Unit-5

SALE OF GOODS ACT 1930

The sale of goods act, 1930 governs the contracts relating to sale of goods. It applies to the whole of India except the State of Jammu & Kashmir. The act first came into force on the 1st of July 1930. The act contains Sixty-Six sections. A few amendments in the act were made by Sale of Goods (Amendment) act 1963.

CONTRACT OF SALE:

A contract of Sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price. The term contract of sale is a generic term and includes both a sale & an agreement to sell.

Sale and Agreement to sell:

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer (i.e. at once) the contract is called "a sale" but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called as "an agreement to sell". An agreement to sell becomes a sale when the time elapses or the condition, subject to which the property in the goods is to be transferred, is fulfilled.

In a contract of sale:

- There must be an offer to sell the goods at a price and subject, sometimes, to certain terms and conditions. This is usually a quotation.
- There must be an acceptance to buy (usually a purchase order)

But. If a supplier sends a quotation and the Purchase order stipulates conditions at variance with the term in the quotation, it is a counter offer and the supplier must accept the revised terms to give them the legal status of the contract.

The contract may provide for:

- Immediate delivery of the goods or
- Immediate payment Or Both.
- Delivery or payment by installments.
- Delivery or payment or both at a future date.

Essentials of a contract of sale:

1.)Two Parties: There must be two distinct parties i.e. a buyer & a seller, as a person cannot buy his own goods to affect a sale and they must be competent to contract.

2.)Goods: Goods means every kind of movable property other than actionable claims and money and includes stock & shares, growing crops, grass, and things attached to or forming a part of the land which are agreed to be severed before sale or under the contract of sale.

Goodwill, trademarks, copy-rights, patents rights, water, gas, electricity, decree of a court of law are all regarded as goods.

Goods are classified into 3 types:

I--Existing goods

Goods which are physically in existence and which are in seller's ownership and/or possession at the time of entering the contract of sale are called existing goods. Where seller is the owner & has a general property in them and if he is an agent, he has the right to sell them. Existing goods are further classified into 2 types:

a) Specific goods:

Goods identified and agreed upon at the time of the making of the contract of sale are called Specific Goods.

e.g Where A agrees to sell B a particular radio bearing a distinctive number there is a contract of sale of specific or ascertained goods.

b) Unascertained goods:

Goods that are not separately identified or ascertained at the time of making of the contract are known as unascertained goods.

e.g. If A agrees to sell to B one bag of sugar out of the lot of one hundred bags lying in his go down, it is a sale of unascertained goods because it is not known which bag is to be delivered..

II--Future goods

Goods that are to be manufactured, produced or acquired by the seller after the making of the contract of sale are called future goods.

e.g. If A Agrees to sell B all the milk that his cow may yield during the coming year, this is a contract for the sale of future goods.

III--Contingent goods

Goods, the acquisition of which by the seller depends upon an uncertain contingency are called contingency goods. If A agrees to sell to B a specific rare painting provided he is able to purchase it from its present owner this is a contract of sale of CONTINGENT GOODS.

3.)Price: The consideration for contract of sale must be money consideration called the "Price". If goods are sold or exchanged for other goods, the transaction is barter, governed by the transfer of property act. But if goods are sold partly for goods and partly for money, the contract is one of sale.

- The price may be fixed, or
- The price may be left to be fixed in a manner agreed upon, or
- The price may be determined in the course of dealing between the two parties or
- May be fixed as per the valuation of a third party.

If the price is not fixed as per these provisions, the buyer " shall pay the seller a reasonable price".
e.g A agrees to exchange with B 100 kegs of barley at Rs 60/kg for 52 bullocks valued at Rs 300 per bullock & pay the difference in cash. Held the contract was a contract of sale.

4.)Transfer of General Property: There must be a transfer of general property as distinguished from special property in goods from the seller to the buyer. If A owns certain goods, he has general property in the goods. If he pledges them with B, B has special property in the goods.

e.g if A owns certain goods , B has general property in the goods. If he pledges them with B,B has special property in the goods.

5.)Essential Elements of a Valid Contract: All essential elements of a valid contract must be present in the contract of sale.

Main Differences between Sale and Agreement to Sell

No	Sale	Agreement to Sell
1	Meaning: *where the Property immediately transferred from seller to buyer, it is called 'Sale'.*	Meaning: *where the transfer of property in goods is to take place in future, from seller to buyer is called 'Agreement to Sell'.*
2	Definition: *Sale can be defined as "transfer of ownership in the goods by the seller to buyer in exchange of price paid or promised or partly paid and partly promised.*	Definition: *in case where the seller agrees with the buyer to transfer the title of ownership on a future date upon satisfying certain condition is called as 'Agreement to Sale'.*
3	Example: *'X' sold 10 bags of Wheat to 'Y' against payment of Rs. 3,000.*	Example: *'X' agrees to sell 10 bags of wheat to 'Y' for Rs.3,000 after gettingthe stock.*
4	*In contract of sale property in goods transfers from seller to buyer immediately*	*In agreement to sell, property in goods does not transfer immediately*
5	*Contract of sale is an executed contract*	*Agreement to Sell is an executory contract*
6	*It creates right in rem*	*It creates rights in personam*
7	*The seller can sue the buyer for case of breach of contract.*	*The seller can sue the buyer only for damages but not for the price.*
8	*Sale is liable for the Sale Tax.*	*Agreement to sale is not liable for the Sale Tax.*
9	*Seller has no right of resale.*	*Seller has right of resale.*
10	*If the goods are destroyed, the loss is borne by the buyer even though the goods are in the possession of the seller.*	*The loss fall on the seller even though the goods are in the possession of the buyer.*

<u>CONDITIONS & WARRANTIES:</u>

Before a contract of sale is entered into, a seller frequently makes representations or statements, which influence the buyer to clinch the bargain. Such representations or statements differ in character and importance. Whether any statement or representation made by the seller with reference to the goods is a stipulation forming part of the contract or is a mere representation forming no part of the contract, depends on the construction of the contract. If there are no such representations then the concept of " buyer beware" applies. This means the buyer gets the goods as they come and it is no part of the seller's duty to point out the defects in the goods to the buyer.

A stipulation in a contract of sale with reference to goods may be a condition or a warranty.

Condition: A condition is a stipulation, which is essential to the main purpose of the contract. It goes to the root of the contract. Its non fulfilment upsets the very basis of the contract, it is defined as “an obligation which goes so directly to the substance of the contract, or in other words so essential to its very nature, that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all.

Warranty: A warranty is a stipulation, which is collateral to the main purpose of the contract. It is not of such vital importance as a condition. It is defined as “ an obligation, which, though it must be performed, is not so vital that a failure to perform it goes to the substance of the contract”. If there is a breach of a warranty, the aggrieved party can only claim the damages, as it has no right to treat the contract as repudiated.

Whether a stipulation is a contract of sale is a condition or a warranty depends on each case on the construction of the contract as a whole.

<u>Express and Implied Conditions & Warranties:</u>

Conditions & Warranties may be either express or implied. They are said to be express when at the will of the parties they are inserted in the contract and they are said to be implied when the law presumes their existence in the contract automatically though they have not beed out into it in express words. Implied Conditions & Warranties may however be negative or varied by express agreement, or by course of dealing between the parties or by usage of trade.

Implied Conditions:

Unless otherwise agreed the law incorporates the following implied conditions:

1.) Condition as to Title:

The first implied condition on part of the seller is that, in the case of a sale, he has the right to sell the goods at the time when the property is to pass. As a result of this condition if the sellers title turns out to be defective the buyer is entitled to reject the goods and the recover the price.

e.g. A purchased a car from B who had no Title to it. A used the car for several months. After that, the two owners spotted the car & demanded it from A. Held, that A was bound to hand over that car to its true owner & that A could successfully sue B the seller without Title, for the recovery of the purchase price even though several months had passed.

2.) Condition in a sale by description:

Where there is a contract of sale of goods by description, there is an implied condition where the goods shall correspond to the with the description. If the article tendered is different in any respect, it is not the article bargained for, the other party is not bound to take it”. Further the fact that the buyer has examined the goods, will not affect his rights to reject the goods, if the deviation of the goods from the description is such which could not have been discovered by casual examination i.e. if the goods show any latent defects. a ship was sold by description viz , “copper fastened vessel” but actually it was partly copper fastened. Held, that the goods did not correspond to description & hence could be returned or else if the buyer took the goods, he could claim damages for breach. This was even though the ship was sold subject to all faults & defects

3.) Condition in a sale by sample: When under a contract of sale, foods are supplied according the a sample agreed upon, the implied conditions are**:**

a. The bulk sample shall correspond to the sample in quality
b. The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
c. The goods shall be free from any defect, rendering them Un merchantable, which would not be apparent on reasonable examination of the sample.

e.g. A certain shoes were sold by sample by the French Army. The Shoes were found to contain paper not discoverable by ordinary inspection. Held, the buyer was entitled to the refund of price plus damages.

4.) Condition in a sale by sample as well as by description:

There is an implied condition that the bulk of the goods shall correspond both with the sample and with the description. If the goods supplied correspond only with the sample and not with the description Or vice- versa, the buyer is entitled to reject the goods. The bulk of the goods must correspond with both.

A agreed to sell to B some oil describes as "Foreign refined rape oil warranted only equal to sample". the goods tendered were equal to sample but contained an admixture of Hemp oil. Held,B could reject the goods.

5.) Condition as to fitness or quality:

Normally there is no implied condition or warranty as to quality or fitness for any particular purpose of goods supplied, the rule of law being let the "buyer beware". But an implied condition is deemed to exist, if the following conditions are satisfied:

a. The buyer, expressly or impliedly, should make known to the seller the particular purpose for which the goods are required.
b. The buyer should rely on the seller's skill or judgment. And
c. Goods sold must be of a description which the seller deals in the ordinary course of his business, be it a manufacturer or not.

A approached B, a motor car dealer & asked for a comfortable car for touring purpose recommended his Bugatti car, a Trade name & also showed a specimen of the same. A there upon ordered for a bugatti car, which was supplied. The car proved to be unsuitable for touring purposes. A claimed to reject the car & recover back the purchase money paid by him. It was held that he was entitled to do so because, while ordering that car by its trade name he was still relying on the sellers skill & judgment as regards the suitability of the car for the specific purpose.

6.) Condition as to merchantability:

This condition is implied only when the sale is by description; the following conditions are to be met:

a. The seller should be a dealer in the goods of that description, whether he is the manufacturer or not.
b. The buyer must not have any opportunity of examining the goods, or there must be some latent defect in the goods, which would not be apparent on reasonable examination of the same.

e.g. Where A purchases a certain quantity of black yarn from B, a dealer in yarn, and finds if damaged by white ants, the condition as to merchantability has been broken and A is entitled to reject as un merchantable.

7.) Condition as to Wholesomeness:

This condition is implied only in a contract of sale of eatables and provisions. In such cases the goods supplied must not only answer to description and be merchantable but must also be wholesome i.e. free from any defect, which render them, unfit for human consumption.
e.g. A bought milk from B a dairy owner. The milk was contaminated with germs of typhoid fever, A's wife on taking the milk became infected and died of it. B was held liable in damages.

Implied Warranties:

Unless otherwise agreed the law also incorporates into a contract of sale of goods the following implied warranties:

1.) **Warranty of Quiet Possession:**

In every contract of sale, the first implied warranty on the part of the seller is that "the buyer shall have & enjoy quiet possession of the goods." If the quiet possession of the buyer is in anyway disturbed by a person having superior right than that of the seller, the buyer can claim damages from the seller.
e.g. The plaintiff a lady purchased a second hand typewriter from the defendant. She thereafter spent some money on its repairs and used it for some months. Unknown to the parties, the typewriters was a stolen one and the plaintiff was compelled to return the same to its true owner. She was held entitled to recover from the seller's for the breach of the warranty, damages reflecting not merely the price paid, but also the cost of repair.

2.) **Warranty of freedom from encumbrances:**

Where the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made" If the goods are afterwards found to be subject to a charge and the buyer has to discharge the same, then there is a breach of warranty & buyer is entitled to damages.

e.g. A, the owner of the watch, pledges it with B. After a week obtains possession of the watch from B for some limited purpose and sells it to C. B approaches C and tells him about the pledge affair. C has to make payment of the pledge amount to B. There is breach of this warranty and C is entitled to claim compensation from A.

3.) Warranty of disclosing the dangerous nature of goods to the ignorant buyer:

The third implied warranty on the part of the seller is that, if the goods sold are of dangerous nature, he will warn the buyer of the probable danger. If there is a breach of warranty the buyer is entitled to claim compensation for the injury caused to him.
e.g. A purchases a Tin of disinfectant powder from B. B knows that the lid of the tin is defective and if it is opended without special care it may be dangerous, but tells nothing to A. A opens the tin in the normal way, whereupon the disinfectant power flies into her eyes and causes injury. B is liable in damages to A as he should have warned A of the probably danger.

Consumer Protection Act-1986

The Consumer Protection Act, implemented in 1986, gives easy and fast compensation to consumer grievances. It safeguards and encourages consumers to speak against insufficiency and flaws in goods and services. If traders and manufacturers practice any illegal trade, this act protects their rights as a consumer. The primary motivation of this forum is to bestow aid to both the parties and eliminate lengthy lawsuits.

This Protection Act covers all goods and services of all public, private, or cooperative sectors, except those exempted by the central government. The act provides a platform for a consumer where they can file their complaint, and the forum takes action against the concerned supplier and compensation is granted to the consumer for the hassle he/she has encountered.

According to the Act, a consumer's definition is who:

- buys goods or hires any service
- uses the goods or hires any service with the approval of any buyer or service provider
- uses goods and services to earn a livelihood by self-employment.

The salient features of Consumer Protection Act are-

- The Consumer Protection Act covers all public, private and cooperative sector.
- This applies to all the goods and services until and unless the Union government exempts it.
- Provisions of the Consumer Protection Act are compensatory in nature.

Consumer Rights and Responsibilities:

The Rights of the Consumer

- **Right to Safety-** Before buying, a consumer can insist on the quality and guarantee of the goods. They should ideally purchase a certified product like ISI or AGMARK.
- **Right to Choose-** Consumer should have the right to choose from a variety of goods and in a competitive price.
- **Right to be informed-** The buyers should be informed with all the necessary details of the product, make her/him act wise, and change the buying decision.
- **Right to Consumer Education-** Consumer should be aware of his/her rights and avoid exploitation. Ignorance can cost them more.
- **Right to be heard-** This means the consumer will get due attention to express their grievances at a suitable forum.
- **Right to seek compensation-** This defines that the consumer has the right to seek redress against unfair and inhumane practices or exploitation of the consumer.

The Responsibilities of the Consumer

- **Responsibility to be aware** – A consumer has to be mindful of the safety and quality of products and services before purchasing.
- **Responsibility to think independently**– Consumer should be well concerned about what they want and need and therefore make independent choices.
- **Responsibility to speak out-** Buyer should be fearless to speak out their grievances and tell traders what they exactly want
- **Responsibility to complain-** It is the consumer's responsibility to express and file a complaint about their dissatisfaction with goods or services in a sincere and fair manner.
- **Responsibility to be an Ethical Consumer-** They should be fair and not engage themselves with any deceptive practice.

How to File a Complaint?

- Within two years of purchasing the product or services, the complaint should be filled.
- In the complaint, the consumer should mention the details of the problem. This can be an exchange or replacement of the product, compensation for mental or physical torture. However, the declaration needs to be reasonable.
- All the relevant receipts, bills should be kept and attached to the complaint letter.
- A written complaint should be then sent to the consumer forum via email, registered post, fax or hand-delivered. Acknowledgement is important and should not be forgotten to receive.
- The complaint can be in any preferred language.
- The hiring of a lawyer not required.
- All the documents sent and received should be kept.

Redressal: Three Tier System Under Consumer Act

- ***District Forum**:* These fora are set by the district of the state concerned in each district wherein it consists of President and two members of which one should be a woman and is appointed by the State Government. In this, the complaining party should not make a complaint more than 20 Lacs and once the complaint is filed the goods are sent for testing and if they found defective the accused party should compensate and if the party is dissatisfied can make an appeal with state commission within 30 days.

- ***State Commission:*** This is set up by each state It consists of President and two members. Complains should be at least 20 lacs and exceed not more than 1 crore. The goods are sent for testing and if found defective are asked for replacement or compensation. If not satisfied can make an appeal within 30 days in front of the National Commission.

- ***National Commission:*** Consist of President and 4 members. The complaint must exceed an amount of 1 crore. The goods are sent for testing and if found defective are asked for replacement or compensation

Competition Act, 2002

Introduction to Competition Act, 2002:

Competition Law for India was triggered by ***Articles 38 and 39*** of the Constitution of India. These Articles are a part of the ***Directive Principles of State Policy.*** Based on the Directive Principles, the first Indian competition law was enacted in 1969 and was labeled the MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969 (MRTP Act).

Articles 38 and 39 of the Constitution of India mandate, inter alia, that 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, and the State shall, in particular, direct its policy towards securing

1. That the ownership and control of material resources of the community are so Distributed as best to sub serve the common good; and
2. that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

One of the ***main goals*** of the MRTP Act was to ***encourage fair play*** and ***fair deal*** in the market besides promoting healthy competition. They seek to afford protection and support consuming public ***by reducing*** Monopolistic, Restrictive and Unfair Trade Practices from the market

Globalization has the fundamental attributes of relying significantly in the market forces, ensuring competition and keeping market functioning efficiently.

In the ***Pre-1991*** Reforms period, India's planned strategic and economic development stressed the broad policy objectives of

1. The development of an industrial base with a view to achieving self reliance and
2. The promotion of social justice

The MRTP Act has become ***obsolete*** in certain areas in the light of international economic developments relating to competition laws and hence focus was shifted from ***curbing monopolies*** to ***promoting competition***

Central government appointed high level committee under the chairmanship of Mr. Raghavan, the aim of the committee was to formulate the competition law in tune with economic reforms and international development. The committee presented its report on May 2000, The draft competition law was presented on November 2000. After certain amendments the parliament passed the new law, called completion Act 2002. The act came into force on January 2003

The Act was amended by the Competition Amendment Act, 2007 and became fully operational from **1 June 2011**,

- The provisions relating to competition advocacy was notified ***in 2003***,
- The provisions regulating anti-competitive agreements and abuse of dominance were notified with effect from ***20 May 2009***
- The provisions regulating mergers and acquisitions were notified on **June 2011**

Both the Competition Commission of India (CCI) (which administers the law) and the Competition Appellate Tribunal (CAT) are operational.

The Framework of Competition Act 2002 has essentially four compartments:

1. Anti- Competitive Agreements [Section 3]
2. Abuse of Dominance [Section 4]
3. Combination Regulation [Section 5 & 6]
4. Competition Advocacy [Section 49]

Difference between MRTP ACT and Competition Act

Basis	MRTP	Competition ACT
Base	It is based upon Pre- Liberalization	It is based upon Post-Liberalization
Focus	Curbing Monopolies	Promoting Competition
Registration of Agreements	Compulsory registration of agreements relating to restrictive trade practices	It does not provide for registration of agreement
Dominance	Under MRTP, Dominance itself is bad	Under Competition Act, Dominance per se is not but only abuse of dominance is considered bad
Provisions for combination	Does not contain provisions of combination	Competition Act contain provisions of combination
Penalties	No Penalties for offences	Penalties for offences
Principles	Rule of law approach	Rule of reason approach
Competition Advocacy	No competition Advocacy role for the MRTP	CCI has competition advocacy role
Exclusion	Blanket exclusion of intellectual property rights	Exclusion of intellectual property rights, but unreasonable restriction covered
Provision for Unfair Trade practices	Provisions was there in MRTP Act (Section 36A)	Not included in the new completion Act and now under purview of Consumer protection Act

The Competition Act, 2002 was enacted to enacted to fill the gaps left open by the MRTP Act — certain offending trade practices such as

1. abuse of dominance,
2. cartels,
3. bid rigging,
4. collusive agreements,
5. price fixing,
6. Predatory pricing, etc.

Salient Features of the Competition Act, 2002/ Objective of the Act

- Facilitate & Foster Competition
- Establish a Commission to prevent practices having adverse effect on competition
- Promote and sustain competition in markets
- Protect the interests of consumers
- Ensure freedom of trade in the Indian markets

Duties of the Commission [Sec 18]

- Eliminate Practices that have an adverse effect on competition
- Promote & Sustain Competition
- Protect the interest of Consumers, economy and nature

Scope or Focus of the Act

1. Enquire into Anti Competitive Agreements [Section - 3]
2. Enquire Abuse of Dominant Position [Section – 4]
3. Regulation of Combination & Mergers [Section – 5 to 6]
4. Undertake Competition Advocacy [Section – 49]

Exclusion from Jurisdiction

1. Those right protected as intellectual property
2. Agreement exclusively for experts

Anti-competitive agreements [Section 3]

Any agreement for goods or services which has ***appreciable adverse effect on competition*** in India is ***prohibited***. These kinds of agreements are known as anti-competitive agreements.

Anti-competitive agreement of entered into shall be void

Section 3 of the Act states that no enterprise shall enter into:

1. Any agreement With respect to ***production***, **supply** ***distribution***, ***storage***, ***acquisition*** or ***Control of goods/provision of services*** which is anti-competitive is prohibited and void.
2. ***Such agreements must cause or be likely to cause appreciable adverse effect on competition (AAEC) in a relevant market in India.***

The relevant market may be a geographical or a products market.

There are two kinds of agreements

1. Horizontal agreements
2. Vertical agreements.

Horizontal agreements

They are Agreements between Parties in the same line of production. Example - Agreement between Manufactures, Agreement between Distributors.

Horizontal agreements are presumed to have AAEC if they:

1. Directly or indirectly determine purchase or sale prices
2. Limit or control output, technical development, services etc.
3. Share or divide markets
4. Indulge in rigging or collusive bidding

Cartels prohibited (Use the same definition Cartel and Horizontal Agreement)+ Add

1. **Agree to limit,**
2. Control or attempt to control production, distribution, sale or price

Types of Horizontal Agreements

1) **Price Fixing Agreement**
   a) Agreement to raise or stabilize price
   b) Establish uniform discount or eliminate discount
   c) Set uniform price as Starting point for negotiation
   d) Discontinue free service
   e) Impose Mandatorily surcharge
   f) Restrict price advertising

2) **Facilitating practices**

   This include agreements that make it easier for competitors to collectively exercise market power, and to avoid competing with each other

   Eg- Agreements to share information

   Sellers agrees either to meet any price, the buyer is able to obtain from another supplier or release the buyer to purchase from another seller

3) **Quiet Life Agreements**

   They are Agreements that restrict competition by free competitors form some significant aspect of competition

   Eg- Agreement not to advertise Agreements to limit business hours

4) **Group Boycotts**

   These are agreements among competitors not to deal with other competitors, suppliers' distributors or retailers

5) **Trade Associations**

Vertical Agreements

Vertical agreement are those agreements between Non-Competition undertaking operating at different levels of manufacturing and distribution process

EX- , the agreement between manufacturers of components , manufactures of products,

between producers and whole- sellers or between producers, whole sellers and retailers
They are prohibited if such agreements cause or are likely to cause AAEC

Types of Vertical Agreements

1. **Tie-in arrangement**

   Agreement between manufacturer and distributor not to sell manufactures product at or above a price floor at or below a price ceiling (e.g. requiring a purchaser of goods to purchase some other goods as condition of such purchase)

2. **Exclusive supply arrangement**
   Agreement restricting the purchase in course of trade from acquiring the goods of trade from acquiring the goods of any other seller
   (E.g. restricting a purchaser in course of his trade from dealing in any goods other than those of the seller)
3. **Exclusive distribution arrangement**
   Agreement to limit or restrict the output or supply of any goods to ant market or area (e.g. limiting/restricting supply of goods or allocate any area or market for sale of goods)
4. **Refusal to deal**
   (E.g. restricting by any method any person/classes of persons to whom goods are sold)
5. **Resale price maintenance**
   (E.g. selling goods with condition on resale at stipulated prices)

ENVIRONMENT (PROTECTION) ACT-1986

Introduction

Man has tried to take nature to a considerable extent and his endeavor to conquer nature has succeeded. The concern over the environment has grown as the quality is degrading. It has been evidenced by increasing pollution; the loss of biodiversity, loss of vegetal cover, growing risks of environmental accidents and also the harmful chemicals in the ambient atmosphere has possessed a threat to the environment.

Due to its growing risks, various legislations are being propounded by the government. Various Acts related to a specific type of pollution have been passed in the India legislature. The most important statute is the Environmental Protection Act, 1986, as it is the general legislation for the protection of the environment.
It was enacted under Article 253 of the Indian constitution and the expression in the say of environmental quality was taken at the United Nation Conference on the Human Environment held at Stockholm in June 1972. The government of India strongly voiced against the environmental concerns and further passed many Acts related to the environment.

Objectives

The **Environmental Protection Act, 1986 (EPA)** was passed with the following objects:
(i) It was enacted to implement the decisions which were made at the United Nation Conference on the Human Environment held at Stockholm in June 1972.

(ii) Creation of authority for government protection.
(iii) Coordinating the activities of various regulating agencies which is done under the existing law.
(iv) The main task is to enact general laws for environmental protection, which could be unfolded in areas of severe environmental hazards.
(v) Providing deterrent punishment to those who inculcate in endangering the human environment, safety and health.
(vi) The main goal for the environment should be sustainable development and it can be regarded as one of the goals for Environment Protection Act, 1986.
(vii) Sustainable development includes achieving the object and the purpose of the act as well as the protection of life under Article 21 of the Indian Constitution.

Scope and commencement of the Act

The **Environment Protection Act, 1986** extends to whole India and it came into force on 19th November.
Section 2 of the **Environmental protection Act, 1986 (EPA)** deals with some of the information about the definition of the Act and these definitions are as follows:
"Environment" the word environment includes water, air, land and also the inter-relation between their existences. It also includes human beings and other living creatures such as plants, micro-organisms and property.
"Environmental Pollutants" means any substance in solid, liquid or gaseous form which in consideration is injurious to the health of living beings.
"Handling" means any substance which is in the relation of being manufactured, processed, collected, used, offered for sale or like of such substance.
"Environmental Pollution" includes the presence of environmental pollutants in the environment.
"Hazardous substance" includes the substance or the preparation by which the physical-chemical property is liable to harm the human beings or other living creatures such as plants, microorganisms and the property.
"Occupier" is in the relation of factory or any other premises which means a person who has control over the affairs of it.
From the above definitions given the Environmental protection Act tends to cover a wide range of matters related to the environment protection.

Power of the Central government for measures to protect and improve the Environment:-

It is the power vested in the central government that they can take any reasonable and valid steps and measures for the purpose of the protection and improvement of the quality of the environment. These measures are taken for the prevention, control and abatement of environmental Pollution.
Such measures may include measures with respect to all namely as follows:

1. Laying down the standards for the quality of the standards of the environment.
2. Coordination of actions which are obliged to the state officers and other authorities under any law.
3. Execution and proper planning of the worldwide national programme for the prevention, controlling and the abatement of environmental pollution.

4. Restrictions to be applied in any of the industries, process and any operation shall be carried out.
5. It is the power and the duty of the government to lay down the procedure to carry forward safeguards for the prevention of many inevitable accidents which may inculcate in more environmental pollution.
6. Proposal of remedies should be put forward for the protection and prevention of further incidents.
7. Duty and power to lay down the procedures and safeguards to handle the hazardous substance.
8. Examination of manufacturing processes should be done, materials, substances which are likely to cause environmental pollution.
9. Power to inspect at various premises, equipment, material and the substances and power to direct the authorities for the prevention and control of environmental pollution.
10. To collect the dissemination in the respect of information related to environmental pollution.
11. Preparation of the manuals, codes, guides which are considered suitable enough for controlling environmental pollution.
12. One of the most important tasks is to establish the laboratories.
13. Serving other matters which are necessary for the central government to deal for the effective implementation of the Environmental Protection Act, 1986.

Under *Section 3* of the following act, the central government has the power to authorize or constitute other authorities for the accurate implementation of powers and duties which are mentioned above.

Section 3 of the Environmental Protection Act holds importance due to the fact of a better regulatory mechanism.

In the case of *Vellore Citizens' Welfare Forum v Union of India,* the Supreme Court has directed the central government to constitute the 'authority' for the implementation of powers under section 3(3). Thus, the Court directed while keeping in the notice about the degrading quality of the environment that authorities should implement the **'precautionary principle**' and '**pollution pay principle'**.

Power to give direction

The central government in the exercise of powers designated by the Act can issue the directions in writing to any of the person or any officer. They shall be bound to comply with these given directions. The powers to issue directions will include the power to direct which are as follows:

(i) The direction of closure, prohibition or the regulation of any industry and its operational process.

(ii) direction for the stoppage or regulation of the supply of electricity, including any other services.

The Environment (Protection) Rules, 1986

The rules of Environment protection came into force on 19th November 1986 and these rules provide for the following:

1. The standards of quality of air, soil and water for various areas and purposes of environment.
2. The standard set up to know about the limits of the environmental pollutants.
3. Rules include the procedure and safeguards needed to handle the hazardous substance.
4. Restrictions and some prohibitions on handling the hazardous substances in different areas and premise

5. The procedures and safeguards required for the prevention of accidents which may cause environmental pollution and also the remedies for it.
6. The prohibition and restrictions possessed on the location of industries in different areas.

Prevention, Abatement and Control of Environmental Pollution

Section 7 of the Environment Protection Act 1986 suggest that no person in the country shall be carrying any of the activity or operation in which there is a large emission of gases or other substances which may lead to excess environmental pollution.

Section 7 of the act provides certain standards that ought to be maintained in which it is a must that no person is allowed to damage the environment and if a person is found guilty for causing damage to the environment by polluting the pollution pay principle.

He can be asked for the 'exemplary damages' if he is found guilty of damaging the environment.

Section 8 provides that any person who is handling the hazardous substance needs to comply with the procedural safeguards.

If the emission is to a very large extent or is apprehended through an accident, the person responsible for it is obliged to mitigate from that place in order to reduce the environmental pollution.

He is also required to give an intimation to the higher authorities regarding the same and for that one receipt of remedies shall be required to prevent or to mitigate the environmental pollution.

In subsection (1), it is also provided that if a person willfully delays or obstructs the person designated by the central government, he will be charged guilty under this act.

Procedure to be followed for the legal proceedings under the Environmental Protection Act

The following procedure needs to be followed for the legal proceedings.

1. The notice must be delivered to the occupier or his agent and it must indicate the intention or the analysis of the issue of a particular case.
2. Samples of the extent of pollution to be checked must be taken in the presence of the occupier or the agent.
3. The sample should be sent directly to the laboratory without any delay in the process.
4. The sample should be kept in a container with a label on it and it should have the signature of both the occupier party and the person taking the sample.

The central government must recognise at least one or two laboratories under this act and the report of analysis can be used as evidence of the facts stated in any procedure done under this act.

Penalty for the Contravention of Rules and orders of this Act

As it was stated earlier that the most important goal of the environmental protection act is to provide for the punishment of the offence of endangering the human environment, safety and health.

Section 15 states that any person who is not complying to the provisions stated in this act and its failure or contravention will make him liable and punishable as the following:

1. In terms of imprisonment up to the extension of the time span of five years.
2. With fine which may extend to the term of one lakh rupee.
3. Or the liable person has to deal with both of the punishments.
4. If the contravention of the offence that continues for one year, the punishment can extend up to seven years.

Section 24 a provision that if any offence is punishable under the Environment Protection Act and also under other Act, then the person shall not be liable under the Environment Protection Act, 1986.
This particular section reduces the punishment extent as other Act includes lesser punishment.

Offences by the Companies and the Governmental Departments

Section 16 of the Environmental Protection Act, 1986 explains the principle of vicarious liability of the Incharge person such as directors, Managers and secretary etc for if the offence is committed by any company.
He is not held liable for the following:

1. If the offence is committed without his knowledge.
2. If he has taken diligent care to prevent the commission of the offence.

Illustration: If any company which is emitting some hazardous substance out of its industry and is taking care of the standard level of the harm produced to the environment and if the offence committed by the industry is not in knowledge of person taking the liability, then the person will not stand as liable.
There cannot be a liability on his part if he **proves** the following.

1. That the offence was committed without his knowledge.
2. If he has exercised the diligent care to prevent the commission of any offence.

Who can make a complaint?

A complaint can be filed by two parties:

1. The central government or any authority associated with the government.
2. Any person who has given the notice of complaint within the term of sixty days of the alleged offence or the has the intention to make the complaint to governmental authority or the central government.

Bars to the jurisdiction

The Act has barred the civil court to entertain any proceedings in respect of any action taken by the central government. Most of the cases in India, pertaining to Environmental Law have to come before the courts in the form of **Public Interest Litigation (PIL)** and can be filed in High Courts and Supreme Courts.

Conclusion

Though many other Acts related to Environment have been introduced to the Indian legislature but the **Environment Protection Act, 1986** has been drafted to cover all the aspects and problems of environment and hence, it is said to be beneficial to understand the provisions related to an environment specifically.

Foreign Exchange Management Act – FEMA

History of the Foreign Exchange Act

The **Foreign Exchange Management Act (FEMA), 1999** is landmark legislation in India that replaced the earlier **Foreign Exchange Regulation Act (FERA), 1973**. It was enacted to facilitate external trade, promote the orderly development of the foreign exchange market in India, and align Indian laws with the changing global economic environment. Here's an overview of the history:

1. Pre-FERA Era:

- Before independence, foreign exchange in India was regulated through wartime rules under the **Defence of India Rules, 1939**, and later under the **Foreign Exchange Regulation Act, 1947**, enacted after independence.
- These regulations were primarily restrictive and aimed at controlling foreign exchange to protect domestic resources.

2. FERA, 1973:

- The **Foreign Exchange Regulation Act, 1973** was introduced during a time of severe foreign exchange scarcity in India.
- Its main objectives were:
  - To conserve foreign exchange reserves.
  - To ensure proper utilization of foreign exchange in national interest.
- FERA was a highly restrictive and stringent law, with violations treated as criminal offenses. This was necessary to prevent capital flight and protect India's weak balance of payments situation.

3. Economic Liberalization and the Need for FEMA:

- By the late 1980s and early 1990s, India began to open up its economy to the world.
- The **1991 Economic Crisis** forced India to adopt liberalization measures, including significant changes in foreign exchange management.
- The rigid and punitive nature of FERA was seen as an impediment to economic growth, particularly for foreign investments and trade.

4. FEMA, 1999:

- To replace the outdated FERA, the **Foreign Exchange Management Act, 1999**, was introduced and came into effect on **June 1, 2000**.
- FEMA was designed to align with India's post-liberalization economic policies.
- Key changes under FEMA:
  - Shifted from a **regulatory approach** to a **facilitative framework**.
  - Reclassified foreign exchange violations as **civil offenses**, as opposed to criminal offenses under FERA.
  - Simplified the process for foreign investments, trade, and remittances.
- FEMA promotes ease of doing business while ensuring compliance with foreign exchange regulations.

5. FEMA's Role in Modern Economy:

- FEMA has been instrumental in boosting India's integration with the global economy.
- It governs areas like Foreign Direct Investment (FDI), External Commercial Borrowings (ECBs), remittances, and overseas investments.
- The Act allows the **Reserve Bank of India (RBI)** to play a central role in managing foreign exchange-related transactions.

Objectives of the Foreign Exchange Management Act (FEMA), 1999

The **Foreign Exchange Management Act (FEMA)** was enacted in 1999 to replace the restrictive **Foreign Exchange Regulation Act (FERA), 1973**. FEMA aims to promote a liberal, facilitative, and transparent regulatory framework for managing foreign exchange in India. Below are its primary objectives:

1. Facilitation of External Trade and Payments:

- FEMA seeks to simplify and streamline procedures related to foreign trade and cross-border payments.
- It ensures that businesses and individuals can conduct international transactions efficiently, thereby promoting global trade and commerce.

2. Promotion of Orderly Development of the Foreign Exchange Market:

- FEMA aims to develop a robust and transparent foreign exchange market in India.
- It encourages competition, enhances market efficiency, and minimizes volatility in exchange rates.

3. Integration with the Global Economy:

- FEMA provides a legal framework that aligns India's foreign exchange policies with global economic trends.
- It facilitates foreign investments (both inbound and outbound) to promote economic growth and integration with international markets.

4. Liberalization of Foreign Exchange Rules:

- FEMA replaces FERA's restrictive approach with a more liberalized and facilitative one.
- It enables the free flow of foreign exchange for permissible current and capital account transactions, such as investments, remittances, and external borrowings.

5. Conservation of Foreign Exchange Reserves:

- FEMA ensures the efficient utilization and conservation of India's foreign exchange reserves.
- It regulates the outflow of foreign exchange to maintain stability in the balance of payments and safeguard national interests.

6. Prevention of Illegal Transactions:

- FEMA establishes a framework to prevent unauthorized dealings in foreign exchange.
- It prohibits activities such as money laundering, hawala transactions, and misuse of foreign exchange for prohibited purposes like gambling or speculation.

7. Simplification of Compliance Procedures:

- FEMA simplifies the rules and reduces bureaucratic hurdles for individuals and businesses involved in foreign exchange transactions.
- It allows for easier approval processes for foreign trade, investments, and remittances.

8. Promotion of Foreign Investments:

- FEMA encourages **Foreign Direct Investment (FDI)** and **Foreign Portfolio Investment (FPI)** in India by simplifying regulations and creating an investor-friendly environment.
- It also supports Indian businesses in investing abroad.

9. Regulation of Capital and Current Account Transactions:

- FEMA distinguishes between **current account transactions** (trade, travel, education) and **capital account transactions** (investments, loans).
- It facilitates current account transactions while regulating capital account transactions to maintain financial stability.

10. Empowering the Reserve Bank of India (RBI):

- FEMA authorizes the **Reserve Bank of India (RBI)** to regulate foreign exchange transactions and enforce compliance.
- The RBI plays a pivotal role in issuing guidelines, managing foreign exchange reserves, and ensuring smooth international transactions.

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Various limits on foreign exchange transfers

The limits on foreign exchange transfers vary depending on the purpose of the transfer and the regulatory framework of the country. In India, these limits are primarily governed by the **Foreign Exchange Management Act (FEMA)** and implemented by the **Reserve Bank of India (RBI)**. Here is an overview of the major limits on foreign exchange transfers under different purposes:

1. Liberalized Remittance Scheme (LRS):
Under the LRS, Indian residents can freely remit up to **USD 250,000** per financial year (April to March) for permissible current and capital account transactions such as:

- **Education and medical expenses**
- **Travel and tourism**
- **Gift or donation**
- **Investments abroad** (e.g., purchase of shares, property)

2. Foreign Education:
For foreign education, remittances up to the cost of tuition, accommodation, and other related expenses are allowed under the LRS without special permissions, provided they are within the LRS cap of USD 250,000 per year.

3. Medical Expenses:
Residents can remit funds for medical treatment abroad. While there is no specific cap on the amount, expenses must be supported by valid documentation, such as a doctor's certificate. Additionally:

- An **attendant allowance** up to USD 250,000 per attendant per financial year is allowed.

4. Emigration:
For emigration purposes, residents can remit up to USD 250,000 under LRS. If additional funds are required (e.g., settlement fees), they can seek specific approval from the RBI.

5. Business Travel:
For official travel by business representatives, remittance up to **USD 25,000 per trip** is allowed without specific approval, though this is subject to company policies and documentation.

6. Investments Abroad:
Indian residents and entities can invest abroad under the following limits:

- **Individuals:** Up to USD 250,000 per year under LRS for investments in equity, debt, or real estate.

- **Companies:** Indian corporates are allowed to invest up to **400% of their net worth** under the Overseas Direct Investment (ODI) scheme, with certain restrictions.

7. Gift and Donations:
Residents can gift or donate up to USD 250,000 per financial year under LRS to anyone abroad, including relatives or charitable organizations.

8. Maintenance of Close Relatives:
Residents can remit funds for the maintenance of close relatives abroad. This is permitted under the LRS limit of USD 250,000, but any remittance beyond this may require prior RBI approval.

9. Current Account Transactions without LRS:
Some transactions do not fall under the LRS and have different limits:

- **Export earnings or payments:** There are no specific limits, but these are governed by trade-related FEMA rules.
- **Corporate spending:** Companies have specific transaction limits based on the type of expenditure (e.g., payment for imports, consulting services).

10. Non-Resident Accounts:
Funds transferred to Non-Resident External (NRE) accounts by Non-Resident Indians (NRIs) are not subject to the LRS limit. Repatriation from these accounts is generally unrestricted.

Applicability of the Foreign Exchange Management Act (FEMA), 1999

The **Foreign Exchange Management Act (FEMA)**, enacted in 1999, provides a comprehensive legal framework to regulate foreign exchange transactions in India. FEMA applies to individuals, companies, and entities involved in foreign exchange dealings. Its scope is outlined below:

1. Territorial Applicability:

- FEMA extends to the whole of India.
- It also applies to all branches, offices, and agencies located outside India that are owned or controlled by a person residing in India.
- It governs transactions carried out within and outside India that affect foreign exchange or involve Indian currency.

2. Applicability to Residents and Non-Residents:

- FEMA applies to **residents of India** who engage in foreign exchange transactions.
- It also governs transactions involving **non-residents**, particularly in the context of investments, remittances, and other foreign exchange dealings in India.

3. Foreign Exchange Transactions Covered by FEMA:
FEMA classifies foreign exchange transactions into two broad categories, both of which fall under its purview:

- **Current Account Transactions:**
  Includes day-to-day transactions such as payments for trade, travel, education, medical expenses, and remittances.
- **Capital Account Transactions:**
  Involves cross-border movement of capital for investments, loans, real estate purchases, or transfers of ownership in companies.

4. Entities Governed by FEMA:

- FEMA applies to **individuals**, **partnership firms**, **companies**, and other entities engaged in foreign exchange dealings.
- It also applies to:
  - **Foreign investors** making investments in India (FDI or FPI).
  - **Indian entities** making investments abroad (ODI or External Commercial Borrowings).
  - **Banks and financial institutions** dealing in foreign exchange.

5. Activities outside India:

FEMA applies to certain activities outside India in the following cases:

- Indian citizens or entities carrying out foreign exchange transactions abroad.
- Overseas branches, offices, or agencies of Indian businesses and individuals.

6. Sectors and Activities Covered:

FEMA regulates the following sectors and activities:

- **Import and export of goods and services.**
- **Cross-border investments** (inbound and outbound).
- **Foreign borrowings and lending.**
- **Holding or transferring foreign currency or assets.**
- **Repatriation of income or assets.**

Prohibition on Withdrawal of Foreign Exchange under FEMA, 1999

The **Foreign Exchange Management Act (FEMA), 1999**, regulates foreign exchange transactions in India, ensuring that such dealings align with the country's economic policies. While FEMA provides a liberalized framework for foreign exchange transactions, it prohibits the withdrawal of foreign exchange for certain purposes to safeguard national and economic interests.

Below are the key areas where foreign exchange withdrawal is prohibited:

1. Prohibited Transactions:

FEMA explicitly prohibits the withdrawal or use of foreign exchange for the following purposes:

a. Gambling and Betting:

- Withdrawal of foreign exchange is prohibited for activities such as:
  - Gambling.
  - Betting or speculation (e.g., betting on races, lotteries, etc.).

b. Lotteries:

- Foreign exchange cannot be used to purchase lottery tickets, including:
  - International lottery tickets.
  - Prize bonds or any other speculative schemes.

c. Prohibited Magazines:

- Withdrawal of foreign exchange for the purchase or subscription of magazines or journals that promote banned or objectionable content is restricted.

d. Foreign Currency for Margin Trading:

- Foreign exchange withdrawal for margin trading or speculative purposes in stock markets is prohibited.

e. Prohibited Items Under Law:

- Foreign exchange cannot be used for purposes prohibited by **Indian law**, such as activities that contravene the Foreign Trade Policy or any other laws of the country.

Penalties for Violation:

Any unauthorized or prohibited withdrawal of foreign exchange is treated as a violation of FEMA. The penalties include:

- Monetary fines up to three times the amount involved in the transaction.
- Seizure of assets equivalent to the transaction value.
- Further legal proceedings under FEMA's adjudicatory provisions.

Routes for Withdrawal of Foreign Exchange under FEMA, 1999

The **Foreign Exchange Management Act (FEMA), 1999**, regulates the withdrawal of foreign exchange in India, ensuring such transactions are legitimate and comply with the prescribed guidelines. Foreign exchange can be withdrawn for both current and capital account transactions, subject to certain limits and conditions. Below are the authorized routes and processes for withdrawing foreign exchange:

1. Authorized Dealers (ADs):

- Authorized Dealers (ADs) are banks or financial institutions authorized by the **Reserve Bank of India (RBI)** to deal in foreign exchange.
- Individuals, businesses, and other entities can approach these ADs to withdraw foreign exchange for permissible purposes.
- ADs ensure compliance with FEMA regulations before approving transactions.

2. Liberalized Remittance Scheme (LRS):

- The **LRS**, introduced by the RBI, allows resident individuals to withdraw foreign exchange up to **USD 250,000** per financial year (April-March) for permissible purposes.
- Common uses of LRS:
  - Travel (personal, business, or medical).
  - Education abroad.
  - Gifts and donations.
  - Investment in foreign securities or property.

3. Current Account Transactions:

- Withdrawal of foreign exchange for current account transactions is permitted without prior approval from the RBI, provided the purpose falls within the prescribed limits.
- Examples of current account transactions:
  - **Travel expenses** for personal, business, or medical purposes.
  - **Payment for services** such as consultancy, technical fees, or education fees.
  - **Imports** of goods and services.

4. Capital Account Transactions:

- Withdrawal of foreign exchange for capital account transactions (investments, real estate purchases, loans, etc.) may require prior RBI approval unless it is explicitly permitted under FEMA guidelines.
- Examples:
    - Overseas direct investments (ODI).
    - External Commercial Borrowings (ECBs).
    - Purchase of immovable property abroad.

5. International Debit and Credit Cards:

- Foreign exchange can be withdrawn using international debit or credit cards issued by Indian banks.
- These cards can be used for:
    - ATM withdrawals in foreign countries.
    - Payments for permissible transactions like travel, shopping, and dining.
    - Online purchases on international platforms.

6. Currency Exchange Companies (FFMCs):

- **Full-Fledged Money Changers (FFMCs)**, licensed by the RBI, provide foreign exchange for smaller amounts, typically for travel or personal use.
- Individuals can exchange Indian currency for foreign currency within prescribed limits.

7. Foreign Travel Cards (Prepaid Cards):

- Banks offer **prepaid foreign travel cards** that can be loaded with foreign currency for travel purposes.
- These cards are a convenient alternative to carrying cash or using credit cards abroad.

Usage:

- Withdraw cash from ATMs in foreign countries.
- Make payments for purchases and services during travel.

8. Limits on Cash Withdrawal:

- For foreign travel, individuals can withdraw foreign exchange in cash, but the cash limit is restricted to **USD 3,000** per trip. The remaining amount can be carried in other forms (e.g., traveler's cheques or prepaid cards).

Documents Required for Foreign Exchange Withdrawal:

1. **Form A2**: Declaration of the purpose of remittance.
2. **Passport and Visa**: For travel-related remittances.
3. **Invoices or Agreements**: For payments related to imports, education, or consultancy.
4. **PAN Card**: For tracking larger remittances.

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