

PROFESSIONAL PRACTICE, LAW & ETHICS

LECTURE NOTES

**IV Year B.Tech. (ECE) - I Sem
(2024-25)**

**Prepared by
Dr. SUNEETHA NAISA**

DEPARTMENT OF ELECTRONICS AND COMMUNICATION ENGINEERING



MALLA REDDY COLLEGE OF ENGINEERING & TECHNOLOGY

(Autonomous Institution – UGC, Govt. of India)

Recognized under 2(f) and 12 (B) of UGC ACT 1956

**(Affiliated to JNTUH, Hyderabad, Approved by AICTE - Accredited by NBA & NAAC –
'A' Grade - ISO 9001:2015 Certified) Maisammaguda, Dhulapally (Post Via. Kompally),
Secunderabad – 500100, Telangana State, India**

MALLA REDDY COLLEGE OF ENGINEERING AND TECHNOLOGY

IV Year B.Tech. IT- I Sem

L/T/P/C

3/-/-/2

(R22A0065) PROFESSIONAL PRACTICE, LAW & ETHICS

COURSE OBJECTIVES

- To make students understand types of roles they are expected to play as practitioners.
- To develop some ideas of the legal and practical aspects of their profession.
- To learn about how to manage IP rights legal aspects, and cyber laws in IPR.

UNIT – I:

Professional Practice and Ethics: Definition of Professional Ethics - Engineering Ethics, Personal Ethics, Code of Ethics - Profession, Professionalism, Professional Responsibility, Professional Liability.

UNIT – II

Law of Contract: Nature of Contract and Essential elements of the valid Contract, offer and Acceptance, Consideration, Capacity of Contract and Free Consent, Legality of Object, Distinction between negotiation, mediation and arbitration and Introduction to GST and Various roles of various stake holders.

UNIT – III:

Arbitration: Arbitration Agreements, Arbitration Tribunals, : Tribunal: appointment, challenges jurisdiction of arbitral Tribunal, Powers, ground of challenge, procedure and Court assistance and Extent of Court intervention. UNCITRAL Model law.

UNIT - IV:

Industrial Employment: Role of Labour, Methods of engaging Labour - on rolls, labour sub-contract Workmen Compensation Act, 1923, Industrial Employment Act, 1946, RERA Act 2017,

UNIT- V

Law relating to Intellectual Property: Introduction, Scope of IPR, WIPO and TRIPS in IPR, main forms of IP, Copyright, Trademarks, Patents and Designs, Secrets, Law relating to Copyright in India. Agencies responsible for IPR Registration and Importance of the Semi-Conductor Integrated Circuits Layout Design Act, 2000. Ethical Decision Making.

TEXT BOOKS

1. R. Subramanian - Professional Ethics, Oxford University Press, 2015.
2. Intellectual property right by Deborah E Bouchoux.
3. Intellectual property rights by N.K Acharya.
4. Fundamentals of IPR for engineers, BY Komal Bansal.

REFERENCES

1. Intellectual property rights by P. Radhakrishnan.
2. Wadhera - IPR, Universal Law Publishing Co., 2004.
3. RERA Act, 2017.

Course Outcome

The students will

1. Understand importance of Professional practice, Law & Ethics in their professional careers
2. Learn the rights and responsibilities as an employee, team member and a global citizen

UNIT – I

Professional Practice and Ethics: Definition of Professional Ethics - Engineering Ethics, Personal Ethics, Code of Ethics - Profession, Professionalism, Professional Responsibility, Professional Liability.

PROFESSIONAL ETHICS

Professional ethics refers to the moral principles and standards that govern how specialist knowledge and skills are applied when offering services to the public. It involves making informed judgments and decisions that require professional training, often in situations where the general public lacks the necessary expertise. Historically, one of the earliest known examples is the Hippocratic Oath in medicine, which continues to guide doctors today.

Professional ethics represents a set of standards adopted by a professional community, typically outlined in formal **codes of ethics**. These codes provide clear boundaries for acceptable conduct, promoting integrity, fairness, and accountability in professional practice. While such codes offer guidance, not all situations present clear right or wrong answers—many involve complex, “grey areas” requiring sound moral judgment. Professional ethics is also commonly referred to as **ethical business practices**.

Definition

Professionals and those working in acknowledged professions exercise specialist knowledge and skill. How the use of this knowledge should be governed when providing a service to the public can be considered a moral issue and is termed "professional ethics".

- Ruth Chadwick

-

Professional ethics encompass the personal and corporate standards of behavior expected of professionals.

- Royal Institute of British Architects

Meaning

Professional ethics refers to the moral principles, values, and accepted standards of conduct that guide individuals in their professional duties. It ensures that professionals act with integrity, honesty, accountability, and respect toward clients, colleagues, employers, and society, making decisions that are right, fair, and responsible. Serving as an ethical framework, it helps resolve dilemmas, maintain public trust, and uphold the dignity and credibility of the profession by ensuring that specialist knowledge and authority are used for the benefit of society rather than personal gain.

KEY ELEMENTS OF PROFESSIONAL ETHICS

1. **Integrity** – Being truthful, consistent, and trustworthy in all professional actions and decisions.
2. **Honesty** – Avoiding deception, misrepresentation, or fraud in any form.
3. **Accountability** – Taking responsibility for one's actions, decisions, and their consequences.
4. **Respect** – Treating clients, colleagues, employers, and society with dignity and fairness.
5. **Confidentiality** – Protecting sensitive or private information entrusted in a professional capacity.
6. **Competence** – Performing duties only within one's area of expertise and maintaining up-to-date knowledge and skills.
7. **Fairness** – Ensuring impartiality and justice in all professional dealings.
8. **Loyalty** – Acting in the best interest of clients or employers without compromising ethical standards.
9. **Public Interest** – Prioritizing the welfare, safety, and well-being of the public over personal or corporate gain.
10. **Adherence to Codes of Ethics** – Following the rules and guidelines set by relevant professional bodies.

CHARACTERISTICS OF PROFESSIONAL ETHICS

- **Codified:** Often presented as a Code of Ethics by professional organizations (e.g., Bar Council for lawyers, IEEE for engineers, ICAI for accountants).
- **Universal in the Profession:** Applies equally to all members of a profession regardless of rank or location.
- **Dynamic:** Evolves with societal values, technology, and legal developments.
- **Enforceable:** Breaches may lead to disciplinary actions such as warnings, fines, suspension, or expulsion from the profession.

ENGINEERING ETHICS

Engineering ethics is a specialized branch of professional ethics that focuses on the moral principles and standards guiding engineers in their professional activities. Since engineering decisions often have direct impacts on **public safety, environmental sustainability, and societal welfare**, ethical considerations are as important as technical competence. Engineering ethics means **the application of moral values and professional standards in the practice of engineering**. It deals with how engineers should conduct themselves when faced with moral dilemmas, conflicting interests, or decisions affecting people, society, and nature.

IMPORTANCE OF ENGINEERING ETHICS

1. **Public Safety:** Engineering work—like building bridges, designing machines, or creating software—can directly impact human lives. Ethical practice ensures safety is never compromised.

2. **Professional Reputation:** Ethical behavior strengthens the trust between engineers, clients, employers, and society.
3. **Environmental Responsibility:** Engineers make choices that can have lasting effects on the planet, requiring sustainable and eco-friendly solutions.
4. **Legal Compliance:** Ethics aligns with laws, helping engineers avoid negligence, fraud, or malpractice.
5. **Moral Leadership:** Engineers often set standards for others in innovation, design, and execution.

CORE PRINCIPLES OF ENGINEERING ETHICS

Hold Paramount the Safety, Health, and Welfare of the Public

Engineers must always prioritize the safety, health, and welfare of the public in all professional decisions. No project or deadline should compromise human life or environmental protection. This principle represents the highest responsibility of the engineering profession.

Perform Services Only in Areas of Competence

Engineers should accept work only within their areas of education, training, and experience. Working beyond one's competence can lead to errors, safety risks, and ethical breaches. Continuous learning ensures expanding expertise while maintaining quality and safety.

Issue Public Statements Truthfully and Objectively

All technical reports, public announcements, and professional opinions must be accurate and unbiased. Misrepresentation or withholding of information damages public trust. Transparency ensures credibility and protects the integrity of the profession.

Act for Each Employer or Client as a Faithful Agent or Trustee

Engineers must remain loyal, fair, and honest in their dealings with clients or employers. Confidential information must be protected, and conflicts of interest avoided. This trust is the foundation of professional relationships.

Avoid Deceptive Acts

Deception, fraud, bribery, or misrepresentation in any form is unethical. Engineers must uphold truthfulness in every aspect of their work. Honesty safeguards both the public and the profession's reputation.

Conduct Oneself Honorably, Responsibly, and Lawfully

Engineers should act in ways that uphold the dignity and respect of the profession. This includes following laws, respecting others, and making decisions with long-term societal benefits. Ethical conduct builds professional honor.

PERSONAL ETHICS

Personal ethics refers to the individual's own set of moral principles, values, and beliefs that guide how they think, behave, and make decisions in daily life. These ethics are

shaped by personal upbringing, cultural background, religion, education, and life experiences. They act as a moral compass, helping a person distinguish between right and wrong, and influencing their actions both in personal and professional situations.

IMPORTANCE OF PERSONAL ETHICS

Guides Moral Decision-Making

Personal ethics provides a moral framework for distinguishing between right and wrong. They guide individuals in making fair, honest, and responsible decisions in everyday life as well as in complex situations.

Builds Trust and Credibility

Strong personal ethics foster honesty, integrity, and reliability, which are essential for earning the trust and respect of others. People with good ethics are often viewed as dependable and sincere.

Promotes Accountability

Individuals with strong ethical values take responsibility for their actions and their outcomes. This sense of accountability strengthens personal character and professional reputation.

Supports Professional Conduct

Personal ethics form the foundation for following professional codes of conduct. They ensure that individuals uphold integrity, fairness, and respect in the workplace, maintaining public trust.

Encourages Personal Growth and Leadership

Ethical behavior contributes to self-respect, moral strength, and the development of ethical leadership qualities. Leaders with strong personal ethics inspire others and create a positive influence in society.

Contributes to Social Harmony

By promoting fairness, respect, and empathy, personal ethics help build harmonious relationships within families, communities, and organizations, contributing to the overall betterment of society.

CHARACTERISTICS OF PERSONAL ETHICS

Individual in Nature

Personal ethics are unique to each individual and are shaped by personal beliefs, upbringing, cultural background, education, and life experiences.

Value-Based

They are rooted in core moral values such as honesty, integrity, fairness, compassion, and respect, which guide day-to-day actions and decisions.

Consistent Across Situations

Personal ethics remain stable regardless of circumstances, meaning a person with strong ethics applies the same moral principles in all situations.

Self-Regulated

They are not enforced by external laws or regulations but by the individual's own conscience and moral sense of responsibility.

Influence on Behavior

Personal ethics directly affect how an individual interacts with others, responds to challenges, and resolves conflicts in both personal and professional contexts.

Foundation for Professional Ethics

They serve as the moral base upon which professional ethics is built, ensuring integrity and fairness in the workplace.

CODE OF ETHICS

A code of ethics is a formal document or set of guidelines that outlines the moral principles, standards, and expected behavior for members of a profession, organization, or community. It serves as a framework for making ethical decisions and ensures that individuals act with integrity, fairness, and responsibility in their roles.

KEY FEATURES OF A CODE OF ETHICS**Formally Documented**

A code of ethics is a written set of rules and guidelines that clearly states the ethical expectations of a profession or organization, ensuring consistency and clarity for all members.

Value-Oriented

It is based on core moral values such as honesty, integrity, fairness, accountability, and respect, which reflect the principles the profession or organization stands for.

Guidance for Decision-Making

The code serves as a reference point for resolving ethical dilemmas, helping members choose actions that align with professional standards and public interest.

Applicable to All Members

It applies uniformly to every member of the profession or organization, regardless of rank or position, ensuring fairness and equality in ethical expectations.

Focus on Public Interest

A strong code of ethics prioritizes the safety, welfare, and trust of the public, ensuring that professional activities serve the greater good.

Basis for Accountability

It establishes clear boundaries for behavior and provides a foundation for disciplinary measures when members violate ethical standards.

PURPOSE OF A CODE OF ETHICS

Guide Professional Conduct

The code of ethics serves as a clear guideline for acceptable and unacceptable behavior, ensuring that members act with integrity, fairness, and responsibility in all professional activities.

Protect Public Interest

It ensures that the safety, welfare, and trust of the public are prioritized above personal or organizational gain, thereby maintaining public confidence in the profession.

Maintain Professional Integrity

By setting ethical standards, it helps preserve the reputation and credibility of the profession or organization, fostering respect and trust among clients, colleagues, and society.

Provide a Framework for Decision-Making

The code offers a consistent reference for resolving ethical dilemmas, enabling members to make sound decisions even in complex or uncertain situations.

Promote Accountability

It establishes clear expectations and boundaries, allowing for disciplinary action when standards are violated, thus ensuring members remain answerable for their conduct.

IMPORTANCE OF A CODE OF ETHICS

Ensures Consistent Ethical Behavior

A code of ethics provides a uniform standard for all members, ensuring that everyone follows the same moral and professional guidelines in their work.

Builds Public Trust

By promoting honesty, fairness, and responsibility, it strengthens the public's confidence in the profession or organization, which is essential for long-term credibility.

Prevents Misconduct

Clear ethical rules help members recognize and avoid unethical practices such as fraud, bias, or conflicts of interest, reducing the risk of professional misconduct.

Enhances Professional Reputation

Adherence to the code upholds the dignity and integrity of the profession, making it more respected and valued in society.

Supports Fair Decision-Making

It provides a moral compass for handling difficult or ambiguous situations, ensuring that decisions are fair, transparent, and in line with professional values.

DIFFERENCE BETWEEN PROFESSIONAL ETHICS, ENGINEERING ETHICS, AND PERSONAL ETHICS

Aspect	Professional Ethics	Engineering Ethics	Personal Ethics
Scope	All professions	Specific to engineering profession	All areas of personal life
Source	Professional bodies, codes of conduct	Engineering institutions, societies	Family, culture, religion, personal beliefs
Focus	Fair and responsible practice in profession	Safety, welfare, honesty in engineering work	Moral integrity and personal values
Example	Lawyer keeping client confidentiality	Engineer ensuring bridge safety	Returning extra change to a shopkeeper

PROFESSION

A **profession** is a specialized type of occupation that requires advanced education, formal training, and a high level of skill in a particular field. It is guided by established standards of practice and a code of ethics, ensuring that members serve society responsibly and competently.

CHARACTERISTICS OF A PROFESSION

Specialized Knowledge

A profession is built on a well-defined body of knowledge and expertise that requires advanced education, formal training, and continuous skill development.

Formal Qualification and Training

Entry into a profession typically requires specific academic qualifications, professional certification, and practical experience to ensure competence.

Code of Ethics

Professions are governed by a formal code of ethics that outlines acceptable behavior, moral obligations, and responsibilities toward clients, employers, and society.

Service Orientation

A profession is committed to serving the public interest, often prioritizing societal welfare over personal or commercial gain.

Autonomy in Work

Professionals have the independence to make decisions within their area of expertise, applying judgment and discretion in their work.

Professional Accountability

Members of a profession are accountable for their actions and decisions, both ethically and legally, and may face disciplinary measures for misconduct.

Recognition by a Professional Body

A profession is usually regulated by a recognized body that sets standards, grants licenses, and ensures members maintain quality and integrity in their practice.

IMPORTANCE OF A PROFESSION**Serves Public Interest**

A profession plays a crucial role in safeguarding public welfare by providing expert services that ensure safety, quality, and fairness in society.

Maintains Standards of Quality

Through specialized training and regulation, a profession ensures that services meet high standards, protecting clients and the community from harm or negligence.

Builds Public Trust

Adherence to ethical codes and professional conduct fosters confidence among the public, making professional advice and services more reliable.

Promotes Social and Economic Development

Professions contribute to the growth of society by solving problems, advancing technology, improving systems, and creating economic opportunities.

Encourages Lifelong Learning

The evolving nature of professional work motivates members to continually update their knowledge and skills, ensuring ongoing competence.

Provides Recognition and Status

Being part of a profession offers respect, prestige, and credibility due to the high standards of education, skill, and ethical responsibility it demands.

EXAMPLES OF PROFESSIONS

Professions exist across various fields where specialized knowledge, formal training, and adherence to ethical standards are required. Common examples include:

- **Medicine** – Doctors, surgeons, and nurses providing healthcare services to ensure patient well-being.
- **Engineering** – Civil, mechanical, electrical, and software engineers designing and developing safe, efficient, and sustainable solutions.
- **Law** – Lawyers, judges, and legal advisors offering legal representation, advice, and justice delivery.
- **Teaching** – School teachers, university lecturers, and academic researchers imparting knowledge and shaping future generations.

- **Accountancy** – Chartered accountants and auditors ensuring accurate financial reporting and compliance.
- **Architecture** – Architects designing functional, safe, and aesthetically pleasing buildings and structures.
- **Pharmacy** – Pharmacists ensuring safe preparation and dispensing of medicines.

These examples share the key traits of specialized education, professional competence, ethical responsibility, and service to society.

PROFESSIONALISM

Professionalism refers to the set of behaviours, attitudes, and qualities that reflect the standards and expectations of a profession. It is the way a professional conducts themselves in the workplace, showing competence, integrity, accountability, respect, and commitment to excellence. Professionalism is not limited to technical skill—it also includes how one communicates, behaves, and represents their profession in society.

CHARACTERISTICS OF PROFESSIONALISM

Specialized Knowledge and Competence

Professionalism involves possessing expert knowledge and skills in a specific field, along with the ability to apply them effectively to deliver high-quality work.

Adherence to Ethical Standards

A true professional follows the ethical principles and codes of conduct of their profession, ensuring honesty, fairness, and responsibility in all actions.

Reliability and Accountability

Professionalism requires meeting commitments, delivering work on time, and taking responsibility for the outcomes of one's decisions and actions.

Respect and Courtesy

Professionals treat clients, colleagues, and the public with respect, maintaining politeness and empathy in all interactions, regardless of the situation.

Continuous Improvement

Commitment to learning and upgrading skills is a core aspect of professionalism, ensuring ongoing competence in a changing environment.

Effective Communication

Clear, respectful, and professional communication—both verbal and written—is an essential element, promoting understanding and trust.

Appearance and Presentation

Maintaining a professional appearance and demeanor reflects seriousness, confidence, and respect for the work environment and profession.

IMPORTANCE OF PROFESSIONALISM

Builds Trust and Credibility

Professionalism fosters confidence among clients, colleagues, and the public by ensuring honesty, integrity, and reliability in all professional dealings.

Enhances Reputation

Consistently professional behavior strengthens the image of both the individual and the profession, earning respect and recognition in society.

Promotes Quality and Efficiency

By adhering to high standards of work, professionalism ensures accuracy, efficiency, and excellence in delivering services or products.

Supports Ethical Decision-Making

Professionalism encourages adherence to moral principles and codes of conduct, helping professionals make fair and responsible choices.

Strengthens Workplace Relationships

A professional attitude promotes mutual respect, teamwork, and effective communication, leading to a positive and productive work environment.

Contributes to Career Growth

Professionals who demonstrate reliability, competence, and ethical behavior are more likely to receive opportunities for advancement and leadership roles.

EXAMPLES OF PROFESSIONALISM

Professionalism can be demonstrated in various ways across different work environments. Common examples include:

- **Meeting Deadlines** – Completing tasks and projects on time without compromising quality.
- **Maintaining Confidentiality** – Protecting sensitive information of clients, employers, or colleagues.
- **Respectful Communication** – Speaking and writing politely, listening actively, and avoiding offensive language.
- **Adhering to Dress Codes** – Wearing attire appropriate to the profession, reflecting seriousness and respect for the workplace.
- **Admitting and Correcting Mistakes** – Taking responsibility for errors and working to resolve them promptly.
- **Punctuality** – Arriving on time for meetings, appointments, and work shifts.
- **Continuous Learning** – Upgrading skills and knowledge through training, workshops, or further education.
- **Ethical Conduct** – Refusing to engage in dishonest or harmful practices, even under pressure.

PROFESSIONAL RESPONSIBILITY

Professional responsibility refers to the moral, ethical, and legal obligations that a professional has to perform their duties with honesty, competence, and accountability. It requires acting in a manner that protects the interests of clients, employers, colleagues, and society, while upholding the integrity of the profession.

KEY ASPECTS OF PROFESSIONALISM

Competence in Work

Professionalism requires having the necessary knowledge, skills, and expertise to perform tasks effectively and to a high standard, ensuring quality outcomes.

Ethical Conduct

It involves following moral principles and the profession's code of ethics, maintaining honesty, fairness, and integrity in all professional dealings.

Accountability and Responsibility

Professionals take ownership of their actions, decisions, and results, and are answerable for both successes and mistakes.

Respect and Courtesy

Treating clients, colleagues, and the public with politeness, empathy, and consideration reflects a professional attitude.

Effective Communication

Clear, respectful, and appropriate communication—both verbal and written—is essential for building trust and understanding.

Professional Appearance and Behavior

Dressing appropriately and maintaining a confident, respectful demeanor reinforces credibility and respect in the workplace.

Commitment to Continuous Improvement

Professionals actively seek to upgrade their skills and stay informed about developments in their field to remain competent and relevant.

IMPORTANCE OF PROFESSIONALISM

Builds Trust and Credibility

Professionalism establishes confidence between professionals, clients, colleagues, and the public by ensuring honesty, reliability, and integrity in all actions.

Enhances Professional Reputation

Consistently professional behavior strengthens both the individual's and the organization's image, earning respect and recognition in society.

Promotes Quality and Efficiency

By adhering to high standards, professionalism ensures that tasks are completed accurately, efficiently, and to the best possible quality.

Supports Ethical Practices

It encourages adherence to moral principles and professional codes of conduct, leading to fair and responsible decision-making.

Improves Workplace Relationships

A professional approach fosters respect, teamwork, and effective communication, creating a positive and productive work environment.

Facilitates Career Growth

Those who demonstrate professionalism are more likely to gain promotions, leadership roles, and long-term career success.

EXAMPLES OF PROFESSIONALISM

- **Punctuality** – Arriving on time for meetings, appointments, and work commitments.
- **Meeting Deadlines** – Completing projects and tasks within the agreed timeframe without compromising quality.
- **Maintaining Confidentiality** – Protecting sensitive information about clients, employers, or colleagues.
- **Respectful Communication** – Speaking and writing politely, listening actively, and avoiding offensive or disrespectful language.
- **Professional Appearance** – Dressing appropriately to reflect seriousness and respect for the workplace.
- **Admitting Mistakes** – Taking responsibility for errors and working promptly to correct them.
- **Continuous Learning** – Participating in training, workshops, or further education to improve skills and knowledge.
- **Ethical Decision-Making** – Refusing to engage in dishonest or harmful practices, even when under pressure.

PROFESSIONAL LIABILITY

Professional liability refers to the legal responsibility a professional has for harm, loss, or damage caused to a client or third party due to negligence, errors, omissions, or failure to meet the accepted standards of the profession. It ensures that professionals are held accountable for the quality and accuracy of their work, especially when their services directly affect public safety, finances, or well-being.

NATURE OF PROFESSIONAL LIABILITY

The nature of professional liability lies in the obligation of a professional to perform their duties with the level of skill, care, and diligence expected in their field. It arises when a

professional fails to meet these standards, leading to harm, loss, or damage to a client or third party. Such liability is closely tied to the concept of **duty of care**, meaning that professionals must act in a way that prevents foreseeable harm. It can result from acts of negligence, giving incorrect advice, omissions, breach of contract, or failure to follow professional regulations. Since the work of professionals often impacts public safety, finances, or well-being, professional liability carries both ethical and legal dimensions, making competence, honesty, and adherence to standards essential.

IMPORTANCE OF PROFESSIONAL LIABILITY

The importance of professional liability lies in ensuring that professionals are accountable for the quality, accuracy, and integrity of the services they provide. It protects clients and the public from losses or harm caused by negligence, errors, or omissions, thereby maintaining trust in the profession. Professional liability also encourages adherence to ethical standards, legal requirements, and best practices, promoting higher levels of care and diligence in work. Additionally, it safeguards the professional's career and financial stability through measures such as professional liability insurance, which covers legal costs and compensation claims. Overall, it strengthens both public confidence and professional credibility.

UNIT – II

Law of Contract: Nature of Contract and Essential elements of the valid Contract, offer and Acceptance, Consideration, Capacity of Contract and Free Consent, Legality of Object, Distinction between negotiation, mediation and arbitration and Introduction to GST and Various roles of various stake holders.

LAW OF CONTRACT

Meaning

The law of contract is a branch of law that governs agreements between two or more parties that are intended to be legally enforceable. It defines the rights and obligations of the parties involved and provides remedies if the agreement is breached. A contract creates a legal relationship, ensuring that promises made in business or personal arrangements are honored.

Definition

A contract can be defined as “**an agreement enforceable by law**” (as per Section 2(h) of the Indian Contract Act, 1872). This means that an agreement becomes a contract when it is recognized by law and can be enforced in a court of law.

NATURE OF CONTRACT

Legally Enforceable Agreement

A contract is an agreement that is recognized and enforceable by law. It creates legal rights and obligations for the parties involved, which can be upheld in a court of law if breached.

Mutual Consent

The foundation of a contract is the free and mutual consent of all parties. No party should be forced or coerced into the agreement, and the terms must be accepted willingly.

Reciprocal Obligations

Contracts are reciprocal in nature, meaning that each party undertakes certain duties in return for benefits or consideration provided by the other party.

Intention to Create Legal Relations

A valid contract requires the intention of both parties to establish a relationship that carries legal consequences, not merely a social or moral arrangement.

Lawful Object and Consideration

The purpose of the contract and the consideration exchanged must be legal, ethical, and not against public policy. Agreements for unlawful purposes are void.

Compliance with Legal Formalities

Certain contracts must follow specific legal formalities, such as being in writing, registered, or stamped, to be considered valid and enforceable.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

Offer and Acceptance

A valid contract begins with a lawful offer made by one party and a lawful acceptance by the other. Both must be clear, definite, and communicated properly to create mutual agreement.

Intention to Create Legal Relationship

The parties must intend that their agreement will result in legal obligations. Social or domestic arrangements are generally not considered contracts unless legal intent is proven.

Lawful Consideration

There must be something of value exchanged between the parties, known as consideration. It can be in the form of money, goods, services, or a promise, and it must be lawful.

Capacity of Parties

The parties entering into the contract must be competent to contract. They should be of legal age, of sound mind, and not disqualified from contracting by any law.

Free Consent

Consent of the parties must be given freely and not obtained by coercion, undue influence, fraud, misrepresentation, or mistake.

Lawful Object

The purpose of the contract must be legal, not immoral, fraudulent, or against public policy. Any agreement with an unlawful object is void.

Certainty of Terms

The terms of the agreement must be clear and certain. Ambiguity or vagueness in the terms can make a contract void.

Possibility of Performance

The contract must be capable of being performed. Agreements to do impossible acts are void from the beginning.

Compliance with Legal Formalities

Some contracts require specific legal formalities, such as being in writing, registered, or stamped, to be valid under the law.

AGREEMENT - OFFER AND ACCEPTANCE

Offer is one of the essential elements of a contract as defined in Section 10 of the Indian Contract Act, 1872.

Definition

Section 2(a) of the Indian Contract Act, 1872 defines the term "Proposal" as when one person signifies to another his willingness to do or to abstain from doing something with a view to obtaining the assent of the other to such an act or abstinence, he is said to make a proposal. The person making the 'proposal' or 'offer' is called the 'promisor' or 'offeror', the person to whom the offer is made is called the 'offeree'.

The parties to the contract should have a mutual understand regarding the subject-matter of the contract. There must be a "lawful offer" and "lawful acceptance" thus resulting in an agreement. The parties must have agreed to the subject-matter in the same sense.

Acceptance is the expression of assent by the person to whom the offer is made. To constitute a valid acceptance, the assent must be communicated to the offeror. Acceptance may be express conduct or may be in implied circumstances. However, silence cannot be prescribed as a mode of acceptance.

The following elements must be present in a valid acceptance.

1. Acceptance must be given only by person to whom the offer is made
2. Acceptance must be absolute and unqualified
3. Acceptance must be communicated by the acceptor
4. Acceptance must be given within a reasonable time and before the offer lapses or is revoked.

Legal purpose

There must be an intention among the parties that the agreement should be attended to by legal consequences and create legal obligation. Agreements of social or domestic nature do not contemplate legal relations.

LAWFUL CONSIDERATION OR OBJECTS

An agreement, the consideration or the object of which is not lawful, cannot be enforced by law. This is because courts will not allow polluted hands to touch the pure fountains of justice. According to Sec. 23, "The consideration or object of an agreement is lawful unless: -

1. it is forbidden by law; or
2. is of such a nature that, if permitted, it would defeat the provisions of any law;
or
3. is fraudulent; or
4. involves or implies injury to the person or property of another; of

5. 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.”

The objects and the consideration of an agreement shall be unlawful in the following cases.

1. If it is forbidden by law:

An act is said to be forbidden by law if it has expressly been declared to be unlawful by any of the laws of the country for the time being in force. And, for this purpose, both the parties are presumed to know the law. If a contract can be performed in one of the two ways, i.e., legally or illegally, it is not an illegal contract, though it is unenforceable at the suit of a party who chooses to perform it illegally.

Examples:

- (a) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.
- (b) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

2. If it is of such a nature that, if permitted, it would defeat the provisions of law

The term “Law” includes any enactment or rule of law for the time being in force in India. This may be considered under three heads:

- (i) An agreement which defeats the provisions of any legislative enactment

Example:

An agreement by which an insolvent who had obtained his personal, but not his final discharge, settled the claim of one creditor without notice to the official assignee or his other creditors and by which that creditor agreed not to oppose his final discharge, was void as inconsistent with the policy of the statute.

- (ii) If defeats the rules of Hindu and Mohomedan Law

The rules must of course be such as are recognized and enforceable by courts of law; they do not include rules of exclusively religious character. An agreement that would defeat the provisions of Hindu Law would be unlawful within the meaning of the present clause.

Example:

- (a) A contract to give a son in adoption in consideration of an annual allowance to the natural parents. A suit will not lie to recover any allowance on such a contract, though the adoption has been performed.

- (b) An agreement entered into before marriage between Mohamedan wife and husband by which it is provided that the wife shall be at liberty to live with her parents after marriage is void.

- (iii) Other rules of law in force in India

Example:

An engagement of a Chartered Accountant to be paid on the basis of a percentage of the relief obtained in an income-tax case of an assessee is opposed to the provision of the Chartered Accountants Act.

3. If it is fraudulent

When the object of an agreement is to cheat the other party by concealment of any material fact or otherwise, it is said to be fraudulent. An agreement to defraud revenue is illegal, including the revenues of a foreign country.

Example:

When the object of an agreement between A and B was to obtain a contract from the Commissariat Department for the benefit of both, which could not be obtained for both of them without practicing fraud on the Department. Held, that the agreement was fraudulent and, therefore, void.

4. If it involves or implies injury to the person or property of another:

The consideration or object of an agreement is unlawful when it involves or implies injury to the person or property of another.

Example:

An agreement which compels a debtor to do manual labour for the creditor as long as the debt is not repaid in full is void.

(5) (a) If the court regards it as immoral:

The definition of the word immoral has been kept limited only to those acts which the court regards as immoral. This shows that what is 'immoral' depends upon the standards of morality prevailing at a particular time and as approved by courts. In most cases the meaning is restricted to sexual immorality.

A landlord cannot recover the rent of his house knowingly let to a prostitute who carries on her vocation there. Similarly, money lent to a prostitute expressly to enable her to carry on her trade cannot be recovered. Likewise money advanced by the plaintiff to the defendant to enable the defendant to continue cohabitation with a dancing girl cannot be recovered. Ornaments lent by a brothel keeper to a prostitute for attracting men and encouraging prostitution cannot be recovered back.

A promise to pay for the past co-habitation has been held to be legal (Dhiraj Kumar V. Bikramjit Singh). But where co-habitation - even not adulterous is also not enforceable. An agreement to pay maintenance for an illegitimate child is not illegal. A loan made for the purpose of teaching to dancing girls has nothing immoral in its object.

Example:

A agrees to let her daughter to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

(b) Agreement which are considered by the courts to be opposed to public policy:

The principle of public policy is this: *ex dolo malo non oritur actio*- No court will lend its aid to a man who found his cause of action upon an immoral or an illegal act. No exhaustive list can be prepared of all the agreements opposed to public policy. Anything which goes against the interest of general public will be deemed to be opposed to public policy.

The doctrine of public policy was summarized by the Supreme Court in *Gherul Parek V. Mahadeodas* (1959).

“Public policy or the policy of the laws is an illusive concept; it has been described as “untrustworthy guide”, “variable quality”, “uncertain one”, “unruly horse”, etc: the primary duty of a court of law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which form the basis of society, but in certain cases, the court may relieve them of their duty on a rule founded on what is called the public policy.”

The law relating to public policy is not a fixed and immutable matter, rather it is alterable by the passage of time.

The general head of public policy covers wide range of topics. Some of these are:

- (i) Trading with the enemy: Those contracts which tend either, to benefit an enemy country or to disturb the good relations of a country with a friendly country, are against public policy. Contracts made before the outbreak of hostilities may be performed after the cessation of hostilities unless already cancelled by the parties or the Government.
- (ii) Shiffling Prosecution : Agreements for shifting prosecution are a well-known class of those contracts which the courts refuse to enforce on this ground. The principle is “that you shall not make a trade of a felony”. If a person has committed an offence he should be punished and, therefore, “no court of law can countenance or give effect to an agreement which attempts to take the administration of law out of the hands of the judges and put it in the hands of private individuals.” (*Sudhindra Kumar V. Ganesh Chandra* (1939)). Thus, a criminal offence cannot be arbitration. but an agreement to refer a civil dispute to arbitration is perfectly valid.

Example:

A promises B to drop a court case which he has instituted against B for robbery and promises to restore the value of the things taken. The agreement is void, as its objects is to stifle prosecution.

(iii) Agreements for improper promotion of litigation : In this connection there are two types of agreements (i) Maintenance and (ii) champers.

Maintenance: When a stranger agrees to render assistance by money or otherwise to another person in a suit in which that third person has himself no legal interest, for its prosecution or defence, it is called maintenance.

Champert: Champerty is a species of maintenance. It is a bargain whereby one person promises to assist another in recovering property in consideration of the latter giving the former a share in the property so recovered.

CONTRACTUAL CAPACITY

The law recognizes the need for a minimum mental capacity, or ability to understand the ramifications of a contract or legal agreement in order for such an agreement to be legal and binding. While several classes of people considered to lack sufficient mental capacity to make legally binding agreements, argument may be successfully made to the court for other circumstances in which a signor to an agreement should be deemed unable to sign. To explore this concept, consider the following *contractual capacity* definition.

Definition of Mental Capacity

The degree of understanding and ability to comprehend and remember a situation in which one finds oneself; understanding the purpose and consequences of an act or transaction to which one agrees or enters into.

The minimum degree of understanding required by law to for an individual to be charged with responsibility for an act or transaction.

Assessment of Contractual Capacity

The law typically recognizes three classes of individuals who are, in general, not regarded as having a great enough understanding or mental capacity to be bound by a legal contract or agreement. These individuals without contractual capacity include:

Mentally impaired or incompetent person – any individual in a state of arrested or incomplete mental development, which may include impairment of intelligence and social functioning.

Minors – any individual under the legal age of 18 years

Intoxicated persons, or persons under the influence of any substance – any individual who has ingested, or is otherwise subject to the influences of, alcohol, drugs, medications, or other substances, whose judgment may be impaired.

Invalidating a Contract Lacking Contractual Capacity

Contracts entered into by a party who lacks contractual capacity are voidable, and a void contract cannot be enforced. Contracts entered into by minors are never binding, allowing the minor to cancel the contract, or fail to fulfill his obligations under the contract, without consequence.

Generally speaking, invalidating a contract lacking contractual capacity may occur when (1) a party to the contract completely lacked an understanding of the contract, or (2) the party lacked a clear understanding of the consequences of entering into the contract. Not all mental and psychological impairments signify a lack of capacity to enter into legally

binding agreements. The burden of proof that a party to a contract actually lacked contractual capacity falls on that party or his legal representative.

Understanding When a Contract is Voidable

With the exception of minors, a party to a contract later deemed to lack contractual capacity is not automatically relieved of his duties under the contract. The court will often take into consideration all of the circumstances under which the contract was entered into. For example, a contract is potentially voidable if one party was intoxicated or under the influence of drugs at the time the agreement was made and the document signed. The intoxicated party may, at a later time, have the right to void the contract, especially if the other party knew he was impaired at the time of the agreement, or had the intent to take advantage of the intoxicated party.

Drugs, Alcohol, and Mental Capacity

An individual under the influence of alcohol, street drugs, or certain prescription medications cannot legally enter into a contract or give their consent for any action. Even if it is not obvious to others that a person is intoxicated or impaired, they are often unable to think clearly or reasonably, communicate their intentions clearly, or recognize problematic or dangerous situations. In addition to contributing to a lack of contractual capacity, drugs, alcohol, and prescriptions are also considered to render an individual unable to give consent for medical care or sexual acts.

Developmental Disabilities

While many individuals considered to have developmental or intellectual disabilities, sometimes referred to as “mental retardation,” live on their own and hold jobs, a great deal of effort goes into adapting to an independent lifestyle. Whether or not such an individual has the mental capacity to enter into a legally binding contract is a matter taken seriously, and considered on a case-by-case basis by the courts. Some individuals with developmental disabilities have a guardian or conservator who is allowed to make legal decisions and sign legally binding documents on behalf of the disabled person.

FREE CONSENT

According to Section 13, "two or more persons are said to be consented when they agree upon the same thing in the same sense (*Consensus-ad-idem*). According to Section 14, Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Elements Vitiating free Consent

1. Coercion (Section 15): "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code under(45,1860), or the 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. For example, "A" threatens to shoot "B" if he doesn't release him from a debt which he owes to "B". "B" releases "A" under threat. Since the release has been brought about by coercion, such release is not valid.

2. Undue influence (Section 16): "Where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears on the face of it, or on the evidence, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

(Section 16(2)) States that "A person is deemed to be in a position to dominate the will of another; Where he holds a real or apparent authority over the other. For example, an employer may be deemed to be having authority over his employee. an income tax authority over to the assessee. Where he stands in a fiduciary relationship to other, For example, the relationship of Solicitor with his client, spiritual advisor and devotee. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by the reason of age, illness or mental or bodily distress"

3. Fraud (Section 17): "Fraud" means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract. Mere silence is not fraud. a contracting party is not obliged to disclose each and everything to the other party. There are two exceptions where even mere silence may be fraud, one is where there is a duty to speak, then keeping silence is fraud. or when silence is in itself equivalent to speech, such silence is fraud.

4. Misrepresentation (Section 18): "causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

5. Mistake of fact (Section 20): "Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void". A party cannot be allowed to get any relief on the ground that he had done some particular act in ignorance of law. Mistake may be bilateral mistake where both parties to an agreement are under mistake as to the matter of fact. The mistake must relate to a matter of fact essential to the agreement.

LEGALITY OF OBJECT

Section 23 of the Indian Contract Act has specified certain considerations and objects as unlawful. The consideration or objects of an agreement is lawful, unless- it is forbidden by law; is of such a nature that, if permitted, it would defeat the provision of any law; or is fraudulent; or involves injury to the person or property of another; or the court regards it as immoral or opposed to public policy.

In each of the above-mentioned cases the consideration or object of an agreement is deemed to be unlawful. Every agreement in which the object or consideration is unlawful is void.

The following agreements are considered to be against public policy:

1. Trade with the enemy
2. An agreement between the citizens of two countries at war with each other is void and hence inoperative.
3. Agreement in interference with the course of justice:
4. All agreements which interfere with the normal course of law and justice are deemed to be opposed to public policy and hence are void.
5. Agreements which injure the public services are considered to be void.
6. Agreements infringing personal freedom
7. Agreements hindering parental duties.
8. Agreements hindering marital duties

DISTINCTION BETWEEN NEGOTIATION, MEDIATION AND ARBITRATION

Negotiation

Negotiation is a voluntary process in which the parties in dispute communicate directly with each other to resolve their differences without the involvement of a third party. It is informal, flexible, and based on mutual discussion and compromise. The outcome depends entirely on the willingness of the parties to agree, and it is not legally binding unless converted into a formal contract.

Mediation

Mediation involves a neutral third party, known as a mediator, who helps the disputing parties communicate, identify issues, and explore solutions. The mediator does not impose a decision but facilitates understanding and encourages a mutually acceptable settlement. The process is flexible and confidential, and the outcome is binding only if the parties agree and formalize it.

Arbitration

Arbitration is a formal dispute resolution process where the parties present their case to a neutral third party called an arbitrator (or panel of arbitrators). The arbitrator listens to evidence and arguments and then makes a decision, known as an award, which is legally binding and enforceable like a court judgment. It is more structured than negotiation or mediation and is often used as an alternative to litigation.

Basis	Negotiation	Mediation	Arbitration
Definition	A voluntary process where parties communicate directly to resolve a dispute.	A process where a neutral third party (mediator) facilitates communication and helps parties reach an agreement.	A formal process where a neutral third party (arbitrator) hears both sides and makes a binding decision.
Third Party Involvement	No third party is involved.	Mediator facilitates but does not decide.	Arbitrator hears evidence and decides the case.

Basis	Negotiation	Mediation	Arbitration
Formality	Informal and flexible.	Semi-formal but less rigid than arbitration.	Formal, with procedures similar to court processes.
Decision-Making Power	Parties themselves decide the outcome.	Parties decide; mediator only assists.	Arbitrator makes the final decision (award).
Binding Nature	Not binding unless formalized in writing.	Not binding unless agreed and formalized.	Binding and enforceable like a court judgment.
Confidentiality	Usually private and confidential.	Confidential process.	Generally private, but the award may be made public in some cases.
Cost and Time	Low cost and quick.	Moderate cost and time.	Higher cost and longer duration compared to negotiation and mediation.
Control over Outcome	Full control with parties.	High control with parties.	Limited control; decision rests with arbitrator.

INTRODUCTION TO GST

The **Goods and Services Tax (GST)** is a comprehensive indirect tax system introduced in India on **1st July 2017**, replacing multiple central and state taxes such as VAT, service tax, excise duty, and others. GST is a **destination-based tax** levied on the supply of goods and services, meaning it is collected at the point of consumption rather than production.

It is designed to create a **unified national market**, remove the cascading effect of taxes, and ensure greater transparency in the taxation process. GST is structured into **CGST** (Central GST), **SGST** (State GST), **IGST** (Integrated GST), and **UTGST** (Union Territory GST), depending on whether the supply is within a state or between states.

ROLES OF VARIOUS STAKEHOLDERS IN GST

1. Central Government

The central government is responsible for framing GST laws, collecting CGST and IGST, and ensuring uniformity of rules across the country. It also handles the GST Council Secretariat and monitors compliance at the national level.

2. State Governments

State governments collect SGST and UTGST, enforce state-level compliance, and ensure proper registration of businesses within their jurisdiction. They also work jointly with the centre to implement GST policies.

3. GST Council

The GST Council is the key decision-making body comprising the Union Finance Minister, state finance ministers, and other representatives. It decides GST rates, exemptions, laws, and procedural rules to maintain a uniform tax structure across India.

4. Businesses / Taxpayers

Businesses must register under GST, collect tax from customers, file GST returns, and pay the collected tax to the government. They are also responsible for maintaining accurate records, issuing GST-compliant invoices, and ensuring timely compliance.

5. Consumers

Consumers bear the GST cost on goods and services they purchase. Their role is indirect, but they contribute to compliance by demanding GST invoices, which encourages transparency and prevents tax evasion.

6. GST Network (GSTN)

The GST Network is the IT backbone of GST, responsible for maintaining the GST portal where taxpayers register, file returns, pay taxes, and claim input tax credits.

7. Tax Authorities

Central and state tax authorities monitor compliance, conduct audits, and take enforcement actions against defaulters. They also assist businesses in understanding GST procedures.

UNIT – III

Arbitration: Arbitration Agreements, Arbitration Tribunals, Tribunal: appointment, challenges jurisdiction of arbitral Tribunal, Powers, ground of challenge, procedure and Court assistance and Extent of Court intervention. UNCITRAL Model law.

ARBITRATION

Arbitration is a formal method of alternative dispute resolution (ADR) in which the parties to a dispute agree to submit their case to a neutral third party, called an **arbitrator** or a panel of arbitrators. The arbitrator hears both sides, examines evidence, and makes a decision known as an **arbitral award**, which is usually binding and enforceable like a court judgment.

NATURE OF ARBITRATION

Consensual Process

Arbitration is based on the mutual agreement of the parties to resolve disputes outside the court. The arbitration clause is often included in contracts beforehand or agreed upon after a dispute arises.

Neutral Third-Party Decision-Maker

A neutral arbitrator or panel of arbitrators is appointed to hear the case. They act impartially, consider evidence and arguments from both sides, and deliver a fair decision.

Private and Confidential

Unlike court proceedings, arbitration hearings are held in private. The details of the dispute, evidence, and the arbitral award are generally kept confidential.

Binding Decision

The arbitrator's decision, known as an arbitral award, is binding on both parties and enforceable in a court of law, similar to a court judgment.

Flexible Procedure

While arbitration follows certain procedural rules, it allows flexibility in scheduling hearings, choosing arbitrators, and deciding specific rules of evidence and procedure.

Specialized Expertise

Parties can appoint arbitrators with technical or industry-specific knowledge, making arbitration particularly effective for commercial, technical, or specialized disputes.

KEY FEATURES OF ARBITRATION

Agreement-Based Process

Arbitration takes place only when the parties have agreed—either through an arbitration clause in a contract or a separate agreement—to resolve disputes outside the court system.

Neutral Arbitrator

A neutral third party, called an arbitrator or a panel of arbitrators, is appointed to hear the dispute and deliver a fair and impartial decision.

Binding Award

The decision of the arbitrator, known as the arbitral award, is binding on both parties and can be enforced in a court of law, similar to a judicial decree.

Confidential Proceedings

Arbitration hearings are private, and the details of the dispute, evidence, and final award are usually kept confidential, protecting sensitive information.

Procedural Flexibility

The process is less rigid than court litigation, allowing parties to choose procedures, hearing dates, and even arbitrators with specific expertise.

Specialized Knowledge

Arbitrators can be selected for their technical, commercial, or legal expertise, making arbitration effective for resolving complex or specialized disputes.

ADVANTAGES OF ARBITRATION**Faster Resolution**

Arbitration generally resolves disputes more quickly than traditional court litigation, as the process is streamlined and free from lengthy procedural delays.

Confidentiality

Proceedings are private, and the details of the dispute, evidence, and award are not disclosed to the public, protecting sensitive business or personal information.

Flexibility in Procedure

Parties have the freedom to choose arbitrators, decide procedural rules, and schedule hearings at their convenience, making the process more adaptable.

Expertise of Arbitrators

Arbitrators can be chosen for their specialized knowledge in technical, commercial, or legal fields, ensuring informed and accurate decision-making.

Binding and Enforceable Award

The arbitral award is legally binding on the parties and can be enforced in court like a judgment, providing certainty and finality to the dispute.

Neutral Forum

Arbitration offers an impartial platform, especially in cross-border or commercial disputes, where parties may prefer not to rely on the courts of either side.

ARBITRATION AGREEMENT

An arbitration agreement is a written agreement between two or more parties to submit present or future disputes to arbitration rather than resolving them through court litigation. It forms the legal foundation for initiating arbitration proceedings and is enforceable under the **Arbitration and Conciliation Act, 1996** in India.

FORMS OF ARBITRATION AGREEMENT

Arbitration Clause in a Contract

This is a provision included within the main contract stating that any disputes arising from or relating to the contract will be settled through arbitration. It is agreed upon at the time of entering into the contract and applies to future disputes.

Submission Agreement

Also known as a **separate arbitration agreement**, this is entered into after a dispute has already arisen. In this form, the parties mutually decide to refer the existing dispute to arbitration instead of going to court.

Statutory Arbitration

In certain cases, arbitration is mandated by law. Specific statutes require disputes in certain sectors or agreements to be resolved through arbitration, regardless of whether the parties have included an arbitration clause.

International Arbitration Agreement

When the parties are from different countries, an international arbitration agreement specifies that cross-border disputes will be resolved under arbitration, often following international rules such as those of the ICC, UNCITRAL, or SIAC.

ESSENTIAL ELEMENTS OF AN ARBITRATION AGREEMENT

Written Form

The agreement must be in writing, either as a clause in a contract, a separate document, or an exchange of letters, emails, or other written communications showing mutual consent.

Clear Intention to Arbitrate

The language of the agreement should clearly state that the parties agree to refer disputes to arbitration, excluding the jurisdiction of regular courts (except for enforcement or procedural assistance).

Defined Scope of Disputes

The agreement should specify whether it covers present disputes, future disputes, or both, and outline the subject matter to be referred to arbitration.

Mutual Consent

Both parties must voluntarily agree to arbitration without coercion, fraud, or undue influence, ensuring free and informed consent.

Number and Appointment of Arbitrators

The agreement should state the number of arbitrators (single or panel) and the method of their appointment to avoid procedural disputes later.

Procedure and Governing Law

It should outline the procedural rules to be followed during arbitration and specify the applicable law governing the agreement and the dispute.

Binding Nature of Award

The agreement must indicate that the arbitrator's decision (arbitral award) will be final and binding on the parties.

ARBITRATION TRIBUNALS

An arbitration tribunal is the body or panel of arbitrators appointed to resolve a dispute referred to arbitration. It acts as the decision-making authority in the arbitration process, hearing both parties, examining evidence, and delivering the **arbitral award**, which is binding on the parties. An arbitration tribunal may consist of a single arbitrator or multiple arbitrators, commonly three. The number and method of appointment are usually specified in the arbitration agreement. In the absence of agreement, the appointment is made as per the provisions of the **Arbitration and Conciliation Act, 1996** or relevant institutional rules. The tribunal controls the arbitration proceedings, determines the admissibility of evidence, interprets contract terms, and ensures that both parties are given equal opportunity to present their case. It also has the authority to issue interim measures, decide procedural matters, and render a final award. Members of an arbitration tribunal must be impartial and independent, avoiding any conflict of interest. They are required to disclose any circumstances that may give rise to doubts about their neutrality. Arbitration tribunals provide an alternative to court litigation, offering expertise, confidentiality, and procedural flexibility. They play a vital role in ensuring that disputes are resolved fairly, efficiently, and in accordance with the terms agreed by the parties.

APPOINTMENT OF AN ARBITRATION TRIBUNAL

As per Agreement Between Parties

The appointment of arbitrators is primarily governed by the terms stated in the arbitration agreement. The parties may mutually decide the number of arbitrators (usually one or three) and the method of their appointment.

Appointment in Case of a Sole Arbitrator

If the arbitration agreement provides for a single arbitrator, both parties must agree on the person to be appointed. If they fail to agree, the appointment can be made by a competent authority or court as per the **Arbitration and Conciliation Act, 1996**.

Appointment in Case of Three Arbitrators

When three arbitrators are to be appointed, each party selects one arbitrator, and the two chosen arbitrators together appoint the third, who acts as the presiding arbitrator. If any party fails to appoint within the specified time, the appointment can be made by the court or an appointing authority.

Institutional Arbitration

If the arbitration is conducted under an institution (e.g., ICC, LCIA, SIAC), the institution appoints arbitrators according to its own rules if the parties cannot agree.

Qualifications and Impartiality

Arbitrators must be impartial, independent, and possess the qualifications agreed upon by the parties. They are required to disclose any conflict of interest or circumstances that may affect their neutrality before and during the proceedings.

CHALLENGING THE JURISDICTION OF AN ARBITRAL TRIBUNAL

Challenging the jurisdiction of an arbitral tribunal means questioning its legal authority to hear and decide a dispute. A party may claim that the tribunal has no right to conduct the arbitration because the dispute is not covered by the arbitration agreement, the agreement itself is invalid, or procedural requirements have not been met.

Principle of Kompetenz-Kompetenz

Under Section 16 of the **Arbitration and Conciliation Act, 1996**, the arbitral tribunal has the power to rule on its own jurisdiction, including objections regarding the existence or validity of the arbitration agreement. This means the tribunal can first decide whether it has the authority to proceed before a court is approached.

Grounds for Challenge

- The arbitration agreement is invalid or void.
- The dispute is outside the scope of the arbitration clause.
- The arbitration clause does not exist in the contract.
- The tribunal has been constituted improperly.
- Time limits or procedural rules in the agreement have not been followed.

Time to Raise Challenge

A plea challenging jurisdiction must be raised **no later than the submission of the statement of defence**. If a party continues to participate in proceedings without objecting in time, they may lose the right to challenge later.

Recourse if Tribunal Upholds Jurisdiction

If the arbitral tribunal rules that it has jurisdiction and proceeds with the case, the aggrieved party can challenge this decision in court after the final award is made, under Section 34 of the Act.

POWERS OF AN ARBITRAL TRIBUNAL

Power to Rule on Its Own Jurisdiction

Under the principle of *Kompetenz-Kompetenz* (Section 16 of the Arbitration and Conciliation Act, 1996), the arbitral tribunal can decide whether it has the authority to hear the dispute, including questions about the validity or scope of the arbitration agreement.

Power to Determine Procedure

The tribunal can decide the procedure for conducting arbitration unless the parties have agreed otherwise. This includes fixing hearing dates, order of evidence, and rules of submission.

Power to Decide on Evidence

It may determine the relevance, materiality, and admissibility of evidence, and decide whether oral hearings are necessary or if the case can be resolved on documents alone.

Power to Grant Interim Measures

The tribunal can order interim measures to protect the subject matter of the dispute, such as preserving assets, securing amounts in dispute, or preventing further harm until the final award.

Power to Appoint Experts

It may appoint independent experts to report on specific issues, seek their opinion, and allow both parties to question them.

Power to Make the Final Award

The most important power is to render an arbitral award that is binding on the parties and enforceable like a court judgment.

Power to Award Costs

The tribunal can decide how arbitration costs, including legal fees and expenses, will be allocated between the parties.

Power to Correct or Interpret Award

It can correct clerical or typographical errors in the award or give an interpretation of any specific point if requested by a party.

GROUND OF CHALLENGE TO AN ARBITRAL TRIBUNAL

The grounds of challenge to an arbitral tribunal refer to the specific legal and factual reasons on which a party can question the validity of an arbitrator's appointment or the tribunal's authority to hear and decide a dispute. These grounds ensure that arbitration is conducted fairly, impartially, and in accordance with the agreement between the parties and the provisions of the Arbitration and Conciliation Act, 1996. A challenge may be raised when there are doubts about an arbitrator's independence, impartiality, qualifications, or jurisdiction. It acts as a safeguard against bias, conflict of interest, or procedural irregularities, protecting the integrity and fairness of the arbitration process.

Lack of Impartiality or Independence

If circumstances exist that give rise to justifiable doubts about the impartiality or independence of an arbitrator—such as a personal, financial, or professional relationship with one of the parties—the tribunal can be challenged.

Lack of Agreed Qualifications

If an arbitrator does not possess the qualifications agreed upon by the parties in the arbitration agreement (for example, technical expertise or legal background), their appointment can be challenged.

Invalid Appointment Procedure

If the arbitrator was appointed in violation of the procedure agreed by the parties or the provisions of the Arbitration and Conciliation Act, 1996, a challenge can be made.

Jurisdictional Issues

If the arbitral tribunal lacks jurisdiction—because the dispute falls outside the scope of the arbitration agreement or the agreement itself is invalid—it can be challenged.

Bias or Conflict of Interest

If an arbitrator has a direct or indirect interest in the outcome of the dispute, or a relationship that may influence their judgment, this constitutes a valid ground for challenge.

PROCEDURE FOR CHALLENGING AN ARBITRAL TRIBUNAL

Under the **Arbitration and Conciliation Act, 1996**, the procedure for challenging an arbitrator or tribunal is as follows:

Filing a Challenge

A party intending to challenge must do so within the time frame specified—generally **within 15 days** after becoming aware of the constitution of the tribunal or the circumstances giving rise to the challenge.

Submission to Tribunal

The challenge must be submitted in writing to the arbitral tribunal, stating the specific grounds (e.g., bias, lack of qualifications, conflict of interest).

Decision by Tribunal

Unless the challenged arbitrator withdraws or the other party agrees to the challenge, the arbitral tribunal (including the challenged arbitrator) decides on the challenge.

Recourse to Court

If the tribunal rejects the challenge, the aggrieved party cannot immediately approach the court; they must wait until the final arbitral award is delivered. At that stage, they may file an application to set aside the award under **Section 34** of the Act, citing the rejected challenge as a ground.

COURT ASSISTANCE IN ARBITRATION

The court plays a **supportive role** in arbitration without taking over the process. Common areas of assistance include:

- Appointment of arbitrators if parties fail to agree (Section 11).
- Granting interim measures for protection of assets or evidence (Section 9).
- Assistance in taking evidence, such as summoning witnesses or producing documents (Section 27).
- Enforcing the arbitral award once it is final.

EXTENT OF COURT INTERVENTION

The Act limits court interference to promote autonomy of arbitration. As per **Section 5**, “**no judicial authority shall intervene except where so provided in this Part.**” This means courts can only intervene in situations explicitly mentioned in the Act, such as:

- Appointment of arbitrators.
- Grant of interim relief.
- Assistance in evidence collection.
- Setting aside or enforcing awards.

The goal is to ensure arbitration remains an **independent, efficient, and speedy** alternative to litigation, with courts acting only as a facilitator, not a controller.

UNCITRAL Model Law

The **UNCITRAL Model Law on International Commercial Arbitration** is a framework of legal principles developed by the **United Nations Commission on International Trade Law (UNCITRAL)** in **1985** (amended in 2006). It is designed to assist countries in reforming and modernizing their arbitration laws to align with international standards.

PURPOSE

The Model Law aims to provide a uniform and fair legal framework for the conduct of international commercial arbitration. It seeks to promote consistency in arbitration practices across different countries, ensuring predictability and neutrality in resolving cross-border commercial disputes.

KEY FEATURES

- **Neutral and Uniform Rules** – Applies to both domestic and international arbitration, removing bias toward any national system.
- **Party Autonomy** – Allows parties to decide on arbitration procedures, seat, language, and rules.
- **Limited Court Intervention** – Courts may intervene only in matters specifically provided for, such as appointing arbitrators, granting interim measures, or setting aside awards.

- **Recognition and Enforcement of Awards** – Arbitral awards are binding and enforceable in member states, similar to court judgments.
- **Procedural Flexibility** – Encourages efficiency while maintaining fairness in proceedings.

ADOPTION IN INDIA

India's **Arbitration and Conciliation Act, 1996** is largely based on the UNCITRAL Model Law, adapting its provisions to suit Indian conditions while aligning with international arbitration practices.

UNIT - IV

Industrial Employment: Role of Labour, Methods of engaging Labour - on rolls, labour sub contract Workmen Compensation Act, 1923, Industrial Employment Act, 1946 , RERA Act 2017,

ROLE OF LABOUR

The role of labour refers to the contribution of workers—both skilled and unskilled—in the production of goods, delivery of services, and overall economic growth of a nation. Labour is one of the four primary factors of production, alongside land, capital, and entrepreneurship.

In Economic Development

Labour plays a vital role in increasing productivity and driving industrial and economic growth. A motivated, skilled, and healthy workforce can improve production efficiency, adopt new technologies, and enhance the competitiveness of industries in both domestic and global markets.

In Industrial Relations

Labour is a key stakeholder in maintaining harmony within industries. Through collective bargaining, participation in decision-making, and adherence to workplace rules, labour contributes to stable employer–employee relationships. Active involvement in labour unions also ensures fair wages, safe working conditions, and protection of rights.

In Social Development

Beyond economic benefits, labour plays a role in uplifting living standards, reducing poverty, and promoting social justice. When workers are fairly compensated and treated with dignity, it leads to better quality of life for them and their families, thereby strengthening communities.

In Nation-Building

Labour contributes directly to infrastructure development, manufacturing, agriculture, and service sectors. Skilled labour, in particular, helps a nation achieve technological advancements, innovation, and sustainable growth.

METHODS OF ENGAGING LABOUR

1. Direct Employment

In direct employment, the employer hires workers directly without any intermediaries. The workers are on the company's payroll, receive wages or salaries from the employer, and are entitled to benefits such as leave, bonuses, and social security. Examples include permanent staff, probationary employees, and trainees directly appointed by the organization.

2. Contract Labour

Here, workers are hired through a contractor or labour supply agency. The contractor is responsible for payment and welfare of the workers, though the work is carried out for

the principal employer. This method provides flexibility but is regulated under laws like the **Contract Labour (Regulation and Abolition) Act, 1970** in India to protect workers' rights.

3. Casual Labour

Casual labourers are engaged for short-term or seasonal work, often on a daily wage basis. They are usually employed when there is a temporary increase in workload, such as during harvest season, festivals, or urgent repair projects.

4. Apprenticeship / Internship

In this method, individuals work as apprentices or interns to gain practical training and experience under the **Apprentices Act, 1961** or company policies. They receive a stipend and learn skills relevant to a trade or profession, often leading to full-time employment.

5. Outsourcing

Certain non-core tasks, such as housekeeping, security, or catering, are outsourced to specialized agencies. The labour provided remains employees of the service provider, not the principal organization, but they perform work on the organization's premises.

6. Piece-Rate Labour

Workers are paid based on the quantity of work done rather than time spent. This method is common in industries like textiles, handicrafts, and manufacturing, where productivity is measured by output.

ON-ROLLS LABOUR

On-rolls labour refers to workers who are directly employed by the organization and whose names appear in the company's payroll records. They receive regular salaries or wages directly from the employer and are entitled to statutory benefits such as provident fund (PF), employee state insurance (ESI), gratuity, paid leave, and bonuses. They often have greater job security, clear career progression, and are covered by the company's HR policies. On-roll employees are usually engaged in the organization's core activities and are under its direct supervision and control.

SUB-CONTRACT LABOUR

Sub-contract labour refers to workers hired by a contractor who, in turn, is engaged by the principal employer to perform certain tasks. These workers are not on the principal employer's payroll but on the contractor's payroll. The contractor is responsible for their recruitment, payment, and welfare benefits, although the work is performed for the principal employer. This method is common in construction, manufacturing, and service industries to meet temporary or specialized labour needs. Sub-contract labour offers flexibility to the employer but often provides less job security and fewer benefits to workers compared to on-roll employees.

THE WORKMEN'S COMPENSATION ACT 1923

There is no doubt that employees are an organisation's pillars of success. Thus, it falls upon employers to ensure that their workforce receives proper financial compensation in case they meet with an unfortunate accident at the workplace. Now, to ensure proper enforcement of this facility, several laws like the 1884 Compensation Act and the Fatal Act of 1885 were implemented. However, they were not enough to financially compensate workers in case they met with harm while performing their duties. Thus, the Indian Parliament passed the Workmen's Compensation Act in 1923.

WORKMEN COMPENSATION ACT 1923 – DEFINITION AND SCOPE

The Workmen Compensation Act 1923 aims to provide financial compensation to employees in case they meet with an unfortunate accident while performing their duties. All employees working full-time, part-time, temporarily or casually are liable to receive financial protection under this law. It comes into effect in case they secure injuries, incapacity, and disfigurement or die while performing their duties.

Front-line workers in the following industries are liable to protection under this law:

- Non-permanent employees of the Railways who do not fall under the sub-divisional, district or administrative offices.
- Captains and crew members on an aircraft.
- Labours employed abroad as per Schedule II of the Workmen Compensation Act 1923.
- Individuals working in construction sites, mines, docks, factories and specific places as per Schedule II of the above mentioned Act.
- Drivers, mechanics, helpers and any other person associated with working with vehicles.

According to this [Act](#), any company or establishment operating in the sector highlighted above and having more than 10 employees are liable to abide by its rules.

COVERAGE RECEIVABLE UNDER THE WORKMEN COMPENSATION ACT 1923

The type and extent of financial coverage as well as its applicable terms and conditions fully depend on the insurance company that is affiliated with the employer. Here are some basic things which all insurers cover:

- Bodily or other injuries during an accident while on duty
- Temporary disablement
- Permanent disablement (complete or partial)
- Death due to an accident at work
- Injury, disease or death resulting from working conditions
- All legal or any other expenses incurred by an employee in the above circumstances

WORKMEN'S COMPENSATION ACT 1923 - AMOUNT OF COMPENSATION

According to Section 4 of the Workmen's Compensation Act 1923, the amount of compensation workers are liable to receive is as follows:

- **Temporary disabilities**

For temporary disabilities, the Workmen's Compensation Act 1923 provides financial compensation of up to 25% of the concerned employee's monthly wages.

- **Permanent total disabilities**

In an unfortunate event when an employee suffers from permanent disablement, that individual has the right to receive 60% of his/her monthly wage or Rs.1,20,000, whichever is higher.

- **Permanent partial disabilities**

Injuries that fall under permanent partial disabilities are stated in Part II Schedule I of the Act. The payable corpus is a certain percentage of earnings loss by the employee due to his/her injury.

- **Death**

When an employee dies due to an accident at his/her workplace, their family is liable to receive 50% of the deceased's monthly wages or Rs.1,20,000, whichever is higher.

UPDATES IN THE WORKMEN COMPENSATION ACT 1923

Since its inception in 1923, there have been two major changes in the Workmen Compensation Act. They are as follows:

- In 2010, this law's name was changed to Employee's Compensation Act.
- On January 3, 2020, the Ministry of Labour and Employment raised the amount on which compensation was calculated as per the Act from Rs. 8,000 to Rs. 15,000.

FEATURES OF THE WORKMEN COMPENSATION ACT 1923

Employers are under the obligation to provide financial compensation as per the Workmen Compensation Act 1923 in the following circumstances:

- An accident or injury occurs at the workplace while carrying out a task.
- If the applicant provides proof that the injury or accident that has occurred at the workplace is aggravating his/her medical condition.
- In case a worker becomes disabled or dies while on duty.

WHEN IS THE EMPLOYER NOT LIABLE TO PAY COMPENSATION?

As per the Act, employers are not liable to financially compensate their employees under the following circumstances:

- Employee suffers from an injury or accident by disregarding the safety norms.
- Injury resulting in partial or total disablement for less than three days.
- For accidents or injuries under the influence of alcohol or drugs.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The **Industrial Employment (Standing Orders) Act, 1946** was enacted to require employers in industrial establishments to formally define and communicate the terms and conditions of employment to their workers. The main aim is to ensure **uniformity, clarity, and transparency** in service conditions, reducing disputes between employers and workers.

APPLICABILITY OF THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The **Industrial Employment (Standing Orders) Act, 1946** applies to:

Industrial Establishments

The Act applies to every industrial establishment where **100 or more workmen** are employed or were employed on any day of the preceding twelve months. The appropriate government (Central or State) has the power to reduce this threshold to **50 workmen** by notification.

Types of Establishments Covered

It covers establishments such as factories, railways, mines, plantations, and other notified industries, as defined under the Industrial Disputes Act, 1947.

Geographical Scope

The Act extends to the whole of India, including both public and private sector industrial establishments that meet the workmen strength requirement.

Exemptions

- Industrial establishments covered by Chapter VII of the Indian Railways Establishment Code are exempt.
- Establishments where workers' service conditions are already governed by rules applicable to civil servants or by other statutory regulations may also be exempt.
- Government can exempt any industrial establishment from the Act's provisions by notification in public interest.

OBJECTIVES OF THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

1. Define Conditions of Employment

To require employers to clearly define and state the terms and conditions of employment for workmen in industrial establishments.

2. Ensure Uniformity

To bring uniformity in service conditions for all workers in the same industrial establishment, avoiding arbitrary differences and discrimination.

3. Reduce Industrial Disputes

To minimize misunderstandings and conflicts between employers and employees by providing clarity on rights, duties, and obligations.

4. Promote Fairness and Transparency

To make the rules of conduct, leave, attendance, termination, suspension, and grievance handling transparent and accessible to all workers.

5. Protect Workers' Rights

To safeguard workmen from unfair practices by ensuring that service conditions are codified, certified, and legally binding.

6. Facilitate Quick Resolution of Issues

To provide a legal framework for resolving disputes related to service conditions without prolonged litigation.

POWERS OF THE APPROPRIATE GOVERNMENT UNDER THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

1. Fixing the Applicability Threshold

The appropriate government (Central or State) can reduce the minimum number of workmen required for the Act's applicability from **100 to 50** by issuing a notification in the Official Gazette.

2. Appointment of Authorities

It has the power to appoint **Certifying Officers** and **Appellate Authorities** to examine, certify, and hear appeals related to standing orders.

3. Prescribing Model Standing Orders

The government can frame and publish **Model Standing Orders** which serve as a guideline for employers in preparing their own standing orders.

4. Granting Exemptions

It can exempt any industrial establishment from the provisions of the Act by issuing a notification, if it is considered expedient in public interest.

5. Making Rules

The government can make rules to carry out the purposes of the Act, including the procedure for submission, certification, modification, and publication of standing orders.

6. Inspection and Enforcement

It has the authority to inspect industrial establishments to ensure compliance with the Act and take necessary action against violations.

RERA ACT, 2017

The **Real Estate (Regulation and Development) Act, 2016**, commonly known as the **RERA Act**, came into force on **1st May 2017** with the aim of regulating the real estate sector in India. It establishes a Real Estate Regulatory Authority in every state and union territory to ensure transparency, accountability, and efficiency in the real estate market, especially for residential and commercial projects.

OBJECTIVES OF RERA ACT, 2017

1. Protect Homebuyers' Interests

To safeguard the rights of property buyers by ensuring they get what was promised in terms of quality, size, facilities, and timely possession.

2. Promote Transparency

To make all project details—such as layout plans, approvals, timelines, and costs—publicly available so buyers can make informed decisions.

3. Ensure Accountability of Promoters and Agents

To hold builders, developers, and real estate agents responsible for project delivery, fund utilization, and compliance with approved plans.

4. Regulate the Real Estate Sector

To bring order and standard practices to the real estate industry by mandating registration of projects and agents with the state RERA authority.

5. Standardize Processes

To define clear norms such as the standard measurement of carpet area and proper use of advance payments, preventing misrepresentation and fraud.

6. Provide Quick Dispute Resolution

To establish a fast-track adjudication mechanism for resolving disputes between buyers, developers, and agents.

7. Boost Investor Confidence

To create a fair, transparent, and reliable real estate market that attracts more domestic and foreign investment.

APPLICABILITY OF RERA ACT, 2017

1. Geographical Scope

The RERA Act applies to the **whole of India**, including all states and union territories, with each having its own Real Estate Regulatory Authority.

2. Projects Covered

- All commercial and residential real estate projects where the land area exceeds **500 square meters** or the number of apartments exceeds **8 units** (inclusive of all phases).

- **Ongoing projects** that had not received a completion certificate before the Act came into force.

3. Parties Covered

- **Promoters / Builders / Developers** – Required to register their projects with RERA before advertising, marketing, or selling.
- **Real Estate Agents** – Required to register themselves with RERA before facilitating any property transactions.
- **Allottees / Buyers** – Have rights and responsibilities defined under the Act.

4. Exemptions

RERA does not apply to:

- Projects where the land area is **less than 500 sq. meters** and the number of apartments is **less than 8**.
- Projects where a **completion certificate** has been issued before the Act came into force.
- Renovation, repair, or redevelopment projects that do not involve marketing, advertising, selling, or new allotment.

KEY PROVISIONS RERA ACT, 2017

- **Mandatory Registration** – All projects and real estate agents must register with the state RERA before advertising or selling.
- **Project Disclosure** – Developers must upload details of the project, including layout plans, approvals, completion timelines, and quarterly progress, on the RERA website.
- **Escrow Account** – At least **70% of the project funds** collected from buyers must be deposited in a separate bank account to be used only for that project's construction.
- **Carpet Area Definition** – Standardized definition of carpet area to prevent misrepresentation.
- **Penalties** – Heavy fines and imprisonment for non-compliance with RERA orders.

UNIT- V

Law relating to Intellectual Property: Introduction, Scope of IPR, WIPO and TRIPS in IPR, main forms of IP, Copyright, Trademarks, Patents and Designs, Secrets, Law relating to Copyright in India. Agencies responsible for IPR Registration and Importance of the Semi-Conductor Integrated Circuits Layout Design Act, 2000. Ethical Decision Making.

INTRODUCTION

Intellectual Property (IP) refers to creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images used in commerce. The **law relating to intellectual property** governs the protection, enforcement, and commercialization of these intangible assets, ensuring that creators and inventors can control and benefit from their work.

The primary objective of intellectual property law is to **encourage innovation, creativity, and fair competition** by granting exclusive rights to creators for a specific period. These rights allow the owner to prevent others from using their work without permission, while also enabling public access to knowledge and innovation after the protection period expires.

In India, intellectual property rights (IPR) are protected under various statutes, such as:

- **The Patents Act, 1970** (for inventions)
- **The Copyright Act, 1957** (for literary, artistic, and musical works)
- **The Trade Marks Act, 1999** (for brand names, logos, and symbols)
- **The Designs Act, 2000** (for industrial designs)
- **The Geographical Indications of Goods Act, 1999** (for goods linked to specific regions)
- **The Semiconductor Integrated Circuits Layout-Design Act, 2000**

Intellectual property law strikes a balance between granting rights to innovators and ensuring that society benefits from their contributions, fostering economic growth, cultural development, and technological advancement.

SCOPE OF INTELLECTUAL PROPERTY RIGHTS (IPR)

The **scope of IPR** covers a wide range of creations and innovations, providing legal protection to both commercial and creative works. It ensures that inventors, authors, designers, and businesses can safeguard their intellectual creations from unauthorized use while enabling them to monetize their work.

1. Patents

Protect new inventions or processes that are novel, non-obvious, and industrially applicable. Scope includes technological innovations, chemical compositions, pharmaceuticals, and manufacturing processes.

2. Copyright

Covers original literary, artistic, musical, and dramatic works, along with cinematographic films and sound recordings. It protects the expression of ideas but not the ideas themselves.

3. Trademarks

Protect distinctive signs, names, logos, symbols, and combinations that identify goods or services. Scope includes brand identity, packaging, slogans, and distinctive shapes or colors.

4. Industrial Designs

Covers the aesthetic or ornamental aspects of an article, such as shape, pattern, or color arrangement applied to products, giving them a unique visual appearance.

5. Geographical Indications (GI)

Protect products that originate from a specific location and possess qualities or reputation linked to that region (e.g., Darjeeling tea, Kanchipuram silk).

6. Trade Secrets

Covers confidential business information such as formulas, processes, methods, or strategies that provide a competitive advantage, provided secrecy is maintained.

7. Semiconductor Integrated Circuits Layout-Designs

Protects the original layout designs of semiconductor integrated circuits used in electronics.

WIPO AND TRIPS IN INTELLECTUAL PROPERTY RIGHTS (IPR)

WIPO – WORLD INTELLECTUAL PROPERTY ORGANIZATION

The **World Intellectual Property Organization (WIPO)** is a specialized agency of the United Nations, established in **1967** and headquartered in Geneva, Switzerland. Its primary role is to promote the protection of intellectual property worldwide through cooperation among states and in collaboration with other international organizations.

Functions in IPR

- Administers major international IP treaties, such as the **Patent Cooperation Treaty (PCT)**, the **Madrid System** for trademarks, and the **Hague System** for industrial designs.
- Provides a platform for resolving IP disputes through its **WIPO Arbitration and Mediation Center**.
- Offers technical assistance and training to member countries for developing IP systems.
- Facilitates global IP databases and information services.
- Promotes harmonization of IP laws and policies among member nations.

Membership

As of now, WIPO has **193 member states**, including India.

TRIPS – TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

The **TRIPS Agreement** is an international legal agreement administered by the **World Trade Organization (WTO)**. It came into effect in **1995** and sets down minimum standards for the protection and enforcement of intellectual property rights in member countries.

Key Provisions

- Covers all main forms of IPR: copyrights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and trade secrets.
- Establishes minimum protection standards for each category of IPR.
- Provides for **national treatment** (foreign nationals get the same IPR protection as domestic citizens) and **most-favored-nation treatment** (equal treatment to all WTO members).
- Mandates enforcement measures to prevent and punish IPR violations.
- Includes provisions for dispute settlement through the WTO system.
-

Significance for India

India, as a WTO member, amended its IPR laws to comply with TRIPS—for example, changes to the **Patents Act, 1970** to allow product patents in pharmaceuticals and agrochemicals from 2005.

MAIN FORMS OF INTELLECTUAL PROPERTY (IP)

1. Patents

A patent protects new inventions—whether it is a product, process, or technology—that is novel, involves an inventive step, and is industrially applicable. It grants the inventor exclusive rights to make, use, and sell the invention for a specific period (usually **20 years**).

2. Copyright

Copyright protects original literary, artistic, musical, and dramatic works, as well as cinematographic films and sound recordings. It safeguards the **expression of ideas** and gives the creator exclusive rights to reproduce, distribute, and adapt the work.

3. Trademarks

A trademark is a distinctive sign, name, logo, symbol, or combination that identifies and differentiates goods or services of one business from others. It helps in brand recognition and consumer trust.

4. Industrial Designs

Industrial design rights protect the ornamental or aesthetic features of a product—such as shape, pattern, lines, or color—that make it visually appealing and distinguishable from others.

5. Geographical Indications (GI)

A GI identifies goods originating from a specific place, where the quality, reputation, or other characteristics are essentially linked to their geographical origin (e.g., Darjeeling Tea, Kanchipuram Silk).

6. Trade Secrets

Trade secrets protect confidential business information, such as formulas, manufacturing processes, or customer lists, which provide a competitive advantage. Protection continues as long as secrecy is maintained.

7. Semiconductor Integrated Circuits Layout-Designs

This protects the original layout design of semiconductor integrated circuits used in electronic devices, preventing unauthorized reproduction or use.

COPYRIGHT

Copyright is a legal right granted to the creator of original literary, artistic, musical, and dramatic works, cinematographic films, and sound recordings. It protects the **expression of ideas** (not the ideas themselves) and gives the creator exclusive rights to use, reproduce, distribute, and adapt their work. The primary purpose of copyright is to encourage creativity by ensuring that authors, artists, and producers can control and benefit from the use of their works. It also prevents unauthorized reproduction or exploitation of creative content.

WORKS COVERED UNDER COPYRIGHT (INDIA – COPYRIGHT ACT, 1957)

1. Literary Works

Includes novels, poems, essays, articles, computer programs, software code, and compilations such as databases, provided they are original in nature.

2. Dramatic Works

Covers plays, screenplays, scripts, choreographic works, and other forms intended for stage or performance.

3. Musical Works

Refers to musical compositions including melodies, notations, and scores, but excludes the actual sound recordings of the performance.

4. Artistic Works

Includes paintings, drawings, sculptures, photographs, works of architecture, and any other artistic craftsmanship, whether or not they have artistic quality.

5. Cinematographic Films

Covers movies, short films, video recordings, documentaries, and any moving visual works, including accompanying sound, if any.

6. Sound Recordings

Includes recordings of sounds from which such sounds can be reproduced, regardless of the medium, such as audio CDs, MP3 files, or digital recordings.

RIGHTS OF THE COPYRIGHT OWNER

Under the **Copyright Act, 1957** (India), the creator or copyright owner enjoys several exclusive rights over their work. These rights allow them to control the use, reproduction, and distribution of the work, and to benefit commercially from it.

1. Right of Reproduction

The owner has the exclusive right to reproduce the work in any material form, including making copies, photocopies, or digital reproductions.

2. Right of Communication to the Public

The owner can communicate the work to the public by any means, including broadcasting, cable, satellite, or online streaming.

3. Right of Adaptation

The owner can create adapted versions of the work, such as turning a novel into a movie, or rearranging a musical piece.

4. Right of Translation

The owner has the right to translate the work into different languages and authorize others to do so.

5. Right of Distribution

The owner can issue copies of the work to the public, sell it, or transfer ownership.

6. Right to Perform the Work in Public

In the case of dramatic, musical, or artistic works, the owner can authorize public performances, exhibitions, or displays.

7. Moral Rights

Even if economic rights are assigned, the creator retains moral rights—such as the right to claim authorship and the right to protect the work from distortion or modification that harms their reputation.

DURATION OF COPYRIGHT IN INDIA

(As per the **Copyright Act, 1957**)

1. Literary, Dramatic, Musical, and Artistic Works

Copyright lasts for the **lifetime of the author plus 60 years** after their death. The 60-year period is counted from the beginning of the calendar year following the author's death.

2. Cinematographic Films

Protection is granted for **60 years** from the beginning of the calendar year following the year of publication.

3. Sound Recordings

Copyright lasts for **60 years** from the beginning of the calendar year following the year of publication.

4. Government Works

Copyright subsists for **60 years** from the beginning of the calendar year following the year of first publication.

5. Works of Public Undertakings

Protection lasts for **60 years** from the beginning of the calendar year following the year of first publication.

6. Works of International Organizations

Copyright exists for **60 years** from the beginning of the calendar year following the year of first publication, subject to international agreements.

TRADEMARKS

A **trademark** is a distinctive sign, word, name, symbol, logo, design, or a combination thereof, used to identify and distinguish the goods or services of one business from those of others. It serves as a brand identity and helps consumers recognize the source and quality of products or services. The main purpose of a trademark is to protect the brand from imitation, build consumer trust, and provide a competitive edge in the market. It also assures customers of the origin and quality of the goods or services.

TYPES OF TRADEMARKS

1. Word Marks

These are trademarks consisting of words, letters, or numerals that can be spoken or written. They identify a product or service through its name, such as **TATA**, **Amul**, or **Infosys**.

2. Device Marks / Logos

These include symbols, designs, or graphical representations that visually distinguish goods or services, such as the **Nike swoosh** or **Apple logo**.

3. Combination Marks

A combination of words and logos or designs used together as a trademark, for example, **Lacoste (name + crocodile logo)**.

4. Service Marks

Marks used to identify and distinguish services rather than goods, such as **Airtel**, **FedEx**, or **MakeMyTrip**.

5. Shape Marks

Protection given to the unique three-dimensional shapes of products or their packaging that identify their source, such as the **Coca-Cola bottle shape**.

6. Sound Marks

Distinctive sounds associated with a brand that function as identifiers, such as the **Airtel jingle** or **Nokia tune**.

7. Color Marks

Specific colors or combinations of colors uniquely associated with a brand, like the **purple color for Cadbury chocolates**.

RIGHTS OF A TRADEMARK OWNER

1. Exclusive Right to Use

The registered trademark owner has the sole right to use the mark in relation to the goods or services for which it is registered. This prevents others from using an identical or deceptively similar mark without permission.

2. Right to Prevent Infringement

The owner can take legal action against any person or business that uses the trademark without authorization in a manner that causes confusion among consumers.

3. Right to License or Assign

The owner can license the use of the trademark to others (franchising) or transfer ownership (assignment) for commercial benefits.

4. Right to Claim Damages

In case of infringement, the owner can claim damages or seek an injunction to stop further unauthorized use.

5. Right to Use the ® Symbol

Once the trademark is registered, the owner can use the ® symbol to indicate legal protection and deter potential infringers.

6. Right to Extend Protection Internationally

Through international agreements like the Madrid Protocol, the owner can seek trademark protection in multiple countries based on the Indian registration.

PATENTS

A **patent** is an exclusive legal right granted to an inventor for a new invention—whether it is a product or process—that is novel, involves an inventive step, and is capable of industrial application. It prevents others from making, using, selling, or distributing the invention without the inventor's permission.

KEY FEATURES OF PATENTS

1. Exclusive Rights

A patent grants the inventor the sole right to make, use, sell, and distribute the invention, preventing others from exploiting it without permission.

2. Novelty Requirement

The invention must be new and not disclosed anywhere in the world before the filing date of the patent application.

3. Inventive Step

The invention must involve a technical advancement or an economic significance that is not obvious to a person skilled in the relevant field.

4. Industrial Applicability

The invention must be capable of being made or used in some kind of industry, ensuring practical utility.

5. Territorial Protection

Patents are territorial in nature—protection is valid only in the country where it is granted unless applied for internationally through treaties.

6. Fixed Duration

In India, patents are granted for a **maximum of 20 years** from the date of filing, after which the invention falls into the public domain.

7. Public Disclosure

The patent system requires the inventor to fully disclose the details of the invention in the patent specification, allowing others to learn from it once the protection period expires.

DESIGNS

A **design** refers to the features of shape, pattern, configuration, ornamentation, or composition of lines or colors applied to any article, which are judged solely by the eye. It focuses on the aesthetic and visual appearance rather than the function of the product.

KEY FEATURES OF DESIGNS

1. Focus on Appearance

Design protection relates only to the **aesthetic or ornamental aspects** of an article, such as shape, configuration, pattern, or color, and not its functional features.

2. Novelty and Originality

The design must be **new and original**, meaning it has not been previously published, used, or disclosed anywhere in India or abroad.

3. Visual Appeal

A registered design must be **judged solely by the eye**, enhancing the product's appearance and marketability.

4. Industrial Application

The design must be capable of being applied to an article by an **industrial process or means of manufacture**.

5. Exclusive Rights

The registered owner has the **exclusive right** to apply the design to the article in the class for which it is registered.

6. Limited Duration

In India, a design is protected for **10 years**, extendable by **5 more years** upon renewal (maximum 15 years).

7. Governed by Law

In India, design protection is governed by the **Designs Act, 2000** and related rules.

TRADE SECRETS

MEANING

A **trade secret** refers to confidential business information that provides a company with a competitive advantage. It can include formulas, processes, designs, methods, strategies, customer lists, or any other proprietary information that is not publicly known.

KEY CHARACTERISTICS

- **Confidentiality** – The information is kept secret and not disclosed to the public.
- **Commercial Value** – It provides economic benefit because it is not known to competitors.
- **Reasonable Protection Measures** – The owner takes steps to keep the information confidential (e.g., NDAs, restricted access).

Examples

- Coca-Cola's drink formula.
- Google's search algorithm.
- KFC's secret blend of herbs and spices.

PROTECTION IN INDIA

India does not have a dedicated **Trade Secrets Act**. Protection is mainly through **contract law**, **equity principles**, and **common law**—using non-disclosure agreements (NDAs) and confidentiality clauses.

DURATION

Unlike patents or copyrights, trade secret protection can last **indefinitely** as long as secrecy is maintained.

LAW RELATING TO COPYRIGHT IN INDIA

The law relating to copyright in India is governed by the **Copyright Act, 1957**, along with the **Copyright Rules, 2013**, as amended from time to time. This legislation provides legal protection to creators of original literary, artistic, musical, and dramatic works, cinematographic films, and sound recordings. The primary objective of the Act is to **safeguard the rights of creators** by granting them exclusive rights to use, reproduce, distribute, and adapt their works, while also ensuring that public interest is served through limitations like fair dealing.

The Act defines **copyright** as a bundle of exclusive rights granted to the creator, including reproduction, distribution, performance, and adaptation of the work. It applies automatically upon creation of an original work, without the need for registration, though registration serves as evidence in legal disputes. The law also recognizes **moral rights** of authors, ensuring the right to claim authorship and to prevent distortion or mutilation of their work that may harm their reputation.

In India, the duration of copyright varies depending on the type of work—for example, for literary works, it lasts for the **author's lifetime plus 60 years** after death, while for cinematographic films and sound recordings, it lasts for **60 years from publication**. The Act incorporates provisions to comply with international conventions such as the **Berne Convention** and the **TRIPS Agreement**, ensuring India's copyright protection meets global standards.

AGENCIES RESPONSIBLE FOR IPR REGISTRATION IN INDIA

1. Patents

Patents in India are administered by the **Office of the Controller General of Patents, Designs, and Trade Marks (CGPDTM)**. The **Head Office** is located in Kolkata, with **branch offices** in Mumbai, Chennai, and New Delhi. The Patent Office examines applications to ensure inventions are novel, involve an inventive step, and are industrially applicable before granting patents.

2. Trademarks

The **Trade Marks Registry** under CGPDTM is responsible for trademark registration and protection. Its **Head Office** is in Mumbai, with **branch offices** in Ahmedabad, Chennai, Kolkata, and New Delhi. The Registry examines trademark applications, handles oppositions, and maintains the register of trademarks to ensure brand identity is legally protected.

3. Industrial Designs

Design registration in India is handled by the **Designs Wing** of the Patent Office, headquartered in Kolkata. It grants protection to the ornamental or aesthetic aspects of articles, ensuring only the registered owner can commercially use or reproduce the design.

4. Copyright

The **Copyright Office** works under the Department of Higher Education, Ministry of Education, Government of India, and is located in New Delhi. It registers original works like books, music, films, and artistic creations. Registration is optional but serves as legal proof in disputes.

5. Geographical Indications (GI)

The **Geographical Indications Registry**, located in Chennai, registers products that have a specific geographical origin and possess qualities or a reputation linked to that origin. Examples include Darjeeling Tea and Kanchipuram Silk. It ensures only authorized users can market these goods under the registered GI name.

6. Semiconductor Integrated Circuits Layout-Designs

This is handled by the **Semiconductor Integrated Circuits Layout-Design Registry**, based in New Delhi. It registers the original layout designs of semiconductor integrated circuits used in electronic devices, protecting them from unauthorized copying or use.

SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN ACT, 2000

The **Semiconductor Integrated Circuits Layout-Design Act, 2000** is an Indian legislation enacted to protect the **original layout designs** of semiconductor integrated circuits. It ensures that creators of these designs get exclusive rights to use, sell, and commercially exploit them, preventing unauthorized copying or infringement.

OBJECTIVES OF THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN ACT, 2000

Protection of Original Layout Designs: To provide legal protection for the original, innovative layout designs of semiconductor integrated circuits, ensuring that creators have exclusive rights over their work.

Encouragement of Innovation: To promote creativity and technological advancement in the electronics and semiconductor industry by safeguarding designers' intellectual efforts.

Prevention of Unauthorized Use: To prevent the unlawful copying, reproduction, import, or sale of protected semiconductor layout designs, thereby reducing infringement.

Compliance with International Standards: To align India's legal framework with global norms, particularly the provisions of the **TRIPS Agreement**, ensuring effective IPR protection at the international level.

Promotion of Economic Growth: To strengthen India's position in the global electronics market by encouraging investment and development in semiconductor technology.

KEY FEATURES OF THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN ACT, 2000

1. Definition of Layout-Design

The Act defines a layout design as the three-dimensional arrangement of an integrated circuit's elements and interconnections, including the layers and patterns that form its structure.

2. Criteria for Protection

Only **original** layout designs, created through the designer's own intellectual effort and not commercially exploited anywhere before filing, are eligible for registration.

3. Registration Authority

The **Semiconductor Integrated Circuits Layout-Design Registry**, located in New Delhi, is responsible for registering layout designs in India.

4. Exclusive Rights

The registered proprietor has the exclusive right to reproduce, sell, import, or commercially exploit the layout design, and to prevent others from doing so without consent.

5. Duration of Protection

The protection lasts for **10 years** from the date of filing the application or from the date of first commercial exploitation—whichever is earlier.

6. Infringement and Remedies

Any unauthorized reproduction or exploitation of a registered layout design constitutes infringement, for which the Act provides both **civil remedies** (such as injunctions and damages) and **criminal penalties**.

ETHICAL DECISION MAKING

Ethical decision making is the process of choosing actions that are morally right, fair, and responsible while considering the impact on all stakeholders. It involves evaluating alternatives not only on legal and practical grounds but also on ethical principles such as honesty, integrity, fairness, and respect.

KEY ASPECTS OF ETHICAL DECISION MAKING

1. Based on Moral Principles

Ethical decision making is grounded in universally accepted moral principles such as honesty, fairness, integrity, and respect for others. These values serve as guiding lights, helping decision-makers choose actions that are not only legally correct but also morally right. This ensures that decisions contribute to trust and credibility.

2. Involves Stakeholder Consideration

An ethical decision considers the interests and well-being of all stakeholders who may be affected—such as customers, employees, shareholders, the community, and the environment. This prevents harm, promotes fairness, and fosters long-term relationships built on mutual respect.

3. Requires Critical Thinking

Ethical decision making demands careful analysis and logical reasoning. Decision-makers must weigh the pros and cons of each alternative, anticipate potential consequences, and remain objective. This helps avoid bias, emotional influence, or impulsive judgments that may lead to unethical outcomes.

STEPS IN ETHICAL DECISION MAKING

1. Identify the Ethical Issue

Recognize that a situation involves an ethical dilemma or moral conflict. This step is crucial because some issues may appear routine but actually carry ethical implications that require careful attention.

2. Gather Relevant Information

Collect all necessary facts, legal requirements, policies, and perspectives of the people involved. Understanding the full context helps in making a well-informed and fair decision.

3. Consider the Alternatives

List all possible courses of action. Each alternative should be evaluated not only for its feasibility but also for its ethical soundness and impact on stakeholders.

4. Evaluate the Options

Examine each alternative against ethical principles such as honesty, fairness, respect, and responsibility. Consider both short-term and long-term consequences for all affected parties.

5. Make the Decision

Choose the option that best aligns with ethical standards, legal requirements, and the organization's values. This step requires balancing practicality with moral responsibility.

6. Act and Review

Implement the chosen decision, then reflect on the outcome to determine whether it achieved the desired ethical goals. Learning from this process helps improve future decision-making.