the Registry of the National Commission, one can contact on Telephone Nos. 011-24608801, 24608802, 24608803, 24608804 and Fax No. 24651505. The filing timings are from 10.00 a.m. to 4.30 p.m. Every matter filed with the Registry is listed on the 7<sup>th</sup> day of its filing for admission before the National Commission.

Functioning of District Forum, State Commission and National Commission is consumer friendly, and thus a consumer can file a complaint and also address arguments in person. In genuine cases where the complainant/ appellant/ petitioner before the National Commission is unable to engage the services of an advocate legal aid is provided by the Commission free of charge.<sup>46</sup>

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## 12.9 Key Words

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- i. **Appeal-** means the transfer of a case from a lower to a higher court for a new hearing.
- ii. **Competent Court-** A court is competent if it has been given jurisdiction, by statute or constitution, to hear particular types of lawsuits.

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<sup>46</sup> <http://ncdrc.nic.in/>

- iii. **Consumer**-is a person who buys goods or hires services to be used or consumed by himself/herself or by someone on behalf of the buyer.
- iv. **Consumer Complaint**- is “an expression of dissatisfaction on a consumer’s behalf to a responsible party”. It can also be described in a positive sense as a report from a consumer providing documentation about a problem with a product or service.
- v. **Dangerous Goods**- are solids, liquids, or gases that can harm people, other living organisms, property, or the environment. They are often subject to chemical regulations.
- vi. **Limitation Period**- It is an enactment in a legal system that sets the maximum time after an event that legal proceedings based on that event may be initiated.
- vii. **Limitation Period**- It is an enactment in a legal system that sets the maximum time after an event that legal proceedings based on that event may be initiated.
- viii. **Redressal**- To compensate someone monetarily for some damages that they experienced. “The courts decided that I was entitled to some compensation for my injury, so they ordered redress from the defendant.”
- ix. **Territorial jurisdiction**- refers to a court’s power over events and persons within the bounds of a particular geographic territory. If a court does not have territorial jurisdiction over the events or persons within it, then the court cannot bind the defendant to an obligation or adjudicate any rights involving them.

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## 12.10 Self Assessment Tests

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1. Explain the terms ‘Consumer’ and ‘Service’ under the Consumer Protection Act, 1986. Give suitable illustrations.
2. Discuss the territorial, pecuniary and appellate jurisdiction of the various consumer forums under the Act.
3. Discuss the concepts of ‘Unfair Trade Practices’ and ‘Restrictive Trade Practices’ under the Act.
4. Explain the provisions in respect of filing a complaint before the restrict forum.
5. Discuss the nature of a complaint to be filed under the Act, fees to be paid and the role of a lawyer, under the Act.
6. State whether the following amount to deficiency in service or defect in goods under the Act.
  - a) Mr. Brown had applied for electricity connection to the Electricity Board. However the power supply was not provided to him ?
  - b) Mr. Black was allotted a Maruti car and after delay in delivery of the car the dealer called upon to pay further amount due to price increase.
  - c) Mr. X did not receive a registered letter sent to him. It was not delivered by the post office.
  - d) A milk company selling milk packets of 500 ml, actually delivered only 400 ml through its retailer.
7. Discuss the composition and functions of the Central Consumer Protection Council.
8. Write short notes on any two :

- a) Period of limitation of filing complaint
  - b) Goods purchased for commercial purpose
  - c) Caveat Emptor
  - d) Penalties under the Act.
9. Discuss the composition and functions of the Different Forums provided in the Act.

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## 12.11 Suggested Readings:

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- “Role of Media in Consumer Protection” Rishikant Agnihotri, Beenu Singh and Arti Singh, VRD International Journal of Business & Management Research Vol. 1 (10), 2011.
- “A guide to developing Consumer Protection law” Published by ‘Consumers International’ in May 2011
- “Procedure to Lodge Consumer Complaints” A. R. Kanagaraj, S. Tamilmani, S. Archana Indian Journal of Research, Volume: 2, Issue: 3, March 2013.
- “Applicability of Consumer Protection Act to Banking Sector” Consumer Protection Journal,
- O. P. Tiwari, Consumer Protection Act (1) 1996.
- [dc-siwan.bih.nic.in/consumer](http://dc-siwan.bih.nic.in/consumer)
- “Consumer Protection Laws – An Appraisal” Naresh Kumar
- “Consumer Awareness Guidelines”, Issued by Government of Tamil Nadu
- “Consumers Awareness about Rights and Grievance Redressal”, by Dr. Durga Surekha, 2010,
- Consumer Protection and Consumerism in India”, Ms Kiran Chaudhry; Ms Tanu Chandhok, Mrs Parveen Dewan
- Consumer Protection Legislations in South Asian Countries: The Emerging Trend”, Basant Kumar
- Aggarwal Sukhdev, **Commentary on the Consumer Protection Act**, 1986 Delhi: Bright Law house, 2003.
- O. P. Tiwari, Consumer Protection Act (1) 1996.

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## Unit 13 : Contract of Insurance & Hotel Insurance

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### Structure

- 13.0 Objective
- 13.1. Introduction
- 13.2. Definition and History of Insurance
- 13.3. Regulation of Insurance
- 13.4. Principles of Insurance
- 13.5. Types of Insurance
- 13.6. Hotel Industry Key Benefits
- 13.7. Summary
- 13.8. Review Questions
- 13.9. Reference and Suggested Readings

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### 13.0 Objectives

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After going through this unit you will be able to Understand the:

- Meaning and Definitions of contract.
- What are the essential Elements of the Contract?
- Who can make a Contract?
- Insurance contract
- Types of insurances
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### 13.1 Introduction

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Man is a social animal. He interacts with other human beings in various ways in his society. With the development of the human civilization man started interacting with each other with more zeal and vigor in various activities of life. This interaction increased with development of society and the industrialization. In advance societies the interaction of human activities revolves around economic and commercial activities. That is why Anson in his Law of Contract has said that “The Law of Contract is Child of Commerce”<sup>47</sup>. Our day to day various activities revolve around the various contracts. Selling and Purchase of a thing or goods or tickets, taking loan, giving money and in many other transactions in which we involve in or enter into a contract knowingly or unknowingly.

In India the matter related with contract are governed by the Indian Contract Act, 1872. Section 1 to Section 75 deals with General Principals of Contract. The particular types of contract such as Indemnity and Guarantee; Bailment and Pledge; and Agency are provided in Chapter VIII, IX and X of the Act. In 1930, The Sale of Goods Act and in 1932 the Partnership Act was passed and provisions related with these were repealed

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<sup>47</sup> See Anson’s Law of Contract

from the Indian Contract Act, 1872. The provisions of the Act are applicable to whole of India except the State of Jammu and Kashmir. In *Punjab National Bank vs. Arura Lal Durga Das*<sup>48</sup> it was held that The Contract Act applies to all the contracts in India.

## Insurance

Uncertainty, risk and insecurity are incidental to any form of business. This makes insurance indispensable for a business organisation. Insurance may be defined as a contract in writing under which one party agrees to indemnify the other party against a loss or damage suffered by it on account of an uncertain future, in return for a consideration called 'premium'. The person/business who gets its life/property insured is called 'Insured/Assured'. The agency which helps in entering into an insurance arrangement is called 'Insurer' or 'Insurance company'. The agreement or contract which is put in writing, is called a 'policy'. An insurance policy provides the following benefits to a business concern :-

- **Protection** :- it provides protection against risk of loss and a sense of security to the businessmen.
- **Diffusion of risks** :- as the burden of loss is spread over a large number of people.
- **Credit standing** :- of the firm is enhanced as the businessman can easily transfer some of his risks to an insurance company.
- **Continuity and certainty of business** :-if all the risks were to be borne by the businessmen themselves, the business operations would have been uncertain and halting in character.
- **Better utilisation of the capital of the firms** :- as the Insurance companies take over the risk, it enables the business firm to invest and optimally utilise its capital.

Thus, the aim of insurance is to compensate the owner against the losses arising from a variety of risks which he anticipates to his life, property and business. It is a means of pooling of risks, under which a group of people who are subject to an insurable risk contribute regularly to a fund. The fund so created is utilised to compensate those members of the group who actually suffer a loss due to some unexpected calamity. Thus the loss of a few is shared by all the members on an equitable basis.

In India, insurance is mainly of two types i.e. life insurance and general insurance. All issues relating to both the types of insurance policies fall within the domain of Insurance Division in the **Ministry of Finance** . In order to protect the interests of holder of insurance policy and to regulate, promote and ensure orderly growth of the insurance industry, the Government of India has set up the **Insurance Regulatory and Development Authority (IRDA)**. The authority has been issuing regulations covering almost the entire segment of insurance industry including insurance agents, solvency margins, re-insurance, registration of insurers, obligations of insurers to rural and social sector, accounting procedures,etc.

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<sup>48</sup> AIR 1960 Punj 632

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## 13.2 Definitions of Insurance & History of Insurance

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**The Indian Contract Act, 1872** has defined Contract in Section 2(h) as

"An agreement enforceable by law".

In above definition we find that this definition is having two distinct characteristics. First, there must be an agreement. Secondly, such an agreement must be enforceable by law. To be enforceable, an agreement must be coupled with an obligation.

A contract therefore, is a combination of the two elements:

- (1) an agreement and
- (2) an obligation.

**INSURANCE** n. a contract (insurance policy) in which the insurer (insurance company) agrees for a fee (insurance premiums) to pay the insured party all or a portion of any loss suffered by accident or death. The losses covered by the policy may include property damage from accident or fire, theft or intentional harm, medical costs and/or lost earnings due to physical injury, long-term or permanent loss of physical capacity, claims by others due to the insured's alleged negligence (eg. public liability auto insurance), loss of a ship and/or cargo, finding a defect in title to real property, dishonest employees, or the loss of someone's life. Life insurance may be on the life of a spouse, a child, one of several business partners, or an especially important manager ("key man" insurance), all of which is intended to provide for survivors or to ease the burden upon the loss of a financial contributor. So-called "mortgage" insurance is life insurance which will pay off the remaining amount due on a home loan on the death of the husband or wife. Life insurance proceeds are usually not included in the probate of a dead person's estate, but the funds may be counted by the Internal Revenue Service in calculating estate tax. Insurance companies may refuse to pay a claim by a third party against an insured, but at the same time may be required to assume the legal defense (pay attorney's fees or provide an attorney) under the doctrine of "reservation of rights."

### History

The first examples of insurance related to marine activities. In many ancient societies, merchants and traders pledged their ships or cargo as security for loans. In Babylon creditors charged higher interest rates to merchants and traders in exchange for a promise to forgive the loan if the ship was robbed by pirates or was captured and held for ransom. In postmedieval England, local groups of working people banded together to create "friendly societies," forerunners of the modern insurance companies. Members of the friendly societies made regular contributions to a common fund, which was used to pay for losses suffered by members. The contributions were determined without reference to a member's age, and without precise identification of what claims would be covered. Without a system to anticipate risks and potential liability, many of the first friendly societies were unable to pay claims, and many eventually disbanded. Insurance gradually came to be seen as a matter best handled by a company in the business of providing insurance.



Insurance companies began to operate for profit in England during the seventeenth century. They devised tables to mathematically predict losses based on various data, including the characteristics of the insured and the probability of loss related to particular risks. These calculations made it possible for insurance companies to anticipate the likelihood of claims, and this made the business of insurance reliable and profitable.

In India, insurance has a deep-rooted history. It finds mention in the writings of Manu ( *Manusmrithi* ), Yagnavalkya ( *Dharmasastra* ) and Kautilya ( *Arthasastra* ). The writings talk in terms of pooling of resources that could be re-distributed in times of calamities such as fire, floods, epidemics and famine. This was probably a pre-cursor to modern day insurance. Ancient Indian history has preserved the earliest traces of insurance in the form of marine trade loans and carriers' contracts. Insurance in India has evolved over time heavily drawing from other countries, England in particular.

1818 saw the **advent of life insurance business in India** with the establishment of the Oriental Life Insurance Company in Calcutta. This Company however failed in 1834. In 1829, the Madras Equitable had begun transacting life insurance business in the Madras Presidency. 1870 saw the enactment of the British Insurance Act and in the last three decades of the nineteenth century, the Bombay Mutual (1871), Oriental (1874) and Empire of India (1897) were started in the Bombay Residency. This era, however, was dominated by foreign insurance offices which did good business in India, namely Albert Life Assurance, Royal Insurance, Liverpool and London Globe Insurance and the Indian offices were up for hard competition from the foreign companies.

In 1914, the Government of India started publishing returns of Insurance Companies in India. The Indian Life Assurance Companies Act, 1912 was the first statutory measure to regulate life business. In 1928, the Indian Insurance Companies Act was enacted to enable the Government to collect statistical information about both life and non-life business transacted in India by Indian and foreign insurers including provident insurance societies. In 1938, with a view to protecting the interest of the Insurance public, the earlier legislation was consolidated and amended by the Insurance Act, 1938 with comprehensive provisions for effective control over the activities of insurers.

The Insurance Amendment Act of 1950 abolished Principal Agencies. However, there were a large number of insurance companies and the level of competition was high. There were also allegations of unfair trade practices. The Government of India, therefore, decided to nationalize insurance business.

An Ordinance was issued on 19<sup>th</sup> January, 1956 nationalising the Life Insurance sector and Life Insurance Corporation came into existence in the same year. The LIC absorbed 154 Indian, 16 non-Indian insurers as also 75 provident societies—245 Indian and foreign insurers in all. The LIC had monopoly till the late 90s when the Insurance sector was reopened to the private sector.

The **history of general insurance dates** back to the Industrial Revolution in the west and the consequent growth of sea-faring trade and commerce in the 17<sup>th</sup> century. It came to India as a legacy of British occupation. General Insurance in India has its roots in the establishment of Triton Insurance Company Ltd., in the year 1850 in Calcutta by the British. In 1907, the Indian Mercantile Insurance Ltd, was set up. This was the first company to transact all classes of general insurance business.

1957 saw the formation of the General Insurance Council, a wing of the Insurance Association of India. The General Insurance Council framed a code of conduct for ensuring fair conduct and sound business practices.

In 1968, the Insurance Act was amended to regulate investments and set minimum solvency margins. The Tariff Advisory Committee was also set up then.

In 1972 with the passing of the General Insurance Business (Nationalisation) Act, general insurance business was nationalized with effect from 1<sup>st</sup> January, 1973. 107 insurers were amalgamated and grouped into four companies, namely National Insurance Company Ltd., the New India Assurance Company Ltd., the Oriental Insurance Company Ltd and the United India Insurance Company Ltd. The General Insurance Corporation of India was incorporated as a company in 1971 and it commenced business on January 1<sup>st</sup> 1973.

This millennium has seen insurance come a full circle in a journey extending to nearly 200 years. The process of **re-opening of the sector** had begun in the early 1990s and the last decade and more has seen it been opened up substantially. In 1993, the Government set up a committee under the chairmanship of RN Malhotra, former Governor of RBI, to propose recommendations for reforms in the insurance sector. The objective was to complement the reforms initiated in the financial sector. The committee submitted its report in 1994 wherein, among other things, it recommended that the private sector be permitted to enter the insurance industry. They stated that foreign companies be allowed to enter by floating Indian companies, preferably a joint venture with Indian partners.

Following the recommendations of the Malhotra Committee report, in 1999, the Insurance Regulatory and Development Authority (IRDA) was constituted as an autonomous body to regulate and develop the insurance industry. The IRDA was incorporated as a statutory body in April, 2000. The key objectives of the IRDA include promotion of competition so as to enhance customer satisfaction through increased consumer choice and lower premiums, while ensuring the financial security of the insurance market.

The IRDA opened up the market in August 2000 with the invitation for application for registrations. Foreign companies were allowed ownership of up to 26%. The Authority has the power to frame regulations under Section 114A of the Insurance Act, 1938 and has from 2000 onwards framed various regulations ranging from registration of companies for carrying on insurance business to protection of policyholders' interests.

In December, 2000, the subsidiaries of the General Insurance Corporation of India were restructured as independent companies and at the same time GIC was converted into a national re-insurer. Parliament passed a bill de-linking the four subsidiaries from GIC in July, 2002.

Today there are 27 general insurance companies including the ECGC and Agriculture Insurance Corporation of India and 24 life insurance companies operating in the country.

The **insurance sector is a colossal one** and is growing at a speedy rate of 15-20%. Together with banking services, insurance services add about 7% to the country's GDP. A well-developed and evolved insurance sector is a boon for economic development as it provides long-term funds for infrastructure development at the same time strengthening the risk taking ability of the country.

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### 13.3 Regulation and Control

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**Insurance in India** is the market for [insurance](#) in India which covers both the state and private sector organisations. It is listed in the [Constitution of India](#) on the Union list in the Seventh Schedule meaning it can only be legislated by the central government.

The insurance sector has gone through a number of phases by allowing private companies to solicit insurance and also allowing foreign direct investment of up to 26% (as of 2013 there have been proposals to extend the FDI up to 49% to strengthen the Insurance Market even further). However, the largest life-insurance company in India, [Life Insurance Corporation of India](#) is still owned by the government and carries a sovereign guarantee for all insurance policies issued by it.

Insurance in its current form has its history dating back until 1818, when *Oriental Life Insurance Company* was started by Anita Bhavsar in [Kolkata](#) to cater to the needs of European community. The pre-independence era in India saw discrimination between the lives of foreigners (English) and Indians with higher premiums being charged for the latter. In 1870, *Bombay Mutual Life Assurance Society* became the first Indian insurer.

At the dawn of the twentieth century, many insurance companies were founded. In the year 1912, the Life Insurance Companies Act and the Provident Fund Act were passed to regulate the insurance business. The Life Insurance Companies Act, 1912 made it necessary that the premium-rate tables and periodical valuations of companies should be certified by an [actuary](#). However, the disparity still existed as discrimination between Indian and foreign companies. The oldest existing insurance company in India is the [National Insurance Company](#), which was founded in 1906, and is still in business.

The Government of India issued an Ordinance on 19 January 1956 nationalising the Life Insurance sector and Life Insurance Corporation came into existence in the same year. The Life Insurance Corporation (LIC) absorbed 154 Indian, 16 non-Indian insurers as also 75 provident societies—245 Indian and foreign insurers in all. In 1972 with the General Insurance Business (Nationalisation) Act was passed by the Indian Parliament, and consequently, General Insurance business was nationalized with effect from 1

January 1973. 107 insurers were amalgamated and grouped into four companies, namely National Insurance Company Ltd., the New India Assurance Company Ltd., the Oriental Insurance Company Ltd and the United India Insurance Company Ltd. The General Insurance Corporation of India was incorporated as a company in 1971 and it commenced business on 1 January 1973.

The LIC had monopoly till the late 90s when the Insurance sector was reopened to the private sector. Before that, the industry consisted of only two state insurers: Life Insurers ([Life Insurance Corporation of India](#), LIC) and General Insurers ([General Insurance Corporation of India](#), GIC). GIC had four subsidiary companies. With effect from December 2000, these subsidiaries have been de-linked from the parent company and were set up as independent insurance companies: [Oriental Insurance Company Limited](#), [New India Assurance Company Limited](#), [National Insurance Company Limited](#) and [United India Insurance Company Limited](#).

### **Industry structure**

By 2012 Indian Insurance is a US\$72 billion industry. However, only two million people (0.2% of the total population of 1 billion) are covered under Mediclaim, whereas in developed nations like USA about 75% of the total population is covered under some insurance scheme. With more and more private companies in the sector, this situation is expected to change. ECGC, ESIC and AIC provide insurance services for niche markets. So, their scope is limited by legislation but enjoy some special powers.

### **Legal structure**

The insurance sector went through a full circle of phases from being unregulated to completely regulated and then currently being partly deregulated. It is governed by a number of acts.

The Insurance Act of 1938 was the first legislation governing all forms of insurance to provide strict state control over insurance business. Life insurance in India was completely nationalized on 19 January 1956, through the Life Insurance Corporation Act. All 245 insurance companies operating then in the country were merged into one entity, the [Life Insurance Corporation of India](#).

The General Insurance Business Act of 1972 was enacted to nationalise the about 100 general insurance companies then and subsequently merging them into four companies. All the companies were amalgamated into National Insurance, New India Assurance, Oriental Insurance and United India Insurance, which were headquartered in each of the four metropolitan cities. Until 1999, there were no private insurance companies in India. The government then introduced the Insurance Regulatory and Development Authority Act in 1999, thereby de-regulating the insurance sector and allowing private companies. Furthermore, foreign investment was also allowed and capped at 26% holding in the Indian insurance companies.

In 2006, the Actuaries Act was passed by parliament to give the profession statutory status on par with Chartered Accountants, Notaries, Cost & Works Accountants, Advocates, Architects and Company Secretaries. A minimum capital of US\$80 million (Rs.400 Crore) is required by legislation to set up an insurance business.

## Authorities

The primary regulator for insurance in India is the [Insurance Regulatory and Development Authority](#) (IRDA) which was established in 1999 under the government legislation called the *Insurance Regulatory and Development Authority Act, 1999*.

The industry recognises examinations conducted by IAI (for actuaries), III (for agents, brokers and [third-party administrators](#)) and IISLA (for surveyors and loss assessors). TAC is the sole data repository for the non-life industry. IBAI gives voice for brokers while GI Council and LI Council are platforms for insurers. AIGIEA, AIIEA, AIIEF, AILICEF, AILIEA, FLICOA, GIEAIA, GIEU and NFIFWI cater to the employees of the insurers. In addition, there are a dozen Ombudsman offices to address client grievances.

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## 13.4 Principles of Insurance

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Insurance involves [pooling](#) funds from *many* insured entities (known as exposures) to pay for the losses that some may incur. The insured entities are therefore protected from risk for a fee, with the fee being dependent upon the frequency and severity of the event occurring. In order to be an [insurable risk](#), the risk insured against must meet certain characteristics. Insurance as a [financial intermediary](#) is a commercial enterprise and a major part of the financial services industry, but individual entities can also [self-insure](#) through saving money for possible future losses.

### Insurability

Risk which can be insured by private companies typically shares seven common characteristics:

1. **Large number of similar exposure units:** Since insurance operates through pooling resources, the majority of insurance policies are provided for individual members of large classes, allowing insurers to benefit from the [law of large numbers](#) in which predicted losses are similar to the actual losses. Exceptions include [Lloyd's of London](#), which is famous for insuring the life or health of actors, sports figures, and other famous individuals. However, all exposures will have particular differences, which may lead to different premium rates.
2. **Definite loss:** The loss takes place at a known time, in a known place, and from a known cause. The classic example is death of an insured person on a life insurance policy. [Fire](#), [automobile accidents](#), and worker injuries may all easily meet this criterion. Other types of losses may only be definite in theory. [Occupational disease](#), for instance, may involve prolonged exposure to injurious conditions where no specific time, place, or cause is identifiable. Ideally, the time, place, and cause of a loss should be clear enough that a reasonable person, with sufficient information, could objectively verify all three elements.
3. **Accidental loss:** The event that constitutes the trigger of a claim should be fortuitous, or at least outside the control of the beneficiary of the insurance. The loss should be pure, in the sense that it results from an event for which there is only the opportunity for cost. Events that contain speculative elements, such as

ordinary business risks or even purchasing a lottery ticket, are generally not considered insurable.

4. **Large loss:** The size of the loss must be meaningful from the perspective of the insured. Insurance premiums need to cover both the expected cost of losses, plus the cost of issuing and administering the policy, adjusting losses, and supplying the capital needed to reasonably assure that the insurer will be able to pay claims. For small losses, these latter costs may be several times the size of the expected cost of losses. There is hardly any point in paying such costs unless the protection offered has real value to a buyer.
5. **Affordable premium:** If the likelihood of an insured event is so high, or the cost of the event so large, that the resulting premium is large relative to the amount of protection offered, then it is not likely that the insurance will be purchased, even if on offer. Furthermore, as the accounting profession formally recognizes in financial accounting standards, the premium cannot be so large that there is not a reasonable chance of a significant loss to the insurer. If there is no such chance of loss, then the transaction may have the form of insurance, but not the substance.
6. **Calculable loss:** There are two elements that must be at least estimable, if not formally calculable: the probability of loss, and the attendant cost. Probability of loss is generally an empirical exercise, while cost has more to do with the ability of a reasonable person in possession of a copy of the insurance policy and a proof of loss associated with a claim presented under that policy to make a reasonably definite and objective evaluation of the amount of the loss recoverable as a result of the claim.
7. **Limited risk of catastrophically large losses:** Insurable losses are ideally [independent](#) and non-catastrophic, meaning that the losses do not happen all at once and individual losses are not severe enough to bankrupt the insurer; insurers may prefer to limit their exposure to a loss from a single event to some small portion of their capital base. [Capital](#) constrains insurers' ability to sell [earthquake insurance](#) as well as wind insurance in [hurricane](#) zones. In the US, [flood risk](#) is insured by the federal government. In commercial fire insurance, it is possible to find single properties whose total exposed value is well in excess of any individual insurer's capital constraint. Such properties are generally shared among several insurers, or are insured by a single insurer who syndicates the risk into the [reinsurance](#) market.

## Legal

When a company insures an individual entity, there are basic legal requirements. Several commonly cited legal principles of insurance include:

1. [Indemnity](#) – the insurance company indemnifies, or compensates, the insured in the case of certain losses only up to the insured's interest.
2. Benefit insurance - as it is stated in the study books of The Chartered Insurance Institute, the insurance company doesn't have the right of recovery from the party who caused the injury and is to compensate the Insured regardless of the fact that



- Insured had already sued the negligent party for the damages (for example, personal accident insurance)
3. Insurable interest – the insured typically must directly suffer from the loss. Insurable interest must exist whether property insurance or insurance on a person is involved. The concept requires that the insured have a "stake" in the loss or damage to the life or property insured. What that "stake" is will be determined by the kind of insurance involved and the nature of the property ownership or relationship between the persons. The requirement of an insurable interest is what distinguishes insurance from gambling.
  4. Utmost good faith – (Uberrima fides) the insured and the insurer are bound by a good faith bond of honesty and fairness. Material facts must be disclosed.
  5. Contribution – insurers which have similar obligations to the insured contribute in the indemnification, according to some method.
  6. Subrogation – the insurance company acquires legal rights to pursue recoveries on behalf of the insured; for example, the insurer may sue those liable for the insured's loss. The Insurers can waive their subrogation rights by using the special clauses.
  7. Causa proxima, or proximate cause – the cause of loss (the peril) must be covered under the insuring agreement of the policy, and the dominant cause must not be excluded
  8. Mitigation – In case of any loss or casualty, the asset owner must attempt to keep loss to a minimum, as if the asset was not insured

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## 13.5 Types of Insurance

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Insurance companies create insurance policies by grouping risks according to their focus. This provides a measure of uniformity in the risks that are covered by a type of policy, which in turn allows insurers to anticipate their potential losses and to set premiums accordingly. The most common forms of insurance policies include life, health, automobile, homeowners' and renters', Personal Property, fire and casualty, marine, and inland marine policies.

Life insurance provides financial benefits to a designated person upon the death of the insured. Many different forms of life insurance are issued. Some provide for payment only upon the death of the insured; others allow an insured to collect proceeds before death.

A person may purchase life insurance on his or her own life for the benefit of a third person or persons. Individuals may even purchase life insurance on the life of another person. For example, a wife may purchase life insurance that will provide benefits to her upon the death of her husband. This kind of policy is commonly obtained by spouses and by parents insuring themselves against the death of a child. However, individuals may only purchase life insurance on the life of another person and name themselves beneficiary when there are reasonable grounds to believe that they can expect some benefit from the continued life of the insured. This means that some familial or financial relationship must unite the beneficiary and the insured. For example, a person may not



purchase life insurance on the life of a stranger in the hope that the stranger will suffer a fatal accident. Health insurance policies cover only specified risks. Generally, they pay for the expenses incurred from bodily injury, disability, sickness, and accidental death. Health insurance may be purchased for one's self and for others.

All automobile insurance policies contain liability insurance, which is insurance against injury to another person or against damage to another person's vehicle caused by the insured's vehicle. Auto insurance may also pay for the loss of, or damage to, the insured's motor vehicle. Most states require that all drivers carry, at a minimum, liability insurance under a no-fault scheme. In states that recognize no-fault insurance, damages resulting from an accident are paid for by the insurers, and the drivers do not have to go to court to settle the issue of damages. Drivers in these states may bring suit over an accident only in cases of egregious conduct, or where medical or repair costs exceed an amount defined by statute.

Homeowners' insurance protects homeowners from losses relating to their dwelling, including damage to the dwelling; personal liability for injury to visitors; and loss of, or damage to, property in and around the dwelling. Renters' insurance covers many of the same risks for persons who live in rented dwellings.

As its name would suggest, personal property insurance protects against the loss of, or damage to, certain items of personal property. It is useful when the liability limit on a homeowner's policy does not cover the value of a particular item or items. For example, the owner of an original painting by Pablo Picasso might wish to obtain, in addition to a homeowner's policy, a separate personal property policy to insure against loss of, or damage to, the painting.

Businesses can insure against damage and liability to others with fire and casualty insurance policies. Fire insurance policies cover damage caused by fire, explosions, earthquakes, lightning, water, wind, rain, collisions, and riots. Casualty insurance protects the insured against a variety of losses, including those related to legal liability, Burglary and theft, accidents, property damage, injury to workers, and insurance on credit extended to others. Fidelity and surety bonds are temporary, specialized forms of casualty insurance. A fidelity bond insures against losses relating to the dishonesty of employees, and a surety bond provides protection to a business if it fails to fulfill its contractual obligations.

Marine insurance policies insure transporters and owners of cargo shipped on an ocean, a sea, or a navigable waterway. Marine risks include damage to cargo, damage to the vessel, and injuries to passengers.

Inland marine insurance is used for the transportation of goods on land and on land-locked lakes.

Many other types of insurance are also issued. Group health insurance plans are usually offered by employers to their employees. A person may purchase additional insurance to cover losses in excess of a stated amount or in excess of coverage provided by a particular insurance policy. Air-travel insurance provides life insurance benefits to a named beneficiary if the insured dies as a result of the specified airplane flight. Flood insurance is not included in most homeowners' policies, but it can be purchased

separately. Mortgage insurance requires the insurer to make mortgage payments when the insured is unable to do so because of death or disability.

### **Contract and Policy**

An insurance contract cannot cover all conceivable risks. An insurance contract that violates a statute, is contrary to public policy, or plays a part in some prohibited activity will be held unenforceable in court. A contract that protects against the loss of burglary tools, for example, is contrary to public policy and thus unenforceable.

### **Insurable Interest**

To qualify for an insurance policy, the insured must have an insurable interest, meaning that the insured must derive some benefit from the continued preservation of the article insured, or stand to suffer some loss as a result of that article's loss or destruction. Life insurance requires some familial and pecuniary relationship between the insured and the beneficiary. Property insurance requires that the insured must simply have a lawful interest in the safety or preservation of the property.

### **Premiums**

Different types of policies require different premiums based on the degree of risk that the situation presents. For example, a policy insuring a homeowner for all risks associated with a home valued at 200,000 requires a higher premium than one insuring a bike valued at 20,000. Although liability for injuries to others might be similar under both policies, the cost of replacing or repairing the bike would be less than the cost of repairing or replacing the home, and this difference is reflected in the premium paid by the insured.

Premium rates also depend on characteristics of the insured. For example, a person with a poor driving record generally has to pay more for auto insurance than does a person with a good driving record in USA. Furthermore, insurers are free to deny policies to persons who present an unacceptable risk. For example, most insurance companies do not offer life or health insurance to persons who have been diagnosed with a terminal illness.

### **Claims**

The most common issue in insurance disputes is whether the insurer is obligated to pay a claim. The determination of the insurer's obligation depends on many factors, such as the circumstances surrounding the loss and the precise coverage of the insurance policy. If a dispute arises over the language of the policy, the general rule is that a court should choose the interpretation that is most favorable to the insured. Many insurance contracts contain an Incontestability Clause to protect the insured. This clause provides that the insurer loses the right to contest the validity of the contract after a specified period of time.

An insurance company may deny or cancel coverage if the insured party concealed or misrepresented a material fact in the policy application. If an applicant presents an unacceptably high risk of loss for an insurance company, the company may deny the application or charge prohibitively high premiums. A company may cancel a policy if the insured fails to make payments. It also may refuse to pay a claim if the insured intentionally caused the loss or damage. However, if the insurer knows that it has the right to rescind a policy or to deny a claim, but conveys to the insured that it has

voluntarily surrendered such right, the insured may claim that the insurer waived its right to contest a claim.

An insurer may have a duty to defend an insured in a lawsuit filed against the insured by a third party. This duty usually arises if the claims in the suit against the insured fall within the coverage of a liability policy.

If a third party caused a loss covered by a policy, the insurance company may have the right to sue the third party in place of the insured. This right is called Subrogation, and it is designed to make the party that is responsible for a loss bear the burden of the loss. It also prevents an insured from recovering twice: once from the insurance company, and once from the responsible party.

An insurance company can subrogate claims only on certain types of policies. Property and liability insurance policies allow subrogation because the basis for the payment of claims is indemnification, or reimbursement, of the insured for losses. Conversely, life insurance policies do not allow subrogation. Life insurance does not indemnify an insured for a loss that can be measured in dollars. Rather, it is a form of investment for the insured and the insured's beneficiaries. A life insurance policy pays only a fixed sum of money to the beneficiary and does not cover any liability to a third party. Under such a policy, the insured stands no chance of double recovery, and the insurance company has no need to sue a third party if it must pay a claim.

### **Terrorism Insurance**

Following the attacks on the World Trade Center and the Pentagon, insurance premiums skyrocketed, especially for tenants of highly visible landmarks like sports arenas and skyscrapers. The Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, 116 Stat. 2322, established a temporary federal program providing for a shared public and private compensation for insured losses resulting from acts of terrorism. The act, which is valid only for three years, provides that insurers must make terrorism coverage available and must provide policy-holders with a clear and conspicuous disclosure of the premium charged for losses covered by the program. TRIA caps the exposure of insurance carriers to future acts of foreign terrorism, leaving the federal government to reimburse the insurance company for excess losses up to a maximum of \$100 billion per year. Under TRIA, the Treasury Department covers 90 percent of terrorism claims when an insurer's exposure exceeds 7 percent of its commercial premiums in 2003, 10 percent of premiums in 2004, and 15 percent in 2005.

TRIA defines an act of terrorism as any act that is certified by the U.S. secretary of the treasury, in concurrence with the U.S. Secretary of State and U.S. attorney general. The act of terror must result in damage within the United States, or outside the United States in the case of an airplane or a U.S. mission. A terrorist act must be committed by an individual or individuals acting on behalf of any foreign person or foreign interest. An event must be a violent act or an act that is dangerous to human life, property, or infrastructure. Nuclear, biological, and chemical attacks are not covered, and an event cannot be certified as an act of terrorism unless the total damages exceed \$5 million.

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## 13.6 Hotel Insurance Key Benefits

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Hotel insurance provides insurance cover for the legal liabilities and risks you face as an hotelier. A hotel insurance policy allows one to combine public and employer's liability cover with cover that's tailored to running a hotel. It also covers wet and dry stock and other contents in one easily managed policy

The following are the key benefits of insurance in hotel operations :-

- stock and contents insurance
- public liability insurance cover
- employer's liability
- business interruption insurance
- money cover
- glass cover
- personal assaults in work hours
- loss of alcohol license insurance
- goods in transit insurance
- buildings insurance

**Money cover:** - Running a hotel often involves having large sums of money on the premises at certain times. Money is covered, while it is:

- stored overnight in a safe on your premises
- on your premises during business hours
- in transit to the bank

**Glass cover:** - Glass cover provides insurance for front of house glass, like window glass and sanitary ware.

**Business interruption insurance:** - Business interruption covers your business against losses incurred following a loss covered by your hotel insurance.

For example, if you were unable to trade because of a fire at your hotel, business interruption insurance could pay for your lost earnings and costs for the period of interruption.

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## 13.7 Summary

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Insurance is the equitable transfer of the risk of a loss, from one entity to another in exchange for payment. It is a form of risk management primarily used to hedge against the risk of a contingent, uncertain loss.

An insurer, or insurance carrier, is a company selling the insurance; the insured, or policyholder, is the person or entity buying the insurance policy. The amount of money to be charged for a certain amount of insurance coverage is called the premium. Risk management, the practice of appraising and controlling risk, has evolved as a discrete field of study and practice.

The transaction involves the insured assuming a guaranteed and known relatively small loss in the form of payment to the insurer in exchange for the insurer's promise to

compensate (indemnify) the insured in the case of a financial (personal) loss. The insured receives a contract, called the insurance policy, which details the conditions and circumstances under which the insured will be financially compensated.

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### **13.8 Review Questions**

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- Q 1 Define Insurance and discuss briefly history of Insurance.
- Q2 Write a short note on Regulation frame work of India.
- Q3 Explain in detail Principles of Insurance.
- Q4 List and discuss types of Insurance.
- Q5 What are the advantages of taking insurance for the Hotel.

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### **13.9 Reference and Suggested Readings**

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- 1. <http://en.wikipedia.org/wiki/Insurance>
- 2. [www.irda.gov.in](http://www.irda.gov.in)
- 3. Life Insurance in India principles and Practices by K C Sharma Year : 2013
- 4. India Insurance Guide 2013 Policies Claims and Law by L P Gupta Jain  
Publication Year : 2012

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## Unit 14 : Labour Laws

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### Structure

- 14.0 Objective
- 14.1 Introduction
- 14.2 Importance and various provisions
  - 14.2.1 Individual Labour Law
  - 14.2.2 Workplace Involvement
- 14.3 International Labour Law
- 14.4 Factories Act
  - 14.4.1 Factory
  - 14.4.2 Precincts
- 14.5 Summary
- 14.6 Review Questions
- 14.7 Reference and suggested Reading

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### 14.0 Objectives

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- The objective of the unit is to familiarize the learners to the various laws and statutory requirements in relation to the labor.
- The unit also introduces to the learners about the various legal definitions and guidelines regarding running of a business and handling manpower.
- The learner will be able to define various terms such as Minimum Wages, Factories act and similar terms.

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### 14.1 Introduction

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This law governs relations between employers and workers resulting from employment contracts to be performed within the territory of India, regardless of where the contract was made and what the nationality and residences of the contracted parties are.

This law applies to every enterprise or establishment of industry, mining, commerce, crafts, agriculture, services, land or water transportation, whether: public, semi-public or private, non-religious or religious; whether they are of professional education or charitable characteristic as well as the liberal profession, associations or groups of any nature whatsoever. This law shall also apply to every personnel who is not governed by the Common Statutes for Civil Servants or by the Diplomatic Statutes as well as officials in the public service who are temporarily appointed.

This law shall not apply to:

- (A) Judges of the Judiciary.
- (B) Persons appointed to a permanent post in the public service.
- (C) Personnel of the Police, the Army, the Military Police, who are governed by a separate statute.
- (D) Personnel serving in the air and maritime transportation, who are governed by a special legislation, These workers are entitled to a-7 the provisions on freedom of union under this law.
- (E) Domestics or household servants, unless otherwise expressly specified under this law. These domestic or household servants are entitled to apply the provisions on freedom of union under this law.

All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, within the meaning of this law provided that they employ one or more workers, even discontinuously Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer. A given establishment shall be always under the auspices of an enterprise. The establishment may employ just one person. if this establishment is unique and independent, it is both considered as an enterprise and an establishment.

"Workers", within the meaning of this law, are every person of all sex and who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is natural person or legal entity, public or private. To clearly determine the characteristics of a worker, one shall not take into account of neither the jurisdictional status of the employer nor that of the worker, as well as the amount remuneration.

"Domestics or household servants" are those workers who are engaged to take care of the home owner or of the owner's property in return for remuneration. "Employees or helpers" are those who are contracted to assist any person in return for remuneration, but who do not perform manual labour fully or who do so incidentally.

### **Definition**

"Labourers" are those workers who are not household servants or employees, namely those who perform mostly manual labour in return for remuneration, under the direction of the employer or his representative. The status of labourer is independent of the method of remuneration; it is determined exclusively by - nature of the work. "Artisans" are persons, who practice a manual trade personally on their own account, working at home or outside, whether or not they use the motive force of automatic machines, whether or not they have a shop with a signboard, who primarily sell the products of their own work, carried out either alone or with the help of their spouse or family members who work without pay, or with the help of workers or apprentices, but the entire workshop is solely under the direction of their own.

The number of non-family workers, who regularly work for an artisan, shall not exceed seven; if this number is exceeded, the employer loses the status artisan.



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## 14.2 Importance and Various Provisions

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Labour law (also known as *employment* or *labour law*) is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates **any** aspects of the relationship between trade unions, employers and employees. In Canada, employment laws related to unionised workplaces are differentiated from those relating to particular individuals. In most countries however, no such distinction is made. However, there are two broad categories of labour law. First, collective labour law relates to the tripartite relationship between employee, employer and union. Second, individual labour law concerns employees' rights at work and through the contract for work. The labour movement has been instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral to the social and economic development since the industrial revolution. Labour law arose due to the demands of workers for better conditions, the right to organise, and the simultaneous demands of employers to restrict the powers of workers' many organizations and to keep labour costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society.

### 14.2.1 Individual Labour Law

Individual labour law deals with people's rights at workplace on their contracts for work. Where before unions would be major custodians to workplace welfare there has been a steady shift in many countries to give individuals more legal rights that can be enforced directly through courts.

#### Contract of Employment

The basic feature of labour law in almost every country is that the rights and obligations of the worker and the employer between one another are mediated through the contract of employment between the two. This has been the case since the collapse of feudalism and is the core reality of modern economic relations. Many terms and conditions of the contract are however implied by legislation or common law, in such a way as to restrict the freedom of people to agree to certain things in order to protect employees, and facilitate a fluid labour market. One example in many countries is the duty to provide written particulars of employment with the *essentialia negotii* (Latin for essential terms) to an employee. This aims to allow the employee to know concretely what to expect and is expected; in terms of wages, holiday rights, notice in the event of dismissal job description and so on. An employer may not legally offer a contract in which the employer pays the worker less than a minimum wage. An employee may not for instance agree to a contract which allows an employer to dismiss them unfairly. There are certain categories that people may simply not agree to because they are deemed categorically unfair. However, this depends entirely on the particular legislation of the country in which the work is.

## Minimum Wage

There may be law stating the minimum amount that a worker can be paid per hour. Australia, Canada, China, Belgium, France, Greece, Hungary, India, Ireland, Japan, Korea, Luxemburg, the Netherlands, New Zealand, Portugal, Poland, Romania, Spain, Taiwan, the United Kingdom, the United States and other have laws of this kind. The minimum wage is usually different from the lowest wage determined by the forces of supply and demand in a free market, and therefore acts as a price floor. Those unable to command the minimum wage due to a lack of education, experience or opportunity would typically work in the underground economy, if at all. Each country sets its own minimum wage laws and regulations, and while a majority of industrialized countries has a minimum wage, many developing countries have not. Minimum wage laws were first introduced nationally in the United States in 1938, India in 1948. France In 1950 and in the United Kingdom in 1999. In the European Union, 18 - member states currently have national minimum wages.

## Working Time

Before the Industrial Revolution, the workday varied between 11 and 14 hours. With the growth of capitalism and the introduction of machinery, longer hours became far more common, with 14-15 hours being the norm, and 16 not at all uncommon. Use of child labour was commonplace, often in factories. In England and Scotland in 1788, about two-thirds of persons working in the new water powered textile factories were children. The eight-hour movement's struggle finally led to the first law on the length of a working day, passed in 1833 in England limiting miners to 12 hours, and children to 8 hours. The 10-hour day was established in 1848, and shorter hours with the same pay were gradually accepted thereafter. The 1802 Factory Act was the first labour law in the UK. After England, Germany was the first European country to pass labor laws; Chancellor Bismarck's main goal being to undermine the Social Democratic Party of Germany (SPD). In 1878, Bismarck instituted a variety of anti-socialist measures, but despite this, socialists continued gaining seats in the Reichstag. The Chancellor, then, adopted a different approach to tackling socialism. In order to appease the working class, he enacted a variety of paternalistic social reforms, which became the first type of social security. The year 1883 saw the passage of the Health Insurance Act, which entitled workers to health insurance; the worker paid two-thirds, and the employer one-third, of the premiums. Accident insurance was provided in 1884, whilst old age pensions and disability insurance were established in 1889. Other laws restricted the employment of women and children. These efforts, however, were not entirely successful; the working class largely remained unreconciled with Bismarck's conservative government.

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### **Unfair Dismissal**

Convention 158 of the International Labour Organization states that an employee "can't be fired without any legitimate motive" and "before of him the possibility to defend himself". Thus, on April 28, 2006, after the unofficial repeal of the French First Employment Contract (CPE), the Longjumeau (Essonne) *conseil des prud'hommes* (labor law court) judged the New Employment Contract (CNE) contrary to international law, and therefore "unlegitimate" and "without any juridical value". The court considered that the two-years period of "fire at will" (without any legal motive) was "unreasonable", and contrary to convention 158, ratified by France.

### **Child Labour**

Child labour is the employment of children under an age determined by law or custom. This practice is considered exploitative by many countries and international organizations. Child labour was not seen as a problem throughout most of history, only becoming a disputed issue with the beginning of universal schooling and the concepts of labourers and children's rights. Child labour can be factory work, mining or quarrying, agriculture, helping in the parent's business, having one's own small business (for example selling food), or doing odd jobs. Some children work as guides for tourists, sometimes combined bringing in business for shops and restaurants (where they may also work as waiters). Other children are forced to do tedious and repetitive jobs such as **assembling** boxes, or polishing shoes. However, rather than in factories and sweatshops, most child labour occurs in the informal sector, "selling on the street, at work in agriculture or hidden away in houses far from the reach of official inspectors and from media scrutiny."

### **Collective Labour Law**

Collective labour law concerns the tripartite relationship between employer, employee and trade unions. Trade unions, sometimes called "labour unions" are the form of workers' organisation most commonly defined and legislated on in labour law. However, they are not the only variety. In the United States, for example, workers' centers are associations not bound by all of the laws relating to trade unions.

## **Trade Unions**

The law of some countries place requirements on unions to follow particular procedures before certain courses of action is adopted. For example, the requirement to ballot the membership before a strike, or in order to take a portion of members' dues for political projects. Laws may guarantee the right to join a union (banning employer discrimination), or remain silent in this respect. Some legal codes may allow unions to place a set of obligations on their members, including the requirement to follow a majority decision in a strike vote. Some restrict this, such as the 'right to work' legislation in some of the United States.

Strike action is the weapon of the workers most associated with industrial disputes, and certainly among the most powerful. In most countries, strikes are legal under a circumscribed set of conditions. Among them may be that:

1. The strike is decided on by a prescribed democratic process. Wildcat strikes are illegal).
2. Sympathy strikes, against a company by which workers are not directly employed, may be prohibited.
3. General strikes may be forbidden by a public order.
4. Certain categories of person may be forbidden to strike (airport personnel, health personnel, police or firemen, etc.)
5. Strikes may be pursued by people continuing to work, as in Japanese strike actions which increase productivity to disrupt schedules, or in hospitals.
6. A boycott is a refusal to buy, sell, or otherwise trade with an individual or business who is generally believed by the participants in the boycott to be doing something morally wrong. Throughout history, workers have used tactics such as the go-slow, sabotage or just not turning up en-masse in order to gain more control over the workplace environment, or simply have to work less. Some labour law explicitly bans such activity, none explicitly allows it.

## **Pickets**

Picketing is a tactic which is often used by workers during strikes. They may congregate outside the business which they are striking against, in order to make their presence felt, increase worker participation and dissuade (or prevent) strike breakers from entering the place of work. In many countries, this activity will be restricted both by labour law, by more general law restricting demonstrations, or sometimes by injunctions on particular pickets. For example, labour law may restrict secondary picketing (picketing a business not directly connected with the dispute, such as a supplier of materials), or flying pickets (mobile strikers who travel in order to join a picket). There may be laws against obstructing others from going about their lawful business (scabbing, for example, is lawful); making obstructive pickets illegal, and, in some countries, such as Britain, there may be court orders made from time to time against pickets being in particular places or behaving in particular ways (shouting abuse, for example).

### 14.2.2 Workplace Involvement

Workplace consultation statutes exist in many countries, requiring that employers consult their workers on issues that concern their place in the company. Industrial democracy refers to the same idea, but taken much further. Not only that workers should have a voice to be listened to, but that workers have a vote to be counted. Co-determination originating in Germany, some form of co-determination (or *Mitbestimmung*) procedure is practiced in countries across continental Europe, such as Holland and the Czech Republic. This involves the rights of workers to be represented on the boards of companies for whom they work. The German model involves half the board of directors being appointed by the company trade union. However, German company law uses a split board system, with a 'supervisory board' (*Aufsichtsrat*) which appoints an 'executive board' (Vorstand). Shareholders and unions elect the supervisory board in equal number, except that the head of the supervisory board is, under co-determination law, a shareholder representative. While not gaining complete parity, there has been solid political consensus since the Helmut Schmidt social democrat government introduced the measure in 1976.

In Britain, the similar proposals were drawn up, and a command paper produced named the Bullock Report (Industrial democracy). This was released in 1977 by the James Callaghan Labour government. This proposal involved a similar split on the board, but its effect would have been even more radical. Because U.K. company law requires no split in the boards of directors, unions would have directly elected the management of the company. Furthermore, rather than gives shareholders the slight upper hand as happened in Germany, a debated 'independent' element would be added to the board, reaching the formula  $2x + y$ . However, no action was ever taken as the U.K. slid into the winter of discontent. This tied into the European Commission's proposals for worker participation in the 'fifth company law directive', which was also never implemented.

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## 14.3 International Labour Law

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One of the crucial concerns of workers and those who believe that labour rights are important, is that in a globalizing economy, common social standards ought to support economic development in common markets. However, there is nothing in the way of international enforcement of labour rights, with the notable exception of labour law within the European Union. At the Doha round of trade talks through the World Trade Organisation, one of the items for discussion was the inclusion of some kind of minimum standard of worker protection. The chief question is whether, with the breaking down of trade barriers in the international economy, while this can benefit consumers it can also make the ability of multinational companies to bargain down wage costs even greater, in wealthier Western countries and developing nations alike. The ability of corporations to shift their

supply chains from one country to another with relative ease could be the starting gun for a "regulatory race to the bottom" whereby nation states are forced into a merciless downward spiral, not only slashing tax rates and public services with it but also laws that in the short term cost employers money. Countries are forced to follow suit, on this view, because should they not foreign investment will dry up, move places with lower "burdens" and leave more people jobless and poor. This argument is by no means uncontested. The opposing view suggests that free competition for capital investment between different countries increases the dynamic efficiency of the market place. Faced with the discipline that markets enforce, countries are incentivized to invest in education, training and skills in their workforce in order to obtain a comparative advantage. Government initiative will be spurred, because rational long term investment will be perceived as the better choice to increase regulation. This theory concludes that an emphasis on deregulation is more beneficial than not. That said, neither the International labour organization nor the European Union takes this view.

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## **14.4 Factories Act**

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Act to consolidate and amend the law regulating labour in factories, it is expedient to consolidate and amend the law regulating labour in factories.

The first Factories Act in India was passed in 1881. It was designed primarily to protect children and to provide for some health and safety measures. It was followed by new Acts in 1891, 1911, 1922 and 1934. The Act of 1934 was passed to implement the recommendations of the Royal Commission on Labour in India and the conventions of the International Labour Organisation. The experience of the working of this Act revealed a number of defects and weaknesses which hampered effective administration of the Act. Further, the provisions of this Act regarding safety, health and welfare of workers were also found to be inadequate and unsatisfactory. It was, therefore, felt that in view of the large and growing industrial activities in the country a radical overhauling of the law relating to factories was necessary. Hence, the Factories Act of 1948 came into force on the 1st day of April, 1949. Its object is to regulate the conditions of work in manufacturing establishments which come within the definition of the term 'factory' as used in the Act.

The Act extends to the whole of India including the State of Jammu and Kashmir. Unless otherwise provided, it also applies to factories belonging to the Central or any State Government. The Act was substantially amended in 1987. Some provisions of the Amending Act came into force with effect from 1st December, 1987 and other, from 1st June 1988.

### **14.4.1 Factory**

According to Act, 'factory' means any premises including the precincts:

- (i) where 10 or more than workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or



(ii) where 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

The term 'factory' does not include a mine subject to the operation of the Indian Mines Act, 1952 or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

In simple words, a factory is a premises where 10 or more persons are engaged if power is used, or 20 or more persons are engaged if power is not in a manufacturing process. For computing the number of workers, all workers in different groups and relays in a day shall be taken into account.

For the purposes of the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory, if no manufacturing process is being carried on 2 such premises or part thereof.

#### **14.4.2 Precincts**

The definition of the term 'factory' envisages premises which have precincts, as the expression used in the definition is 'premises including the precincts thereof'. 'Precincts' are usually understood as a space enclosed by walls or fences. Where premises are buildings, they would include precincts. What are the precincts of a particular premises is a question of fact to be determined according to the circumstances of each particular case? The word 'premises' is not to be confined in its meaning to buildings alone.

Whether any establishment is a factory. In order to determine whether any establishment is a factory, two things must be proved:

1. That a manufacturing process is being carried on in any part of the premises of that establishment and
2. That there are prescribed number of workers working in any part of the premises where the manufacturing process is being carried on.

Mere fact that power is used in a premises is not the deciding factor, the power used must be in the aid of the manufacturing process.

The following have been held to be factories:

- (a) Salt works which consist merely of open stretches of large areas of land with some temporary shelters.
- (b) Railway workshops.
- (c) A premises where the manufacturing process is carried on with 7 persons employed permanently and 3 persons employed temporarily in repairs of part of machinery.

For proper understanding of the meaning of the term 'factory', the following three terms should be clearly understood:

#### **1. Manufacturing Process**

It means any process for



- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- (ii) pumping oil, water, sewage, or any other substance, or
- (iii) generating, transforming or transmitting power, or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding, or
- (v) constructing, reconstructing, repairing, refitting, finishing, breaking up ships or vessels, or
- (vi) Preserving or storing any article in cold storage.

Some of the processes which have been held to be manufacturing processes are as follows:

- (a) Fabrication works.
- (b) Moulding and transformation of raw cinematography films into a finished product.
- (c) Work done in a salt work which consists of converting sea-water into salt.
- (d) Use of a refrigerator for treating or adapting any article with a view to its sale.
- (e) Work of composition in printing business.
- (f) Use of electric motor for the purpose of lifting or pumping water.
- (g) Process of moistening, stripping and packing of tobacco leave.
- (h) Activities of a petrol pump.

In deciding whether a particular business is a manufacturing process or not, regard must be had to the circumstances of each particular case. To constitute a manufacturing process, there must be some transformation, i.e., the article must become commercially known as something different from which it acquires its existence.

**Worker:** A worker means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer. **He** may be employed for or without remuneration. But he must be employed in a manufacturing process, or in cleaning some part of the machinery used for the manufacturing process, or in some other kind of work to, or connected with, the manufacturing process, or the subject of the manufacturing process. A worker does not include any member of the armed force of the Union.

**Relationship of master and servant:** The expression 'employed' in the above definition means that the relationship of master and servant must exist. It makes no whether the worker employed in the manufacturing process is paid wages or not or is paid wages on time-rate basis or piece-rate basis.

Whether a particular person is a worker depends upon the terms of contract between him and the employer. A worker does not include an independent contractor or his coolies or servants who are not under the control and supervision of the employer.

**Obligations of workers:** A worker in a factory shall

- (a) willfully interfere with or misuse any appliance, convenience or other thing provided in the factory for the purpose of securing the health, safety or welfare of the workers therein;
- (b) willfully and without reasonable cause do anything likely to endanger himself or others ; and
- (c) willfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

If any worker employed in a factory contravenes any of the provisions of or any rule or order made there under, he shall be punishable with imprisonment for a term which may extend to 3 months, or with fine which may extend to 100 or with both.

Rights of workers as introduced by the Amendment Act of 1987. Every worker shall have the right to

- (i) obtain from the occupier, information relating to workers' health and safety at work;
- (ii) get trained within the factory wherever possible, or to get himself sponsored by the occupier for getting trained in a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work;
- (iii) represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health or safety in the factory.

3. Power: It means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency\_

**Different departments to be separate factories or 2 or more factories to be single factory:** The occupier of a factory may apply to the State Government that the different departments or branches of the factory of the occupier be treated as separate factories. He may also apply to the State Government that 2 or more factories of the occupier specified in the application be treated as a single factory. The State Government may, by an order in writing, accede to request of the occupier.

**Exemption during public emergency:** In any case of public emergency, the State Government may by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this act except which deals with prohibition of employment of young persons. This exemption may be for a specified period not exceeding 3 months at a time and subject to such conditions as the State Government may think fit to impose.

**Public emergency** means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.

The State Government to exempt certain workshops or workplaces attached to public institutions maintained for the purposes of education, training, research or reformation, from all or any of the provisions of the Act.

***Certain premises deemed to be a factory:*** The State Government may, by notification in the Official Gazette, declare any establishment carrying on a manufacturing process to be a factory for the purposes of the Act even though the number of persons employed therein is less than the prescribed minimum number of workers. The manufacturing process is being carried on by the owner only with the aid of his family, will not apply.

## **DEFINITIONS**

In this Act, unless there is anything repugnant in the subject or context -

- (a) "adult" means a person who has completed his eighteenth years age;
- (b) "adolescent" means a person who has completed his fifteen years of age but has not completed his eighteenth year;
- (c) "calendar year" means the period of twelve months beginning with the first day of January in any year;
- (d) "child" means a person who has not completed his fifteenth year of age;
- (e) "competent person", in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to -
  - (i) the qualifications and experience of the person and facilities available at his disposal; or
  - (ii) the qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognised as a competent person in relation to a factory.
- (f) "Hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents there of would -
  - (i) cause material impairment to the health of the persons engaged in or connected therewith, or
  - (ii) result in the pollution of the general environment : Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.
- (g) "Young person" means a person who is either a child or an adolescent. h)
- (h) "day" means a period of twenty-four hours beginning at midnight.
- (i) "week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;
- (j) "Power" means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;
- k) "Prime Mover" means any engine, motor or other appliance which generates or otherwise provides power.

- (l) "Transmission machinery" means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;
- (m) "Machinery" includes prime movers, transmission machinery all other appliances whereby power is generated, transform transmitted or applied.
- (n) "Manufacturing process" means any process for-
- (i) making, altering, repairing, ornamenting, finishing, packing oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use sale, transport, delivery or disposal, or
  - (ii) pumping oil, water, sewage or any other substance; or
  - (iii) generating, transforming or transmitting power; or
  - (iv) composing types for printing, printing by letter press, lithography photogravure or other similar process or book binding.
  - (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels
  - (vi) preserving or storing any article in cold storage.
- (o) "Worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.
- (p) "Factory" means any premises including the precincts thereof –
- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or
  - (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.
- (q) Hazardous process as introduced by the Amendment Act of 1987. It means any process or activity in relation to an industry specified in the first schedule where, unless special care is taken, raw material used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would:
- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
  - (ii) result in the pollution of general environment.

The State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in

the First Schedule. The definition of 'hazardous process' has been introduced by the Amendment Act of 1987.

(r) Occupier of a factory means the person who has ultimate control over the affairs of the factory. In the case of a firm or other association of individuals, any one of the partners or members thereof shall be deemed to be the occupier. In the case of a company, the directors shall be deemed to be the occupier. In the case of a factory owned or controlled by the Central Government or any State Government or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier. The definition of 'occupier' has been considerably enlarged by the Amendment Ad of 1987.

A partner in a firm who has ultimate control over the affairs of a factory is an occupier. An 'occupier' may be an owner, a lessee or a mere licensee, but he must have the right to occupy the property and dictate terms of management. He must be in possession of the factory and control its working. A mere servant charged with specific duties in regard to the control of the machinery, workmen or office is not an 'occupier'.

(s) *Shift and relay*: Where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay' and each of such periods is called a 'shift'.

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## 14.5 Summary

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Labour law also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers and employees. In other words, Labour law defines the rights and obligations as workers, union members and employers in the workplace. Generally, labour law covers:

- Industrial relations – certification of unions, labour- management relations, collective bargaining and unfair labour practices;
- Workplace health and safety;
- Employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay.

There are two broad categories of labour law. First, collective labour law relates to the tripartite relationship between employee, employer and union. Second, individual labour law concerns employees' rights at work and through the contract for work.

The labour movement has been instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral to the social and economic development since the industrial revolution.

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## 14.6 Review Questions

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- Q 1 Differentiate between Worker & Domestic/Household Servants.
- Q2 Write short note on the following
- Contract of Employment
  - Minimum Wages
  - Child Labour
  - Trade Union
- Q 3 Discuss Factory Act.
- Q4 What are the obligations of a Worker under Factory Act?
- Q5 Discuss Manufacturing Process.

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## 14.7 Reference and Suggested Readings

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- 1 Employee Provident fund Organisation, Head Office - New Delhi : <http://www.epfindia.com/>
- 2 Employee State Insurance Corporation, Head Office - New Delhi: <http://esic.nic.in/>
- 3 Industrial Relations division : <http://labour.nic.in/ir/welcome.html>
- 4 Child and Women Labour Division: <http://labour.nic.in/cwl/welcome.html>
- 5 Directorate General, Labour Welfare : <http://labour.nic.in/dglw/welcome.html>
- 6 Economic and Statistics Division
- 7 International Labour Affairs Section: <http://labour.nic.in/ilas/welcome.html>
- 8 Labour Conference Section: <http://labour.nic.in/lc/welcome.html>

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## Unit 15 : Pollution Control Act, 1981

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### Structure

- 15.1 Objective
- 15.2 Introduction
- 15.3 Pollution control Act 1981  
(Air Pollution, Water Pollution , Prevention & Control Act, 1986),
- 15.4 Agencies to protect and prevent pollution.
- 15.5 Shops and Establishment Act. ,
- 15.6 Liquor Legislations and orders.
- 15.7 Question
- 15.8 References

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### 15.1 Objective

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At the end of the unit learner will be able to

- Understand the pollution control act .
- Acknowledge the importance of law.
- Learn the importance of agencies to protect and prevent & pollution.
- Understand the importance of shop and establishment act .

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### 15.2 Introduction

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Pollution laws have become very important for industries. The industries creating pollution has to work under the permissible limit given in these laws. Disobedience of these pollution laws can lead to closer of industry and criminal prosecution for management. It is worthwhile to mention that all industries are not creating pollution. From last some years the procedure under labour laws are made simple and transparent. Now most of the industry can deal with these laws without any difficulty and complication.

There are three main laws relating to pollution.

- i) The Air (Prevention and Control of Pollution) Act- 1981.
- ii) The Water (Prevention and Control of Pollution) Act- 1974.
- iii) The Environment (Protection) Act-1986.

There are about fifteen rules under these Acts relating to different matters. These Acts and Main rules are given under Heading “Acts” in this programme. The Water (Prevention and Control of Pollution) Act- 1974 is normally applicable after 20 employees. Even a generator in your establishment can make The Air (Prevention and Control of Pollution) Act- 1981 applicable on your establishment. These Acts provides Central & State Boards for the Prevention and Control of pollution for air and water. The Environment Protection Act empowered Central Government to protect and improve environment. These Acts prohibits industries to spread pollution. The industries are bound to discharge any pollutant within standards prescribed for those pollutants. They also carry many precautionary regulations for safety against pollution. The industries



have to take no objection certificates from Pollution Board (normally State Board). The refusal and withdrawal of these “No Objection Certificates” by Pollution Boards can even lead to close of industry. The closer of units are ordered normally only if deficiencies are not corrected after giving due time by pollution board to correct them. The process of obtaining No Objection Certificates are made quite simple these days. Acknowledgement of Application for No Objection Certificates by Pollution Board is considered as No Objection Certificate for most of the Small Scale Industries. Now this certificate is issued for five years for most of non-polluting industries instead of one year. The” No Objection Certificate “ is automatically granted after four months of it apply if NO QUERY OR OBJECTION is raised by pollution board. For transparency in the working of pollution boards, A special provision is made. Every State Pollution Board has to maintain a register containing particulars of the person to whom consent (No Objection Certificate) is granted. Any interested person can inspect this register at all reasonable times. Central Pollution Control Board (CPCB) of India is a statutory organisation under the Ministry of Environment and Forests (MoEF). It was established in 1974 under Water (Prevention and Control of Pollution) Act, 1974. CPCB is also entrusted with the powers and functions under the Air (Prevention and Control of Pollution) Act, 1981. It serves as a field formation and also provides technical services to the Ministry of Environment and Forests of the provisions of the Environment (Protection) Act, 1986. It Co-ordinate the activities of the State Boards by providing technical assistance and guidance and resolve disputes among them. It is an apex organization in country in the field of pollution control, as technical wing of MoEF. The board is led by its chairman, who is nominated by the Central Government. The current acting chairman is Susheel Kumar.

CPCB has its head office in New Delhi, with seven zonal offices and 5 laboratories. The board conducts environmental assessment and research. It is responsible for maintain national standards under a variety of environmental laws, in consultation with zonal offices, tribal, and local governments. It has monitoring the water and air quality and maintains respective quality data. The agency also works with industries and all levels of government in a wide variety of voluntary pollution prevention programs and energy conservation efforts. It advise the central government to prevent and control water and air pollution. It also advise the Governments of Union Territories about an industry or the pollution source causing water and [air](#) pollution. CPCB along with its counterparts State Pollution Control Boards (SPCBs) are responsible for implementation of legislations relating to prevention and control of environmental pollution.

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### **15.3 Air Pollution**

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An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. Whereas decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India Participated, to take appropriate steps for the preservation of the natural resources of the

earth which, among other things, include the preservation of the quality of air and control of air pollution And whereas it is considered necessary to implement the decisions aforesaid in so far as, they relate to the preservation of the quality of air and control of air pollution Be it enacted by Parliament in the Thirty-second Year of the Republic of India as follows

Air (Prevention and Control of Pollution) Rules, 1983

1. Short title, application and commencement.

(1) These Rules may be called the Air (Prevention and Control of Pollution) (Union Territories) Rules, 1983.

(2) They shall apply to the Union Territories of Delhi, Pondicherry, Goa, Daman and Diu, Dadra and Nagar Haveli, Lakshadweep, Mizoram, Andaman and Nicobar Islands, Arunachal Pradesh and Chandigarh.

(3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

In these rules, unless the context otherwise requires:-

(a) "Act" means the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(b) "appellant" means any person aggrieved by and appealing against an order made by the Board;

(c) "Appellate Authority" means an Appellate Authority constituted by the Central Government under sub-section (I) of section 31 of the Act;

(d) "Board" means the Central Board for the Prevention and Control of Water Pollution constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(e) "Chairman" means a Chairman of the Board;

(f) "consultant" means any person appointed as such under sub-section (5) of section 14;

(g) "Form" means a form appended to these rules;

(h) "premises" means any building structure or land used for industrial or commercial purposes where pollution occurs;

(i) "State Air Laboratory", in relation to a Union Territory, means a laboratory established or specified as such by the Central Government under sub-section (1) of section 28;

(j) "section" means any section of the Act;

(k) "Board Laboratory" means a laboratory established or recognised as such under sub-section (2) of section 17; words and expressions used but not defined in these rules and defined in the Act shall have the meaning respectively assigned to them in the Act.

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## **Water Pollution**

Water pollution is the contamination of water bodies e.g. lakes, rivers, oceans, aquifers and ground water. Water pollution occurs when pollutants are directly or indirectly discharged into water bodies without adequate treatment to remove harmful compounds. Water pollution affects plants and organisms living in these bodies of water. In almost all cases the effect is damaging not only to individual species and populations, but also to the natural biological communities. Water pollution is a major global problem which

requires ongoing evaluation and revision of water resource policy at all levels (international down to individual aquifers and wells). It has been suggested that it is the leading worldwide cause of deaths and diseases, and that it accounts for the deaths of more than 14,000 people daily. An estimated of 580 people in India die of water pollution related sickness every day. Some 90% of China's cities suffer from some degree of water pollution, and nearly 500 million people lack access to safe drinking water. In addition to the acute problems of water pollution in developing countries, developed countries continue to struggle with pollution problems as well. In the most recent national report on water quality in the United States, 45 percent of assessed stream miles, 47 percent of assessed lake acres, and 32 percent of assessed bays and estuarine square miles were classified as polluted. Water is typically referred to as polluted when it is impaired by anthropogenic contaminants and either does not support a human use, such as drinking water, or undergoes a marked shift in its ability to support its constituent biotic communities, such as fish. Natural phenomena such as volcanoes, algae blooms, storms, and earthquakes also cause major changes in water quality and the ecological status of water.

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## **The Environment (Protection) Act, 1986**

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An Act to provide for the protection and improvement of environment and for matters connected therewith:

WHEREAS the decisions were taken at the United Nations Conference on the Human Environment held at Stockholm June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

AND WHEREAS it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows :-

1. Short title, extent and commencement- (1) This Act may be called the Environment (Protection) Act, 1986.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas.(1)

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

(a) "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

(b) "environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;

(c) "environmental pollution" means the presence in the environment of any environmental pollutant;

- (d) "handling", in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance;
- (e) "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment;
- (f) "occupier", in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance;
- (g) "prescribed" means prescribed by rules made under this Act.

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## **15.4 Agencies to protect and prevent pollution**

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Pollution prevention (P2) describes activities that reduce the amount of pollution generated by a process, whether it is consumer consumption, driving, or industrial production. In contrast to most pollution control strategies, which seek to manage a pollutant after it is formed and reduce its impact upon the environment, the pollution prevention approach seeks to increase the efficiency of a process, thereby reducing the amount of pollution generated at its source. Although there is wide agreement that source reduction is the preferred strategy, some professionals also use the term pollution prevention to include Pollution Prevention With the ever-rising human population, pollution has become a great concern. Pollution from human activities is a problem that does not have to be inevitable. With a comprehensive pollution prevention programme, most pollution can be reduced, reused, or prevented. The purpose of this paper is to introduce a pollution prevention programme that will demonstrate how to stabilize the population growth as well as how to reduce and manage waste to prevent further pollution to the planet. A range of pollution prevention guidance notes (PPGs) to advise industry and the public on legal responsibilities and good environmental practice.

In partnership with the Northern Ireland Environment Agency (NIEA) and the Scottish Environment Protection Agency (SEPA), we have written a range of pollution prevention guidance notes.

Each PPG gives advice on law and good environmental practice, to help reduce environmental risks from business activities.

PPGs:

are used by our staff to help customers when we visit businesses and when we answer queries

provide up-to-date technical and legal compliance advice to help achieve consistent good environmental practice

set out our national position on a range of activities

are used to support compliance with permit conditions

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## **15.5 Shops and Establishment Act**

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There is no enactment in this Province regulating the conditions of work of employees in shops, commercial undertaking, restaurants, etc. The Weekly Holidays Act, 1942(Central

Act XVIII of 1942), which has been brought into force in this Province from January, 1947 is limited in scope in that it provides only for the grant of holidays and does not contain provisions for various other matters affecting them, such as hours of work, payment of wages, health and safety. It is considered that there should be a comprehensive measure in this Province to regulate these matters on the lines of similar enactments in force in other Provinces. While planning to step into the world of business, you need to draw up not only your business plan, product/service model, financing options, but also make a comprehensive list of all the compulsory regulations that your business entity will have to comply with such as the taxation legislations, licensing requirements, etc. One such important legislation is the Shops and Establishments Act, enacted by every state in India to regulate conditions of work and to provide for statutory obligations of the employers and rights of the employees in un-organized sector of employment and other establishments in their jurisdiction.

In this article, we will discuss the applicability and requirements of the Shop and Establishments Act in greater detail.

Which businesses come under the purview of Shops & Establishments Act?

A Commercial Establishment including:

- A commercial or trading or banking or insurance establishment, or
- An establishment or administrative service in which persons employed or mainly engaged in office work, or
- A hotel, restaurant, boarding or eating house, a cafe or any other refreshment house or
- A theater, cinema or any other place of public amusement or entertainment.

Regulations Under The Act:

This act lays down the following rules:

- Working hours per day and week.
  - Guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work.
  - Rules for employment of children, young persons and women.
  - Rules for annual leave, maternity leave, sickness and casual leave, etc.
  - Rules for employment and termination of service.
  - Maintenance of registers and records and display of notices.
  - Obligations of employers as well as employees.

Records to be maintained for registering under S&E Act:

Every business has to be maintain the following records under Shops and Establishments act:

- Approval from Department of Labor.
- Various registers giving details of employment, fines, deductions and advances, salary, holidays, etc. The names of the register may vary from state to state, and hence, it is a prudent practice to request the exact nature of documents that your state might need from your municipal corporation. Files related to annual holidays, number of employees need to be submitted at the Office of the Municipal Corporation annually.

Procedures under this Act:

Every shop/establishment is compulsorily required to register itself under this Act within 30 days of commencement of work.

Registration Certificate:

- The business owner should send to the Inspector (Chief Inspector of Shops or other Inspectors under the Act) of the area concerned, an application form and fees detailing: Name of the establishment, the employer and the manager, if any; Postal address of the establishment; Such other particulars as may be prescribed.

- The Inspector, on verifying the statement, shall register the establishment in the register of establishments and issue a registration certificate. This certificate has to be prominently displayed at the establishment and needs to be renewed before it expires.
- If there is any change in the initial statement, the same has to be communicated within 15 days to the Inspector and he will make changes in the register of establishments and issue a fresh registration certificate. Closure of Business And in case of closure, the same has to be communicated to the authorities within 15 days from the closing of the establishment.

Important to Note:

The rules under this act vary as per the states. We recommend you to consult the S&E Act with the Administrative Office/Municipal Corporation in your city. Legal requirements adhered to timely and in full, ensure not only the continuity but also the smooth running of your business.

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## 15.6 Liquor Legislations and Orders

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The relevant Irish legislation relating to the serving of alcohol in licensed premises, the buying of alcoholic drinks in off-licences and drinking alcohol in public places is the Intoxicating Liquor Act 2008 , Intoxicating Liquor Act 2003 , Intoxicating Liquor Act 2000 , the Licensing Act, 1872 and the Criminal Justice (Public Order) Act 1994 .

Rules

Intoxicating Liquor Acts

Under the Intoxicating Liquor Acts, it is an offence to sell alcohol to anyone under the age of 18. Anyone found guilty of doing so is liable on summary conviction in a District Court to a class B fine for a first offence and a class A fine for a second and any subsequent offence.

It is an offence to buy alcohol for people under the age of 18. It is also an offence to give alcohol to anyone under the age of 18 unless in a domestic home and they have parental consent. If found guilty of any of these offences, you could be liable on summary conviction in a District Court to a class B fine for a first offence and a class A fine for a second or any subsequent offence.

Young people under the age of 18 are not allowed in licensed premises during extended hours (except in certain circumstances). It is the responsibility of the licence holder to make sure this does not happen.



If you are under 18, you cannot legally buy alcohol. Also you cannot drink it unless you are in a private residence and have permission from your parents. It is also an offence to pretend that you are over 18 in order to buy or drink alcohol. If you are found guilty of these offences, you are liable to a class E fine on summary conviction in a District Court.

#### Conduct in licenced premises

Patrons of licenced bars and premises in Ireland are expected to behave at all times with due respect for others. The law on conduct in licenced premises changed in August 2003. It is now an offence under the 2003 Act to supply alcohol to a drunken person and to admit a drunken person to a bar. (A 'drunken person' is someone intoxicated to such a degree that they may endanger themselves or other people). Any licence holder that allows this to occur on their premises is liable on summary conviction to a class B fine for a first offence and a class A fine for any subsequent offence.

It is also an offence to engage in disorderly conduct on a licenced premises in Ireland. This means that you cannot behave in any way that constitutes a risk to the health, safety or welfare of anyone else on the premises. It also means that you cannot behave in a violent, threatening, abusive, insulting or quarrelsome manner. If you are requested to leave a licenced premises by the licence holder or a member of the Gardai, you must do so. Failure to leave when requested can mean you are liable for a class E fine. You may also be arrested by the Gardai.

#### Off-licences

Off-licence sales of alcohol is only permitted between the hours of 10.30 am and 10.00 pm on weekdays and 12.30 pm to 10.00 pm on Sundays.

It is illegal for anyone under the age of 18 to be in an off-licence, unless he or she is with a parent or guardian and all off-licences must display a sign to this effect. The sign must be in a prominent place at all times and failure to have such a sign on display can result in a fine. If an off-licence owner is found guilty of allowing under people under 18 onto his or her premises, he or she can be fined. People under 18 can themselves be liable for a class E fine if they are found in an off-licence without a parent or guardian.

#### Temporary closure orders

Some offences under the Intoxicating Liquor Act, 2003 (the sale of alcohol to people under 18, allowing people under 18 in licensed premises during extended hours and allowing people under 18 to be in an off-licence unaccompanied) can result in a temporary closure order. This order is imposed by the District Court in addition to any fine that may be payable by the licence holder. The premises must be closed for a period not less than 2 days and not exceeding 7 days for a first offence, or of not less than 7 days and not more than 30 days for a second or any subsequent such offence. Any premises closed due to a temporary closure order must display a sign outside giving details of the length of the closure and stating that the closure is in compliance with a court order. In the event of persistent offenders, a court can ultimately demand the forfeiture of a licence.

#### Children

Children (anyone under the age of 18) are only allowed in licensed premises if they are with a parent or guardian, but this provision carries certain restrictions. For example if accompanied by a parent/guardian, the child may remain on the premises between the



hours of 10:30am - 9pm (10pm May to September) (unless the licence holder feels this is injurious to the child's health, safety and welfare). Children aged between 15-17 years may remain on the premises after 9pm where they are attending a private function at which a substantial meal is served. All licensed premises must display a sign to this effect in a prominent place at all time and failure to do so can result in a fine.

If the licence holder is found guilty of allowing unsupervised children in his or her premises, a fine can be imposed on summary conviction in a District Court. Parents and guardians can also be guilty of an offence under the Act if their children are found to be in licensed premises without supervision. If the parent or guardian cannot prove that the child was there without his or her knowledge or permission, he or she can be liable for a class E fine on summary conviction.

**Selling alcohol at reduced prices 'Happy Hour'**

Since August 2003 it is illegal in Ireland to sell alcohol at reduced prices for a limited period during any day. (In other words, 'happy hour' is now prohibited).

**Drinking in public**

Under the Criminal Justice (Public Order) Act 1994, it is an offence for you to be so drunk in a public place that you could reasonably be presumed to be a danger to yourself or to anyone around you. If found guilty of this offence, you could be liable to a class E fine and a member of the Garda Síochána can confiscate any alcohol you may be carrying.

It is illegal for a licence holder to sell alcohol in a closed container (i.e., can or bottle) for consumption off the premises in a place 100 metres from the premises. If you purchase alcohol in this way, you could be liable for a class E fine.

While there is no national legislation prohibiting drinking in public, each local authority area is entitled to pass bye-laws prohibiting the consumption of alcohol in a public place. Contact your local authority to find out about these bye-laws in your area.

Under the Intoxicating Liquor Act 2008 the Gardaí have the power to seize alcohol in the possession of a child under 18 years of age where the Gardaí have reasonable cause to believe that the alcohol will be consumed by a child under 18 years in a public place.

**Driving under the influence of alcohol**

Under the Road Traffic Act 2010, it is illegal to drive or be in charge of a vehicle if you are under the influence of alcohol. The current legal limit is .50mgs of alcohol per 100mgs of blood in the case of experienced drivers, and .20mgs of alcohol per 100mgs of blood in the case of new and professional drivers. If you are over this limit, you are liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months. If the court decides, you could be liable to both. Anyone found driving while over the legal limit may be disqualified from driving. The period of disqualification will usually depend on the level of alcohol consumed. Read more about driving offences in Ireland [here](#).

**National Age Card**

The Gardai (Irish police force) operate the National Age Card scheme. These Cards are proof that the cardholder is 18 or over, they are not identity cards. The Card shows the name of the holder, their date of birth, a photograph and a security feature, such as a hologram. You can order your Card online at [agecard.ie](http://agecard.ie). It costs €10.

Anyone found guilty of forging or altering the details on an official Age Card can be liable on summary conviction to a class C fine or to a prison term not exceeding 12 months or to both. Licence holders that allow people between 18-21 years on their premises without appropriate identification can face a fine. (Appropriate identification includes a National Age Card, a passport, a driving licence, or a identity card issued by an EU member state).

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## 15.7 Question

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1. what is pollution control act?
2. Define air pollution .
3. Explain the essential of agencies to protect and prevent pollution?
4. How is work liquor legislation and order ?
5. Explain the prevention & control act 1986?

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## 15.8 References

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## Unit 16 : Sale of Goods

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### Structure

- 16.1 Objective
  - 16.2 Introduction
  - 16.3 Sales of Goods Act 1930
  - 16.4 Sale and Agreement to Sell
  - 16.5 Formation of Contract of Sale Conditions and Warranties
  - 16.6 Implied Conditions and Warranties
  - 16.7 Duties and Rights of Parties
  - 16.8 Summery
  - 16.9 Question
  - 16.10 References
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### 16.1 Objective

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At the end of the unit learner will be able to

- Understand the Sale of goods.
  - Acknowledge the importance of law.
  - Learn the importance of sale of goods act.
  - Understand the importance of contracts.
  - Identify the Implied Conditions and Warranties
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### 16.2 Introduction

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Sale of Goods Act (with its variations) is a stock short title used for legislation in the United Kingdom relating to the sale of goods. The Bill for an Act with this short title will have been known as a Sale of Goods Bill during its passage through Parliament. Sale of Goods Acts may be a generic name either for legislation bearing that short title or for all legislation which relates to the sale of goods. Sale of Goods Act is one of very old mercantile law. Sale of Goods is one of the special types of Contract. Initially, this was part of Indian Contract Act itself in chapter VII (sections 76 to 123). Later these sections in Contract Act were deleted, and separate Sale of Goods Act was passed in 1930.

The Sale of Goods Act is complimentary to Contract Act. Basic provisions of Contract Act apply to contract of Sale of Goods also. Basic requirements of contract i.e. offer and acceptance, legally enforceable agreement, mutual consent, parties competent to contract; free consent, lawful object, consideration etc. apply to contract of Sale of Goods also.

*(1) This Act may be called the Sale of Goods Act, 1930.*

*(2) It extends to the whole of India (except the State of Jammu and Kashmir).*

*(3) It shall come into force on the 1st day of July, 1930.*

You introduce yourself as a manager and people immediately ask what you sell. The very concept of business will cease if there is no sale. Sales involve commercial relationship. There is exchange of goods and services for money or other assets. Property, ownership, transfer of ownership, rights and duties of buyers and sellers—all of these

bind people to a contract. We discussed contract in Chapter 2 in a general way. In this chapter we shall deal with a particular contract of sale and purchase between the seller and buyer, respectively. You as a manager have no other choice but to know this law well, lest you may experience pitfalls.

In 1893, the British Parliament enacted the Sale of Goods Law after repealing part of its Contract Law with the purpose of serving the new business realities. Chapter VII of the Indian Contract Law, Secs 76–123, formed the Sale of Goods. To meet the new needs of growing economy, this chapter on sale of goods was repealed to enact a new law on the same lines as the British Law. It does not affect the rights, interests, obligations, and titles acquired or which had already accrued before the enforcement of this Act. Work on the legislation began as early as 1926 carefully examining the case law making new provisions. The law commission of India recommended for certain amendments so that it is made indubitably clear that electrical energy, water, and gas come under the purview of the definition of goods.

Agreements for the sale of goods are governed by the general principles of the Contract Law: offer, acceptance, consideration, communication, competence to contract, free consent, and the legality of the object. However, these may not be exhaustive enough to meet some grave challenges in contracts of sale. Hence, the Sale of Goods Act caters to the needs of, for instance, conditions and warranties in a contract; when does the ownership of the goods pass from the seller to the buyer; how does the buyer acquire a good title; fixing of price; remedies of the buyer if the goods are not delivered to him. All of this is the scope of the Sale of Goods Act, 1930.

Basic definitions

*Seller*- Person who sells or agrees to sell.

*Buyer*- Person who buys or agrees to buy.

*Goods* - All kinds of movable property, except actionable claims.

*Sale* -Where under a contract of sale the property in the goods is transferred from the seller

to the buyer, the contract is called a sale.

*Agreement to sale*- Where the transfer of the property in the goods is to take place at a Future time or subject to some condition thereafter to be fulfilled, the contract is called an

Agreement to sell.

*Price* - Consideration for the sale of goods in money. (When the consideration is only in Goods then it are ‘barter’ and not ‘sale’.)

*Transfer* -Transfer of ownership of goods or agreement to that effect.

The Act has found several reviews and amendments to adapt to the new complex course Of businesses. In 1993, for instance, the Multimodal Transportation of Goods Act was enacted. As you now study the rest of the chapter you will be introduced to six different steps to appreciate the practical wisdom enshrined in this Act.

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## 16.3 Sales of Goods Act 1930

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The law relating to sale of goods is contained in the Sale of Goods Act, 1930. It has to be read as part of the Indian Contract Act, 1872 [Sections 2(5) and (3)].

### Contract of Sale of Goods

According to Section 4, a contract of sale of goods is a contract whereby the seller:

- (i) transfers or agrees to transfer the property in goods
- (ii) to the buyer,
- (iii) for a money consideration called the price.

It shows that the expression "contract of sale" includes both a sale where the seller transfers the ownership of the goods to the buyer, and an agreement to sell where the ownership of goods is to be transferred at a future time or subject to some conditions to be fulfilled later on.

The following are thus the essentials of a contract of sale of goods:

- (3) *Bilateral contract*: It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself.
- (4) *Transfer of property*: The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.
- (5) *Goods*: The subject matter must be some goods.
- (6) *Price or money consideration*: The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.
- (7) All essential elements of a valid contract must be present in a contract of sale.

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## 16.4 Sale and Agreement to Sell

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- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

The Sale of Goods Act 1979 (SOGA) provides four main protections for buyers:

- 1. The seller must have the right to sell the goods (S.12)
- 2. Goods sold by description must correspond to the description (S.13)
- 3. Goods must be of satisfactory quality (s.14)
- 4. Goods sold by sample, the goods must correspond to the sample in quality (s.15)

The SOGA applies to all contracts for the sale of goods, however, s.14 is more limited in its scope in that it only applies where goods are sold in the course of a business. Also where the goods are sold in the course of a business the provisions of the SGA are reinforced with the protection offered by the Unfair Contract Terms Act 1977 which prohibits their exclusion.

These protections are in the form of statutory implied terms. This means that the SGA will put these terms into all contracts for the sale of goods no matter what the parties themselves have agreed to in the terms and conditions of sale. A contract is for the sale

of goods provided it is a contract to transfer ownership of goods (as opposed to a hire agreement) and the goods are exchanged for money. If a seller breaches one of these implied terms (often referred to as statutory rights), the buyer is entitled to a remedy. The remedy will depend upon what type of term has been breached. In contract law there are three categories of terms:

- i) Conditions
- ii) Warranties
- iii) In nominate terms

#### Conditions

These are main contractual terms, something which goes to the heart of the agreement. If a condition has been breached the innocent party is entitled to claim damages (an award of money to compensate their loss) and repudiate the contract. Repudiate the contract simply means end the contract, relieving both parties of their contractual obligations.

#### Warranties

This is a technical legal term for minor contractual terms or those terms which are less central to the agreement. (not to be confused with a manufacturer's warranty). Breach of warranty entitles the injured party to claim damages only.

#### In nominate terms

These are terms which can not be classed as either conditions or warranties by looking at the contractual term itself. It can only be classified by looking to the effect of the breach. If the consequence of the breach is slight it will be treated as a warranty, if the consequence is great it will be treated as a breach of condition.

#### Limitations

The normal rules of limitations applicable to contract apply to claims under the SGA. Thus claims should be brought within 6 years of the breach of contract (s.5 Limitation Act), although for reasons of proof it is preferable that claims are brought sooner rather than later.

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## 16.5 Formation of Contract of Sale Conditions and Warranties

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The following terms and conditions of a sale shall apply to the sale of goods or services ("Goods") by Riomore Pty Ltd ACN 079 975 189 (trading as Enzed Western Sydney, Enzed Blacktown, Enzed Penrith, Enzed Silverwater, Enzed Wetherill Park, Enzed Mudgee and 24/7 Hydraulics) to another party.

"Purchaser means a person whose order for the purchase of Goods are accepted by Riomore Pty Ltd

"Order means an order to offer purchase and can be made by the Purchaser verbally or in writing.

"Contract means a contract formed between Riomore Pty Ltd and the Purchaser by the provision of an order and production

of a printed invoice by Riomore Pty Ltd

"Terms and Conditions" means these terms and conditions as amended from time to time.



## 2. FORMATION OF CONTRACT OF SAME OF GOODS

2.1 Each Order will constitute an offer by the Purchaser to acquire Goods from Riomore Pty Ltd upon and subject to the Terms and Conditions and to the exclusion of all other Terms and Conditions notwithstanding any qualifications of the Terms and Conditions.

2.2 Terms of payment – Unless otherwise stated, terms of payment are net cash on delivery, or for approved monthly accounts, within thirty (30) days measured from the end of the month the Goods are delivered to the Purchaser, or the Purchaser's carrier or agent.

2.3 Interest may be charged at a rate of 4% per annum above the overdraft interest rate charged to Riomore Pty Ltd by its bankers on all monies outstanding beyond the terms above, and without prejudice to Riomore Pty Ltd other rights under law in relation to non-payment.

## 3. RETENTION OF TITLE

3.1 Title of the Goods passes to the Purchaser when it pays the full purchase price in accordance with this clause.

3.2 Until title to the Goods passes to the Purchaser under clause 3.1 and without prejudice to any of Riomore Pty Ltd's rights, the Purchaser must not encumber or otherwise change the Goods, it possesses the Goods as bailee only and it acknowledges that Riomore Pty Ltd is entitled to maintain an action for the proceeds of sale of any of the Goods by the Purchaser.

3.3 If the Purchaser does not pay the full purchase price when due, Riomore Pty Ltd may enter the premises where the goods are situated and repossess them, the Purchaser must deliver up the Goods to Riomore Pty Ltd or its' agent if so directed by Riomore Pty Ltd, and the Purchaser indemnifies Riomore Pty Ltd against any claim, damages, liability, cost, expenses or payment which it suffers, incurs or becomes liable for in respect of the exercise of Riomore Pty Ltd's rights under this clause.

3.4 Notwithstanding the foregoing, the Purchaser may sell the Goods to a third party in the ordinary course of business.

## 4. RISK

Risk of the Goods passes to the Purchaser upon delivery (including all risks associated with unloading); or upon title in the Goods passing to the Purchaser in accordance with Clause 3, whichever is the earliest.

## 5. DELIVERY/PICK UP

5.1 Riomore Pty Ltd will make all reasonable efforts to have the goods delivered to the Purchaser or its designated agent as agreed between the parties (or if there is no specific agreement then at Riomore Pty Ltd's reasonable discretion), but Riomore Pty Ltd shall not be liable for:

5.1.1 Any failure to delivery or delay in delivery for any reason; or

5.1.2 Any damage or loss due to unloading or packaging; or

5.1.3 Damage to property caused upon entering premises to deliver the Goods.

5.2 Any costs incurred by Riomore Pty Ltd due to any failure by the Purchaser to accept the Goods at the time of delivery will be reimbursed by the Purchaser to Riomore Pty



Ltd. Except as required by law, Riomore Pty Ltd will be under no obligation to accept Goods returned for any reason.

## 6. WARRANTIES

6.1 Legislation such as Trade Practices Act 1974 (Cth) may apply to these Terms and Conditions, warranties or conditions or impose obligations which cannot be excluded, restricted or modified and these Terms and Conditions are read subject to such statutory provisions.

6.2 All other conditions, representations, liabilities and obligations, whether implied or imposed by statute, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description are excluded to the extent permitted by law.

6.3 In the event that Riomore Pty Ltd breaches its obligations referred to in Clause 6.1 to the extent allowed by law, its liability is limited to any one of the following at its election:

6.3.1 the replacement of the Goods or the supply of equivalent goods;

6.3.2 the repair of the Goods;

6.3.3 the payment of the cost of replacing the Goods or acquiring equivalent goods; or

6.3.4 the payment of the cost of having the goods repaired

6.4 The total liability of Riomore Pty Ltd under these Terms and Conditions is, to the extent permitted by law, expressed in this Clause 6 and Riomore Pty Ltd will under no circumstances be liable to the Purchaser for any loss incurred by the CONDITIONS OF SALE Purchaser or any other party resulting directly or indirectly out of the supply by Riomore Pty Ltd to the Purchaser or out of any breach of Riomore Pty Ltd under these Terms and Conditions or out of the negligence of Riomore Pty Ltd.

6.5 Nothing in these Terms and Conditions shall exclude or modify any conditional warranty implied by law where to do so would render these Terms and Conditions void.

## 7. PARKER AND ENZED FITTINGS

Parker and Enzed Goods (which are covered by design registration) are specifically manufactured for attachment to the make and type of hose specified in its catalogue. Use of other than the specified hoses or assembly of the hose fittings contrary to the instructions contained in the catalogue may result in an unsatisfactory or even dangerous product, and any warranties express or implied as to the fitness or otherwise are expressly excluded and negated and all liabilities disclaimed.

## 8. VOIDED WARRANTY

8.1 Riomore Pty Ltd reserves the right to declare void any warranty claim where the user does not give Riomore Pty Ltd the opportunity to have its engineers or representatives inspect the application of the Goods.

8.2 Riomore Pty Ltd sets out suggestions as to the use; installation and care of its Goods on the understanding that these suggestions are made only from Riomore Pty Ltd's wish that the Purchaser shall get the best results from its purchase, and do not in any way nullify the Conditions of Sale.

## 9. GENERAL

9.1 These Terms and Conditions take effect, are governed by and will be continued in accordance with the laws of the state of New South Wales, Australia.

9.2 These Terms and Conditions are subject to any change without notice.

9.3 The parties agree that any action arising out of, or relating to these Terms may only be brought by a court or competent jurisdiction in the state of New South Wales, Australia.

9.4 If any of these Terms and Conditions is found by a court of competent jurisdiction to be invalid or unenforceable, it will be struck out and the remaining Terms and Conditions will remain in force.

9.5 If Riomore Pty Ltd does not act in relation to a breach by the Purchaser of the Terms and Conditions, this does not waive Riomore Pty Ltd's right to act with respect to subsequent or similar breaches.

9.6 The Purchaser may not assign or transfer any rights or benefits it may receive under these Terms and Conditions to any other person or entity without the prior written consent of Riomore Pty Ltd Implied Conditions and Warranties

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## **16.6 Implied Conditions**

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Those conditions are not included in the contract but the law presumes their existence in the contract are called implied conditions. Following conditions are included by law in to a contract of sale of goods

1. Right To Sell:- This right is considered as an implied conditions in every sale contract. It is presumed that he can sell the goods and he can enter in sale agreement.
2. Sale By Description :- In this case implied condition is that goods shall the correspond with the description. A buyer can reject if the goods if these are not according the description.
3. Sale By Sample:- In this case goods must be supplied according the sample agreed upon condition.
  - i. The buyer may be able to compare the sample with the bulk.
  - ii. The goods should be free from any defect.
  - iii. The bulk should match with the quality of the sample.
4. Sale By Sample & Description :-In this case goods supplied must correspond with sample and description both. So there is implied condition in it that if bulk does not match with one even then buyer may reject the goods.
5. Condition of Merchantable Quality :-Merchantable quality means that the goods must be sale able in the market as goods of that description are sold. In case of any defect a seller must inform the buyer. It is implied condition.
6. Conditions As Quality To Fitness :-Sometimes buyer informs the seller that he wants to purchase the goods for particular purpose. It is implied condition that goods shall serve the purpose of buyer. As the buyer relays on the sellers skill then seller should provide the goods according the description.
7. Wholesomeness Condition :-It means conducive to health. When someone makes a sale of contract about the eatable goods this condition is applied. If some one supply the goods and it damages to health then supplier will be liable for damages.Example :- Sams Food Company supplied food on the marriage party of

Mr. Vicky. After eating the food people were infected and died. The company was held liable in damages.

#### IMPLIED WARRANTIES

1. Possession Of Goods :-It is an implied warranty on the part of the seller that buyer shall enjoy the quiet possession of goods sold to him without any disturbance. In case of any disturbance a buyer can claim the damages from the seller.
2. Dangerous Nature Must Be Disclosed :-It is necessary that seller should disclose the dangerous nature of the good sold to the buyer. If he does not disclose then any type of loss suffered by the buyer will be compensated by the seller. Example :- Mr. Noor sold the camel to Mr. Naveed which is very dangerous. But he did not tell about the nature of the camel. The camel killed Mr. Baqir son of Mr. Naveed due to the ignorance of the nature of camel Mr. Noor will be liable to compensate Mr. Naveed.
3. Burden on Property :-Before selling the goods, it is necessary that these should be free from any charge or encumbrance from any third party. If a seller does not tell about such burden on the goods to the buyer and later on the buyer suffers a loss. The buyer can claim such damages from seller.
  - (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
  - (2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated.
  - (3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
  - (4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

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### 16.7 Duties and Rights of Parties

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First party - individual. Each individual has a right to some degree of privacy in some areas of his or her life. Alan Westin referred to this kind of privacy as solitude: "the individual is separated from the group and freed from observation of other persons." (Westin, p.31). The concept of privacy places a limit on the flow of personal information and channels it. It endows each individual with the right to stop, restrict, or otherwise control the flow of his or her personal information. The right to privacy, however, is only a partial right, not an absolute one. As a result, any attendant duty to confidentiality is also partial. Under certain conditions pledges of confidentiality may be breached.

Rights also entail responsibilities. Each individual also has a responsibility to assert their right to privacy and to take reasonable precautions to assure it. A person must be active, not passive in protecting his or her rights. For example, given the current state of surveillance technologies taking precautions such as locking one's doors and putting up blinds, etc., perhaps even using jamming devices, becomes the responsibility of the

individual. It is an irony that the more popular or famous an individual becomes - that is, the more a person becomes a celebrity - the greater the responsibility that a person must assume to provide for his or her own privacy. Secrecy is one of the tools a person uses to protect his or her privacy. Various technologies exist today to help keep things secret. Nevertheless, it is also the responsibility of the fourth party to establish laws, policies and enforcement procedures so as to minimize the effects of unwanted surveillance on its citizens. In general, however, the permissible zones of privacy in a society are rooted deeply in a society's culture, its norms and its special geopolitical circumstances.

Second party. The second party has a duty of confidentiality and secrecy. A fiduciary relationship is established in which personal information is entrusted by the first party to the second party. This information becomes privileged. Privilege in this context refers to the right of the first party to impose on the second party a duty to refuse to answer any questions posed by any third parties relating to the information that passed between them. Furthermore, it should not be transferred or sold to others without consent. Therefore the second party must take the steps necessary to secure the personal information in such a way that it does not leak to any member of the third party. Each of us deals with many different types of second parties. A second party may be an individual and the form of privacy protection may be as simple as a promise not to tell. The second party frequently, however, is an institution, a company, a group or, in general, a decision structure. In this case privacy protection takes on a more complex form. Decision structures and some of their requirements are discussed more detail below.

Third party. The third party has a duty of restraint. It should honor the first party's rights of privacy and privilege and the second party's duty of confidentiality. Decorum requires that third parties should not probe too deeply into the private lives of other members of the society. As will be discussed below, the modern information society has been witness to an erosion of restraint and decorum with respect to personal information. Many third parties have become, at best, economic opportunists or, at worst, electronic voyeurs. Instilling in society values with respect to privacy is an important education and acculturation issue.

Fourth party. The fourth party has a duty to acquire only that information it needs to perform its social function and to make public only that personal information that should legitimately be made available to all members of the society.

This general framework for considering privacy in our society is shaped by two historical forces: (1) the Western intellectual tradition, and (2) technology, especially the technologies resulting in the electronically networked, digital, information society.

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## 16.8 Summary

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The Act while recognizing the general rule that no one can give a better title than what he himself has, laid down important exceptions to it. Under the exceptions the buyer gets a better title of the goods than the seller himself. These exceptions are given below:

- (a) *Sale by a mercantile agent*: A buyer will get a good title if he buys in good faith from a mercantile agent who is in possession either of the goods or documents of title of goods with the consent of the owner, and who sells the goods in the ordinary course of his business.
- (b) *Sale by a co-owner*: A buyer who buys in good faith from one of the several joint owners who is in possession of the goods with the permission of *his co-owners* will get good title to the goods.
- (c) *Sale by a person in possession under a voidable contract*: A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not been rescinded at the time of the sale.
- (d) *Sale by seller in possession after sale*: Where a seller, after having sold the goods, continues in possession of goods, or documents of title to the goods

and again sells them by himself or through his mercantile agent to a person who buys in good faith and without notice of the previous sale, such a buyer gets a good title to the goods.

- (e) *Sale by buyer in possession*: If a person has brought or agreed to buy goods obtains, with the seller's consent, possession of the goods or of the documents of title to them, any sale by him or by his mercantile agent to a buyer who takes in good faith without notice of any lien or other claim of the original seller against the goods, will give a good title to the buyer. In any of the above cases, if the transfer is by way of pledge or pawn only, it will be valid as a pledge or pawn.
- (f) *Estoppel*: If the true owner stands by and allows an innocent buyer to pay over money to a third-party, who professes to have the right to sell an article, the true owner will be estopped from denying the third-party's right to sell.
- (g) *Sale by an unpaid seller*: Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.
- (h) *Sale by person under other laws*: A pawnee, on default of the pawnee to repay, has a right to sell the goods, pawned and the buyer gets a good title to the goods. The finder of lost goods can also sell under certain circumstances. The Official Assignee or Official Receiver, Liquidator, Officers of Court selling under a decree, Executors, and Administrators, all these persons are not owners, but they can convey better title than they have.

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## 16.9 Question

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1. Define a contract of sale.
2. Explain the essential of a valid contract of sale?
3. How is contract of sale different from an agreement to sale?
4. Explain the terms' goods as defined in, the sale of goods act 1930?
5. Briefly discuss the implied conditions and warranties in a contract of sale?

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## 16.10 References

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1. The Sale of Goods Act 1979, section 64(2)
2. Sale of Goods Act 1979 s2(1).
3. Under Scots law this aspect is now regulated by the Age of Legal Capacity (Scotland) Act 1991
4. In England and Wales this aspect is now regulated under the Mental Capacity Act 2005.
5. s15A, as added by the Sale of Goods Act 1994 s4(1).
6. *Harlingdon & Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd* [1990] 1 All ER 737
7. [1999] 1 All ER 613, distinguished from *R & B Customs Brokers & Co. v. United Dominions Trust* [1988] 3 All ER 831; and affirmed by *Feldaroll Foundry plc v. Hermes Leasing Ltd.* [2004] EWCA Civ 747.
8. P Richards, *Law of Contract*, (7th edn London, Pearsons 2006) 124
9. As substituted by the Sale of Goods Act 1994 s 1.
10. s 14(2A), as added by the Sale of Goods Act 1994 s 1.
11. [1987] 2 All ER 220.
12. s 14(2D), as added by the Sale and Supply of Goods to Consumers Regulations 2002, reg 3(2).
13. [1960] 1 WLR 9.
14. 23. see *Shogun Finance Ltd v Hudson* [2004] 1 AC 919. For legal justification see Brooks, O & Dodd, A, "Shogun: A Principled Decision" (2003) 153 *NLJ* 1898
15. 48B, as added by the Sale and Supply of Goods to Consumers Regulations 2002.
16. 48A(4), as added by the Sale and Supply of Goods to Consumers Regulations 2002.
17. 48B(2), as added by the Sale and Supply of Goods to Consumers Regulations 2002.
18. 48B(3), as added by the Sale and Supply of Goods to Consumers Regulations 2002.
19. 48C, as added by the Sale and Supply of Goods to Consumers Regulations 2002.
20. Under Scots law, this applies where there is a *consumer contract*.