

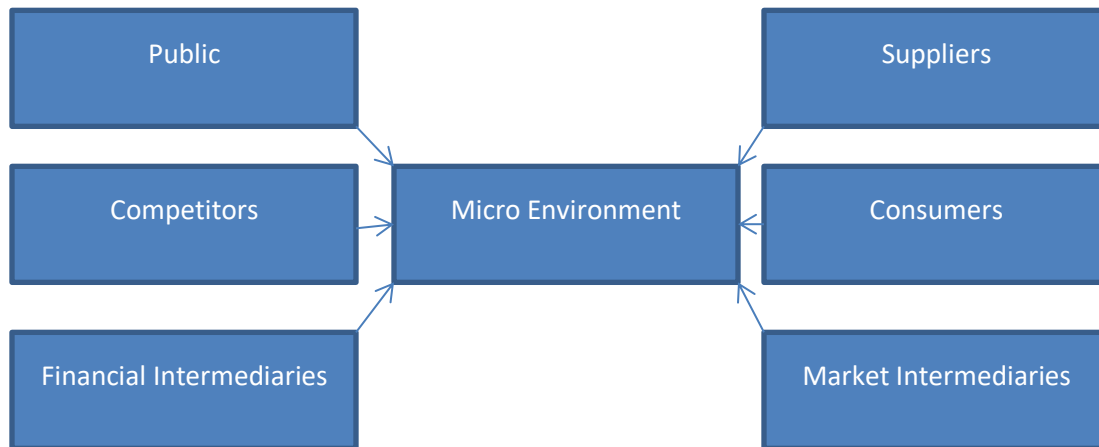
Business Environment and Business Law

Unit – I

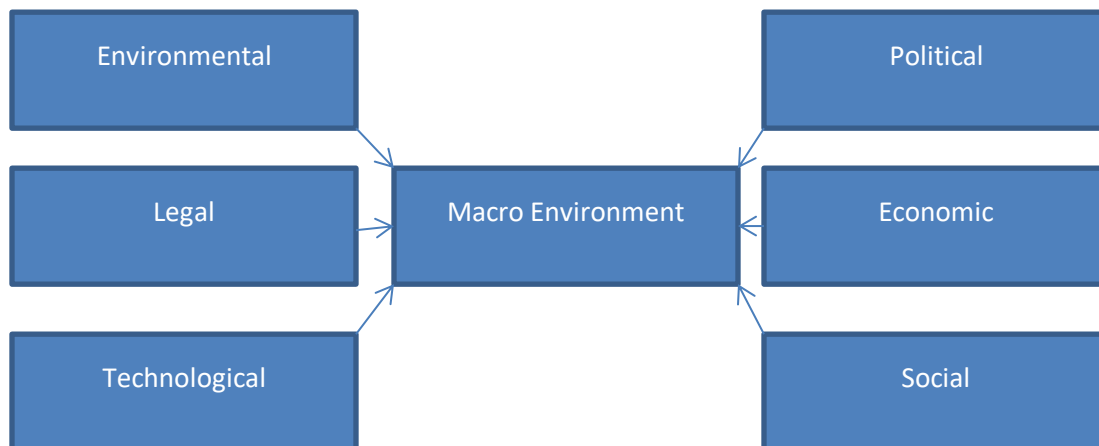
Introduction to Business Environment

It may be defined as the set of external and internal factors which influences the decisions of business. We can divide business environment into two parts.

Micro environment of business



Macro environment of business



Industrial policies since independence

Since independence we have five industrial policies.

1) 1948 industrial policy

- 2) **1956 industrial policy**
- 3) **1977 industrial policy**
- 4) **1980 industrial policy**
- 5) **1991 industrial policy**

1) **1948 industrial policy**

In the mixed economy of our sort, the government should declare its industrial policy clearly indicating what should be the sphere of the state and of the private enterprise. A mixed economy means co-existence of two sectors, public and private. They have divided industrial structure into four groups.

- 1) Basic and strategic industries
- 2) The second group
- 3) The third group
- 4) All other industries.

2) **1956 industrial policy**

- 1) 1956 policy emphasis the need to expand the public sector.
- 2) This policy stressed on the importance of cottage and small scale industries.
- 3) Regional disparities in the industrialization should be reduced.

Features of this policy

- 1) Expansion of the role of the state
- 2) Reduced threat of nationalization.

3) **1991 industrial policy**

On July 24th, 1991, Government of India, announced its new industrial policy with an aim to correct the weakness of the industrial structure of the country. The salient features are,

- 1) Government monopoly.
- 2) Industrial licensing policy.
- 3) Foreign investment and capital.
- 4) Foreign technology agreements.
- 5) Review in public sector investments

Fiscal policy

It means the use of taxation and public expenditure by the government for stabilization of economy. When the government receives more than it spends, it has a surplus. If the government spends more than it receives it runs a deficit. To meet the additional expenditure, it needs to borrow its domestic or foreign sources or print or an equivalent amount of money. This

tends to increase other economic variables. Excessive printing of money leads to inflation. If the government borrows too much from abroad, it leads to debt crisis. Excess domestic borrowing may lead to higher interest rates and domestic private sector cannot access funds. So, it can be said that fiscal deficit can be like a double edged sword which need to be tackled very carefully.

Main objectives

- 1) Reduction in inequalities of income of wealth.
- 2) Price stabilization and control inflation
- 3) To maintain and achieve full employment
- 4) To improve growth rate of money.

Monitory policy

It is the process by which RBI controls the supply of money to bring trust in the company. It is referred to either being expansionary or contractionary. Expansionary policy is when a monitory authority uses its tools to stimulate the economy. This policy increases the supply of money in the economy. It is traditionally used try to combat unemployment in a recession by lowering interest rates in the hope that credit will make the business expanding. But this policy reduces, the value of currency there by decreasing the exchange rate.

Contractionary policy slows the rate of growth in the money supply. This slows down economic growth. This policy can lead to increased unemployment. Hence, it should be well managed and conducted with care instruments of monitory policy have included short term interest rates and bank rates and bank reserves.

Goals of monetary policy

- 1) To increase economic growth and to lower unemployment.
- 2) To maintain predicable exchange rates with other currencies.

GST (Goods and Services Tax)

It is a multi-stage destination based tax that will be levied on every value addition. GST is an indirect tax levied on supply of goods and services. GST law had replaced many indirect tax laws that previously existed in India and GST regime, tax will be levied at every point of sale.

Multi stage

There are multiple change of hands an item goes through along its supply chain that is from manufacturer to consumer. They are,

Supplier of Raw material	-----	manufacturer
Manufacturer	-----	distributor

Distributor	-----	retailer
Retailer	-----	consumer

GST will be levied on each of these stages which makes it a multi-stage tax.

Value addition

The manufacturer, who makes shirts, buys yarn. The value yarn gets increased when it is woven into a shirt. The manufacturer then sells the shirt to distributor who attaches labels and tags to each shirt. The distributor sells the shirt to retailer who packages each shirt separately that increases its value.

Destination based

Consider goods manufactured in Rajasthan and are sold to the final consumer in Karnataka. Since GST is levied at the point of consumption, the entire tax will go to Karnataka.

Components of GST

- 1) CGST – Controlled by central government on intra-state sale.
- 2) SGST - Controlled by state government on intra-state sale.
- 3) IGST - Controlled by central government on inter-state sale.

Union budget

The union budget 2017 was presented by finance minister Arun Jaitley in the parliament. It was broadly focused on 10 themes.

- 1) Farming sector.
- 2) Rural population
- 3) For youth
- 4) For poor
- 5) Infrastructure.
- 6) Financial sector
- 7) Fiscal situation
- 8) Funding of political parties
- 9) Defense sector
- 10) Tax proposals

Unit – II

India trade policy

India plans to rename its foreign policy and relook at incentives to give boost to the export sector. The foreign trade policy in 2015 has set an export target of Rs. 58 lac crore billion by 2020. In 2016-17 India's merchandise shipments aggregated at Rs. 17,70,000 crores. To achieve this target in live years, exports have to grow at 14% at every year. That would not be easy at a time when the US sends some other developed countries increased protectionism in trade between 2014 and today a lot has changed. Exports are happening but globally trade is in a depressed situation. "Make in India" will continue to be a significant factor influencing the policy.

Trade policies of different sectors

Manufacturing sector:

Manufacturing has emerged as one of the high growth sectors in India. Prime minister Mr. Naredra Modi had launched make in India program to place India on the world map as a manufacturing hub . India is expected to become the fifth largest manufacturing country in the world by the end of the year 2020 . Manufacturing sector in India grew 7.9% in 2016-17 .The government aims to increase the share of manufacturing sector from 16% to 25% by 2022 . business conditions in Indian manufacture sector continue to remain positive. FDI inflows in India's manufacturing sector grew by 82% during 2016 . the government has reduced income tax rate to 25% for companies having turnover upto 50 crore . It has launched PMP (phased manufacturing program aimed at adding more smart phone components and there by giving push to domestic manufacturing of mobile handsets .

Service sector:

India has submitted proposal before WTO on a trade facilitation agreement in services . the objective of this program is to ease to is the flow of global services trade . it includes temporary movement of software , accounting , medical , consulting professionals etc... This proposal was welcomed by most of the trade ministers of different countries. India has pushed the idea of clear distinction between temporary movement of professionals and migration. This is important because India is strong in terms of professionals like IT , medical services etc.. Therefore their easier movement to other countries for short term projects has been high on its agenda.

General agreements in WTO:

1. **Reduction of tariffs:** reduction of tariffs on goods and services is very significant . there should be commitment to phase out trade restrictions gradually.
2. **Trade related Investment Measures(TRIMS):** the agreement prohibits the host country to discriminate the investment from abroad with domestic country . this requires investment to be freely allowed within domestic borders.

Trade related investment Measures:

TRIPS requires WTO members to provide copy rights, covering content producers including performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents; new plant varieties; trademarks; trade dress; and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

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Public sector disinvestment:

India is plagued by its inefficient and impotent public sector. Barring a very few, 254 Public sector units (PSU) incur heavy losses. However, they continue to exist due to state granted monopoly and excessive assets. Being huge burden on taxpayers, they almost always returned less than investment. In the period of 1986-1991, State owned enterprises made 39% of GDP as gross investment, but generated only 14% of GDP.^[21] Conceding to demands of privatization and with tough resistance from labor unions, government of India is slowly divesting from PSUs. The below

table provides the data for divestment which started from 1991 (Barring 2 small units CMC Limited and Patherele Concrete).

In order to avoid more losses (at taxpayer's expense) incurred by inefficient and loss-making PSUs, the BJP-led Vajpayee government (1999-2004) made four strategic disinvestments - in Bharat Aluminium Company (BALCO) and Hindustan Zinc (both to Sterlite Industries), Indian Petrochemicals Corporation Limited (to Reliance Industries) and VSNL (to the Tata group).

Foreign direct investment:

Introduction

Apart from being a critical driver of economic growth, foreign direct investment (FDI) is a major source of non-debt financial resource for the economic development of India. Foreign companies invest in India to take advantage of relatively lower wages, special investment privileges such as tax exemptions, etc. For a country where foreign investments are being made, it also means achieving technical know-how and generating employment.

The Indian government's favourable policy regime and robust business environment have ensured that foreign capital keeps flowing into the country. The government has taken many initiatives in recent years such as relaxing FDI norms across sectors such as defense, PSU oil refineries, telecom, power exchanges, and stock exchanges, among others.

Market size

According to Department of Industrial Policy and Promotion (DIPP), the total FDI investments in India during April-September 2017 stood at US\$ 33.75 billion, indicating that government's effort to improve ease of doing business and relaxation in FDI norms is yielding results.

Data for April-September 2017 indicates that the telecommunications sector attracted the highest FDI equity inflow of US\$ 6.08 billion, followed by computer software and hardware – US\$ 3.05 billion and services – US\$ 2.92 billion. Most recently, the total FDI equity inflows for the month of September 2017 touched US\$ 2.12 billion.

During April-September 2017, India received the maximum FDI equity inflows from Mauritius (US\$ 11.47 billion), followed by Singapore (US\$ 5.29 billion), Netherlands (US\$ 1.95 billion), USA (US\$ 1.33 billion), and Germany (US\$ 934 million).

Indian impact investments may grow 25 per cent annually to US\$ 40 billion from US\$ 4 billion by 2025, as per Mr Anil Sinha, Global Impact Investing Network's (GIIN's) advisor for South Asia.

Unit – III

India's new EXIM policy

1. Merchandise exports from India scheme.
2. Service exports from India scheme.
3. The incentives freely transferrable scheme.
4. Status holders.

Legal framework for EXIM policy

The trade policy 2015-20 is notified by central government in exercise of powers conferred under Section 5 of foreign trade act, 1992.

1. Duration of FTP
2. Amendment to FTP
3. Objective
4. DGFT as a facilitator for export/imports
5. Niryat Bandhu

FEMA, 1999

It is act of parliament in India to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and for promoting orderly development of foreign exchange in India.

Features

1. FEMA gives central government the power to restrict international trade of any person or organization.
2. The international transactions should be made only through an authorized person.
3. Residents of India will be permitted to carry out transactions in foreign exchange.
4. The violation of FEMA is a civil offense.
5. Any person can sell or draw foreign exchange without prior permission and can later on inform to RBI.
6. Under this act, enforcement directorate is given more powers to investigate financial crimes.
7. This act gives power to arrest an individual even on mere suspicions.
8. FEMA is applicable to entire country. Agencies, branches and offices, outside India that are owned by Indian residents also fall under this act.

Liberalization in India

The **economic liberalization in India** refers to the economic liberalisation, initiated in 1991, of the country's economic policies, with the goal of making the economy more market and service-oriented and expanding the role of private and foreign investment. Specific changes include a reduction in import tariffs, deregulation of markets, reduction of taxes, and greater foreign investment. Liberalisation has been credited by its proponents for the high economic growth recorded by the country in the 1990s and 2000s. Its opponents have blamed it for increased poverty, inequality and economic degradation. The overall direction of liberalisation has since remained the same, irrespective of the ruling party, although no party has yet solved a variety of politically difficult issues, such as liberalising labour laws and reducing agricultural subsidies. There exists a lively debate in India as to what made the economic reforms sustainable.

Indian government coalitions have been advised to continue liberalisation. Before 2015 India grew at slower pace than China which has been liberalising its economy since 1978. But in year 2015 India outpaced China in terms of GDP growth rate. *The McKinsey Quarterly* states that removing main obstacles "would free India's economy to grow as fast as China's, at 10% a year".^[5]

Privatization in India:

Privatization (also spelled **privatisation**) is the purchase of all outstanding shares of a publicly traded company by private investors. The shares are then no longer traded at a stock exchange, as the company became private through private equity. The second such type of privatization is the demutualization of a mutual organization or cooperative in order to form a joint-stock company.^[1] Privatization may also refer to a government outsourcing services or functions to private firms, for example, revenue collection, law enforcement, and prison management. *The Economist* magazine introduced the term "privatization" (or "privatisation") during the 1930s when it covered Nazi Germany's economic policy.

There are five main methods[[]of privatization:

1. Share issue privatization: Shares sale on the stock market.
2. Asset sale privatization: Asset divestiture to a strategic investor, usually by auction or through the Treuhand model.
3. Voucher privatization: Distribution of vouchers, which represent part ownership of a corporation, to all citizens, usually for free or at a very low price.
4. Privatization from below: Start of new private businesses in formerly socialist countries.
5. Management buyout or employee buyout: Distribution of shares for free or at a very low price to workers or management of the organization.

Globalization in India:

India currently accounts for 2.7% of world trade (as of 2015), up from 1.2% in 2006 according to the World Trade Organisation (WTO). Until the globalization of 1991, India was largely and intentionally isolated from the world markets, to protect its fledgling economy and to achieve self-reliance. Foreign trade was subject to import tariffs, export taxes and quantitative restrictions, while foreign direct investment was restricted by upper-limit equity participation, restrictions on technology transfer, export obligations and government approvals; these approvals were needed for nearly 60% of new FDI in the industrial sector. The restrictions ensured that FDI averaged only around \$200M annually between 1985 and 1991; a large percentage of the capital flows consisted of foreign aid, commercial borrowing and deposits of non-resident Indians.

India's exports were stagnant for the first 15 years after independence, due to the predominance of tea, jute and cotton manufactures, demand for which was generally inelastic. Imports in the same period consisted predominantly of machinery, equipment and raw materials, due to recent industrialisation. Since globalization the value of India's international trade has become more broad-based and has risen to 63,0801 billion in 2003–04 from 12.50 billion in 1950–51. India's trading partners are China, the US, the UAE, the UK, Japan and the EU. The exports during April 2007 were \$12.31 billion up by 16% and import were \$17.68 billion with an increase of 18.06% over the previous year.

Impact of globalization on Indian Economy :

Impact of Globalization on Agricultural Sector:

Agricultural Sector is the mainstay of the rural Indian economy around which socio-economic privileges and deprivations revolve and any change in its structure is likely to have a corresponding impact on the existing pattern of Social equity. The liberalization of India's economy was adopted by India in 1991. Facing a severe economic crisis, India approached the IMF for a loan, and the IMF granted what is called a 'structural adjustment' loan, which is a loan with certain conditions attached which relate to a structural change in the economy. Essentially, the reforms sought to gradually phase out government control of the market (liberalization), privatize public sector organizations (privatization), and reduce export subsidies and import barriers to enable free trade (globalization). Globalization has helped in:

- Raising living standards,
- Alleviating poverty,
- Assuring food security,
- Generating buoyant market for expansion of industry and services, and
- Making substantial contribution to the national economic growth.

Impact of Globalization on Industrial Sector:

Effects of Globalization on Indian Industry started when the government opened the country's markets to foreign investments in the early 1990s. Globalization of the Indian Industry took

place in its various sectors such as steel, pharmaceutical, petroleum, chemical, textile, cement, retail, and BPO.

Globalization means the dismantling of trade barriers between nations and the integration of the nations economies through financial flow, trade in goods and services, and corporate investments between nations. Globalization has increased across the world in recent years due to the fast progress that has been made in the field of technology especially in communications and transport. The government of India made changes in its economic policy in 1991 by which it allowed direct foreign investments in the country. The benefits of the effects of globalization in the Indian Industry are that many foreign companies set up industries in India, especially in the pharmaceutical, BPO, petroleum, manufacturing, and chemical sectors and this helped to provide employment to many people in the country. This helped reduce the level of unemployment and poverty in the country. Also the benefit of the Effects of Globalization on Indian Industry are that the foreign companies brought in highly advanced technology with them and this helped to make the Indian Industry more technologically advanced.

The negative Effects of Globalization on Indian Industry are that with the coming of technology the number of labor required decreased and this resulted in many people being removed from their jobs. This happened mainly in the pharmaceutical, chemical, manufacturing, and cement industries.

Impact on Financial Sector:

Reforms of the financial sector constitute the most important component of India's programme towards economic liberalization. The recent economic liberalization measures have opened the door to foreign competitors to enter into our domestic market. Innovation has become a must for survival. Financial intermediaries have come out of their traditional approach and they are ready to assume more credit risks. As a consequence, many innovations have taken place in the global financial sectors which have its own impact on the domestic sector also. The emergences of various financial institutions and regulatory bodies have transformed the financial services sector from being a conservative industry to a very dynamic one. In this process this sector is facing a number of challenges. In this changed context, the financial services industry in India has to play a very positive and dynamic role in the years to come by offering many innovative products to suit the varied requirements of the millions of prospective investors spread throughout the country. Reforms of the financial sector constitute the most important component of India's programme towards economic liberalization.

Growth in financial services (comprising banking, insurance, real estate and business services), after dipping to 5.6% in 2003-04 bounced back to 8.7% in 2004-05 and 10.9% in 2005-06. The momentum has been maintained with a growth of 11.1% in 2006-07. Because of Globalization, the financial services industry is in a period of transition. Market shifts, competition, and

technological developments are ushering in unprecedented changes in the global financial services industry.

Impact on Export and Import:

India's Export and Import in the year 2001-02 was to the extent of 32,572 and 38,362 million respectively. Many Indian companies have started becoming respectable players in the International scene. Agriculture exports account for about 13 to 18% of total annual of annual export of the country. In 2000-01 Agricultural products valued at more than US \$ 6million were exported from the country 23% of which was contributed by the marine products alone. Marine products in recent years have emerged as the single largest contributor to the total agricultural export from the country accounting for over one fifth of the total agricultural exports. Cereals (mostly basmati rice and non-basmati rice), oil seeds, tea and coffee are the other prominent products each of which accounts for nearly 5 to 10% of the countries total agricultural exports.

Unit – IV

Law of Contract

Indian contract act 1872

Introduction:

When proposal by one party is accepted by the other party, it becomes an agreement.

Every agreement enforceable at law is called a contract.

Essential elements of a valid contract.

- 1) Agreement
- 2) Competent parties
- 3) Free consent
- 4) Consideration
- 5) Legal object
- 6) Not expressly declared void
- 7) Compliance with the legal formalities

1. **Agreement:** it requires a proposal from one party and its acceptance by another party.
Thus a contract requires two parties.
2. **Competent parties :** both the parties entering into an agreement should be competent to make a contract . every person who has attained the age of majority , possess sound mind and not subject to any other legal disqualifications , is considered competent to enter into a contract.
3. **Free consent :** consent is said to be free if it has been given by the parties independently without any fear or favour .

4. **Consideration** : it means something in return . it implies that the parties entering into an agreement should get something in return for the promise they make , to make a valid contract .
5. Legal object: the object of the agreement should be legal .
6. **Not expressly declared void**: the agreement must not have been expressly declared void by any law in the country .
7. **Compliance with the legal formalities**: the prescribed legal formalities must be observed to make any contract valid .

Negotiable instruments act 1881

It is a document guaranteeing the payment of a specific amount of money either on demand or at a fixed time and is also frequently transferrable from person to person.

It is a document consisting of a contract which promises the payment of money

Characteristics

- 1) It must be in written form and signed by the maker.
- 2) It must contain unconditional promise to pay the money.
- 3) It must be payable on demand or at a definite time.
- 4) It must be payable either to a person or order of the person or to the bearer of the instrument.
- 5) It must be freely transferrable from person to person.

Types of negotiable instruments

- 1) Promissory note (Section 4)
- 2) Bill of exchange (Section 5)
- 3) Cheque (Section 6)

1) Promissory note

- 1) It is an instrument in writing
- 2) It is promise to pay
- 3) The undertaking to pay is unconditional

- 4) it should be signed by maker
- 5) The maker must be certain.
- 6) The pay must be certain
- 7) The promise should be to pay money only.
- 8) The amount of payment should be certain.

2) Bills of exchange

- 1) It must be in writing
- 2) It must be signed by the drawer.
- 3) The drawer, the drawee and payee must be certain.
- 4) The sum payable must be certain.
- 5) It must contain an order to pay money only

There are three parties in a bill of exchange

- 1) Drawer
- 2) Drawee
- 3) Payee

3) Cheque

- 1) It was always drawn on a specified banker.
- 2) it was always payable on demand.

Types of endorsements

The endorsement of negotiable instrument means writing of a person's name on the back of the instrument for the purpose of negotiation.

- 1) General or blank
- 2) Endorsement in full
- 3) Partial endorsement
- 4) Restrictive endorsement
- 5) Condition endorsement

Consumer protection act 1986

It makes the growth of the enlightened consumer movement in our country.

Features

- 1) The act applies to all goods and services.
- 2) It covers all the sectors
- 3) The provisions of the act are compensatory in nature.
- 4) The right to consumers education
- 5) The right to seek redressal against unfair trade practices

Who is a Consumer?

All of us are consumers of goods and services. The producers of goods and services also consume various other goods and services produced by others.

Consumer protection act, a consumer means a person belonging to the following categories.

- 1) One who buys any goods
- 2) It includes any user of such goods
- 3) One who hires any service or services
- 4) It includes any beneficiary of such services.

Who can file a complaint?

- 1) A consumer
- 2) Any voluntary consumer organization
- 3) Central government
- 4) State government or union territory administrations

What constitutes a complaint?

- 1) He has suffered loss or damages as a result of any unfair trade practices.
- 2) The goods mentioned in the complaint are defects.
- 3) Services mentioned in the complaint suffer from defects

Where to file a complaint?

If the cost of goods or services and compensation asked for, is less than 20 lac rupees then the complaint can be filed in the district forum.

If the cost of goods or services and compensation asked for, is more than 20 lac rupees but less than 1 crore then the complaint can be filed in the state commission.

If the cost of goods or services and compensation asked for, is more than 1 crore then the complaint can be filed in the national commission at New Delhi.

How to file a complaint?

There is no fee for filing a complaint.

- 1) The name, description and address of the complainant.
- 2) Name, description and address of the opposite parties.
- 3) The facts relating to complaint and when and where it arose.
- 4) The relief which the complaint is seeking

Relief available to the consumer

- 1) Removal of defects from the goods.
- 2) Replacement of the goods
- 3) Refund of the price paid.
- 4) Award of compensation

Procedure for filing an appeal

Appeal against the decision of the district forum can be filed before the state commission within a period of 30 days.

Appeal against the decision of the state commission can be filed before the national commission within a period of 30 days.

Appeal against the decision of the national commission can be filed before the Supreme Court within a period of 30 days.

There is no fee for filing appeal before the state commission or the national commission.

The reasons for filing the appeal should be specified.

Income tax act, 1961

The national income tax act, 1961 extends to the whole of India and became effective from 7th April, 1962. The tax act contains provision for determination of taxable income procedure for assessment, appeals, penalties and precautions.

It also lays down the powers and duties of various income tax authorities.

Since the income tax act, 1961 is a revenue law, it is bound to be amended from time to time. The amendments are generally brought annually, along with the union budget. In addition to this the central government can introduce amendments in the form of various amendments acts.

Scheme of taxation

Every person who's total income of the previous year exceeds the maximum amount which is not chargeable income tax act, has to pay the tax on the excess amount.

Key terms used in income tax

- 1) Assessee
- 2) Assessment year
- 3) Previous year
- 4) Income tax
- 5) Financial year
- 6) Gross total income

Deduction of tax at source

The person making payment is required to deduct tax in respect of following cases.

- 1) Salary
- 2) Interest on securities
- 3) Interest other than interest on security
- 4) Winning from lotteries, puzzles etc.
- 5) Winning from horse races
- 6) Insurance commission
- 7) Rent

Advanced payments of tax (Section 207-219)

This is an another method of collection of tax by the central government in the form of prepaid tax.

Assessment procedure

- 1) Self-assessment
- 2) Bi-lateral return
- 3) Defective return

Value added tax (VAT)

It is a multi-point sales tax with set off for the tax payed on purchases.

The consumer can get goods at cheaper price under VAT as compared to sales tax system.

Ex:-

			Sales Tax	VAT
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Stage 1	'A' sells fabric to tailor 'B'	For shirt Tax	100 10 <hr/> 110	100 10 <hr/> 110
Stage 2	'B' sold the shirt to 'C' (Retailer)	For Shirt Tax	200 20 <hr/> 220	200 10 <hr/> 210
Stage 3	'C' sold shirt to 'D'	For Shirt Tax	300 30 <hr/> 330	300 10 <hr/> 310

Information technology act 2000:

In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000 and came to be known as the Information Technology Act, 2000. Cyber laws are contained in the IT Act, 2000.

This Act aims to provide the legal infrastructure for e-commerce in India. And the cyber laws have a major impact for e-businesses and the new economy in India. So, it is important to understand what are the various perspectives of the IT Act, 2000 and what it offers.

The Information Technology Act, 2000 also aims to provide for the legal framework so that legal sanctity is accorded to all electronic records and other activities carried out by electronic means. The Act states that unless otherwise agreed, an acceptance of contract may be expressed by electronic means of communication and the same shall have legal validity and enforceability. Some highlights of the Act are listed below:

Chapter-II of the Act specifically stipulates that any subscriber may authenticate an electronic record by affixing his digital signature. It further states that any person can verify an electronic record by use of a public key of the subscriber.

Chapter-III of the Act details about Electronic Governance and provides inter alia amongst others that where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is - rendered or made available in an electronic form; and accessible so as to be usable for a subsequent reference.

The said chapter also details the legal recognition of Digital Signatures.

Chapter-IV of the said Act gives a scheme for Regulation of Certifying Authorities. The Act envisages a Controller of Certifying Authorities who shall perform the function of exercising supervision over the activities of the Certifying Authorities as also laying down standards and conditions governing the Certifying Authorities as also specifying the various forms and content of Digital Signature Certificates. The Act recognizes the need for recognizing foreign Certifying

Authorities and it further details the various provisions for the issue of license to issue Digital Signature Certificates.

Chapter-VII of the Act details about the scheme of things relating to Digital Signature Certificates. The duties of subscribers are also enshrined in the said Act.

Chapter-IX of the said Act talks about penalties and adjudication for various offences. The penalties for damage to computer, computer systems etc. has been fixed as damages by way of compensation not exceeding Rs. 1,00,00,000 to affected persons. The Act talks of appointment of any officers not below the rank of a Director to the Government of India or an equivalent officer of state government as an Adjudicating Officer who shall adjudicate whether any person has made a contravention of any of the provisions of the said Act or rules framed there under. The said Adjudicating Officer has been given the powers of a Civil Court.

Chapter-X of the Act talks of the establishment of the Cyber Regulations Appellate Tribunal, which shall be an appellate body where appeals against the orders passed by the Adjudicating Officers, shall be preferred.

Chapter-XI of the Act talks about various offences and the said offences shall be investigated only by a Police Officer not below the rank of the Deputy Superintendent of Police. These offences include tampering with computer source documents, publishing of information, which is obscene in electronic form, and hacking.

The Act also provides for the constitution of the Cyber Regulations Advisory Committee, which shall advise the government as regards any rules, or for any other purpose connected with the said act. The said Act also proposes to amend the Indian Penal Code, 1860, the Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934 to make them in tune with the provisions of the IT Act.

The Act now allows Government to issue notification on the web thus heralding e-governance.

Unit – V

Incorporation of company

The company promoters have to take the following steps at the time of formation of company.

1. Ascertainment of the proposed name of the company.
2. Application for licenses.
3. Securities and Exchange Board of India
4. Filing of documents
 - a. Memorandum of association.
 - b. Articles of association
 - c. Prospectus
5. Issue of certificate of incorporation

Powers of directors

The following are the various powers which can be exercised by the directors of a company.

1. Powers to be exercised by resolutions passed at board meetings.
2. Powers of board exercisable only at a meeting
3. Powers to be exercised in general meetings

Appointment of directors

1. Appointment of directors by promoters
2. Appointment of directors by members
3. Appointment of directors by the board
 - a. Additional directors
 - b. Casual vacancy
 - c. Alternate directors
4. Appointment of directors by third party
5. Appointment of directors by central government

Company meetings

1. Statutory meeting

2. Annual general meeting
3. Extraordinary general meeting
4. Meetings conveyed by national company law tribunal
5. Class meetings
6. Other meetings
 - a. Meetings of the creditors
 - b. Meetings of the debenture holders

Duties of the directors

1. Duty of good faith
2. Duty of reasonable care
3. Duty to attend board meeting
4. Personal attendance
5. Duty to disclose interest

Resolutions

A proposal when accepted by the members become a resolution. There are two types.

1. Ordinary resolution [Section – 189(1)]
2. Special resolution [Section – 189(2)]

Winding up of a company

A company may wind up in any of the following two ways.

1. Winding up by the national company law tribunal
2. Voluntary winding up
 - a. Members voluntary winding up
 - b. Creditors voluntary winding up

Latest amendments in company law, 2013

Brief description of new concepts

- **One Person Company** is a company with only one person as a member. That one person will be the shareholder of the company. It avails all the benefits of a private limited company such as separate legal entity, protecting personal assets from business liability, and perpetual succession. One Person Company (OPC) is a Company registered with ONLY ONE PERSON as its shareholder. An OPC is classified as a private company under Companies Act.

- **Woman Director:** Every Listed Company and Public Company with paid up capital of Rs 100 Crores or more / Public Company with turnover of Rs 300 Crores or more shall have at least one Woman Director.
- **Corporate Social Responsibility** Clause (135)^[8] Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- **Registered Valuers** - Valuation by registered valuers. Clause (247) (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.
- **Class action suits** (clause 245) For the first time, a provision has been made for class action suits. It is provided that specified number of member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors. Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company.
- **Dormant Company** - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company(inactive company)
- **Serious Fraud Investigation Office** (clause 211) Statutory status to SFIO has been proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill.
- **Fast Track Mergers** : The Companies Act, 2013 has separate provisions of fast track merger under Section 233 of Companies Act, 2013. These provisions are notwithstanding with the normal provisions of merger under Section 230 and 232 of this Act. Under fast track merger processes Central Government has the power to sanction all such scheme and there will be no requirement to approach National Company Law Tribunal (powers presently exercised by the High Court).

Winding up of a company:

The following steps are followed in the case of a company winding up –

- An administrator, usually denoted as a liquidator, is appointed in the context of liquefaction or winding up of a company.
- The liquidator takes control over the company, assembles its assets, pays debts of the company and finally distributes any surplus amongst the members according to their rights and liabilities.
- The company has no assets or liabilities at the end of liquefaction or winding up.
- The dissolution of a company takes place when the assets and liabilities of a company are completely wound up.
- On the context of winding up, the name of the company is struck off from the list of companies and its identity as a separate legal person is lost.
- If a company is unable to pay its debts or the debts taken by the company is worth more than the assets it owns and no agreements have been made with the creditors, then the company is considered insolvent and is subjected to compulsory liquidation or compulsory winding up.
- If an insolvent owes money to a natural person, he may ask the court of law to make a compulsory winding up order against the company.
- On the issuance of the order, the order is informed by the court to the official receiver, who eventually becomes the liquidator.
- The official receiver informs the creditors and conducts interviews with the directors of the company on the context of the winding up.
- If it is believed by the official receiver that the company has enough assets to pay its creditors, then the official receiver will seek for the appointment of an insolvency practitioner as the liquidator.
- The appointment of the liquidator is done either by calling a creditors' meeting for the creditors to elect a liquidator by vote or by requesting the Secretary of the State to appoint one.
- If there are no assets left, then the official receiver will become the liquidator.
- A person must be owed a minimum amount of INR 750 without dispute before he can ask for a winding up.
- Other business corporations or individuals can request the order of winding up of a company.
- Insolvency Service, an agent of the government, is an investigating agency, which investigates the winding up of a company.
- The Insolvency Service investigates financial failure and misconduct of individuals and companies.
- The official receiver works for the Insolvency Service.
- The official receiver finds out when and why an individual became bankrupt and finds out the primary cause behind the liquidation of a company.
- The procedure of winding up differs according to the registration status of the company, i.e., if the company is registered or if it is an unregistered company.
- If the winding up of a company is processed in the court of law, the liquidator is termed as official liquidator.

- The official liquidator acts through a recognized reporting system under the supervision of the court.