STUDY MATERIAL BY PVAIVPO

PVAI
VPO

MICRO ECONOMICS

INDIFFERENCE CURVE

- Properties of indifference curve

1. Indifference curve slopes downward to the right

This property implies that when the amount of one good in combination is increased, demand of other good is reduced. This is essential in the level of satisfaction is to remain same does due to an inverse relationship between the two commodities is the difference call slopes downwards from left to right As shown in the diagram with the consumer increases the consumption of commodity in the consumption of the community be remaining the same utility level of the consumer bill of rights sold to maintain the same level of utility the consumer has to secure by certain quantity of the commodity be which will neutralize the additional gain in utility from commodity

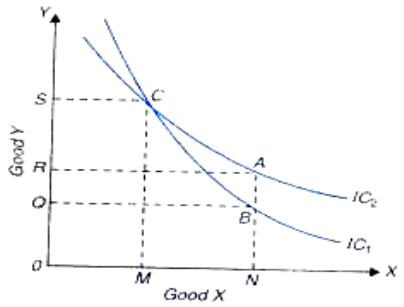


Fig. 8.5. Indifference curves cannot cut each other

2. Indifference curves are always convex to the origin and not concave

indifference curves or convex to the origin this is so because as we go on substituting community app for competitive be the marginal rate of substitution goes on decreasing define indifference curve is not convex to the point of origin then it can be there be a straight line for concave in case the indifference curve is concave to the point of origin and surprise that marginal rate of substitution of one commodity or the other goes on increasing which does not happen in real life

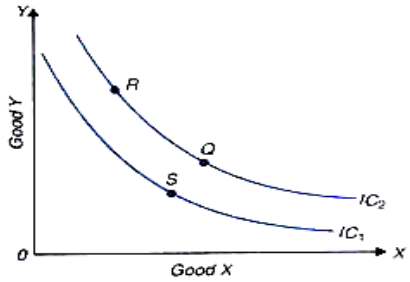


Fig. 8.6. A higher indifference curve shows a higher level of satisfaction.

3. Higher indifference curves higher satisfaction

In indifference map higher indifference curve represents those combinations which yield more satisfaction then the combinations on your indifference curve. more satisfaction that point a on

ice even it is evident therefore that higher the indifference curve greater the satisfaction it will represent.

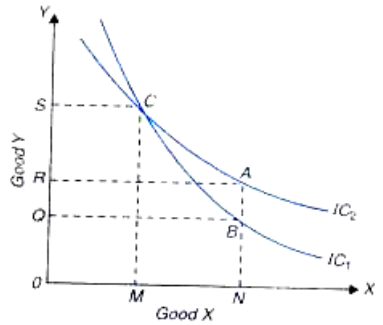


Fig. 8.5. Indifference curves cannot cut each other

4. Indifference curves do not intersect the x or y axis

It is assumed in the indifference curve analysis that a consumer buys combinations of different quantities of two goods hence in indifference curve touches with x-axis not exist in case and indifference curve touches either access it means that the consumer wants only one commodity and is demand for the second commodity is zero an indifference curve at x axis if it represents money instead of commodity as shown in the diagram in IT IC touch is over exercise. M it means the consumer has in his position quantity of money and does not want any unit of be at point and consumer likes to have combination of commodity but not units of commodity A.

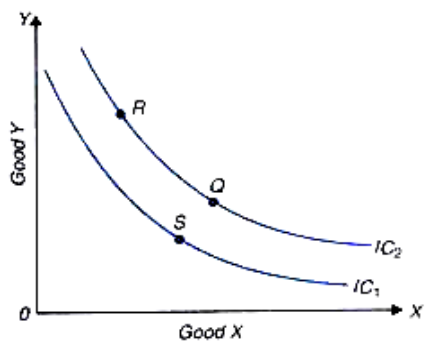


Fig. 8.6. *A higher indifference curve shows a higher level of satisfaction.*

5. Non intersection of two indifference curves

Each I c curve presents different level of satisfaction show their intersection is ruled out in the diagram two indifference curves are shown intersecting each other at point where the satisfaction will be same on the two curves on this. But it is not possible since different level of satisfaction is derived on different indifference curves.

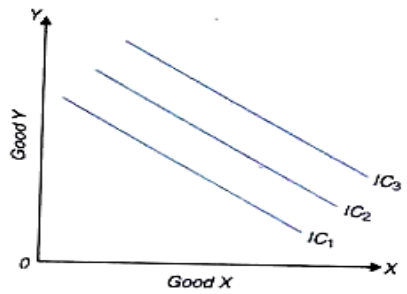


Fig.8.7. *Indifference Curves of Perfect Substitutes*

❖ Law of demand

Other things being equal the higher the price of a commodity the smaller is the quantity demanded and know the price is larger is the quantity demanded it can be said that other things remaining constant demand varies inversely with price
in the above diagram of x-axis measures units of commodity x demanded and y-axis measures the price in rupees it can be seen that the quantity demand extends price falls and it contracts with price rises does the demand curve indicates and inverse relationship between Price and demand.

❖ Assumptions of law of demand

1. **No change in consumers income**- Throughout the operation of the law the consumers income must remain unchanged otherwise with the rising prices is income also rises he may not correct in his demand and does the law will be proved invalid.
2. **No change in taste habit and preference of the consumers**-The consumers taste habit preference must remain constant if consumers habit of preference change along with the change in price he may not try more of a commodity despite of fall in its price and does the law will not hold good.
3. **No change in fashion**-It should be taken into consideration that throughout the operation of the law there should be no change in fashion because if a commodity goes out of fashion empire may not buy more of it even at a substantial price reduction.
4. **No change in the price of related goods**-Price of other quotes like substitute and complementary must remain constant for example if the price of substitute small much more than the price of the commodity under consideration consumers may not buy more of it even at a lower price.
5. **No change in the distribution of income and wealth of the commodity**-
    a. There should be no redistribution of income because redistribution of income would change the level of income of the consumer.
6. **No introduction of new product**-There should be no introduction of new product in the market because it may disturb the consumer's preference.
7. **No change in population**-It is assume that the population should remain constant because change in population may affect the demand for commodity.
8. **No change in taxation**-It is assume that there is no change in the levels of taxation because the disposable income of the consumer must remain unaffected.

9. **No expectation of future change**-The consumer should not expect for the change in the petrol price because if he expects for the following the price of the commodity in the picture is not buy more despite of fall in its price.

On the x-axis demand is assumed and on the y-axis price is assumed when op 1 is the price quality demanded is so q1 when the price rises to copy to demand extends to acute to does direction is upward sloping demand curve which shows direct functional relationship between price and quality demanded

<u>Exceptions</u>

1. **Giffen goods**- Giffen goods means inferior goods and the prices of successful people by small quantity of goods and save money the money income so saved is then transferred to purchase better substitute Such quotes like bread is called as giffen goods as it was first noticed by Sir Robert Giffen. Sir Robert Giffen was surprised to find out that a British walkers purchased more of bread win prizes for high and less of bread with price below the reason for this behavior was a primary ladies low paid work is consumed bread with a small quantity of meat which was relatively expensive item between the price of bread decreased ,demanding more bread this workers saved money by spending less on bread and use the save money for buying the quantity of meat that they were consuming this reduction of intake of bread was compensated by buying a little extra man to use it in the place of bread this phenomenon is called *Geffen's paradox*.

2. **Prestige Goods**-Precious stones like diamond and gem services by the rich people with their prices are very high because the views of such goods gives them high status for enables them to show off their well when their prices fall the demand for them from the rich people may be low because they would ship their choice of some other words of hydaspes the law of demand is not operate in the case of prestige clips having snob appeal
3. **Speculation**-In the case of shares when prices of shares rises its demand also rises such people expect for the rise in price of that share.
4. **Improvement in quality**-In the price of a product is red because of its improvement in its quality and if the consumers were aware of it the demand may increase after its price rise and vice versa.
5. **Price illusions**-In case of electronic goods is generally happens that if the price of the product is low the consumers feel that its quality is lowered and then the demand for it would decrease.
6. **Change in taste and fashion**-If a commodity has gone out of fashion it will not be purchased in larger amount even if its prices reduced boys will not by other friends if their prices fall if there is a fashion for jeans.

7. Ignorance-If the price of a commodity falls and in the consumers do not know that its price has fallen they will not buy more than before similarly people made by more at high price on account of their ignorance about the quality of the product.
8. Necessity-Is consumer Spencer greater part of his income on necessary like wheat and if its price rises he may be forced to buy small amount of other commodity and by the necessary item in a larger amount even after rise in its price.

❖ Limitations of the law of demand

1. Change of Income-If the income of the consumer changes then I'll do the price of the commodity remains the same he may purchase more or less of the community increase in income increases the purchasing power of the people and therefore increases the demand for the product conversely and overall fall in the income reduces the quantity or quantity demanded by the consumer.
2. Changes in Distribution of Wealth for Income-If the distribution of income is more equal than the propensity to consume of the society as a whole will be relatively high which means creative demands for goods.
3. Change In Savings-Less savings means more demand for goods and more solutions less demand and people will spend less and therefore the demand will be less.
4. Taste of a Consumer-Increase in the habit of tea drinking has decrease the demand for milk if a new thing comes into fashion then I'll do the price of commodity rises the quantity demanded remains the same or even may increase.
5. Uses of the Commodity-If a new users discovered then also the price increases the quantity demanded also increases.
6. Change In The Price Of Substitute-The demand for coffee will depend upon the price of tea at the price of 20 .The demand for copy will be high Converse leave the price of tea is low demand for coffee will be low in other words large quantity of substitute Sade munde Di even though their prices does not fall.
7. Change In The Price Of Complementary Goods-Increase in the demand for one will increase in demand for other and vice versa for example car and petrol
8. Consumer Expectations With Regard To The Future Prices-If due to some reason consumers expect that in the near future prices of the goods would rise then in the present day would demand greater quantities of the goods so that in the future they should not have to pay higher prices similarly when the consumers of that in the future they will have good income then in the president they will spend greater part of the rain comes with the result that their present demand for goods will increase.

❖ Definition of market

To quote connate economist understand by the term market not in any particular marketplace in which things are bought and sold but the whole of any region in which buyers and sellers are in such close contact with one another that prices of same good tend to equality easily and quickly.

❖ Types of market

On the basis of degree of competition markets are classified as follows:-

1. Perfect competition
2. Pure competition
3. Monopoly
4. Monopolistic competition

1. Perfect competition

A perfectly competitive market is one which has large number of buyers and sellers of homogeneous product according to John Robinson perfect competition prevention the demand for the output of each producer is perfectly elastic this indicates that the number of sellers is large so the output of anyone seller is negligible small portion of the total output of the commodity

Features of perfect competition

Features of perfect competition are as follows:

1. Large number of sellers
2. Large number of buyers
3. Free entry and exit
4. Homogeneous product
5. Single price
6. Perfect knowledge
7. Perfect mobility of factors of production
8. No transport cost
9. Non intervention of government

What is consumer surplus?

- *When there is a difference between the price that you pay in the market and the value that you place on the product, then the concept of consumer surplus becomes a useful one to look at. This is an important idea that you can use on many occasions in your exams.*

- **Consumer surplus and economic welfare-**Consumer surplus is a measure of the welfare that people gain from consuming goods and services. ***Consumer surplus is***

defined as the difference between the total amount that consumers are willing and able to pay for a good or service (indicated by the demand curve) and the total amount that they actually do pay (i.e. the market price).

Consumer surplus is shown by the area under the demand curve and above the price.

- Consumer surplus and price elasticity of demand

- How is consumer surplus affected by the elasticity of a demand curve?
- *When the demand for a good or service is perfectly elastic, consumer surplus is zero because the price that people pay matches exactly what they are willing to pay.*

In contrast, when demand is perfectly inelastic, consumer surplus is infinite. In this situation, demand does not respond to a price change. Whatever the price, the quantity demanded remains the same. Are there any examples of products that have such zero price elasticity of demand? Perhaps the closest we get is a life-saving product with no obvious substitutes - in this situation, consumers' willingness to pay will be extremely high.

The majority of demand curves in markets are assumed to be downward sloping. When demand is inelastic (i.e. Ped<1), there is a greater potential consumer surplus because there are some buyers willing to pay a high price to continue consuming the product. Businesses often raise prices when demand is inelastic so that they can turn consumer surplus into producer surplus!

- Consumer surplus with elastic and inelastic demand curves
- PED and consumer surplus

When there is a shift in the demand curve leading to a change in the equilibrium market price and quantity, then the level of consumer surplus will change too

- Changes in consumer surplus

Price discrimination and consumer surplus Producers often take advantage of consumer surplus when setting prices. If a business can identify groups of consumers within their market who are willing and able to pay different prices for the same products, then sellers use price discrimination – this is a way of turning consumer surplus into producer surplus, put simply to make higher revenues and profits.

Airlines and train companies are expert at this, extracting from consumers the price they are willing and able to pay for flying to different destinations are various times of the day, and exploiting variations in elasticity of demand for different types of passenger service.

You will always get a better deal/price with airlines such as EasyJet and Ryan Air if you are prepared to book in advance. The airlines are happy to sell tickets more cheaply because they get the benefit of cash-flow together with the guarantee of a seat being filled. The nearer the time to take-off, the higher the price.

If a businessman is desperate to fly from Newcastle to Paris in 24 hours' time, his or her demand is said to be price inelastic and the corresponding price for the ticket will be much higher.

Price discrimination and market power

One of the main arguments against firms with monopoly power is that they can exploit their monopoly position by raising prices in markets where demand is inelastic, extracting consumer surplus from buyers and increasing profit margins at the same time.

Law of Supply

Schedule, Curve, Function, Assumptions and Exception

Law of supply expresses a relationship between the supply and price of a product. It states a direct relationship between the price of a product and its supply, while other factors are kept constant.

For example, in case the price of a product increases, sellers would prefer to increase the production of the product to earn high profits, which would automatically lead to increase in supply.

Similarly, if the price of the product decreases, the supplier would decrease the supply of the product in market as he/she would wait for rise in the price of the product in future.

The statement given for the law of supply is as follows: ***"Other things remaining unchanged, the supply of a commodity expands with a rise in its price and contracts with a fall in its price."***

The law of supply can be better understood with the help of supply schedule, supply curve, and supply function. Let us discuss these concepts in detail in the next sections.

- Supply Schedule:

Supply schedule shows a tabular representation of law of supply. It presents the different quantities of a product that a seller is willing to sell at different price levels of that product.

A supply schedule can be of two types, which are as follows:

1. Individual Supply Schedule:
   Refers to a supply schedule that represents the different quantities of a product supplied by an individual seller at different prices.

2. Market Supply Schedule:
   Refers to a supply schedule that represents the different quantities of a product that all the suppliers in the market are willing to supply at different prices. Market supply schedule can be drawn by aggregating the individual supply schedules of all individual suppliers in the market.

The graphical representation of supply schedule is called supply curve. In a graph, price of a product is represented on Y-axis and quantity supplied is represented on X-axis. Supply curve can be of two types, individual supply curve and market supply curve. Individual supply curve is the graphical representation of individual supply schedule, whereas market supply curve is the representation of market supply schedule.

Market Demand Curve:- The slope of market supply curve can be obtained by calculating the supply of the slopes of individual supply curves. Market supply curve also represents the direct relationship between the quantity supplied and price of a product.

Supply Function:- Supply function is the mathematical expression of law of supply. In other words, supply function quantifies the relationship between quantity supplied and price of a product, while keeping the other factors at constant. The law of supply expresses the nature of relationship between quantity supplied and price of a product, while the supply function measures that relationship.

The supply function can be expressed as:

$$Sx = f(Px)$$

Where, Sx = Quantity supplied for product X

Px = Price of product X

f = Constant representing change produced in Sx with one unit change in Px

❖ Assumptions in Law of Supply:

The law of supply expresses the change in supply with relation to change in price. In other words the main assumption of law of supply is that it studies the effect of price on supply of a product, while keeping other determinants of supply at constant.

Apart from this, there are certain assumptions that are necessary for the application of law of supply, which are as follows:

1. Assumes that the price of a product changes, but the change in the cost of production is constant. This is because if the cost of production rises with increase in price, then sellers would not supply more due to the reduction in their profit margin. Therefore, law of supply would be applicable only when the cost of production remains constant.
2. Assumes that there is no change in the technique of production. This is because the advanced technique would reduce the cost of production and make the seller supply more at a lower price.
3. Assumes that there is no change in the scale of production. This is because if the scale of production changes with a period of time, then it would affect the supply. In such a case, the law of supply would not be applicable.
4. Assumes that the policies of the government remain constant. If there is an increase in tax rates, then the supply of product would decrease even at the higher price. Therefore, for the application of law of supply, it is necessary that government policies should remain constant.

5. Assumes that the transportation cost remain the same. In case the transportation cost reduces, then the supply would increase, which is invalid according to the law of supply.
6. Assumes that there is no speculation about prices in future, which otherwise can affect the supply of a product. If there is no speculation about products, then the economy is assumed to be at balance and people are satisfied with the available products and do not require any change.

- Exception to Law of Supply:

According to the law of supply, ***if the price of a product rises, then the supply of the product also rises and vice versa.*** However, there are certain conditions where the law of supply is not applicable. These conditions are known as exceptions to law of supply. In such cases, the supply of a product falls with the increase in price of a product at a particular point of time.

For example, there would be decrease in the supply of labor in an organization when the rate of wages is high. The exception of law of supply is represented on the regressive supply cure or backward sloping curve. It is also known as exceptional supply curve.

Some of the exceptions of law of supply are as follows:

1. Speculation: Refers to the fact that the supply of a product decreases instead of increasing in present when there is an expected increase in the price of the product. In such a case, sellers would not supply the whole quantity of the product and would wait for the increase in price in future to earn high profits. This case is an exception to law of demand.
2. Agricultural Products: Imply that law of supply is not valid in case of agricultural products as the supply of these products depends on particular seasons or climatic conditions. Thus, the supply of these products cannot be increased after a certain limit in spite of rise in their prices.
3. Changes in Other Situations: Refers to the fact that law of supply ignores other factors (except price) that can influence the supply of a product. These factors can be natural factors, transportation conditions, and government policies.

❖ Types of Supply Schedule:

Individual Supply and Market Supply

Supply schedule is a tabular statement showing various quantities of a commodity being supplied at various levels of price, during a given period of time. Like demand schedule, supply schedule is also of two types:

1. Individual supply schedule

2. Market supply schedule.

1. Individual Supply Schedule: Individual supply schedule refers to a tabular statement showing various quantities of a commodity that a producer is willing to sell at various levels of price, during a given period of time.

Table 9.1 shows a hypothetical supply schedule for commodity 'x'.

Price. (Rs.)	Quantity supplied of good x (units)
1	5
2	10
3	15
4	20
5	25

Table 9.1: Individual Supply Schedule:

As seen in the schedule, quantity supplied of commodity x increases with increase in price. The producer is willing to sell 5 units of x at a price of Rs. 1. When the price rises to Rs. 2, supply also rises to 10 units.

2. **Market Supply Schedule:** Market supply schedule refers to a tabular statement showing various quantities of a commodity that all the producers are willing to sell at various levels of price, during a given period of time. It is obtained by adding all the individual supplies at each and every level of price.

Market supply schedule is expressed as: $S_m = S_A + S_B + \ldots\ldots\ldots\ldots$

Where S_m is the market supply and $S_A + S_B$ are the individual supply of supplier A, supplier B and so on.

Let us understand the derivation of market supply schedule with the help of Table 9.2 (Assuming, there are only 2 producers: A and B in the market):

	Price (Rs.) Px Individual Supply (units)		Market Supply (units) {SA + SB)
	SA	SB	
1	5	10	5+10 = 15
2	10	20	10 + 20 = 30
3	15	25	15 + 25 = 40
4	20	35	20 + 35 = 55
5	25	40	25 + 40 = 65

Table 9.2: Market Supply Schedule:

As seen in Table 9.2, market supply is obtained by adding the supplies of suppliers A and B at different prices. At price of Rs. 1, market supply is 15 units. When price rises to Rs. 2, market supply rises to 30 units. So, market supply schedule also shows the direct relationship between price and quantity supplied.

- *What is the Role of Time Element in Determination of Price?*
- Role of time element in determination of price are given below:

Time plays an important role in the theory of volume, i.e., price determination because supply and demand conditions are affected by time.

Price during the short-period can be higher or lower than the cost of production, but in the long-period price will have a tendency to be equal to the cost of production. The relative importance of supply on demand in the determination of price depends upon the time given to supply to adjust itself to demand.

To study the relative importance of supply or demand in price determination, Prof. Marshall has divided time element-into three categories:

1. *Very short period or market period.*
2. *Short period.*
3. *Long period.*

Now we shall discuss the price determinant in different period.

1. *Very short period (determination of market price):*

Market period is a time period which is too short to increase production of the commodity in response to an increase in demand. In this period the supply cannot be more than existing stock of the commodity.

The supply of perishable goods is perfectly inelastic during market period. But non-perishable goods (durable goods) can be stored.

Therefore, the supply curve of non-perishable goods above reserve price has a positive scope at first but becomes perfectly inelastic after some price level.
The reserve price y depends upon-*(i) cost of storing, (ii) future expected price, (iii) future cost of production, and (iv) seller's need for cash* we will discuss the determination of market price by taking a perishable commodity and determination of market price is illustrated.

2. *Price determination is short period:*

In the short period fixed factors of production remain unchanged, i.e., productive capacity remains unchanged. However, in the short period supply can be affected by changing the quantity of variable factors.In other words, during the short period supply can be increased to some extent only by an intensive use of the existing productive capacity.The increase in demand the market price (in market period) rises at once to OP3 because supply remains fixed. But in the short-run supply increases. Therefore, in the short-run price will cuts the SRS curve. If demand decreases opposite will happen.

3. *Price determination in long period (Normal Price):*

In the long period there is enough time for the supply to adjust fully to the changes in demand. In the long period all factors are variable. Present firms can increase on decrease the size of their plants (productive capacity).The new firms can enter the industry and old firms can leave the market. This price will be equal to minimum average cost (AC) of production because in the long period firms under perfect competition can only earn normal profits. Suppose these are permanent increase in demand. With the increase in demand, the price in the market period and short period will rise. Due to increase in price present firms will earn above normal profit. Therefore, new firms will enter into market in the long period. As a result of it supply will increase in the long period. The industry is an increasing cost industry. This new higher price will also be equal to minimum average cost of production.

❖ DEFINITION OF MARKET

To quote quality economist understand by the term market not any virtual the market place in which things are bought and sold but whole of any region in which buyers and sellers are in Sachin close contact with one another that prices of same goods train to equality easily and quickly.

TYPES OF MARKET

on the basis of degree of computation markets are classified as follows :-

1. perfect competition
2. pure competition
3. Monopoly
4. monopolistic competition

1. Perfect competition

A perfectly competitive market is one which has a large number of buyers and sellers of Homogeneous product according to Joan robinson's perfect competition prevails in the demand for the output of each producer is perfectly elastic
this indicates that the number of sailors is last show the output of anyone seller is a negligible small portion of the total output of the commodity

❖ Features of perfect competition

Features of perfect competition are as follows:-

A. Large number of sellers
B. Large number of buyers
C. Free entry and exit
D. Homogeneous product
E. Single price
F. Perfect knowledge
G. Perfect mobility of factors of production
H. No transport cost
I. Non intervention of government

A. Large number of sellers or sellers are price taker

There are many potential seller selling their commodity in the market their numbers such that a single cell are cannot influence the market price because its seller services mole fraction of total market supply the price of the product is determined on the basis of market demand and market supply of the commodity which is accepted by the forms the seller is a price taker and not a price maker

B. Large number of buyers

There are many buyers in the market single boy can you tell me what is the price of the commodity because individual demand is a small fraction of total market demand

C. Free entry and exit

New firms can enter and exit the market without any restrictions

D. Homogeneous product

Firms crude essential and identical units of a given product in perfectly competitive market that is units of commodity produced by each of them is uniform and respect of size shape colour quality etc.does commodities have perfect substitute for each other

E. Single price

In perfect competition all units of commodity have uniform or single phase hits determined by the forces of demand and supply

F. Perfect knowledge

The buyers as well as sellers in the perfectly competitive market have perfect knowledge of the market conditions such knowledge will prevent the buyers from being a higher price and solar charging different price then what is prevailing in the market

G. Perfect mobility of factors of production

Under perfect competition the factors of production that is land labour capital and organisation enjoy complete freedom to move from one place to another and from one location to another this implies optimum use of each factor input which can be available easily to the producers that they will not face any problem in production of any commodity

H. No Transport cost

There is no transport cost under perfect competition that is assume that in perfect competition all the forms are close to each other there will not be any difference in transport cost and price will remain uniform

I. Non government intervention

Laissez faire policy prevails under perfect competition which means there is no government intervention in respect of production transportation price determination of goods etc. After analysing all the features of perfect competition it is clear that perfect competition is ideal form of market but it is very difficult to realise that the conditions practically perfect competition is an imaginary concept.

2. Pure competition

Pure competition is a part and parcel of perfect competition according to chamberlin A market becomes pure when Monopoly is kept away

Pure competition at certain conditions of perfect competition they are

A. Large number of sellers
B. Large number of buyers
C. Free entry and exit
D. Homogeneous product
E. Single price

Price determination under perfect competition

Equilibrium price- Equilibrium price is the price at which quantity demanded is equal to quantity supplied the price of the product under perfect competition is influenced by both buyers and sellers and equilibrium price is determined by the interaction of demand and supply forces According to Marshall demand and supply are like two blades of a pair of scissors justice cutting of cloth is not possible with use of one blade the equilibrium price of commodity cannot be determined by the forces of demand or by supplier alone both together determine the price Chart table

3. Monopoly

Meaning and its features

Monuments single and Parliament seller does Monopoly in single sailor who has complete control over the supply of the commodity there is no close substitute of the commodity due to absence of computation monopolist is a price maker and not a price taker.

According to HL ahuja Monopoly is said to exist when one form is the sole producer wholesaler of a product which has no close substitute.

according to chemberlin a Monopoly refers to single form which has control over the supply of product which has no close substitute.

- Features of monopoly

a) Single seller
b) No close substitute
c) Barriers to entry
d) No distinction between firm and industry
e) Control over the market supply
f) Price maker
g) Profit maximization
h) Price discrimination

a) Single seller

In a Monopoly market there is a single seller or single producer under Monopoly he has no rivals and he faces no competition

b) No close substitute

There are no close substitute for the commodity is sold in the market likewise other forms may not produce the same product hence monopolist do not face any competition

c) Barriers to entry

Under Monopoly the entry of other form is strictly restricted the seller has complete hold over the supply in the market such provision protects the Monopoly powers.
No distinction between firm and industry. Under Monopoly there is only one cell are there is no distinction between the firm and industry does under Monopoly the firm is an industry.

d) Control over the market supply

The monopolist has complete hold over the market supply he is a sole producer of the commodity therefore entry barriers such as natural economic technological or liquid do not allow competitors to enter the market.

e) Price maker

The firm under Monopoly is a price maker and not the price taker he can charge any price for the commodity as he has complete control over the supply of the product.

f) Profit maximization

The monopolist always wants to earn supernormal profit his decision regarding the price and the level of output are guided by the profit maximization motive does sometimes at high price is supplies the product as per the demand and sometimes he controls the supply of the product and sells the product at high price

g) Price discrimination

The simplex charging different prices for the same product to different buyers the monopolist succeeds in increasing is profit by adopting the technique of price discrimination

- Types of monopoly

1. Natural monopoly
2. Public monopoly
3. Private monopoly
4. Legal monopoly
5. Simple monopoly
6. Discriminating monopoly
7. Voluntary monopoly

1. Natural monopoly-Natural monopoly versus due to availability of natural resources a particular type of natural resources available there for that reason enjoys Monopoly in the product which requires that natural resources natural advantages link good location confirm natural monopoly for example tea from Assam.

2. Public monopoly-Public Monopoly refers to sole ownership of the supply of goods or services by the government search Monopoly functions with the primary motive of

providing maximum welfare to the society does it is also known as welfare Monopoly it is not based on profit motive example Indian railway.

3. **Private monopoly**-Private Monopoly refers to sole ownership of the supply of goods or services by the private firm or individual the main objective of private Monopoly is profit maximization for example Tata group and reliance group.

4. **Legal monopoly**-Women police created by law it is known as legal Monopoly legal provisions like patents trademarks copyrights etc give rise to legal Monopoly example some producers use a particular trademark for their product and they take legal permission from the government for that the slope hobbits the potential competitors to imitate the design firm and shape of the product if anyone tries to violate the rights action can be taken against them example Parle-G etc.

5. **Simple** monopoly- It is that organization which charger is a single uniform prices for consumers there is no price discrimination among the consumers.

6. **Discriminating monopoly** - when different prices are charged to different customers for the same product or services known as price discrimination or discriminating Monopoly example a doctor or a lawyer recharge different fees to people.

7. **Voluntary** monopoly- Number of big business companies declared Monopoly through voluntary agreement business forms growing together through trusts, curtains syndicates etc they are called joined monopolies. Mergers and amalgamations may also lead to monopoly example for OPEC-OIL PRODUCING AND EXPORTING COUNTRIES this also known as *joint monopoly.*

- ***Monopolistic competition***
  Definition & Its Features

Another type of market structure monopolistic competition which is very realistic in nature in this market there are some features of monopoly and some pictures of perfect competition acting together this mixture of two markets give birth to a new form of market known as monopolistic competition professor each chamberlain. This concept in his book theory of monopolistic competition which was published in 1933.

Definition: *According to Chambers in monopolistic competition refers to competition among the large number of sellers produce includes but not perfect substitute.*
when markets which have lost in the number of producers producing differentiated products which are close substitute to each other engage in non price competition we call it as a monopolistic competitive market.

Following are the features of monopolistic competition:-

1. *Fairly large number of buyers*
2. *Fairly large number of sellers*
3. *Product differentiation*
4. *Close substitute*
5. *Selling cost*
6. *Free entry and exit*
7. *Demand curve of the firm*
8. *Concept of group*

Following is the explanation for features of monopolistic competition

1. Fairly large number of buyers-In this market there are very large number of buyers consequently no single boy can influence the price of the product by changing his individual demand.

2. Fairly large number of seller's-Number of seasons in monopolistic competition is large it is still smaller than that in a perfectly competitive market size and number of silence is large seat seller has a limited control over supply the seller has complete control over its brand is control is possible because of patents trademarks copyrights etc that the producer possesses does each producer enjoy is an element of monopoly on one hand and on the other they have to face competition from seller selling close substitute in the market.

3. Product differentiation-The most important feature of monopolistic competition is product differentiation product in this market is different from other product and sum for more the other the difference is called me in its colour shape rapper after sales services extra care products do different are close substitute to each other example hamam soap is close substitute to lux soap producers also various techniques such as discounts gifts advertisements etc to attract the consumers this is known as product differentiation in this market producers compete with each other on the basis of product differentiation and not on the price differentiation therefore monopolistic competition is also known as non-price competition.

4. Close substitute-In monopolistic competition goods have close substitute to each other for example gold spot is close substitute to limca.

5. Selling cost-The uniqueness of this market lies in the fact that difference is made between cost of production and selling cost product differentiation leads to emergence of selling cost in this the cost that producer have to enquire in order to differentiate their product is known as selling cost hence medium such as television radio newspaper magazine exhibition sin 37 and salaries of sales representatives etc are used by firms to increase the sales the price of product includes cost of production as well as selling cost.

6. **Free entry and exit-**Under monopolistic competition there is freedom of entry and exit it is new forms are free to enter the market is there is supernormal profit similarly they can leave the market if they find it difficult to survive.

7. **Demand curve of the firm-**Due to product differentiation in availability of close substitute demand curve of the sailor is highly price elastic and downward sloping it means a slight change in price of the product will bring about a change in quantity demanded.

8. **Concept of group -** Chamberlain introduced the concept of group as the substitute for industry concept in the firm.

❖ Factors of production

1. Land
2. Labour
3. Capital
4. Entrepreneur

1. Land

Meaning and features-

In ordinary language in the world land refers to the surface of the earth but in economics the word land is a wider concept land is primary, natural and original factor of production land is a free gift of nature

According to Professor Alfred Marshall by land women not merely land in the strict sense of the world but whole of materials water air light and heat. Does according to Marshall "land means all free gifts that nature had given to mankind it includes".

On the surface of the earth-all the natural resources like water river forest agricultural land mountains etc

Below the surface of Earth-natural resources like coal, gold, silver iron etc.

Above the surface of Earth-natural resources like air, sunlight, heat etc

❖ ***Features of land***

Following are the features of land

- ***Free gift of nature***
- ***Passive factor of production***
- ***No geographical mobility***
- ***Inelastic supply***
- ***Permanent and indestructible factor***
- ***Heterogeneity***
- ***Diminishing marginal returns***
- ***Derived demand***
- ***Site value***
- Free gift of nature-Land is material source which nature has provided as a gift to mankind land is not created with human efforts that supply price of land is zero from the society point of view does land has no cost of production.

- Passive factor of production-Land is a passive factor of production land becomes less productive when the other factors of production such as labour capital etc are used with it.
- No geographical mobility-Land cannot move from one place to another but it has occupational mobility that it can be put into some other alternative uses for example agricultural land can be used for construction of houses therefore it is the least mobile factor of production.
- Inelastic supply-The total land surface is determined by nature and is fixed in supply man cannot increase or decrease the total volume of blind man can try to improve the quality of plant the availability of land at any time is fixed that supply of land is perfectly inelastic.
- Permanent and indestructible factor-Land is indestructible factor it cannot be destroyed completely fertility of land when diminished but its existence remains forever.
- Heterogeneity-Land is a heterogeneous factor and not homogeneous factor. Land surface in quality and there are different grades inland as a result superior land commands higher rent as compared to inferior land.
- Diminishing marginal returns-Land subject to the law of diminishing returns as more and more units of labor and capital are added to the same piece of land the total output increases but at definition rate.
- Derived demand-The demand for land is indirect demand for land depends on the demand of other goods and services example the demand for agricultural land is derived from the demand for agricultural products.
- Site value-Lands natural factor value of land depends upon location land situated near urban area fetch higher price in the Land located near rural area.

2. Labour

Meaning and features-

Labor is the most active and living factor of production without which production process is not possible

According to Marshall in exertion of mind or body undergone partly on wholly with a view to earning some return other than the pleasure derived directly from the work
In other words, any exhibition of human body and mind with a view to earn money is labour

Example:- when students play football it involves operation but it is not labour for it has no economic motive. But the football coach who teaches them the game, does it for his livelihood so his exertion is labour.

- Features of labour

  Following are the features of labour :-
- Inseparable from the body of the worker
- Human and active factor of production
- Labourer sales is labour and not himself
- Restricted mobility
- Perishable factor
- Efficiency of labour
- Less bargaining power
- Inelastic supply of labour

- Inseparable from the body of worker-labourer and his work always goes together hence labourer must be present himself when he supposed to render IT services.

- Human and active factor of production-Labour being human actor has feelings likes and dislikes therefore he cannot be treated as a machine other factors become productive only after the application of labour so labour is the most active factor of production.
- Labourer sales is labour and not himself- Escorted by Alfred Marshall the worker census labour but he himself remains his own property the worker does not sell himself he sells his labour only.
- Restricted mobility-According to Adam Smith of all the luggages the labour is the most difficult to be transported. Labour can move from one country to another country in the same way.liver can change is business is Deepa due to family attachment housing problems climate etc restricts geographic mobility of labour.

- **Perishable factor-**Labour is perishable in nature if a worker is absent for a day the day liver has gone the amount of labour lost is lost forever labour cannot be stored and used for future.
- **Efficiency of labour-**efficiency of liberty force from worker to worker this differences are on account open number of factors such as training education surrounding culture physical strength PTC does labour is a heterogeneous factor of production that's why labour is categorized under different classes such as skilled labour semi skilled labour and unskilled labour.
- **Less bargaining power**-Individual worker has weak bargaining power they are helpless to accept the low wages offered to them rather than the remaining unemployed however in modern days trade unions fights for the rights of the labour labour can form a trade Union and through trade union the can put forward their demands for better working conditions higher wages etc.
- **Supply of labour-**Supply of labour is relatively inelastic during the short period of time this is because working population is between the age group that is 15 to 59 supply of labour cannot be quickly increased or decreased to meet the changes in the demand for it.

3. CAPITAL

Meaning and features - Capital is the third important factor of production in ordinary language we identify capital with money invested in the business even the capital in a business is expressed in terms of the amount of money used to start a business this amount has to be converted into capital goods like building machinery raw material fuel it easy to get production started

According to bohm bawark, an Austrian economist" capital is produced means of production"
Capital refers to the stock of capital assets which give income

- ❖ **Factors of capital**

1. **Man-made factor**
2. **Mobile factor of production**
3. **Passive factor of production**
4. **Elastic supply**
5. **Derived demand**

6. Capital of Part of wealth
7. Durability
8. Productive factor

1. **Man made factor**-Capital is amendment factor of production man produces the capital in the form of plant machinery building vehicle etc hence it is a man made factor
2. Mobile factor of production-capital is highest mobility it has both geographical as well as occupational mobility; capital of every type can be easily transferred from one place to another or from one country to another country and from one occupation to another occupation.
3. **Passive factor of production-**Capital is a passive factor of production it becomes productive only with the help of labour does it cannot produce anything on its own however it increases the efficiency of other factors of production.
4. **Elastic supply-**The supply of capital goods is elastic depending upon the requirements the capital can be increased or decreased if demand increases the supply of capital can be increased the supply of capital can be increased by increasing saving and investment.

5. **Derived demand**-Human wants are not directly satisfied by the capital goods but with the help of capital goods production of consumer goods is possible does it has derived demand.
6. **Capital is part of wealth**-Those things in which we find the qualities like utility is scarcity transferability and externalities termed as well on capital is wealth because capital purchases on the characteristic of 12th but all wealth is not capital because all those things which we termed as wealth cannot be used in production process.
7. **Durability-**Capital assets like machinery are durable in nature which contributes to production over a period of time
8. **Productive factor-**Capital is more productive as compared to other factors of production use of capital is not only improve the efficiency of plant in liver but also increases the total production this capital is most important factor in a production process without capital production process is not possible.

❖ Types of capital

The capital can be classified mainly into 4 groups:

1. *on the basis of ownership:-*

A. Private capital or personal capital
B. Public capital or social capital

2. On the basis of durability:-

A. Fixed capital
B. Working capital or circulating capital

3. On the basis of mobility:-

A. Sunk capital
B. Floating capital

4. On the basis of nature:-

A. Real capital
B. Money capital

1. On Basis of ownership :-

A. Private or personal capital-It is the capital which is owned by individual or institute that is group of individual's example of amount by individual machinery etc.
B. Public or social capital-When capitalism collectively by the society of the government it is public or social capital example municipal School municipal hospital railways etc.

2. On the basis of durability:-

A. Fixed capital-It is the capital which is used in production process again and again it is true regarding object example machinery factory building etc.
B. Working or circulating capital-It is the type of capital which is used in the production process only once it is also known as variable capital example raw material power fuel

3. On the basis of mobility

A. Sunk capital-Main capital is used for a specific purpose it is some capital examples Xerox machine road roller railway lines it can be used for any other purpose.
B. Floating capital-It is that capital that has several alternative uses example electricity coal petrol etc.

4. On the basis of nature

A. **Real capital-**It is physical capital used in the production process example machinery raw material equipment's etc. is used to produce other goods.

B. **Money capital-**It is a capital in the form of money real capital like raw material machinery can be purchased with the help of money capital.

4. Entrepreneur

meaning qualities and functions

ENTREPREUNER plays an important role in the process of production. Production is the combined effect of land, labour capital and entrepreneur it is not possible to carry of the production process without the service of an efficient Andhra Pradesh Andhra Pradesh himself me or may not have his own land, labour capital but to make the production possible he has to combine all factors of production in appropriate manner in not only combines all factors of production but organization supervisors the production by undertaking all the risks in short answer is the initiative organizer the comptroller and risk bearer of business.

According to F.H. knight "an entrepreneur is a person who performs dual function of risk taking and control".

According to Schumpeter, "entrepreneur is associated with innovation".

Does the job as an entrepreneur is a highly specialized job other factors get their fixed reward in the form of rent wages interest button entrepreneur cannot guarantee his own income/profit the remuneration of an entrepreneur can be positive, negative or zero.

- *Qualities of entrepreneur*

ENTREPRENEUR is regarded as a captain of ship. It is the entrepreneur who coordinates on the factors of production to be a successful businessman and entrepreneur should possess the following qualities:-

1. *Efficient*
2. *Organizer*
3. *Leadership*
4. *Decision maker*
5. *Self-confident*
6. *Bold and courageous*
7. *Knowledgeable*
8. *Innovator*
9. *Vision and foresight*

1. ***Efficient:-***He should be highly intelligent able and efficient so as to solve the problems arising in industry.
2. Organizer:-He should be good organiser he should have the ability to combine all the factors of production in appropriate manner does he should be good coordinator.
3. Leadership:-*ENTREPREUNER* should possess the quality of leadership the key of successful business is brilliant leaders if we should put the right person at types of the important function of a leader is to give right direction to different factors of production.
4. Decision maker:-He should be quick decision maker he should have capacity to take quick decisions regarding the location of industry investment nature of product sale of the products etc.
5. Self-confident:-Entrepreneur should be self-confident and should be able to develop confidence in others regarding his integrity and honesty which will help to maintain goodwill and reputation of his firm in the market.
6. Bold and courageous:-Entrepreneur should be able to face difficulties and her circumstances with confidence.
7. Knowledgeable:-He should have complete knowledge about his business market conditions new technology ups and downs in market etc
8. Innovator:-Entrepreneur should be a good innovator. He should introduce new technique of production which minimizes cost of production and explores the market for his product.
9. Vision and foresight:-He should a person who has vision for Santander drive to move ahead of others he must be a man with imagination and judgment so that he may be able to estimate the changes likely to take place in the market trends.

- ***Functions of an entrepreneur*** In modern economy, an entrepreneur has to perform various functions they are broadly classified into three categories-

1. Organizing function
    a) *Factor coordination*
    b) *Decision making*

2. Planning

a) *Supervision*
b) *Making factor payments*
c) *Risk and uncertainty bearing functions*
d) *Insurable risk*
e) *Non insurable risk or uncertainties*

3. Innovative function

1. ***Organizing function-*** An entrepreneur has to perform following functions to organize business
    a) ***Factor coordination-***An entrepreneur has to co-ordinate The other factors of production that is land labour and capital in the most optimum manner so that he can minimize the cost of production and maximize the total output

    b) ***Decision making-***Entrepreneur has to undertake several decisions regarding how to produce at what cost to produce where to sell how much to produce it is either Andhra Pradesh is a decision making factory in a production process

2. ***Planning-***Planning is an important function of an entrepreneur he has to plan before starting production process during the production process also he has to make some desirable changes in after production of goods he has to plan about sell of his product thus planning is a continuous process

a) ***Supervision-***An entrepreneur is also supervisor office business you should supervise center functioning of the business you should keep on monitoring the working of factor inputs.

b) ***Making factor payments-***Entrepreneur pays fixed contractual rewards to all factors of production that is land labour and capital issued distribute the rewards according to their contribution in the production process.

c) ***Risk and uncertainty bearing function-***It is a unique and most important function performed by entrepreneur it is the responsibility of entrepreneur to undertake the risk and uncertainty in the business entrepreneur bears two types of risk.

d) **Insurable risk**-It is the tourist which is insured by the insurance companies such as risk due to fire risk due to flood risk due to accident etc The Lost due to Such risk can be avoided

e) ***Non insurable risk or uncertainties-***Non insurable or uncertainties means unexpected risk which cannot be insured by insurance company

Example:-risk due to change in demand for the product, availability of close substitute for the product, change in government policy, warlike condition etc

3. ***Innovative function****- According to Schumpeter the introduction of innovation is the sole of entrepreneurial function*. It is the duty of entrepreneur to do innovations to discover new technology of production finding of New market finding opening place of getting raw material find a popular place to bring out the change in shape and cover of the product and also to find out new sales promotion

Thus, entrepreneur performs a variety of functions therefore he is right click described as the captain of the industry.

❖ THEORY OF RENT

➢ Ricardian Theory of Rent

The classical theory of rent is associated with the name of David Ricardo. He begins with a group of new settlers in a new country.

Let us suppose ourselves to be the settlers in a hitherto unknown island which we shall call jawahar Island after our late beloved leader. Let Tarapur in 'A' Part of the Island.
This is the most fertile land and gives us the largest produce per acre. Enough land is available of this quality to satisfy all our needs at the moment. Therefore, it is u free good and will not command any price, i.e., rent. But as time passes, the mouths to be fed increase in number. This may be due to more immigrants, who have heard of our good luck, or due to an increase in population.

- Rent in Extensive Cultivation: A time comes when all land of the best quality has been taken up. But some demand still remains unsatisfied. We have then to resort to 'B' quality land. It is inferior to 'A' and yields only 30 quintals of wheat per plot as compared with 35 quintals of 'A' with the same expenditure of labour and capital. Naturally plots in 'A' now acquire a greater value as compared with 'B'. A tenant will be prepared to pay up to 5 quintals of wheat in order to get a plot in the 'A' zone, or take 'B' quality land free of charge.

This difference, paid to the owner (if the cultivator is a tenant) or kept to himself (if he is the owner), is economic rent. In the first case (i.e., when the cultivator is a tenant) it is contractual rent; and in the latter (i.e., when the cultivator is the owner) it is known as implicit rent. 'B' plots do not pay any rent. To go a step further, we see that after all land of 'B' quality has also been taken up, we begin cultivating 'C' plots. Now even 'B' quality land comes to have differential surplus over 'C'. Rent of 'A' increases still further.

When the demand increases still more, we are pushed to the use of the worst land, which is of 'D' quality yielding 25 quintals per plot. 'D' quality land is now no-rent land or marginal land while 'A', 'B', 'C all earn rent. This growing demand shows itself in rising prices. They raise high enough to cover the expenses of cultivation on the lowest grade land, i.e., 'D' quality.

Let us suppose that one unit of productive effort is equal to Rs. 3,500. When only A' quality land, where a plot produces 35 quintals is under the plough, the price of wheat will be Rs. 100 per quintal. When owing to increased demand, the price of wheat rises to Rs.-110 then and only then will 'B' quality land be cultivated which produces 30 quintals of wheat. And when that happens 'A' land will have a surplus of 5 quintals X Rs. 110 = Rs. 550 per plot. This becomes rent.

The difference, in other words, between the return from a plot of land above the margin and the marginal plot (i.e., the one just paying its way) is called rent or economic rent.

- **Rent in Intensive Cultivation:** The settlers in Jawahar Island realize that there is another way too of increasing the produce. Why not apply more labour and capital to superior lands, and resort to intensive cultivation? This is done but it is seen that the law of diminishing returns sets in. Now consider that A, B, C and D are the different doses of labour and capital (instead of different grades of land) applied to the same grade of land. The first dose yields 35 quintals.

The second unit of labour and capital used on 'A' plot will almost definitely give us less than the first. We suppose it gives us only 30 quintals. So we have the choice of either taking new plots in 'B' land, or cultivating 'A' lands more intensively. If we adopt the latter course, the first unit of labour and capital will be yielding a surplus over the second unit—which unit produces just enough to cover the expenses. This surplus, again, is rent. As more and more units of labour and capital are applied, the return per unit will go on falling.

- **Rent Due to Differential Advantages:** Transport charges are a part of the cost of production, because production is complete only when the commodity reaches the hands of consumers. The better-situated plots, which have to bear less transport charges, will enjoy a surplus over the distant ones. This surplus will be another cause of rent. Hence, economic rent is a surplus which arises on account of natural differential advantages, whether of fertility or of situation, possessed by the land in question over the marginal land.

- **No-rent or Marginal Land:** The cases described above show that rent is earned due to a certain paces being better suited for cultivation or being better situated in regard to markets. But better than what? Of course better than some other plot of land. This 'some other' plot is marginal land which just covers its expenses and no more. This land is called 'no-rent land'. All rents are measured from it upwards.

➢ Quality of Land of Does of Capital and Labour

It is quite possible that we may not be able to spot the 'no-rent land' because:

(a) It may be paying scarcity rent, or (b) The owner might have invested some capital in it and the interest thereon might be mistaken for rent, or (c) The no-rent land may be in some other country or (d) The no-rent tracts may form part of a rent-paying area and be concealed in it.

- Scarcity Rent: In our new home-country, Jawahar Island, we at last come to a situation when all the lands have been brought under the plough, and are being cultivated intensively too. But the price rises still further under the pressure of demand. Population has been increasing fast. Our country has become old and no more land is available as we are an island country. Prices of agricultural produce go up and, therefore, incomes from land go up.

Hence, all land begins to get surplus above expenses. This surplus above costs in the quality land, our previous no-rent land, is scarcity rent. Superior lands will be paying this surplus over and above differential gain.

Conclusion: *Summing up, we can say that, according to the Ricardian theory, rent is a differential surplus and arises from the fact that land possesses certain peculiarities as a factor of production. It is limited in area and its fertility varies. Besides, its situation is fixed. Thus rent results because:*

(a) Fertility is more or less fixed by nature;

(b) The total stock of land is fixed and cannot be increased. On this basis, Ricardo defines rent as "that portion of the produce of the earth which is paid to the landlord for the original and indestructible powers of the soil." According to him fertility, situation and limited total stock—these qualities, which are original as well as permanent, give, rise to rent.

- Criticism of Ricardian Theory:

The Ricardian theory of rent has been widely criticized as under:

(i) It is pointed out that fertility of land is not original: Much of the present productive capacity of land is the result of human efforts, use of manures and other improvements. Thus, it is not possible to say which qualities of land are original and which of them are man's creation. Situation is something which man cannot change. Obviously it is not possible to move a plot of land to another place. But man can improve the means of transport so much that the distance between two places matters little Thus he can manage to change the character of a place. The planned cities and factory towns of today are the product of man's brain. Although this criticism

has a leg to stand upon, it cannot be denied that certain original qualities do matter. No human effort will change Rajasthan into Kashmir.

(ii) The idea of indestructibility is objected to: Area, it is said, is everlasting but not fertility. Continued cultivation exhausts fertility. We observe this in the case of land in India. Lands are reported to be less fertile and, therefore, less productive per hectare today than they were in the past.

Ricardo's doctrine, however, cannot be wholly rejected. Land which is naturally fertile regains its fertile qualities more easily, if it is manures or left fallow. Creation of fertility in a barren land is more difficult. Besides no amount of use will entirely kill the fertility of land.

(iii) Certain American economists like Carey have criticized the classical theory of rent on historical grounds. They say that cultivation did not begin with the most fertile lands when the first settlers arrived in America, nor did it pass on to the less fertile lands in that order. The reason was that some of the most fertile lands were covered with thick forests while others were open to enemy attack. The settlers naturally preferred less fertile areas which were open and could be defended. This criticism answers itself. Not necessarily the most fertile, but the land offering the best reward for a definite effort is occupied first. Moreover, the order of cultivation is not so important. Even if the order is changed, when two types of land are being cultivated, the more fertile or better situated plot will produce a surplus above the cost. The surplus will arise whichever land is cultivated before the other. Rent will still arise even if all the lands were of uniform quality. It will arise in the intensive form.

(iv) It is said that rent is not due to differential advantages only. Even if all lands were of uniform quality, rent would still arise. Rent arises from scarcity.

(v) Ricardian theory does not say why rent is paid; it only tells us that superior lands command higher rent.

(vi) The concept of marginal land is said to be imaginary, theoretical and not realistic.

(vii) It is also urged that no special theory of rent is necessary. Demand and supply theory, which explains all values, can explain rent also.

(viii) Modern economists think that it is only from the point of view of economy as a whole that land has perfectly inelastic supply and earns a surplus or rent. This surplus is not included in cost and hence does not enter into price. But from the point of view of individual farmer or industry, a payment has to be made to prevent land from being transferred to some other use.

The payment, called transfer earnings, is an element of cost and hence enters into price. For the individual farmer the whole of rent is cost. *"This concept of transfer earnings helps to bring the*

simple Ricardian Theory—where transfer earnings are zero because it is the whole economy which is being studied—into a closer relation with reality."— (Stonier and Hague).

- Rent as Payment for the Use of Land: Modern View:

So far as the use of land is concerned, the modern economists have offered a better explanation of rent. This payment is obviously determined by the demand for and the supply of land.

- Demand Side: The demand for land is a derived demand. It is derived from the demand for the products of land. If the demand for these products rises or falls, the demand for the use of land will correspondingly rise or fall leading to increase or decrease of rents. For instance, if the population of a country increases, the demand for food will increase, resulting in increased demand for land and rise m its rent, and vice versa.
- Supply Side: The supply of land is fixed so far as the community is concerned, although individuals can increase their own supply by acquiring more land from others or decrease its supply by parting with land. In spite of reclamation projects, the effect of which on the total supply is negligible, the supply of land remains practically fixed.

It is a case of perfectly inelastic supply, which means that whatever the rent (the rent may rise or fall), the supply remains the same. That is why it is said that land has no supply price. In other words, the supply of land in general is absolutely inelastic and as such its supply is independent of what it earns.

- Interaction of Demand and Supply: If the land is of different qualities, then each quality will have a separate demand curve and they will command different rents. Hence the theory explains differential rent too. Thus, the rent of land, like the remuneration of other factors, is determined by the equilibrium between demand for and supply of land.

In other words, it is scarcity in relation to demand that determines rent. Fundamentally speaking, rent is paid for land because the produce of land is scarce in relation to its demand. The scarcity of land is in fact derived from the scarcity of its products. It is this scarcity which explains all values and rent is no exception.

- Land for a Particular Use:
  We have analyzed above total demand and total supply of land for the community as a whole. Let us now consider it from the point of view of a particular industry or use. For a particular use or industry, the supply of land cannot be regarded as fixed. By offering more rent, it can be increased; the supply will decrease if the rent in this particular case goes down.

❖ Modern Theory of Rent

Modern theory of rent is an amplified and modified version of Ricardian theory of Rent. It was first of all discussed by J.S. Mill and after that developed by economists like Jevons, Pareto, Marshall, Joan Robinson etc.

According to modern theory, economic rent is a surplus which is not peculiar to land alone. It can be a part of income of labour, capital, entrepreneur.
According to modern version rent is a surplus which arises due to difference between actual earning and transfer earning.

i.e. Rent = Actual Earning-Transfer Earning.

- What is Transfer Earning? In this universe, each factor of production has varied uses. When we transfer one factor from one use to another, we have to sacrifice the income earned by it from its earlier use. Sacrifice of earning is called transfer earning.

Basically, the concept of transfer earning in economics is introduced by Prof. Benham. According to him, "The amount of money which any particular unit could earn in its best paid alternative use is sometimes called its transfer earnings." A similar idea was developed by Pigou. Different economists consider transfer earnings as that amount of money which any particular unit could cam in its best paid alternative use.

Thus, what a person, piece of land or capital can earn in the next best alternative use is known as transfer earnings. Thus, according to Mrs. Robinson, "The price which is necessary to retain a given unit of three factors in a certain industry may be called its transfer earning. "Suppose a piece of land can cam Rs. 100/- when it is used for producing wheat and the same amount if it is used for cotton. There is no extra earning because there are no transfer earnings. If, however, the same piece of land could cam Rs. 60 when put to the use of cotton.

Its transfer earning would be Rs. 40 and the extra gain of Rs. 40 which is surplus could be called Rent. So, according to this theory, we can define rent as a payment of excess of the transfer earnings. In the words of Benham, "In general the excess of what any unit gets over its transfer earnings is of the nature of rent." In the above example, true rent is Rs. 10 and transfer earning Rs. 40.

- Modern Definitions of Rent:

"Rent is a payment in excess of transfer earning." *Stonier and Hague*

"The essence of the conception of rent is the conception of a surplus earned by a particular part of a factor of production over and above the minimum sum necessary to induce it to do its work". *Mrs. Joan Robinson*

- ***Features of Modern Theory of Rent:***

The major features of the modern theory of rent are as under:

1. Rent can be a part of the income of all factors of production.

2. Amount of rent depends upon the difference between actual earning and transfer earning.

3. Rent arises when supply of the factor is either perfectly inelastic or less elastic.

- Why Rent Arises:
- According to modern theory, rent arises due to scarcity of land. Supply of other factors like labour, capital etc. can also be scare in relation to demand. Therefore, income earned by these factors in excess of their minimum income is called economic rent.

Prof. Wieser divided factors of production into two parts viz.; specific factors and non-specific factors.

- Specific Factors: These factors refer to those factors which have only one use. For example, a farm used for growing wheat alone. Such factors have no mobility.

- Non-Specific Factors: These factors are those which have mobility and can be put to different uses. It is only due to the reason that specific factors cannot be put to another use. Specificity of factors is the main cause of the emergence of rent. It is so because

specific factors cannot be put to any other use. So, its opportunity cost is zero. In other words, its transfer earning is zero. So its entire actual earning in the existing use is rent.

- **Determination of Rent:**

Modern economists studied the determination of rent in two forms as:

1. Rent of Land

2. General concept of Rent.

- ***Determination of Rent of Land or Scarcity Theory of Rent:*** Modern economists opined that rent arises due to scarcity of land. Scarcity of land means that demand for land exceeds its supply. Rent will be determined at a point where demand for land is equal to its supply.

- ***Demand for Land:*** Land has derived demand. It means that demand for land depends on the demand for agricultural products. If demand for food grains increases, demands for land will also increase and vice-versa. Moreover, demand for land is influenced by its marginal productivity. It means as more and more land is used its MP1 goes on diminishing.

- **Supply of Land:** Supply of land is fixed. Its supply is perfectly inelastic. It means, increase in the price of land will not evoke any increase in its supply.

Supply of Land Rent as the Difference between Actual Earnings and Transfer Earnings:

According to modern economists rent is the difference between actual earning and transfer earning. Rent can be a part of income of factors of production. But, these factors will earn rent only when their supply is less than perfectly elastic. Thus, from elasticity point of view, there are three possibilities, i.e.:

1. Supply of factors of production is perfectly elastic.

2. Supply of factors of production is perfectly inelastic.

3. Supply of factors of production is less than perfectly elastic.

- **When Supply is Perfectly Elastic:** When change in demand at existing rate is followed by corresponding change in supply, then the supply is said to be perfectly elastic i.e. such a factor is not scare. At the existing rate, any amount of that factor is available. Therefore, its actual earning and transfer earning will be equal.

Actual Earning = Transfer Earning Rent

- *Actual Earning – Transfer Earning = Zero*

- Perfectly Elastic Supply Curve of Land

Since, transfer earnings are equal to actual earnings i.e. OSEN, there is no surplus and, thus, no rent. If this firm does not pay the price, the factor units will be shifted to other uses and earn there as much, because present earnings equates the transfer earnings. In this way, we may conclude that if the supply is perfectly elastic, then there exists no surplus and hence no economic rent.

- **When the Supply is Inelastic:** Inelastic supply of a factor indicates that any increase or decrease in demand is not followed by the supply. In such a case, transfer earnings will be zero and the difference between actual earning and transfer earning will be equal to actual earning. Therefore, all the actual earnings will be called rent.

Rent = Actual Earning (Since Transfer Earning is zero)

- Perfectly Inelastic Supply Curve of Land
- **When the Supply is less than Perfectly Elastic:** Less than perfectly elastic supply means that the transfer earnings of all the factor units are not equal. Mrs. Joan Robinson used the concept of 'Transfer Earnings' to explain the amount of rent earned by a factor unit in a particular use. She defines transfer earnings as the price which is necessary to retain a given unit of a factor in a certain industry.

❖ Theories of Wages (With Criticisms)

The following points highlight the top six theories of wages. The theories are:

1. The Subsistence Theory of Wages
2. Standard of Living Theory
3. Wage Fund Theory
4. Residual Claimant Theory
5. Marginal Productivity Theory
6. Discounted Marginal Productivity Theory.

Theory # 1. The Subsistence Theory of Wages:

The theory was formulated by physiocrats. According to them wages would be equal to the amount just sufficient for subsistence. Lassale, a German economist developed this theory. According to this theory, wages are determined by the cost of production of labour or subsistence level. The wages so determined will remain fixed.

It actual wages are higher than the subsistence level, then population will increase leading to an increase in labour supply and lower wages. If on the other hand, the actual wages fall below the subsistence level, population will decrease resulting in a decline in labour supply and rise in wages. Since there is a tendency for the wages to remain fixed at the subsistence level, it is called as Iron Law of Wages or Brazen Law of Wages. This theory is based on two assumptions:

a. ***Food production is subject to the law of diminishing returns, i.e., there is a limit to expansion of food production.***
b. ***Population increases at an increasing rate.***

Criticisms: *1. the subsistence theory of wages explains wages from the supply side and ignores the demand side.*
2. If all laborers must get the bare necessaries of life, all must get equal wages. But there are many differences in wages. Thus this theory ignores wage differences.
3. This theory asserts that wages are fixed at the subsistence level. Therefore, it assumes that the trade unions are powerless in increasing the wages. This is a wrong notion.
4. This theory is based on the Malthusian theory of population according to which a rise in wages above the subsistence level will lead to rapid increase in population. But experience shows that a rise in wages leads to higher standard of living and not increase in population.
5. This theory is pessimistic because it excludes all possibility of improvement in the conditions of labour either through increased efficiency or due to general economic progress.

Theory # 2. Standard of Living Theory:

This theory is an improved and refined version of subsistence theory. According to this theory, wage is determined by the standard of living of the workers. Standard of living refers to the bare necessaries of life and also education, and recreation to which the worker is habituated.
Merits: This theory has two merits:

a. *This theory gives importance to the efficiency and productivity of the worker.*
b. *When workers are paid a high wage rate for a considerable period of time, they become accustomed to a high standard of living and they will try to maintain the same high standard of living.*

- *Criticisms:*

In spite of its merits, the theory has been subjected to many criticisms:

1. Individuals do not have any fixed standard of living. Critics point out that there is no such thing as a standard of living to which a worker is accustomed.

2. When wages depend on standard of living, the latter should not change. But workers' standard of living remains fixed for sometimes but wages change frequently.

3. No doubt, wages are determined by standard of living. It is also true that standard of living is determined by wages.

Theory # 3. Wage Fund Theory:

This theory was developed by J.S.Mill. According to him, the employers set apart a certain amount of capital to pay wages for labourers. This is fixed and constant. This is called as wages fund. Wage is determined by the amount of wages fund and the total number of labourers.

According to J.S.Mill, "wages depend upon the demand and supply of labour or as it is often expressed as proportion between population and capital. By population is here meant the number only of the laboring classes or rather of those who work for hire and by capital, only circulating capital……. ".

Wage rate=Wage fund / Number of labourers

An increase in wage rate is possible only by an increase in wage fund or by a reduction in the number of labourers. Thus there exists a direct relation between wage rate and wages fund and inverse relation between wage rate and number of labourers. This theory also states that trade unions are powerless in rising the general wage rate.

- Criticisms:

1. Wage fund theory states that the wage rate is found by dividing the wage fund by the number of workers. But it does not tell us about the sources of wages fund and the method of estimating it.

2. Wage fund theory is unscientific and illogical because it first decides the wages fund and then determines wages. But in reality, wages should be found first and from that wage fund should be calculated. This theory neglects the quality and efficiency of the workers in determining the wage rate. This is considered to be a basic weakness of the theory.

3. This theory neglects the quality and efficiency of the workers in determining the wage rate. This is considered to be a basic weakness of the theory.

4. This theory assumes that wages can increase only at the expense of profit. This is not correct. The operation of the law of increasing returns will lead to a great increase in total output which may be sufficient to raise both wages and profits.

5. The wages fund theory has been criticised by the trade unions for its assumption that wages cannot be increased through bargaining.

6. Wages fund theory has failed to explain the differences in wage rate.

7. This theory believes that wages are paid out of circulating capital. But when the process of production is short, wages are paid out of current production. When the process of production is long, wages are paid out of capital.

Theory # 4. Residual Claimant Theory:

This theory was propounded by Walker. According to this theory, rent and interest are contractual payments. After deducting rent and interest from total product, the employer will deduct his profits. What remains after deducting rent, interest and profits is wages. It is possible to increase wages by increasing the total product by improving the efficiency of the workers.

This theory has several defects:

1. This theory assumes that the share of landlords, capitalists and entrepreneurs are fixed and it is absolutely wrong.

2. It is not the worker who is the residual claimant but the entrepreneur.

3. It does not explain the influence of trade union in wage determination.

4. The supply side of labour has been totally ignored by the theory.

Theory # 5. Marginal Productivity Theory:

Marginal productivity theory of wages is an extension of marginal productivity theory of distribution. According to this theory, wage for labour should be equal to the value of the marginal product under conditions of perfect competition. Marginal product is the addition made to total product by the employment of one unit of labour. The value of the marginal product of labour is equal to the price at which the marginal product can be sold.

Under conditions of perfect competition, an employer will continue to employ more and more of labourers till the value of the marginal product is equal to marginal factor cost(MFC). Marginal factor cost is the cost of employing an additional worker. In order to find out the marginal productivity of labour we have to keep the quantity of other factors constant while employing one more unit of labour.

The difference in total production is the marginal productivity. The employment of an additional unit of labour will result in increase in output and cost. As long as MPP is greater than MFC, the employer will employ additional units of labour. But he will stop employing additional units of labour when MPP=MC.

- **Assumptions:** This theory is based upon the following assumptions:

1. There is perfect competition in factor market and in product market.

2. Labour is homogeneous.

3. The law of diminishing returns operates in production.

4. There is free entry and exit of the firms.

5. There is perfect knowledge about the market conditions.

6. All factors of production can be substituted for each other.

7. There is free mobility of factors of production.

8. Factors of production are divisible.

- ***Criticism:*** *The theory is found to be unsatisfactory and various criticisms have been leveled against this theory.*

1. The theory deals with the demand side only. The supply side is totally ignored.

2. This theory is unjust because wages are determined by the marginal productivity. But justice demand that workers should be paid on the basis of average productivity.

3. Further, marginal productivity of the worker cannot be calculated as factors are not divisible into small units.

4. Factors of production are neither mobile nor perfect substitutes. Their Knowledge is also imperfect.

5. This theory assumes perfect competition in the product market. But the market for goods is characterised by imperfect competition.

6. Marginal product of labour depends not only on its support but also on the supply of other factors. If other factors are plentiful and labour is scarce, marginal product of labour will be high and vice versa.

7. This theory fails to explain the differences in wages.

Rejecting the marginal productivity theory Marshall states, *"This doctrine has been put forward as a theory of wages. But there is no valid ground for any such pretension… Demand and supply exert equally important influences on wages; neither has a claim to predominance; any more than has either blade of scissors, or either pier of an arch… The doctrine throws into clear light, one of the causes that governs wages".*

Theory # 6. Discounted Marginal Productivity Theory:

Taussig has given a modified version of the Marginal Productivity theory of wages. According to this theory, the wage for labour is determined not by its marginal product but by the discounted marginal product. Labourers cannot get the entire amount of the marginal product because production is a long drawn out process.

In the same way, sales also take time. As the labourers are poor and cannot wait till the product is sold, they have to be supported by the employers. The employer does not pay the full amount of the marginal product of labour. In order to compensate the risk involved in giving advance to the workers, the employer deducts a certain percentage from the final output. This deduction is

made at the current rate of interest. It is the discounted marginal product that determines the wage of the labourers.

- *Criticisms:* *1. this theory is abstract. It is "a dim and abstract one remote from the problem of real life".*

2. It is very difficult to determine the discounted marginal product of labour.
3. This theory fails to take into account other factors which determine the wage rate.
4. This theory has failed to explain differences in wage rate.

Taussing's theory is another version of the Residual Claimant Theory of wages. Therefore, it is subject to all criticisms put forward against the Residual Claimant Theory.

❖ What is Capital?

- *Capital is anything that increases one's ability to generate value*. It can be used to increase value across a wide range of categories such as financial, social, physical, intellectual, etc. In business and economics, the two most common types of capital are financial and human. This guide will explore all the above categories in more detail.
- Types of Capital

The different types of capital include:

1. Financial

a) Equity

b) Debt

c) Investments

d) Working capital

2. Human

a) Social

b) Intellectual

c) Physical

d) Talents/skills

3. Natural

a) Commodities

b) Animals

c) Vegetation

d) Ecologies

- Capital in Business

The focus of this guide is on capital in a business context, which can include all three of the broad categories above (financial, human, natural). Let's explore each of the categories in more detail.

- Capital Being Used in Business

1. Financial

The most common forms of financial capital are ***debt and equity.***

- ***Debt*** is a loan or financial obligation that must be repaid in the future. It has an interest expense attached to it, which is the cost of borrowing money. The cash received from borrowing money is then used to purchase an asset and fund the operations of a business, which in turn generates revenues for the company.
- ***Equity*** is an ownership stake in a company, and equity investors will receive the residual value of the company in the even it is sold or wound-up. Unlike debt, it does not have to be repaid and doesn't have an interest expense associated with it. Equity is used to fund the business and purchase assets to generate revenue.

2. Human

- ***Human capital*** is used by business to create products and perform services that can be used to generate revenue for the company. Companies don't "own" people they way they do other assets. The most common types are ***intellectual*** and ***skills/talents***.

- ***Intellectual*** refers to the intelligence of people, which can be used to successfully run a company, think creatively, solve problems, form strategies, and outperform competitors.

Skills and ***talents*** are used in much the same way as intelligence to help a business operate and generate revenues. Skills do not necessarily require mental capacity and can include manual labor, physical exertion, social influence, etc.

3. Natural Natural capital can also be used by businesses to generate income and increase production. Many businesses use natural resources such as water, wind, solar, animals, trees, plants, crops, and other species to run their company and increase value over time.

Companies may or may not own the natural assets they require to operate.

- Cost of Capital

In a financial context, there is an associated cost of acquiring capital to run a company.

The cost of debt is based on the coupon, interest rate, and yield to maturity of the debt. For example, if a company borrows $5 million and must pay $0.5 million in annual interest, it's cost of debt would be 10%.

Since the interest expense is tax-deductible, the after-tax cost of debt is equal to the interest rate time one minus the tax rate. Continuing with the example above, if the company's tax rate is 25%, the after-tax cost of debt would be 10% x (1 – 25%) = 7.5%.

The cost of equity is an implied cost that is calculated using the Capital Asset Pricing Model (CAPM), which uses the riskiness of an investment (the volatility of its returns) as a means of determining how much it should cost per year. The cost of equity is always higher than the cost of debt because it is riskier (in the event of insolvency, debt is repaid before equity). To learn more, read CFI's guide to the weighted average cost of capital (WACC).

- Cost of Capital

- *Importance in Business*

In business, a company's capital base is absolutely essential to its operation. Without adequate funding, a company may not be able to afford the assets it needs to operate and survive, nor be able to outperform its competitors. Financial analysis will perform an extensive analysis to assess

how well funded a business is, how efficient is its operation, and how good a job it does of generating a return for the investors who funded the business.

Managers and operators of a business are typically very focused on being efficient in operations and generating the highest possible returns for their investors. Common examples of metrics and financial ratios managers and analysts look at to measure the performance of a company include:

- Return on Assets (ROA)
- Return on Equity (ROE)
- Return on Invested Capital (ROIC)

❖ Money vs. Capital

While money (currency) and capital may seem like the same thing, they are not. "Money can be used to purchase assets for a company that will generate revenue and income". "Capital is a much broader term that includes all aspects of a business that can be used to generate revenue and income, i.e., the company's people, investments, patents, trademarks, and other resources".

Money is what's used to complete the purchase or sale of assets that the company employs to increase its value. While the two things may feel the same, it's important to note that they are not.

❖ What is Gross Interest

- Gross interest is the annual rate of interest to be paid on an investment, security, or deposit account before taxes or other charges are deducted. Gross interest is expressed as a percentage and is the opposite of net interest, which is the rate of interest after taxes are applied.

❖ BREAKING DOWN Gross Interest When an individual deposits money in his bank account, the bank pays interest on the funds to the accountholder to compensate him for the deposit, which is used to lend money to individual and corporate borrowers. The interest paid may be deposited in the entity's account monthly, quarterly, or annually, depending on the financial institution or account type. The interest is simply referred to as a gross interest because it does not factor in taxes, which also impacts the interest earnings. For example, if you had $3,000 in a savings account that earns 2% interest, charged on a yearly basis, the quoted 2% is the gross interest which would pay $60 at the end of the year.

However, the gross interest does not take into account other items such as taxes, fees, and other charges which may apply to the investment or account. After these costs are taken into account and deducted from the gross interest earned, the accountholder actually walks away with less. Following from our example above, if the monthly fee on the savings account is $5 and you were taxed 35%, taxes due would be would be $21 (calculated as 35% multiplied by $60) and the net interest earned would be calculated as $60 - $21 - $5 = $34, or 1.13%, which is less than the 2% gross interest.

Gross interest is simply the pure interest amount paid by a debtor to a creditor. Concerning bonds, the interest income bondholders receive from their investment, which will be subject to further taxes, represents gross interest. For example, assume a bond investor purchases a $1,000 par value corporate bond with a coupon rate of 3% payable annually and maturity date of five years. The bond issuer will periodically pay the bondholder a fixed interest of 3% x $1,000 = $30 for the duration of the bond's life. The fixed coupon rate is the gross interest. However, at the end of the year, the interest earned on the corporate bond will be taxed by the government. Therefore, the bondholder's effective net yield will be less than 3%.

The net interest is calculated from the gross interest after other fees and costs are deducted.

MACRO ECONOMICS

❖ Functions of money

1. Primary functions
2. Secondary functions
3. Contingent functions

1. **Primary functions-** Medium of exchange-the fundamental role of money is to serve as medium of exchange this is the most important function of money by working as a medium of exchange money divides the exchange transactions into two parts namely sale and purchase this function of money has solved one of the biggest problems of the barter system that is lack of double coincidence of wants any commodity or service can be bought with and sold for money money represents general purchasing power a person can sell any commodity today for money and can use the money in future to purchase any commodity or service some unique characteristics of money like general acceptability probability durability etc have helped money to work as medium of exchange

Measure of value or unit of account-the value of all goods and services is expressed in terms of money it is a unit of account when the value of commodity is expressed in terms of money it is called price it helps us to compare the value of on commodities by comparing the prices of different commodities relative values of this commodities can be calculated example price of a table is 2000 and price of a share is 500 it indicates that the value of a table is equivalent to the value of purchase goods and services are quantified in different units it would have been difficult to express the value of 1 kilogram of sugar in terms of certain litre of milk or certain metre of cloth in the absence of money is difficulty is overcome when the prices of all these goods are expressed in terms of money which is unit of account every country has a standard money or monetary unit in terms of which values are expressed and measured example dollars pounds nctc in India rupee is the unit of account incomes and expenditures of all kinds assets and liabilities of all kinds budgets of the government etc are stated in terms of money as a unit of account

2. **Secondary functions:-**Standard of deferred payments-in the modern economy many transaction take place without instant payments the debtors make a promise to make payments on some future date such future payments are possible because of money underwater system taking loan was easy but its requirement was difficult because loans were in the form of grains or cattle money facilitates lending and borrowing because the borrowings are in the form of money and the repayment are also in the form of money due to general acceptability stability of value compared to other goods durability etc money acts as standard of deferred payments

- **Store of value**-money works as a store of value along with the satisfaction of present wants provision for satisfaction of future worms is equally important it requires savings from the current earnings money is a convenient means through which things can be done easily according to Lord J M Keynes, money is a link between present and the future Manisha Asus store of value because money has purchasing power.

It can be used to purchase real assets like land house etc. and financial assets like shares debentures bonds etc.

- **Transfer of value**-Today the extension of trade among various countries and organizations it becomes necessary to transfer purchasing power from one place to another this is easily done by money. money helps to shift the purchasing power from one place to another example real acids like building on agricultural land from one place can be sold and with the help of that one building or land can be purchased at some other place

3. **Contingent/incidental functions of money**:-According to professor kinley, money in modern times also perform certain contingent functions.

Following are some contingent or incidental functions of money

Measurement and division of national income: Money facilitates estimation and distribution of national income numerous goods and services are produced in a country during period of time when these goods and services are converted in terms of money calculation of national income becomes possible factors of production like land labour capital and organization contribute to national income all these factors get their respective rewards like rent wages interest and profit in terms of money the total production and factor prices are easily expressed in terms of money

- **Basis of credit**- Modern economy is based on credit commercial banks create credit on the basis of their cash holdings without the use of money credit instruments cannot operate one cannot issue cheque without having a bank balance money provides the liquid base of the banking system.
- **Imparts liquidity to wealth**- Money is called the most liquid asset money can be easily converted into any asset and any asset can be converted into money example of person can purchase gold and if you want to cancel it and can purchase government bonds securities etc liquidity of money has improved the mobility of capital from a business in laws to a profit making business it also facilitates transfer of capital from less productive use of two or more productive use.

Equalization of marginal utilities and marginal productivity is with price-prices of goods services and prices of all factors of production are expressed in terms of money it helps the consumers to compare marginal utilities of goods with their prices based on this comparison consumers can allocate their income various goods in such a way that the price of each commodity is equal to its marginal utility.

Producers compare factor prices like current fall and wages for labour interest for capital with marginal productivity (contribution made by additional factor* to total productivity) factors of production. The producers strike maximize their profits by equalizing marginal productivity of a vector with its price.

- **Estimation of macroeconomics variables-**

Macroeconomics variables gross national production, total savings, total investment etc can be easily estimated in monetary terms. It also facilitates government for collection budget etc

Thus, in modern monetized economy money can facilitate production distribution saving etc. increases international trade transport organization of capital market and other financial institutions.

Along with these functions money also perform some other functions like

It helps in the maintenance of repayment capacity which is called guarantee of solvency

Money can be used for any purpose according to the priority of an individual or an organization. Money saved by person to purchase of house in future can be used for higher education of children. P. Graham has called this function of money as bearer option.

It is the base of price mechanism prices of all goods and all factors of production are expressed in terms of money price mechanism guides important decisions like what to produce how much to produce how to distribute etc. when money performs various functions different qualities or characteristics of money help it to perform this functions.

- Measures of credit control by Central Bank

The central bank of country has the responsibility of controlling the volume and direction of credit in the economy in order to achieve the objective of growth with stability.

The central bank adopts two types of measures for controlling credit activities of the banks in the economy these are quantitative measures of credit control and qualitative or selective measures of credit control. Let us study these measures.

Let us study them in detail

- Quantitative measures of credit control

These measures are macroeconomic in effect and are used to control the volume or quantity of credit so as to control the inflationary and deflationary pressures caused by expansion or contraction of credit. These measures also am at controlling the cost of credit these include

- Bank rate
- Open market operations

Variable reserve ratio or cash reserve ratio CRR

- Bank rate-Bank rate is the minimum rate of interest charged by the central bank to commercial banks while giving loans to them against eligible securities or by rediscounting bills of exchange it is also called as it is also rediscount rate. The bank rate of its both the cost and availability of credit the bank rate is important because it is the best sector to other market rates of interest the money market rates adjust automatically to the changes in bank rate the central bank can arrange for reduce the bank rate to increase or decrease the money supply in the economy.

When the bank rate is increased, the cost of borrowing from Central Bank was of which in turn process the commercial banks to search higher lending rate to cover up their increased cost businessman and industrialist or entrepreneurs feel discouraged to borrow more money when the lending rate of interest charged by commercial banks is hi this would lead to contraction in bank credit and decrease in money supply in the economy the reduction in money supply will reduce aggregate demand or money expenditure as a result prices will fall and inflation will be checked Central Bank follows this dear money policy during the period of inflation to control general rise in prices of all goods and services.

The reverse will happen when the bank rate is reduced in order to overcome the problem of recession or depression in the economy this is called cheap money policy of the central bank

Derby started with a chip manipulating with bank rate of 3% in 1951 this rate has undergone a lot of changes from time to time as per the requirements of the economy

- Open market operations- Open market operations refer to deliberate buying and selling of government securities and treasury bills by the central bank in the open market by doing so the central bank can increase or decrease cash reserves of the bank open market operations is an important instrument of stabilizing the general price level IT affects the money supply directly and rate of interest indirectly.

when the central bank sells securities to the public commercial banks and other financial institutions in open market money flows from them to Central Bank this reduces the demand deposits held by the public and the cash reserve of banks, which in turn reduces the ability to create credit does the sale of securities by the central bank leads to a decrease in quantity of money supply in the economy and the rise in market rate of interest. Listen to reduce the demand for money due to higher cost and those helps to check inflationary tendencies in the economy.

Windows Central Bank purchases securities money flows from it to commercial banks are public this increases cash reserves with the bank and helps to expand credit and money supply as a result interested declines and demand for money increases in this way Central Bank by selling government securities during the period of prosperity and purchasing government securities during the period of precession or depression controls the credit activities of the commercial banks

- Variable cash reserve ratio

Lord JM Keynes has popularized this as a method of credit control by the central banks.

- Cash reserve ratio CRR

Bad banking at commercial banks have to maintain a certain amount of cash with Central Bank for example RBI as reserves against their demand and time deposits under the RBI act of 1935 every commercial bank has to keep certain minimum cash reserves with RPF at conveying CRR between 3% and 15% of total time and demand deposits

This amount cannot be used by banks for lending activities there for the amount available for lending rates reduced to the extent of cash reserve ratio this reserve ratio is changed to regulate credit it directly affects the lending capacity of banks and the rate of interest charged by banks.

An increase in CRR leads to contraction of credit increase in lending interest rates and reduction in money supply in the economy this can reduce inflationary pressure.
Decrease in CRR leads to an expansion of credit or decrease in lending interest rates and an increase in money supply in the economy.

When Central Bank wants to reduce money supply the CRR will be raised and it will be reduced to expand the quantity of money it is very effective instrument as it affects the base of credit creation.

- Statutory liquidity ratio SLR In addition to CRR the commercial banks have to maintain a certain percentage 25% of their total demand and time deposits with the RBI in the form of liquid assets that is in the form of cash gold and in approved securities this is known as statutory liquidity requirement. This amount is kept in reserve to invest in government securities as every commercial bank has to make this investments hence it is not available to banks for lending purposes

Central Bank most to decrease money supply in the economy it will increase the seller which will reduce commercial banks' ability to create credit a higher salary increase the lending rates of bank in the central bank forms to increase money supply in the economy it will reduce SLR which will increase banks' ability to create credit.

- *Repo rate or purchase rate that is liquidity adjustment facility LAF*

Repo rate or repurchase rate is that rate at which commercial Banks borrow money from the central bank for short period by selling the securities to the central bank with an agreement to repurchase them at a future date at pre-determined price

- Concept of reverse repo rate

Reverse repo rate is the rate of interest at which the central bank borrow funds from other commercial banks for short duration the commercial banks deposit their short term excess funds with the central bank and earn interest on it reverse repo rate is used by the central bank to absorb liquidity from the economic when it feels that there is too much money floating in the market it increases the reverse repo rate meaning that Central Bank will pay higher rate of interest to the banks for depositing money with it.

An increase in the reverse repo rate causes the banks to transfer more funds to the central bank because banks are attractive interest rates and also their money is in safe hands this results in the money be drawn out of the banking system does banks are left with lesser funds.

Thus, by reverse repo rate Central Bank injects equality in the banking system and by increasing the reverse repo rate it absorbs liquidity from the banking system.

- Qualitative or selective credit control measures

these measures adopted by the central bank to control the use of credit they do not affect the inter economy they help to divert the flow of funds to their desirable and product uses these methods are known as selective credit control measures

1. Regulation of margin requirements
2. Regulation of consumers credit
3. Issue of directives
4. Credit rationing
5. Publicity
6. Moral suasion
7. Direct action

Let us study these measures in detail

1. Regulation of margin requirement- Margin requirements to trimming the loan value of collateral security offered by borrower the loan value of a security is the difference between the market value and the machine requirement for example in the market value of 10 grams of gold is 30000 and the margin requirement is 25% then the loan value of 10 grams of gold as collateral security will be 22500 that is 30000 - 7500. Equity shares debentures of the stock companies precious metals Central assets are accepted by banks as collateral security for granting loans. Increase or decrease in watching requirements changes the loan value of security demand for loans can be discouraged by increasing the margin and vice versa. Central Bank has the power to determine the margin requirements it is a very effective instrument used to control speculative activities both in commodity market as well as money and capital market.
2. Regulation of consumer credit- This technique of selective or qualitative credit control is used to regulate the terms and conditions under which consumer installment credit and hire purchase finance is provided by the banks in developed and developing countries substantial part of the credit is used for consumer durable goods make cars motorcycle TV sets refrigerators computers microwave ovens domestic furniture etc. when their purchased on hire purchase or installment credit system Axis as well as insufficient demand for these items disturb the production towards this problem consumer credit is required to be regulated. This method or technique is implemented by determining the minimum down payment and maximum period of the payment that is maximum equated monthly installments EMI in order to check consumer credit the central bank may increase the minimum down payment and to reduce the maximum period of payment by reducing the number of equated monthly installment this week discuss the prospective buyers on the other hand or lower down payment and more number of installments will encourage them.
3. Issue of directives- Recently the central banks have started issuing directives to commercial banks in this method the central bank issues directives in the form of oral or return statements or declarations in the newspaper sepals and warnings in order to follow a particular course of action it may ask commercial banks to be lived in granting loans so that the credit policy followed by them is in harmony with the overall monetary policy followed by the commercial banks
4. Credit rationing-In this method the central bank main poses ceiling on the loans and advances to regulate and control the purpose for which credit is offered by commercial banks this is done so that industries to not indulge in speculation and shortages and black marketing can be avoided under this method the creditors rationed by limiting the amount available to each applicant credit rationing is done during times of quantitative shortage and declining gold reserves.
5. Publicity-Central Bank may employ publicity as an instrument of credit control not only for influencing the credit policies who commercial banks but also to educate

influence public opinion in the country in the words of professor de kock, includes publishing regularly the weekly statements of their assets and liabilities reviews of credit and business conditions and comprehensive annual reports on their operations and activities money market and banking conditions generally public finance trade industry agriculture etc the published literature makes it easy for the commercial bank and public at large to anticipate future changes in the monetary and credit policies of Central Bank. The central bank provides a guideline to commercial banks regarding their credit creation activities.
Quantitative and qualitative methods of credit control are not travels but on the contrary they supplement each other.

6. Moral suasion-Moral suasion implies persuading the commercial banks by the central bank to corporate with it in following a proper credit policy more rigorously. This method of credit control is used by Central Bank in many countries that is a psychological instrument of monetary policy the executive head or governor of the central bank calls meeting of the heads of commercial banks and during the meeting explains the need of adopting a particular monetary policy under prevailing economic conditions and appeals them to operate with the bank in recent years this method has become more effective has the commercial banks are apprehensive of stronger measures that may follow in case they fail to adhere to the central banks appeal.

7. Direct action-Central Bank main technique of direct action against defaulting commercial banks for which has to follow the directions given by it this method can be used to enforce both quantitative and selective or qualitative credit control and is generally used not in isolation but as a supplement to other methods the following modes of direct action may be taken by the central bank. The central bank may refuse her discounting facilities to those commercial banks which may be granted too much credit for speculative and productive purposes in excess of their capital and reserves. The central bank near restraint those from granting advances against the collateral securities of certain commodities. Picnic charge of penal rate of interest on those banks which want to borrow from it beyond prescribed limit. The central bank may threaten a commercial bank to be taken over by debit fails to follow its policies and instructions.

❖ INFLATION AND DEFLATION

❖ INFLATION

If money is to serve its good purpose its value must remain stable. Changes in value of money lead to harmful consequences in the economy at large.
some broad effects of changes in value of money are traced below:

1. Price fluctuations implies that the value of money is unstable. This adversely affect the confidence in money as money fails to serve as a good store of value.

2. Even as a means of payments it loses its growth. It may also become a source of peril and confusion. Since prices of all goods do not change in the same order, the relative price structure is distorted. When prices of necessaries tend to rise while those of luxuries may be falling, there is regressive effect, as the poor consumers suffer, while the rich are benefited while spending their money.

3. Price variations in product and factor markets are not uniform. Thus, the cost-functions and revenues in different categories of production differ. As a result, profitability of firms and industry tend to differ. Marginal productivity of different factors in different uses never tend to be identical when the value of money fluctuates in segregated manner. This obstructs the optimal utilization of resources. This may also cause maladjustment and wastefulness in the exploitation of country's productive resources.

4. When value of money changes incoherently in different types of real and financial assets, assets portfolio management becomes a difficult task. It also distorts the pattern of wealth distribution and position of the wealth holders, Say, for instance, when share prices fall but real estate prices rises, then person who has invested in shares is a looser while person occupying a real estate of the same amount is a gainer. Such changes in different values of wealth due to unstable value of money distorts the pattern of income distribution. Consequently, savings and investment may be adversely affected. It also disturbs business expectations and business planning. Business risks would be high when value of money in not stable.

5. Effects of rising prices in general inflation effects are also different from the effects of falling prices in general the deflation effects. Especially, tempo of growth process and economic development is disturbed due to instability in the value of money. It also adversely affects the course of economic planning and programming both at macro and micro levels. In short, most of such harmful effects are indirectly by the menace of' inflation' and 'deflation.' ion implies declining value of money. Deflation implies rising value of money. We shall therefore, discuss these topics in detail in this chapter.

❖ MEANING OF INFLATION

Inflation is commonly understood as a situation of substantial and rapid general increase in the level of prices and consequent deterioration in the value of money over a period of time. The behavior of general prices is measured through price indices. The trend of price indices is the course of inflation or deflation in the economy. As ***Lerner says, a price rise which is unforeseen and uncorrected is inflationary.***

A FEW DEFINITIONS

Different economists have defined inflation differently. We may, thus, enlist a *few* important definitions of inflation as under which would give us a comprehensive idea about this intricate problem.

Harry Johnson defines inflation as a sustained rise in prices.

Crowther, similarly, defines inflation as "a state in which the value of money is falling for prices are rising."

The common feature of inflation is a price rise, the degree of which may be measured by price indices. ***Edward Shapiro, puts it thus: "Recognizing the ambiguities our words contain, e define inflation simply as a persistent and appreciable rise in the general level of prices."***

Prof. Samuelson puts it thus: "Inflation occurs when the general level of prices and costs is rising."

Authors like Thorp and Quandt, however opine that it is of great help to define inflation in terms of observable phenomenon and for this reason the process of rising prices should be considered as inflation.

There are, at least, two distinct views on the concept of inflation. To some economists, inflation is a pure monetary phenomenon, whi1'to others it is a post-full employment phenomenon.

- Moderate, Galloping and Hyper Inflation

The severity of inflation is often measured in terms of the rapidity of price rise, i.e., the rate of inflation on this basis, a quantitative distinction of inflation may be made into three categories viz

a) Moderate inflation;
b) Running & galloping inflation, and
c) Hyperinflation

a) Moderate Inflation :- It is a mild and tolerable form of inflation. It occurs when prices are rising slowly when the rate of inflation is less than 10 percent annually, or it is a *single* digit annual inflation rate, it is Considered to be a moderate inflation in the Present-day economy. Prof. Samuelson observes that moderate inflation is *typical* today in most industrialized Countries.

The following are the major characteristics of moderate inflation

(i) There is a single digit inflation rate (less than 10percent) annually.

(ii) It does not disrupt the economic balance.

(iii) It is regarded as stable inflation in which the relative prices do not get far out of line.

(iv) People's expectations remain more or less stable under moderate inflation.

(v) Under a low inflation rate, the real interest rate is not too low or negative, so money can serve its role as a store of value without difficulty.

(vi) There are modest inefficiencies associated with moderate inflation.

Economists have arbitrarily laid *down* that a 3-4 per cent price rise per annum is a tolerable rate of inflation in modern economies. Even the Chakravarthi Report of the Reserve Bank of India has accepted 4 per cent rate of inflation annually to be an efficient and tolerable norm for the Indian economy.

Incidentally, Some economists have described up to 3 percent annual rate of inflation as creeping inflation' and if it exceeds 10 per cent, it is called 'walking inflation' This means, Samuelson has clubbed 'creeping' and 'walking' inflation into 'moderate' inflation.

In Samuelson's opinion, moderate inflation is not a serious problem. While some ecol1omis feel that even a walking inflation Should make us more cautious, as it represents a warning signal for the occurrence of running or double digit and eventually a galloping inflation, if it is not checked in time.

b) Running and Galloping Inflation: When the movement of price accelerates rapidly, running inflation emerges. Running inflation may record more than 100 per cent rise in prices over a decade. Thus, when prices rise by more than 10 per cent a year, running inflation occurs. Economists have not described the range of running inflation. But, we may say that a double digit inflation of 10-20 per cent per annum is a running inflation If *it* exceeds that figure, it may be called 'galloping' inflation.

According to Samuelson, when prices are rising at double or triple digit rates *of 20,* 100 or 200 percent a year, the situation may be described as 'galloping' inflation.
Indian economy has witnessed a sort of 'running' and 'galloping' inflation
extent (not exceeding ***25*** percent per annum) during the planning era, since the
Plan period. Argentina, Brazil and Israel, for instance, have experienced inflation
over 100 percent in the eighties.
Galloping inflation is really a serious problem. it causes economic distortions & disturbances.

c) Hyper-inflation: In the case of hyperinflation, prices rise every moment, and the limit to the height to which prices might rise. Therefore, it is difficult to measure it is as prices rise by fits and starts.
In quantitative terms, when prices rise over 1000 per cent in a year, it is called hyper-inflation.
Austria, Hungary, Germany, Poland and Russia witnessed hyper-inflation a wake of World War I.
Hyperinflation notably took place in Germany in 1920-1923. The German price
index rose from 1 to 10, 00,000,000 during January 1922 to November 1923. Believe not, it is a fact!

The main features of hyperinflation are:
i) During hyperinflation, the price rise is severe. The price index moves up by bounds. It is over 1000 per cent per year. There is at least a 50 percent price rise in month, so that in a year it rises to about 130 times.
ii) It represents the most pathetic deterioration in people's purchasing power.
iii) It is apparently generated by a massive fiscal dislocation.
iv) It is amplified by wage-price spiral.
v) Hyperinflation is a monetary disease.
vi) The velocity of circulation of money increases very fast.
vii)The structure of the relative prices of goods become highly unstable.
viii) The real wages tend to decline fast.
ix) Inequalities increase.
x) Overall economic distortions take place.

It must be remembered that the difference between all these four types of inflation is one of degree than of kind. They are species of the genus.

War, Post-war and Peace-time Inflation
On the basis of the nature of time-period of occurrence, we have:
a)war-time inflation;
b)Post-war inflation; and

c)peace-time inflation.

a) War-time inflation- It is the outcome of certain exigencies of war, on account of increased government expenditure on defense which is of an unproductive nature. By such public expenditure, the government apportions a substantial production of goods and services out of total availability for war which causes a downward shift in the supply; as a result, an inflationary gap may develop.

b) Post-war inflation- It is a legacy of war. In the immediate post-war period, it is usually experienced. This may happen when the disposable income of the community increases, when war-time taxation is withdrawn, or public debt is repaid in the post war period.

c) Peace-time inflation- By this is meant the rise in prices during the normal period of peace. Peace-time inflation is often a result of increased government outlays on capital projects having a long gestation period; so a gap between money income and real wage goods develops. In a planning era, thus, when government's expenditure increases, prices may rise.

- COMPREHENSIVE AND SPORADIC INFLATION
  From the coverage or scope point of view, we have:
  a)Comprehensive Or Economy-Wide Inflation,
  B) Sporadic Inflation.

a) Comprehensive Inflation: When prices of every commodity throughout the economy rise, it is called economy-wide or comprehensive inflation, It is a normal inflationary phenomenon and refers to a rise in the general price level.
b) Sporadic Inflation: This *is* a kind of sectional inflation. It consists of cases in which the averages of a group of prices rise because of increases in individual prices due to abnormal shortage of specific goods. When the supply of some goods becomes inelastic, at least temporarily, due to physical or structural constraints, sporadic inflation has its sway. For instance, during drought conditions when there is a failure of crops, food ,grain prices shoot up.
Sporadic inflation is a situation in which direct price control, if ally used, is most likely to be beneficial to the community at large.

- Open and Repressed Inflation
  An inflation is open or repressed according to the government's reaction to the prevalence of inflationary forces in the economy.

a) Open Inflation:- When the government does not attempt to prevent price rise is said to be open. Thus, inflation is open when prices rise without any interruption. In open inflation, the free market mechanism is permitted to fulfill its historic
the short supply of goods and distribute them according to consumer's ability to pay. Therefore, the essential characteristics of an open inflation lie in the *operation of price mechanism* as the sole distributing agent. The post-war hyper-inflation during the twenties in Germany is a living example of open inflation.

b) Repressed Inflation: - When the government interrupts a price rise there is repressed or suppressed inflation. Thus, suppressed inflation refers to those conditions in which price

increases are prevented at the present time through an adoption of certain measures like price controls and rationing by the government, but they rise on the removals of such controls and rationing. The essential characteristic of repressed inflation, in contrast to open inflation, is that the former seeks to prevent distribution through market mechanism and substitutes instead a distribution system based the administration of controls is an important feature of suppressed inflation. However, many economists like Milton Friedman and G.N. Halm opine that any inflation, it is better open than suppressed. Suppressed inflation is condemned as a number of evils like black market, hierarchy of price controllers and rationing officers & uneconomic diversion of productive resources from essential industries to non-essential or less essential goods industries since there is a free price movement in the latter and hence more profitable to investors.

Types of Inflation based on the causes inducing inflation

According to the causes of rising prices, one can consider several types of inflation as follows:-

a)Credit Inflation:- Inflation which is caused by excessive expansion of bank credit or money supply is referred to as credit or money inflation.

b) Deficit Inflation:- It is the inflation caused by deficit financing.

When the government budgets contain heavy deficit financing, through new money, the purchasing power in the community increases and prices rise may be referred to as deficit-induced, inflation. During a planning era, when government launches upon heavy investment, it usually resorts to deficit financing, when resources are not found. An inflationary spiral develops due to deficit financing. When the production of consumption goods fails to keep pace with the increase money expenditure.

c) Scarcity Inflation:- Whenever scarcity of real goods occurs or may be artificially created by the hoarding activities of unscrupulous traders and speculators *w* result into black-marketing, thereby causing prices to go up, such type of inflation be described as scarcity inflation.

d) Profit Inflation:- In his recent book, Growth-less Inflation by Means of Money, Prof. Brahmananda mentions profit inflation as an unique category of inflation.

The concept of profit inflation was originated by Keynes in his 'Treatise on money'.

According to Keynes, the price level of consumption goods is a function of the investment exceeding savings. He considered the investment boom as a reflection of profit boom. Inflation is unjust in its distribution effect, it redistributes income in favor of profiteers and against the wage- earning class. During inflation, thus, the entrepreneur class may tend to expect an upward shifting of the marginal efficiency of capital (MEC); hence, entrepreneurs are induced to invest more even by borrowing at higher interest rates. Eventually, investment exceeds savings and economy tends to reach a higher level of money income equilibrium. lf economy is operating at full employment level or *if* there are bottlenecks of market imperfections, real output will not rise Proportionately so the imbalance between money income and real income is corrected through rising prices.

e) Foreign Trade induced Inflation:- For an international economy, we may categories the following two types of inflation as being caused by factors pertaining to the balance of payments:

I) Export Boom Inflation; and

II) Import Price-hi*ke* Inflation

I) Export Boom Inflation:- When a Country having a sizeable export component in its foreign trade experiences a sudden rise in the demand for its exportable against the inelastic supply of exportable in the domestic market, it obviously implies an excessive pressure of demand which *IS* revealed in terms of persistent inflation at home.
Again, trade gains and sudden influx of exchange remittances may lead to an increase in monetary liabilities which is further reflected in the rising pressure of demand for domestic output causing an inflationary spiral to get further momentum Such a permanent case for an export boom inflation is, however, ruled out in the Indian economy because neither export trade is a significant portion of Domestic National Product nor is there a continuous boom of export- demand, causing terms of trade to move up favorably all the time.

II) Import Price hike Inflation:- When prices of import components rise due to inflation abroad, the domestic Costs and prices of goods using these imported parts vil1 tend to rise. Such an inflation is referred to as imported inflation. For Instance, hike in oil prices by the Arab Countries was responsible for accelerating inflation, price rise in many Oil-importing countries, including India to some extent.

f) Tax Inflation:- Year to year increase in commodity taxation such as excise duties and sales tax may lead to rise in prices of taxed goods. Such an inflation is termed as tax inflation or tax-induced inflation.

g) Cost inflation:- When inflation emerges on account of a rise in cost factor, it is called cost inflation. It occurs when money incomes (wage rate, particularly) expand more than real Productivity Cost inflation has its Course through the level of money costs of the factors of production and in particular through the level of wage rates. Due to a rising cost of living index, workers demand higher wages, and higher wages in their turn increase the cost of production which a producer generally meets by raising prices: This process of spiraling may reach higher and higher levels. In this case, however cyclical anti-inflation remedies of monetary controls are not relatively effective. Wage inflation is an important variant of cost inflation. Wage- push inflation occurs when money wages are raised without corresponding improvement in the productivity of the workers.

h) Demand Inflation:- When there is an excess of aggregate demand against the aggregate supply of goods and *services,* prices tend to rise. It is called demand-inflation. Population-growth, rising money income, etc. forces play a significant role in generating demand inflation

❖ CAUSES OF INFLATION

Inflation is a complex phenomenon which cannot be attributed to a single factor. The causes of inflation are:

1. **Over-expansion of Money Supply-**Many a time, a remarkable degree of correlation between the increase in money and the rise in the price level may be observed.
2. **Expansion of Bank Credit-**Rapid expansion of bank credit is also responsible for the inflationary trend in a country.

3. **Deficit Financing-**The high doses of deficit financing which may cause reckless spending, may also to the growth of the inflationary spiral in a country.

4. **Ordinary Monetary Factors**
   Among other monetary factors influencing the price trend in an economy, the major are listed here:
   a) High Non-development Expenditure- The continuous increase in public expenditure and especially the growth of defense and non- development expenditure.
   b) Huge Plan Investment- The huge planned investment and its high rate of growth every plan may lead to an excess demand in the capital goods sector, so that - prices may rise.
   c) Black Money- Some economists have condemned black nr in the hands of tax and black marketers as an important of inflation in a country. Black money enc' lavish spending, which causes excess demand and a rise in prices.
   d) High Indirect Taxes- Incidence of high commodity taxation. Prices tend to rise on account of high excise duties imposed by the Government on raw materials and e goods.

5. Non-Monetary Factors-There are various non-monetary and structural factors that may cause a trend in a country. Those are:
a) A High Population Growth- Undoubtedly, the rising pressure of demand resulting from the growth of population and money income, will cause a high price rise in an over-populated country.
b) Natural Calamities and Bad Weather Conditions- Vagaries of monsoons, bad weather conditions, droughts and failure of agricultural crops have been responsible for price Spurts, from time to time, in many underdeveloped Countries Agriculture prices are most Sensitive to inflationary forces in India. Natural calamities also contribute occasionally to the inflationary boost in a country. Events such as Cyclones and floods, which destroy village economies also aggravate the inflationary pressure.
c) Speculation and Hoarding- Hoarding and Speculative activities, corruption at every level, in both Private and *public* sectors, etc., are also responsible to some extent for aggravating inflation in a Country.
d) High Prices of Imports- Inflation has also been *inflicted* on some Countries through the import content used by their industries Prices of petroleum products have been increased in many Countries due to price-hikes by the oil-producing Countries.
e) Monopolies – Monopoly profits and unfair trade practices by big industrial houses are also responsible for the price rise in Countries like India.

f) Underutilization of Resources- Non-utilization of installed capacities in large industries is also a Con tributary factor to inflation.
Inflation in the country may be regarded as a symptom of a deep- seated malady, born of structural deficiencies involved in the functioning of its economic system, which is

characterized by inherent weaknesses wastages, and imbalances

6. Gaps and Bottlenecks-To understand the true nature of inflation in an underdeveloped Country, One has to exam Inc the bottlenecks and gaps of various types which obstruct the normal growth process, causing prices to rise with the generation of money Income without an appropriate rise in real income. These gaps Or bottlenecks may be enlisted as follows
a) Market Imperfections- Market imperfection, is like factor immobility, price rigidity, ignorance of market Conditions rigid social and institutional structures and lack of specialization and training in underdeveloped economies do not allow an Optimum allocation, and utilization of resources Hence, increase in money supply and increased money Income remain unaccompanied by increased Supply of real output, causing a net price rise of an inflationary nature in these economies.

b) Capital Bottleneck- On account of a very low rate of cap ital formation and consequent capital deficiency, a poor Country is caught *in a* vicious circle of poverty and any excessive money supply instead of breaking this vicious circle, tends to create a chronic inflationary spiral. Thus, in a poor Country, there is inflation because by virtue of its internal backwardness it is prone to chronic inflation.

c) Entrepreneurial Bottleneck- Entrepreneur in underdeveloped Countries lack skill, spirit of boldness and adventure They prefer trading on safer traditional investments rather than attempt risky innovations Absence of adequate industrial capital, prevalence of merchant capital and a Colossal amount of private investments in such unproductive fields as land, jewelry gold, etc., which is a gross Socio-economic waste, starves the developing economy of its much-needed capital resources. Thus, increased money supply or savings in terms of money makes little impact on real output and monetary equilibrium is just attained through a galloping price rise in the various sectors of the economy.

d) Food Bottleneck- Due to slowgrowth of agriculture overpressure of growing Population on land, primitive methods of cultivation, defective land tenure system lack of adequate irrigation facilities and many other reasons, agriculture output. Food supply which constitutes a large part of wage-goods, has failed to keep the growing demand for it from the growing population and increased rural ci in the rural industrialization process in these countries. This food bottleneck has the problem of price rise in food grains, and it has become the cornerstone in the whole of price-structure in the developing economies.

e) Infrastructural Bottlenecks- These refer to power shortages and inadequate transport facilities in underdeveloped economies. Infrastructural bottlenecks restrict the growth process in industrial, agricultural and commercial sectors underutilization of capacity in the economy as a whole. Under-utilization of does not absorb the full increase in money supply and reflects upon the rising prices.

f) Foreign Exchange Bottleneck- Developing economies stiffer from a fund structural disequilibrium in the balance of payments due to high imports and low on unfavorable terms of trade; hence, they usually suffer from foreign exchange scarcity problem. In recent years, day to day, rising import bills due to high oil prices have aggravated the problem further. This foreign exchange bottleneck comes in the way of necessary imports to domestic inflation. Again, the need to boost exports to meet the growing deficits balance of payments puts an extra pressure on the marketable surplus me domestic requirements, This eventually leads to a heavy price rise of commodities in the domestic market.

g) Resources Gap- When the public sector is widely expanded for industrial development in these countries, the government aggravates the problem of resources gap. The backward

socio- economic-political structure of the less developed co' government always finds it difficult to raise sufficient resources through taxation, borrowings and profit of State enterprises, to meet the ever-increasing public e in intensive-and extensive dimensions. As such, under the pressure of the gap, the government has to resort to a heavy dose of deficit financing, despite its dangers. This makes the economy inflation-prone. Similarly, the resource gap private sector, caused by low' voluntary savings and high-cost economy, pre over-expansion of money supply through bank credit which, by and large, results in the acceleration of inflationary spiral in the economy.

➢ Effects of Inflation

Inflation has direct socio-economic consequences. As such, inflation has been taken serious social and economic problem. U.S. Presidents Ford and Carter have considered Inflation as public enemy number one.

- Economic Effects of Inflation

  The effects of inflation on the economic system may be classified into three kinds: (1)on production, that is, changes in the tempo of economic activity, (2) effects on income distribution that is, re-distribution of income and wealth, and (3) effects on consumption and welfare.

- Effects on Production

  Keynes argues that a moderate rise in prices, that is, a mild inflation, or creeping inflation it may be called, has a favorable effect on production when there are unutilized or under-employed resources in existence in an economy. Rising prices breed optimistic expectations within the community in view of increasing profit margins, because the price level moves up at a faster rate than, the cost of production. Businessmen are induced to invest more, and as a result, employment, output and income increase. The tempo of economic activity starts rising. But, there is a limit to it. This limit is set by the full employment ceiling. Once the full employment stage is reached in the economy a further rise in prices will not stimulate production, employment and real income, due to physical limitations. Therefore, till the level of full employment is reached, moderately rising prices, though otherwise harmful, are also beneficial. The beneficial effect on production, however, is possible only when inflation does not take place at too fast a rate. A state of running of galloping inflation creates uncertainty, which is inimical to production. Thus, when inflation has reached an advanced stage, its brighter aspects disappear and the evil aspects manifest themselves.

  The disastrous consequences of inflation on the economic system may be stated briefly as under:

  (a) Maladjustments- Inflation leads to maladjustments in production and disrupts the working of the price system, which is ruinous to the entire system.

  (b)Hindrance to capital accumulation- Capital accumulation is hindered by uncontrolled inflation, and the savings potentiality of the community also declines due to the diminishing purchasing power of money.

  (C) Speculation- Since excessive inflation disturbs all economic relationships and leads to uncertainty, as a result the skills and energies of the business community are concentrated on speculation,

  (d) Hoarding and black-marketing- During inflation, when prices are rapidly rising, and the holding of larger stocks of goods becomes very profitable. Hoarding is encouraged, which further decreases the available supply of goods in relation to increasing monetary demand. Eventually, the phenomena of black-marketing and spiraling inflation develop.

(e)Distortion of production pattern- Inflation not only adversely affects the volume of production but also changes its pattern. Generally, resources are diverted from the production of essential goods to those of non-essential because the rich, whose incomes increase more rapidly, make their demand for luxury goods felt in the market. Production of undesirable lines is, therefore, stimulated and finally results in the breakdown of the economic system.

(f) Creation of a sellers' market- Inflation tends to create a seller's market. As a result, sellers have a command on prices because of excessive demand in the market. Anything can be sold in such a market. Sellers do not care for quality, their interest is in high profits only.

(g)Distortions in resource allocation- Inflation will, turn resource a1locatioi away from longer term productive investments and towards unproductive assets like housing, real estate, inventories, gold, etc. Such a diversification of savings tends to inhibit the future capacity to grow.

(h)Disincentive effects due to income-tax bracket creep- During inflation, with the rise in money incomes of the individuals under progressive income tax system, the effective tax rate will rise (called 'income-tax Bracket Creep'). This may cause a disincentive effect on willingness to work, save and invest, thus, discouraging productive activity.

- **Effects on Distribution**

  Inflation redistributes income, because prices of all factors do not rise in the same proportion.

  The effect of inflation on the income of different classes of earners varies, there are serious social consequences. During inflation, the distributive share accruing to the profiteers *increases* more than that of wage earners or fixed-income earners, such as the *rentier* class. All producers, traders and speculators gain during an inflation because of the windfall profits which arise, because prices rise at a faster and higher rate than the cost of production; wages, interest and rent do not increase rapidly, and are more or less fixed. Moreover, profits increase because there is between a rise prices and rise in the cost of production. Businessmen always find the money of their inventories going up because the general price level rises. In general, inflation enlarges money Incomes in the hands of the flexible groups, and adversely affects people in the fixed income groups, such as pensioners, government employees, salaried classes, such as teachers, clerks some extent labourers or wage earners. Among wage earners or the labour class, those who are well organized are hit less than others.

  Changes in the value of money also cause re-distribution of wealth, partly because,

  (a) inflation, there is no uniform price rise; prices of some types of goods change more than others &

  (b) debts are expressed in terms of money. Inflation is a sort of hidden tax, steeply re effect. The redistribution of wealth due to inflation is a burden on those groups of people least able to bear it. Let us study the Concrete effects of inflation on various economic

(a)Debtors and creditors- Debtors generally again and creditors lose during an *inflation.* Gain accrues to a debtor because he repays loans at a time when the purchasing power of money is lower than when it was borrowed. The creditor, on the other hand, is an I during inflation, since he receives, in effect, less in goods and services than he v' received in times of low prices. Thus, borrowers who borrowed funds prior to in stand to gain by inflation, and creditors who lent funds lose. However, this does not that debtors always welcome inflation because, usually, the' are members of one oft— group of people who are adversely affected

by inflation.

(b)Business community. Inflation is welcomed by entrepreneurs and businessmen they stand to profit by rising prices. They find that the value of their inventories of an goods is rising in money terms. They also find that prices are rising faster than of production, so that their profit margin is greatly enhanced. The business Co. therefore, gets supernatural profits during period of inflation, and those profits co increase as long as price rise. However, the producers of conventionally priced gc services, such as electricity and transport services, gain very little or not at ai inflation, because the prices of their goods are fixed by convention or by law.

❖ DEFLATION

Definition: When the overall price level decreases so that inflation rate becomes negative, it is called deflation. It is the opposite of the often-encountered inflation.

- **What Causes Deflation?**

- Deflation can be caused by a number of factors, all of which stem from a shift in the supply-demand curve. Remember, the prices of all goods and services are heavily affected by a change in the supply and demand, which means that if demand drops in relation to supply, prices will have to drop accordingly. Also, a change in the supply and demand of a nation's currency plays an instrumental role in setting the prices of the country's goods and services. Although there are many reasons why deflation may take place, the following causes seem to play the largest roles:

1. Change in Structure of Capital Markets

When many different companies are selling the same goods or services, they will typically lower their prices as a means to compete. Often, the capital structure of the economy will change and companies will have easier access to debt and equity markets, which they can use to fund new businesses or improve productivity. There are multiple reasons why companies will have an easier time raising capital, such as declining interest rates, changing banking policies, or a change in investors' aversion to risk. However, after they have utilized this new capital to increase productivity, they are going to have to reduce their prices to reflect the increased supply of products, which can result in deflation.

2. Increased Productivity Innovative solutions and new processes help increase efficiency, which ultimately leads to lower prices. Although some innovations only affect the productivity of certain industries, others may have a profound effect on the entire economy. For example, after the Soviet Union collapsed in 1991, many of the countries that formed as a result struggled to get back on track. In order to make a living, many citizens were willing to work for very low prices, and as companies in the United States outsourced work to these countries, they were able to significantly reduce their operating expenses and bolster productivity. Inevitably, this increased the supply of goods and decreased their cost, which led to a period of deflation near the end of the 20th century.

3. Decrease in Currency Supply As the currency supply decreases, prices will decrease so that people can afford goods. How can currency supplies decrease? One common reason is through central banking systems. For instance, when the Federal Reserve was first created, it considerably contracted the money supply of the United States. In the process, this led to a severe case of deflation in 1913. Also, in many economies, spending is often completed on credit. Clearly, when creditors pull the plug on lending money, customers will spend less, forcing sellers to lower their prices to regain sales.

4. Austerity Measures Deflation can be the result of decreased governmental, business, or consumer spending, which means government spending cuts can lead to periods of significant deflation. For example, when Spain initiated austerity measures in 2010, preexisting deflation began to spiral out of control.

5. Deflationary Spiral Once deflation has shown its ugly head, it can be very difficult to get the economy under control for a number of reasons. First of all, when consumers start cutting spending, business profits decrease. Unfortunately, this means that businesses have to reduce wages and cut their own purchases. In turn, this short-circuits spending in other sectors, as other businesses and wage-earners have less money to spend. As horrible as this sounds, it continues to get worse and the cycle can be very difficult to break.

SUPPLY CONCEPT

- Effects of Deflation
  Deflation can be compared to a terrible winter: The damage can be intense and be experienced for many seasons afterwards. Unfortunately, some nations never fully recover from the damage caused by deflation. Hong Kong, for example, never recovered from the deflationary effects that gripped the Asian economy in 2002.

Deflation may have any of the following impacts on an economy:

1. Reduced Business Revenues

Businesses must significantly reduce the prices of their products in order to stay competitive. Obviously, as they reduce their prices, their revenues start to drop. Business revenues frequently fall and recover, but deflationary cycles tend to repeat themselves multiple times. Unfortunately, this means businesses will need to increasingly cut their prices as the period of deflation continues. Although these businesses operate with improved production efficiency, their profit margins will eventually drop, as savings from material costs are offset by reduced revenues.

2. Wage Cutbacks and Layoffs
When revenues start to drop, companies need to find ways to reduce their expenses to meet their bottom line. They can make these cuts by reducing wages and cutting positions. Understandably, this exacerbates the cycle of inflation, as more would-be consumers have less to spend.

3. Changes in Customer Spending The relationship between deflation and consumer spending is complex and often difficult to predict. When the economy undergoes a period of deflation, customers often take advantage of the substantially lower prices. Initially, consumer spending may increase greatly; however, once businesses start looking for ways to bolster their bottom line, consumers who have lost their jobs or taken pay cuts must start reducing their spending as well. Of course, when they reduce their spending, the cycle of deflation worsens.

4. Reduced Stake in Investments
When the economy goes through a series of deflation, investors tend to view cash as one of their best possible investments. Investors will watch their money grow simply by holding onto it. Additionally, the interest rates investors earn often decrease significantly as central banks attempt to fight deflation by reducing interest rates, which in turn reduces the amount of money they have available for spending. In the meantime, many other investments may yield a negative return or are highly volatile, since investors are scared and companies aren't posting profits. As investors pull out of stocks, the stock market inevitably drops.

5. Reduced Credit
When deflation rears its head, financial lenders quickly start to pull the plugs on many of their lending operations for a variety of reasons. First of all, as assets such as houses decline in value, customers cannot back their debt with the same collateral. In the event a borrower is unable to make their debt obligations, the lenders will be unable to recover their full investment through foreclosures or property seizures.

Also, lenders realize the financial position of borrowers is more likely to change as employers start cutting their workforce. Central banks will try to reduce interest rates to encourage customers to borrow and spend more, but many of them will still not be eligible for loans.

- ECONOMIC CRISIS TO FIX DEFLATION Fortunately, it is possible to reduce the impact of deflation. However, fighting deflation requires a

disciplined approach, as it will not fix itself. Prior to the Great Depression, it was commonly believed that deflation would eventually run its course. However, economists suggested government intervention was necessary to break a deflationary spiral. During the Great Depression, the government attempted different methods to fight deflation, most of which proved ineffective. For example, President Franklin D. Roosevelt believed that deflation was caused by an oversupply of goods and services, so he attempted to reduce the supply of resources on the market. One way he tried to do this was to purchase farmland so farmers could not produce as many crops to sell in the marketplace. However, these kinds of "solutions" only further damaged the economy, possibly worsening the deflationary spiral.

Central banks have a considerable influence over the direction of inflation and deflation by changing the nation's monetary supply. For example, the Federal Reserve has engaged in quantitative easing as a means to prevent deflation. Although increasing the nation's monetary supply too much could create excessive inflation, a moderate expansion in the nation's monetary base could be an effective means of fighting deflation.

The central banks' efforts to fight deflation are effective in some instances, but not in others. The biggest limitation with central bank policies is that they can only decrease interest rates until they are near 0%. After reducing interest as much as possible, central banks no longer have a large bevy of solutions available to them. In fact, there still exists no clear-cut, foolproof way to address deflation.

Historical Examples of Deflation

Although deflation is a rare occurrence in the course of an economy, it is a phenomenon that has occurred a number of times throughout history. Among others, these are incidences in which deflation has occurred:

1. Expansion of Industrial Revolution

During the late 19th century, manufacturers took advantage of new technology that allowed them to increase their productivity. As a result, the supply of goods in the economy increased substantially, and consequently, the prices of those goods decreased. Although the increase in the level of productivity after the Industrial Revolution was a positive development for the economy, it also led to a period of deflation.

2. Great Depression

The Great Depression was the most financially trying time in American history. During this dark era in history, unemployment spiked, the stock market crashed, and consumers lost much of their savings. Also, employees in high production industries such as farming and mining were producing a great amount, but not getting paid accordingly. As a result, they had less money to spend and were unable to afford basic commodities, even in spite of how much vendors were forced to reduce prices.

Great depression unemployed men queued outside. Depression of 1920-1921

About eight years prior to the onset of the Great Depression, the United States underwent a shorter depression while recovering from the aftermath of World War I. During this time, a million members of the Armed Forces returned to civilian life, and employers hired a number of returning troops at reduced wages. The labor market was already very tight before they returned, and due to the expansion in the workforce, unions lost much of their bargaining power and were unable to demand higher wages, which resulted in reduced spending.

4. European Debt Crisis

The debt crisis in Europe is causing a number of complications for the global economy. In response to this crisis, governments have implemented austerity measures, such as cutting government assistance to needy families. However, these measures have reduced GDP considerably. Also, the banks have contracted their credit, which has reduced the money supply within the country. As a result, Europe is undergoing massive deflation.

- Difference Between Fiscal Policy and Monetary Policy

Fiscal vs Monetary policy

The economic position of a country can be monitored, controlled and regulated by the sound economic policies. The fiscal and monetary policies of the nation are the two measures, which can help in bringing stability and developing smoothly. Fiscal policy is the policy relating to government revenues from taxes and expenditure on various projects. Monetary Policy, on the other hand, is mainly concerned with the flow of money in the economy.

Fiscal policy alludes to the government's scheme of taxation, expenditure and various financial operations, to attain the objectives of the economy. On the other hand, monetary policy, scheme carried out by the financial institutions like the Central Bank, to manage the flow of credit in the country's economy. Here, in this article, we provide you all the differences between the fiscal policy and monetary policy, in tabular form

- BASIS FOR COMPARISON

FISCAL POLICY & MONETARY POLICY

Meaning

"The tool used by the government in which it uses its tax revenue and expenditure policies to affect the economy is known as **Fiscal Policy"***.*

"The tool used by the central bank to regulate the money supply in the economy is known as **Monetary Policy"***.*

Administered by	*Ministry of Finance*	*Central bank*
Nature	*The fiscal policy changes every year.*	*The change in monetary policy depends on the economic status of the nation.*
Related to	*Government Revenue & Expenditure*	*Banks & Credit Control*
Focuses on	*Economic Growth*	*Economic Stability*
Policy instruments	*Tax rates and government spending*	*Interest rates and credit ratios*

Political influence	*Yes*	*No*

- Definition of Fiscal Policy

  When the government of a country employs its tax revenue and expenditure policies to influence the overall demand and supply for commodities and services in the nation's economy is known as Fiscal Policy. It is a strategy used by the government to maintain the equilibrium between government receipts through various sources and spending over different projects. The fiscal policy of a country is announced by the finance minister through budget every year.

  If the revenue exceeds expenditure, then this situation is known as fiscal surplus, whereas if the expenditure is greater than the revenue, it is known as the fiscal deficit. The main objective of the fiscal policy is to bring stability, reduce unemployment and growth of the economy. The instruments used in the Fiscal Policy are the level of taxation & its composition and expenditure on various projects. There are two types of fiscal policy, they are:

Expansionary Fiscal Policy: The policy in which the government minimizes taxes and increase public spending.

Contractionary Fiscal Policy: The policy in which the government increases taxes and reduce public expenditure.

- Definition of Monetary Policy

  Monetary Policy is a strategy used by the Central Bank to control and regulate the money supply in an economy. It is also known as credit policy. In India, the Reserve Bank of India looks after the circulation of money in the economy.

There are two types of monetary policies, i.e. expansionary and contractionary. *The policy in which the money supply is increased along with minimization of interest rates is known as Expansionary Monetary Policy. On the other hand, if there is a decrease in money supply and rise in interest rates, that policy is regarded as Contractionary Monetary Policy.*

The primary purposes of the monetary policy include bringing price stability, controlling inflation, strengthening the banking system, economic growth, etc. The monetary policy focuses on all the matters which have an influence on the composition of money, circulation of credit, interest rate structure. The measures adopted by the apex bank to control credit in the economy are broadly classified into two categories:

- General Measures (Quantitative Measures):

1. *Bank Rate*
2. *Reserve Requirements i.e. CRR, SLR, etc.*
3. *Repo Rate Reverse Repo Rate*
4. *Open market operations*
5. *Selective Measures (Qualitative Measures):*
6. *Credit Regulation*
7. *Moral persuasion*
8. *Direct Action*
9. *Issue of directives*

- *Key Differences Between Fiscal Policy and Monetary Policy*

The following are the major differences between fiscal policy and monetary policy.

The policy of the government in which it utilizes its tax revenue and expenditure policy to influence the aggregate demand and supply for products and services the economy is known as *Fiscal Policy.* The policy through which the central bank controls and regulates the supply of money in the economy is known as Fiscal Policy is carried out by the Ministry of Finance whereas the Monetary Policy is administered by the Central Bank of the country.

- *Fiscal Policy is made for a short duration, normally one year, while the Monetary Policy lasts longer.*
- *Fiscal Policy gives direction to the economy. On the other hand, Monetary Policy brings price stability.*
- *Fiscal Policy is concerned with government revenue and expenditure, but Monetary Policy is concerned with borrowing and financial arrangement.*
- *The major instrument of fiscal policy is tax rates and government spending. Conversely, interest rates and credit ratios are the tools of Monetary Policy.*
- *Political influence is there in fiscal policy. However, this is not in the case of monetary policy.*

- Conclusion

The main reason of confusion and bewilderment between fiscal policy and monetary policy is that the aim of both the policies is same. The policies are formulated and implemented to bring stability and growth in the economy. The most significant difference between the two is that fiscal policy is made by the government of the respective country whereas the central bank creates the monetary policy.

❖ SAVINGS & INVESTMENT

Saving is income not spent, or deferred consumption. Methods of saving include putting money aside in, for example, a deposit account, a pension account, an investment fund, or as cash.[1] Saving also involves reducing expenditures, such as recurring costs. In terms of personal finance, saving generally specifies low-risk preservation of money, as in a deposit account, versus investment, wherein risk is a lot higher; in economics m Determinants of Saving

There are a number of **determinants of saving**. These determinants are the major forces that shape the economic scenario of a country. At the same time, determinants of saving are also responsible for the development or downfall of the investment sector of a country.
There are a number of factors that are termed as the **determinants of savings**. Some of these factors are the demographics of the particular region or country. At the same time, there are the income ratios that play an important role for the development or downfall of savings rate.

Along with the income level, the production level or the productivity is also related to the savings rate of a country. Along with these, the factor of consumerism is also among the important determinants of saving rates.

Consumerism is dominating the modern society and because of the availability of numerous opportunities of borrowing, individuals are now able to spend as much as they like. Now, the increased availability of borrowing opportunities is stimulating the process of debt creation and because of this, individuals are saving less.
This in turn is creating problems for the individuals as well as for the economy.

There are some other factors also that are related to the savings rate and can be termed as determinants of saving. Among these, there are the uncertainties that are related to the economies of almost every country and this is particularly true for the developing countries all over the world. Again, the price difference between the domestic goods and the foreign goods also influences the savings rate. Public Finance is another important factor for savings.

Some financial decisions of the public sector also play an important role as the determinants of savings. The percentages of children and old people are also among the determinants of savings. This section of a country's population is not expected to generate income. Because of this, the portion is dependent on the remaining part of the population for maintaining their livelihood. All these factors cause the saving capacity of the workforce to come down to a certain level.

At the same time, there are the factors like real interest rates and the inflation rates that are also among the important determinants of saving.

OR broadly, *it refers to any income not used for immediate consumption.*

- Saving Factors, Factors of Saving *The various factors affecting savings decision play a major role in influencing the savings plans of individuals. There are a number of reasons that influence the savings decisions both at the microeconomic and macroeconomic level. The various measures that work on the savings decisions try to explain the tendency of people to consume or save.*
  Opportunity cost is one of the major factors affecting savings decision. Opportunity cost refers to the alternative cost that should be waived while consuming certain product or service. In other words it can also be said that the opportunity cost is actually a benefit that is enjoyed by the purchaser over certain alternative action.n

Generally the opportunity cost is expressed as the relative price of one choice to another. The concept of opportunity cost affects the decision of savings of an individual gravely. Before going for purchasing a good or service the individual thinks about the opportunity cost of that particular purchase and hence decides on saving.
Another important factor that affects the savings decision is the theory of diminishing returns. Also known as the diminishing marginal returns, the diminishing return says that after a certain point, the additional variable input unit does not yield the same but rather yields less additional output.
In other way it can also be said that creating a single unit actually costs more variable inputs. This theory affects the decision making concept of individual and says that after a certain point the consumer prefers to save rather than going for more consumption.
Economies of scale refers to a process of production where, if there is an increase in the scale of the firm, the long run average cost is decreased for each unit. The two of the most

popular ways of achieving the economies of scale are – low fixed cost and decreasing marginal cost and constant marginal cost. This 'economies of scale' theory influences a firm's decision to save or invest.

- Investment Demand: Types, Meaning and Determinants! Levels of national income and employment in the short run depend upon the level of aggregate demand. In the Keynes's two sector model aggregate demand consists of two constituents-consumption demand and investment demand. Since consumption function is more or less stable in the short run, investment demand is of crucial importance in the determination of income and employment.

Types: Investment is of three types:
(1) Business Fixed Investment (i.e. investment in fixed capital, such as machines, tools)
(2) Residential Investment i.e., investment in building of houses) &
(3) Inventory Investment (i.e. investment in building stocks of goods and raw materials).
The greater the level of investment, the greater the level of income and employment. According to Keynes, the equilibrium of a capitalist economy is generally not established at the level of full employment, primarily because investment demand is insufficient to fill up the saving gap corresponding to the level of full employment. Therefore, underemployment equilibrium, on which Keynes laid a great stress, is due to the lack of investment demand as compared to the amount of saving at full-employment level of income.

On the other hand, as Keynes later showed, when investment demand is more than the magnitude of saving at full-employment level of income, there emerges an inflationary gap in the economy which brings about the rise in general price level. We thus see that investment demand plays a vital role in the determination of national income, employment and prices in the country.

- Meaning of Investment:
  It is useful to make the meaning of investment clear. When a person buys shares, bonds or debentures of a public limited company from the market, it is generally said that he has made investment. But this is not the real investment which determines income and employment in the country and with which we are here concerned. Buying of existing shares and bonds by an individual is merely a financial investment.

When one individual purchases the shares or bonds, some other one would sell them. Thus, the purchase and sale of the shares merely represents the change in the ownership of assets which already exists rather the creation of new capital assets. It is the new addition to the stock of physical capital such as plant, machines, trucks, new factories and so on that creates income and employment. Therefore, by real investment we mean the addition to the stock of physical capital.

Thus, in economics, investment means the new expenditure incurred on addition of capital goods such as machines, buildings, equipment, tools, etc. The addition to the stock of physical capital i.e., net investment raises the level of aggregate demand which brings about addition to the level of income and employment in the economy. Keynes and many other economists also include the increase in the inventories of consumer goods in the capital of the country and therefore in the investment.

- Autonomous Investment and Induced Investment:
  After Keynes two types of investments have been distinguished. One is autonomous investment and the second is induced investment. By autonomous investment we mean the investment which does not change with the changes in the income level

and is therefore independent of income. Keynes thought that the level of investment depends upon marginal efficiency of capital and the rate of interest. He thought changes in income level will not affect investment. This view of Keynes is based upon his preoccupation with short-run problem.

He was of the opinion that changes in income level will affect investment only in the long ran. Therefore, considering as he was the short-ran problem he treated investment as independent of the changes in the income level. In fact the distinction between autonomous investment and induced investment has been made by post-Keynesian economists. Autonomous investment refers to the investment which does not depend upon changes in the income level. This autonomous investment generally takes place in houses, roads, public undertakings and in other types of economic infrastructure such as power, transport and communication.

This autonomous investment depends more on population growth and technical progress than on the level of income. Most of the investment undertaken by Government is of the autonomous nature. The investment undertaken by Government in various development projects to accelerate economic growth of the country is of autonomous type. The autonomous investment is depicted in Fig. 8.1 where it will be seen that whatever the level of national income, investment remains the same at I_a. Therefore the autonomous investment curve is a horizontal straight line.

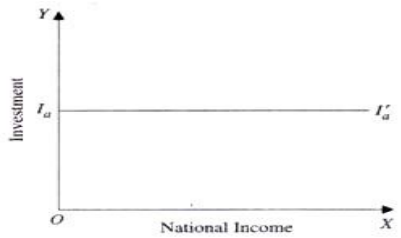


Fig. 8.1. *Autonomous Investment*

On the other hand, induced investment is that investment which is affected by the changes in the level of income. The greater the level of income, the larger will be the consumption of the community. In order to produce more consumer goods, more investment has to be made in capital goods so that greater output of consumer goods becomes possible. Keynes regarded rate of interest as a factor determining induced investment but the empirical evidence gathered so far suggests that induced investment depends more on income than on the rate of interest.

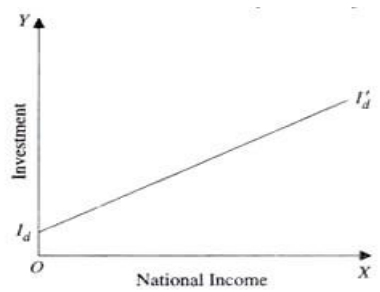


Fig. 8.2. *Induced Investment*

Induced investment is shown in Fig. 8.2 where it will be seen that with the increase in national income, induced investment is increasing. Increase in national income implies that demand for output of goods and services increases. To produce greater output, more capital goods are required to produce them. To have more capital goods more investment has to be undertaken. This induced investment is undertaken both in fixed capital assets and in inventories.

The essence of induced investment is that greater income and therefore greater aggregate demand affects the level of investment in the economy. The induced investment underlines

the concept of the principle of accelerator, which is highly useful in explaining the occurrence of trade cycles.

- **Determinants of Investment:**
  Inducement to invest or investment demand depends upon two factors:

(1) Expected rate of profits to which Keynes gives the name Marginal Efficiency of Capital, and

(2) The rate of interest. It can be easily shown that investment is determined by expected rate of profit and the rate of interest.

A person having an amount of savings has two alternatives before him. Either he should invest his savings in machines, factories, etc., or he can lend his savings to others on a certain rate of interest. If investment undertaken in machines or factories is expected to fetch 25% rate of profit, while the current rate of interest is only 15%, then it is obvious that the person would invest his savings in machinery or factory.

It follows from above, if investment is to be profitable then the expected rate of profit must not be less than the current market rate of interest. If the expected rate of profit is greater than the market rate of interest, new investment will take place.

If an entrepreneur does not invest his own savings but has to borrow from others, then it becomes much clear that the expected rate of profit from investment in any capital asset must not be less than the rate of interest he has to pay. For instance, if an entrepreneur borrows funds from others at 15% rate of interest, then the investment proposed to be undertaken will actually be undertaken only if the expected rate of profit from it is more than 15 per cent.

We thus see that investment depends upon marginal efficiency of capital on the one hand and the rate of interest on the other. Investment will be undertaken in any given form of capital asset so long as expected rate of profit or marginal efficiency of capital falls to the level of the current market rate of interest. The equilibrium of the entrepreneur is established at the level of investment where expected rate of profit or marginal efficiency of capital is equal to the current rate of interest. Therefore, the theory of investment is also based upon the assumption that the entrepreneur tries to maximize his profits.

Of the two determinants of inducement to invest, marginal efficiency of capital or expected rate of profit is of comparatively greater importance than the rate of interest. This is because rate of interest does not change much in the short run; it is more or less sticky.

But changes in the expectations of profits greatly affect the marginal efficiency of capital and make it very much unstable and volatile. As a result of changes in marginal efficiency of capital, investment demand is greatly affected which causes aggregate demand to fluctuate very much. The changes in aggregate demand bring about economic fluctuations which are generally known as trade cycles.

When profit expectations of businessmen are good, large investment is undertaken which causes aggregate demand to rise and bring about conditions of boom and prosperity in the economy. On the other hand, when expectations regarding profits are adverse, the rate of investment falls which causes decline in aggregate demand and brings about depression, unemployment and excess productive capacity in the economy. Thus, the changes in the marginal efficiency of capital play a crucial role in causing changes in the investment level and economic activity.

The theory of interest that, according to Keynes, the rate of interest is determined by liquidity preference and the supply of money. The greater the liquidity preference, the greater the rate of interest. Given the liquidity preference curve, the greater the supply of money, the lower will be the rate of interest. We have already studied how the rate of interest is determined. We explain below in detail the concept of marginal efficiency of capital and describe the factors on which it depends.

- Marginal Efficiency of Capital:

As has been pointed out above, the concept of marginal efficiency of capital refers to the rate of profit expected to be made from investment in certain capital assets. The rate of profit expected from an extra unit of a capital asset is known as marginal efficiency of capital.

Now, the question is how the marginal efficiency of capital is measured. Suppose an entrepreneur invests money in a certain machinery, how will he estimate the expected rate of profit from it. To estimate the marginal efficiency of capital, the entrepreneur will first take into consideration how much price he has to pay for the particular capital asset.

The price which he has to pay for the particular capital asset is called its supply price or cost of capital. The second thing which he will consider is that how much yield he expects to obtain from investment from that particular capital asset. A capital asset continues to produce goods and yield income over a long period of time. Therefore, an entrepreneur has to estimate the prospective yield from a capital asset over his whole life period. Thus, the supply price and the prospective yields of a capital asset determine the marginal efficiency of capital.

By deducting the supply price from the prospective yield during whole life of a capital asset the entrepreneur can estimate the expected rate of profit or marginal efficiency of capital. Keynes has defined the marginal efficiency of capital in the following words: "I define the marginal efficiency of capital as being equal to that rate of discount which would make the present value of the series of annuities given by the returns expected from the capital asset during its life just equal to its supply price."

Thus, according to Keynes, marginal efficiency of capital is the rate of discount which renders the prospective yields from a capital asset over its whole life period equal to the supply price of that asset.

Therefore, we can obtain the marginal efficiency of capital in the following way:

Supply Price = Discounted Prospective Yields

$C = R_1/1+r + R_2/(1+r)^2 + R_3/(1+r)3 \ldots\ldots\ldots\ldots + R_n/(1+r)^n$

In the above formula, C stands for Supply Price or Replacement Cost and R_1, R_2, R_3, .. R_n etc., represent the annual prospective yields from the capital asset, r is that rate of discount which

renders the annual prospective yields equal to the supply price of the capital asset. Thus, r represents the expected rate of profit or marginal efficiency of capital.

The measurement of marginal efficiency of capital can be illustrated by an arithmetical example. Suppose it costs 3000 rupees to invest in a certain machinery and the life of the machinery is two years, that is, after two years it becomes quite useless, having no value. Suppose further that in the first year the machinery is expected to yield income of Rs. 1100 and in the second year Rs. 2420/-. By substituting these values in the above formula, we can calculate the value of r, that is, the marginal efficiency of capital.

Supply Price = Discounted Prospective Yields

$C = R_1/1+r + R_2/(1+r)^2$

$3000 = 1,100/1+r + 2,420/(1+r)^2$

On calculating the value of r in the above equation it is found to be equal to 10. In other words, marginal efficiency of capital is here equal to 10 per cent. If we put the value of r, that is, 10 in the above equation, we obtain the following:

$3,000 = 1100/1.10 + 2,420/ (1.10)^2$

$= 1,000 + 2,000 = 3,000$

- Marginal Efficiency of Capital in General:

We have explained above the marginal efficiency of a particular type of capital asset. But we also require to know the marginal efficiency of capital in general. It is the marginal efficiency of capital in general that will indicate the scope for investment opportunities at a particular time in any economy.

At a particular time in an economy the marginal efficiency of that particular capital asset which yields the greatest rate of profit, is called the marginal efficiency of capital in general. In other words, marginal efficiency of capital in general is the greatest of all the marginal efficiencies of various types of capital assets which could be produced but have not yet been produced. Thus, marginal efficiency of capital in general represents the highest expected rate of return to the community from an extra unit of a capital asset which yields the maximum profit which could be produced.

Keeping in view the existing stock of a capital asset, we can always calculate the marginal efficiency of any particular capital asset. The marginal efficiency of capital will vary when more is invested in a given particular capital asset. In any given period of time marginal efficiency of capital from every type of capital asset will decline as more investment is undertaken in it. In other words, marginal efficiency of a particular type of capital asset will be sloping downward as the stock of capital increases.

The main reason for the decline in marginal efficiency of capital with the increase in investment in it is that the prospective yields from capital asset fall as more units are installed and used for production of a good. Prospective yields decline because when more quantity of a good is produced with the greater amount of capital asset prices of goods decline. The second reason for the decline in the marginal efficiency of capital is that the supply price of

the capital asset may rise because the increase in demand for it will bring about increase in its cost of production.

- **Rate of interest and Investment Demand Curve:**
  We have explained above how the marginal efficiency of capital is estimated. We can represent diminishing marginal efficiency of capital in general by a curve which will slope downward. This has been done in Fig. 8.3 in which along the X-axis investment in capital assets is measured and along the X-axis marginal efficiency of capital in general is shown. It will be seen from the figure that when investment in capital asset is equal to 07,, marginal efficiency of capital is i,. When the investment is increased to OI_2, marginal efficiency of capital falls to i_2. Likewise, when investment rises to OI_3, marginal efficiency of capital further diminishes to i_3.

We have seen above that inducement to invest depends upon the marginal efficiency of capital and the rate of interest. With the given particular rate of interest and given the curve of marginal efficiency of capital in general we can show what will be the equilibrium level of investment in the economy. If in Fig. 8.3 along the Y-axis, rate of interest is also shown, then level of investment can be easily determined.

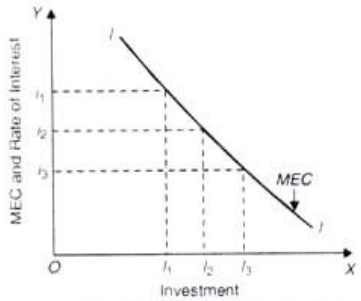


Fig. 8.3. *Investment Demand Curve*

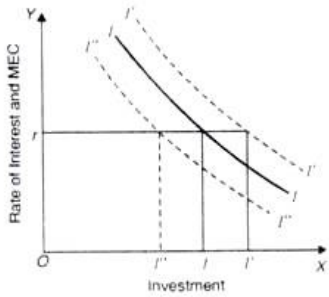


Fig. 8.4. *Shifts in Investment Demand Curve due to Changes Marginal Efficiency of Capital*

The equilibrium level of investment will be established at the point where marginal efficiency of capital becomes equal to the given current rate of interest. Thus, if the rate of interest is i_1 then I_1 investment will be undertaken. Since at OI_1 level of investment marginal efficiency of capital is equal to the rate of interest i_1. If the rate of interest falls to i_2, investment in the capital assets will rise to OI_2, since at OI_2 level of investment the new rate of interest i_2 is equal to the marginal efficiency of capital. Thus, we see that the curve of marginal efficiency of capital in general shows the demand for investment or inducement to invest at various rates of interest.

Hence marginal efficiency of capital curve represents the investment demand curve. This investment demand curve shows how much investment will be undertaken by the entrepreneurs at various rates of interest. If the investment demand curve is less elastic, then investment demand will not increase much with the fall in the rate of interest. But if the investment demand curve or marginal efficiency of capital curve is very much elastic, then the changes in the rate of interest will bring about large changes in investment demand.

- **Business Expectations and Investment Demand Curve:**
  We have studied above that the marginal efficiency of capital depends upon the supply price of capital on the one hand and prospective yields on the other. It is important to note here that the prospective yields are greatly affected by the expectations of the entrepreneurial class regarding profit making. These expectations generally change very frequently. Indeed, it is the profit expectations of the entrepreneur which determine the level of investment. When the expectations of the entrepreneur regarding profit making become dim, the marginal efficiency of capital declines and as a result demand for investment falls.

The occurrence of depression is mainly due to the pessimistic expectations of the entrepreneurial class regarding profit making. On the contrary, when the expectations of the entrepreneurs regarding profit opportunities increase, their inducement to invest rises. As a result of the increase in investment, aggregate demand in the economy increases and levels of income and employment increase. We thus see that profit expectations of entrepreneurs greatly affect investment demand and consequently the level of income and employment.

We have explained above that, according to Keynes, marginal efficiency of capital along with rate of interest determines the level of investment and therefore of the levels of income and employment. A significant contribution of Keynes is that he emphasized the important role that business expectations play in determining the prospective yield from assets on which marginal efficiency of capital and therefore the level of investment depends. He drew distinctions between short-term expectations and long-term expectations.

Keynes thought that prospective yields of capital assets depended on partly existing facts which we can assume to be known with a fair degree of certainty and partly on future events which can be predicted with a degree of uncertainty and involves greater risk. It is the existing facts which are known almost with certainty that determine short-term expectations.

The short-term business expectations about prospective yields from investment depend on *(i) the existing stock of capital assets* & *(ii) the strength of consumer demand for goods* which require a good deal of those assets for their production. The investors think that the current consumption demand will continue in immediate future too and base their expectations of prospective yield from investment in capital assets on it.

As regards the state of long term expectations, Keynes emphasized future changes in the stock of capital assets and changes in the level of aggregate demand during the entire future life of the assets whose prospective yields are being estimated.

Business men acquiring new assets which have long life for production of goods are more concerned with long-run forces on which future earnings from capital assets depend. It is these long-run forces which make long-run expectations about future yields that make them quite uncertain. Changes in these long term expectations make investment quite volatile. Therefore, Keynes gave great importance to the state of confidence for determining investment.

It should be carefully noted that when the expectations regarding prospective yields change, the whole curve of the marginal efficiency of capital will shift. If profit expectations fall, the marginal efficiency of capital curve, that is, investment demand curve will shift downward to left, as shown by the shift of the curve from II to I”I” in Fig. 8.4. On the other hand, when the profit expectations of the entrepreneurial class become better than before, the marginal efficiency of capital curve will shift upward to the right, as shown by the marginal efficiency of capital curve I’I’. Downward shift in the marginal efficiency of capital curve indicates that at the given rate of interest, less investment will be undertaken than before.

And upward shift in the marginal efficiency of capital curve indicates that more will be invested at the given rate of interest than before. In Fig. 8.4 when in the beginning, investment demand curve, that is, marginal efficiency of capital curve is represented by II, at the rate of interest r, demand for investment is OI, As a result of downward shift in the marginal efficiency of capital curve to I”I”, investment demand at the rate of interest r falls to OI”. When the marginal efficiency of capital shifts upward to I’I’, investment demand at the given rate of interest r rises to OI’.

It follows, therefore, that the rate of investment depends on marginal efficiency of capital and the rate of interest. If investment demand is interest-elastic, a reduction in rate of interest tends to stimulate investment. But it may fail to do so, if marginal efficiency of investment is already lower than the rate of interest (as may well happen during a depression). Of the two determinants of the rate of investment, marginal efficiency of investment is more volatile than the rate of interest.

The rate of interest is usually 'sticky' in the short run, while marginal efficiency of investment can fluctuate from one extreme to another. If there is a divergence between the two, usually the marginal efficiency of investment will adjust to the rate of interest. If, for example, the marginal efficiency of investment is 20 per cent, while the current rate of interest is 12 per cent, forces will be set in motion so as to bring the former to the level of the latter.

In such a situation, there will be more investment because marginal efficiency of investment is greater than the rate of interest, and with the increase in investment, marginal efficiency of investment will fall. At the point where it is just reduced to the level of the current rate of interest, further investment will cease.

❖ The Relationship between Saving and Investment!

An important controversy in macroeconomics relates to the relationship between saving and investment. Many economists before J.M. Keynes were generally of the view that saving and investment are generally not equal; they are equal only under condition of equilibrium. Besides, they thought that equality between saving and investment is brought about by changes in the rate of interest. Keynes in his famous work "General Theory of Employment, Interest and Money" put forward the view that saving and investment are always equal.

This gave rise to a severe controversy in economics as to whether saving and investment are always equal or they are generally unequal. This controversy has now been resolved, and there is general agreement among the economists about the correct relationship between saving and investment.

Modern economists use the concepts of saving and investment in two different senses. In one sense, saving and investment are always equal, equilibrium or no equilibrium. In the second sense, saving and investment are equal only in equilibrium; they are unequal under conditions of disequilibrium. We shall explain below in detail the relationship between saving and investment in these two different senses.

When in a certain year there is net addition to the stock of capital, investment is said to have taken place. It is worth mentioning here that by investment we do not mean the stock of capital but the net addition to the stock of capital i.e., investment is a flow concept. Of course, addition to the stock of capital is made through the flow of investment. In every year stock of capital expands through net investment.

On the other hand, by saving we mean the part of the income which has not been spent on consumer goods and services. In other words, saving is the difference between income and consumption expenditure. It is worth noting that in consumption expenditure all types of expenditure are not included. If an individual spends a part of his income on providing

irrigation facilities, on buying tools and machinery, then that expenditure is not the consumption expenditure, it is in fact an investment expenditure.

In order to obtain the saving, we have only to deduct the consumption expenditure from income and not the investment expenditure. When an individual makes investment expenditure he is deemed to spend his saved income on investment. For instance, if a farmer's annual income is Rs. 10,000 and he spends Rs. 6,000 on consumer goods and services and spends Rs. 1,000 on the construction of a well for his fields, and another Rs. 1,000 on building a drainage system for his fields and providing fencing, then his saving would be 10 – 6 = Rs. 4 thousands.

The expenditure of Rs. 2,000 on well, drainage and fencing will be included in the saving and will not constitute the consumption expenditure. If Y represents the national income of a country and C the total consumption, then the saving of the country will be equal to Y – C. Thus, $S = Y – C$

- **Ex-post Savings and Ex-post Investment are always equal:**
  Pre-Keynesian economists were of the view that savings and investment are generally not equal. This is firstly because saving and investment are made by two different classes of people. While investment is undertaken by entrepreneurial class of the society, saving is done by the general public. Secondly, saving and investment depend upon different factors and are made for different purposes and motives.

Therefore, it is not inevitable that savings and investment of a society must always be equal. Besides, some pre-Keynesian economists pointed out that investment expenditure is also undertaken by borrowing money from the banks which create new credit for this purpose.

It was thus pointed out that more amount of investment than savings is possible because excess of investment over savings is financed by new bank credit. But Keynes expressed a totally opposite view that saving and investment are always equal. The sense in which savings and investment are always equal refers to the actual savings and actual investment made in the economy during a year.

They are also called ex-post saving and ex-post investment. If we have to calculate that during the year 2002-03, how much actual savings and investment have been made in India, we will have to deduct the total consumption expenditure made by the citizens of India during that year from the national income.

Likewise, the real investment during the year 2002-03 of the Indian economy will be obtained by summing up the investments actually made by the Indian people during that year. In fact, national income estimates of savings and investment are made in this actual or ex-post sense.

The second sense in which saving and investment words are used is that in a certain year how much saving or how much investment people of the country desire or intend to do. Therefore, saving and investment in this sense are known as desired, intended or planned savings and investment. They are also called ex-ante saving and ex-ante investment.

Keynes in his book, "General Theory of Employment, Interest and Money" showed that in spite of the fact that saving and investment are done by two different classes of people and also for different purposes and motives, actual saving and actual investment are always equal.

Thus, he used the word saving and investment in the ex-post or actual sense and proved the equality between saving and investment in the following way:

Income of a country is earned in two ways:
(1) By producing and selling consumer goods and services, and
(2) By producing and selling capital goods.
i.e. national income of a country is composed of the value of consumer goods and services and the value of capital goods.
This can be expressed in the form of the following equation:
National Income = Consumption + Investment or Y = C + I ….(i)
where Y stands for national income, C for consumption and I for investment.

The above equation represents the production or earning side of the national income. The second aspect of national income is the expenditure side. The total national income can be fully consumed but generally it does not happen so. In actual practice, a part of the total income is spent on consumption and the remaining part is saved.
From this we get the following equation:
National Income = Consumption + Saving Or Y = C + S …..(ii)
where Y stands for national income, C for consumption and S for saving.

In the above two equations (i) and (ii) it is clear that national income is equal to the sum of consumption and investment and also equal to the sum of consumption and saving.
From this it follows that:
Consumption + Saving = Consumption + Investment
C + S = C + I ….(iii)
In equation (iii) above, since C occurs on both sides of the equation, we get:
Saving = Investment
or S = I
From the foregoing analysis, it follows that saving and investment are defined in such a Way that they are necessarily equal to each other. In equation *(i) investment is that part of national income which is obtained from the production of goods other than those consumed and equation (ii) saving is that part of national income which is not spent on consumption.*

Hence the actual or ex-post sense, saving and investment by definition are equal. It is worth mentioning that in macroeconomics, saving and investment do not refer to the saving and investment by an individual; they refer to the saving and investment of the whole community or economy. Saving and investment by an individual can differ but in the ex-post sense, the saving of the whole country must always be equal to the investment.

Now the question arises, why ex-post saving and ex-post investment are always equal. For instance, when more investment is undertaken by the entrepreneurs how actual saving becomes equal to this larger investment and if the saving falls how investment will become equal to smaller savings. In this connection it is worth mentioning that modern economists, as did Keynes, include the addition to the inventories of consumer goods in investment.

Now, when saving increases, it implies that consumption will be less. The decline in consumption would result in the addition to the inventories of consumer goods with the shopkeepers and manufacturers, which were not planned or intended by them. This addition to inventories, though unintended, will raise the level of actual investment.

Thus unintended increase in inventories will raise the level of investment and in this way investment will increase to become equal to the greater saving. On the other hand, if in any year saving declines, it will result in the unplanned decline in the inventories of consumer goods with the traders and manufacturers. This unintended decline in inventories will mean

the fall in actual investment. In this way, investment will decline to become equal to the lower savings.

- **Ex-ante saving and Ex-ante Investment are Equal only in Equilibrium:**
  As said above, in the desired, planned or ex-ante sense, saving and investment can differ. In fact planned or ex-ante saving and investment are generally not equal to each other. This is due to the fact that the persons or classes who save are different from those who invest.

Savings are done by general public for various objectives and purposes. On the other hand, investment is made by the entrepreneurial class in the community and is generally governed by marginal efficiency of capital on the one hand and rate of interest on the other hand.

Therefore, savings and investment in planned or ex-ante sense generally differ from each other. But through the mechanism of change in the income level, there is tendency for ex-ante saving and ex-ante investment to become equal.

When in a year planned investment is larger than planned saving, the level of income rises. At a higher level of income, more is saved and therefore intended saving becomes equal to intended investment. On the other hand, when planned saving is greater than planned investment in a period, the level of income will fall.

At a lower level of income, less will be saved and therefore planned saving will become equal to planned investment. We thus see that planned or ex-ante saving and planned or ex-ante investment are brought to equality through changes in the level of income. When ex-ante saving and ex-ante investment are equal, level of income is in equilibrium i.e., it has no tendency to rise or fall.

It is thus clear that whereas realised or ex-post saving is equal to realised or ex-post investment, intended, planned or ex-ante saving and investment may differ; intended or ex-ante saving and investment have only a tendency to be equal and are equal only at the equilibrium level of income.

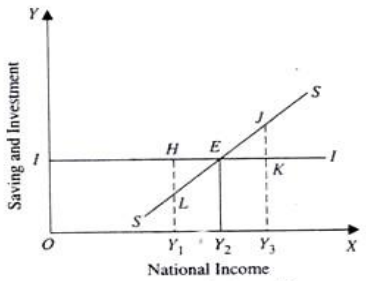


Fig. 8.5. *Equality between Saving and Investment in the ex-ante sense*

That the planned or intended saving is equal to intended investment only at the equilibrium level of income can be easily understood from Fig. 8.3. In this figure, national income is measured along the X-axis while saving and investment are measured along the Y-axis.

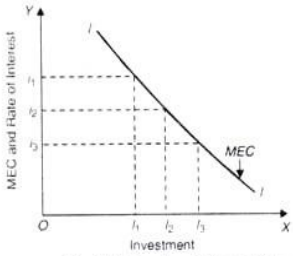


Fig. 8.3. *Investment Demand Curve*

SS is the saving curve which slopes upward indicating thereby that with the rise in income, saving also increases. II is the investment curve. Investment curve II is drawn as horizontal straight line because, following Keynes, it has been assumed that investment is independent of the level of income i.e., it depends upon factors other than the current level of income.

It will be seen from the Fig. 8.5 that saving and investment curves intersect at point E. Therefore, OY is the equilibrium level of income. If the level of income is OY_1, the intended investment is Y_1H whereas the intended saving is Y_1L. It is thus clear that at OY_1 level of income, intended investment is greater than intended saving.

As a result of this, level of income will rise and at higher levels of income more will be saved. It will be seen that with the rise in income to OY_2, saving rises and becomes equal to investment. On the other hand, if in any period, level of income is OY_3 intended investment is Y_3K and intended saving is Y_3J. As a result of this, level of national income will fall to OY_2 at which ex-ante saving and ex-ante investment are once again equal and thus level of national income is in equilibrium.

To sum up, whereas ex-post savings and ex-post investment are always equal, ex-ante saving and ex-ante investment are equal only in equilibrium.

❖ COMPONENTES OF ECONOMY

An industry involved in the extraction and collection of natural resources, such as copper and timber, as well as by activities such as farming and fishing. A company in a primary industry can also be involved in turning natural resources into products. Primary industry tends to make up a larger portion of the economy of developing countries than they do for developed countries. See also service industry, secondary industry. The **primary sector** is concerned with the extraction of raw materials. It includes fishing, farming and mining.
Primary industry is a larger sector in developing countries; for instance, animal husbandry is more common in countries in Africa than in Japan. Mining in 19th-century South Wales provides a case study of how an economy can come to rely on one form of activity.
In developed countries the primary industry has become more technologically advanced, for instance the mechanization of farming as opposed to hand picking and planting. In more developed countries, additional capital is invested in primary means of production. As an example, in the United States' corn belt, combine harvesters pick the corn, and sprayers spray large amounts of insecticides, herbicides and fungicides, producing a higher yield than is possible using less capital-intensive techniques. These technological advances and investment allow the primary sector to require less workforce and, this way, developed countries tend to have a smaller percentage of their workforce involved in primary activities, instead having a higher percentage involved in the secondary and tertiary sectors.
Developed countries are allowed to maintain and develop their primary industries even further due to the excess wealth. For instance, European Union agricultural subsidies provide buffers for the fluctuating inflation rates and prices of agricultural produce. This allows developed countries to be able to export their agricultural products at extraordinarily low prices. This makes them extremely competitive against those of poor or underdeveloped countries that maintain free market policies and low or non-existent tariffs to counter them. Such differences also come about due to more efficient production in developed economies, given farm machinery, better information available to farmers, and often larger scale.

The **secondary sector of the economy** includes industries that produce a finished, usable product or are involved in construction. This sector generally takes the output of the primary sector and manufactures finished goods or where they are suitable for use by other businesses, for export, or sale to domestic consumers. This sector is often divided into light industry and heavy industry. Many of these industries consume large quantities of energy and require factories and machinery to convert raw materials into goods and products. They also produce waste materials and waste heat that may cause environmental problems or cause pollution. The secondary sector supports both the primary and tertiary sector.
Some economists contrast wealth-producing sectors in an economy such as manufacturing with the service sector which tends to be wealth-consuming. Examples of service may include retail, insurance, and government. These economists contend that an economy begins to decline as its wealth-producing sector shrinks. Manufacturing is an important activity to promote economic growth and development. Nations that export manufactured products tend to generate higher marginal GDP growth which supports higher incomes and marginal tax revenue needed to fund the quality of life initiatives such as health care and infrastructure in the economy. The field is an important source for engineering job opportunities. Among developed countries, it is an important source of well-paying jobs for the middle class to facilitate greater social mobility for successive generations on the economy.

The **tertiary sector** or **service sector** is the third of the three economic sectors of the three-sector theory. The others are the secondary sector (approximately the same as manufacturing), and the primary sector (raw materials).
The service sector consists of the production of services instead of end products. Services (also known as "intangible goods") include attention, advice, access, experience, and

affective labor. The production of information has long been regarded as a service, but some economists now attribute it to a fourth sector, the quaternary sector.
The tertiary sector of industry involves the provision of services to other businesses as well as final consumers. Services may involve the transport, distribution and sale of goods from producer to a consumer, as may happen in wholesaling and retailing, pest control or entertainment. The goods may be transformed in the process of providing the service, as happens in the restaurant industry. However, the focus is on people interacting with people and serving the customer rather than transforming physical goods.

❖ Difficulty of definition

It is sometimes hard to define whether a given company is part and parcel of the secondary or tertiary sector. And it is not only companies that have been classified as part of that sector in some schemes; government and its services such as police or military, and non-profit organizations such as charities or research associations can also be seen as part of that sector.
In order to classify a business as a service, one can use classification systems such as the United Nations' International Standard Industrial Classification standard, the United StatesStandard Industrial Classification (SIC) code system and its new replacement, the North American Industrial Classification System (NAICS), the Statistical Classification of Economic Activities in the European Community (NACE) in the EU and similar systems elsewhere. These governmental classification systems have a first-level hierarchy that reflects whether the economic goods are tangible or intangible.
For purposes of finance and market research, market-based classification systems such as the Global Industry Classification Standard and the Industry Classification Benchmark are used to classify businesses that participate in the service sector. Unlike governmental classification systems, the first level of market-based classification systems divides the economy into functionally related markets or industries. The second or third level of these hierarchies then reflects whether goods or services are produced.

❖ Theory of progression

For the last 100 years, there has been a substantial shift from the primary and secondary sectors to the tertiary sector in industrialized countries. This shift is called **tertiarisation**. The tertiary sector is now the largest sector of the economy in the Western world, and is also the fastest-growing sector. In examining the growth of the service sector in the early Nineties, the globalistKenichi Ohmae noted that:
"In the United States 70 percent of the workforce works in the service sector; in Japan, 60 percent, and in Taiwan, 50 percent. These are not necessarily busboys and live-in maids. Many of them are in the professional category. They are earning as much as manufacturing workers, and often more."
Economies tend to follow a developmental progression that takes them from a heavy reliance on agriculture and mining, toward the development of manufacturing (e.g. automobiles, textiles, shipbuilding, steel) and finally toward a more service-based structure. The first economy to follow this path in the modern world was the United Kingdom. The speed at which other economies have made the transition to service-based (or "post-industrial") economies has increased over time.
Historically, manufacturing tended to be more open to international trade and competition than services. However, with dramatic cost reduction and speed and reliability improvements in the transportation of people and the communication of information, the service sector

now includes some of the most intensive international competition, despite residual protectionism.

Issues for service providers

Service providers face obstacles selling services that goods-sellers rarely face. Services are intangible, making it difficult for potential customers to understand what they will receive and what value it will hold for them. Indeed, some, such as consultants and providers of investment services, offer no guarantees of the value for price paid.

Since the quality of most services depends largely on the quality of the individuals providing the services, "people costs" are usually a high fraction of service costs. Whereas a manufacturer may use technology, simplification, and other techniques to lower the cost of goods sold, the service provider often faces an unrelenting pattern of increasing costs.

Product differentiation is often difficult. For example, how does one choose one investment adviser over another, since they are often seen to provide identical services? Charging a premium for services is usually an option only for the most established firms, who charge extra based upon brand recognition.

Examples of tertiary sector industries

Examples of tertiary industries may include:

- Telecommunication
- Hospitality industry/tourism
- Mass media
- Healthcare/hospitals
- Public health
- Information technology
- Waste disposal
- Consulting
- Gambling
- Retail sales
    - Fast-moving consumer goods (FMCG)
- Franchising
- Real estate
- Education
- Financial services
    - Banking
    - Insurance
    - Investment management
- Professional services
    - Accounting
    - Legal services
    - Management consulting

The **informal sector**, **informal economy**, or **grey economy**is the part of an economy that is neither taxed nor monitored by any form of government. Unlike the formal economy, activities of the informal economy are not included in a country's gross national product (GNP) or gross domestic product (GDP). The informal sector can be described as a grey market in labour.

Other concepts that can be characterized as informal sector can include the black market (shadow economy, underground economy), agorism, and System D. Associated idioms include "under the table", "off the books", and "working for cash".

Although the informal sector makes up a significant portion of the economies in developing countries, it is often stigmatized as troublesome and unmanageable. However, the informal sector provides critical economic opportunities for the poor and has been expanding rapidly since the 1960s.Integrating the informal economy into the formal sector is an important policy challenge.

- Definition

The original use of the term 'informal sector' is attributed to the economic development model put forward by W. Arthur Lewis, used to describe employment or livelihood generation primarily within the developing world. It was used to describe a type of employment that was viewed as falling outside of the modern industrial sector. An alternative definition uses job security as the measure of formality, defining participants in the informal economy as those "who do not have employment security, work security and social security". While both of these definitions imply a lack of choice or agency in involvement with the informal economy, participation may also be driven by a wish to avoid regulation or taxation. This may manifest as unreported employment, hidden from the state for tax, social security or labour law purposes, but legal in all other aspects. Edgar L. Feige has proposed a taxonomy for describing unobserved economies including the informal economy as being characterized by some form of non-compliant behavior with an institutional set of rules. Feige argues that circumvention of labor market regulations specifying minimum wages, working conditions, social security, and unemployment and disability benefits gives rise to an informal economy that deprives some workers of deserved benefits while conveying undeserved benefits to others.

The term is also useful in describing and accounting for forms of shelter or living arrangements that are similarly unlawful, unregulated, or not afforded protection of the state. 'Informal economy' is increasingly replacing 'informal sector ‘as the preferred descriptor for this activity.

Informality, both in housing and livelihood generation has often been seen as a social ill, and described either in terms of what participant's lack, or wish to avoid. A countervailing view, put forward by prominent Dutch sociologist Saskia Sassen is that the modern or new 'informal' sector is the product and driver of advanced capitalism and the site of the most entrepreneurial aspects of the urban economy, led by creative professionals such as artists, architects, designers and software developers. While this manifestation of the informal sector remains largely a feature of developed countries, increasingly systems are emerging to facilitate similarly qualified people in developing countries to participate.

- Characteristics

The informal sector is largely characterized by several qualities: easy entry, meaning anyone who wishes to join the sector can find some sort of work which will result in cash earnings, a lack of stable employer-employee relationships, a small scale of operations, and skills gained outside of a formal education. Workers who participate in the informal economy are typically classified as employed. The type of work that makes up the informal economy is diverse, particularly in terms of capital invested, technology used, and income generated. The spectrum ranges from self-employment or unpaid family labor to street vendors, shoe shiners, and junk collectors. On the higher end of the spectrum are upper-tier informal activities such as small-scale service or manufacturing businesses, which have more limited entry. The upper-tier informal activities have higher set-up costs, which might include complicated licensing regulations, and irregular hours of operation. However, most workers in the informal sector, even those are self-employed or wage workers, do not have access to secure work, benefits, welfare protection, or representation. These features differ from businesses and employees in the formal sector which have regular hours of operation, a regular location and other structured benefits.

The most prevalent types of work in the informal economy are home-based workers and street vendors. Home-based workers are more numerous while street vendors are more visible. Combined, the two fields make up about 10–15% of the non-agricultural workforce in developing countries and over 5% of the workforce in developed countries.

While participation in the informal sector can be stigmatized, many workers engage in informal ventures by choice, for either economic or non-economic reasons. Economic motivations include the ability to evade taxes, the freedom to circumvent regulations and licensing requirements, and the capacity to maintain certain government benefits. A study of informal workers in Costa Rica illustrated other economic reasons for staying in the informal sector, as well as non-economic factors. First, they felt they would earn more money through their informal sector work than at a job in the formal economy. Second, even if workers made less money, working in the informal sector offered them more independence, the chance to select their own hours, the opportunity to work outside and near friends, etc. While jobs in the formal economy might bring more security and regularity, or even pay better, the combination of monetary and psychological rewards from working in the informal sector proves appealing for many workers.
The informal sector was historically recognized as an opposition to formal economy, meaning it included all income earning activities beyond legally regulated enterprises. However, this understanding is too inclusive and vague, and certain activities that could be included by that definition are not considered part of the informal economy. As the International Labour Organization defined the informal sector in 2002, the informal sector does not include the criminal economy. While production or employment arrangements in the informal economy may not be strictly legal, the sector produces and distributes legal goods and services. The criminal economy produces illegal goods and services. The informal economy also does not include the reproductive or care economy, which is made up of unpaid domestic work and care activities. The informal economy is part of the market economy, meaning it produces goods and services for sale and profit. Unpaid domestic work and care activities do not contribute to that, and as a result, are not a part of the informal economy.

- Social and political implications and issues

According to development and transition theories, workers in the informal sector typically earn less income, have unstable income, and do not have access to basic protections and services. The informal economy is also much larger than most people realize, with women playing a huge role. The working poor, particularly women, are concentrated in the informal economy, and most low-income households rely on the sector to provide for them. However, informal businesses can also lack the potential for growth, trapping employees in menial jobs indefinitely. On the other hand, the informal sector can allow a large proportion of the population to escape extreme poverty and earn an income that is satisfactory for survival. Also, in developed countries, some people who are formally employed may choose to perform part of their work outside of the formal economy, exactly because it delivers them more advantages. This is called 'moonlighting'. They derive social protection, pension and child benefits and the like, from their formal employment, and at the same time have tax and other advantages from working on the side.
From the viewpoint of governments, the informal sector can create a vicious cycle. Being unable to collect taxes from the informal sector, the government may be hindered in financing public services, which in turn makes the sector more attractive. Conversely, some governments view informality as a benefit, enabling excess labor to be absorbed, and mitigating unemployment issues. Recognizing that the informal economy can produce significant goods and services, create necessary jobs, and contribute to imports and exports is critical for governments.
As the work in informal sector is not monitored or registered with the state, its workers are not entitled to social security, nor can they form trade unions.

Women tend to make up the greatest portion of the informal sector, often ending up in the most erratic and corrupt segments of the sector. In developing countries, most of the female non-agricultural labor force is in the informal sector. Major occupations in the informal sector include home-based workers (such as dependent subcontract workers, independent own account producers, and unpaid workers in family businesses) and street vendors, which

both are classified in the informal sector. In India, women working in the informal sector often work as ragpickers, domestic workers, coolies, vendors, beauticians, construction laborers, and garment workers.
Female representation in the informal sector is attributed to a variety of factors. One such factor is that employment in the informal sector is the source of employment that is most readily available to women. A 2011 study of poverty in Bangladesh noted that cultural norms, religious seclusion, and illiteracy among women in many developing countries, along with a greater commitment to family responsibilities, prevent women from entering the formal sector.
According to a 2002 study commissioned by the ILO, the connection between employment in the informal economy and being poor is stronger for women than men. While men tend to be over-represented in the top segment of the informal sector, women overpopulate the bottom segment. Men are more likely to have larger-scale operations and deal in non-perishable items while few women are employers who hire others. Instead, women are more likely to be involved in smaller-scale operations and trade food items. Women are under-represented in higher-income employment positions in the informal economy and over-represented in lower-income statuses. As a result, the gender gap in terms of wage is higher in the informal sector than the formal sector. Labor markets, household decisions, and states all propagate this gender inequality.

- Political power of agents

Workers in the informal economy lack a significant voice in government policy.[13] Not only is the political power of informal workers limited, but the existence of the informal economy creates challenges for other politically influential actors. For example, the informal workforce is not a part of any trade union, nor does there seem a push or inclination to change that status. Yet the informal economy negatively affects membership and investment in the trade unions. Laborers who might be formally employed and join a union for protection may choose to branch out on their own instead. As a result, trade unions are inclined to oppose the informal sector, highlighting the costs and disadvantages of the system. Producers in the formal sector can similarly feel threatened by the informal economy. The flexibility of production, low labor and production costs, and bureaucratic freedom of the informal economy can be seen as consequential competition for formal producers, leading them to challenge and object to that sector. Last, the nature of the informal economy is largely anti-regulation and free of standard taxes, which diminishes the material and political power of government agents. Whatever the significance of these concerns are, the informal sector can shift political power and energies.
The relationship between the informal sectors and poverty certainly is not simple nor does a clear, causal relationship exist. An inverse relationship between an increased informal sector and slower economic growth has been observed though. Average incomes are substantially lower in the informal economy and there is a higher preponderance of impoverished employees working in the informal sector. In addition, workers in the informal economy are less likely to benefit from employment benefits and social protection programs. For instance, a survey in Europe shows that the respondents who have difficulties to pay their household bills have worked informally more often in the past year than those that do not (10% versus 3% of the respondents).
Children work in the informal economy in many parts of the world. They often work as scavengers (collecting recyclables from the streets and dump sites), day laborers, cleaners, construction workers, vendors, in seasonal activities, domestic workers, and in small workshops; and often work under hazardous and exploitative conditions. It is common for children to work as domestic servants across Latin America and parts of Asia. Such children are very vulnerable to exploitation: often they are not allowed to take breaks or are required

to work long hours; many suffer from a lack of access to education, which can contribute to social isolation and a lack of future opportunity. UNICEF considers domestic work to be among the lowest status, and reports that most child domestic workers are live-in workers and are under the round-the-clock control of their employers. Some estimates suggest that among girls, domestic work is the most common form of employment.

During times of economic crisis many families experience unemployment and job loss, thus compelling adolescents to supplement their parents' income by selling goods or services to contribute to the family economy. At the core, youth must compromise their social activities with other youth, and instead prioritize their participation in the informal economy, thus manufacturing a labor class of adolescents who must take on an adult role within the family. Although it revolves around a negative stigma of deviance, for a majority of individuals, mostly people of color, and the informal economy is not an ideal choice but a necessity for survival. Participating in the informal economy is becoming normalized due to the lack of resources available in low-income and marginalized communities, and no matter how hard they have to work, will not advance in the economic hierarchy. When a parent is either unemployed or their job is on low demand, they are compelled to find other methods to provide for themselves but most importantly their children. Yet, due to all the limitations and the lack of jobs, children eventually cooperate with their parent/s and also work for their family's economic well-being. By having to assist in providing for the family, children miss out on their childhood because instead of engaging in activities other youth their age participate in, they are obligated to take on an adult role, put the family first and contribute to the family's well-being.

The participation of adolescents in the informal economy, is a contentious issue due to the restrictions and laws in place for youth have to work. One of the main dilemmas that arise when children engage in this type of work, is that privileged adults, denounce children participation as forced labor. Due to the participant being young, the adults are viewed as "bad" parents because first they cannot provide for their children, second they are stripping the child from a "normal" childhood, and third, child labor is frowned upon. Furthermore, certain people believe that children should not be working because children do not know the risks and the pressure of working and having so much responsibility, but the reality is that for most families, the children are not being forced to work, rather they choose to help sustain their family's income. The youth become forced by their circumstances, meaning that because of their conditions, they do not have much of a choice. Youth have the capability to acknowledge their family's financial limitations and many feel that it is their moral obligation to contribute to the family income. Thus, they end up working without asking for an allowance or wage, because kids recognize that their parents cannot bring home enough income alone, thus their contribution is necessary and their involvement becomes instrumental for their family's economic survival.

Emir Estrada and Pierrette Hondagneu-Sotelo have gone to predominantly Latinx communities of Los Angeles, CA. to observe the daily actions of street vendors. They analyze why adults participate in the informal economy. Although it revolves around a negative stigma of deviance, for a majority of individuals, the informal economy is not an ideal choice but an action necessary for survival. While witnessing the constant struggle of Latinx individuals to make ends meet and trying to earn money to put food on the table, they witnessed how the participation of children either benefits the family or even hurt it. Through field notes derived from their participation, Estrada states, "children are not the 'baggage' that adult immigrants simply bring along. In the case of street vendors, we see that they are also contributors to family processes". Estrada's findings demonstrate that children are working in order to help contribute to their household income, but most importantly, they play a vital role when it comes to language barriers. The kids are not simply workers, they achieve an understanding of how to manage a business and commerce.

- Expansion and growth

The division of the economy into formal and informal sectors has a long heritage. Arthur Lewis in his seminal work *Economic Development with Unlimited Supply of Labour*, published in the 1950s, was the celebrated paradigm of development for the newly independent countries in the 1950s and 1960s. The model assumed that the unorganized sector with the surplus labour will gradually disappear as the surplus labour gets absorbed in the organized sector. The Lewis model is drawn from the experience of capitalist countries in which the share of agriculture and unorganized sector showed a spectacular decline, but it didn't prove to be true in many developing countries, including India. On the other hand, probabilistic migration models developed by Harris and Todaro in the 1970s envisaged the phenomenon of the informal sector as a transitional phase through which migrants move to the urban centers before shifting to formal sector employment. Hence it is not a surprise to see policy invisibility in the informal sector. Curiously, the informal sector does not find a permanent place in the Marxian theory since they anticipate the destruction of the pre-capitalist structure as a result of the aggressive growth of capitalism. To them, in the course of development, 'the small fish is being eaten by the big fish'. Therefore, neither in the Marxian theory nor in the classical economic theory, the unorganized sector holds a permanent place in the economic literature. The informal sector has been expanding as more economies have started to liberalize. This pattern of expansion began in the 1960s when a lot of developing countries didn't create enough formal jobs in their economic development plans, which led to the formation of an informal sector that didn't solely include marginal work and actually contained profitable opportunities. In the 1980s, the sector grew alongside formal industrial sectors. In the 1990s, an increase in global communication and competition led to a restructuring of production and distribution, often relying more heavily on the informal sector.

Over the past decade, the informal economy is said to account for more than half of the newly created jobs in Latin America. In Africa it accounts for around eighty percent. Many explanations exist as to why the informal sector has been expanding in the developing world throughout the past few decades. It is possible that the kind of development that has been occurring has failed to support the increased labor force in a formal manner. Expansion can also be explained by the increased subcontracting due to globalization and economic liberalization. Finally, employers could be turning toward the informal sector to lower costs and cope with increased competition.

Such extreme competition between industrial countries occurred after the expansion of the EC to markets of the then new member countries Greece, Spain and Portugal, and particularly after the establishment of the Single European Market (1993, Treaty of Maastricht). Mainly for French and German corporations it led to systematic increase of their informal sectors under liberalized tax laws, thus fostering their mutual competitiveness and against small local competitors. The continuous systematic increase of the German informal sector was stopped only after the establishment of the EURO and the execution of the Summer Olympic Games 2004, which has been the first and (up to now) only in the Single Market. Since then the German informal sector stabilized on the achieved 350 bn € level which signifies an extremely high tax evasion for a country with 90% salary-employment.

According to the Swedish International Development Cooperation Agency (SIDA), the key drivers for the growth of the informal economy in the twenty-first century include: limited absorption of labour, particularly in countries with high rates of population or urbanisation

- excessive cost and regulatory barriers of entry into the formal economy, often motivated by corruption
- weak institutions, limiting education and training opportunities as well as infrastructure development
- increasing demand for low-cost goods and services
- migration motivated by economic hardship and poverty
- difficulties faced by women in gaining formal employment

Historically, development theories have asserted that as economies mature and develop, economic activity will shift from the informal to the formal sphere. In fact, much of the economic development discourse is centered around the notion that formalization indicates how developed a country's economy is; for more on this discussion see the page on fiscal capacity. However, evidence suggests that the progression from informal to formal sectors is not universally applicable. While the characteristics of a formalized economy – full employment and an extensive welfare system – have served as effective methods of organizing work and welfare for some nations, such a structure is not necessarily inevitable or ideal. Indeed, development appears to be heterogeneous in different localities, regions, and nations, as well as the type of work practiced. For example, at one end of the spectrum of the type of work practiced in the informal economy are small-scale businesses and manufacturing; on the other "street vendors, shoe shiners, junk collectors and domestic servants." Regardless of how the informal economy develops, its continued growth that it cannot be considered a temporary phenomenon.

- Policy suggestions

As it has been historically stigmatized, policy perspectives viewed the informal sector as disruptive to the national economy and a hindrance to development. The justifications for such criticisms include viewing the informal economy as a fraudulent activity that results in a loss of revenue from taxes, weakens unions, creates unfair competition, leads to a loss of regulatory control on the government's part, reduces observance of health and safety standards, and reduces the availability of employment benefits and rights. These characteristics have led to many nations pursuing a policy of deterrence with strict regulation and punitive procedures.

In a 2004 report, the Department for Infrastructure and Economic Cooperation under SIDA explained three perspectives on the role of government and policy in relation to the informal economy.

- Markets function efficiently on their own; government interference would only lead to inefficiency and dysfunction.
- The informal economy functions outside of government control, largely because those who participate wish to avoid regulation and taxation.
- The informal economy is enduring; suitable regulation and policies are required.

As informal economy has significant job creation and income generation potential, as well as the capacity to meet the needs of poor consumers by providing cheaper and more accessible goods and services, many stakeholders subscribe to the third perspective and support government intervention and accommodation. Embedded in the third perspective is the significant expectation that governments will revise policies that have favored the formal sphere at the expense of the informal sector.

Theories of how to accommodate the informal economy argue for government policies that, recognizing the value and importance of the informal sector, regulate and restrict when necessary but generally work to improve working conditions and increase efficiency and production.

The challenge for policy interventions is that so many different types of informal work exist; a solution would have to provide for a diverse range of circumstances. A possible strategy would be to provide better protections and benefits to informal sector players. However, such programs could lead to a disconnect between the labor market and protections, which would not actually improve informal employment conditions. In a 2014 report monitoring street vending, WIEGO suggested urban planners and local economic development strategists study the carrying capacity of areas regularly used by informal workers and deliver the urban infrastructure necessary to support the informal economy, including running water and toilets, street lights and regular electricity, and adequate shelter and storage facilities. That study also called for basic legal rights and protections for informal workers, such as appropriate licensing and permit practices.

An ongoing policy debate considers the value of government tax breaks for household services such cleaning, babysitting and home maintenance, with an aim to reduce the shadow economy's impact. There are currently systems in place in Sweden and France which offer 50 percent tax breaks for home cleaning services. There has also been debate in the UK about introducing a similar scheme, with potentially large savings for middle-class families and greater incentive for women to return to work after having children. The European Union has used political measures to try and curb the shadow economy. Although no definitive solution has been established to date, the EU council has led dialogue on a platform that would combat undeclared work.
The World Bank's 2019 World Development Report on *The Changing Nature of Work*discusses the extension of social assistance and insurance schemes to informal workers given that, in 2018, 8 in 10 people in developing countries still receive no social assistance and 6 in 10 work informally.

- Asia-Pacific

The International Labour Organization mentioned that in most developing nations located in the Asia-Pacific, the informal sector comprises a significant and vital percentage of the labor force. This sector constitutes around 60 percent of the labor force. Informal economy includes economic activities of laborers (legally and in practice) which are not or inadequately covered by official employment contracts or agreements. Informal employment means payment of wagers may not be guaranteed and retrenchment can be implemented without prior notice or compensation from employers. There are generally substandard health and safety conditions as well as nonexistence of social benefits which include sick pay, pension, and health coverage. The informal economy absorbs a larger part of the ever-growing workforce in urban hubs. In 2015, urban populations of Asian countries started to grow while the service sector also continued to increase. These developments contributed to the extensive expansion of urban informal economy in practically all of Asia. In India, the country's informal sector accounted for over 80 percent of the non-agricultural industry during the last 20 years. Inadequate employment denotes the option for majority of India's citizens is to find work in the informal sector which continues to grow because of the contract system and outsourcing of production. An article in First Post (June 2018) said approximately 1.3 billion people or more than 68 percent of employed persons in the Asia-Pacific earn through the informal economy. It is prevalent in the countryside (around 85 percent) and almost 48 percent in urban locations. 2 billion of the global population (61 percent) works in the informal sector. According to an article published in Eco-Business in June 2018, the informal sector has emerged as an essential component of the economic environment of cities in this region. Henceforth, the importance of contribution of informal workers deserves recognition.

Gross domestic product is the best way to measure a country's economy. GDP is the total value of everything produced by all the people and companies in the country. It doesn't matter if they are citizens or foreign-owned companies. If they are located within the country's boundaries, the government counts their production as GDP. The only exception is the shadow or black economy.

- Calculating GDP The components of GDP include Personal Consumption Expenditures plus Business Investment plus Government Spending plus (Exports minus Imports). Now that you know what the components are, it's easy to calculate a country's gross domestic product using this standard formula: C + I + G + (X-M).

- **Types** There are many different ways to measure a country's GDP. It's important to know all the different types and how they are used.
- **Nominal GDP:** This is the raw measurement that includes price increases. The Bureau of Economic Analysis measures nominal GDP quarterly. It revises the quarterly estimate each month as it receives updated data. In 2017, the nominal U.S. GDP was $19.485 trillion.

When economists talk about the "size" of an economy, they are referring to GDP.

- **Real GDP:** To compare economic output from one year to another, you must account for the effects of inflation. To do this, the BEA calculates real GDP. It does this by using a price deflator. It tells you how much prices have changed since a base year. The BEA multiplies the deflator by the nominal GDP. The BEA makes the following three important distinctions:

1. Income from U.S. companies and people from outside the country are not included. That removes the impact of exchange rates and trade policies.
2. The effects of inflation are taken out.
3. Only the final product is counted. For example, a U.S. footwear manufacturer uses laces and other materials made in the United States. Only the value of the shoe gets counted. The shoelace does not.

Real GDP is lower than nominal. In 2017, it was $18.051 trillion. The BEA provides it using 2012 as the base year in the Interactive Tables, Table 1.1.6. Real Gross Domestic Product-Chained Dollars.

- **Growth Rate:** The GDP growth rate is the percentage increase in GDP from quarter to quarter. It tells you exactly whether the economy is growing quicker or slower than the quarter before. Most countries use real GDP to remove the effect of inflation. If the economy produces less than the quarter before, it contracts and the growth rate is negative. This signals a recession. If it stays negative long enough, the recession turns into a depression. As bad as a recession is, you also don't want the growth rate to be too high. Then you'll get inflation. The ideal growth rate is between 2 percent and 3 percent.

The BEA calculates the U.S. GDP growth rate. It provides current U.S. GDP statistics monthly. In 2017, it was 2.2 percent. The U.S. GDP has changed each year since 1929 depending on the phase of the business cycle.

- **GDP per Capita:** GDP per capita is the best way to compare gross domestic product between countries. This divides gross domestic product by the number of residents. It's a good measure of the country's standard of living. Some countries have enormous economic outputs only because they have so many people. The 2017 U.S. GDP per capita was $59,500.

The best way to compare gross domestic product by year and between countries is with real GDP per capita. This takes out the effects of inflation, exchange rates, and differences in population. In 2007, the United States lost its position as the world's largest economy.

- **How It Affects You**
  The GDP impacts personal finance, investments, and job growth. Investors look at the growth rate to decide if they should adjust their asset allocation. They also compare

country growth rates to decide where the best opportunities are. Most investors like to purchase shares of companies that are in rapidly growing countries.

The Federal Reserve uses the growth rate to decide whether to implement an expansionary monetary policy to ward off recession or contractionary monetary policy to prevent inflation. Its primary tool is the federal funds rate.

For example, say the growth rate is speeding up. The Fed raises interest rates to stem inflation. In this case, you would want to lock in a fixed-rate mortgage. You know that an adjustable-rate mortgage will start charging higher rates next year.

If growth slows or becomes negative, then you should dust off your resume. Slow economic growth leads to layoffs and unemployment. That can take several months. It takes time for executives to compile the layoff list and exit packages.

You could use the GDP report from the BEA to look at which sectors of the economy are growing and which are declining.

You can apply for jobs in growing sectors. Even during the 2008 financial crisis, health care industries continued to add jobs. This report also helps you determine whether you should invest in, say, a tech-specific mutual fund versus a fund that focuses on agribusiness.

- Difference From GNP For the value of everything produced by a country's citizens, no matter where they are in the world, you should look at gross national product. The World Bank now calculates gross national income instead, but the differences are insignificant.

- What is Gross National Product (GNP)?

- Gross national product (GNP) is a broad measure of a nation's total economic activity. GNP is the value of all finished goods and services produced in a country in one year by its nationals.

- How to calculate GNP?

- GNP includes income earned by citizens and companies abroad, but does not include income earned by foreigners within the country.

The figures used to assess GNP include the manufacturing of tangible goods (cars, furniture and agricultural products) and the provision of services (education, healthcare, and business services). GNP does not include the services used to produce manufactured goods because their value is included in the price of the finished product. However, GNP does include depreciation and indirect business taxes like sales tax.

The formula for GNP is: Consumption + Government Expenditures + Investments + Exports + Foreign Production by U.S. Companies – Domestic Production by Foreign Companies = Gross National Product

GNP can be adjusted to make valid comparisons year-to-year or among countries. For year-to-year comparisons, GNP needs to be adjusted for inflation. For country-to-country comparisons, GNP needs to be stated on a per capita basis (i.e. GNP divided by the population of the country).

The difference between GNP and gross domestic product (GDP) is that GNP includes the value of products made by a country's citizens and companies abroad, while GDP only accounts for products made within a country's borders. However, GNP excludes the value of products made by foreign companies within the reporting country.

- Why does GNP matter?

- Due to the increasingly global nature of national economies and the interdependence of labor forces, supply chains and sales channels, the U.S. Bureau of Economic Analysis uses GDP instead of GNP as its measure of output for the United States.

GNP is still an interesting economic indicator. For example, the larger the difference between a country's GNP and GDP, the more a country is involved in international trade, finance and production.

CAPITAL FORMATION

- Meaning of Capital Formation:

Capital formation means increasing the stock of real capital in a country.
In other words, capital formation involves making of more capital goods such as machines, tools, factories, transport equipment, materials, electricity, etc., which are all used for future production of goods.
For making additions to the stock of Capital, saving and investment are essential.

- Process of Capital Formation:

In order to accumulate capital goods some current consumption has to be sacrificed. The greater the extent to which the people are willing to abstain from present consumption, the greater the extent that society will devote resources to new capital formation. If society consumes all that it produces and saves nothing, future productive capacity of the economy will fall as the present capital equipment wears out.

In other words, if whole of the current productive activity is used to produce consumer goods and no new capital goods are made, production of consumer goods in the future will greatly decline. To cut down some of the present consumption and wait for more consumption in the future require far-sightedness on the part of the people. There is an old Chinese proverb, "He who cannot see beyond the dawn will have much good wine to drink at noon, much green wine to cure his headache at dark, and only rain water to drink for the rest of his days."

- Three Stages in Capital Formation:

Although saving is essential for capital formation, but in a monetized economy, saving may not directly and automatically result in the production of capital goods. Savings must be invested in order to have capital goods. In a modern economy, where saving and investment are done mainly by two different classes of people, there must be certain means or mechanism whereby the savings of the people are obtained and mobilized in order to give them to the businessmen or entrepreneurs to invest in capital.

Therefore, in a modern free enterprise economy, the process of capital formation consists of the following three stages:

(a) Creation of Savings: An increase in the volume of real savings so that resources, that would have been devoted to the production of consumption goods, should be released for purposes of capital formation.

(b) Mobilization of Savings: A finance and credit mechanism, so that the available resources are obtained by private investors or government for capital formation.

(c) Investment of Savings: The act of investment itself so that resources are actually used for the production of capital goods.

We shall now explain these three stages:

(a)Creation of Savings: Savings are done by individuals or households. They save by not spending all their incomes on consumer goods. When individuals or households save, they release resources from the production of consumer goods. Workers, natural resources, materials, etc., thus released are made available for the production of capital goods.

The level of savings in a country depends upon the power to save and the will to save. The power to save or saving capacity of an economy mainly depends upon the average level of income and the distribution of national income. The higher the level of income, the greater will be the amount of savings.

The countries having higher levels of income are able to save more. That is why the rate of savings in the U.S.A. and Western European countries is much higher than that in the under-developed and poor countries like India. Further, the greater the inequalities of income, the greater will be the amount of savings in the economy. Apart from the power to save, the total amount of savings depends upon the will to save. Various personal, family, and national considerations induce the people to save.

People save in order to provide against old age and unforeseen emergencies. Some people desire to save a large sum to start new business or to expand the existing business. Moreover, people want to make provision for education, marriage and to give a good start in business for their children.

Further, it may be noted that savings may be either voluntary or forced. Voluntary savings are those savings which people do of their own free will. As explained above, voluntary savings depend upon the power to save and the will to save of the people. On the other hand, taxes by the Government represent forced savings.

Moreover, savings may be done not only by households but also by business enterprises" and government. Business enterprises save when they do not distribute the whole of their profits,

but retain a part of them in the form of undistributed profits. They then use these undistributed profits for investment in real capital.
The third source of savings is government. The government savings constitute the money collected as taxes and the profits of public undertakings. The greater the amount of taxes collected and profits made, the greater will be the government savings. The savings so made can be used by the government for building up new capital goods like factories, machines, roads, etc., or it can lend them to private enterprise to invest in capital goods.
(b)Mobilization of Savings: The next step in the process of capital formation is that the savings of the households must be mobilized and transferred to businessmen or entrepreneurs who require them for investment. In the capital market, funds are supplied by the individual investors (who may buy securities or shares issued by companies), banks, investment trusts, insurance companies, finance corporations, governments, etc.
If the rate of capital formation is to be stepped up, the development of capital market is very necessary. A well- developed capital market will ensure that the savings of the society-will be mobilized and transferred to the entrepreneurs or businessmen who require them.
(C)Investment of Savings in Real Capital: For savings to result in capital formation, they must be invested. In order that the investment of savings should take place, there must be a good number of honest and dynamic entrepreneurs in the country who are able to take risks and bear uncertainty of production.
Given that a country has got a good number of venturesome entrepreneurs, investment will be made by them only if there is sufficient inducement to invest. Inducement to invest depends on the marginal efficiency of capital (i.e., the prospective rate of profit) on the one hand and the rate of interest, on the other.
But of the two determinants of inducement to invest-the marginal efficiency of capital and the rate of interest—it is the former which is of greater importance. Marginal efficiency of capital depends upon the cost or supply prices of capital as well as the expectations of profits.
Fluctuations in investment are mainly due to changes in expectations regarding profits. But it is the size of the market which provides scope for profitable investment. Thus, the primary factor which determines the level of investment or capital formation, in any economy, is the size of the market for goods.

- **Foreign Capital:** Capital formation in a country can also take place with the help of foreign capital, i.e., foreign savings.

Foreign capital can take the form of:
(a) Direct private investment by foreigners,
(b) Loans or grants by foreign governments,
(c) Loans by international agencies like the World Bank.
There are very few countries which have successfully marched on the road to economic development without making use of foreign capital in one form or the other. India is receiving a good amount of foreign capital from abroad for investment and capital formation under the Five-Year Plans.

- **Deficit Financing:** Deficit financing, i.e., newly-created money is another source of capital formation in a developing economy. Owing to very low standard of living of the people, the extent to which voluntary savings can be mobilised is very much limited. Also, taxation beyond limit becomes oppressive and, therefore, politically inexpedient. Deficit financing is, therefore, the method on which the government can fall back to obtain funds.

However, the danger inherent in this source of development financing is that it may lead to inflationary pressures in the economy. But a certain measure of deficit financing can be had without creating such pressures.
There is specially a good case for using deficit financing to utilize the existing under-employed labour in schemes which yield quick returns. In this way, the inflationary potential of deficit financing can be neutralized by an increase in the supply of output in the short-run.

- **Disguised Unemployment:** Another source of capital formation is to mobilize the saving potential that exists in the form of disguised unemployment. Surplus agricultural workers can be transferred from the agricultural sector to the non-agricultural sector without diminishing agricultural output.

The objective is to mobilize these unproductive workers and employ them on various capital creating projects, such as roads, canals, building of schools, health centers and bunds for floods, in which they do not require much more capital to work with. In this way', the hitherto unemployed, labour can be utilized productively and turned into capital, as it were.

- **Capital Formation in the Public Sector:** In these days, the role of government has greatly increased. In an under-developed country like India, government is very much concerned with the development of the economy. Government is building dams, steel plants, roads, machine-making factories and other forms of real capital in the country. Thus, capital formation takes place not only in the private sector by individual entrepreneurs but also in the public sector by government.

There are various ways in which a government can get resources for investment purposes or for capital formation. The government can increase the level of direct and indirect taxation and then can finance its various projects. Another way of obtaining the necessary resources is the borrowing by the Government from the public.

The government can also finance its development plans by deficit financing. Deficit financing means the creation of new money. By issuing more notes and exchanging them with the productive resources the government can build real capital. But the method of deficit financing, as a source of development finance, is dangerous because it often leads to inflationary pressures in the economy. A certain measure of deficit financing, however, can be had without creating such pressures.

Another source of capital formation in the public sector is the profits of public undertakings which can be used by the government for further investment. As stated above, government can also get loans from foreign countries and international agencies like World Bank. India is getting a substantial amount of foreign assistance for investment purposes under the Five-Year Plans.

- **Parallel economy**

It is based on the black money or unaccounted money, is a big menace to the Indian economy. It is also a cause of big loss in the tax-revenues for the government. As such, it needs to be curbed. Its elimination will benefit the economy in more than one way.

In a general way, we can define black economy as the money that is generated by activities that are kept secret, in the sense that these are not reported to the authorities. As such, this money is also not accounted to (he fiscal authorities i.e., taxes are not paid on this money.

An estimate by Suraj B. Gupta had put the size of black money at over 50 per cent of GDP (at factor cost) in 1987-88. It is also stated that annual rate of growth of black economy is higher than the annual growth rate of GDP.

According to Global Financial Integrity Study of 2009, $ 1.4 trillion belongs to Indians were parked in safe havens abroad. $ 1.4 trillion is equivalent to Rs. 70 lakh crore, more than India's national income of around Rs. 50 lakh crore.

A statement from the Swiss Central Bank declared that Indians have $2.5 billion deposits in various Swiss Banks. It is suspected that the deposits of Indians in tax havens are mostly being withdrawn and shifted to a third country; making it difficult for the government to gather any further details once the accounts are closed.

- **Harmful Effects of Parallel Economy:**

The circulation of black money has adversely affected the economy in several ways. First, is the misdirection of precious national resources? A part of black money is kept in a form that

contributes nothing/little to productive activities. Again, much around half to two third is squandered away on ostentatious consumption of goods and services.
Second, it has enormously worsened the income distribution, and has thereby undermined the fabric of the society.
Third, the existence of a big-sized unreported segment of the economy is a big handicap in making a correct analysis and formulation of right policies for it. Nor. it is possible to monitor the development in the economy with precision.
Fourth, the black money has eroded the social values of the society. The undeclared income is 'earned' by illegitimate ways. This is spent in undesirable and vulgar manner.

1. Dual Economy

The increase in the amount of black money in India over a period of time lead to the perpetual growth of economic dualism which consists of ***Parallel economy*** (black money economy) operating side by side with the ***Official*** or ***Reported*** economy on the country.
The black economy represents not less than one fifth of the aggregate economic transactions. There is also interaction between the reported and unreported activities such that it is difficult to identify black money from the white money economy. Such a ***Parallel Economy*** will ruin the entire economic development of the country.

2. Under-estimation

A large underground economy and growth of black income lead to under-estimation of the true size and incorrect picture of the economy by the officially complied national income data. Since unreported economy is apparently excluded from the official records of the Gross National Product, the estimates of savings and consumption of nations to the national income and measurement of other macroeconomic variables would be biased and misleading for accurate policy making and planning considerations.

3. Loss of Revenue to the Government

Black money is largely attributed to tax evasion. Its direct impact is the loss of the Government revenue. Since the Government fails to get sufficient tax revenue due to large-scale tax evasion, it is forced to resort to high taxation and deficit financing which again carry their ill-economic effects.

4. Undermining the Equity

When the Government resorts to progressive direct taxation to maintain equity in the distribution of the tax burden, the tax evasion and growth of black money affect the very concept of social justice by not allowing the desirable reduction in inequalities of incomes. Again, when underground activities like smuggling etc. could not be taxed, the Government will impose higher taxes on officially sanctioned activities.
Further, the tax evasion will also equally enjoy the public services without paying the due contribution; to that extent also social enquiry is undermined. The honest have to bear high tax burden to make up for the deficit in revenue caused by the tax evasion of black money makers.

5. Widening the Gap between the Rich and the Poor

Growth of the black economy causes regressive distribution of income in the society. When the black money grows faster, **rich becomes richer and the poor become poorer**. By way of concentration of income and wealth in few hands, the black money widens the gap between the rich and the poor.

6. Lavish Consumption Spending

Black money is disposed off by lavish spending on travels and tours, entertainment, ostentatious articles, financing of extravagant elections etc. This has also lead to many social evils and deteriorated the values of life of the common people.

7. Distortion of Production Pattern

The black money has altered the choice coefficients in the market in favor of luxuries, which lead to the diversification of productive resources from essential goods to the non-essential goods.

8. Distribution of Scarce Resources

Black money holders are always in a position to put their prior claim over the scarce goods in the market due to their readiness and ability to pay more, thereby depriving the honest and poor people from their legitimate share. This obviously reduces the net economic welfare of the Indian society at large.

9. Deteriorate the General Moral Standards of the Society

Black money is largely responsible for the deterioration of general moral standards of the society. Black income generation implies a deviation from the accepted norms in society and from the point of view of the society is unethical.

Socially, we can say that the structure and ethos of a society undergoes a massive change. Social values of honesty, hard work, thrift and simplicity get eroded. Even the political institutions and organizations lose their credibility as they also gradually become a part of the entire system of black income generation.

10. Average Effect on Production

As a consequence, the consumption pattern is titled in favor of the rich and elite, at the cost of encouraging production of articles of mass consumption. A rise in overall consumption leaves fewer resources for investment in priority areas, having an adverse effect on production.

➢ Conclusion

From the above discussion, the exact effect of black money on any economy shall be summarized as follows.

1. *Growth of economic dualism,*
2. *Under-estimation of the true size of the economy,*
3. *Tax evasion, thereby loss of revenue to Government,*
4. *Undermining equity,*
5. *Widening Gap between the Rich and Poor,*
6. *Lavish Consumption Spending,*
7. *Distortion of Production Pattern,*
8. *Distribution of Scarce Resources,*
9. *Deterioration of General Moral Standards of the Society,*
10. *Effects on Production.*

LAWS - GENERAL

- Salient Features of the Indian Constitution

Indian constitution being the most unique and the longest written constitution in the world, originally had 395 articles which are further divided into 22 parts and 8 schedules. As a result of various amendments over time, at present, our constitution contains 448 articles, with 12 schedules. The constitution of India was put together by a Constituent Assembly. After several meetings and discussions, finally, on 26th January 1950, our constitution came into effect.

Article 368 of the constitution laid down that the Parliament can keep amending the constitution according to the need of the time in future. As held by the Apex Court, every part of the constitution can be modified, except the "basic structure" of the Constitution. Any old or new law which violates the basic structure of the constitution is declared unconstitutional and invalid by the Courts.

1. Longest Written Constitution:

Indian Constitution is a fully written document which incorporates various laws for proper management of the country. Indian constitution contains separate provisions for states and centre and their inter-relationship. The constituent assembly had borrowed various provisions from several other constitutions of the world which made it very detailed. Moreover, there are separate provisions for scheduled castes, scheduled tribes, other backward classes, children and women.

2. Single Citizenship:

Presently there are 28 states and 7 Union Territories in India and all citizens enjoy a common uniform citizenship. All those citizens are further entitled to equal freedom, rights, and protection.

3. Fundamental Rights:

The fundamental rights of an Indian citizen are guaranteed under Part IIIC (Articles 12-35). It is also called the 'Indian Bill of Rights'. After the 44th Amendment Act 1979, there are presently six fundamental rights in our constitution. It is to be noted that these fundamental rights are not absolute and are subject to certain limitations that are expressly mentioned in the constitution itself.

The six fundamental rights are as follows:

(i) Right to Equality

This fundamental right provides for equality before law and equality of opportunity. It also ends discrimination and abolishes untouchability and titles.

(ii) Right to Freedom

This fundamental right further includes six kinds of freedoms.

These are:- Freedom of speech and expression, Freedom to assemble peacefully without arms, Freedom to form associations, Freedom to move freely in India, Freedom to reside in any part of India, Freedom of adopting any profession, trade, or occupation.

(iii) Right to freedom of Religion

This fundamental rights, grants an individual, a right to believe, profess, or worship any religion. The State does not have a common religion. It also guarantees the right to establish and maintain any religious institution. No person can be compelled to follow a particular religion.

(iv) Cultural and Educational Rights

This fundamental right guarantees all the minorities a right to maintain, develop, and further teach their language and culture. It also provides them a right to establish, maintain and administer their own educational institutions.

(v) Right against Exploitation

This fundamental right prohibits forced labour, child labour, and human trafficking. It ensures protection to individuals against various human atrocities.

(vi) Right to Constitutional Remedies (Article 32)

This fundamental right is the heart and soul of all of the fundamental rights. It ensures effective enforcement of all the other fundamental rights and protection from violation of these rights. Under this article, the Supreme Court and Hight Court have to power to issue writs for enforcement of these rights.

4. Fundamental Duties:

Part IVA (Article 51 A) of the Constitution describes various Fundamental Duties of each citizen. Those fundamental duties are as follows:

i. *To abide by the Constitution and respect its ideals and institutions; as well as, respect the National Flag and the National Anthem*
ii. *To cherish the noble ideals of the freedom struggle*
iii. *To uphold and protect the unity, sovereignty, and integrity of India*
iv. *To defend the country and render national service when called upto to do so.*
v. *To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional, or sectional diversities; to renounce practices derogatory to the dignity of women*
vi. *To value and preserve the rich heritage of our exquisite culture*
vii. *To protect and improve the natural environment including forests, lakes, rivers, and wild life, and to have compassion for living creatures*
viii. *To develop the scientific temper, humanism, and the spirit of inquiry and reform*
ix. *To safeguard public property and to abjure violence*
x. *To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.*
xi. *To provide opportunities for education by the parent or the guardian, to his child, or a ward between the age of 6-14 years as the case may be.*

5. Directive Principles of State Policy:

Part IV of the Indian Constitution deals with the 'Directive Principles of State Policy'. This part of the Constitution mentions certain guidelines for the State with the objective of socio-economic development. All three governments of the country, Central, State, and Local are expected to frame welfare policies in accordance with this part of the Constitution. However, these policies are not enforceable in a Court of Law.

For example, some of the policies that the State is directed to make are to ensure fairer distribution of wealth, protection of women and children, old age pensions, local governments, adequate means of livelihood to people, etc.

6. Mixture of Rigidity and Flexibility:

The Constitution of India is said to be the perfect mixture of rigidity and flexibility. It is neither wholly rigid nor wholly flexible. It is because, some provisions of the Constitution can be amended very easily while the others can only be amended by complex processes.

7. Adult Suffrage: (Universal Adult Franchise)

This part of the Constitution promotes the policy of 'one person one vote'. According to this part of the Constitution, every individual of 18 years and above have a right to vote irrespective of their age, gender, race, colour, religion, etc.

8. India as a Democratic, Socialist, Sovereign, Secular, and Republic State:

- India is a Democratic state means that the citizens of India have the power to elect their representatives in the government and thus, the government is responsible to the people.
- India is a Socialist state because the 42nd Amendment of the Constitution states the achievement of socialist goals through democratic and non-violent means.
- Indian Constitution states that India is a Sovereign state because it is absolutely independent and it is not under the control of any other state. It manages all of its internal and external affairs freely without any external forces.
- India is a Secular state as the state has no specific religion of its own. Every citizen is free to follow, practice, and profess the religion of their choice. Moreover, the state cannot discriminate amongst its citizens on the basis of religion.
- India is a Republic because it is not ruled by a heredity monarch, whereas, the head of the state (the President) is elected by the people indirectly for a fixed period of 5 years.

9. Parliamentary system of government:

Indian Constitution provides for a parliamentary form of government. President is the nominal or Constitutional head of the state. He is indirectly elected by the citizens of India for a fixed period of 5 years. While, the Prime Minister is the real or executive head of the state and is collectively responsible for the management of the Council of Ministers.

10. Independent Judiciary:

The Indian judiciary is free from interference from the other organs of the government (namely, the executive and the legislature). Some facts mentioned in the Constitution that further prove the independence of the judiciary are:-

- Judges are appointed by the President,
- Judges of Supreme Court cannot be removed from office except through an extremely complex process,
- The salaries of judges are very high,
- The Supreme Court has its own staff.

11. Judicial Activism:

Through the Public Interest Litigation system (PIL) and many other ways, the judiciary has been keeping an eye on the functioning of the legislature and the executive and if the judiciary feels that there is need of some more effective policies or laws on a certain topic of public or national importance, the Judiciary can suggest or make temporary laws in the favour of those topics.

12. Judicial Review:

This part of the Constitution gives the judiciary, a right to review each law and further declare them as unconstitutional or invalid according to the decisions

- Fundamental Rights and Duties

As a citizen of India, we are entitled to certain rights as well as obliged to certain duties. It is our duty as responsible citizens that we abide by these laws and carry out our duties. Similarly, knowledge of our fundamental rights is important so as to prevent injustice. Let us update ourselves about the Fundamental Rights and Duties laid down by the constitution of India

- Introduction to Fundamental Rights and Duties

During the period of 1947 to 1949, Constitution of India developed and prescribed the fundamental obligations of the State to its citizens and the duties and the rights of the

citizens towards the State under the following sections which constitute the vital elements of the constitution.

- Fundamental Rights
- Directive Principles of State Policy
- Fundamental Duties

These sections consist of a constitutional bill of rights for government policy-making and lay down a foundation for the appropriate the behavior and conduct of citizens.

➢ The Fundamental Rights

These are the basic human rights of all citizens, defined in Part III of the Constitution. These are applicable irrespective of race, place of birth, religion, caste, creed, or gender. They are enforceable by the courts, subject to specific restrictions. Following are some of the important rights of the citizens of India in accordance with the Constitution.

- Right to Equality
- Right to freedom
- Right against exploitation
- Right to freedom of religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

➢ Directive Principles of State Policy

These are included in Part IV of the Constitution. For the framing of certain Laws, the Government requires certain guidelines. These are included in the Directive Principles of State Policy. According to Article 37, they are not enforceable by the courts. It just lays down the fundamental principles and guidelines on which they are based are fundamental guidelines for governance that the State need to follow while designing the laws. Emphasis is on the Welfare of State Model.

The establishment of Directive Principles of State Policy is in accordance with certain articles of the Constitution of India. Let us explore more about the importance of these articles.

Article	*Significance*
37-	*Non-enforceability in court*

39A-	*Securing participation of workers in management of industries*
41-43-	*Mandate the state to endeavor to secure to all citizens right to work, living wage, security, maternity relief and a decent standard of living*
43-	*Promotion of industries, Establishment of Several Boards for the promotion of Khadi and other handlooms*
45-	*Free and compulsory education to children between age group of 6-14* *After 2002 amendment childhood care age limit was shifted to below 6 years*
47-	*Raise the standard of living and improve public health* *Prohibition of consumption of intoxicating drinks and drugs injurious to health*
48-	*Organize agriculture and animal husbandry on modern and scientific lines*
48A-	*Protection of the environment and safeguard the forests and wildlife of the country*
49-	*Preservation of monuments and objects of national importance*
50-	*Separation of judiciary from the executive in public services*
51-	*International peace and security* *Implementation of Laws giving effect to International Treaties*

➢ The Fundamental Duties

These are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India and concern the individuals and the nation. Included in Part IVA of the Constitution, like the Directive Principles, they are not enforceable by the law. According to the constitution, following are the duties to be followed by every citizen of India

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To uphold and protect the sovereignty, unity, and integrity of India.
- To defend the country and render national service when called upon to do so.
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
- To value and preserve the rich heritage of our composite culture.
- To protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures.
- To develop the scientific temper, humanism and the spirit of inquiry and reform.
- To safeguard public property and to abjure violence.

- To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.
- Who is a parent or guardian, to provide opportunities for education to his child, or as the case may be, ward between the ages of six to fourteen years.
- According to the 86th constitutional amendment in 2002, it is the duty of the people of India to adapt to make India a safer place to live, to be clean and make the surrounding clean and not to hurt anybody physically and mentally.

➢ The Relationship Between the Fundamental Rights, Directive Principles and Fundamental Duties

Directive Principles have been used to uphold the Constitutional validity of legislation in case of conflict with Fundamental Rights. According to the amendment of 1971, any law that even though it deviates from the Fundamental Rights, but has been made to give effect to the Directive Principles in Article 39(b)(c) would not be deemed invalid. The Fundamental Duties will be held obligatory for all citizens subject to the State enforcing the same by means of a valid law.

- Solved Question For You

Que: Which of these is not a Fundamental Right according to The Constitution of India?

a. Right to Constitutional Remedies
b. Cultural and Educational Rights
c. Right to Equality
d. Right to a luxurious life

Ans: The correct answer is Option d. Right to a luxurious life. It is not a fundamental right according to the Constitution of India.

➢ Directive Principles of Our State Policy: Part IV (Articles 36-51)

Part IV of Indian Constitution deals with Directive Principles of our State Policy (DPSP). The provisions contained in this Part cannot be enforced by any court, but these principles are

fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The concept of Directive Principles of State Policy was borrowed from the Irish Constitution. While most of the Fundamental Rights are negative obligations on the state, DPSPs are positive obligations on the state, though not enforceable in a court of law.

Article 36: Definition In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

Article 37: Application of the principles contained in this Part

The provisions contained in this Part shall not be enforced by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 38: State to secure a social order for the promotion of the welfare of the people

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39: Certain principles of policy to be followed by the State

The State shall, in particular, direct its policy towards securing –
(a) that the citizen, men and women equally, have the right to an adequate means of livelihood;
(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) that there is equal pay for equal work for both men and women;
(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 39A: Equal justice and free legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 40: Organization of village panchayats

The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Article 41: Right to work, to education and to public assistance in certain cases

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42: Provision for just and humane conditions of work and maternity relief

The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43: Living wage, etc., for workers

The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43A: Participation of workers in management of industries

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organization engaged in any industry.

Article 44: Uniform civil code for the citizen

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Article 45: Provision for free and compulsory education for children

The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular,

the State shall endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

Article 48: Organization of agriculture and animal husbandry

The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other mulch and draught cattle.

Article 48A: Protection and improvement of environment and safeguarding of forests and wildlife

The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 49: Protection of monuments and places and objects of national importance

It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Article 50: Separation of judiciary from the executive

The State shall take steps to separate the judiciary from the executive in the public services of the State.

Article 51: Promotion of international peace and security

The State shall endeavor to –
(a) promote international peace and security;
(b) maintain just and honorable relations between nations;
(c) foster respect for international law and treaty obligations in the dealings of organized people with one another; and
(d) encourage settlement of international disputes by arbitration.

- What is the difference between legislature, executive and judiciary?

- The modern democratic setup is nowadays is generally based on the concept of the **"Doctrine of Separation of Powers".** Earlier all the powers were vested in only one authority, i.e the King. Concentration of all the powers in one particular authority led to abuse of power as the decision taken by the authority was whimsical and arbitrary on several occasions. A French lawyer and Political thinker Montesquieu proposed the "Doctrine of Separation of Powers" in his book *"De l'esprit des Lois"* also known as the **"Spirit of Laws"**. This theory suggested formation of three separate authorities for separate functions.

While framing the Indian constitution the Constituent Assembly was working meticulously to frame a system of Governance in which the powers conferred by the people won't be vested on a single person/institution. Hence they devised the principle of '*Separation of powers' among the three pillars of democracy!*

- Legislature to Legislate,
- Executive to implement,
- Judiciary to adjudicate,

Therefore, every ideal democratic state has three basic organs. The Legislature, the Executive and the Judiciary.

- The Legislature: It is the law and policy making body. Generally, new laws or policies are introduced in the Parliament/ State Legislature in the form of Bills. These Bills once passed by the Legislature are sent to the President for assent. Once the passed bill gets the assent of the President, it becomes the law or the policy comes into effect. Parliament or the State Legislature are the forms of "Legislature". *It is the policy making body of India. Each and every bill proposed by the executive has to be initiated, discussed, reviewed, amended and voted upon in the legislature. So ultimately it is the legislature that decides which bills should be passed. The Executive can bypass the legislature through Ordinance. But the validity of this ordinance is six months only and it has to be ratified by the legislature.*

- The Executive: The executive is responsible for the effective implementation of the laws/ policies passed by the Legislature. The President, Vice- President along with the Council of Ministers and the Attorney General form the Executive branch of the Center, whereas Governor is the Executive at the State level along with the council of Ministers.

Prime Minister along with his council of ministers is called the Temporary Executives. They implement the policies framed by the legislature. They are elected for every five years and hence called as Temporary Executives. These executives are drawn from the legislature.

Civil servants and other officers, staffs working under the government of India is called the Permanent Executives. They are assigned the task of policy implementation.

The Bureaucrats and civil servants are also parts of the executive as they are responsible for effective implementation of the law and policies at local level.

- The Judiciary: It is the most important feature of democracy. It is responsible for safeguarding the interests and the fundamental rights of the people. Judiciary consists of the Hon'ble Supreme Court, Hon'ble High Court and other lower courts. Judiciary keeps a tab on the activities of the government and plays an important role in the event of violation of Fundamental Rights of the people of the country. Judiciary also has the authority to examine the validity of the Laws enacted by the Parliament on the constitutional parameters. *Judiciary is the adjudicating body.*
  Indian judiciary is an integrated and independent judiciary meaning Supreme court is at the helm of the judiciary and all other courts comes below the Supreme court and the Judiciary is independent of the executive and the legislature.

  Judiciary has the power to review any law passed by the Parliament and can declare a law null and void if it violates the constitution.

LAW OF CONTRACT

- Who Performs the Contract?
- There are at least two parties to a contract, a promisor, and a promisee. A promisee is a party to which a promise is made and a promisor is a party which performs the promise. Three sections of the Indian Contract Act, 1872 define who performs a contract – Section 40, 41, and 42. In this article, we will look at these sections to understand the concept of the performance of a contract better.

Section 40

Section 40 of the Indian Contract Act, 1872 states
If the nature of a contract indicates that either of the parties intended that the promise contained in the contract must be performed by the promisor himself

- Then the promisor is obligated to perform the promise
- Else the promise can be performed by the promisor or his representatives or an employed agent.

Let's look at some examples: Peter promises to pay Rs 50 to John. In this case, Peter can perform the promise himself by paying the money to John or can ask someone else to pay him. Also, if Peter dies before fulfilling his promise, then his representatives are required to perform the promise or employ someone to do the same.
We will take a look at another example. Peter is a singer and he promises to sing a song at John's wedding reception. In this case, the nature of the contract requires Peter to perform the promise himself. He cannot delegate it to someone. So, there are three possibilities for the performance of the promise. It can be done by the promisor, his representatives or his agent, depending on the nature of the contract.

- Promisor Performs the Promise

If a contract indicates that the parties intended for the promisor to fulfill the promise himself, then the promisor is obligated to perform the promise. Usually, these include promises which involve personal skills, experience, or expertise and are usually based on trust between the promisor and the promisee.
The example 2 cited above about Peter singing at John's wedding reception is a good example of a personal skill being required to perform the promise.

- Agent Performs the Promise

If the contract does not require the personal consideration of the promisor, then the promisor can employ a competent person to perform the promise. The example 1 cited above is a good example of Peter employing an agent to pay Rs 50 to John.

- Legal Representatives Perform the Promise

If the promisor dies before performing the promise, then the legal representatives become responsible for the same. If the promise involves utilization of personal skills or expertise, then the consideration ceases with the death of the promisor. However, in all other scenarios, the legal representatives are obligated to perform the promise unless the contract has a contrary intention specified. Also, the liability of the legal representatives is limited to the value of the property inherited by them.
Peter promises to pay John an amount of Rs 10,000 within one month of delivery of certain goods. John delivers the goods. However, Peter dies before he can pay the money to John. Now, it is his legal representative's responsibility to ensure that John receives the payment. The representative can pay himself or employ someone for the same.

❖ Section 41

If the promisee accepts the performance of a promise from a third person, then he cannot enforce it against the promisor at a later date. Hence, the performance of the promise by a third-party discharges the promisor of his obligations even if he has not authorized the third-party to perform the promise.
Peter promises to pay John and an amount of Rs 10,000 for painting his house. John finishes the job but Peter is unable to pay him. Oliver, a common friend of Peter and John, offers Rs 6,000 to John on behalf of Peter, which he accepts. Eventually, John files a suit for recovery against Peter. The Court holds that:

- John accepted Rs 6,000 from a third-person.
- Peter has not authorized the third-person.
- Hence, John's act has discharged Peter of his liability to pay the entire amount.
- John can only claim Rs 4,000 from Peter now.

❖ Section 42

If the promisors agree to perform a promise together – joint promise – then they are jointly obligated to fulfil the promise, unless the contract specifies a contrary intention. Also, if any of the promisors die, then their legal representatives must fulfil the promise jointly with the surviving promisors. If all the promisors die, then the legal representatives of each of them must perform the promise jointly.
Peter, John, and Oliver jointly promise to pay Rs 900,000 to Rita. However, Peter dies before paying the money. In this case, Peter's representative – Jack, is now jointly responsible along with John and Oliver to pay Rita the amount.
Unfortunately, before Rita receives her money, all the three promisors, i.e. Peter, John, and Oliver die. In this case, Jack – Peter's representative, Tony – John's representative, and Sam – Oliver's representative must jointly pay the amount to Rita.

- ✓ Solved Example for You

Q: Peter and John are childhood friends. Peter is a painter and agrees to paint John's portrait for a payment of Rs 20,000. However, he is in urgent need and requests John to pay him in advance. John obliges and they enter into a contract for the same. Peter starts making John's portrait. However, before he can finish, he dies in a car accident. Jack inherits Peter's property. Can John file a suit for recovery since he had already made the payment but did not get his portrait in return?

Ans: Since the contract was based on personal consideration, that is Peter's painting skills and there was no clause in the contract regarding a refund if Peter fails to deliver the portrait, John cannot file a suit for recovery of his money.

❖ Types of Contracts – Based on Validity

Now that you know what a contract is, can you identify the various Types of Contracts? A proper knowledge of the types of contracts is essential as it will allow you to decide the legal ramifications of an agreement. Here we will see the different Types of Contracts classified as per their validity.

➢ Types of Contracts - On The Basis Of Validity

Chapter 2 of the Indian Contract Act, 1872 discusses the voidable contracts and void agreements. On the basis of validity or enforceability, we have five different types of contracts as given below.

➢ Valid Contracts

The Valid Contract as discussed in the topic on "Essentials of a Contract" is an agreement that is legally binding and enforceable. It must qualify all the essentials of a contract.

➢ Void Contract or Agreement

The section 2(j) of the Act defines a void contract as "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". This makes all those contracts that are not enforceable by a court of law as void. We have already stated examples of these kinds of contracts in the "Essentials of a Contract".

Example: A agrees to pay B a sum of Rs 10,000 after 5 years against a loan of Rs. 8,000. A dies of natural causes in 4 years. The contract is no longer valid and becomes void due to the non-enforceability of the agreed terms.

➢ Voidable Contract

These types of Contracts are defined in section 2(i) of the Act: "An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract." This may seem difficult to wrap your head around but consider the following example:

Suppose a person A agrees to pay a sum of Rs. 10,0000 to a person B for an antique chair. This contract would be valid, the only problem is that person B is a minor and can't legally enter a contract. So this contract is a valid contract from the point of view of A and a "voidable" contract

from the point of view of B. As and when B becomes a major, he may or may not agree to the terms. Thus this is a voidable contract.

A voidable contract is a Valid Contract. In a voidable contract, at least one of the parties has to be bound to the terms of the contract. For example, the person A in the above example. The other party is not bound and may choose to repudiate or accept the terms of the contract. If they so choose to repudiate the contract, the contract becomes void. Otherwise, a voidable contract is a valid contract.

- Illegal Contract

An agreement that leads to one or all the parties breaking a law or not conforming to the norms of the society is deemed to be illegal by the court. A contract opposed to public policy is also illegal.

Several examples may be cited to illustrate an illegal contract. For example, A agrees to sell narcotics to B. Although this contract has all the essential elements of a valid contract, it is still illegal. The illegal contracts are deemed as void and not enforceable by law. As section 2(g) of the Act states: "An agreement not enforceable by law is said to be void."

Thus we can say that all illegal contracts are void but the reverse is not true. Both the void contracts and the illegal contracts can't be enforceable by law. Illegal contracts are actually void *ab initio* (from the start or the beginning).

Also because of the criminal aspects of the illegal contracts, they are punishable under law. All the parties that are found to have agreed on an illegal promise are prosecuted in a court of law.

- Unenforceable Contracts

Unenforceable contracts are rendered unenforceable by law due to some technical. The contract can't be enforced against any of the two parties.

For example, A agrees to sell to B 100kgs of rice for 10,000/-. But there was a huge flood in the states and all the rice crops were destroyed. Now this contract is unenforceable and cannot be enforced against either party.

Solved Examples For You

Q1*: List the main differences between a void and a voidable contract?*
Answer: *The following table will illustrate the major differences between a void and a voidable contract.*

Void Contract	*Voidable Contract*
"A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".	*"An agreement which is enforceable by law at the option of one or more of the parties thereto, but no at the option of the other or others, is a voidable contract."*
A contract becomes void if either it lacks the essential elements, the law changes drastically or the terms of the contract change such that it is no longer possible to enforce the contract in a court of law.	*A contract becomes a voidable contract when at least one of the parties reserves its consent or the consent of one of the parties was not free at the time of the formation of the contract.*
Void contracts can't be fulfilled.	*The validity and enforceability of the voidable contract depend on the choice of the unbound part If the unbound party decides to repudiate the contract it becomes void.*
This type of contract can't grant any rights or considerations to any of the involved parties.	*The right to rescind a voidable contract is retained by the unbound party.*

➢ FREE CONSENT

➢ *Introduction to 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 if it is not caused by coercion, undue influence, fraud, misrepresentation and mistake.

➢ Elements vitiating free Consent

- ***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.

- ***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 assesse.*

✓ *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"*

- ***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, and then keeping silence is fraud. Or when silence is in itself equivalent to speech, such silence is fraud.

- ***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".
- ***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.

❖ Discharge of a Contract

A contract creates certain obligations on one or all parties involved. The discharge of a contract happens when these obligations come to an end. There are many ways in which a contract is discharged. In this article, we will look at various such scenarios.

1] Discharge by Performance

When the parties to a contract fulfill the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.
Example: *Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount.*

Since both the parties to the contract fulfill their obligation arising under the contract, then it is discharged by performance. Now, discharge by the performance of a contract can be by:

1. *Actual performance*
2. *Attempted performance*

As shown in the example above, actual performance is when all the parties to a contract do what they had agreed for under the contract. On the other hand, it is possible that when the promisor attempts to perform his promise, the promise refuses to accept it. In such cases, it is called attempted performance or tender.

2] Discharge by Mutual Agreement

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.
Example: *Peter owes Rs 100,000 to John and agrees to repay it within one year. They document the debt under a contract. Subsequently, he loses his job and requests John to accept Rs 75,000 as a final settlement of the loan. John agrees and they make a contract to that effect. This discharges the original contract due to mutual consent.*

3] Discharge by the Impossibility of Performance

If it is impossible for any of the parties to the contract to perform their obligations, then the impossibility of performance leads to a discharge of the contract. If the impossibility exists from the start, then it is impossibility ab-initio. However, the impossibility might also arise later due to:

- *An unforeseen change in the law*
- *Destruction of the subject-matter essential to the performance*
- *The non-existence or non-occurrence of a particular state of things which was considered a given for the performance of the contract.*
- *A declaration of war*

Example: *Peter enters into a contract with John to marry his sister Olivia within one year. However, Peter meets with an accident and becomes insane. The impossibility of performance leads to a discharge of the contract.*

4] Discharge of a Contract by Lapse of Time

The Limitation Act, 1963 prescribes a specified period for performance of a contract. If the promisor fails to perform and the promise fails to take action within this specified period, then the latter cannot seek remedy through law. It discharges the contract due to the lapse of time.

Example: *Peter takes a loan from John and agrees to pay installments every month for the next five years. However, he does not pay even a single installment. John calls him a few times but then gets busy and takes no action. Three years later, he approaches the court to help him recover his money. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.*

5] Discharge of a Contract by Operation of Law

A contract can be discharged by operation of law which includes insolvency or death of the promisor.

6] Discharge by Breach of Contract

If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract. Also, if a party repudiates a contract before the agreed time of performance of a contract, then he is said to have committed an anticipatory breach of contract.

In both the cases, the breach discharges the contract. In case of:

- an actual breach, the promisee retains his right of action for damages.
- an anticipatory breach of contract, the promisee cannot file a suit for damages. It also discharges the promisor from performing his part of the contract.

7] Discharge of a Contract by Remission

A promisee can waive or remit the performance of promise of a contract, wholly or in part. He can also extend the time agreed for the performance of the same.

In example 3 above, Peter only repays a part of the money he owes to John. However, John agrees to accept it as a final settlement of the debt. John's act of remission discharges the contract.

8] Discharge by Non-Provisioning of Facilities

In many contracts, the promisee agrees to offer reasonable facilities to the promisor for the performance of the contract. If the promisee fails to do so, then the promisor is discharged of all liabilities arising due to non-performance of the contract.

Example: *Peter agrees to fix John's garage floor provided he keeps his car out for at least 6 hours. Peter approaches him a few times but John is reluctant to get his car out. John fails to provide reasonable facilities to Peter (an empty floor). This discharges him of all obligations arising under the contract.*

9] Discharge of a Contract due to the Merger of Rights

In some situations, it is possible that inferior and superior right coincides in the same person. In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

Example: *Peter rents John's apartment for two years. One year into the contract, he offers to buy the property from John, who agrees. The enter a sale contract and Peter becomes the owner of the apartment. Here Peter has two rights; one accorded by the lease agreement making him the renter and second by the sale agreement making him the owner. The former being an inferior right merges with the superior one and discharges the lease contract.*

- ✓ Solved Question for You

Q: Peter agrees to sell his laptop to John for an amount of Rs 15,000. He also promises to deliver it within 2 days. The next day, when Peter approached John with his laptop, John refuses to accept it without any valid reason. Is the contract discharged?

Ans: *Yes, in the above case the contract is discharged. The contract is discharged since Peter attempted the performance of his promise.*

❖ Breach Of Contract: Remedies

***The five basic remedies for breach of contract include the following*: *money damages, restitution, rescission, reformation, and specific performance*.** A money damage award includes a sum of money that is given as compensation for financial losses caused by a breach of contract. Parties injured by a breach are entitled to the benefit of the bargain they entered, or the net gain that would have accrued but for the breach. The type of breach governs the extent of damages that may be recovered.

If the breach is a total breach, a plaintiff can recover damages in an amount equal to the sum or value the plaintiff would have received had the contract been fully performed by the defendant, including lost profits. If the breach is only partial, the plaintiff may normally seek

damages in an amount equal to the cost of hiring someone else to complete the performance contemplated by the contract. However, if the cost of completion is prohibitive and the portion of the unperformed contract is small, many courts will only award damages in an amount equal to the difference between the diminished value of the contract as performed and the full value contemplated by the contract.

For example, if the plaintiff agreed to pay the defendant $200,000 to build a house, but the defendant only completed 90 percent of the work contemplated by the contract, a court might be inclined to award $20,000 in damages if it would cost the plaintiff twice as much to hire someone else to finish the last 10 percent. The same principles apply to damages sought for contracts that are fully performed, but in a defective manner. If the defect is significant, the plaintiff can recover the cost of repair. But if the defect is minor, the plaintiff may be limited to recovering the difference between the value of the good or service actually received and the value of the good or service contemplated by the contract.

Restitution is a remedy designed to restore the injured party to the position occupied prior to the formation of the contract. Parties seeking restitution may not request to be compensated for lost profits or other earnings caused by a breach. Instead, restitution aims at returning to the plaintiff any money or property given to the defendant under the contract. Plaintiffs typically seek restitution when contracts they have entered are voided by courts due to a defendant's incompetence or incapacity. The law allows incompetent and incapacitated persons to disavow their contractual duties but generally only if the plaintiff is not made worse off by their disavowal.

Parties that are induced to enter into contracts by mistake, fraud, undue influence, or duress may seek to have the contract set aside or have the terms of the contract rewritten to do justice in the case. Rescission is the name for the remedy that terminates the contractual duties of both parties, while reformation is the name for the remedy that allows courts to change the substance of a contract to correct inequities that were suffered. Like contracts implied in law, however, courts are reluctant to rewrite contracts to reflect the parties' actual agreement, especially when the contract as written contains a mistake that could have been rectified through pre-contract investigation. Thus, one court would not reform a contract that stipulated an incorrect amount of acreage being purchased, since the buyer could have ascertained the correct amount by obtaining a land survey before entering the contract.

Specific performance is an equitable remedy that compels one party to perform, as nearly as practicable, his or her duties specified by the contract. Specific performance is available only when money damages are inadequate to compensate the plaintiff for the breach. This ruling often happens when the subject matter of a contract is in dispute.

Every parcel of land by definition is unique, if for no other reason than its location. However, rare articles that are not necessarily one of a kind are still treated by the law as unique if it would be impossible for a judge or jury to accurately calculate the appropriate amount of damages to award the plaintiff in lieu of awarding him or her the unique article contemplated by the contract. Heirlooms and antiques are examples of such rare items for which specific performance is usually available as a remedy. However, specific performance may never be invoked to compel the performance of a personal service, since doing so would constitute slavery in violation of the Thirteenth Amendment to the U.S. Constitution.

❖ Contract of Indemnity and Law Of Guarantee

The term Indemnity literally means “Security against loss". In a contract of indemnity one party – i.e. the indemnifier promise to compensate the other party i.e. the indemnified against the loss suffered by the other.

The English law definition of a contract of indemnity is – *“it is a promise to save a person harmless from the consequences of an act"*. Thus it includes within its ambit losses caused not merely by human agency but also those caused by accident or fire or other natural calamities.

The definition of a contract of indemnity as laid down in Section 124 – *“A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person*”, is called a contract of indemnity.

The definition provided by the Indian Contract Act confines itself to the losses occasioned due to the act of the promisor or due to the act of any other person.

Under a contract of indemnity, liability of the promisor arises from loss caused to the promisee by the conduct of the promisor himself or by the conduct of other person. *[Punjab National Bank v Vikram Cotton Mills].*

Every contract of insurance, other than life insurance, is a contract of indemnity. The definition is restricted to cases where loss has been caused by some human agency. *[Gajanan Moreshwar v Moreshwar Madan]*

Section 124 deals with one particular kind of indemnity which arises from a promise made by an indemnifier to save the indemnified from the loss caused to him by the conduct of the indemnifier himself or by the conduct of any other person, but does not deal with those classes of cases where the indemnity arises from loss caused by events or accidents which do not depend upon the conduct of indemnifier or any other person. *[Moreshwar v Moreshwar]*

"Contract of indemnity" defined.-A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

Illustration

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

➢ Nature of Contract of Indemnity –

A contract of indemnity may be express or implied depending upon the circumstances of the case, though Section 124 of the Indian Contract Act does not seem to cover the case of implied indemnity.

A broker in possession of a government promissory note endorsed it to a bank with forged endorsement. The bank acting in good faith applied for and got a renewed promissory note from the Public Debt Office. Meanwhile the true owner sued the Secretary of State for conversion who in turn sued the bank on an implied indemnity. It was held that – it is general principle of law when an act is done by one person at the request of another which act is not

in itself manifestly tortious to the knowledge of the person doing it, and such act turns to be injurious to the rights of a third person, the person doing it is entitled to an indemnity from him who requested that it should be done. [Secretary of State v Bank of India].

The Indian Contract Act also deals with special cases of implied indemnity –

1. U/s 69 if a person who is interested in payment of money which another is bound by law to pay and therefore pays it, he is entitled to be indemnified. For instance – if a tenant pays certain electricity bill to be paid by the owner, he is entitled to be indemnified by the owner.

2. Section 145 provides for right of a surety to claim indemnity from the principal debtor for all sums which he has rightfully paid towards the guarantee.

3. Section 222 provides for liability of the principal to indemnify the agent in respect of all amounts paid by him during the lawful exercise of his authority.

The plaintiff, an auctioneer, acting on the instruction of the defendant sold certain cattle which subsequently turned out to belong to someone else other than the defendant. When the true owner sued the auctioneer for conversion, the auctioneer in turn sued the defendant for indemnity. The Court held that the plaintiff having acted on the request of the defendant was entitled to assume that, if it would turned out to be wrongful, he would be indemnified by the defendant. [Adamson v Jarvis].

- *Validity of Indemnity Agreement*

A contract of indemnity is one of the species of contracts. The principles applicable to contracts in general are also applicable to such contracts so much so that the rules such as free consent, legality of object, etc., are equally applicable.

Where the consent to an agreement is caused by coercion, fraud, misrepresentation, the agreement is voidable at the option of the party whose consent was so caused. As per the requirement of the Contract Act, the object of the agreement must be lawful. An agreement, the object of which is opposed to the law or against the public policy, is either unlawful or void depending upon the provision of the law to which it is subject.

- Contract of indemnity when enforceable –

The question whether the liability of indemnifier commences only when the indemnified has actually suffered loss or when there is an apprehension that the indemnified by all chances is likely to suffer it.

The former view was held in cases like – *Shankar Nimbaji v Laxman Sapdu / Chand Bibi v Santosh Kumar Pal.*

The plaintiff filed a suit to recover Rs. 5,000/- and interest from defendant by the sale of a mortgaged property and, in case of deficit, for a decree against the estate of defendant 2 which was in the hands of his sons, the defendant 2 died during the pendency of the suit. It was held that plaintiff cannot sue the defendant in anticipation that the proceeds realized by the sale of the mortgaged property would be insufficient and there would be some deficit. [Shankar Nimbaji v Laxman Sapdu]

The defendant's father while purchasing certain property covenanted to pay off mortgage debt incurred by the plaintiff and also promised to indemnify him if they were made liable for the mortgage debt. The defendant's father failed to pay off the mortgage debt and plaintiff filed an action to enforce the covenant. It was held as the plaintiff had not yet suffered any damage, the suit was premature so far as the cause of action on indemnity was concerned. [Chand Bibi v Santosh Kumar Pal]

A different point of view was held by the Courts in the following cases –

Plaintiff company agreed to act as commission agent for the defendant firm for purchase and sale of *"Hessian" and "Gunnies"* and charge commission on all such purchases and the defendant firm agreed to indemnify the plaintiff against all losses in respect of such transactions. The plaintiff company purchased certain Hessian from one *Maliram Ramjidas*. The defendant firm failed to pay for or take delivery of the Hessian. Then *Maliram Ramjidas* resoled it at lesser price and claimed the difference as damages from the plaintiff company. The plaintiff company went into liquidation and the liquidator filed a suit to recover the amount claimed by *Maliram* from the defendant firm under the indemnity. The defendant argued that in as much as the plaintiff had not yet paid any amount to *Maliram* in respect of their liability they were not entitled to maintain the suit under indemnity. It was held negative and decided in plaintiff's favour with a direction that the amount when recovered from the defendant firm should be paid to *Maliram Ramjidas*. *[Osmal Jamal & Sons Ltd. v Gopal Purushotham]*

After the landmark decision in the case of Gajanan *Moreshwar v Moreshwar Madan Mantri* it has been well established that the liability of the indemnifier commences as soon as the loss of the indemnified becomes absolute, certain or imminent. It is not necessary that the promisee should pay for the loss.

❖ Right of the indemnity holder – (Section 125)

An indemnity holder (i.e. indemnified) acting within the scope of his authority is entitled to the following rights –

1. Right to recover damages – He is entitled to recover all damages which he might have been compelled to pay in any suit in respect of any matter covered by the contract.

2. Right to recover costs – He is entitled to recover all costs incidental to the institution and defending of the suit.

3. Right to recover sums paid under compromise – He is entitled to recover all amounts which he had paid under the terms of the compromise of such suit. However, the compensation must not be against the directions of the indemnifier. It must be prudent and authorized by the indemnifier.

4. Right to sue for specific performance – He is entitled to sue for specific performance if he has incurred absolute liability and the contract covers such liability. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

(1) All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies

(2) All costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit ;

(3) All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not.

It is important to note here that the right to indemnity cannot be claimed of dishonesty, lack of good faith and contravention of the promisor's request. However, the right cannot be negatived in case of oversight. [Yeung v HSBC]

- ***Right of Indemnifier –***

Section 125 of the Act only lays down the rights of the indemnified and is quite silent of the rights of indemnifier as if the indemnifier has no rights but only liability towards the indemnified.

In the logical state of things if we read Section 141 which deals with the rights of surety, we can easily conclude that the indemnifier's right would also be same as that of surety.

Where one person has agreed to indemnify the other, he will, on making good the indemnity, be entitled to succeed to all the ways and means by which the person indemnified might have protected himself against or reimbursed himself for the loss. *[Simpson v Thomson]*

Principle of Subrogation is applicable because it is an essential part of law of indemnity and is based on equity and the Contract Act contains no provision in contravention with *[Maharaja Shri Jarvat Singhji v Secretary of State for India]*

- ***Contract of guarantee, surety, principal debtor and creditor:-***

A "contract of guarantee " is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the " surety";

The person in respect of whose default the guarantee is given is called the " principal debtor ", and the person to whom the guarantee is given is called the " creditor ". A guarantee may be either oral or written.

Consideration for guarantee.-Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Illustrations

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of

As promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

- Suretys liability:-

The liability of the surety is coextensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonored by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

Continuing guarantee.-A guarantee which extends to a series. Series of transactions is called a *"continuing guarantee".*

Illustrations

(a) A, in consideration that B will employ C in collecting the rent of Bs zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents.

This is a continuing guarantee.

(b) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does riot pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.-A continuing guarantee may at any time be revoked by the surety,as to future transactions, by notice to the creditor.

Illustrations

(a) A, in consideration of Bs discounting, at As request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

- Revocation of continuing guarantee by surety's death-*The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.*

- Discharge of surety by variance in terms of contract.-*Any variance, made without the surety's consent, in the terms of the contract between the principal 1[debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.*

Illustrations

(a) A becomes surety to C for Bs conduct as a manager in Cs bank. Afterwards B and C contract, without As consent, that Bs salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his surety ship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect, of a duty not affected by the later Act.

(c) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the 1st of March.

- Discharge of surety by release or discharge of principal debtor: - *The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor*.

Illustrations

(a) A contracts with B to grow a crop of indigo an As land and to deliver it to B at a fixed rate, and C guarantees As performance of this contract. B diverts a stream of water which is necessary for irrigation of As land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor- *A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.*

Surety not discharged when agreement made with third person to give time to principal debtor. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration

(a) C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

- Release of one co-surety does not discharge others-
  Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties. Discharge of surety by creditors act or omission impairing surety's eventual remedy.

- Guarantee obtained by misrepresentation invalid-
  Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

- Guarantee on contract that creditor shall not act on it until co-surety joins- Where *a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.*

- Co-sureties liable to contribute equally-*Where two or more persons are CO-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.*

Illustrations

(a)A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, la and C are liable, as between themselves, to pay 1,000 rupees each.

(b)A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

- Liability of co-sureties bound in different sums- *Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.*

Illustrations

(a)A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000

rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for Ds duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are liable to pay 10,000 rupees.

(b)A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for Ds duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

- Difference between Indemnity and Guarantee:-

1. *In a contract of indemnity there are two parties i.e. indemnifier and indemnified. A contract of guarantee involves three parties i.e. creditor, principal debtor and surety.*
2. *An indemnity is for reimbursement of a loss, while a guarantee is for security of the creditor.*
3. *In a contract of indemnity the liability of the indemnifier is primary and arises when the contingent event occurs. In case of contract of guarantee the liability of surety is secondary and arises when the principal debtor defaults.*
4. *The indemnifier after performing his part of the promise has no rights against the third party and he can sue the third party only if there is an assignment in his favour. Whereas in a contract of guarantee, the surety steps into the shoes of the creditor on discharge of his liability, and may sue the principal debtor.*

❖ TEN PRINCIPLES OF TORT LAW

❖ INTRODUCTION

Every person in our country is entitled to some legal right. Law imposes a duty on every individual to respect the legal right bestowed on others and any person interfering with someone else's enjoyment of their legal right is said to have committed a tort. The underlying principle of the law of tort is that every person has certain interests which are protected by law. Any act of omission or commission which causes damage to the legally protected interest of an individual shall be considered to be a tort, the remedy for which is an action for liquidated damages. Tort is generally a breach of duty. In India, the law of tort is unmodified and is still in the process of development.

However, following are the 10 most important principles of tort:

1. PRINCIPLE OF DAMNUM SINE INJURIA AND INJURIA SINE DAMNUM

- ***Damnum sine injuriais a Latin maxim which means damage without legal injury***. When there is an actual damage caused to the plaintiff without an infringement of his legal right, no action lies against the defendant. In order to make someone liable in tort, plaintiff must prove that he has sustained legal injury. Damage without injury is not actionable in the law of torts.

Example: *A sets up a rival school opposite to B's school with a low fee structure as a result of which students from B's school flocked to A's school thereby causing a huge financial loss to A. This act of A is not actionable in law of torts since it did not lead to the violation of any legal right of the plaintiff although he has sustained financial loss.*

- ***Injuria sine damnum*** **is a Latin term which means legal injury without any damage**. This implies an infringement of the legal rights of a person without any actual loss. Loss in this sense could mean loss of health, monetary loss etc. Since there is an infringement of legal right of a person, right to sue for a remedy is available against the wrongdoer regardless of the fact whether any actual loss is sustained or not.

In the leading case of Ashby v White the defendant, a returning officer at a voting booth refused to allow the plaintiff, a duly qualified voter from voting. The candidate for whom the plaintiff was voting got elected and therefore no loss was suffered by him. The court held that although the plaintiff did not sustain any actual loss, but his legal right to vote was violated for which he was granted a remedy.

2. PRINCIPLE OF VICARIOUS LIABILITY

It is a general rule that a person is responsible for his own act of omission and commission but in certain cases a person is liable for the act of others. This is known as vicarious liability. The essential elements of vicarious liability are as follows:

- There must be a relationship of a certain kind.
- The wrongful act must be related to the relationship in a certain way.
- The wrongful act must be done within the course of employment.

Most common example of vicarious liability include:
Employers liability for the act of his servant during the course of employment: This liability is based on the principle of "respondent superior" whereby a person is responsible for the act of his subordinate ***andqui facit per aliumfacit per se*** which means he who does an act through another is deemed in law to do it himself.

The essential elements amounting to vicarious liability of a master for the tort of his servant are as follows:

- ***There should be a master-servant relation.***
- ***The act of omission or commission should be done within the course of employment.***

Example: *If A, driver of B in his course of employment negligently knocks down C while driving a car, B will be responsible for the negligence of his driver A.*

- Principal's liability for the act of his agent: *When an agent performs an act which is authorized by the principle, the latter becomes liable for such an act of the agent provided the act is done within the course of employment*.
- Liability of partners for each other's torts: *When a partner in the normal course of business of a partnership firm commits a tort, all the other partners are equally responsible for the tort as the guilty partner.*

3. PRINCIPLE OF VOLENTI NON FIT INJURIA

The Latin maxim volenti non fit injurialiterally means "to one who volunteers, no harm is done". A person who after knowing the risks and circumstances willingly and voluntarily consents to take the risk cannot ask for compensation for the injury resulting from it. A person who voluntarily abandons his rights cannot sue for any damage caused to him. It is used as a complete defense in the law of torts liberating the defendant from all kinds of liability. Essential elements constituting volenti non fit injuria are as follows:

- ***Voluntary***
- ***Agreement (express or implied)***
- ***Knowledge of the risk***

Example: *By participating in a football match, the player willingly consents to bear the risk that may arise in the normal course of the game.*

4. PRINCIPLE OF NEGLIGENCE

Negligence is said to have been committed when a person owes a duty of care towards someone and commits a breach of duty by failing to perform it resulting in a legal damage caused to the complainant. In other words, a tort of negligence is committed when a person is injured due to the irresponsibility of another. The damage so caused must be an immediate cause of the act of negligence and not a remote cause.

Essential elements of negligence are as follows:

- ***Duty to take care***
- ***Beach of such a duty***
- ***Legal damage caused to the complainant due to a breach of duty***

Reasonable foresee ability is the basic principle on which the tort of negligence is based. When a person before or at the time of committing an act can reasonably foresee that his act is likely to cause a damage to the other person and he still continues to do it, he is said to have committed a tort of negligence.

COMPOSITE NEGLIGENCE: When the negligent act of two or more person results in the same damage, it is called composite negligence. The liability in such a case is joint and several.

The burden of proof falls on the plaintiff that he has sustained legal damage due to a breach of duty on the part of the defendant. However, in certain cases the plaintiff doesn't have to prove negligence on the defendant's part. Such cases fall under the principle of ***res ipsa loquitor which means "things speak for itself" where it is evident from the facts of the case that there has been negligence on the side of the defendant.***

Example: *A doctor while performing an operation leaves a pair of scissor inside the stomach of the patient.*

5. PRINCIPLES OF PERSONAL SECURITY

Principles of personal security are as follows:

- ASSAULT

Assault is an act which creates in the mind of a person reasonable apprehension of a physical threat or a harm accompanied by a capacity to carry out such a threat. It is important to note that there is an absence of physical contact in assault. Essential elements of assault are as follows:

- *Apprehension of harm*
- *Intention to use force*
- *Capacity to use force*

BATTERY- Battery refers to a harmful, offensive and unlawful touching of a person against his will. It is an application of force to the body of another in an offensive manner. Battery is an accomplished assault.

Essential elements:

- *Intention to use physical force*
- *Actual physical contact*

- *FALSE IMPRISONMENT*

  Unlawfully restraining a person without his will by someone who does not have any legal authority to do so amounts to false imprisonment. A person may also be made liable for false imprisonment if he intentionally restricts another person's freedom of movement without any lawful justification. Arrest of a person without any legal warrant and authority also amounts to false imprisonment.

Essential elements:

- *Wilful detention*
- *Detention without consent*
- *Detention is unlawful*

Example: *A person locking another person in a room without the consent of the person being locked.*

6. PRINCIPLE OF NUISANCE

The word nuisance is derived from the French word 'nurie' which means 'to hurt' or 'to annoy'. Nuisance is an unlawful interference with a person's enjoyment of land or some rights over or in connection with it.

There are two types of nuisance:

PUBLIC NUISANCE: It is an interference with the right to enjoyment of land of a large number of people thereby causing inconvenience and annoyance. It is committed against the community at large and not any particular individual. It covers a wide variety of minor crimes that harms or threatens the safety, comfort and welfare of people at large. The extent to which the inconvenience has been caused may differ from person to person.

Examples: *Fireworks in the street, construction of a structure in the middle of a public way obstructing the passage of people, etc.*

PRIVATE NUISANCE: It refers to an unlawful interference with a person's use or enjoyment of his land causing inconvenience and annoyance to the person. It should be noted that while public nuisance affects the community at large, private nuisance affects an individual.

Example: *Destruction of crops of an individual, a poisonous dog of a person enters into the neighbour's premises and causes destruction*.

- *REMEDIES*
- ✓ *Damages*
- ✓ *Injunction*
- ✓ *Abatement*

7. PRINCIPLE OF TRESPASS TO PROPERTY

Trespass to property refers to an unjustifiable physical encroachment of land of one person by another. If a person directly enters upon another person's land without permission or remains upon the land or places any object upon the land, he is said to have committed the tort of trespass to land.

For an act of trespass to be actionable, it is necessary that the land in which the trespass has been committed must be in direct possession of the plaintiff. For example, use of camera in order to view activities on the land of another. The encroachment on plaintiff's land should arise out of the direct consequence of the act of the defendant and not any remote or

indirect cause.Also, one of the most important elements of trespass to land is the intention in the mind of the defendant not to commit trespass but to commit the act that amounts to trespass. Trespass to land is actionable per se.

However, it should be noted that there is a difference between trespass to land and nuisance. Trespass is an encroachment or interference on the property of a person whereas nuisance is an interference with the right to enjoy his property.

CONTINUING TRESPASS: Continuing trespass occurs when there is a continuation of the presence after the permission has been withdrawn or when the offending object remains on the property of the person entitled to possession. For example continuing to keep an object on someone's land even after the permission has been withdrawn.

- Ways in which trespass to land can occur:
- ✓ *Entry upon land*
- ✓ *Trespass to airspace (limited)*
- ✓ *Trespass to the ground beneath the surface*
- *REMEDIES*
- ✓ Damages: the plaintiff is entitled to full compensation of the loss incurred by him.
- ✓ Injunction: order by the court directing the defendant from doing or restraining from doing an act.

8. PRINCIPLES OF REPUTATION AND PRIVACY

The principles of reputation and privacy are as follows:

➢ DEFAMATION

Defamation means publishing false and defamatory statement about someone without any lawful justification which lowers his reputation in the eyes of the right thinking members of the society. In other words, defamation means intentional false communication either written or spoken which harms a person's reputation.

- Defamation is of two types:

1. LIBEL: This is a written form of defamation which is actionable per se. Libel refers to the statement which intends to lower the reputation of another person without any lawful excuse. The statement must be in printed form capable of being reproduced like cartoons, drawings, recordings, etc.
2. SLANDER: Slander is an oral form of defamation where false and defamatory statements are made by words spoken or gestures which intend to lower the reputation of a person.

Essential elements of defamation are as follows:

- ✓ Statement must be published

- ✓ It must be defamatory
- ✓ It must be false
- ✓ It must refer to the plaintiff

Defences against an action for defamation are as follows:

- ✓ Statements made about a public personality
- ✓ Statements which are true
- ✓ Fair comment
- ✓ Consent of the aggrieved

9. PRINCIPLE OF STRICT LIABILITY AND ABSOLUTE LIABILITY

- ➢ STRICT LIABILITY:

At times a person may be held responsible for doing a wrong even though there had been no negligence on his part or no intention to do such wrong or even if he had taken necessary steps to prevent such a wrong from happening. This is known as the principle of strict liability and is based on a no fault theory. The principle of strict liability was first laid down in the landmark case of Ryland's v. Fletcher.

" Anyone who in the course of "non-natural" use of his land "accumulates" thereon for his own purposes anything likely to do mischief if it escapes is answerable for all direct damage thereby caused. It imposes strict liability on certain areas of nuisance law."

The essential elements of strict liability are as follows:

- ✓ *There has to be some hazardous thing brought by the defendant on his land.*
- ✓ *Escape of the hazardous thing from the territory of the defendant.*
- ✓ *There must be a non-natural use of land*.

Exceptions:

- ✓ Escape of the hazardous goods was because of plaintiffs own consent
- ✓ *Act of god*
- ✓ *Act of a stranger*
- ✓ *Act done by any statutory authority*
- ✓ *Default of the plaintiff*

- ➢ ABSOLUTE LIABILITY:

Absolute liability is a stricter form of strict liability. It refers to the no fault theory liability in which the wrongdoer is held absolutely liable for the act of omission or commission without any defenses which are available to the rule of strict liability. It is applicable only to those people who are involved in hazardous or inherently dangerous activity whereby they become absolutely liable to full compensation for the harm caused to anyone resulting from the operation of such hazardous activity. The rule of absolute liability was first laid down in M.C Mehta v. Union of India (Oleum gas case).

10. POSITION OF MINORS IN LAW OF TORT

In India, a minor is a person who is below the age of 18 years. They can sue just like adults but through their parents and can also be sued like adults if they are old enough to form an intention to commit a tort.

- CAPACITY TO SUE

A minor can sue for any wrong done to him through his 'litigation friend' who usually is his father. A minor may even sue his parents for a negligent act. A child who sustained injury while in the mother's womb can also sue the guilty after coming to the world.

- CAPACITY TO BE SUED

A minor is generally not capable of being sued if he commits a tort since he is incapable of reimbursing damages, but in most of the cases he can be sued just like an adult. Also, a minor can be sued for contributory negligence.

- PARENTS LIABILITY FOR A MINORS TORT

Parents could be held liable for the tort committed by their children if they owed a direct duty of care towards their child while he committed the tort. They are responsible for their children's action the same way as the employers are responsible for the harmful action of their employees.

❖ Salient Features of the Arbitration and Conciliation (Amendment) Bill, 2018

Since the past few months, there were robust discussions on the proposed Arbitration Amendment Bill to incorporate necessary changes in the existing Arbitration and Conciliation Act 1996 along with the Arbitration and Conciliation (Amendment) Bill, 2015. Placing into consideration the need for incorporating certain changes in the existing law relating to Arbitration and other related ADR mechanisms with reference to enhancing and promoting institutional, arbitration vis-a-vis *ad hoc* arbitration and to remove some practical difficulties in applicability of the Arbitration and Conciliation (Amendment) Act, 2015, a High Level Committee (HLC) under the Chairmanship of Justice B. H. Srikrishna, Retired Judge, Supreme Court of India, was constituted by the Central Government to review and provide possible remedies and solutions. With the new 2018 Amendment Bill being approved by the Cabinet for being introduced in the Parliament for further discussions, the following new agendas and features are proposed to be intorduced by way of this bill:

1. *The Bill proposes to create an Arbitration Council of India (ACI) whose prime objective is to grade arbitral institutions and accreditation of arbitrators on certain specific guidelines to promote and recognize ADR mechanisms for dispute resolution along with maintaining an electronic depository for all arbitral awards. The ACI would act in the capacity of formulating norms and policies towards, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration and ADR mechanism. It is also envisaged that parties could directly approach arbitral institutions designated by the Supreme Court for International Commercial arbitration and in other cases the concerned High Courts.*
2. *Under the proposed amendments, the ACI shall be a body corporate. The Chairperson of ACI shall be a person who has been a Judge of the Supreme Court or Chief Justice or Judge of any High Court or any eminent person. Further, the other Members would include an eminent academician etc. besides other Government nominees.*
3. *Further the Section 42A and 42B have been proposed to ensure confidentiality of arbitral proceedings by arbitrators and arbitral institutions except for the arbitral award and to safeguard arbitrators from any suit or legal proceedings for any act or omission that may have been committed in good faith during the arbitral proceedings respectively.*
4. *A prominent amendment to Section 29A (1) is proposed to exclude International Arbitrations from bounds of timeline i.e. passing of awards are not bound to be made within 12 months from the institution of the Arbitral Tribunal. Further, the timeline for passing an award in other arbitrations would be from the completion of the pleading of the parties.*

1. *A new section 87 is proposed to be inserted to clarify that unless parties agree otherwise the Amendment Act 2015 shall not apply to*

(a) Arbitral proceedings which have commenced before the commencement of the Amendment Act of 2015

(b) Court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Amendment Act of 2015 and shall apply only to Arbitral proceedings commenced on or after

the commencement of the Amendment Act of 2015 and to court proceedings arising out of or in relation to such Arbitral proceedings.

➢ Auctions

Auctions:-

A sale open to the general public and conducted by an auctioneer, a person empowered to conduct such a sale, at whichproperty is sold to the highest bidder.

A bid is an offer by a bidder, a prospective purchaser, to pay a designated amount for the prope rty on sale.

A Dutch auction is a method of sale that entails the public offer of the property at a price in e xcess of its value, accompaniedby a gradual reduction in price until the item is purchased.

- According to the UniformCommercialCode (UCC), a body of law governing commercial tran sactions that has beenadopted by the states, the auction sale of any item concludes w ith the fall of the hammer or in any other customary manner.Such a sale is "with reser ve," which denotes that the goods can be withdrawn at any time, until the auctioneer announces thecompletion of the sale, unless the goods are explicitly put up "without r eserve," which signifies that the article cannot bewithdrawn after the call for bids unl ess no bid is made within a reasonable time. In both types of auctions, the bidder can withdraw a bid prior to the auctioneer's announcement that the sale has been compl eted.

➢ Regulation

As a legitimate business enterprise, auctions cannot be proscribed. They are not above reaso nable regulation by both stateand local authorities. Some states subject auction sales to taxat ion.

In the absence of statutes, any person can act as an auctioneer, but a license, which usually r estricts his or her authority to acertain region, is often required. Licensing officers can refuse to issue a license, but only if done reasonably, impartially, andto promote the interest of the community.

➢ Agency of Auctioneer

An auctioneer serves as the agent of the seller who employs him or her, and the auctioneer must act in Good Faith, advancethe interest of the seller, and conduct the sale in accordance with the seller's i nstructions. If real property or goods priced at$500 or more are sold at auction, a written agr eement is necessary to satisfy the Statute of Frauds, an old English Lawadopted in the United States that requires certain contracts to be in writing. The auctione er is authorized to sign amemorandum of sale on behalf of both parties, but this authority is li mited and expires shortly after the sale has beenconcluded. Both the buyer and the seller are bound by the announcement of the auctioneer concerning the identity of theproperty and t he terms and conditions of the sale.

In the absence of a statutory provision requiring authority to be in writing, an agent, pursuan t to oral authorization, canexecute any contract required to be in writing. The statutory provi sions vary, however, in regard to the execution of contractsto purchase real property.

Because of the trust and confidence the seller reposes in an auctioneer, the individual cannot delegate the power to sellwithout special authority from the seller. The delegation of insignificant duties, such as the striking of the hammer and theannouncement of the sale, is allowable if conducted pursuant to the auctioneer's immediate supervision and direction.

An auctioneer's authority normally terminates upon the completion of the sale and the collection of the purchase price, butthe seller can revoke the authority at any time prior to the sale. According to some authorities, the buyer or seller can end theauctioneer's authority to sign a memorandum on his or her behalf between the time of the fall of the hammer and the signingof the memorandum, but the prevailing view deems the auctioneer's authority to be irrevocable. Private sales by anauctioneer are generally impermissible.

- Conduct and Validity of Sale

The owner of the property has the right to control the sale until its conclusion. Unless conditions are imposed by the seller,
the auctioneer is free to conduct the sale in any manner chosen, in order to bar fraudulent bidders and to earn the confidenceof honest purchasers. The auctioneer cannot amend the printed terms and conditions of the auction, but he or she isempowered to postpone the sale, if that is the desire. The auctioneer can modify the sale terms of goods advertised in acatalog at any time during the sale, if announced publicly and all of the bidders present are cognizant of it. The auctioneermay also retain the right to resell should there be an error or a dispute concerning the sale property. The description of theproperty in the catalog must be unambiguous. A significant error in a description might cause the cancellation of the sale,
although trivial discrepancies between the property and the description are not problematic. The seller can withdraw propertyuntil the acceptance of a bid by an auctioneer.

A bid is an offer to purchase, and no obligations are imposed upon the seller until the bid is accepted. It can be made in anymanner that demonstrates the bidder's willingness to pay a particular price for the auctioned property, whether orally, inwriting, or through bodily movements, such as a wave of the hand. Secret signals between the bidder and the auctioneermilitate against equality in bidding and are thereby prohibited. The auctioneer accepts a bid by the fall of the hammer or byany other perceptible method that advises the bidder that the property is his or hers upon tendering the amount of the bid inaccordance with the terms of the sale. An auctioneer can reject a bid on various grounds, such as when it is combined withterms or conditions other than those of the sale, or is below the minimum price acceptable to the owner.

As a general rule, any act of the auctioneer, seller, or buyer that prevents an impartial, free, and open sale or that reducescompetition in the bidding is contrary to public policy. An agreement among prospective buyers not to bid has been held tovoid the sale to any buyer within this group. A purchase by a person who has not participated in the illegal agreementremains in effect. A *puffer* or *shill* is a person who has no intention of buying but is hired by the seller to place fictitious bids inorder to raise the bidding of genuine purchasers. In general, if a purchaser at an auction can prove that a puffer wasemployed, he or she can void the sale. Some jurisdictions require the buyer to have been financially hurt by the puffer, butothers permit an individual to void a sale even if no harm occurred. Puffing and *by-bidding* are synonymous.

A deposit is not a pledge but a partial payment of the purchase price, usually made payable to the auctioneer who retains ituntil the completion of the sale.

The property of one person should not be commingled and sold with the property of another by the auctioneer unless noticeis furnished to all interested parties, or it might constitute Fraud.

An auctioneer is not entitled to bid on property that he or she has been hired to sell, but the auctioneer can, however, bid aparticular sum for a purchaser without violating any duties to t he seller or even to other prospective bidders.

An auctioneer who does not have the required license but who executes a sale can be penaliz ed, but the sale remains valid;
an auction is void, however, when it is conducted without the owner's consent.

- Rights and Liabilities of Buyer and Seller

In an unconditional sale, title passes to the bidder when the auctioneer's hammer falls. If con ditions exist, title passes upontheir fulfillment or through their waiver, the intentional relinqui shment of a known right. The bidder is ordinarily entitled topossession when he or she pays t he amount bid.

A person who bids on behalf of another is personally liable for the bid unless the person discl oses this relationship to theauctioneer.

Fraud, or a Misrepresentation of a material fact on which the buyer detrimentally relied, or th e seller's failure to providegood title furnishes a basis for setting aside the sale.

The seller has a lien, a security interest, on the property until the price is paid. If the purchase r fails to comply with theconditions of a sale, the seller can regard the sale as abandoned and sue for damages. Where a resale occurs, and the priceis lower than the contract price, the de faulting buyer in some jurisdictions is liable to the seller for the difference betweenwhat he o r she had agreed to pay and what the seller received on the resale. In general, whether a dep osit or a partialpayment must be repaid depends upon which party was responsible for the u ncompleted sale. If the buyer is responsible, heor she cannot recover either the deposit or pa rtial payment.

- Compensation

The party employing the auctioneer pays a commission regardless of whether he or she proc ures a sale, unless theauctioneer is responsible for the failure of the sale. The auctioneer is e ntitled to a reasonable sum unless a statute orcontract provision determines the amount.

- Liabilities of Auctioneer

An auctioneer is usually liable to the seller for monetary losses attributable to his or her Negli gence in failing to follow theseller's instructions. The auctioneer can also be responsible to th e buyer for fraud, conduct in excess of authority, and failureto deliver the goods. Since the au ctioneer is a stakeholder, a third party designated by two or more persons to retain ondeposi t money or property that is the subject of a dispute, the auctioneer is liable to the buyer in th ose instances where thebuyer is entitled to the return of the deposit. An auctioneer who sells property on behalf of one who does not own it anddelivers the proceeds to that person is pe rsonally liable to the rightful owner even though the auctioneer acted in good faithand witho ut knowledge of the absence of title. He or she can recover his or her losses from the person who received theproceeds in the form of damages that he or she was ordered to pay to the a ctual owner.

- Online Auctions

With its ability to connect potential buyers and sellers from anywhere in the world, the Internet has become an increasinglyimportant player in auctions. The first online auctions appeared on the Internet in 1995, and according to the Federal Trade Commission (FTC) these auctions have become "perhaps the hottest phenomenon on the Web." Large organizations canparticipate in online auctions but so can individual sellers and small businesses.

The rules for online auctions are fairly straightforward. For a typical person-to-person site, the sellers will open an accountand are assigned an on-screen name. They must pay a fee whenever they conduct an auction. The seller can set a time limiton the bidding, as well as a minimum price. If a buyer puts in a bid that the seller accepts, they complete the transaction, often via email, arranging for payment and delivery of the goods. Many sites allow buyers to pay by credit card (whichprotects the buyer in case merchandise is not delivered); some individual sellers require payment by cashier's check ormoney order (to protect against bounced checks). Some buyers and sellers conduct their money transactions through onlinepayment or online escrow services, which serve as a secure site for sending and receiving payment information. Thesepayment arrangements are more a matter of caution than lack of trust. In fact, auction sites usually offer some form ofinsurance or guarantees to ensure that merchandise is both paid for and delivered as agreed by the buyer and the seller.

Although online auctions are generally safe for both buyers and sellers, auction fraud does occur. Buyers who report onlineauction fraud to the FTC commonly complain that merchandise never arrives or that it arrives late or that the merchandisethat does arrive is not what was advertised. There are other more problematic types of fraud. In "bid siphoning," a bidder islured off a legitimate auction site by a phony seller who promises to sell the same item as that being auctioned for a lowerprice. The buyer sends money to this "seller," who offers no guarantees— and usually no merchandise. Fraudulent onlinesellers, like their "live" counterparts, may also employ puffers to bid up the price of an item, or they may engage in "bidshielding," in which extremely high bids are submitted and then retracted so that a preferred bidder can put in a lower bid andobtain the item.

Both buyers and sellers who engage in online auctions are advised to take common-sense precautions. First, people shouldeal with legitimate auction sites whose reputations are established. They should determine that terms of bidding, payment, and delivery are spelled out ahead of time. Also it is a good idea to check out online payment or escrow services, particularlyif the buyer or seller insists on using a particular one whose reputation is not known. Buyers and sellers can contact theirlocal branch of the Better Business Bureau to find out whether complaints have been lodged against a particular service orsite.

❖ THE LAW OF EVIDENCE

The law of evidence, also known as the rules of evidence, encompasses the rules and legal principles that govern the proof of facts in a legal proceeding. These rules determine what evidence must or must not be considered by the trier of fact in reaching its decision.

The burden of proof (Latin: onus probandi) is the obligation of a party in a trial to produce the evidence that will prove the claims they have made against the other party. In a legal dispute, one party is initially presumed to be correct and gets the benefit of the doubt, while the other side bears the burden of proof. When a party bearing the burden of proof meets its burden, the burden of proof switches to the other side. Burdens may be of different kinds for each party, in different phases of litigation. The burden of production is a minimal burden to produce at least enough evidence for the trier of fact to consider a disputed claim. After litigants have met the burden of production and their claim is being considered by a trier of fact, they have the burden of persuasion, that enough evidence has been presented to persuade the trier of fact that their side is correct. There are different standards of persuasiveness ranging from a preponderance of the evidence, where there is just enough evidence to tip the balance, to proof beyond a reasonable doubt, as in United States criminal courts.

The burden of proof is always on the person who brings a claim in a dispute. It is often associated with the Latin *maxim semper necessitas probandi incumbit ei qui agit*, a translation of which in this context is: *"the necessity of proof always lies with the person who lays charges."*

The party that does not carry the burden of proof carries the benefit of assumption of being correct, they are presumed to be correct, until the burden shifts after presentation of evidence by the party bringing the action. An example is in an American criminal case, where there is a presumption of innocence by the defendant. Fulfilling the burden of proof effectively captures the benefit of assumption, passing the burden of proof off to another party.

In the law of evidence, a presumption of a particular fact can be made without the aid of proof in some situations. The invocation of a presumption shifts the burden of proof from one party to the opposing party in a court trial. An example of presumption without basic facts is presumption of innocence.

- Presumptions as to Indian Evidence Act documents

Presumptions are inferences which are drawn by the court with respect to the existence of certain facts. When certain facts are presumed to be in existence the party in whose favor they are presumed to exist need not discharge the burden of proof with respect to it. This is an exception to the general rule that the party which alleges the existence of certain facts has the initial burden of proof but presumptions do away with this requirement.

Presumptions can be defined as an affirmative or negative inference drawn about the truth or falsehood of a fact by using a process of probable reasoning from what is taken to be granted. A presumption is said to operate where certain fact are taken to be in existence even there is no complete proof. A presumption is a rule where if one fact which is known as the primary fact is proved by a party then another fact which is known as the presumed fact is taken as proved if there is no contrary evidence of the same. It is a standard practice where certain facts are treated in a uniform manner with regard to their effect as proof of certain other facts. It is an inference drawn from facts which are known and proved. Presumption is a rule which is used by judges and courts to draw inference from a particular fact or evidence unless such an inference is said to be disproved.

Presumptions can be classified into certain categories:

- *Presumptions of fact.*
- *Presumptions of law.*
- *Mixed Presumptions.*

Presumptions of fact are those inferences which are naturally and logically derived on the basis of experience and observations in the course of nature or the constitution of the human mind or springs out of human actions. These are also called as material or natural presumptions. These presumptions are in general rebuttable presumptions.

Presumptions of law are those inferences which are said to be established by law. It can be subdivided into rebuttable presumptions of law and irrefutable presumptions of law. Rebuttable Presumptions of law are those presumptions of law which hold good until they are disproved by evidence to the contrary. Irrefutable Presumptions of Law are those presumptions of law which are held to be conclusive in nature. They cannot be overturned by any sort of contrary evidence however strong it is.

Mixed Presumptions are certain inferences which can be considered as observations of law due to their strength or importance. These are also known as presumptions of mixed law and fact and presumptions of fact recognized by law.

This project primarily deals with discretionary presumptions with respect to documents under the Indian Evidence Act. Discretionary presumptions relating to documents are given under Section 86, 87, 88, 90 and 90-A of the Indian Evidence Act. Chapter 1 deals with ANALYSIS OF SECTION 4 OF THE INDIAN EVIDENCE ACT. Chapter 2 deals with DISCRETIONARY PRESUMPTIONS RELATING TO DOCUMENTS.

- CHAPTER: 1

ANALYSIS OF SECTION 4 OF THE INDIAN EVIDENCE ACT

Section 4 of the Indian Evidence Act deals with three categories of presumptions

- *Discretionary Presumptions*
- *Mandatory Presumptions*
- *Conclusive Proof*

The Sections of the Indian Evidence Act which deal with Discretionary Presumptions relating to documents are sections 86, 87, 88, 90 and 90-A. These Presumptions are those in which the words may presume are used in the sections and the words may presume is used signifies that the courts of law have discretion to decide as to whether a presumption is allowed to be raised or not. In the case of such presumptions the courts of law will presume that a fact is proved unless and until it is said to be disproved before the court of law or it may call for proof of a fact brought before it. The Sections of the Indian Evidence Act which deal with Mandatory Presumptions are Section 79, 80, 80-A, 81, 82, 83 85 and 89. These Presumptions are those in which the words shall presume is used. In case of such presumptions the courts of law will presume that a fact before it is proved until and unless it is disproved. The words shall presume signify that the courts have to mandatorily raise a presumption and such a presumption which is raised shall be considered to be proved unless and until the presumption is said to be disproved and there is no discretion left to the court therefore there is no need for call of proof in this case. It is like command of the legislature to the court to raise a presumption and the court has no choice but to do it. The similarity between discretionary and mandatory presumptions is that both are rebuttable presumptions.

Conclusive Proof is defined under Section 4 that one fact is said to be conclusive proof of another fact when the court shall on the proof of a certain fact regard another fact to be proved and the court shall not allow any evidence which shall to be given for the purpose of disproving such a fact. Conclusive Proof is also known as Conclusive Evidence. It gives certain facts an artificial probative effect by law and no evidence shall be allowed to be produced which will combat that effect. It gives finality to the existence of a fact which is sought to be established. This generally occurs in cases where it is in the larger interest of society or it is against the governmental policy. This is an irrebuttable presumption.

The general rule about burden of proof is that it lies on the party who alleges the fact to prove that the fact exists. But a party can take advantage of the presumptions which are in his favor. If the prosecution can prove that the conditions of a presumption are fulfilled and such a presumption is of rebuttable nature then the burden of prove to rebut it is always on the party who wants to rebut it.

❖ CHAPTER: 2

➢ DISCRETIONARY PRESUMPTIONS RELATING TO DOCUMENTS

Discretionary presumptions are those presumptions where the discretion is left to the court whether or not to raise the presumption. The provisions in which the words “may presume" are used are discretionary presumptions. The discretionary presumptions relating to documents are provided under Sections 86, 87, 88, 90 and 90-A of the Indian Evidence Act. Section 86 lays down the principle that the court may make a presumption relating to the genuineness and accuracy of a certified copy of a judicial record of any foreign country if the said document is duly certified in accordance with the rules which are used in that country for certifying copies of judicial records. The presumption under this section is permissive and imperative in nature and hence should be complied with. But the court has the discretion to decide whether the presumption should be raised or not. If there is no certificate under this section then a foreign judgment is not admissible as evidence in court. But this does not mean that it excludes other proof. It is not necessary that the foreign judgment should have already been admitted as evidence so as to give rise to this presumption .

The presumption under Section 87 is related to the authorship, time and place of the book or map or chart and not related to accuracy or correctness of facts contained in the book, map or chart. The accuracy of the information in the map, book or chart is not conclusive but in the absence of contrary evidence it is presumed to be accurate. The accuracy of the information in a map or a chart depends on the source of information. The age of the publication is also not important the court can refer to any publication as long as it is relevant to the suit brought before it.

The presumption under Section 88 is based on the principle that the acts of official nature are performed in a regular manner. Under this section the court accepts hearsay statement as evidence about the identity of the message which was delivered. The requirement under this section that no presumption shall be made with regard to the person who has delivered the message for the purpose of transmission is mandatory and should be necessarily complied with. This presumption only operates if the message has been delivered to the addressee otherwise the message is not held to be proved. This presumption applies only those messages which are transmitted to the addressee through the telegraphic office. This presumption also applies to radio messages .

The form which is given to the post office by the sender of the message is the original of the telegram and not the form given by the post office to the addressee. Either the original copy must be submitted before the court by a post office official or proof of its destruction must be given before copy can admitted as secondary evidence before the court under this section.

According to Section 88 there is only a presumption that the message received by the addressee corresponds to the message delivered for transmission to the telegraph office and there is no presumption as to the person who delivered the said message for transmission. But the proof relating to the authorship of the message is not direct but of a circumstantial nature. The content of the message read in context with the chain of correspondence is proof relating to the authorship of the message.

Section 88-A is similar to Section 88 in structure and it is like an extension of Section 88 which deals with the transmission of electronic message. According to this section the court may presume that an electronic message forwarded by the originator through an electronic mail server to be addressee to whom the message purports to be addressed corresponds with the message with the message as fed into his computer for transmission but the court shall not

make any presumption as to the person by whom the message is sent. *The terms "addressee" and "originator" given in this section can be defined by looking into Clauses (b) and (za) of Subsection (1) of Section 2 of the Information Technology Act of 2000.*

Section 90 deals with presumption relating to ancient documents or documents which are 30 years old. The basis of Section 90 is the principle of convenience and necessity. The basic objective of this section is to reduce any difficulties faced by persons who want to prove the handwriting, execution and attestation of ancient documents for establishing their case.

Under this section the court may make the following presumptions with respect to ancient documents: a) the signature and every part of handwriting of such a person and b) that the document was duly executed and attested by the person it is supposed to be executed and attested. The presumption under this section does not apply to other aspects of the document like its contents or its authenticity. The presumption under this section applies to all the documents which come under the definition given under Section 3 of the Indian Evidence Act. It applies to books of accounts, testamentary documents, private and public documents. This presumption does not apply to anonymous documents.

For the presumption under Section 90 to be applicable the following conditions have to be fulfilled:

The document should be proved or purported to be 30 or more years old. There must be some evidence or at least a prima facie case should be made out to support that the document is 30 years old. This is however a rebuttable presumption. Ancient documents can be read as evidence without any formal proof. The period of 30 years is commuted from the date of the execution of the document to the date on which it is put as evidence.

The document should be produced from proper custody. It can be proved that document is produced from proper custody either by giving evidence to prove the fact or show that the person who produced it was the depository of the document.

The document should be original and not certified copies or registered copies. If an original document is not produced before the court and no reason is given for the non-production of the original documents the certified copies are not admissible before the court. However if a copy of a document can be admitted as secondary evidence under Section 65 and is produced from proper custody and is over thirty years old then signature which authenticates the document may be presumed as genuine but this does prove the execution of the document. Certified copies are admissible if the original document is in the possession of the opposite party. Certified copies are also admissible to prove contents of the original if the original copy is lost.

This presumption applies only in the case of proving the signature and the handwriting of the document. If the documents do not have a signature then the presumption under Section 90 does not apply to it. The definition of signature under this section includes thumb impressions if there is no evidence to the contrary. However the signature under this section does not include seals because seals do not fall within the definition of signature given in the General Clauses Act.

However there are certain causes which weaken the presumption under Section 90 are:

- The court may presume the genuineness of the document if it more than 30 years and produced from proper custody. The presumption is weakened by circumstances which raise doubts authenticity of the document. When the genuineness of the

document is disputed the court has to consider external and internal evidence related to it in order to decide whether there was proper execution and signature.

- When the document is suspicious on the face of it the court need not presume that the document was executed by the person purported to have executed it.

Section 90-A is similar to Section 90 of the Indian Evidence Act in structure and is like an extension of Section 90 which applies to electronic records which are 5 years old. According to this section if any electronic record purporting or proved to be 5 years old is produced from custody which the court in the particular case considers proper the court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or authorized by him in this behalf.

The explanation to this section states that the electronic records are said to be in proper custody if they are in the place in which and under the care of the person with whom they naturally be but no custody is said to be improper if it is proved to have a legitimate origin or the circumstances of the case are such as to render such an origin probable.

➢ CONCLUSION

Discretionary presumptions are those presumptions in which court will presume a fact to be proved until it is disproved or may call proof upon it. In the case of such presumptions the court has the choice to decide whether to raise the presumption or not.

Discretionary presumptions given under Section 86 to 88-A and Section 90-A are self-explanatory in nature. However with respect to the interpretation of Section 90 there is lot of questions. First issue is on how the period of 30 years is calculated to find out if a document is 30 years old or not. According to the current position of law to find whether a document is thirty years or not the period has to be calculated from the date of execution of the document and not from the date which the document is filed in court. Next there is the issue as to whether the mere production of the document would enough to attract section 90. According to the present position of law mere production is not enough the production has to be from proper custody. Proper custody of a document means that the document is possession of such a person that it does not bring about any suspicion fraud or doubt. Proper custody does not mean most proper place for the document to be deposited it just requires that there should be a sufficient explanation about the origin of the document. Proper custody thus means the document should be in such a place or with such a person where or in whose possession can be reasonably expected to be. The third issue is on whether section 90 is applicable to copies of document. The current position of law is that Section 90 is applicable to only original documents and not to copies of documents. However in copies of documents(whether certified copies or registered copies) which can be admitted as secondary evidence under Section 65 which is over 30 years old and is produced from proper custody only the signature which authenticates the document can be presumed to be genuine and not the execution of the said document. Certified copies are admissible to prove the contents of the original document if the original document is proved to be lost in proper custody or it is in the possession of the adverse party. But these certified copies do not prove the execution of the original documents only the contents of the same. The next issue is on whether documents with respect to which presumption under Section 90 can be raised should be signed. The current position of law is that only the documents which are signed attract the presumption under Section 90. If the document does not have a signature then Section 90 is not applicable. Signature here includes thumb impressions but does not include seals.

❖ Conclusive Proof under the Indian Evidence Act, 1872

There are three sections in the Act which deal with conclusive proof, viz., Ss. 41, 112 and 113. The contents of these sections are discussed below.

1. Judgments in probate and other jurisdictions (S. 41):

A final judgment, order or decree of a competent Court, in the exercise of its.

(i) Probate,
(ii) Matrimonial,
(iii) Admiralty, or
(iv) Insolvency jurisdiction

Not against any specified person, but absolutely (i.e., in rem)

Is conclusive proof- *(a) That any legal character*

I. Which it confers, accrued at that time when such judgment, decree or order came into operation;
II. Which it declares any such person to be entitled to, accrued to him at the time when such judgment, decree or order declares it to have accrued to him;
III. Which it takes away from any person, ceased at the time from which such judgment, decree or order declared that it had ceased or should cease;

(b) That anything to which it declares any person to be entitled was his property at the time from which such judgment, decree or order declares that it had been or should be his property.

2. Birth during marriage conclusive proof of legitimacy (S. 112):

The fact that any person was born—

(1) During the continuance of a valid marriage between his mother and any man, or

(2) Within two hundred and eight days after its dissolution (the mother remaining unmarried), is conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

- Scope of Section 112:

Evidence that a child is born during wedlock is sufficient to establish its legitimacy, and shifts the burden of proof to the party seeking to establish the contrary.

Sections 41, 112 and 113 (discussed later) are the only sections which deal with matters which are to be regarded as "conclusive proof". No rule of the kind can be based on considerations of evidence, because enquiry is altogether excluded.

The basis of the rule contained in S. 112 seems to be that it is undesirable to enquire into the paternity of a child whose parents have access to each other. This section refers to the point of time of the birth of the child as the deciding factor, and not to the time of conception of

that child; the latter point of time has to be considered only to see whether the husband had no access to the mother.

The presumption as to paternity in this section arises only in connection with the offspring of a married couple. The section applies to the legitimacy of the children of married persons only. On the birth of a child during marriage, the presumption of legitimacy is conclusive, no matter how soon the birth occurs after the marriage.

Under the section, a child born in wedlock should be treated as the child of the father who was at the time of its birth, the husband of the mother, unless it is shown that he had no access to the mother at the time of its conception, irrespective of the question whether the mother was married or not at the time of the conception.

The presumption contemplated by this section is a conclusive presumption of law, which can be displaced only by proof of the particular fact mentioned in the section, namely, non-access between the parties to the marriage at a time when, according to the ordinary course of nature, the husband could have been the father of the child. *(Venkateswarlu v. Venkatnarayan, A.I.R. 1954 S.C. 176)*

The word "access" means effective access as is shown by the use of the words "when he could have been begotten", and physical incapacity to procreate amounts to non-access within the meaning of this section. *(Bhagwan Bakhsh v. Mahesh Bakhsh, A.I.R. 1935 P.C. 199)*

In a case decided by the Kerala High Court, the facts were interesting: A wife had become pregnant after her husband had undergone a vasectomy operation. The husband alleged that she had conceived because of illicit intercourse, and claimed to be entitled to a decree for divorce on this ground.

The success of the operation was not proved before the Court. Nor was any case made out by the husband that he had no sexual intercourse with the wife during the period when she could have conceived. Also, the allegation of illicit relations was not repeated by the husband on oath when in the witness box.

Taking all these circumstances into consideration, the Court held that the presumption would be that the husband was the father of the child. No decree for divorce was, therefore, passed in his favour. (Chandramathi v. Pazhetti Balan, A.I.R. 1982 Ker. 68)

The Calcutta High Court has held that the paternity of a child born during lawful wedlock cannot be decided by a blood group test, in view of the provisions of S. 112. (Tushar Roy v. Sukla Roy, 1993, Cri. L.J. 1659)

The principle of this section does not apply to the case of a paramour, and the presumption can be rebutted when the mother of child is not the wife, but a mistress, and it would be open for the mistress to prove that the real father of the child born during the period of her concubinage is different from the paramour.

A wife can be examined to prove non-access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of the children. She is a competent witness to prove access or non-access by her husband.

In a leading case, Russell v. Russell (1924 A.C. 687), it has been laid down that neither the declarations of the wife, nor her testimony that the child was the child of a man other than her husband are admissible, nor of the husband that he was not the father of the child.

The Allahabad High Court has held that the English rule that such evidence is inadmissible because it is evidence which tends to bastardize the child is not applicable to the Courts in India; there is nothing in the Indian Evidence Act which renders this evidence inadmissible.

In a suit for divorce by the husband on the ground of the wife's adultery, alleged to be established by the fact of her having given birth to an illegitimate child, evidence by the husband of non-access to the wife, at any time when the child could have been begotten is admissible, and an admission by the wife that the child is illegitimate is also admissible in evidence.

3. Cession of Territory (S. 113):

A Notification in the Official Gazette that any portion of British territory has, before the commencement of Part III of the Government of India Act, 1935, been ceded to any Native State, Prince or Ruler is conclusive proof that a valid cession of such territory took place at the date mentioned in such Notification.

❖ Valuation Of Assets Under The Insolvency And Bankruptcy Code, 2016: Understanding The Term 'Liquidation Value'

Valuation of assets is one of the core features of the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (**Code**). However, there are various clarifications that are yet to be provided by the Insolvency and Bankruptcy Board of India (**Board**) in relation to provisions pertaining to valuation of assets as provided under the Code and the Regulations. One of the prominent controversies in relation to valuation of assets is the lack of clarity surrounding interpretation of the term 'liquidation value' under the Code.

The term "liquidation value" is defined under Regulation 35(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) as *'the estimated realizable value of assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date'*. Regulation 35(2) of the CIRP Regulations prescribes the method for determining liquidation value. From a bare reading of the said definition, it emerges that liquidation value is the notional realizable value that assets of the corporate debtor would fetch, should the corporate debtor be liquidated on the insolvency commencement date (and not the value that may be actually realized under a resolution plan). However, the ambiguity arises with respect to determining "estimated realizable value" in the context of the insolvency resolution process as opposed to valuation in an out-and-out liquidation of assets. Typically, a valuation report often comprises more than one sale value for an asset based on valuation under different scenarios. For instance, a valuation report may provide for a fair market value, realizable value and distressed sale value of an asset. The multitude of jargon and terminology in valuation only adds to the already difficult task that registered valuers (appointed under the Code) and the insolvency professional discharging his/her function as an interim resolution professional (IRP)/resolution professional (RP) face in determining character of asset value that should be considered as liquidation value for purposes of Regulation 35 read with Regulations 36 and 38 of the CIRP Regulations. The determination of 'liquidation value' of assets is an extremely crucial exercise, keeping in view its practical implication on the resolution plan, claims of creditors and prospective investors.

➢ Objective

One of the most important pieces of information that forms part of the Information Memorandum[1] is liquidation value. The purpose of having to provide for a liquidation value as part of the Information Memorandum during the corporate insolvency resolution process is in turn to enable compliance with provisions of Regulation 38 of the CIRP Regulations which requires identification (and subsequently payment) of specific sources of funds for payment of dues of operational creditors and dissenting financial creditors at liquidation value in priority to recovery of dues of other financial creditors who approve the resolution plan. In the event a resolution plan is reached and approved, operational creditors and dissenting financial creditors will have to be paid at this "notional" liquidation value in Regulation 35(1) since the corporate debtor would not actually go into liquidation.

➢ Duty of an IRP/RP vis-à-vis the liquidation value of the corporate debtor

One of the key tasks of an IRP/RP is to appoint two registered valuers (as per Regulation 27 of the CIRP Regulations), who in turn will determine liquidation value (as per Regulation 35 of the CIRP Regulations) of the corporate debtor and submit the same to the IRP/RP. The registered valuers are required to provide an estimate of liquidation value *"computed in accordance with internationally accepted valuation standards, after physical verification of the inventory, and fixed assets of the corporate debtor."*[2]

It is incumbent upon the IRP/RP to observe if there is a significant difference between the two estimates of liquidation value submitted to him/her, in which case, the IRP/RP may appoint a third registered valuer who will submit an estimate of the liquidation value computed in the same fashion as the two valuers first appointed. Thereafter, the IRP/RP will have to consider average of the two closest estimates as liquidation value.

Pursuant to this, the IRP/RP is required to note the said liquidation value of the corporate debtor as well as the liquidation value due to an operational creditor (arrived as per the waterfall mechanism under section 53 of the Code) in the Information Memorandum prepared in terms of Regulation 36 of the CIRP Regulations.

Thus, it is to be noted that the duty of determination of liquidation value is based on the registered valuer and the duty of the IRP/RP in this regard is summarized herein below:

(a) *Appointment of two registered valuers (as per Regulation 27);*

(b) Observing any discrepancy in the two values submitted by the registered valuers and subject thereto, appointing a third valuer to provide another estimate of the liquidation value, so that the estimate of the two closest values may be taken as the liquidation value (as per Regulation 35(2));

(c) Incorporating the said liquidation value (as provided by the registered valuers) in the Information Memorandum (as per Regulation 36).

(d) Ensuring that every resolution plan identifies sources of funds, and provides for making payment of claims of operational creditors at liquidation value in priority to financial creditors and within 30 days of its approval (Regulation 38(1)(b) of the CIRP Regulations); and

(e) Ensuring that every resolution plan identifies sources of funds to make payment of claims of the dissenting financial creditors at liquidation value in priority to recovery by other financial creditors who approve the resolution plan (Regulation 38(1)(c) of the CIRP Regulations).

- Liquidation value visà- vis Realizable value

The term 'Liquidation value' as generally understood is the value of an asset which is arrived at when a seller is under extreme compulsion to sell. As mentioned earlier, Regulation 35 of the CIRP Regulations, which defines the term 'liquidation value' specifies that the said value is to be a notional value, which should be arrived at considering a hypothetical scenario of liquidation of the Corporate Debtor on the date of insolvency commencement. In other words, it will be an estimated value calculated by registered valuers if the Corporate Debtor were to be liquidated on the insolvency commencement date. This is similar to the concept of "vertical comparison" under Chapter 11 of the United Stated Bankruptcy Code, and an accepted definition for arriving at liquidation value under English insolvency laws.

It is observed that the definition of the term 'liquidation value' uses the term *"realizable value"*, thereby indicating that liquidation value is the notional realizable value arrived at the time of liquidation of the Corporate Debtor, in terms of provisions of the Code. In view of the aforesaid, it may be pertinent to consider the procedure to realize assets during liquidation of the Corporate Debtor, as more particularly provided under Chapter III of the Code, read

with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations**). In this regard, Regulations 32, 33 and Schedule 1 of the Liquidation Process Regulations, provide that a liquidator appointed as per the Code, may sell the assets either on a stand-alone basis or sell the assets in a slump sale /a set of assets collectively /the assets in parcels. However, it is stated that the mode of sale shall ordinarily be through auction, unless,

(1) The asset is perishable; or

(2) Likely to deteriorate in value significantly if not sold immediately; or

(3) Is fetching a better price than the reserved price of a failed auction; or

(4) Has the permission of the Adjudicating Authority, in which case the liquidator shall sell the assets by means of a private sale.

The Schedule I to the Liquidation Process Regulations, under part (1) item (4), specifies that for the purposes of auction, the reserve price would be the value of the asset determined by the registered valuers in terms of Regulation 35.

Thus, it becomes evident that identification of an asset plays a crucial role in determining liquidation value. In ordinary circumstances, the liquidation value of an asset is likely to be the notional reserve price at which such an asset would be sold in an auction. However, if the nature of the asset is perishable or such that its value may depreciate significantly if not sold immediately, then the value of such an asset may be determined on the basis of a private sale. It may be stated herein that the methodology to be adopted for determining the aforesaid values is to be as per internationally accepted valuation standards, after physical verification of assets of the Corporate Debtor.

- Conclusion

Valuation is a quintessential part of the corporate insolvency resolution process, and a proper understanding of liquidation value is crucial to protect the interest of stakeholders and to formulate a compliant resolution plan. Any errors in determining liquidation value in the corporate insolvency resolution process can have far reaching consequences, including the effect of undermining of reversing any resolution plan that may be approved on the basis of an incorrect liquidation value. In fact, a case of allegedly incorrect determination of liquidation value under the CIRP of Hotel Gaudavan Private Limited has already resulted in a criminal complaint against officers of a private securitization company and the resolution professional3. It is therefore crucial for insolvency professionals, and more importantly, for registered valuers, to have a correct understanding of the definition of liquidation value under the Code read with CIRP Regulations. While one expects the understanding of valuers and a customization of valuation methods to more accurately determine liquidation value in the corporate insolvency resolution process, any clarification on liquidation value under the CIRP Regulations and the Code by the Board or the Adjudicating Authority would be a welcome move that would help bring about consensus on this much debated issue.

❖ 230.Power to compromise or make arrangements with creditors and members

(1) Where a compromise or arrangement is proposed—
(a) Between a company and its creditors or any class of them; or
(b) Between a company and its members or any class of them,
the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.
Explanation- *For the purposes of this sub-section, arrangement includes a Re-organisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.*
(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—
(a) All material facts relating to the company, such as the latest financial position Of the company, the latest auditor's report on the accounts of the company and the Pendency of any investigation or proceedings against the company;
(b) Reduction of share capital of the company, if any, included in the compromise Or arrangement;
(c) Any scheme of corporate debt restructuring consented to by not less than Seventy-five per cent. Of the secured creditors in value, including—
(i) A creditor's responsibility statement in the prescribed form;
(ii) Safeguards for the protection of other secured and unsecured creditors;
(iii) Report by the auditor that the fund requirements of the company after The corporate debt restructuring as approved shall conform to the liquidity test Based upon the estimates provided to them by the Board;
(iv) Where the company proposes to adopt the corporate debt restructuring Guidelines specified by the Reserve Bank of India, a statement to that effect; and
(v) a valuation report in respect of the shares and the property and all assets, Tangible and intangible, movable and immovable, of the company by a registered valuer.
(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal Under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed: ***Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed****, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:* ***Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.***
(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the

adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectorial regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the

Date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) The protection of any class of creditors;

(c) If the compromise or arrangement results in the variation of the shareholders 'rights, it shall be given effect to under the provisions of section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;

(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement: Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section133.

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any

grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.
Explanation*-For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.*

- Section 231 of Companies Act, 2013 deals with Power of Tribunal to enforce compromise or arrangement.
  - From the Act

(1) Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—

(a) Shall have power to supervise the implementation of the compromise or arrangement; and

(b) May, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(2) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

- Section 232 of Companies Act, 2013 deals with Merger and amalgamation of companies.

  - From the Act

(1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies,

the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

(2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

(a) The draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(b) Confirmation that a copy of the draft scheme has been filed with the Registrar;

(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) The report of the expert with regard to valuation, if any;

(e) A supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

(3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) The transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) The allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) The continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) Dissolution, without winding-up, of any transferor company;

(e) The provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) The transfer of the employees of the transferor company to the transferee company;

(h) Where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) The transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation; and

(j) Such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(4) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(5) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

(6) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

***Explanation**-For the purposes of this section,—*

(i) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;

(ii) References to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;

(iii) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and

(iv) Property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

- REGISTERED VALUERS

247. Valuation by registered valuers

(1) Where a valuation is required to be made in respect of any property. stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued prescribed; by [a person having such qualifications and experiences registered as a valuer iiould be and being a member of an organization recognized, in such manner, on such terms and conditions as may be prescribed] and appointed by the audit committee or in its absence by the Board of Directors of that company.
(2) The valuer appointed under sub-section (1) shall,—
(a) make an impartial, true and fair valuation of any assets which may be required to be valued;
(b) exercise due diligence while performing the functions as valuer;
(c) make the valuation in accordance with such rules as may be action prescribed; and
(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time [during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him].

(3)If a valuer contravenes, the Provisions of this section or the rules made thereunder the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:
Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
(4) Where a valuer has been convicted under sub-section (3), he shall be liable to—
(i) refund the remuneration received by him to the company, and
(ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made In his report.

LAW - REAL ESTATE

❖ LAW OF REAL ESTATE

The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** (also **Land Acquisition Act, 2013**)

The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** (also **Land Acquisition Act, 2013**) is an Act of Indian Parliament that regulates land acquisition and lays down the procedure and rules for granting compensation, rehabilitation and resettlement to the affected persons in India. The Act has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected. The Act establishes regulations for land acquisition as a part of India's massive industrialization drive driven by public-private partnership. The Act replaced the Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule.

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in Lok Sabha on 7 September 2011. The bill was then passed by it on 29 August 2013 and by Rajya Sabha on 4 September 2013. The bill then received the assent of the President of India, Pranab Mukherjee on 27 September 2013. The Act came into force from 1 January 2014.

An amendment bill was then introduced in Parliament to endorse the Ordinance. Lok Sabha passed the bill but the same is still lying for passage by the Rajya Sabha. On 30 May 2015, President of India promulgated the amendment ordinance for third time.

- History

The Land Acquisition Act, 1894 was a British era lawthat governed the process of land acquisition in India until 2013 and continues to do so in Pakistan and Myanmar. It allows the acquisition of land for some public purpose by a government agency from individual landowners after paying a government-determined compensation to cover losses incurred by landowners from surrendering their land to the agency. In India, a new Act, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, replaced this law.

- Need

The Government of India believed there was a heightened public concern on land acquisition issues in India. Of particular concern was that despite many amendments, over the years, to India's Land Acquisition Act of 1894, there was an absence of a cohesive national law that addressed fair compensation when private land is acquired for public use, and fair rehabilitation of land owners and those directly affected from loss of livelihoods. The Government of India believed that a combined law was necessary, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow government acquisition of land for public purposes.

Forty-Fourth Amendment Act of 1978 omitted Art 19(1) (f) with the net result being:-

1. *The right not to be deprived of one's property save by authority of law has since been no longer a fundamental right. "No person shall be deprived of his property saved by authority of law" (Constitution 44th Amendment, w.e.f. 10.6.1979). The amendment ensured that the right to property" is no more a fundamental right but rather a constitutional/legal right/as a statutory right and in the event of breach, the remedy*

available to an aggrieved person is through the High Court under Article 226 of the Indian Constitution and not the Supreme Court under Article 32 of the Constitution. .

2. *Moreover, no one can challenge the reasonableness of the restriction imposed by any law the legislature made to deprive the person of his property.*

State must pay compensation at the market value for such land, building or structure acquired (Inserted by Constitution, Seventeenth Amendment Act, 1964), the same can be found in the earlier rulings when property right was a fundamental right (such as 1954 AIR 170, 1954 SCR 558, which propounded that the word "Compensation" deployed in Article 31(2) implied full compensation, that is the market value of the property at the time of the acquisition. The Legislature must "ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of"). Elsewhere, Justice, Reddy, O Chinnappa ruled (State Of Maharashtra v. Chandrabhan Tale on 7 July 1983) that the fundamental right to property has been abolished because of its incompatibility with the goals of "justice" social, economic and political and "equality of status and of opportunity" and with the establishment of "a socialist democratic republic, as contemplated by the Constitution. There is no reason why a new concept of property should be introduced in the place of the old so as to bring in its wake the vestiges of the doctrine of Laissez Faire and create, in the name of efficiency, a new oligarchy. Efficiency has many facets and one is yet to discover an infallible test of efficiency to suit the widely differing needs of a developing society such as ours" (1983 AIR 803, 1983 SCR (3)

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in Lok Sabha. Two Bills on similar lines were introduced in Lok Sabha in 2007. These Bills lapsed with the dissolution of the 14th Lok Sabha.

❖ Aims and objectives

The aims and objectives of the Act include:

- ✓ *To ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution of India, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families*
- ✓ *Provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition*
- ✓ *Make adequate provisions for such affected persons for their rehabilitation and resettlement*
- ✓ *Ensure that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status and for matters connected therewith or incidental thereto.*

➢ Purpose and scope

The Act aims to establish the law on land acquisition, as well as the rehabilitation and resettlement of those directly affected by the land acquisition in India. The scope of the Act includes all land acquisition whether it is done by the Central Government of India, or any State Government of India, except the state of Jammu & Kashmir.

The Act is applicable when:

- ✓ *Government acquires land for its own use, hold and control, including land for Public sector undertakings.*
- ✓ *Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose. The purpose of LARR 2011 includes public-private-partnership projects, but excludes land acquired for state or national highway projects.*
- ✓ *Government acquires land for immediate and declared use by private companies for public purpose.*

The provisions of the Act does not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

- ❖ Provisions
- ➢ Definition of public purpose

Section 2(1) of the Act defines the following as public purpose for land acquisition within India:

- *For strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defense of India or State police, safety of the people; or*
- *For infrastructure projects, which includes the following, namely:*
    - *All activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated 27 March 2012, excluding private hospitals, private educational institutions and private hotels;*
    - *Projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;*
    - *Project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;*
    - *Project for water harvesting and water conservation structures, sanitation;*
    - *Project for Government administered, Government aided educational and research schemes or institutions;*
    - *Project for sports, health care, tourism, transportation of space programme;*
    - *Any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;*
- *Project for project affected families;*
- *Project for housing, or such income groups, as may be specified from time to time by the appropriate Government;*
- *Project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;*
- *Project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.*

When government declares public purpose and shall control the land directly, consent of the land owner shall not be required. However, when the government acquires the land for private companies, the consent of at least 80% of the project affected families shall be

obtained through a prior informed process before government uses its power under the Act to acquire the remaining land for public good, and in case of a public-private project at least 70% of the affected families should consent to the acquisition process.

The Act includes an urgency clause for expedited land acquisition. The urgency clause may only be invoked for national defense, security and in the event of rehabilitation of affected people from natural disasters or emergencies.

- Definition of 'land owner'

The Act defines the following as land owner: person whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or

1. *person who is granted forest rights under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or under any other law for the time being in force; or*
2. *Person who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or*
3. *any person who has been declared as such by an order of the court or Authority;*
4. *Limits on acquisition*

The Act forbids land acquisition when such acquisition would include multi-crop irrigated area. However such acquisition may be permitted on demonstrable last resort, which will be subjected to an aggregated upper limit for all the projects in a District or State as notified by the State Government. In addition to the above condition, wherever multi-crop irrigated land is acquired an equivalent area of cultivable wasteland shall be developed by the state for agricultural purposes. In other type of agricultural land, the total acquisition shall not exceed the limit for all the projects in a District or State as notified by the Appropriate Authority. These limits shall not apply to linear projects which includes projects for railways, highways, major district roads, power lines, and irrigation canals.

- Compensation

Section 26 of the Act defines the method by which market value of the land shall be computed under the proposed law. Schedule I outlines the proposed minimum compensation based on a multiple of market value. Schedule II through VI outline the resettlement and rehabilitation entitlements to land owners and livelihood losers, which shall be in addition to the minimum compensation per Schedule I.

- Market value

The market value of the proposed land to be acquired, shall be set as the higher of: the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds in the area, where the land is situated; or

- The average of the sale price for similar type of land being acquired, ascertained from the highest fifty per cent of the sale deeds registered during the preceding three years in the nearest village or nearest vicinity of the land being acquired.; or
- The consented amount in case the land is acquired for private companies or public-private partnership projects.

The market value would be multiplied by a factor of, at least one to two times the market value for land acquired in rural areas and at least one times the market value for land acquired in urban areas. The Act stipulates that the minimum compensation to be a multiple of the total of above ascertained market value, value to assets attached to the property, plus a solatium equal to 100 percent of the market value of the property including value of assets.

In addition to above compensation, the Act proposes a wide range of rehabilitation and resettlement entitlements to land owners and livelihood losers from the land acquirer. Market value is often used interchangeably with open market value, fair value or fair market value, although these terms have distinct definitions in different standards, and may differ in some circumstances.

- Rehabilitation and resettlement

For land owners, the Act provides:

- ✓ *an additional subsistence allowance of Rs.38,000 (US$800) for the first year - may be*
- ✓ *an additional entitlement of a job to the family member, or a payment of Rs.5,00,000 (US$11,000) up front, or a monthly annuity totaling Rs.24,000 (US$550) per year for 20 years with adjustment for inflation – the option from these three choices shall be the legal right of the affected land owner family, not the land acquirer*
- ✓ *an additional upfront compensation of Rs.50,000 (US$1,100) for transportation*
- ✓ *an additional upfront resettlement allowance of Rs.50,000(US$1,100)*
- ✓ *if the land owner loses a home in a rural area, then an additional entitlement of a house with no less than 50 square meters in plinth area*
- ✓ *if the land is acquired for urbanization, 20% of the developed land will be reserved and offered to land owning families, in proportion to their land acquired and at a price equal to cost of acquisition plus cost of subsequent development*
- ✓ *if acquired land is resold without development, 20% of the appreciated land value shall be mandatorily shared with the original owner whose land was acquired*

In addition to the above compensation and entitlements under the proposed LARR 2011, scheduled caste and schedule tribe (SC/ST) families will be entitled to several other additional benefits per Schedule II of the proposed bill. India has over 250 million people protected and classified as SC/ST, about 22% of its total population. The proposed additional benefits to these families include: an additional land grant of 2.5 acres per affected family

- an additional assistance of Rs.50,000 (US$1,100)
- free land for community and social gatherings, and special Schedule V and VI benefits

Schedule III of LARR 2011 proposes additional amenities over and beyond those outlined above. Schedule III proposes that the land acquirer shall provide 25 additional services to families affected by the land acquisition. Some examples of the 25 additional services include schools, health centers, roads, safe drinking water, and child support services, places of worship, burial and cremation grounds, post offices, fair price shops, and storage facilities.

LARR Bill 2011 proposes that Schedule II through VI shall apply even when private companies willingly buy land from willing sellers, without any involvement of the government.

The Bill as drafted mandates compensation and entitlements without limit to number of claimants. Thus, for clarity and as an example, if 1000 acres of rural land is to be acquired for a project, with market price of Rs.2, 25,000 per acre (US$5000 per acre), 100 families claim to be land owners, and 5 families per acre claim their rights as livelihood losers under the proposed LARR 2011 Bill, the total cost to acquire the 1000 acre would be

- Land compensation = Rs.90,00,00,000 (US$20,000,000)
- Land owner entitlements = Rs.6,30,00,000 (US$1,400,000) + 100 replacement homes
- Livelihood loser entitlements = Rs.365,00,00,000 (US$70,000,000) + 5000 replacement homes

The average effective cost of land, in the above example will be at least Rs.41, 00,000 (US$91,400) per acre plus replacement homes and additional services per Schedule III to VI of the proposed bill. Even if the pre-acquisition average market price for land were just Rs.22,500 per acre (US$500 per acre) in the above example, the proposed R&R, other entitlements and Schedule III to VI would raise the effective cost of land to at least Rs.33,03,000 (US$73,400) per acre.

The LARR Bill of 2011 proposes the above benchmarks as minimum. The state governments of India, or private companies, may choose to set and implement a policy that pays more than the minimum proposed by LARR 2011.

For context purposes, the proposed land prices because of compensation and R&R LARR 2011 may be compared with land prices elsewhere in the world:

- According to The Financial Times, in 2008, the farmland prices in France were Euro 6,000 per hectare ($2,430 per acre; Rs.1, 09,350 per acre).
- According to the United States Department of Agriculture, as of January 2010, the average farmland value in the United States was $2,140 per acre (Rs.96, 300 per acre). The farmland prices in the United States varied between different parts of the country, ranging between $480 per acre to $4,690 per acre.

A 2010 report by the Government of India, on labour whose livelihood depends on agricultural land, claims that, per 2009 data collected across all states in India, the all-India annual average daily wage rates in agricultural occupations ranged between Rs.53 to 117 per day for men working in farms (US$354 to 780 per year), and between Rs.41 to 72 per day for women working in farms (US$274 to 480 per year). This wage rate in rural India study included the following agricultural operations common in India: ploughing, sowing, weeding, transplanting, harvesting, winnowing, threshing, picking, herdsmen, tractor driver, unskilled help, mason, etc.

- ❖ Issues & Expectations regarding Compensation
- ➢ Issues

1. Compensation criteria is not understandable/clear 2. Compensation prices variation place to place 3. Compensation as per newly amended bill is not distributed (Under below mentioned circumstances)

Example

1. *Land acquired in the period bill is under discussion in parliament.*
2. *No many changes are done in bill after parliamentary discussions and LLRR 2011 bill passed with marginal changes.*
3. *Large land acquisition are done by government/others during the period bill is under discussion in parliament.*
4. *During this period LARR 2011 bill under discussion, Compensation is as per previous Land acquisition bill (Poor farmers lost their lands in unfair/ unfavorable condition)*
5. *Multiplication factors in rural and urban area are added rather than increasing the base Land cost (Land is most essential component for any infrastructure geographically, socially, economically, as per terrain available with/without resources)*

- Expectations

1. *Bill recommendation to be implemented as dated bill appeared in parliament.(2011)*
2. *Compensation should be time bound and to amount to be released with is a time frame / as per bill recommendations.*
3. *Fair compensation including life time productive income from land to Farmer/land owner (Till date he/she or family holding land)*
4. *Land Holding & maintenance cost to farmers/Land owners (as per current date land situation) till land acquired by government/others (As crop price are also not favorable to farmers in compression to other item in economy)*

- Benefits and effects

The 2013 Act is expected to affect rural families in India whose primary livelihood is derived from farms. The Act will also affect urban households in India whose land or property is acquired.

Per an April 2010 report, over 50% of Indian population (about 60 crore people) derived its livelihood from farm lands. With an average rural household size of 5.5, LARR Bill 2011 R&R entitlement benefits may apply to about 10.9 crore rural households in India.

According to Government of India, the contribution of agriculture to Indian economy's gross domestic product has been steadily dropping with every decade since its independence. As of 2009, about 15.7% of India's GDP is derived from agriculture. Act will mandate higher payments for land as well as guaranteed entitlements from India's non-agriculture-derived GDP to the people supported by agriculture-derived GDP. It is expected that the Act will directly affect 13.2 crore hectares (32.6 crore acres) of rural land in India, over 10 crore land owners, with an average land holding of about 3 acres per land owner. Families whose livelihood depends on farming land, the number of livelihood-dependent families per acre varies widely from season to season, demands of the land, and the nature of crop.

Act provides to compensate rural households – both land owners and livelihood losers. The Act goes beyond compensation, it mandates guaranteed series of entitlements to rural households affected. According to a July 2011 report from the Government of India, the average rural household per capita expenditure/income in 2010, was ₹928 per month (US$252 per year).

For a typical rural household that owns the average of 3 acres of land, the Act will replace the loss of annual average per capita income of ₹11,136 for the rural household, with:

- *four times the market value of the land, and*
- *an upfront payment of Rs.1,36,000 (US$3,000) for subsistence, transportation and resettlement allowances, and*
- *an additional entitlement of a job to the family member, or a payment of Rs.5,00,000 (US$11,000) up front, or a monthly annuity totaling Rs.24,000 (US$550) per year for 20 years with adjustment for inflation – the option from these three choices shall be the legal right of the affected land owner family, not the land acquirer, and*
- *a house with no less than 50 square meters in plinth area, and*
- *additional benefits may apply if the land is resold without development, used for urbanization, or if the land owner belongs to SC/ST or other protected groups per rules of the Government of India*

If the affected families on the above rural land demand 100% upfront compensation from the land acquirer, and the market value of land is Rs.1,00,000 per acre, the Act mandates the land acquirer to offset the loss of an average per capita 2010 income of ₹11,136 per year created by this 3 acre of rural land, with the following:

- *Rs.18,36,000 (US$41,727) to the rural land owner; which is the total of R&R allowances of Rs.6,36,000 plus Rs.12,00,000 – which is four times the market value of the land, plus*
- *a house with no less than 50 square metres in plinth area and benefits from Schedule III-VI as applicable to the rural land owner, plus*
- *additional payments of ₹6,36,000 each to any additional families claiming to have lost its livelihood because of the acquisition, even if they do not own the land*

The effects of LARR Bill 2011, in certain cases, will apply retroactively to pending and incomplete projects. land acquisition for all linear projects such as highways, irrigation canals, railways, ports and others.

- Criticisms

The proposed Bill, LARR 2011, is being criticized on a number of fronts:

- *Some criticize the Act citing that it is heavily loaded in favour of land owners and ignores the needs of poor Indians who need affordable housing, impoverished families who need affordable hospitals, schools, employment opportunities and infrastructure and industries.*
- *Some economists suggest that it attaches an arbitrary mark-up to the historical market price to determine compensation amounts, along with its numerous entitlements to potentially unlimited number of claimants. This according to them shall guarantee neither social justice nor the efficient use of resources.*
- *LARR 2011 as proposed mandates that compensation and rehabilitation payments to land owners and livelihood losers be upfront. This misaligns the interests of land acquirer and those affected. Once the payment is made, one or more of the affected families may seek to delay the progress of the project to extract additional compensation, thereby adversely affecting those who chose long term employment in the affected families. The Bill, these economists suggest, should link compensation and entitlements to the progress and success of the project, such as through partial compensation in form of land bonds. These success-linked infrastructure bonds may also help poor states reduce the upfront cost of land acquisition for essential public projects such as hospitals, schools, universities, affordable housing, clean drinking water treatment plants, electricity power generation plants, sewage treatment plants, flood control reservoirs, and highways necessary to bring relief to affected public*

during fires, epidemics, earthquakes, floods and other natural disasters. The state of Kerala has decided to pursue the use of infrastructure bonds as a form of payment to land owners.

- *LARR 2011 places no limit on total compensation or number of claimants; nor does it place any statute of limitations on claims or claimants. The beneficiaries of the Bill, with guaranteed jobs for 26 years, will have no incentive to be productive. The Bill should place a limit on total value of entitlement benefits that can be annually claimed per acre, this entitlement pool should then be divided between the affected families, and the government should run this program if it is considered to be fair.*
- *LARR 2011 as proposed severely curtails free market transactions between willing sellers and willing buyers. For example, DLF Limited – India's largest real estate developer – claims that the current bill may limit private companies such as DLF from developing affordable housing for millions of Indians. DLF suggests that direct land transactions with owners on a willing voluntary basis, at market-determined rate, should be kept out of the purview of the bill. There should be no conditions imposed on free market transactions between willing sellers and willing buyers.*
- *An article in The Wall Street Journal claims that the proposed LARR 2011 rules will apply even when any private company acquires 100 acres of land or more. For context, POSCO India seeks about 4000 acres for its US$12 billion proposed steel manufacturing plant in the Indian state of Orissa. In most cases, even small companies planning US$10-US$300 million investment, seeking 100 or more acres will be affected by the compensation plus rehabilitation effort and expenses of LARR 2011. The WSJ article further claims that the proposed LARR 2011 bill doesn't actually define the word "acquisition," and leaves open a loophole that could allow government agencies to continue banking land indefinitely.*
- *The Observer Research Foundation's Sahoo argues that the bill fails to adequately define "public purpose".The current definition, he claims, can be interpreted vaguely. In leaving public purpose too vague and porous, it would ensure that land acquisition will remain hostage to politics and all kinds of disputes. More clarity is needed, perhaps with the option that each state have the right to hold a referendum, whereby the voters in the state can vote to approve or disapprove proposed public purpose land acquisitions through the referendum, as is done through local elections in the United States for certain public acquisition of private or agricultural land.*
- *The Confederation of Real Estate Developers' Association of India claims that the proposed LARR 2011 bill is kind of one-sided, its ill-thought-out entitlements may sound very altruistic and pro-poor, but these are unsustainable and will kill the goose that lays the golden egg. This group further claims that the bill, if passed, will increase the cost of acquisition of land to unrealistic level. It will be almost impossible to acquire 50-acre or 100-acre land at one place for planned development. They suggest that if India does not facilitate urbanization in an organized manner, all the incremental population will be housed in disorganized housing developments such as slums with dire consequences for Indian economy. In the long run, even farmers will suffer as fringe development of urban centres will largely be in the form of unauthorized developments and they will not realize the true economic potential of their lands.*
- *The bill inflates the cost of land to help a small minority of Indians at the cost of the vast majority of Indian citizens, as less than 10% of Indian population owns rural or urban land., The LARR Bill 2011 favours a privileged minority of land owners as the Bill mandates above market prices for their land plus an expensive rehabilitation package. The Bill does not mandate a process by which the time involved in land acquisition is reduced from current levels of years. Nor does the Bill consider the effect of excessive costs upfront, and expensive rehabilitation mandate over time, on the financial feasibility of large-scale, socially necessary infrastructure projects needed by 90%+ of Indians who are not landowners. In an editorial, Vidya Bala writes that the most*

important weakness in the Bill is bringing non-government transactions too under its purview. Private players buying 50+ acres of urban land tracts or 100+ acres of rural areas would be required to comply with the R&R package stated in the Bill.

- *LARR 2011 Bill's sections 97, 98 and 99 are incongruous with other laws of India in details and intent. Section 98, for example, says that the provisions of the Bill shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule of the Bill. According to Indian Legal Code, the Fourth Schedule referred to by LARR 2011 Bill, consists of 16 bills, including the ancient monuments and archaeological sites and remains Act, 1958, the atomic energy Act, 1962, the special economic zones Act, 2005, the cantonments Act, 2006, the railways Act, 1989 amongst others. Laws cannot be in conflict with*
- *Each other. LARR Bill carve outs through Sections 97, 98 and 99 add confusion, offering a means for numerous citizen petitions, lawsuits and judicial activism. The LARR 2011 Bill thus fails to deliver on the goals motivating it.*

❖ Section 52 in The Indian Easements Act, 1882

52 "License" defined. -Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

❖ SALIENT FEATURES OF REAL ESTATE ACT 2016

After a lot of opposition, deliberation and several amendments, the Rajya Sabha has, on 10 March 2016, approved the Real Estate (Regulation and Development) Bill, 2016 (Bill/Act) which substantially amends the original Real Estate (Regulation and Development) Bill, 2013.

The Bill largely seeks to protect the interest of the allottees/purchasers by promoting transparency, accountability and efficiency in the construction and execution of real estate projects by promoters. It also holds the promoters accountable for not registering their projects with the Real Estate Regulatory Authority (Regulatory Authority) or for providing insufficient information regarding their project. In addition to the promoter and allottees, the Bill also brings real estate brokers who facilitate the sale and purchase of units in a project within its ambit.

- ***Salient Features*** *The salient features of the Bill are the following:*

- Real Estate Regulatory Authority

Under the Bill, instead of a regular forum of consumers, the purchasers of real estate units from a developer would have a specialized forum called the "Real Estate Regulatory Authority" which will be set up within one year from the date of coming into force of the Act. In the interim, the appropriate Government (i.e., the Central or State Government) shall designate any other regulatory authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority.

- Registration with the Regulatory Authority

The promoter has to register their project (residential as well as commercial) with the Regulatory Authority before booking, selling or offering apartments for sale in such projects. In case a project is to be promoted in phases, then each phase shall be considered as a standalone project, and the promoter shall obtain registration for each phase.

Further, in case of ongoing projects on the date of commencement of the Act which have not received a completion certificate, the promoter of such project shall make an application to the Regulatory Authority for registration of their project within a period of three months of the commencement of the Act.

- The following types of projects shall not be required to be registered before the Regulatory Authority:

Where the area of land proposed to be promoter does not exceed 500 square meters or the number of apartments to be constructed in the project does not exceed eight apartments. However, the appropriate Government (Central and State Government) may, if it considers appropriate, reduce the threshold limit below 500 square meters or eight apartments;

- ✓ *Projects where the completion certificate has been received prior to the commencement of the Act;*

- ✓ *Projects for the purpose of renovation or repair or re-development which does not involve marketing, advertising, selling and new allotment of any apartment plot or building.*

The application for registration must disclose the following information:

A. *Details of the promoter (such as its registered address, type of enterprise such proprietorship, societies, partnership, companies, competent authority);*
B. *A brief detail of the projects launched by the promoter, in the past five years, whether already completed or being developed, as the case may be, including the current status of the projects, any delay in its completion, details of cases pending, details of type of land and payments pending;*
C. *An authenticated copy of the approval and commencement certificate received from the competent authority and where the project is proposed to be developed in phases, an authenticated copy of the approval and commencement certificate of each of such phases;*
D. *The sanctioned plan, layout plan and specifications of the project, plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof and the locational details of the project;*
E. *Proforma of the allotment letter, agreement for sale and conveyance deed proposed to be signed with the allottees;*
F. *Number, type and carpet area of the apartments and the number and areas of garages for sale in the project;*
G. *The names and addresses of the promoter's real estate agents, if any, and contractors, architects, structural engineers affiliated with the project; and*
H. *A declaration by the promoter supported by an affidavit stating that:*
   he has a legal title to the land, free from all encumbrances, and in case there is an encumbrance, then details of such encumbrances on the land including any right, title, interest or name of any party in or over such land along with the details;
I. *the time period within which he undertakes to complete the project or the phase; and*
J. *70% of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.*

- ➢ Carpet Area

Under the Bill, developers can sell units only on carpet area, which means the net usable floor area of an apartment. This excludes the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

- 70% of realization from allottees in a separate bank account
- The Act mandates that a promoter shall deposit 70% of the amount realized from the allottees, from time to time, in a separate account to be maintained in a scheduled bank. This is intended to cover the cost of construction and the land cost and the amount deposited shall be used only for the concerned project.

- The promoter shall be entitled to withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. However, such withdrawal can only be made after it is certified by an engineer, an architect and chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.
- The promoter is also required to get his accounts audited within six months after the end of every financial year by a practicing chartered accountant. , Further, he is required to produce a statement of accounts duly certified and signed by such chartered accountant, and it shall be verified during the audit that (i) the amounts collected for a particular project have been utilized for the project; and (ii) the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

➢ Acceptance or refusal of registration

Upon receipt of an application by the promoter, the Regulator Authority shall within a period of 30 days, grant or reject the registration.

Upon granting a registration, the promoter will be provided with a registration number, including a login Id and password for accessing the website of the Regulatory Authority and to create his web page and to fill in the details of the proposed project.

If the Regulatory Authority fails to grant or reject the application of the promoter within the period of 30 days, then the project shall be deemed to have been registered.

The registration, if granted, will be valid until the period of completion of the project as committed by the promoter to the Regulatory Authority. This period shall be extended by the Regulatory Authority for a period not exceeding one year in aggregate, only due to force majeure and on payment of such fee as may be specified by regulations made by the Regulatory Authority.

➢ Revocation or lapse of registration

The Regulatory Authority may revoke the registration granted on receipt of a complaint or suo moto or on the recommendation of the competent authority in case (i) the promoter makes a default in doing anything required under the Act or the rules or regulations made thereunder; (ii) the promoter violates any terms of the approvals granted for the project; and (iii) the promoter is involved in any kind of unfair practice of irregularities.

In the event the registration is revoked by the Regulatory Authority or it lapses, the Regulatory Authority shall:

- *Debar the promoter from accessing the website in relation to the project, specify his name in the list of defaulters on its website and also inform other Regulatory Authorities in other States and Union territories about such cancellation;*

- *Facilitate the remaining development works to be carried out by competent authority or the association of allottees or in any other manner as may be determined by the Regulatory Authority. However, the association of allottees shall have a first right of refusal for carrying out the remaining development works; or*
- *Direct the scheduled bank holding the project bank account, to freeze the account and thereafter take such further necessary actions, including consequent de-freezing of the account, for facilitating the remaining development works in the manner mentioned above.*

➢ Website of the Regulatory Authority

The promoter shall, upon receiving his login Id and password, create his web page on the website of the Regulatory Authority and enter all details of the proposed project including:

1. ***Details of the registration granted by the Regulatory Authority;***
2. ***Quarterly up-to-date list of the number and types of apartments or plots or garages, as the case may be, booked;***
3. ***Quarterly up-to-date status of the project along with the list of approvals obtained and approvals pending subsequent to commencement certificate; and***
4. ***Such other information and documents as may be specified by the regulations made by the Regulatory Authority.***
5. ***Advertisement or prospectus issued by the promoter***

The advertisement or prospectus issued or published by the promoter should prominently mention the website address of the Regulatory Authority, where all details of the registered project have been entered and include the registration number obtained from the Regulatory Authority and other similar details.

Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus and sustains any loss or damage because of any incorrect, false statement included in these, he shall be compensated by the promoter in the manner as provided under the Act. Also, if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, intends to withdraw from the proposed project, his entire investment (along with interest at such rate as may be prescribed and compensation in the manner provided under the Act), will be returned to him.

- Limit on receipt of advance payment

A promoter shall not accept a sum more than 10% percent of the cost of the apartment, plot, or building, as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement of sale with such person and register the said agreement of sale, under any law for the time being in force.

➢ Restriction on addition and alteration in the plans

- *The promoter cannot make any addition or alteration in the approved and sanctioned plans, structural designs, specifications and amenities of the apartment, plot or building without the previous consent of the allottee.*
- *The promoter also cannot make any other addition or alteration in the approved and sanctioned plans, structural designs and specifications of the building and common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such a building.*

➢ Structural defect

In case any structural defect or any other defect in the workmanship, quality or provision of services or any other obligations of the promoters is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, the promoter shall rectify such defect without any further charge, within thirty days. If the promoter fails to rectify such defect within such time, the aggrieved allottee shall be entitled to receive appropriate compensation in the manner as provided in the Act.

➢ Restriction on transfer and assignment

The promoter shall not transfer or assign his majority rights and liabilities in respect of a project to a third party without obtaining prior written consent from two-thirds of the allottees, except the promoter, and without the prior written approval of the Regulatory Authority.

Please note that the allottee, irrespective of (i) the number of apartments or plots booked by him or booked in the name of his family; or (ii) in the case of other persons such as companies/firms/any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities/related enterprises, shall be considered as one allottee only.

➢ Refund of amount in case of delay in handing over possession

In case the promoter is unable to hand over possession of the apartment, plot or building to the allottee *(i) in accordance with the terms of the agreement of sale; or (ii) due to discontinuance of his business as a promoter on account of suspension; or (iii) revocation of his registration or for any other reason, then the promoter shall be liable, on demand being made by the allottee, to return the amount received by him from the allottee with interest and compensation at the rate and manner as provided under the Act. This relief will be available without prejudice to any other remedy available to the allottee.*

However, where an allottee does not intend to withdraw from the project, he shall be paid interest by the promoter for every month of delay, till the handing over of the possession, at a prescribed rate.

- Other relevant provisions

The same rate of interest will be payable by the allottee and the promoter in the event of their respective defaults.

In the absence of any local laws, an association or society or cooperative society, as the case may be, of the allottees, shall be formed within a period of three months of the majority of allottees who have booked their plot or apartment or building, as the case may be, in the project.

After the promoter executes an agreement for sale for any apartment, plot or building, no mortgage or charge can be created by the promoter on such apartment, plot or building. If any such mortgage or charge is created, then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building.

The promoter may cancel the allotment only in terms of the agreement for sale. However, the allottee may approach the Regulatory Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, is unilateral and without any sufficient cause.

The promoter shall obtain insurance as may be notified by the appropriate Government, including but not limited to the title of the land and building and construction of the project. The promoter shall also be liable to pay the premium and charges in respect of the insurance.

The promoter shall execute a registered conveyance deed in favour of the (i) allottee in respect of the apartment, plot or building; and (ii) association of allottees of competent authority in respect of the undivided proportionate title in the common areas, and hand over possession of the same within the period as specified under the local laws. In the absence of any local law, such conveyance deed shall be carried out by the promoter within three months from date of issue of the occupancy certificate.

The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land in the manner as provided under the Act, and such claim for compensation shall not be barred by limitation provided under any law for the time being in force.

Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or buildings.

The Regulatory Authority shall make a recommendation to the appropriate Government on (i) creation of a single window system for ensuring time-bound project approvals and clearances for timely completion of the project; and (ii) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials.

- Real Estate Appellate Tribunal

In addition to the establishment of the Regulatory Authority, the Bill also proposes to establish a Real Estate Appellate Tribunal (Appellate Tribunal) within one year from the date of commencement of the Act.

Any person aggrieved by any direction or decision made by the Regulatory Authority or by an adjudicating officer, may make an appeal before the Appellate Tribunal within a period of 60 days from the date of receipt of a copy of the order or direction.

The Appellate Tribunal shall deal with the appeal as expeditiously as possible and endeavour shall me made to dispose of the appeal within a period of sixty days from the date of receipt of appeal.

The Appellate Tribunal shall have same powers as a civil court and shall be deemed to be a civil court. An appeal against the order of the Appellate Tribunal may be filed before the jurisdictional High Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal.

- Adjudicating Officer

For adjudging the compensation to be paid by the promoter in accordance with the provisions of the Act, the Regulatory Authority shall appoint (in consultation with the appropriate Government) one or more judicial officers as deemed necessary, who is or has been a District Judge, to be an adjudicating officer for holding an inquiry in this regard. However, such an appointment will be made after giving any person concerned a reasonable opportunity of being heard.

- Offences and Penalty

Stringent penal provisions have been prescribed under the Act against the promoter in case of any contravention or non-compliance of the provisions of the Act or the orders, decisions or directions of the Regulatory Authority or the Appellate Tribunal which are the following:

If promoter does not register its project with the Regulatory Authority – the penalty may be up to 10% of the estimated cost of the project as determined by the Regulatory Authority;

- ✓ *If promoter does not comply with the aforesaid order of the Regulatory Authority - imprisonment of up to three years and a further penalty of up to 10% of the estimated cost, or both; and*
- ✓ *In case the promoter provides any false information while making an application to the Regulatory Authority or contravenes any other provision of the Act – the penalty may be up to 5% of the estimated cost of the project or construction.*
- ✓ *These penal provisions have also been prescribed for any contravention or violation committed by the real estate agent or the allottee.*
- ✓ *If any allottee fails to comply with, or contravenes any of the orders, decisions or directions of the Regularity Authority, there may be a penalty for the period during which such default continues, which may cumulatively extend up to 5% of the cost of*

the plot, apartment or building, as the case may be, as determined by the Regulatory Authority. Further, if any allottee fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, this may entail imprisonment up to one year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the cost of the plot, apartment or building, as the case may be, or with both.

- Overriding effect

The provisions of this Act shall have an overriding effect in case there is any inconsistency between the provisions contained in this Act and in any other law (including a state law) for the time being in force.

The Maharashtra Housing (Regulation and Development) Act 2012 has been repealed by the Central Government.

❖ Transfer of Property Act, 1882

- "Exchange" defined

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

➢ Transfer of Property

- INTRODUCTION

Section 100 of the Transfer of Property Act, 1882(henceforth referred as “the Act") defines a charge.

“Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another; and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. “

It says that where immovable property of one person is, by act of parties or operation of law, made security for the payment of money to another, and the transaction does not amount to mortgage, the latter person is said to have a charge on the property, and all the provisions hereinbefore contained which apply to simple mortgage shall, so far as may be, apply to such charge.

“Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly insured in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

The expenses incurred by the trustee are a charge upon the trust property but this charge, unlike other types of charges, cannot be enforced by the sale of the trust property for it would have the effect of destroying the trust. Section 32 of the Trust Act says that the trust may only reimburse itself for such expenses out of the income of the trust estate and prohibit any disposition of the trust property without previous payment of his expenses.

The second exception lays down that no charge shall be enforced against any property in the hands of the person to whom such property has been transferred for consideration and without notice of the charge. This exception brings out the distinction between a charge and mortgage (which will be discussed in detail by the researcher in the first chapter of this paper. The researcher also wishes to discuss the distinction between a “charge and a lien" and “a charge and a simple mortgage" followed by the kinds of charges in the second chapter of this paper followed by his conclusion.

❖ <u>CHAPTER 1 - CHARGES AND MORTGAGES</u>

Section 58 of TOPA defines what a mortgage is:-

"A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability".

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed."

Therefore a mortgage being just *in rem* can be enforced against the mortgaged property in the hands of any transferee from mortgage irrespective of notice. Whereas a charge, on the other hand, is a just *ad rem* and can be enforced against a transferor got consideration if he has taken the transfer with notice of charge.

Before *section 100 of the Act was amended by ACT 20 of 1929*, it was well settled that the section did not prescribe any particular mode of creating charge. The amendment substituted the words: "all the provisions hereinbefore contained which apply to a simple mortgage shall, so far maybe, apply to such charge"., for the words "all the provisions hereinbefore contained as to a mortgagor shall, so far may be, apply to the owner of such property, and the provisions of section 81 & 82 shall, so far as may be, apply to the person having such charge."

The object of the amendment was to make it clear that the rights and liabilities of the parties in case of such charge shall, so far as may be, the same as the rights and liabilities of the parties of a simple mortgage. The amendment was not intended to prescribe to any particular mode for the creation of a charge. The Nagpur HC came to a similar conclusion in *Bapurao V. Narayan*.It follows that the security bond was not required to be attested by witness. It was duly registered and was valid and operative .

- *Mortgage and charge distinguished*:

The main points of difference between mortgage and a charge are as follows:

- ✓ ***A mortgage is a transfer of an interest in specific immovable property but a charge is not. In a charge no right in rem is created, but the right is something more than a personal obligation, for it is a just ad rem, that is right of payment out of property specified, while a mortgage is a right in rem.***
- ✓ ***A charge may be created by act of parties or by operation of law; but a mortgage can be created only by act of parties.***
- ✓ ***The creation of a charge does not necessarily imply the existence of a debt while it is always so in case of a mortgage.***
- ✓ ***A mortgage is good against subsequent transferees and may be enforced against a bona fide purchaser for value with or without notice, while a charge is good only against subsequent transferee with notice.***
- ✓ ***A charge created by operation of law does not require registration pre scribed by section 59 of the Act for a mortgage. A charge created by act of parties requires registration irrespective of the amount involved.***

It should be noted that a transaction intended to be a mortgage but not reduced to writing and registration in cases where such a formality is required cannot operate as a charge. In *Govinda v. Dwarka nath*, it was observed that: "if an instrument is expressly stated to be a mortgage, and give the power of realization of the mortgage money by sale of mortgaged premises, it should be held to be a mortgage. The fact that necessary formalities of the due execution were wanting would not convert the mortgage into a charge. If, on the other hand, the instrument is not on the face to it a mortgage, but simply creates a lien, or directs the realization of money from a particular property without reference to sale, it creates a charge.

- ***Charge and Lien distinguished***:

In law, a lien is a form of security interest granted over an item of property to secure the payment of a debt or performance of some other obligation. ***The owner of the property, who grants the lien, is referred to as the lienor and the person who has the benefit of the lien is referred to as the lienee.***

- *A charge may be created by the act of parties or by operation of law, but lien can arise only by operation of law.*
- *A charge may not only empower its possessor in many cases to hold the property charged, if it is in his possession, but also to enforce it in a court of law. A lien, on the other hand, is simply a right to possess and retain property until some charge attaching to it is paid or discharged.*
- *A charge is confined to immovable property, but a lien may be in respect of movable property.*

- Charge and Simple Mortgage distinguished:

Section 58 of The Act defines simple mortgage as: "Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly that in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee".

In simple terms a simple mortgage does not involve giving the possession of the mortgagor's property to the mortgagee. It is under mutual agreement that in case of non-payment by the mortgagee to the mortgagor within the specified time, the mortgagee can cause the mortgaged property to be sold in accordance with law and have the sale proceeds adjusted towards the payment of the mortgage money.

In a simple mortgage, there is a personal covenant to pay the mortgage money whereas in charge, there is no understanding to pay the money personally.

In simple mortgage there is a transfer of interest in the property mortgaged, in a charge there is no such transfer. Notwithstanding this vital distinction, the section says :

"The provision hereinbefore contained which apply to simple mortgage shall, so far may be, apply to charge." As in case of a simple mortgage, the charge-holder has got a right to enforce the charge by sale of the property subject to charge.

❖ CHAPTER 2- KINDS OF CHARGES

The charges that have been dealt in this section are:-

1. *Charges created by act of parties.*
2. *Charges arising out of operation of law.*

The Nagpur HC had held that a charge which is created by a decree is not created by acts of parties, nor can it be said to have been creates by operation of law. Such charge does not fall under the section nor does the principle underlying it apply to it. But in a later decision, the same HC has held that a charge created by a compromise of a money decree is a charge created by the act of parties and is thereof governed by this section. The Patna HC has, however, held that where a charge is created by a decree which was passed in pursuance of an agreement between the parties; it is a charge by act the act of parties and consequently, one contemplated by sec. 100 of the Act. The Calcutta HC held that a charge created by a consent decree over certain property of the husband for maintenance of the deserted wife for his life was in the nature of a charge contemplated by sec. 100 of the Act, and will not lapse by death of the husband. But a charge created by ordinary decree would not be charge created by the acts of parties and the provision of sec. 100 would not apply. However the SC has held in a case that a compromise decree creating a charge is an “act of parties" within the meaning of sec. 100 of the act. It is no the result of a decision of the court, but is an acceptance by the court of something to which the parties have agreed.

1. *Charges created by act of parties* –

An agreement which gives immovable property as security for the satisfaction of a debt without transferring any interest in the property constitutes a charge by act of parties. No particular form of words is necessary case for creation of a charge. It is sufficient, if, having regard to all the circumstances of the transaction. The document shows intent to make the land security for the payment of the money mentioned therein. But there must be a clear intention to make a property security for money in praesenti. If there is an intention to create a charge in praesenti an agreement to mortgage may amount to a charge. A mere undertaking to discharge an obligation or liability is not enough if the intention to make a specified property of fund liable is absent. An agreement which gives immovable property as security for the satisfaction of a debt, or for the payment of a maintenance allowance in perpetuity, without transferring any interest in the property or an agreement by which an owner of a share in a village receives in lieu of his share a lump sum out of the income, constitutes a charge on the property and is not a mortgage.

The following are the illustrations of charges by acts of parties:

A. *A inherited an estate from his maternal grand-mother and executed an agreement to pay his sister B a fix annual sum out the rents of the estate; B has charges on the estate.*
B. *A sued B on a promissory note. The compromise decree directed the payment of the money and further directed the B shall not dispose of his share in a factory until satisfaction of the entire decretal amount. It was held that A had a charge on the property specified.*

2. *Charges arising out of operation of law* –

A charge by operation of law is one which arises irrespective of the agreement of the parties. Such charges are known as equitable liens in English Law. The inclusion, in the definition, of charges by operation of law has been criticized as inconsistent with the scheme of the Act which relates to transfers by act of parties. [16] But as the SC observed in *Laxmi Devi v. Mukand Munwar* a plain reading of sec. 2(d) of the Act leaves no doubt that the provisions of chapter IV of the Act, and therefore of this section, governs charges by operation of law. The Act however itself creates such charges, for a charge by the operation of law arises in this Act under sec. 55(4)(b) in the case of an unpaid vendor, under sec. 55(6)(b) for the purchase money paid in advance; and sec. 73 in favors of a mortgagee on surplus sale proceeds of a revenue sale.

As illustrations of such charges we may note the following:

- ***Vendor's charge for unpaid purchase-money*** -

This is provided by sec. 54 (4)(b) : "where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, the seller is entitled to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered"

- ***Vendee's charge for purchase-money paid in advance –***

Under sec.55 (6)(b), the vendee is entitled "to a charge on the property, as against the seller and all persons claiming under him to the extent of the seller's interest in the property, for the amount of any purchase-money properly, for the amount of any purchase-money properly laid by the buyer in anticipation of the delivery and for interest on such amount".

Other instances of charges arising by operation of law are mortgagee's lien under sec. 73 on surplus sales proceeds, a revenue sale, the right of maintenance under sec. 39 and the right of a holder of a detective title who makes improvement on the property under sec. 51.

- CONCLUSION

A charge gives rise to a new proprietary interest in favour of the lender over the borrower's property. In contrast to a mortgage there is no transfer of the borrower's existing interest but the creation of a new burden upon the borrower's ownership. This interest by way of charge appropriates the borrower's property to the repayment of the loan. In other words it

entitles the lender to look to the borrower's property should the borrower fail to repay the loan, for instance by insisting that the property to be sold. When the loan is repaid the charge will cease as there is no longer any appropriation.

Strictly speaking, a charge does not involve the transfer of ownership, in the same way as a mortgage of unregistered title. The charge holder is deemed to have all the legal rights of a mortgagee. However, some mortgagee rights depend on ownership, such as the inherent right to take possession. A charge holder does not the have possession as a mortgagee. However, it is often the case that conditions of a charge of registered land, right a grant mortgagee, by the terms of the charge deed.

- *Essential Conditions of Transfer of Property Under Transfer of Property Act, 1882 (Act 4 of 1882)*

Any other mere possibility of a like nature.

Clause (b)*-a mere right to re-entry for the breach of a condition subsequent;*

Clause (c)*-an easement (apart from dominant heritage);*

Clause (d)-*restricted interest i.e., when the interest in property is restricted in its enjoyment only;*

Clause (dd)-a right to future maintenance;

Clause (e)-a mere right to sue;

Clause (f)-a public office and salary of a public officer;

Clause (g)-stipends allowed to military, naval, air force and civil pensioners of the Government and political pensioners;

Clause (h)-Nature of interest, unlawful object, disqualification of transferee. This

clause deals with three cases. It says no transfer can be made

-(i)in so far as it is opposed to the nature of the interest affected thereby; or

(ii)for an unlawful object or consideration within meaning of section 23 of Indian Contract Act, 1872; or

(iii)to a person legally disqualified to be transferee. Clause (i) ± Untransferable interests this clause removes doubts regarding the non-transferability of occupancy rights. Under this clause, any tenant having an transferable right of occupancy cannot transfer his interest as such tenant. The farmer of an estate in respect of which default has been made in paying revenue cannot transfer his interest as such farmer and the lessee of an estate under the management of the Court of Wards cannot assign his interest as such lessee to any other person.

Section 24- Agreements void, if consideration are objects unlawful in part if any part of a single consideration for one or more objects, or any one or any part of anyone of several consideration of a single object, is unlawful, the agreement is void.

- Competence of transferor

Section 7of Transfer of Property deals with this aspect, which reads as ± Persons

Competent to transfer *-Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.*

(a)The competence to contract is defined in the section 11 of Indian Contract Act,1872,which prescribed that every person is competent to contract ±

(i)who is of the age of majority according to the law to which he is subjected,

(ii)who is of sound mind, and

(iii)is not disqualified from contracting by any law to which he is subject.

(b)Any person who is authorized to dispose of the property is competent to transfer it too.

- Competence of the transferee

Nowhere it is said that the transferee must be a competent person in respect of his age, soundness of mind etc.

(a)Only he must be alive at the time of transfer.

(b)Transfer to unborn person requires creation of a prior interest:

- *Section 13 of Transfer of Property Act which reads as-*

Transfer for the benefit of unborn person.-Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends the whole of the remaining interest of the transferor in the property.

- *Section 12of Indian Contract Act describes sound mind, which says that-*

A person is said to be of sound mind for the propose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

- *Operation of transfer Section 8 of Transfer of Property Act deals with effect of transfer. It says that a transfer of property passes forthwith to the transferee all the interest which the transferor, then capable of passing in the property, and in the legal incidents thereof. The transferor cannot convey a better title to the transferee that the transferor himself possesses. Operation of transfer is considered complete on the date of execution of registered instrument itself. Section 8 defined what legal incidents of each particular class of property are passed along with the property when it is transferred*

-(a)For land, the incidents are easements, rents, profits and all the things attached to earth;

(b)For house, the easements, rents after transfer, locks, keys, bars, doors etc., which are provided with the house for permanent use;

(c)For machinery, its movable parts;

(d)For debt, it is security; and(e)For money, it is interest after transfer.

- Conditions for Oral and Written transfer

The transfer of property can be made in oral or in written.

(a)**Oral transfer**: *Section 9 of Transfer of Property Act deals with oral transfer, which reads as- Oral transfer .-A transfer of property may be made without writing in every case in which a writing is not expressly required by law. Transfer of property which requires oral transfer is transferred by delivery of possession, e.g.*

(i)Generally the movable properties may be transferred by delivery of possession,

(ii)Month to month tenancy,

(iii)Mortgage by deposit of title-deeds, exchange of immovable property value less than rupees one hundred, etc.

6(b) Written transfer (by Registration): *Where registration is necessary, the transfer must be made in writing. According to Transfer of Property Act, following transaction must be made in written:*

(i)Sale of an immovable property exceeding rupees one hundred (section54).

(ii)Simple mortgage irrespective of the amount specified (section 59).

(iii)All other mortgage (except mortgage by deposit of title deeds) securing sum exceeding rupees one hundred (section 59).

(iv)Lease from year to year (section 107).

(v)Exchange of immovable property exceeding one hundred rupees in value (section 118).

(vi)Gift of an immovable property (section 123).

(vii)Transfer of actionable claims (section 130), where only writing is sufficient, and registration is not necessary.

- Central Government Act
- Section 3 in The Transfer of Property Act, 1882

Interpretation clause- In this Act, unless there is something repugnant in the subject or context- "*immoveable property*" does not include standing timber, growing crops or grass; ''instrument" means a non-testamentary instrument; 1["attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or

has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;] "registered" means registered in 2[3[any part of the territories] to which this Act extends] under the law4 for the time being in force regulating the registration of documents; "*attached to the earth*" means—

(a) Rooted in the earth, as in the case of trees and shrubs;

(b) Imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached; 5["actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;] 6["a person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.
Explanation I-*Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:] Provided that—*

(1) The instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

- (3) The particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.
  Explanation II - *Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.*
  Explanation III-*A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material: Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.*

- Central Government Act
- Section 5 in The Transfer of Property Act, 1882

"Transfer of property" defined-In the following sections *"transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, 1[or to himself] and one or more other living persons; and "to transfer property" is to perform such act. 1[In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]*

- Section 6 in The Transfer of Property Act, 1882
- What may be transferred?
  Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force-

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him; 1[(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;]

(e) A mere right to sue cannot be transferred;

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military 3[naval], 4[air-force] and civil pensioners of the 5[Government] and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) 6[for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872)], or (3) to a person legally disqualified to be transferee; 7[(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.]

- Section 7 in The Transfer of Property Act 1882

Persons competent to transfer- *Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.*

- Section 25 in The Transfer of Property Act, 1882

Conditional transfer-*An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy*.

Illustration

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C, if she will desert her husband. The transfer is void.

- Section 53 in The Transfer of Property Act, 1882

1[53]. Fraudulent transfer-

(1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration. Nothing in this sub-section shall affect any law for the time being in force relating to insolvency. A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee. For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made

- Section 53A in The Transfer of Property Act, 1882

1[53A. Part performance- *Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]*

- ✓ Section 54 of the price Transfer of Property Act
  Defines "Sale" as "sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made – Such transfer, in case of tangible immovable property of the value of one hundred rupees and upwards or in the case of revision or other intangible things, can be made only by registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument of by delivery of the property.

Delivery of tangible immovable property takes place when the seller place the buyer or such person as he directs, in possession of the property."

- ✓ Essentials of a Valid Sale

According to Section 54, following are the essentials of a valid sale—

i. The parties, i.e., the seller and the purchase, must be competent. They are also called vendor and vendee, respectively. They must be competent to contract, i.e., must of sound mind and have attained the age of majority. The seller must also have right to sell the property and purchase may be any person not disqualified to purchase a property under any law enforced in India.

ii. There must be a subject-matter of sale. Transfer of Property Act deals with sale of immovable property. The transfer of ownership of immovable property is dealt with under this Act while sale of movable are dealt with under the Sale of Goods Act, 1930. Immovable property may be either tangible, such as land, house, and things attaches to earth, etc., or it may be intangible immovable property, such as right of ferry or fisheries, or right to a mortgage debt etc. But the immovable property must be in existence on the date of execution of sale.

iii. Price or money consideration—Price is an essential ingredient of a sale. A sale is a transfer of ownership in exchange of money. Payment of price is not necessary for completion of the transfer but its reference is necessary. It may be paid at the time of execution or promised to pay or same part of it may paid at the time of execution and rest may be promised to be paid in future.

iv. Conveyance—In sale, property must be transferred from seller to purchaser. According to Section 54 there must be a registered conveyance in the case of—
(a) tangible immovable property of the value of Rs. 100 and upwards; or

(b) a reversion of an intangible thing of any value.
In case of tangible immovable property of a value less than Rs. 100, there must either be,

i. A registered conveyance, or
ii. Delivery of property.

- ✓ Sale and Contract for Sale
  Section 54 of the Act defines 'sale' as a transfer of ownership in exchange for a price Paid or promised or part paid and part promised.

Section 54 also defines 'contract for sale' as, "a contract for the sale of immovable property B a contract that a sale of such property shall take place on terms settled between the parties,"

Thus a sale may be preceded by a contract for sale. A contract for sale is merely a document creating a right to obtain another document namely, a duly executed sale deed. On the Other hand, a sale of immovable property is a transfer of ownership.
A sale passes an absolute interest in the property to the purchaser, but a contract for sale does not of itself create any interest in, or charge upon the property in favour of the buyer. It does not convey any little to the purchaser.
A sale must be registered, if it deals with the conveyance of tangible immovable property of the value of Rs. 100 or more, or a reversion or any intangible things.

A contract for sale need not be registered at all.

- ✓ Sale and Exchange

According to Section 54 of the Act, a sale is a transfer of ownership in a property in exchange for a price. On the other hand exchange is a transfer of ownership in property in exchange of ownership of another property. Section 118 of the Act defines exchange as, "when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both thing being money only, the transaction is called exchange.

Thus in both, there is transfer of absolute interest in the property, but real difference is that in sale, the consideration is money, whereas in exchange, it is another property or anything of value.

- ✓ Sale and Gift

In both sale and gift, there is transfer of ownership of an immovable property. However the difference between the two is that where in sale, the ownership is transferred in exchange for a price, in gift, the immovable property is transferred with any consideration.

In sale, if the valuation of immovable property is Rs. 100 or more, than it is to be effected only by registered instrument. But in case of a gift of an immovable property, it must be made only by registered instrument irrespective of the valuation of the property.

- ❖ *RIGHTS AND DUTIES OF SELLER AND BUYER (SECTION 55)*

- ✓ Sellers Duties and Rights

- Sellers duties before sale-

(a) The seller is bound to disclose to the buyer any material defect in the property or title, of which seller is, and buyer is not aware, and which buyer could not with ordinary case discover. [Section 55(1)(a)]

(b) The seller is bound to the buyer on his request for examination of all documents of title relating to the property which are in the seller's possession or power. [Section 55(1) (b)]

(c) The seller is bound to answer to the best of his information all relevant question put it him by him by the buyer in respect to the property or the title there. [Section 55(1) (2)]

(d) The seller's next duty is to execute the conveyance. He is bound on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at proper time of place. [Section 55 (1) (d)]

(e) Seller is bound to take case of the property and documents of title. Between the date of contract of sale and the delivery of the property, he is bound to take as much case of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents. [Section 55(1) (c)]

(f) It is the seller's duty before the completion of sale to pay all the outgoings. Before completing of sale, the seller continues to the owner of the property, thus the Government dues, etc., are to be paid by him. [Section 55(1)(g)]

- Seller duty after sale—

(a) After completion of the sale, it is the seller's duty to give possession to the buyer. The seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits. [Section 55(1)(f)1

(b) It is the seller duty to covenant for title. Section 55(2) of the Act provides that—

"The seller's be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsist and that he has power to transfer the same". (This is also known as implied covenant for title): Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested."

(c) It is the seller duty to deliver title-deeds on receipt of the price. Section 55(3) of the Act provides that, where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which is in the seller's possession or power. However, he proviso to Section 55(3) lays down that:

Where the seller retains that part of the property with him, which of greatest value and, such property is included in the documents, the seller is entitled to retain all the documents with him.

Where the whole of such property is sold to several buyers the persons who purchase the largest part of the property would be entitled to retain all the documents.

- Seller's Right before Sale

Section 55(4)(a) provides that 'the seller is entitled to the rents and profits of the property till the ownership thereof passes to the buyer'. 'Thus, before completion of the sale, the seller is entitled to all the rents, profits or another benefit. Interests of the property'.

- Seller's Right after Sale

If after completion of sale, the price or any part of it remain unpaid, the seller acquires a lien or charge on property. Accordingly to Section 55(4)(b) if price remains unpaid, the seller cannot refuse delivery of possession for can claim back the possession if already given to buyer, but he (seller) is given a right to recover unpaid purchase money from and out of the property.

- ✓ Buyer's Duties and Rights
- Buyers duties before sale—

(a) Before completion of sale, it is the duty of the buyer to disclose, facts which materially increases the value of property, Section 55(5)(a) of the Act provides that, "the buyer is bound to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest.

(b) The buyer is bound to pay or tender the purchase money to seller [Section 55(5)(b)].

- Buyer's Duties after Sale

(a) Where the ownership of the property has passed to the buyer, the buyer is bound to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller. [Sec[Section 55(5) (c)]i>

(b) According to Section 55(5) (d) after the completion of sale, the buyer is liable to pay the outgoings, e.g., Government dues, rents, revenue or taxes, as the buyer becomes the owner of the property.

- Buyer's Right before Sale

Section 55(6)(a) of Act provides that the buyer is entitled to (unless he has improperly declined to accept delivery of property):

A charge on the property for the purchase money properly paid by him in anticipation not the delivery.

(ii) Interest on such purchase money.

The earnest, and cost awarded to him in a suit to compel specific performance of the contract or to obtain a decree for its recession in case he properly declines to accept delivery.

- Buyer's Right after sale

After sale, the buyer is entitled to the benefits of any improvement in, or increase in value of, the property, and to the rents and profits thereof, [Sec[Section 55(6)(a)]i].

What is Inheritance Succession?

✓ *Inheritance succession refers to the manner in which property is distributed when a person dies. In almost all cases, a person would like their estate to be distributed upon death in a very specific manner. Most persons leave their property to immediate family members, close relatives, and close friends.*

When doing so, the property is usually distributed in an order of preference or priority. Thus, the ordering of property distribution is called inheritance succession.

- How is Inheritance Succession Determined?
- ✓ *Ideally, the owner of the estate will specify exactly who will receive what upon their death. This is usually done through a written will instrument. However, it often happens that a person passes away before they are able to record their preferences for inheritance succession in a will.*

In the event that a person dies without a valid will in place, it is known as "intestacy". If a person dies intestate, then their property will have to be distributed according to intestacy laws. Thus, inheritance succession is sometimes called "intestacy succession".

The aim of intestate succession laws is to distribute the property in a manner that represents how an average person would have planned if they had formed a will. However, intestacy succession can sometimes be unfavorable, as state intestacy laws will not always yield the same distribution of property that the deceased person would have wanted. For this reason, it is always best for a person to have a valid will prepared early on in life.

- What is the Order of Inheritance Succession?
- ✓ *Every state has intestacy laws that govern inheritance succession or intestacy succession if a person dies without a will. In effect, the state "creates" a will for the person who dies intestate. Most states model their intestacy laws after the Uniform Probate Code (UPC, or "the Code").*

While state laws may vary, the distribution format in the Code can provide a general idea of inheritance succession. According to the Code, close relatives will always receive distributions first. If any property is left over, distance relatives may receive a portion of the distribution.

A typical order of preference may be as follows: Surviving spouse; "descendents" (such as children or grandchildren); parents of the deceased, siblings, nieces and nephews; grandparents; and aunts, uncles and cousins. Adopted children are treated in the same way as biological children.

If any of the property is not distributed to the classes named above, the property will "escheat", or be distributed back to the state.

- How much will each relative receive through inheritance succession?
- ✓ *The percentage the estate that each relative receives depends on many factors. In general, a surviving spouse and surviving children are usually entitled to the entire estate or most of the estate. Thus, a relative may receive more or less depending mostly on whether the deceased person was survived by a spouse or children*.

Again, the share distributions and percentages may vary by state; according to the Code, the estate is divided as follows:

- ✓ ***Surviving Spouse***: A surviving spouse is usually entitled to receive the entire estate (after taxes and expenses). Or, they will usually receive a substantial part of the estate. This may change depending on whether the deceased has left surviving children and parents.
- ✓ ***Surviving Children****: If no spouse is left surviving, the children may take the entire estate through "right of representation".*
- ✓ ***Surviving Parents****: The parents may receive the entire estate if no spouse or children are left by the estate owner.*
- ✓ ***Other Relatives****: If the decedent left no surviving spouse, children, or parents, then the deceased's siblings will take the entire estate. If no siblings exist, the estate will go to the grandparents or the deceased's aunts and uncles.*

The net estate is the amount of the estate remaining for distribution after all the relatives have received their distributions, and after all debts, taxes and expenses have been paid on the property. It is common for the estate funds to be exhausted at this point.

- Do one need a Lawyer for Inheritance Succession?
- ✓ *Inheritance succession can often be a source of many legal disputes over property and assets. This is especially true if the estate owner did not leave behind a valid will containing clear instructions on distributions. If you are facing disputes over inheritance succession, you may wish to contact a probate lawyer for advice. Or, if you need assistance in drafting a will, an attorney can help you create one.*

A Succession Certificate *is a document that is granted by a civil court to the legal heirs of a deceased who dies without leaving a will. It is granted by the court to realize the debts and securities of the deceased*. In the case of Muthia vs Ramnatham, it was held that the privilege of certificate gives to the grantee a right to recover the debt due to the deceased person, and payment to the grantee is a good release of the debt." It establishes the authenticity of the heirs and gives them the authority to have securities and other assets transferred in their names as well as inherit debts. In the absence of a will, if there is no heir amongst the account owners and a no nomination had been prepared by the holder (s), a succession certificate is the primary certificate through which the heirs can stake a claim to the assets of a deceased relative.

A Succession certificate is issued by the government, usually to establish a relationship for claims relating to Insurance, pension, retirement benefits or service benefits of central and state government departments, Government undertakings etc. In legal succession cases ***sine qua non*** *to obtain a succession certificate is to establish the relationship.*

In the matter of *Paramananda Chary vs Veerappan* , it was held that "The grant of succession certificate is conclusive against the debtor. Also if another person turns out to be the heir of the deceased, it does not follow that the certificate is invalid". All required documents are to be submit while lodging the application.

Procedure to apply for Succession Certificate to The District Judge under section 372 of the Act;

- ✓ The petitioner must sign and verify the petition;
- ✓ The residences of the relatives and family of the deceased must be mentioned;
- ✓ In the case of The Hindu Succession Act (Act of 1956), the names of the heirs must be mentioned in the petition;
- ✓ The right of the petitioner should be mentioned;
- ✓ Either Ordinary house of the deceased, at the time of death, or the estate of the deceased should be inside the limits of the Jurisdiction of the Court concerned;

The debts and securities as to which the succession certificate is applied for should be mentioned; vii) the absence of any impediment u/sec. 370(1) of the Act or any other terms of the Act or any other laws to the privilege of succession certificate or to the legality of it in case of it was granted, must be mentioned.

- How to Get Succession Certificate in India

- ✓ Succession Certificate is a certificate granted by the Courts in India to the legal heirs of a person dying intestate leaving debts and securities. A person is said to have passed away intestate when he/she does not leave a legal Will. Succession certificate entitles the holder to make payment of debt or transfer securities to the holder of certificate without having to ascertain the legal heir entitled to it. Succession certificate provides indemnity to all persons owing such debts or liable on such securities with regards to all payments made to or dealings had in good faith with a person to whom a certificate as granted. Hence, many organisation and person request for succession certificate before settling the debts or securities of the deceased in favour of the person claiming such debts or securities.

- Procedure for Obtaining Succession Certificate

- ✓ To obtain succession certificate, a petition to the District Judge within whose jurisdiction the deceased person ordinarily resided at the time of his or her death or, if at that time he or she had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found.

- ✓ Petition for Certificate

A petition for succession certificate must contain the following particulars:

- ✓ Time of death of the deceased;
- ✓ Residence or details of properties of the deceased at the time of death within which Judge the jurisdiction falls under;
- ✓ Details of family or other near relatives;

- THE RIGHTS OF THE PETITIONER;

Absence of any impediment to the grant of certificate;

- ✓ Grant of Certificate

On making the petition, if the District Judge is satisfied as to the ground of making the petition, can grant an opportunity of hearing to persons who, in his/her opinion, should be heard. After hearing all parties, the Judge can decide the right of the petitioner to be granted the succession certificate. The Judge would then pass an order for grant of certificate specifying the debts and securities set forth in the application empowering the person to receive interest or dividend or to negotiate or transfer or do both.

- ✓ Restriction on Succession Certificate

A court can sometime require a bond with one or more surety or sureties or any other security for rendering an account of debts and securities received by the petitioner of succession certificate for indemnifying the persons who may be entitled to any part of the debt or securities.

- ✓ Validity of Succession Certificate

A succession certificate has validity throughout India. If a certificate is granted in a foreign country by an Indian representation accredited to that State, it should be stamped in accordance with the Court Fees Act 1870 to have the same effect in India as a certificate granted in India.

- ✓ Will and testament-

A will or testament is a legal document by which a person, the testator, expresses their wishes as to how their property is to be distributed at death, and names one or more persons, the executor, to manage the estate until its final distribution. For the devolution of property not disposed of by will, see inheritance and intestacy.

Though it has at times been thought that a "will" was historically limited to real property while "testament" applies only to dispositions of personal property (thus giving rise to the popular title of the document as "Last Will and Testament"), the historical records show that the terms have been used interchangeably. Thus, the word "will" validly applies to both personal and real property. A will may also create a testamentary trust that is effective only after the death of the testator.

Throughout most of the world, disposal of an estate has been a matter of social custom. According to Plutarch, the written will was invented by Solon. Originally, it was a device intended solely for men who died without an heir.

The English phrase "will and testament" is derived from a period in English law when Old English and Law French were used side by side for maximum clarity. Other such legal doublets include "breaking and entering" and "peace and quiet".

- ✓ Freedom of disposition

Last will and testament of Tennessee Williams

The conception of the freedom of disposition by will, familiar as it is in modern England and the United States, both generally considered common law systems, is by no means universal. In fact, complete freedom is the exception rather than the rule. Civil law systems often put some restrictions on the possibilities of disposal; see for example "Forced heirship".

Advocates for gays and lesbians have pointed to the inheritance rights of spouses as desirable for same-sex couples as well, through same-sex marriage or civil unions. Opponents of such advocacy rebut this claim by pointing to the ability of same-sex couples to disperse their assets by will. Historically, however, it was observed that "[e]ven if a same-sex partner executes a will, there is risk that the survivor will face prejudice in court when disgruntled heirs challenge the will", with courts being more willing to strike down wills leaving property to a same-sex partner on such grounds as incapacity or undue influence.

- ✓ Types of wills
- Types of wills generally include:

1. ***Nuncupative (non-culpatory)*** *- oral or dictated; often limited to sailors or military personnel.*
2. ***Holographic will*** *- written in the hand of the testator; in many jurisdictions, the signature and the material terms of the holographic will must be in the handwriting of the testator.*
3. ***Self-proved*** *- in solemn form with affidavits of subscribing witnesses to avoid probate.*
4. ***Notarial*** *- will in public form and prepared by a civil-law notary (civil-law jurisdictions and Louisiana, United States).*
5. ***Mystic*** *- sealed until death.*
6. ***Serviceman's will*** *- will of person in active-duty military service and usually lacking certain formalities, particularly under English law.*
7. ***Reciprocal/mirror/mutual/husband and wife wills*** *- wills made by two or more parties (typically spouses) that make similar or identical provisions in favor of each other.*
8. ***Unsolemn will*** *- will in which the executor is unnamed.*
9. ***Will in solemn form*** *- signed by testator and witnesses*.

Some jurisdictions recognize a *holographic will*, made out entirely in the testator's own hand, or in some modern formulations, with material provisions in the testator's hand. The distinctive feature of a *holographic will* is less that it is handwritten by the testator, and often that it need not be witnessed. In Louisiana this type of testament is called an *Holographic or Mystic will*.[6] It must be entirely written, dated, and signed in the handwriting of the testator. Although the date may appear anywhere in the testament, the testator must sign the testament at the end of the testament. Any additions or corrections must also be entirely hand written to have effect. In England, the formalities of wills are relaxed for soldiers who express their wishes on active service; any such will is known as a serviceman's will. A minority of jurisdictions even recognize the validity of *nuncupative wills (oral wills*),

particularly for military personnel or merchant sailors. However, there are often constraints on the disposition of property if such an oral will is used.

- ❖ Terminology

1. ***Administrator***- *person appointed or who petitions to administer an estate in an intestate succession. The antiquated English term of administratrix was used to refer to a female administrator but is generally no longer in standard legal usage.*
2. ***Beneficiary***- *anyone receiving a gift or benefiting from a trust*
3. ***Bequest***- *testamentary gift of personal property, traditionally other than money.*
4. ***Codicil*** - *(i) amendment to a will; (ii) a will that modifies or partially revokes an existing or earlier will.*
5. ***Decedent*** - *the deceased (U.S. term)*
6. ***Demonstrative Legacy*** - *a gift of a specific sum of money with a direction that is to be paid out of a particular fund.*
7. ***Descent*** - *succession to real property.*
8. ***Devise*** - *testamentary gift of real property.*
9. ***Devisee*** - *beneficiary of real property under a will.*
10. ***Distribution*** - *succession to personal property.*
11. ***Executor/executrix or personal representative [PR]*** - *person named to administer the estate, generally subject to the supervision of the probate court, in accordance with the testator's wishes in the will. In most cases, the testator will nominate an executor/PR in the will unless that person is unable or unwilling to serve. In some cases a literary executor may be appointed to manage a literary estate.*

Exordium clause is the first paragraph or sentence in a will and testament, in which the testator identifies himself or herself, states a legal domicile, and revokes any prior wills.

12. ***Inheritor*** - *a beneficiary in a succession, testate or intestate.*
13. ***Intestate*** - *person who has not created a will, or who does not have a valid will at the time of death.*
14. ***Legacy*** - *testamentary gift of personal property, traditionally of money. Note: historically, a legacy has referred to either a gift of real property or personal property.*
15. ***Legatee*** - *beneficiary of personal property under a will, i.e., a person receiving a legacy.*
16. ***Probate*** - *legal process of settling the estate of a deceased person.*
17. ***Specific legacy (or specific bequest)*** - *a testamentary gift of a precisely identifiable object.*
18. ***Testate -*** *person who dies having created a will before death.*
19. ***Testator*** - *person who executes or signs a will; that is, the person whose will it is. The antiquated English term of Testatrix was used to refer to a female and is still in use in the US.[citation needed]*
20. ***Trustee*** - *a person who has the duty under a will trust to ensure that the rights of the beneficiaries are upheld.*

- ✓ Requirements for creation

Muhammad Ali Jinnah's will, excerpt- *Any person over the age of majority and having "testamentary capacity" (i.e., generally, being of sound mind) can make a will, with or without the aid of a lawyer. Additional requirements may vary, depending on the jurisdiction, but generally include the following requirements:*

1. *The testator must clearly identify themselves as the maker of the will, and that a will is being made; this is commonly called "publication" of the will, and is typically satisfied by the words "last will and testament" on the face of the document.*
2. *The testator should declare that he or she revokes all previous wills and codicils. Otherwise, a subsequent will revokes earlier wills and codicils only to the extent to which they are inconsistent. However, if a subsequent will is completely inconsistent with an earlier one, the earlier will is considered completely revoked by implication.*
3. *The testator may demonstrate that he or she has the capacity to dispose of their property ("sound mind"), and does so freely and willingly.*
4. *The testator must sign and date the will, usually in the presence of at least two disinterested witnesses (persons who are not beneficiaries). There may be extra witnesses, these are called "supernumerary" witnesses, if there is a question as to an interested-party conflict. Some jurisdictions, notably Pennsylvania, have long abolished any requirement for witnesses. In the United States, Louisiana requires both attestation by two witnesses as well as notarization by a notary public. "Holographic" or handwritten wills generally require no witnesses to be valid.*
5. *If witnesses are designated to receive property under the will they are witnesses to, this has the effect, in many jurisdictions, of either (i) disallowing them to receive under the will, or (ii) invalidating their status as a witness. In a growing number of states in the United States, however, an interested party is only an improper witness as to the clauses that benefit him or her (for instance, in Illinois).*
6. *The testator's signature must be placed at the end of the will. If this is not observed, any text following the signature will be ignored, or the entire will may be invalidated if what comes after the signature is so material that ignoring it would defeat the testator's intentions.*
7. *One or more beneficiaries (devisees, legatees) must generally be clearly stated in the text, but some jurisdictions allow a valid will that merely revokes a previous will, revokes a disposition in a previous will, or names an executor.*
8. *There is no legal requirement that a will be drawn up by a lawyer, although there are pitfalls into which home-made wills can fall. The person who makes a will is not available to explain him or herself, or to correct any technical deficiency or error in expression, when it comes into effect on that person's death, and so there is little room for mistake. A common error, for example, in the execution of home-made wills in England is to use a beneficiary (typically a spouse or other close family members) as a witness—which may have the effect in law of disinheriting the witness regardless of the provisions of the will.*
9. *A will may not include a requirement that an heir commit an illegal, immoral, or other act against public policy as a condition of receipt.*
10. *In community property jurisdictions, a will cannot be used to disinherit a surviving spouse, who is entitled to at least a portion of the testator's estate. In the United States, children may be disinherited by a parent's will, except in Louisiana, where a minimum share is guaranteed to surviving children except in specifically enumerated circumstances[7]. Many civil law countries follow a similar rule. In England and Wales from 1933 to 1975, a will could disinherit a spouse; however, since the Inheritance (Provision for Family and Dependants) Act 1975 such an attempt can be defeated by a court order if it leaves the surviving spouse (or other entitled dependent) without "reasonable financial provision".*

✓ *Revocation*

- *Methods and effect*

Intentional physical destruction of a will by the testator will revoke it, through deliberately burning or tearing the physical document itself, or by striking out the signature. In most jurisdictions, partial revocation is allowed if only part of the text or a particular provision is crossed out. Other jurisdictions will either ignore the attempt or hold that the entire will was actually revoked. A testator may also be able to revoke by the physical act of another (as would be necessary if he or she is physically incapacitated), if this is done in their presence and in the presence of witnesses. Some jurisdictions may presume that a will has been destroyed if it had been last seen in the possession of the testator but is found mutilated or cannot be found after their death.

A will may also be revoked by the execution of a new will. However, most wills contain stock language that expressly revokes any wills that came before them, because otherwise a court will normally still attempt to read the wills together to the extent they are consistent.

In some jurisdictions, the complete revocation of a will automatically revives the next-most recent will, while others hold that revocation leaves the testator with no will, so that their heirs will instead inherit by intestate succession.

In England and Wales, marriage will automatically revoke a will, for it is presumed that upon marriage a testator will want to review the will. A statement in a will that it is made in contemplation of forthcoming marriage to a named person will override this.

Divorce, conversely, will not revoke a will, but in many jurisdictions will have the effect that the former spouse is treated as if they had died before the testator and so will not benefit.

Where a will has been accidentally destroyed, on evidence that this is the case, a copy will or draft will may be admitted to probate.

- Dependent relative revocation

Many jurisdictions exercise an equitable doctrine known as "dependent relative revocation" ("DRR"). Under this doctrine, courts may disregard a revocation that was based on a mistake of law on the part of the testator as to the effect of the revocation. For example, if a testator mistakenly believes that an earlier will can be revived by the revocation of a later will, the court will ignore the later revocation if the later will comes closer to fulfilling the testator's

intent than not having a will at all. The doctrine also applies when a testator executes a second, or new will and revokes their old will under the (mistaken) belief that the new will would be valid. However, if for some reason the new will is not valid, a court may apply the doctrine to reinstate and probate the old will, if the court holds that the testator would prefer the old will to intestate succession.

Before applying the doctrine, courts may require (with rare exceptions) that there have been an alternative plan of disposition of the property. That is, after revoking the prior will, the testator could have made an alternative plan of disposition. Such a plan would show that the testator intended the revocation to result in the property going elsewhere, rather than just being a revoked disposition. Secondly, courts require either that the testator have recited their mistake in the terms of the revoking instrument, or that the mistake be established by clear and convincing evidence. For example, when the testator made the original revocation, he must have erroneously noted that he was revoking the *gift "because the intended recipient has died" or "because I will enact a new will tomorrow".*

DRR may be applied to restore a gift erroneously struck from a will if the intent of the testator was to enlarge that gift, but will not apply to restore such a gift if the intent of the testator was to revoke the gift in favor of another person.

For example- *suppose Tom has a will that bequeaths $5,000 to his secretary, Alice Johnson. If Tom crosses out that clause and writes "$7,000 to Alice Johnson" in the margin, but does not sign or date the writing in the margin, most states would find that Tom had revoked the earlier provision, but had not effectively amended his will to add the second; however, under DRR the revocation would be undone because Tom was acting under the mistaken belief that he could increase the gift to $7,000 by writing that in the margin. Therefore, Alice will get 5,000 dollars. However, the doctrine of relative revocation will not apply if the interlineation decreases the amount of the gift from the original provision (e.g., "$5,000 to Alice Johnson" is crossed out and replaced with "$3,000 to Alice Johnson" without Testator's signature or the date in the margin; DRR does not apply and Alice Johnson will take nothing).*

Similarly, if Tom crosses out that clause and writes in the margin "$5,000 to Betty Smith" without signing or dating the writing, the gift to Alice will be effectively revoked. In this case, it will not be restored under the doctrine of DRR because even though Tom was mistaken about the effectiveness of the gift to Betty, that mistake does not affect Tom's intent to revoke the gift to Alice. Because the gift to Betty will be invalid for lack of proper execution, that $5,000 will go to Tom's residuary estate.

- Election against the will

Also referred to as "electing to take against the will". In the United States, many states have probate statutes which permit the surviving spouse of the decedent to choose to receive a particular share of deceased spouse's estate in lieu of receiving the specified share left to him or her under the deceased spouse's will. As a simple example, under Iowa law (see Code of

Iowa Section 633.238 (2005)), the deceased spouse leaves a will which expressly devises the marital home to someone other than the surviving spouse. The surviving spouse may elect, contrary to the intent of the will, to live in the home for the remainder of his/her lifetime. This is called a *"life estate" and terminates immediately upon the surviving spouse's death*.

The historical and social policy purposes of such statutes are to assure that the surviving spouse receives a statutorily set minimum amount of property from the decedent. Historically, these statutes were enacted to prevent the deceased spouse from leaving the survivor destitute, thereby shifting the burden of care to the social welfare system.

In New York, a surviving spouse is entitled to one-third of her deceased spouse's estate. The decedent's debts, administrative expenses and reasonable funeral expenses are paid prior to the calculation of the spousal elective share. The elective share is calculated through the "net estate". The net estate is inclusive of property that passed by the laws of intestacy, testamentary property, and testamentary substitutes, as enumerated in EPTL 5-1.1-A. New York's classification of testamentary substitutes that are included in the net estate make it challenging for a deceased spouse to disinherit their surviving spouse.

What are mortgage loans?

- *Section 58 (a) of the TRANSFER OF PROPERTY ACT, 1882, defines mortgage as, "A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an*

existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. "

The bold letters signifies the essential elements for the creation of valid mortgage in favor of the lender over the immoveable property.

- ***Types of Mortgages:***

There are six kinds of mortgages which are detailed as under:

1. Simple Mortgage: It has below characteristics:-
   i) That the mortgagor must have bound himself personally to repay the loan
   ii) That to secure the loan he has transferred to the mortgagee the right to have the specific immovable property sold in the event of his having failed to repay
   iii) That the possession of the property is not delivered to the lender.

2. Mortgage by Conditional Sale: It's defined as a situation, where the mortgagor ostensibly sells the mortgaged property
   i) on the condition that on default of payment of the mortgage money (loan) on a certain date the sale shall become absolute or
   ii) on condition that on such payment being made the sale shall become void or,
   iii) on the condition that in such payment being made the buyer shall transfer the property to the seller,

PROVIDED that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which affects or purports to affect the sale.

This kind of mortgage came into vogue in India during Muslim rule and was given legal recognition in the Bengal Regulation Act, 1978.

3. Unsufructuary Mortgage: It has below characteristics:-
   i) That the possession of the property is delivered to the mortgagee;

   ii) That the mortgagee is to get rents and profits in lieu of the interest or principal or both;

   iii) That no personal liability is incurred by the mortgagor and

   iv) The mortgagee cannot foreclose or sue for sale.
   v) That no time limit can be fixed expressly during which the mortgage is to subsist.

4. English Mortgage: It has below characteristics:-
   i) That the mortgagor should bind himself to repay the mortgage money/loan on a certain day;
   ii) That the mortgaged property should be transferred absolutely to the mortgagee ; and
   iii) That such absolute transfer should be made subject to a proviso that the mortgagee will recover the property to the mortgagor, upon the payment by him of the mortgage money on the appointed day

The difference between the mortgage by conditional sale and English mortgage is that in English mortgage, the mortgagor binds him personally to repay the money.

5. Mortgage by Deposit of Title Deeds: In England and popularly in India, this mortgage is called the equitable mortgage. Under the definition under Section 58 (f) of Transfer of Property Act, 1882, the essential requisites of such mortgage are:

i) a debt should be there

ii) Deposit of the title deed with the lender (most essential)

iii) Said deposit is with intention that the said title deed shall be security for the debt.

Section 96 of the Transfer of Property Act, 1882 places mortgages by deposit of title deeds on the same footings as simple mortgages. As such, the security can, like a simple mortgage can be enforced by a suit for sale of mortgaged property, of course, by the process of the law. And this kind of mortgage does not require registration and is at par with any other legal mortgage.

6. Anomalous Mortgage: *A mortgage which is not a simple mortgage, a mortgage by conditional sale, a usufructuary, an English mortgage or a mortgage by deposit of title deeds within the meaning of Section 58 of Transfer of Property Act is an Anomalous mortgage*.

➢ Law Relating To Suspension And Revocation Of Gift

➢ Introduction.

According to Section 122 of Transfer of Property Act, 1882 'Gift' is defined as the

transfer of certain existing moveable and immoveable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee. Gift, as defined in this section, is gratuitous transfer of ownership in some existing property made voluntarily. The definition includes gift of both movable as well as immovable property. The transferor is called donor and the transferee is called donee.There are certain essentials of a gift like a must transfer of ownership, the ownership must relate to a property in existence, the transfer must be without consideration, it must have been made voluntarily, the donor must be a competent person and lastly the transferee must accept the gift. A gift is a transfer of property without any monetary consideration by one person infavour of another and accepted by him or by a person on his behalf. Transfer without consideration is called a gratuitous transfer. A gratuitous transfer may take place between two living persons or, it may take place only after the death of the transferor. Gift may, therefore, be either inter vivos or, testamentary. Gift inter vivos is gratuitous transfer of ownership between two living persons and is a transfer of property within the meaning of Section 5 of

Transfer of Property Act, 1882. Gift testamentary is called a will which is transfer byoperation of law and is outside the scope of this Act. A gift made during apprehension of death is called a gift mortis causa. A gift, where both the parties are Muslims, is governed bythe provisions of Quranic Law, and not by the Transfer of Property Act as it is inconsistent with the provisions of this act.

- Essentials Of A Gift.
  The essentials of a valid gift are given below:

1. *There must be transfer of ownership:*
   As in case of a sale, there must be a transfer of all the rights in the property by the donor to the done. It may, however, be noted that it is permissible to make conditional gifts. The only restriction is that the condition must not be repugnant to nay of the provisions of Section 10 to 34 of the Transfer of Property Act, 1882.
   The ownership must relate to a property in existence:
   Gift must be made of existing movable or immovable property capable of being transferred. Future property cannot be transferred. The share obtained after partition of the joint family property can be gifted. Even a gift of property that is obtained after a preliminary decree of partition is passed by the court is valid.

2. *The transfer must be without consideration:*
   The word 'consideration' refers to monetary consideration and does not include natural love and affection. If the consideration is a nominal amount of money or the property is grossly undervalued yet the transfer would not be a gift but a sale. In fact, the passing of money as a consideration, howsoever small it may be, would destroy the nature of transfer as a gift. Gifts in lieu of expectation of spiritual and moral benefit or a promise to look after the donor in her old age or through our life are transactions without any consideration. A transfer executed for consideration of a *donee* undertaking the liability of the donor is not gratuitous, and not a gift.

3. It must have been made voluntarily:
   The offer to make the gift must be voluntary. A gift therefore should be executed with free consent of the donor. This consent should be untainted by force, fraud or undue influence. Mere relationship between the donor and *donee* is not a conclusive fact of the exercise of undue influence and it must be proved that the transaction is unconscionable.

4. The donor must be a competent person:
   Section 122, Transfer of Property Act, 1882.
   Donor is the person who makes the gift. In a transaction by way of gift the transferor is called a donor and he divests his ownership in the property so as to vest it in the transferee, the done. The donor must be a sui juris. He must have therefore attained the age of majority, possess a sound mind and should not be otherwise disqualified. Section 7 of this Act provides that only such persons can effect a transfer of property who are competent to contract. The result is, therefore, that a minor cannot make a gift of his properties.

5. The transferee must accept the gift:

The gift must be accepted by the donee himself. Acceptance can be validly given by a minor donee himself or by his mother or guardian or by an agent is case of a deity. If the guardian gives the acceptance on behalf of the minor the minor on attaining majority can either accept it or reject it. If a gift is made to two or more persons, one of whom is capable of taking and the other is not, it has been held that the former will take the whole of the property.

- *Acceptance must be made during the lifetime of the donor and while he is capable of giving. According to Section 122 if the donee dies before the acceptance of gift the gift is void.*

- *Suspension Or Revocation Of Gift*.
  Section 126 of Transfer of Property Act, 1882 deals with when gift may be suspended or revoked. According to it, the donor and *donee* may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor is void wholly or in part as the case may be. A gift may also be revoked in any of the cases in which if it were a contract it might be rescinded. Such as aforesaid a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice. Gift is transfer of ownership without consideration. Like other transfers, gift too can be made subject to certain conditions. Donor may make a gift subject to a condition of it being suspended or revoked. But, such gifts would then be governed by those provisions of this Act which regulate conditional transfers. Accordingly, if a gift is made subject to condition of it being revoked in future the condition must be valid and enforceable under those provisions.

Section 126 lays down two modes of revocation of gift:
(i) Revocation by mutual agreement of donor and donee.
(ii) Revocation by rescission as in the case of contracts.

- Revocation by Mutual Agreement:

Donor and donee may agree that the gift shall be suspended or revoked upon happening of an event not dependant on the will of the donor. The condition revoking the gift must be express; it should not be merely in the form of a wish or desire. In other words, the condition on the non-fulfilment of which the donor may revoke the gift must be expressly laid down in the gift. A gift of certain properties was executed in lieu of the past and future services rendered by done to donor. But failure of done to render services to donor or to maintain donor in future, was not specified to be a condition for revocation of the gift deed. The held that since the condition for revocation of gift upon *donee's* failure to render services to the donor was not laid down in the deed, it was unconditional gift and, therefore, cannot be revoked by the donor. However, even though a condition is not laid down in the gift deed

itself, and has been provided under a mutual agreement separately but forms part of the transaction of gift, the condition would be valid and enforceable.6The condition upon which a gift is to be revoked must not depend solely on the will of the donor. A gift revocable at the pleasure of donor is no gift at all. The condition or stipulation providing for revocation must have been mutually agreed upon at the time of the gift. If such agreement is made after completion of gift, since the gift has already become absolute, it cannot be revoked. However, it's not necessary that stipulation for revocation is given in the deed of gift itself. What is necessary is that stipulation and gift both are made at the same time. They might be in two separate documents but must form part of the same transaction. That is to say, the stipulation must relate to the same gift which is to be revoked. The condition for revocation of gift is a condition subsequent. It must be valid under the provisions of law given for conditional transfers. The condition totally prohibiting the alienation of property is void under Section 10 of this Act. Therefore, if the gift is made revocable with such condition, the condition itself being void, the gift is not revoked.7It is also necessary that the condition upon which the gift is agreed to be revoked must be a condition subsequent the fulfilment of which is not dependant on the will or desire of donor. The condition subsequent must be in the nature if future event beyond the control of donor.

For example, *A makes a gift of his field to B reserving to himself with B's assent the right to take back the field in case B and his descendants die before A*. Here the condition upon which the field given in gift is to be revoked is a condition depending on uncertain future event not depending on the will of A. Therefore, if B dies without descendants in A's life time, the gift is revoked and A may take back the field. Where the stipulation provide for revocation of gift at the will or pleasure of donor the stipulation is void and gift is not revoked although such stipulation is merely agreed upon by donor and donee. Gift revocable at the will of donor is void. For example, A makes a gift of one lakh rupees to B reserving to himself with B's assent the right to take back at his (A's) pleasure Rs. 10,000/- out of this amount. The gift as to Rs. 90,000/- is valid but as regards Rs. 10,000/- the gift is void, i.e., it shall continue to belong to A. Law shall consider that no transfer of Rs. 10,000/- was made at all.

- Revocation by Rescission as Contracts:

  Gift is a gratuitous transfer of ownership made voluntarily. If it could be proved that the gift was not made voluntarily, i.e., the consent of the donor was not free, the gift must be revoked. Gift is always preceded by an express or implied contract; offer by donor and acceptance by done. If the preceding contract itself is rescinded or revoked there is no question of taking place of transfer (gift) made under it. Accordingly, under Section 126 a gift is revoked also on any of the grounds on which it might be rescinded has it been a contract. Section 19 of the Indian Contract Act provides that "Where consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so obtained". Thus, where the gift is not made voluntarily because of any of the factors mentioned above, the gift may be revoked by the donor. It is to be noted that this section deals with revocation which means rescission or repudiation of gift; it does not deal with cases where the gift is void, e.g., for want of donor's tide. So, where the donor's consent has been obtained by coercion, undue influence, fraud or misrepresentation the donor has option to repudiate or revoke the gift. If he does not exercise this option, the gift is not revoked. Gift may be revoked on the above mentioned grounds only by the donor, he cannot assign this right to any other person. However, after donor's death, his legal heirs may sue for the revocation of gift on any one of these grounds. The period of limitation for the revocation of gifts on the ground of fraud, coercion, misrepresentation or undue influence is three years from the date on which such facts are known to the plaintiff (donor). The right to revoke the gift on the above mentioned grounds is lost when the donor ratifies the

gift either expressly or by his conduct.

- No Revocation on any other ground:

Except on the ground of (a) condition subsequent not depending on the pleasure of the donor and (b) on the grounds justifying of a contract, a gift cannot be revoked on any other ground. A gift deed was validly executed in favour of the done. It was held that a simultaneous claim by the donor that the gift deed was revoked unilaterally by him and lodged for registration was not valid as there was no participation by the *donee*.

- Subsequent conduct of done after acceptance – Irrelevant:

A father executed a registered deed of gift in favour of his son. He had done it because of love and affection for the son and also to enable him to live a peaceful life. There was no proof of undue influence. The done remained out of India for a long time. In the meantime the gift deed remained with the donor and he also kept paying taxes. There was no mutation for that period in the revenue records. The Supreme Court held that these circumstances were not sufficient in themselves to show that the execution of the gift deed was not voluntary. The deed could not be rescinded on the premise that it was an onerous gift and that the done had failed to fulfil the condition for the gift of contributing towards the marriage of the donee's sister the specified sum. Once a gift is complete, it cannot be rescinded for any reason whatsoever. The subsequent conduct of the donee is not a ground for rescission of a valid gift.

- Transferee for Consideration without Notice:

  The last paragraph of Section 126 of the Act protects the interest of a bonafide transferee for consideration without notice of donor's right of revocation.
  For example, *A makes a gift of his house to B with a condition that he shall revoke the gift if B's son does not take up the studies of law after graduation. B sells the house to C. C has no notice of any such condition. After graduation B's son does not join the law course. A cannot revoke the gift because C's interest shall be affected. If C has notice of such condition or that C was a gratuitous transferee, A could have revoked the gift.*

- Suspension Or Revocation of Gift under Mohammedan

  Law- A gift, where both the parties are Muslims, is governed by the provisions of Quranic Law, also known as the Mohammedan Law, and not by the Transfer of Property Act as it is inconsistent with the provisions of this act. A Mohammedan, as opposed to others, can revoke a gift even after delivery of possession except in the following cases:

- *When the gift is made by a husband to his wife or by a wife to her husband;*
- *when the donee is related to the donor within the prohibited degrees;*
- *When the gift is Sadaka (i.e. made to a charity or for any religious purpose).*
- *when the donee is dead;*
- *when the thing given has passed out of the donee's possession by sale, gift or otherwise;*
- *when the thing given is lost or destroyed;*
- *when the thing given has increased in value, whatever be the cause of the increase;*
- *when the thing given is so changed that it cannot be identified, as when wheat is converted into flour by grinding; and*
- *When the donor has received something in exchange for the gift. Except in those cases, a gift may be revoked at the mere will of the donor, whether he has or has not reserved to himself the power to revoke it, but the revocation must be by a decree of court.*

- Conclusion.

  The conception of the term gift and subject matter of gift has been an age old and traditional issue which has developed into a distinct facet in property law. The Transfer of Property Act, 1882 lays down all the rules, regulations and procedures relating to gift and how its transfer is made. There are certain essentials of a gift like a must transfer of ownership, the ownership must relate to a property in existence, the transfer must be without consideration, it must have been made voluntarily, the donor must be a competent person and lastly the transferee must accept the gift. The most important essential of the gift is its acceptance i.e. an acceptance of gift must be made during the lifetime of the donor and while he is capable of giving. According to s. 122 if the donee dies before the acceptance of gift the gift is void. Also registration is necessary in all cases of gift of immovable properties and the title cannot pass without there being a registered deed of gift. A gift is valid and complete on registration. Also while dealing with the laws relating to gift we have come across important aspects relating to gift like gift of existing and future property, when gift may be ***revoked, donation, mortis causa*** etc.

A deed of gift once executed and registered cannot be revoked, unless the mandatory requirement of Section 126 of Transfer of Property Act, 1882 is fulfilled. So in the end it can be concluded fairly that Transfer of Property Act, 1882 and its sections is a complete code dealing with regulations of gift in India. Section 126 of the Transfer of Property Act, 1882 is very clear and elaborative upon the manner in which gifts can be suspended or revoked, which is of two ways:

(i) By mutual agreement, or,

(ii) By rescissions as contracts.

Mortgage

MORTGAGE VS. LIEN

	Lien
Definition : A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.	Definition : A right to keep possession of Property belonging to another person until a debt owed by that person is discharged.
Mortgage is created either by transfer or by act of the parties.	A lien is created by way of an encumbrance only.
A mortgage is an independent and principal right and not a mere security.	A lien is only a security for a debt. It is merely a right to retain possession of chattel until payment is made.
a mortgage is pre-supposes a contract between the parties.	In lien, existence of a contract is not always necessary in case of a lien.
The right of mortgage is vested in him conditionally and by way of security only.	The right is vested in the lienee absolutely and not merely as security.
A mortgagor has an infallible right of redemption of mortgage.	In case of lien, there is nothing like redemption.

BOOK- KEEPING & ACCOUNTANCY

➢ *PRINCIPLES AND PRACTICE OF ACCOUNTING*

- *MEANING AND SCOPE OF ACCOUNTING*
- *BOOKKEEPING*

- Meaning and Scope of Accounting
  we often use the terms accounting and bookkeeping interchangeably. However, bookkeeping is actually a just one part of the accounting process which deals with the recording of the transactions. So let us learn about book-keeping and its differences with accounting.
- Bookkeeping
  Bookkeeping is the activities concerned with the systematic recording and classification of financial data of an organization in an orderly manner. It is essentially a record-keeping function done to assist in the process of accounting. It is a key component in forming the financial statements of the organization at the end of the financial year.

Bookkeeping also concerns itself with the classification of financial transactions and events. Such classification of transactions is essential to maintain proper financial accounts. It also involves preparing source documents for the financial transactions and other business operations being carried out.

There are many methods of book-keeping. The most common ones are the double-entry system and the single-entry system. But even methods other than these, which involves the process of recording financial transactions in any manner are acceptable book-keeping systems or processes.

- ✓ Objectives of Bookkeeping

The main objective of book-keeping is to keep a complete and accurate record of all the financial transactions in a systematic orderly, logical manner. This ensures that the financial effects of these transactions are reflected in the books of accounts.

Then the second main objective is to ascertain the overall effect of all recorded transactions on the final statement of the company. Book-keeping will eventually ascertain the final accounts of the company, namely the Profit and Loss Account and the Balance Sheet.

- ✓ Need for Bookkeeping

One of the main reasons for bookkeeping is so records can be maintained to show the financial position of each and every head/account of income and expenditure. Through book-keeping, detailed information about each expense or income could be obtained instantaneously.

Say for example a company makes sales in both cash and credit. Each of these sale transactions will be recorded. When a credit sale is made, the creditor's account will be recorded. So at any time, the management of the company can determine which creditors owe them how much money by just looking at the records/accounts.

Also, the maintenance of books of accounts and financial statements is a legal requirement in many cases. In the case of companies or banks or insurance companies, there are acts that require such firms to keep and maintain financial records. In such a case, book-keeping becomes mandatory.

- ✓ Activities of Bookkeeping

Book-keeping comprises of a lot of functions and activities bundled together. Some such activities are

- *Recording all financial transactions*
- *Posting debit and credits in the respective ledgers*
- *Producing and organizing all source documents such as invoices*
- *Payroll accounting and upkeep may also be clubbed in with book-keeping*

Bookkeeping vs. Accounting

Bookkeeping	*Accounting*
Book-keeping consists of recording financial transactions in a logical fashion	*Accounting concerns itself with summarizing of such recorded financial transactions*
It is the basis of the process of accounting	*Accounting is the basis for the Business Language*
Financial statements are not a part of bookkeeping	*Preparing financial statements is the ultimate aim of accounting*
Managers do not take decisions on the basis of bookkeeping records	*Accounting records are used to assist managers in making decision*
Bookkeeping does not have any branches	*Accounting has branches such as Cost Accounting, Management Accounting etc*
It is done by bookkeepers, who do not require any special skill or knowledge	*Accountants, on the other hand, require special accounting knowledge and skills*

Solved Question for You

Q*: Book-keeping is an analyzing function. True or False?*

Ans: *False. Book-keeping is actually a recording function. The analysis is done during accounting.*

❖ THE ACCOUNTANT

➢ CONCEPT OF PRIMARY BOOKS AND SUBSIDIARY BOOKS

Any student of accountancy is familiar with two things of the subject, namely "Journal" and "Ledger". The student is also familiar with the format of the two and the manner in which accounting entries are passed in them. However, very few students are aware of the concepts underlying them. They are equally unaware of the accounting procedure. This post is aimed at clearing that very concept.

First we must understand the role of journal and ledger in the accounting cycle. Accounting for any transaction begins with passing an entry in the journal. There are separate journals for recording different types of entries. These journals are collectively known as "Books of prime entry", "Books of original entry" and "Subsidiary books". These are called by the first two names because all transactions are first recorded in these books. The third name indicates that these are subsidiaries of the Journal. There are eight types of Subsidiary books.

Next comes ***Ledger.*** Ledger is the prepared with the total amounts of the different subsidiary books. for example, the total of purchase journal is posted to the debit side of purchase account. In other words, the totals of the different ledgers will be transferred to ledger accounts of the same name. Ledger too is known by three names: "Primary books" and "Books of secondary entry" and "Principal books". Ledger is known as a primary book and principal book because it is from ledger balances that trial balance and final accounts are prepared. It is called a secondary book because it is prepared after the journal and on the former's basis. Hence it is subsidiary to the journal. The balances of the ledger accounts are used in preparation of the final accounts of the organization.

- DIFFERENT TYPES OF SUBSIDIARY BOOKS(JOURNALS)

There are eight different types of subsidiary books:

- *Purchase Day Book- For recording credit purchases*
- *Sales Day Book- For recording credit sales*
- *Purchase Return Book- For recording purchase returns*
- *Sales Return Book- For recording sales returns*
- *Bills Receivable Book- For recording all Bills of exchange receivable*
- *Bills Payable Book- For recording all Bills of exchange payable*
- *Cash Book-For recording all transactions made in cash*
- *Journal Proper- For recording all those entries which do not come in the above seven types of journals.*

Cash Book is both a book of prime entry and a book of secondary entry. This is because all cash transactions are first recorded in the Cash Book and it is from the Cash Book only that the balnce of cash is recorded in the final accounts. Cash book is thus both a jounal and a ledger. Hence Cash Book is a *JOURNALISED LEDGER.*

- Accountancy/Books of Prime Entry

An alternative introduction is under the journal entry. A journal is known as primary book. Books of Prime Entry are a more efficient variation on double-entry accounting. In basic double entry, a double entry is made in the general journal, which is posted in the general ledger accounts. Originally, the Venetian method also suggested a preceding diary step, which makes sense as no thinking is required in double entry, so it may have been faster. In a manual system, books of prime entry act as the speed entry step: instead of trying to remember which accounts to debit and which to credit, and writing the names down for each entry for each transaction in the general journal, the general journal is reserved for infrequent accrual entries; the more frequent cash entries, and the most frequent accrual entries are divided into specialized journals of cash receipts and cash payments; credit sales journal and credit purchases journal (credit means 'on credit' here) ; and for medium frequency accrual entries , sales returns and purchased returns journal. Apart from not having to write account names each time, the column layout in these specialized journal help systemize the double entry rules; most of them can be totaled at the end of each month to provide monthly entries into control account ledgers, as well as reconciliation with summary monthly totals when a schedule of subsidiary ledger accounts is created. Cash reconciliation also is a monthly task, which is made easier by tracking with numbered transactions such as numbered cheque books where cheque numbers can be entered in the cash payments journal; for tracking cash receipts, it is recommended banking occurs daily so that end of month bank reconciliation is easier. Bank reconciliation involves looking at outstanding items from the last reconciliation then seeing which of these occurred in this period's bank statement; then a search is made for unpresented cheques , and unrecorded receipts, and then payments and receipts that occurred through the bank and not through the business. This makes the cash receipts and cash payments journal essential for reconciliation. Books of prime entry OR books of original entry are books where transactions are first recorded. These may or may not be part of the double entry system.

The main books of prime entry are:

- *Sales day book*
- *Purchase day book*
- *Sales returns day book*
- *Purchases returns day book*
- *Bank Book*
- *Cash Receipts Book*
- *Cash Payments Book*
- *Petty Cash Receipts Book*
- *Petty Cash Payments Book*
- *Journal*
- *Sales Day Book*

Books for prime entry are synonymous with manual accounting system of special journals and subsidiary ledgers

- *What Is a Bookkeeping Journal? What Is a Daybook?*

- In bookkeeping and accounting, a journal is a record of financial transactions, entered as they occur. "Transactions" and their entry into a journal are usually the first steps in the accounting cycle, as Exhibit 1 below shows. The exceptions are situations where entries are first captured in a daybook (or book of original entry) before they transfer to the journal.

- *The Journal*

Historically, journals were always bounds as sewn-page bound notebooks in which bookkeepers hand wrote entries shortly after the firm closed a sale, incurred an expense, earned revenues, or otherwise impacted the firm's accounts.

Today, of course, journals usually exist as part of an accounting system software application. Users, therefore, enter journal transactions either manually, through onscreen forms, or automatically, as with a point-of-sale system. Also, most accounting systems provide user guidance and error-checking to help ensure that entries register correctly as debits or credits in the appropriate accounts. And, the software also automates the second stage of the accounting cycle, posting journal entries to a ledger.

The name "journal," from Old French and Latin origins, suggests a daily activity (jouris French for "day"). Personal diaries and newspapers are sometimes called journals for the same reason. While other accounting records may update less frequently, journals update either continuously or at least daily. As a result, the journal builds a running list of account transactions as they occur. Consequently, should anyone ask which actions happened on a given day, the journal provides the answer.

- *Daybooks*
- Firms sometimes use one or more daybooks (or books of original entry) instead of the journal as the first data entry point for transactions. Entries in daybooks build in chronological order, just as they do in journals. Entries in the firm's various daybooks are frequently transferred to the firm's "journal," and then ultimately to the ledger. With daybooks, in other words, the journal becomes the second step in the accounting cycle, while the ledger becomes third.

- What is Balance Sheet?
- Balance Sheet is part of any financial statement which provides the financial condition on a given date. An entity's balance sheet provides a lot of information which can be used to analyze the financial stability and business performance. The balance sheet is a report version of the accounting equation that is balance sheet equation where assets always equate liabilities plus shareholder's capital. Investors and creditors generally look at the balance sheet and infer as to how efficiently a company can use its resources and how effectively it can finance them.

The three important sections of any balance sheet are:

- Assets – Anything that has value and owned by a company
- Liabilities – This provides a list of debts a company owes to others
- Capital or Equity- This is the amount invested by the Shareholders

- Importance of Balance Sheet

Balance sheet analysis can reveal a lot of important information about a company's performance. Importance of balance sheet is listed below:

- ✓ It is an important tool used by the investors, creditors and other stakeholders to understand the financial health of an entity.
- ✓ The growth of an organization can be known by comparing the balance sheet of different years.
- ✓ It is an essential document required to be submitted to the bank to obtain a business loan.
- ✓ Stakeholders can understand the business performance and liquidity position of the entity.
- ✓ Ability to undertake expansion projects and meet unforeseen expenses can be determined by analyzing a company's balance sheet

If the company is funding its operations with profit or debt can be known Sample Format of Balance Sheet

There are several balance sheet formats available and generally, it is categorized as classified, common size, comparative, and vertical balance sheets. The old format of balance sheet called as T shape format or horizontal format as given below:

- Balance Sheet

The new format of the balance sheet is also called "vertical format balance sheet" and it lists the Equities and liabilities on the top followed by the assets at the bottom.

- Liabilities Assets

MCA Compliance Requirement Per the 2017 modification to the Companies Act 2013, every company should prepare the profit and loss account and balance sheet as per the format prescribed in new Schedule III.

1. ***Current Asset Cash****- Current assets are those which can be liquidated within a short period of time.*
2. ***Cash*** *is most liquid form of these assets and it includes all funds contained in checking, saving, and money market accounts.*
3. ***Accounts Receivable-*** *Accounts receivable are the amount to be received from the customers also known as debtors. These receivable exists from the time the client is billed to the time the company receives payment from the customer*
4. ***Inventory****-Inventory is the items that a company purchases/manufactures and then sells to the customers.*
5. *From the time the goods/raw material are purchased or processed to the time, it is sold to the customer, these are termed as inventories.*
6. ***Fixed Asset Equipments****-Fixed assets are items that are physical assets that are owned by the company for a long term. Long term assets are generally depreciated over time and so these assets are recorded with a total accumulated depreciation amount subtracted from them.*
7. ***Vehicle****-Vehicle is a long term assets held by the company for more than a year and it is depreciated over the time.*
8. ***Land****-Land is a fixed asset and held for a longer period of time than any other long term asset. This is one of the fixed asset which is not depreciated instead the value of the land increases as the years pass.*
9. ***Intangible Asset Goodwill****-Goodwill is an intangible asset which represents non-physical assets that add to a company's value but cannot be easily identified or valued*
10. ***Current Liability Accounts Payable****-These are the obligations that will become due in the current period (within a year) and generally includes trade due to vendors and suppliers.*
11. ***Accounts payable*** *are amounts due to creditors for services or goods that have not yet been paid.*
12. ***Accrued Expenses-****Accrued expenses are obligations that are recognized in the books but are not yet due, and include wages, interest etc*
13. ***Taxes Payable****-This represents the amount of taxes that a company owes to the government. All taxes are generally due to be paid within a year and hence classified as current liability*

14. ***Long Term Liability****-Long Term Debt Long-term debts are those obligations which will not be payable within the current year and will become due in more than one year. It represents the total amount due to be paid by the company to third parties and creditors for over a year or more*
15. ***Share Holder's Equity Capital Stock****-Capital represents the money invested by the owner in the business and it is the total assets minus the total liabilities.*
16. ***Capital stock*** *changes according to the organisation type – companies report capital as common stock, preferred stock etc whereas Partnerships list the Partner's capital.*

- Home Accounting
- Cost Accounting
- Elements of Cost in Cost Accounting with Example

- What are the Elements of Cost in Cost Accounting?

➢ The elements that constitute the cost of manufacture are known as the elements of cost. Such element of cost is divided into three categories. In a manufacturing concern, raw materials are converted into a finished product with the help of labour and other service units. They are Material, Labour and Expenses.

➢ Elements of Cost in Cost Accounting

Again, these elements of cost are divided into two categories such as Direct Material and Indirect Material, Direct Labour and Indirect Labour, Direct Expenses and Indirect Expenses. All direct material, direct labour and direct expenses are added to get prime cost. Likewise all indirect material, indirect labour and indirect expenses are added to get overhead. Again, overhead is divided into four categories. They are factory overhead, administration overhead, selling overhead and distribution overhead.

1. ***Direct Material***: It refers to material out of which a product is to be produced or manufactured. The cost of direct material is varying according to the level of output.
For example: Milk is the direct material of butter.

2. ***Indirect Material***: It refers to material required to produce a product but not directly and does not form a part of a finished product.
For example: *Nails are used in furniture. The cost of indirect material is not varying in direct proportion of product*.

3. ***Direct Labour:*** It refers to the amount paid to the workers who are directly engaged in the production of goods. It varies directly with the output.

4. ***Indirect Labour***: It refers to the amount paid to the workers who are indirectly engaged in the production of goods. It does not vary directly with the output.

5. ***Direct Expenses***: It refers to the expenses that are specifically incurred by the company to produce a product. A product cannot be produced without incurring such expenses. It varies directly with the level of output.

6. ***Indirect Expenses***: It refers to the expenses that are incurred by the organization to produce a product. But, these expenses cannot be easily found out accurately.
For example: *Power used for production*.

7. ***Overhead:*** It is the combination of all indirect materials, indirect labour and indirect expenses.

8. ***Factory Overhead***: It is otherwise called Production Overhead or Works Overhead. It refers to the expenses that are incurred in the production place or within factory premises.
For example: *Indirect material, rent, rates and taxes of factory, canteen expenses etc.*

9. ***Administration Overhead***: It is otherwise called Office Overhead. It refers to the expenses that are incurred in connection with the general administration of the company.
For example*: Salary of administrative staff, postage, telegram and telephone, stationery etc.*

10. ***Selling Overhead***: It refers to all expenses incurred in connection with sales.
For example: *Salary of sales department staff, travelers' commission, advertisement etc.*

11. ***Distribution Overhead****:* It refers to all expenses incurred in connection with the delivery or distribution of goods and services from the producer to the consumer.
For example: *Delivery van expenses. Loading and unloading, customs duty, salary of deliverymen etc.*

What's the Difference Between Fixed & Variable Expenses?

- *Fixed expenses vs variable expenses and how to save on each.*
  Your budget is comprised of both fixed and variable expenses. But what do these two words mean? How do they differ from necessities vs. discretionary spending?

The Definition of Fixed Expenses

Fixed expenses cost the same amount each month. These bills cannot easily be changed and are usually paid on a regular basis, such as weekly, monthly, quarterly or from year to year.

It's much easier to budget for fixed expenses than a variable expense or discretionary expense.

Typical household fixed expenses are mortgage or rent payments, car payments, real estate taxes and insurance premiums. While you could theoretically change your monthly mortgage payment by refinancing your loan or by appealing your property tax assessment, this is not an easy switch.

The same is true if you pay rent. You could change this expense by moving to a cheaper home or getting a roommate, but these are major lifestyle changes.

Your health insurance, car insurance, life insurance, and homeowners or renters insurance are also examples fixed costs. You would have to spend several hours researching alternate plans to change these monthly payment amounts.

The Benefits of Saving Money on Fixed Expenses

The major lesson here is that in spite of its name, “fixed” expenses are not necessarily set in stone. If you lose your job or aggressively want to start saving, you could devote a few hours to culling your fixed expenses.

Since fixed expenses typically represent the biggest chunk of your budget, the money you save in this category can be quite substantial.

Saving money on fixed costs has a second advantage: you won't feel as though you’re curbing your lifestyle. Shopping around for a cheaper health insurance premium or a less expensive cellular phone plan will only require a few hours of your time each year.

Once you’ve found these low-cost vehicles, you’ll automate frugal choices into your monthly budget.

In other words: lowering your fixed monthly bills won’t make you feel like you’re being frugal because most people don’t think about their monthly fixed costs. You’ll “feel the pinch” much more when you make day-to-day decisions like “Should I eat at a restaurant tonight?” or “Should I buy those jeans?”

- The Definition of Variable Costs

Variable expenses represent those daily spending decisions like eating at a restaurant, buying clothes, drinking Starbucks, and playing a round of golf with your buddies.

These costs are not considered variable because they're discretionary. Rather, they're "variable" because the amount that you spend differs from month-to-month.

While most variable costs represent discretionary spending (such as restaurants, Starbucks, and golf), some variable costs represent necessities.

Most families, for example, spend variable amounts of money on groceries each month. Most people spend variable amounts each month on putting gasoline in their cars and paying for necessary car repairs and maintenance.

- *Saving on Variable Expenses*

Variable costs are usually the first expenses that people try to cut when they need to start saving money. Unfortunately, variable costs are also some of the toughest expenses to cut back on, because it requires a daily commitment to frugal decision-making.

Trimming a fixed cost, like your cell phone plan (or insurance) or your cable package, requires only making a decision once, and then living with that decision for the next several months or years.

Trimming variable costs, on the other hand, requires actively making multiple decisions every day about whether or not to buy certain items or participate in certain events.

The Bottom Line

If you need to start cutting back on costs, look at both your fixed and variable expenses. Devoting a Saturday afternoon to reviewing all of your subscriptions, insurance plans, and recurring monthly bills may help you trim hundreds of dollars from your fixed monthly budget.

If you can cut back on some variable costs in addition to your fixed monthly bills, you'll free up more money to save for retirement, build an emergency fund, pay off debt, or invest.

❖ Break-even Point

Definition

In simple words, the break-even point can be defined as a point where total costs (expenses) and total sales (revenue) are equal. Break-even point can be described as a point where there is no net profit or loss. The firm just "breaks even." Any company which wants to make abnormal profit, desires to have a break-even point. Graphically, it is the point where the total cost and the total revenue curves meet.

Calculation (formula)

Break-even point is the number of units (N) produced which make zero profit.

Revenue – Total costs = 0

Total costs = Variable costs * N + Fixed costs

Revenue = Price per unit * N

Price per unit * N – (Variable costs * N + Fixed costs) = 0

So, break-even point (N) is equal

N = Fixed costs / (Price per unit - Variable costs)

- About Break-even point

The origins of break-even point can be found in the economic concepts of "the point of indifference." Calculating the break-even point of a company has proved to be a simple but quantitative tool for the managers. The break-even analysis, in its simplest form, facilitates an insight into the fact about revenue from a product or service incorporates the ability to cover the relevant production cost of that particular product or service or not. Moreover, the break-even point is also helpful to managers as the provided info can be used in making important decisions in business, for example preparing competitive bids, setting prices, and applying for loans.

Adding more to the point, break-even analysis is a simple tool defining the lowest quantity of sales which will include both variable and fixed costs. Moreover, such analysis facilitates the managers with a quantity which can be used to evaluate the future demand. If, in case, the break-even point lies above the estimated demand, reflecting a loss on the product, the manager can use this info for taking various decisions. He might choose to discontinue the product, or improve the advertising strategies, or even re-price the product to increase demand.

Another important usage of the break-even point is that it is helpful in recognizing the relevance of fixed and variable cost. The fixed cost is less with a more flexible personnel and equipment thereby resulting in a lower break-even point. The importance of break-even point, therefore, cannot be overstated for a sound business and decision making.

However, the applicability of break-even analysis is affected by numerous assumptions. A violation of these assumptions might result in erroneous conclusions.

- What is a Break-Even Analysis?

➢ A break-even analysis is a financial tool which helps you to determine at what stage your company, or a new service or a product, will be profitable. In other words, it's a financial calculation for determining the number of products or services a company should sell to cover its costs (particularly fixed costs). Break-even is a situation where you are neither making money nor losing money, but all your costs have been covered.

Break-even analysis is useful in studying the relation between the variable cost, fixed cost and revenue. Generally, a company with low fixed costs will have a low break-even point of sale. For an example, a company has a fixed cost of Rs.0 (zero) will automatically have broken even upon the first sale of its product.

- Components of Break Even Analysis

- ✓ *Fixed costs*

Fixed costs are also called as the overhead cost. These overhead costs occur after the decision to start an economic activity is taken and these costs are directly related to the level of production, but not the quantity of production. Fixed costs include (but are not limited to) interest, taxes, salaries, rent, depreciation costs, labour costs, energy costs etc. These costs are fixed no matter how much you sell.

- ✓ *Variable costs*

Variable costs are costs that will increase or decrease in direct relation to the production volume. These cost include cost of raw material, packaging cost, fuel and other costs that are directly related to the production.

- *Calculation of Break-Even Analysis*

The basic formula for break-even analysis is driven by dividing the total fixed costs of production by the contribution per unit (price per unit less the variable costs).
Contribution per unit Break even point in quantity

For an example:
Variable costs per unit: Rs. 400 Sale price per unit: Rs. 600 Desired profits: Rs. 4,00,000 Total fixed costs: Rs. 10,00,000 First we need to calculate the break-even point per unit, so we will divide the Rs.10,00,000 of fixed costs by the Rs. 200 which is the contribution per unit (Rs. 600 – Rs. 200). Break Even Point = Rs. 10,00,000/ Rs. 200 = 5000 units Next, this number of units can be shown in rupees by multiplying the 5,000 units with the selling price of Rs. 600 per unit. We get Break Even Sales at 5000 units x Rs. 600 = Rs. 30,00,000. (Break-even point in rupees)

- Contribution Margin

Break-even analysis also deals with the contribution margin of a product. The excess between the selling price and total variable costs is known as contribution margin. For an example, if the price of a product is Rs.100, total variable costs are Rs. 60 per product and fixed cost is Rs. 25 per product, the contribution margin of the product is Rs. 40 (Rs. 100 – Rs. 60). This Rs. 40 represents the revenue collected to cover the fixed costs. In the calculation of the contribution margin, fixed costs are not considered.

- When is Break even analysis used?

- Starting a new business: If you wish to start a new business, a break-even analysis is a must. Not only it helps you in deciding, whether the idea of starting a new is viable, but it will force you to be realistic about the costs, as well as guide you about the pricing strategy.
- Creating a new product: In the case of an existing business, you should still do a break-even analysis before launching a new product—particularly if such a product is going to add a significant expenditure.
- Changing the business model: If you are about to the change your business model, like, switching from wholesale business to retail business, you should do a break-even analysis. The costs could change considerably and this will help you to figure out the selling prices need to change too.

Breakeven analysis is useful for the following reasons:

- *It helps to determine remaining/unused capacity of the concern once the breakeven is reached. This will help to show the maximum profit on a particular product/service that can be generated.*
- *It helps to determine the impact on profit on changing to automation from manual (a fixed cost replaces a variable cost).*
- *It helps to determine the change in profits if the price of a product is altered.*
- *It helps to determine the amount of losses that could be sustained if there is a sales downturn.*

Additionally, break-even analysis is very useful for knowing the overall ability of a business to generate a profit. In the case of a company whose breakeven point is near to the maximum sales level, this signifies that it is nearly impractical for the business to earn a profit even under the best of circumstances.
Therefore, it's the management responsibility to monitor the breakeven point constantly. This monitoring certainly reduces the breakeven point whenever possible.

➢ *Ways to monitor Break even point*

✓ Pricing analysis: Minimize or eliminate the use of coupons or other price reductions offers, since such promotional strategies increase the breakeven point.
✓ Technology analysis: Implementing any technology that can enhance the business efficiency, thus increasing capacity with no extra cost.
✓ Cost analysis: Reviewing all fixed costs constantly to verify if any can be eliminated can surely help. Also, review the total variable costs to see if they can be eliminated. This analysis will increase the margin and reduce the breakeven point.

✓ *Margin analysis*: Push sales of the highest-margin (high contribution earning) items and pay close attention to product margins, thus reducing the breakeven point. Outsourcing: If an activity consists of a fixed cost, try to outsource such activity (whenever possible), which reduces the breakeven point.

✓ *Benefits of Break-even analysis*
Catch missing expenses: When you're thinking about a new business, it's very much possible that you may forget about few expenses. Therefore, if you do a break-even analysis you have to review all your financial commitments to figure out your break-even point. This analysis certainly restricts the number of surprises down the road.

✓ *Set revenue targets*: Once the break-even analysis is complete, you will get to know how much you need to sell to be profitable. This will help you and your sales team to set more concrete sales goals.

✓ *Make smarter decisions*: Entrepreneurs often take decisions in relation to their business based on emotion. Emotion is important i.e. how you feel, though it's not enough. In order to be a successful entrepreneur, your decisions should be based on facts.

✓ *Fund your business*: This analysis is a key component in any business plan. It's generally a requirement if you want outsiders to fund your business. In order to fund your business, you have to prove that your plan is viable. Furthermore, if the analysis looks good, you will be comfortable enough to take the burden of various ways of financing.

- ✓ *Better Pricing*: Finding the break-even point will help in pricing the products better. This tool is highly used for providing the best price of a product that can fetch maximum profit without increasing the existing price.

- ✓ *Cover fixed costs*: Doing a break-even analysis helps in covering all fixed cost.

➢ Profit and Loss Statement (P&L)

What is Profit and Loss Statement (P&L)?

➢ The profit and loss statement is a financial statement that summarizes the revenues, costs and expenses incurred during a specified period, usually a fiscal quarter or year. P&L statement is synonymous with the income statement. These records provide information about a company's ability or inability to generate profit by increasing revenue, reducing costs or both. Some refer to the P&L statement as a statement of profit and loss, income statement, statement of operations, statement of financial results or income, earnings statement and expense statement.

What's a P&L Statement?

✓ BREAKING DOWN Profit and Loss Statement (P&L)

The P&L statement is one of three financial statements every public company issues quarterly and annually, along with the balance sheet and the cash-flow statement. The income statement, like the cash flow statement, shows changes in accounts over a set period. The balance sheet, on the other hand, is a snapshot, showing what the company owns and owes at a single moment. It is important to compare the income statement with the cash flow statement since under the accrual method of accounting, a company can log revenues and expenses before cash changes hands.

The income statement follows a general form as seen in the example below. It begins with an entry for revenue, known as the top line, and subtracts the costs of doing business, including the cost of goods sold, operating expenses, tax expense and interest expense. The difference, known as the bottom line, is net income, also referred to as profit or earnings. You can find many templates for creating a personal or business P&L statement online for free.

It is important to compare income statements from different accounting periods, as the changes in revenues, operating costs, research and development spending and net earnings over time are more meaningful than the numbers themselves. For example, a company's revenues may grow, but its expenses might grow at a faster rate.

The Profit and Loss Statement (P&L) Example
Below is Caterpillar Inc's income or P&L statement for 2013 and 2014 (all figures in millions of USD except per-share data):

Twelve Months Ended December 31,	2014	2013
Sales and revenues:		
Sales of Machinery, Energy & Transportation	52,142	52,694
Revenues of Financial Products 3,042	2,962	
Total sales and revenues	55,184	55,656
Operating costs:		

Cost of goods sold	39,767	40,727
Selling, general and administrative expenses	5,697	5,547
Research and development expenses	2,135	2,046
Interest expense of Financial Products	624	727
Other operating (income) expenses	1,633	981
Total operating costs	49,856	50,028
Operating profit	5,328	5,628
Interest expense excluding Financial Products	484	465
Other income (expense)	239	(35)
Consolidated profit before taxes	5,083	5,128
Provision (benefit) for income taxes	1,380	1,319
Profit of consolidated companies	3,703	3,809
Equity in profit (loss) of unconsolidated affiliated companies	8	(6)
Profit of consolidated and affiliated companies	3,711	3,803
Less: Profit (loss) attributable to non controlling interests	16	14
Profit [footnote 1: Profit attributable to common shareholders]	3,695	3,789
Profit per common share	5.99	5.87
Profit per common share – diluted [footnote 2: Diluted by assumed exercise of stock-based compensation awards using the treasury stock method]	5.88	5.75
Weighted-average common shares outstanding (millions)		
- Basic	617.2	645.2
- Diluted [see footnote 2]	628.9	658.6
Cash dividends declared per common share	2.70	2.32

One can use the income statement to calculate several metrics, including the gross profit margin, the operating profit margin, the net profit margin and the operating ratio. Together with the balance sheet and cash-flow statement, the income statement provides an in-depth look at a company's financial performance and position.

INTRODUCTION TO STATISTICS

❖ Data classification

Data classification is the process of organizing data into categories for its most effective and efficient use.

A well-planned data classification system makes essential data easy to find and retrieve. This can be of particular importance for risk management, legal discovery, and compliance. Written procedures and guidelines for data classification should define what categories and criteria the organization will use to classify data and specify the roles and responsibilities of employees within the organization regarding data stewardship. Once a data-classification scheme has been created, security standards that specify appropriate handling practices for each category and storage standards that define the data's lifecyle requirements should be addressed

- DEFINITION

Data classification is the process of organizing data into categories for its most effective and efficient use.

A well-planned data classification system makes essential data easy to find and retrieve. This can be of particular importance for risk management, legal discovery, and compliance. Written procedures and guidelines for data classification should define what categories and criteria the organization will use to classify data and specify the roles and responsibilities of employees within the organization regarding data stewardship. Once a data-classification scheme has been created, security standards that specify appropriate handling practices for each category and storage standards that define the data's lifecycle requirements should be addressed.

To be effective, a classification scheme should be simple enough that all employees can execute it properly. Here is an example of what a data classification scheme might look like:

Category 4: Highly sensitive corporate and customer data that if disclosed could put the organization at financial or legal risk.
Example: Employee social security numbers, customer credit card numbers

Category 3: Sensitive internal data that if disclosed could negatively affect operations.
Example: Contracts with third-party suppliers, employee reviews

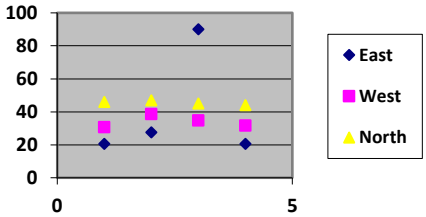
Category 2: Internal data that is not meant for public disclosure.
Example: Sales contest rules, organizational charts

Category 1: Data that may be freely disclosed with the public.
Example: Contact information, price lists

- Dot Plots

The dot plot is one of the simplest ways of graphical representation of the statistical data. As the name itself suggests, a dot plot uses the dots. It is a graphic display which usually compares frequency within different categories.

The dot plot is composed of dots that are to be plotted on a graph paper.



A dot plot may look like:

Dot Plots of Radom Variables

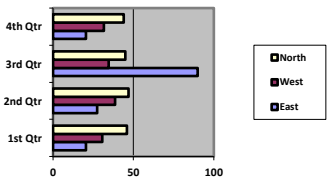
In the dot plot, every dot denotes a specific number of observations belonging to a data set. One dot usually represents one observation.

These dots are to be marked in the form of a column for each category. In this way, the height of each column shows the corresponding frequency of some category.

The dot plots are quite useful when there are small amount of data is given within the small number of categories.

- Bar Graph

A vertical bar graph is shown below:



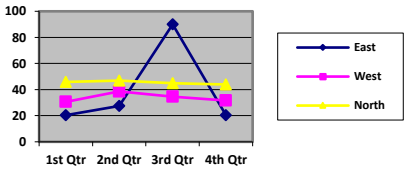
Bar Graph

A bar graph is a very frequently used graph in statistics as well as in media. A bar graph is a type of graph which contains rectangles or rectangular bars. The lengths of these bars should be proportional to the numerical values represented by them. In bar graph, the bars may be plotted either horizontally or vertically. But a vertical bar graph (also known as column bar graph) is used more than a horizontal one.

The rectangular bars are separated by some distance in order to distinguish them from one another. The bar graph shows comparison among the given categories.
Mostly, horizontal axis of the graph represents specific categories and vertical axis shows the discrete numerical values.

- Line Graph

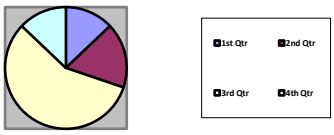
A line graph is a kind of graph which represents data in a way that a series of points are to be connected by segments of straight lines. In a line graph, the data points are plotted on a graph and they are joined together with straight line.
A sample line graph is illustrated in the following diagram:
Line Graph



The line graphs are used in the science, statistics and media. Line graphs are very easy to create. These are quite popular in comparison with other graphs since they visualize characteristics revealing data trends very clearly. A line graph gives a clear visual comparison between two variables which are represented on X-axis and Y-axis.

- Circle Graph A circle graph is also known as a pie graph or pie chart. It is called so since it is similar to slice of a "pie". A pie graph is defined as a graph which contains a circle which is divided into sectors. These sectors illustrate the numerical proportion of the data.

A pie chart are shown in the following diagram:



➢ *Pie Chart*

The arc lengths of the sectors, in pie chart, are proportional to the numerical value they represent. Circle graphs are quite commonly seen in mass media as well as in business world.

- *Histogram and Frequency Polygon*

The histograms and frequency polygons are very common graphs in statistics. A histogram is defined as a graphical representation of the mutually exclusive events. A histogram is quite similar to the bar graph. Both are made up of rectangular bars. The difference is that there is no gap between any two bars in the histogram. The histogram is used to represent the continuous data.

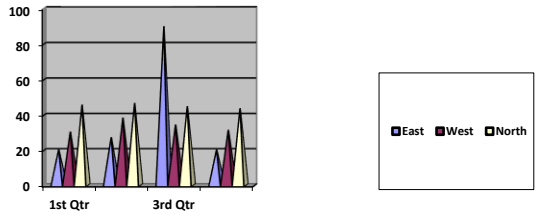
A histogram may look like the following graph:

➢ Histogram

The frequency polygon is a type of graphical representation which gives us better understanding of the shape of given distribution. Frequency polygons serve almost the similar purpose as histograms do.

But the frequency polygon is quite helpful for the purpose of comparing two or more sets of data. The frequency polygons are said to be the extension of the histogram. When the midpoints of tops of the rectangular bars are joined together, the frequency polygon is made. Let us have a look at a sample of frequency polygon:

Histogram Example



- What is a Frequency Distribution?

- A frequency distribution is an overview of all distinct values in some variable and the number of times they occur. That is, a frequency distribution tells how frequencies are distributed over values. Frequency distributions are mostly used for summarizing categorical variables. That's because metric variables tend to have many distinct values. These result in huge tables and charts that don't give insight into your data. In this case, histograms are the way to go as they visualize frequencies for intervals of values rather than each distinct value.

❖ Central tendency

In statistics, a central tendency (or measure of central tendency) is a central or typical value for a probability distribution. It may also be called a center or location of the distribution. Colloquially, measures of central tendency are often called averages. The term central tendency dates from the late 1920s.

The most common measures of central tendency are the arithmetic mean, the median and the mode. A central tendency can be calculated for either a finite set of values or for a theoretical distribution, such as the normal distribution. Occasionally authors use central tendency to denote "the tendency of quantitative data to cluster around some central value." The central tendency of a distribution is typically contrasted with its dispersion or variability; dispersion and central tendency are the often characterized properties of distributions. Analysts may judge whether data has a strong or a weak central tendency based on its dispersion.

- Measures

The following may be applied to one-dimensional data. Depending on the circumstances, it may be appropriate to transform the data before calculating a central tendency. Examples are squaring the values or taking logarithms. Whether a transformation is appropriate and what it should be, depend heavily on the data being analyzed.

- Arithmetic mean or simply, mean-The sum of all measurements divided by the number of observations in the data set.

- Median-The middle value that separates the higher half from the lower half of the data set. The median and the mode are the only measures of central tendency that can be used for ordinal data, in which values are ranked relative to each other but are not measured absolutely.

- Mode-The most frequent value in the data set. This is the only central tendency measure that can be used with nominal data, which have purely qualitative category assignments.

- Geometric mean-The nth root of the product of the data values, where there are n of these. This measure is valid only for data that are measured absolutely on a strictly positive scale.

- Harmonic mean-The reciprocal of the arithmetic mean of the reciprocals of the data values. This measure too is valid only for data that are measured absolutely on a strictly positive scale.

- Weighted arithmetic mean-An arithmetic mean that incorporates weighting to certain data elements.

- Truncated mean or trimmed mean-The arithmetic mean of data values after a certain number or proportion of the highest and lowest data values have been discarded.

- Interquartile mean-A truncated mean based on data within the interquartile range.

- Midrange-The arithmetic mean of the maximum and minimum values of a data set.

- Midhinge-The arithmetic mean of the two quartiles.

- **Trimean-**The weighted arithmetic mean of the median and two quartiles.

- **Winsorized mean-**An arithmetic mean in which extreme values are replaced by values closer to the median.

Any of the above may be applied to each dimension of multi-dimensional data, but the results may not be invariant to rotations of the multi-dimensional space. In addition, there are the

- ***Geometric median***-which minimizes the sum of distances to the data points. This is the same as the median when applied to one-dimensional data, but it is not the same as taking the median of each dimension independently. It is not invariant to different rescaling of the different dimensions.
- ***Quadratic mean*** (often known as the ***root mean square***) useful in engineering, but not often used in statistics. This is because it is not a good indicator of the center of the distribution when the distribution includes negative values.

- ***Simplicial depth-***the probability that a randomly chosen simplex with vertices from the given distribution will contain the given center

- **Tukey median-**a point with the property that every halfspace containing it also contains many sample points

- **Solutions to variational problems**

Several measures of central tendency can be characterized as solving a variational problem, in the sense of the calculus of variations, namely minimizing variation from the center. That is, given a measure of statistical dispersion, one asks for a measure of central tendency that minimizes variation: such that variation from the center is minimal among all choices of center. In a quip, "dispersion precedes location". This center may or may not be unique. In the sense of Lp spaces, the correspondence is:

L_p	*Dispersion*	*central tendency*
L_0	*variation ratio*	*Mode*
L_1	*average absolute deviation*	*Median*
L_1	*average absolute deviation*	*geometric median*
L_2	*standard deviation*	*Mean*
L_∞	*maximum deviation*	*Midrange*

The associated functions are called p-norms: respectively 0-"norm", 1-norm, 2-norm, and ∞-norm. The function corresponding to the L0 space is not a norm, and is thus often referred to in quotes: 0-"norm".

Measures of Central Tendency

❖ Introduction

A measure of central tendency is a single value that attempts to describe a set of data by identifying the central position within that set of data. As such, measures of central tendency are sometimes called measures of central location. They are also classed as summary statistics. The mean (often called the average) is most likely the measure of central tendency that you are most familiar with, but there are others, such as the median and the mode.

The mean, median and mode are all valid measures of central tendency, but under different conditions, some measures of central tendency become more appropriate to use than others. In the following sections, we will look at the mean, mode and median, and learn how to calculate them and under what conditions they are most appropriate to be used.

➢ Mean (Arithmetic)

The mean (or average) is the most popular and well known measure of central tendency. It can be used with both discrete and continuous data, although its use is most often with continuous data (see our Types of Variable guide for data types). The mean is equal to the sum of all the values in the data set divided by the number of values in the data set. So, if we have n values in a data set and they have values x1, x2, ..., xn, the sample mean, usually denoted by (pronounced x bar), is:

This formula is usually written in a slightly different manner using the Greek capitol letter, , pronounced "sigma", which means "sum of...":

You may have noticed that the above formula refers to the sample mean. So, why have we called it a sample mean? This is because, in statistics, samples and populations have very different meanings and these differences are very important, even if, in the case of the mean, they are calculated in the same way. To acknowledge that we are calculating the population mean and not the sample mean, we use the Greek lower case letter "mu", denoted as μ:

The mean is essentially a model of your data set. It is the value that is most common. You will notice, however, that the mean is not often one of the actual values that you have observed in your data set. However, one of its important properties is that it minimises error in the prediction of any one value in your data set. That is, it is the value that produces the lowest amount of error from all other values in the data set.

An important property of the mean is that it includes every value in your data set as part of the calculation. In addition, the mean is the only measure of central tendency where the sum of the deviations of each value from the mean is always zero.

When not to use the mean

➢ The mean has one main disadvantage: it is particularly susceptible to the influence of outliers. These are values that are unusual compared to the rest of the data set by being especially small or large in numerical value. For example, consider the wages of staff at a factory below:

Staff	1	2	3	4	5	6	7	8	9	10
Salary	15k	18k	16k	14k	15k	15k	12k	17k	90k	95k

The mean salary for these ten staff is $30.7k. However, inspecting the raw data suggests that this mean value might not be the best way to accurately reflect the typical salary of a worker, as most workers have salaries in the $12k to 18k range. The mean is being skewed by the two large salaries. Therefore, in this situation, we would like to have a better measure of central tendency. As we will find out later, taking the median would be a better measure of central tendency in this situation.

Another time when we usually prefer the median over the mean (or mode) is when our data is skewed (i.e., the frequency distribution for our data is skewed). If we consider the normal distribution - as this is the most frequently assessed in statistics - when the data is perfectly normal, the mean, median and mode are identical. Moreover, they all represent the most typical value in the data set. However, as the data becomes skewed the mean loses its ability to provide the best central location for the data because the skewed data is dragging it away from the typical value. However, the median best retains this position and is not as strongly influenced by the skewed values. This is explained in more detail in the skewed distribution section later in this guide.

❖ PLANS & PRICING

➢ Median

The median is the middle score for a set of data that has been arranged in order of magnitude. The median is less affected by outliers and skewed data. In order to calculate the median, suppose we have the data below:

65 55 89 56 35 14 56 55 87 45 92

We first need to rearrange that data into order of magnitude (smallest first):

14 35 45 55 55 56 56 65 87 89 92

Our median mark is the middle mark - in this case, 56 (highlighted in bold). It is the middle mark because there are 5 scores before it and 5 scores after it. This works fine when you have an odd number of scores, but what happens when you have an even number of scores? What if you had only 10 scores? Well, you simply have to take the middle two scores and average the result. So, if we look at the example below:

65 55 89 56 35 14 56 55 87 45

We again rearrange that data into order of magnitude (smallest first):

14 35 45 55 55 56 56 65 87 89

Only now we have to take the 5th and 6th score in our data set and average them to get a median of 55.5.

- Mode

The mode is the most frequent score in our data set. On a histogram it represents the highest bar in a bar chart or histogram. You can, therefore, sometimes consider the mode as being the most popular option. An example of a mode is presented below:

Normally, the mode is used for categorical data where we wish to know which is the most common category, as illustrated below:

We can see above that the most common form of transport, in this particular data set, is the bus. However, one of the problems with the mode is that it is not unique, so it leaves us with problems when we have two or more values that share the highest frequency, such as below:

We are now stuck as to which mode best describes the central tendency of the data. This is particularly problematic when we have continuous data because we are more likely not to have any one value that is more frequent than the other. For example, consider measuring 30 peoples' weight (to the nearest 0.1 kg). How likely is it that we will find two or more people with exactly the same weight (e.g., 67.4 kg)? The answer, is probably very unlikely - many people might be close, but with such a small sample (30 people) and a large range of possible weights, you are unlikely to find two people with exactly the same weight; that is, to the nearest 0.1 kg. This is why the mode is very rarely used with continuous data.

Another problem with the mode is that it will not provide us with a very good measure of central tendency when the most common mark is far away from the rest of the data in the data set. To use the mode to describe the central tendency of this data set would be misleading.

❖ PLANS & PRICING

➢ Skewed Distributions and the Mean and Median

We often test whether our data is normally distributed because this is a common assumption underlying many statistical tests. An example of a normally distributed set of data is presented below:

When you have a normally distributed sample you can legitimately use both the mean or the median as your measure of central tendency. In fact, in any symmetrical distribution the mean, median and mode are equal. However, in this situation, the mean is widely preferred as the best measure of central tendency because it is the measure that includes all the values in the data set for its calculation, and any change in any of the scores will affect the value of the mean. This is not the case with the median or mode. However, when our data is skewed, for example, as with the right-skewed data set below: we find that the mean is being dragged in the direct of the skew. In these situations, the median is generally considered to be the best representative of the central location of the data. The more skewed the distribution, the greater the difference between the median and mean, and the greater emphasis should be

placed on using the median as opposed to the mean. A classic example of the above right-skewed distribution is income (salary), where higher-earners provide a false representation of the typical income if expressed as a mean and not a median.

If dealing with a normal distribution, and tests of normality show that the data is non-normal, it is customary to use the median instead of the mean. However, this is more a rule of thumb than a strict guideline. Sometimes, researchers wish to report the mean of a skewed distribution if the median and mean are not appreciably different (a subjective assessment), and if it allows easier comparisons to previous research to be made.

- Summary of when to use the mean, median and mode

Please use the following summary table to know what the best measure of central tendency is with respect to the different types of variable.

Type of Variable	*Best measure of central tendency*
Nominal	*Mode*
Ordinal	*Median*
Interval/Ratio (not skewed)	*Mean*
Interval/Ratio (skewed)	*Median*

- Dispersion vs Skewness

In statistics and probability theory, often the variation in the distributions has to be expressed in a quantitative manner for the purposes of comparison. Dispersion and Skewness are two statistical concepts where the shape of the distribution is presented in a quantitative scale.

- More about Dispersion
  In statistics, the dispersion is the variation of a random variable or its probability distribution. It is a measure of how far the data points lie from the central value. To express this quantitatively, measures of dispersion are used in descriptive statistic.

Variance, Standard Deviation, and Inter-quartile range are the most commonly used measures of dispersion.
If the data values have a certain unit, due to the scale, the measures of dispersion may also have the same units. Interdecile range, Range, mean difference, median absolute deviation, average absolute deviation, and distance standard deviation are measures of dispersion with units.

In contrast, there are measures of dispersion which has no units, i.e dimensionless. Variance, Coefficient of variation, Quartile coefficient of dispersion, and Relative mean difference are measures of dispersion with no units.

Dispersion in a system can be originated from errors, such as instrumental and observational errors. Also, random variations in the sample itself can cause variations. It is important to

have a quantitative idea about the variation in data before making other conclusions from the data set.

- More about Skewness

In statistics, skewness is a measure of asymmetry of the probability distributions. Skewness can be positive or negative, or in some cases non-existent. It can also be considered as a measure of offset from the normal distribution.

If the skewness is positive, then the bulk of the data points is centred to the left of the curve and the right tail is longer. If the skewness is negative, the bulk of the data points is centred towards the right of the curve and the left tail is rather long. If the skewness is zero, then the population is normally distributed.

In a normal distribution, that is when the curve is symmetric, the mean, median, and mode have the same value. If the skewness is not zero, this property does not hold, and the mean, mode, and median may have different values.

Pearson's first and second coefficients of skewness are commonly used for determining the skewness of the distributions.

- Pearson's first skewness coffeicent = (mean – mode) / (standard deviation)
- Pearson's second skewness coffeicent = 3(mean – mode) / (satndard deviation)

In more sensitive cases, adjusted Fisher-Pearson standardized moment coefficient is used.
$G = \{n / (n-1)(n-2)\} \sum n_i=1 ((y-\bar{y})/s)3$

- What is the difference between Dispersion and Skewness?

- Dispersion concerns about the range over which the data points are distributed, and the skewness concerns the symmetry of the distribution. Both measures of dispersion and skewness are descriptive measures and coefficient of skewness gives an indication to the shape of the distribution. Measures of dispersion are used to understand the range of the data points and offset from the mean while skewness is used for understanding the tendency for the variation of data points into a certain direction

❖ Sampling distribution

In statistics, a sampling distribution or finite-sample distribution is the probability distribution of a given random-sample-based statistic. If an arbitrarily large number of samples, each involving multiple observations (data points), were separately used in order to compute one value of a statistic (such as, for example, the sample mean or sample variance) for each sample, then the sampling distribution is the probability distribution of the values that the statistic takes on. In many contexts, only one sample is observed, but the sampling distribution can be found theoretically.

Sampling distributions are important in statistics because they provide a major simplification en route to statistical inference. More specifically, they allow analytical considerations to be based on the probability distribution of a statistic, rather than on the joint probability distribution of all the individual sample values.

❖ Introduction to sampling distribution

The sampling distribution of a statistic is the distribution of that statistic, considered as a random variable, when derived from a random sample of size n. It may be considered as the distribution of the statistic for all possible samples from the same population of a given sample size. The sampling distribution depends on the underlying distribution of the population, the statistic being considered, the sampling procedure employed, and the sample size used. There is often considerable interest in whether the sampling distribution can be approximated by an asymptotic distribution, which corresponds to the limiting case either as the number of random samples of finite size, taken from an infinite population and used to produce the distribution, tends to infinity, or when just one equally-infinite-size "sample" is taken of that same population.

For example, consider a normal population with mean and variance. Assume we repeatedly take samples of a given size from this population and calculate the arithmetic mean for each sample – this statistic is called the sample mean. The distribution of these means, or averages, is called the "sampling distribution of the sample mean". This distribution is normal (n is the sample size) since the underlying population is normal, although sampling distributions may also often be close to normal even when the population distribution is not (see central limit theorem). An alternative to the sample mean is the sample median. When calculated from the same population, it has a different sampling distribution to that of the mean and is generally not normal (but it may be close for large sample sizes).

The mean of a sample from a population having a normal distribution is an example of a simple statistic taken from one of the simplest statistical populations. For other statistics and other populations the formulas are more complicated, and often they don't exist in closed-form. In such cases the sampling distributions may be approximated through Monte-Carlo simulations,bootstrap methods, or asymptotic distribution theory.

- Standard error
  The standard deviation of the sampling distribution of a statistic is referred to as the standard error of that quantity. For the case where the statistic is the sample mean, and samples are uncorrelated.

➢ Tests of Significance

Once sample data has been gathered through an observational study or experiment, statistical inference allows analysts to assess evidence in favor or some claim about the population from which the sample has been drawn. The methods of inference used to support or reject claims based on sample data are known as tests of significance.

Every test of significance begins with a null hypothesis H_0. H_0 represents a theory that has been put forward, either because it is believed to be true or because it is to be used as a basis for argument, but has not been proved. For example, in a clinical trial of a new drug, the null hypothesis might be that the new drug is no better, on average, than the current drug. We would write H0: there is no difference between the two drugs on average.

The alternative hypothesis, H_a, is a statement of what a statistical hypothesis test is set up to establish. For example, in a clinical trial of a new drug, the alternative hypothesis might be that the new drug has a different effect, on average, compared to that of the current drug. We would write Ha: the two drugs have different effects, on average. The alternative hypothesis might also be that the new drug is better, on average, than the current drug. In this case we would write Ha: the new drug is better than the current drug, on average.

The final conclusion once the test has been carried out is always given in terms of the null hypothesis. We either "reject H_0 in favor of H_a" or "do not reject H_0"; we never conclude "reject H_a", or even "accept H_a".

If we conclude "do not reject H_0", this does not necessarily mean that the null hypothesis is true, it only suggests that there is not sufficient evidence against H0 in favor of H_a; rejecting the null hypothesis then, suggests that the alternative hypothesis may be true.

Hypotheses are always stated in terms of population parameter, such as the mean . An alternative hypothesis may be one-sided or two-sided. A one-sided hypothesis claims that a parameter is either larger or smaller than the value given by the null hypothesis. A two-sided hypothesis claims that a parameter is simply not equal to the value given by the null hypothesis -- the direction does not matter.

Hypotheses for a one-sided test for a population mean take the following form:
$H_0 : = k$
$H_a : > k$
or
$H_0 : = k$
$H_a : < k$
Hypotheses for a two-sided test for a population mean take the following form:
$H_0 : = k$
$H_a : k$

A confidence interval gives an estimated range of values which is likely to include an unknown population parameter, the estimated range being calculated from a given set of sample data.

Example

Suppose a test has been given to all high school students in a certain state. The mean test score for the entire state is 70, with standard deviation equal to 10. Members of the school board suspect that female students have a higher mean score on the test than male students, because the mean score from a random sample of 64 female students is equal to 73. Does this provide strong evidence that the overall mean for female students is higher?

The null hypothesis H0 claims that there is no difference between the mean score for female students and the mean for the entire population, so that = 70. The alternative hypothesis claims that the mean for female students is higher than the entire student population mean, so that > 70.

- **Regression and correlation analysis:**

Regression analysis involves identifying the relationship between a dependent variable and one or more independent variables. A model of the relationship is hypothesized, and estimates of the parameter values are used to develop an estimated regression equation. Various tests are then employed to determine if the model is satisfactory. If the model is deemed satisfactory, the estimated regression equation can be used to predict the value of the dependent variable given values for the independent variables.

- **Regression model**

In simple linear regression, the model used to describe the relationship between a single dependent variable y and a single independent variable x is y = a0 + a1x + k. a0and a1 are referred to as the model parameters, and is a probabilistic error term that accounts for the variability in y that cannot be explained by the linear relationship with x. If the error term were not present, the model would be deterministic; in that case, knowledge of the value of x would be sufficient to determine the value of y.

- **Least squares method**

Either a simple or multiple regression model is initially posed as a hypothesis concerning the relationship among the dependent and independent variables. The least squares method is the most widely used procedure for developing estimates of the model parameters.
As an illustration of regression analysis and the least squares method, suppose a university medical centre is investigating the relationship between stress and blood pressure. Assume that both a stress test score and a blood pressure reading have been recorded for a sample of 20 patients. The data are shown graphically in the figure below, called a scatter diagram. Values of the independent variable, stress test score, are given on the horizontal axis, and values of the dependent variable, blood pressure, are shown on the vertical axis. The line passing through the data points is the graph of the estimated regression equation: y = 42.3 + 0.49x. The parameter estimates, b0 = 42.3 and b1 = 0.49, were obtained using the least squares method.

- Correlation

Correlation and regression analysis are related in the sense that both deal with relationships among variables. The correlation coefficient is a measure of linear association between two variables. Values of the correlation coefficient are always between -1 and +1. A correlation coefficient of +1 indicates that two variables are perfectly related in a positive linear sense, a correlation coefficient of -1 indicates that two variables are perfectly related in a negative linear sense, and a correlation coefficient of 0 indicates that there is no linear relationship between the two variables. For simple linear regression, the sample correlation coefficient is the square root of the coefficient of determination, with the sign of the correlation coefficient being the same as the sign of b1, the coefficient of x1 in the estimated regression equation.

Neither regression nor correlation analyses can be interpreted as establishing cause-and-effect relationships. They can indicate only how or to what extent variables are associated with each other. The correlation coefficient measures only the degree of linear association between two variables. Any conclusions about a cause-and-effect relationship must be based on the judgment of the analyst.

- Multiple correlation

In statistics, the coefficient of multiple correlation is a measure of how well a given variable can be predicted using a linear function of a set of other variables. It is the correlation between the variable's values and the best predictions that can be computed linearly from the predictive variables.
The coefficient of multiple correlation takes values between 0 and 1; a higher value indicates a better predictability of the dependent variable from the independent variables, with a value of 1 indicating that the predictions are exactly correct and a value of 0 indicating that no linear combination of the independent variables is a better predictor than is the fixed mean of the dependent variable.
The coefficient of multiple correlation is computed as the square root of the coefficient of determination, but under the particular assumptions that an intercept is included and that the best possible linear predictors are used, whereas the coefficient of determination is defined for more general cases, including those of nonlinear prediction and those in which the predicted values have not been derived from a model-fitting procedure.

- Definition

The coefficient of multiple correlation, denoted R, is a scalar that is defined as the Pearson correlation coefficient between the predicted and the actual values of the dependent variable in a linear regression model that includes an intercept.
The squared coefficient of multiple correlation can also be computed as the fraction of variance of the dependent variable that is explained by the independent variables, which in turn is 1 minus the unexplained fraction. The unexplained fraction can be computed as the sum of squared residuals—that is, the sum of the squares of the prediction errors—divided by the sum of the squared deviations of the values of the dependent variable from its expected value.

- Properties

With more than two variables being related to each other, the value of the coefficient of multiple correlation depends on the choice of dependent variable: a regression of y on x and z will in general have a different R than will a regression of z on x and y. For example, suppose

that in a particular sample the variable z is uncorrelated with both x and y, while x and y are linearly related to each other. Then a regression of z on y and x will yield an R of zero, while a regression of y on x and z will yield a strictly positive R. This follows since the correlation of y with its best predictor based on x and z is in all cases at least as large as the correlation of y with its best predictor based on x alone, and in this case with z providing no explanatory power it will be exactly as large.

- What is a Time Series
- A time series is a sequence of numerical data points in successive order. In investing, a time series tracks the movement of the chosen data points, such as a security's price, over a specified period of time with data points recorded at regular intervals. There is no minimum or maximum amount of time that must be included, allowing the data to be gathered in a way that provides the information being sought by the investor or analyst examining the activity.

- BREAKING DOWN Time Series

A time series can be taken on any variable that changes over time. In investing, it is common to use a time series to track the price of a security over time. This can be tracked over the short term, such as the price of a security on the hour over the course of a business day, or the long term, such as the price of a security at close on the last day of every month over the course of five years.

- Time Series Analysis
  Time series analysis can be useful to see how a given asset, security or economic variable changes over time. It can also be used to examine how the changes associated with the chosen data point compare to shifts in other variables over the same time period.

For example, suppose you wanted to analyze a time series of daily closing stock prices for a given stock over a period of one year. You would obtain a list of all the closing prices for the stock from each day for the past year and list them in chronological order. This would be a one-year daily closing price time series for the stock.

Delving a bit deeper, you might be interested to know whether the stock's time series shows any seasonality to determine if it goes through peaks and troughs at regular times each year. Analysis in this area would require taking the observed prices and correlating them to a chosen season. This can include traditional calendar seasons, such as summer and winter, or retail seasons, such as holiday seasons.

Alternatively, you can record a stock's share price changes as it relates to an economic variable, such as the unemployment rate. By correlating the data points with information relating to the selected economic variable, you can observe patterns in situations exhibiting dependency between the data points and the chosen variable.

- Time Series Forecasting
  Time series forecasting uses information regarding historical values and associated patterns to predict future activity. Most often, this relates to trend analysis, cyclical fluctuation analysis and issues of seasonality. As with all forecasting methods, success is not guaranteed.

- What are index numbers?
- Index numbers are a useful way of expressing economic data time series and comparing / contrasting information. An index number is a figure reflecting price or quantity compared with a base value. The base value always has an index number of 100. The index number is then expressed as 100 times the ratio to the base value. Note that index numbers have no units e.g. £, Euros or $

- *Index Numbers:*

Index numbers are used to measure the changes in one or more variable over a period of time. These numbers are stated as a percentage of a base figure. Index numbers are the specialized averages that measure the change in level of a phenomenon. They measure the effect of changes over a period of time. A collection of index numbers for years is referred to as index series. Consider an example now.

Monica purchased an apartment in 2010 that she wishes to sell now. She wants to know the value of the apartment as on the present day so she can get the right price. She wants to know the present value of the money she spent to buy the apartment in 2010. How can she find that? There is no direct measure to study the change in the effect of such factors. This is when Index numbers come into play. An index number is calculated by finding the ratio of the current value to a base value.

- Formal Definitions:
  Few Definitions of Index numbers:

- ✓ *According to Bowley, "Index numbers are used to measure the changes in some quantity which we cannot observe directly".*

- ✓ *According to Ronold, "Index numbers are quantitative measures of growth of prices, production, inventory and other quantities if economic interest."*

- Applications:

In scenarios where inflation plays a major part, index numbers are useful in deflating.
As these numbers aid in measuring the effect of change over a period of time they reveal various trends and tendencies.
Using index numbers various suitable policies can be framed.
They are used in the field of commerce, meteorology, industry etc.
They measure the purchasing power of money.
They are helpful in studying the difference between comparable categories of people and items.
Index numbers of import and export prices of a country help measure the changes in trade of a country.
They measure the seasonal and cyclical variations for a time period.

- What are the types of index numbers and how are they useful?
- Simple index number:

In the simple index number all the items of variables in the series are given equal weightage. They are all given equal importance. These index numbers are constructed form a single variable. This measures a relative change in single variable to its respective base.

- *Composite index number:*

Two or more indices when combined together form a composite index number. Consider an example for better understanding. Indices of consumer spending on gold and on all other accessories could be combined into one index.

- *Price index number:*

Price index number is a scale that is used to measure changes in the level of prices. It can be based on price of a single item or a selected group of items referred to as a market basket. Mostly, price indices are uses to measure inflation. The consumer price index is focused on the goods and services consumed by households while the produce price index directs its focus towards the goods purchase by businesses that is used for further production.

To better understand the usage of price index, one must clearly understand what price means. Price is the value of money paid for the purchase of goods or services. When the price of a product falls, it means that the value of money has risen and when the price rises, it means that the value has fallen. A price index is a statistical measure that expresses a price change as a percentage of price in the base year. Some examples of price indices in India are index of retail prices, index of wholesale prices, cost of living index of industrial workers etc.

- *Quantity index number:*

These are the index numbers that measure the changes in the level of quantities consumed, produced and distributed for an item or group of items during a year under reference in relation to the base year. These are highly significant as they indicate the level of output in an economy.

- *Methods of constructing index numbers:*
- *Simple Aggregate method:*

It is the method of expressing the aggregate price of all the commodities in the year under reference as a percentage of the aggregate price in in the base year. By computing the price relatives and averaging them all, a simple price index is constructed. The price relatives are then added and divided by the number of items.

- *Simple average of relatives method:*

In this method the current year price is expressed as a price relative of the price in the base year. To arrive at the index number, these price relatives are averaged. The average used could be median, arithmetic mean or even geometric mean.

- *Weighted aggregative Index numbers:*

The fundamental difference between the simple aggregative type and the weighted aggregative type is that in case of latter, weights are assigned to the various items included in the index. The different methods used to calculate weighted aggregative index numbers are:

- Dorbish and bowley's method
- Fisher's ideal method
- Marshall-Edgeworth method
- Laspeyres method
- Paasche method
- Kelly's method

- *Weighted average of price relative method:*

Here, the price relatives for the current year are calculated based on the prices of the base year. The respective weights of the items are multiplied with the price relatives. The resultant products are all summed up and that value is divided by the sum of weights.

Index numbers have uses that are widely applied in various scenarios. However, these are not free from problems. Look at a few problems related to index numbers:

- Choice of base period.
- Choice of an average
- Choice of commodities
- Choice of index

- *Data collection*

Finally, to put it in a nutshell, index numbers are statistical devices that measure relative changes in large number of items. There are several formulae for computing index numbers based on the base year taken into consideration and also the question of interest. However, every formula that is used requires careful interpretation. The adequacy of the index number calculated could also be checked using four tests namely time reversal test, factor reversal test, unit test and circular test.

PROFESSIONAL ETHICHS & STANDARDS

❖ MODEL CODE OF CONDUCT FOR REGISTERED VALUERS

(Under Rule 12(e) of the Companies (Registered Valuers and Valuation) Rules, 2017)

➢ Integrity and Fairness

1. A valuer should in the conduct of his/its business follow high standards of integrity and fairness in all his/its dealings with his/its clients and other valuers.

2. A valuer should maintain integrity by being honest, straightforward, and forthright in all professional relationships.

3. A valuer should endeavour to ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations.

4. A valuer should refrain from being involved in any action that would bring disrepute to the profession.

➢ Professional Competence and Due Care

5. A valuer should render at all times high standards of service, exercise, due diligence, ensure proper care and exercise independent professional judgment.

6. A valuer should carry out professional services in accordance with the relevant technical and professional standards that may be specified from time to time

7. A valuer should continuously maintain professional knowledge and skill to provide competent professional service based on up-to-date developments in practice, prevailing regulations/guidelines and techniques.

8. In the preparation of a valuation report, the valuer should not disclaim liability for his/its expertise or deny his/its duty of care, except to the extent that the assumptions are statements of fact provided by the company and not generated by the valuer.

9. A valuer should have a duty to carry out with care and skill, the instructions of the client insofar as they are compatible with the requirements of integrity, objectivity and independence.

➢ Independence and Disclosure of Interest

10. A valuer should act with objectivity in his/its professional dealings by ensuring that his/its decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the valuation assignment or not.

11. A valuer should not take up an assignment under the Act/Rules if he/it or any of his/its relatives or associates is not independent in relation to the company and assets being valued.

12. A valuer should maintain complete independence in his/its professional relationships and shall conduct the valuation independent of external influences.

13. A valuer should wherever necessary disclose to the clients, possible sources of conflicts of duties and interests, while providing unbiased services. 14. A valuer should not deal in securities of any subject company after any time when he/it first becomes aware of the possibility of his/its association with the valuation, and in accordance with the SEBI (Prohibition of Insider Trading) Regulations, 2015.

15. A valuer should not indulge in "mandate snatching" or "convenience valuations" in order to cater to the company's needs or client needs. A valuer should communicate in writing with a prior valuer if there is knowledge of any prior valuer having been appointed before accepting the assignment.

16. As an independent valuer, the valuer should not charge success fee.

17. In any fairness opinion or independent expert opinion submitted by a valuer, if there has been a prior engagement in an unconnected transaction, the valuer should declare the past association with the company.

- Confidentiality

17. A valuer should not use or divulge to other clients or any other party any confidential information about the subject company, which has come to his/its knowledge without proper and specific authority or unless there is a legal or professional right or duty to disclose.

- Information Management

19. A valuer should ensure that he/ it maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This should be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his/its decisions and actions.

20. A valuer should appear, co-operate and be available for inspections and investigations carried out by the Registration Authority, any person authorised by the Registration Authority, the Valuation Professional Organisation with which he/it is registered or any other statutory regulatory body.

21. A valuer should provide all information and records as may be required by the Registration Authority, the Tribunal, Appellate Tribunal, the Valuation Professional Organisation with which he/it is registered, or any other statutory regulatory body.

22. A valuer while respecting the confidentiality of information acquired during the course of performing professional services, should maintain proper working papers for a period of three years, for production before a regulatory authority or for a peer review. In the event of a pending case before the Tribunal or Appellate Tribunal, the record should be maintained till the disposal of the case.

- Gifts and hospitality.

23. A valuer, or his/its relative should not accept gifts or hospitality which undermines or affects his independence as a valuer.

24. A valuer should not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person, intending to obtain or retain work for himself/ itself, or to obtain or retain an advantage in the conduct of profession for himself/ itself.

- Remuneration and Costs.

25. A valuer should provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable rules.

26. A valuer should not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his/ its remuneration.

Occupation, employability and restrictions. 27. A valuer should refrain from accepting too many assignments, if he/it is unlikely to be able to devote adequate time to each of his/ its assignments.

28. A valuer should not engage in any employment, except when he has temporarily surrendered his certificate of membership with the Valuation professional Organisation with which he is registered.

29. A valuer should not conduct business which in the opinion of the Registration Authority is inconsistent with the reputation of the profession.

MODEL QUESTION PAPER

1. Ques. The below of transfer property followed to which party?

(a) Dead party
(b) **Live party**
(c) One party
(d) More than 2 party

2. Ques. Which doctrine has been involved in the provision regarding condition precedent?

(a) Doctrine of Acceleration
(b) **Doctrine of Cy-pres**
(c) Rule against Perpetuity
(d) Rule of Perpetuity

3. Ques. Actual possession of property by another must put of such property on his guard, than its amount to notice For_____

(a) **Purchaser**
(b) Municipality
(c) Seller
(d) Registration office

4. Ques. Easement apart from the_____heritage can't be transferred

(a) Right of re-entry
(b) **Dominant**
(c) Undominant
(d) None

5. Ques. When two persons mutually transfer the ownership of another, neither thing or both things being money only, the transaction is called_____

a. sale
b. **an exchange**
c. gift
d. None

6. Ques. Which provision effected of charges.

(a) **simple mortgage**
(b) english mortgage
(c) anomalous mortgage
(d) usufructuary mortgage

7. Ques. In a gift, one person voluntarily without _____ transfer his ownership.

(a) Money
(b) Property
(c) None
(d) **Consideration**

8. Ques. What is intention to deposit of title deeds in equitable mortgage?
   (a) Take an interest
   (b) Take a possession
   (c) Create a security
   (d) Take a consideration

9. Ques: From below which rights are calculated as rights of immovable property?
   (a) Right of royalty
   (b) Right of way in immovable property
   (c) Right of worship
   (d) Government prom isory notes

10. Ques. If transfer made from insolvency, forfeiture or sale in execution of a decree, what it is called as?
   (a) Transfer by will
   (b) Transfer by operation of law
   (c) Transfer by act of parties
   (d) None of above

11. Ques. "Once a mortgage, always a mortgage". This sentence is …….
   (a)Absolutely True
   (b) Absolutely False
   (c) Partly False
   (d) Partly True

12. Ques. Document is not necessary if value of immovable property is ……..
   (a) Less than Rs. 1000
   (b) Less than Rs. 10000
   (c) Less than Rs. 100
   (d) Less than Rs. 100000

13. Ques. "Transfer in favor of unborn person can not be done", This sentence is …….
   (a) Partly False
   (b) Absolutely True
   (c) Absolutely False
   (d) Partly True

14. Ques. Doctrine of Part Performance is applicable to what?
   (a) Only Oral contract
   (b) Only written contract
   (c) Oral-Written contract
   (d) None of above

15. Ques. How many types of mortgage can be?

(a) Two

(b) Six

(c) Five

(d) Four

16. Ques. The transferee of property is known as…….

(a) Mortgagor

(b) Co-owner

(c) Mortgagee

(d) Executor

17. Ques: The below of transfer property followed to which party?

(a) Live party

(b) Dead party

(c) One party

(d) More than 2 party

18. Ques: In transfer of property from below which is movable property ?

(a) Right of fishery

(b) Life time interest in immovable property

(c) grass

(d) Right to collect lac from trees

19. Ques: From below which is immovable party?

(a) Growing crops

(b) Trees & Plants

(c) Grass

(d) Standing timber

20. Ques: Transfer of Actionable claim is known as_____

(a) Undivision

(b) Division

(c) Combination

(d) Assignment

21. Ques: ……..is a security for the payment of any money

(a) charge

(b) mortgage

(c) exchange

(d) lease

22. Ques: A mere right of re-entry for breach of a condition subsequent can't be transferred to any one, except the of the property affected there by_____

(a) Seller

(b) Purchaser

(c) Owner

(d) Trustee

23. Ques: An Easement is imposed on property, that property is called_____

(a) Serivient heritage

(b) Nonserivient heritage

(c) Dominant heritage

(d) Nondominant heritage

24. Ques: While purchasing house in the city, who has to do inquity that any tax is not remainning on the house?

(a) **Purchaser**
(b) Local authority
(c) Seller
(d) Registration office

25. Ques: Registration amount to notice , when instrument must be_____ registrable

(a) Unauthorised
(b) Voluntarily
(c) Authorised
(d) **Compulsorily**

26. Ques: Actual possession of property by another must put of such property on his guard, than its amount to notice For_____

(a) Municipality
(b) Seller
(c) **Purchaser**
(d) Registration office

27. Ques: Possession consider as notice , when_____ possession can't be followed as notice

(a) Actual
(b) **Constructive**
(c) Express
(d) Unconstructive

28. Ques: A was trusty of one property from the amount of trust he purchase some land for his brother B , B put this land as mortgage to C, does C is responsible in this fruad?

(a) **No**
(b) Yes
(c) No one is responsible
(d) Both responsible

29. Ques: From below, which interest is not transferrable ?

(a) Interest on company
(b) **Interest on lease**
(c) Interest of Bank
(d) None

30. Ques: There is no need of written document for transfer of _____ property

(a) **Movable**
(b) Immovable
(c) Both
(d) None

31. Ques: Property which is not in Existence, can be transferred

(a) **No**
(b) Yes
(c) Both 1 & 2
(d) None

32. Ques: If you are trusty of any property and authority is given to you , than as a trusty can you transfer property of trust in your personal property?

(a) No
(b) **Yes**
(c) None
(d) Both 1 & 2

33. Ques: Easement apart from the_____heritage can't be transferred

(a) Undominant
(b) Right of re-entry
(c) **Dominant**
(d) None

34. Ques: A public of his , or the salary of a public officer, whether before or after it has become _____can't be transferred

(a) Non-payable
(b) **Payable**
(c) Salary in Arrear
(d) None

35. Ques: _____ allowed to military, naval, airforce and civil pensioners of government can't be transferred

(a) Salary and allowances
(b) Salary
(c) **Stipends and Pensions**
(d) Allowances

36. Ques: Under Section 6-c excepting _____property, easement rights can't be transferred

(a) **Dominant heritage**
(b) Nondominant heritage
(c) Serivient heritage
(d) Nonserivient heritage

37. Ques: A right of future maintenance is altogether

(a) Alienable
(b) **Inalienable**
(c) Transferrable
(d) Nontransferrable

38. Ques: Which provision effected of charges.

(a) **simple mortgage**
(b) english mortgage
(c) anomalous mortgage
(d) usufructuary mortgage

39. Ques: Does rule against perpetuity followd to personal contracts?

(a) **Yes**
(b) No
(c) Both A & B
(d) None

40. Ques: Does the water of rivers or seas are transferrable ?

(a) Yes

(b) No

(c) Both A & B

(d) None

41. Ques: Any person is capable enough to do contract, when he has right of _____ property

(a) Transferable

(b) Nontransferable

(c) Legal

(d) Illegal

42. Ques: Contingent interest is not …….

(a) Only heritable

(b) Only transferable

(c) Transferable & Heritable

(d) None of above

43. Ques: Which doctrine has been involved in the provision regarding condition precedent?

(a) Doctrine of Cy-pres

(b) Rule against Perpetuity

(c) Rule of Perpetuity

(d) Doctrine of Acceleration

44. Ques: Property can be transferred in the favour of Minor person?

(a) No

(b) Yes

(c) Both A & B

(d) None

45. Ques: In a gift, one person voluntarily without _____ transfer his ownership.

(a) Property

(b) Money

(c) Consideration

(d) None

46. Ques: In contract of sale, convenant of title is _____

(a) Expressed

(b) Implied

(c) Both A & B

(d) None

47. Ques: When "Transfer of Property Act" was not enacted in India, We have to rely on which law?

(a) English Law

(b) American Law

(c) Islamic Law

(d) Greek Law

48. Ques: “Transfer of Property Act” is subordinate to which law?
    (a) Criminal
    (b) Equity and Trust
    (c) Constitutional
    (d) Contract

49. Ques: The aim of “Transfer of property Act” is to complete the law related to what?
    (a) Bribe
    (b) Movable Property
    (c) Immovable Property
    (d) Cash Money

50. Ques: If Two persons transfers the property with mutual consent, what is it called as?
    (a) Transfer by act of parties
    (b) Transfer by will
    (c) Transfer by operation of law
    (d) None of above

51. Ques: If a person derives the property by deceased who made testament in avors of him, then it is called as?
    (a) Transfer by operation of law
    (b) Transfer by act of parties
    (c) Transfer by will
    (d) None of above

52. Ques: If transfer made from insolvency, forfeiture or sale in execution of a decree, what it is called as?
    (a) Transfer by act of parties
    (b) Transfer by operation of law
    (c) Transfer by will
    (d) None of above

53. Ques: “Transfer of Property Act” applies to whom?
    (a) One dead-one living parties
    (b) Two living parties
    (c) Above (a) & (b)
    (d) None of above

54. Ques: Which type of transfer does not covered by “Transfer of Property Act”?
    (a) By will
    (b) By Parties
    (c) By operation of law
    (d) None of above

55. Ques: What is not included in “Immovable Property”?
    (a) Standing timber, crops, grass
    (b) House
    (c) Land
    (d) All of above

56. Ques: Which right is recognised as “Immovable Property”?

(a) Right of Way
(b) Right to Royalty
(c) Right to worship
(d) Right to Redemption

57. Ques: Which right is not recognised as "Immovable Property"?
(a) Right of Worship
(b) Right of way
(c) Right to Redemption
(d) Right of Fishery

58. Ques: How many witnesses are necessary for attestation?
(a) Two
(b) One male-One female
(c) Both male
(d) Both female

59. Ques: From where the doctrine of "Constructive Notice" has developed?
(a) India
(b) France
(c) Greece
(d) Britain

60. Ques: Which interest cannot transferred?
(a) Gift
(b) Sell
(c) Mortgage
(d) Surrender of Lease

61. Ques: As per Transfer of Property Act, living person means …….
(a) Human Being
(b) Limited Comp any
(c) Partnership Firm
(d) All mention here

62. Ques: "Spes Successionis" Can not be transferred", This sentence is …….
(a) Absolutely True
(b) Absolutely False
(c) Partly True
(d) Partly False

63. Ques: "Contigent Interest can be transferred", This sentence is …….
(a) Partly True
(b) Partly False
(c) Absolutely True
(d) Absolutely False

64. Ques: Which is a not characteristic of vested interest…….
(a) Fulfillment of prior condition
(b) Transferable
(c) Heritable
(d) Not fulfil lment of condition

65. Ques: “Ostensible Owner is not real owner”, This Sentence is …….
(a) **Absolutely True**
(b) Absolutely False
(c) Partly True
(d) Partly False

66. Ques: “Transfer in favor of unborn person cannot be done”, This sentence is …….
(a) **Absolutely True**
(b) Absolutely False
(c) Partly True
(d) Partly False

67. Ques: Before giving benefit to unborn person, what can be made first?
(a) **Prior Interest**
(b) Subsequent Interest
(c) Equal Interest
(d) None

68. Ques: How long interest in favor of unborn person can be made?
(a) Youth
(b) Major
(c) **up to Minority**
(d) Old age

69. Ques: What is not included in exceptions to the rule against Perpetuities?
(a) **Transfer of property**
(b) Gift to religious institute
(c) Redemption of Contract
(d) Renewal of lease

70. Ques: How long the period of election can be?
(a) One month within the date of possession
(b) One month within the date of transfer
(c) One year within the date of possession
(d) **One year within the date of transfer**

71. Ques: Provisions of fraudulent transfer ……. any law relating to insolvency.
(a) **Does not affect**
(b) Does affect
(c) Partly affect
(d) None of above

72. Ques: Doctrine of …… is based on doctrine of equity of England.
(a) **Part Performance**
(b) Election
(c) Acceleration
(d) Cy-pres

73. Ques: “A contract for sale is not transfer of ownership”, This sentence is …….
(a) **Absolutely True**
(b) Absolutely False

(c) Partly True
(d) Partly False

74. Ques: Property which is not legally transferable if same has Transferred, what is its effect?
(a) Contract is voidable
(b) Contract is legal
(c) Contract is void
(d) No effect.

75. Ques: What is aim of sell?
(a) Transfer of Commodity
(b) Transfer of Ownership
(c) Transfer of commodity property
(d) Transfer of Property

76. Ques: What is aim of Exchange?
(a) Transfer of Ownership
(b) Transfer of commodity-property
(c) Above (a) & (b) both
(d) None of above

77. Ques: What can be transferred in the mortgage?
(a) Transfer of Loan
(b) Transfer of Owne rship
(c) Transfer of Interest
(d) Transfer of Possession

78. Ques: How many types of mortgage can be?
(a) Two
(b) Six
(c) Five
(d) Four

79. Ques: Which property can be transferred in mortgage?
(a) Immovable Property
(b) Movable Property
(c) Immovable – mov able Property
(d) Rented property

80. Ques: In which type of mortgage the property is transferred Absolutely?
(a) English Mortgage
(b) Simple Mortgage
(c) Usufructuary Mortgage
(d) Anomalous Mortgage

81. Ques: What can be transferred in ease?
(a) Transfer of Loan
(b) Transfer of Interest
(c) Transfer of Ownership
(d) Transfer of Possession

82. Ques: The person who mortgages the property is known as……

(a) Mortgagee
(b) **Mortgagor**
(c) Co-owner
(d) Executor

83. Ques: The transferee of property is known as…….
(a) Mortgagor
(b) **Mortgagee**
(c) Co-owner
(d) Executor

84. Ques: What a minor can become?
(a) Administrator
(b) Mortgagor
(c) **Mortgagee**
(d) None of above

85. Ques: In which section provision of gift may be suspended or revoked
(a) sec. 124
(b) sec. 122
(c) **sec. 126**
(d) sec. 128

86. Ques: In which section provision of transfer of actionable claims ?
(a) **sec. 130**
(b) sec. 131
(c) sec. 129
(d) sec. 128

87. Ques: Who is in possession of property in simple mortgage?
(a) **Mortgagor**
(b) Mortgagee
(c) Co-owner
(d) Administrator

88. Ques: In which type of mortgage the immovable property Ostensibly sell?
(a) **Mortgage by Conditional sale**
(b) Simple Mortgage
(c) English Mortgage
(d) Usufructuary Mortgage

89. Ques: In which type of mortgage the possession of property is delivered?
(a) **Usufructuary Mortgage**
(b) Simple Mortgage
(c) English Mortgage
(d) Anomalous Mortg age

90. Ques: Doctrine of Part Performance is applicable to what?
(a) Only Oral contract
(b) **Only written contract**
(c) Oral-Written contract
(d) None of above

91. Ques: Who can use the doctrine of Part Performance?
    (a) Both defendant-Plaintiff
(b) Only Plaintiff
    (c) Only defendant
    (d) Unborn Person

92. Ques: Mortgage by deposit of title deeds is also called as …….
    (a) Equitable Mortgage
    (b) Simple Mortgage
    (c) Usufructuary Mortgage
    (d) Anomalous Mortgage

93. Ques: What is intention to deposit of title deeds in equitable mortgage?
    (a) Create a security
    (b) Take a possession
    (c) Take a consideration
    (d) Take an interest

94. Ques: How the mortgage ca be made?
    (a) By Gift Deed
    (b) By Sale Deed
    (c) By Lease Deed
    (d) By Registered instrument

95. Ques: Which right give of property by consideration lesser to lessee, lease means contract of transfer property.
    (a) ownership
    (b) to enjoy
    (c) 1 and 2
    (d) None

96. Ques: Which type of interest is not complete in transfer of property, so lease is not possible?
    (a) Praposal
    (b) transfer
    (c) accept
    (d) None

97. Ques: A lease to a minor is _____
    (a) void
    (b) voidable
    (c) valid
    (d) None

98. Ques: Which time duration, a lease can be made
    (a) Periodic
    (b) fixed time
    (c) any

(d) Perpetuity

99. Ques: If create perpetuity lease, so which power not expired of lessor
(a) to enjoy
(b) Increase rent
(c) (a) and (b)
(d) None

100. Ques: Which type of consideration to give leassor by lessee in lease contract.
(a) Premium or rent
(b) sale
(c) Rent
(d) premium

101. Ques: In which section provision under the transfer of property act exemption of leases for agricultural purposes.
(a) sec.111
(b) sec. 115
(c) sec. 117
(d) sec.116

102. Ques: Termination of lease ,in which section provision under the transfer of property act.
(a) sec. 108
(b) sec. 114
(c) sec. 111
(d) sec. 110

103. Ques: When two persons mutually transfer the ownership of another, neither thing or both things being money only, the transaction is called_____
(a) gift
(b) sale
(c) an exchange
(d) None

104. Ques: In which section provision under the transfer property Right of party deprived of thing received in exchange
(a) sec.117
(b) sec. 119
(c) sec. 120
(d) None

105. Ques: Rights and liabilities of parties of to an exchange compare with whom ?
(a) buyer
(b) seller
(c) seller and buyer
(d) None

106. Ques: If the donne dies before acceptance, the gift is _____
(a) valid

(b) voidable
(c) void
(d) None

107. Ques: What should be not made transfer of gift.
(a) voluntarily transfer
(b) consideration
(c) acceptance
(d) existence of the property

108. Ques: In which section provision of incapacity of officers connected with courts of justice
(a) sec. 135
(b) sec. 136
(c) sec. 138
(d) None

109. Ques: In which section provision of assignment of rights under policy of insurance against fire
(a) sec. 131
(b) sec. 135
(c) sec. 136
(d) None

110. Ques: "Once a mortgage, always a mortgage". This sentence is …….
(a) Absolutely False
(b) Absolutely True
(c) Partly True
(d) Partly False

111. Ques: Who can make suit for redemption?
(a) Mortgagee
(b) Mortgagor
(c) Both (a) & (b)
(d) None

112. Ques: The right of redemption will be considered as a clog on redemption and will be null and ……
(a) Voidable
(b) Void
(c) Partial Void
(d) None

113. Ques: If mortgage property subsequently sold to the same mortgagee, it can be ……
(a) Voidable
(b) Void
(c) Legal
(d) None of above

114. Ques: A suit to obtain a decree that a mortgagor shall be absolutely debarred of is right to redeem the mortgaged property is called……..
(a) Implied redemption
(b) Foreclosure or sale

(c) Redemption
(d) None

115. Ques: The court for appointment of a receiver and any person appointed to have been duly appointed by the……..
(a) Mortgagor
(b) Mortgagee
(c) Both (a) & (b)
(d) None

116. Ques: Which purposes can for mortgagee accession mortgaged property.
(a) sale
(b) security
(c) charge
(d) None

117. Ques: A person who has advanced to a mortgager, money with which the mortgage has been redeemed is called……
(a) clog on redemption
(b) redemption
(c) subrogation
(d) None

118. Ques: A charge does not contemplate any transfer of …… in the immovable property.
(a) possession
(b) ownership
(c) interest
(d) None

119. Ques: Which Type can be waiver of forfeiture?
(a) by any other action on intention to the part of the lessor shouing an intention to threat the lease as subricsting
(b) by acceptance of rent while has become due since the forfeiture
(c) by distress for such rent
(d) any one

120. Ques: Rights and Liabilities of lessor and lessee, in which section provision under the transfer of property act.
(a) sec. 107
(b) sec. 110
(c) sec. 105
(d) sec. 108

121. Ques. In which section provision under the transfer of property act exemption of leases for agricultural purposes.
(a) sec. 115
(b) sec. 117
(c) sec.111

(d) sec.116

122. Ques. In which section provision of gift may be suspended or revoked
(a) sec. 122
(b) sec. 124
(c) sec. 128
(d) sec. 126

123. Ques. The right of redemption will be considered as a clog on redemption and will be null and…….
(a) Voidable
(b) Partial Void
(c) None
(d) Void

124. Ques. A person who has advanced to a mortgager, money with which the mortgage has been redeemed is called……
(a) redemption
(b) subrogation
(c) clog on redemption
(d) None

125. Ques. In which type of mortgage the possession of property is delivered?
(a) Simple Mortgage
(b) Usufructuary Mortgage
(c) English Mortgage
(d) Anomalous Mortgage