BUSINESS LEGISLATION

UNIT – I

An overview of laws related to Promotion and Incorporation of different types of companies.

INTRODUCTION

A company is an association of persons formed for some common purpose. It is a complex, centralized, economic, administrative structure run by professional managers who hire capital from the investors. It is the most dominant form of business organization and it offers the privilege of limited personal liability for business debts. A company has neither a body, nor a soul, nor a conscience, nor is it subject to the limitations of the body; even then, it exists in the eyes of the law. It is a legal person just as much as a human being but with no physical existence. It is the only choice where the enterprise requires a greater mobilization of capital which the resources of a few persons can not provide.

Thus, the modern industrialized society is the outcome of the company form of organization. Companies in India are incorporated under the Companies Act, 1956. The process of formation of a company can be divided and discussed under the following four stages :

i) Promotion

ii) Incorporation

iii) Capital subscription

iv) Commencement of business

PROMOTION

Promotion is the first stage in formation of a company. This stage covers all the preliminary steps incidental to the formation of the company. It covers the questions like whether it should be a private company or a public company, what business is to be done by the company, when it is to be done, what its capital should be and whether it would be worth while to form a new company or take over the business of an already established concern. Promotion begins with the conception of an idea and it goes on to include preliminary investigations into the feasibility and preparation of necessary documents, making preliminary contracts, arrangement of finance etc. So promotion implies all the initial steps taken in the formation of a company.

“Promotion is the process of creating of specific business enterprise. The aggregate of activities contributed by all those who participate in the building of the business constitute promotion.” - Dr. Henry E. Hoagland

Thus, the promotion stage starts with the conception of an idea and it continues till the company is formally incorporated. All the preliminaries done for the formation of a company are included in the process of promotion. The persons who do the necessary preliminary work incidental to the formation of a company are termed the promoters of the company.

The necessary investigation regarding the business to be started and the assembling of the various factors like the selection of the site of business, deciding about the size of business, decision regarding the purchase of plant and machinery etc. form a part of the promotion stage. The efforts for the arrangement of finance are made and all the preliminary contracts are also entered into in the promoting stage. The promoters also prepare the necessary documents for the formation of the company. These documents generally include the memorandum of association and articles of association. The approval regarding the proposed name of the company is also sought from the Registrar of Companies before the preparation of the above documents.

INCORPORATION

It is the second stage in the formation of a company. The act of forming a corporation or company is called incorporation. It is the process of uniting a group of persons into a legal body by following the prescribed procedure. According to section 12 (21) of the Companies Act, any seven or more persons, or where the company to be formed is a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability. Such a company may be either a company limited by shares or a company limited by guarantee or an unlimited company. However, the purpose for which a company is proposed to be established must be lawful. It must not be in contravention of the general laws of the country. Before applying for registration and submitting the necessary documents, it must be ascertained from the Register of companies whether the proposed name has been approved by the Registrar.

The following documents as per section 33 of the Companies Act shall be presented for registration to the Registrar of the State in which the registered office of the company is to be situated :

1) The memorandum of association duly signed by the subscribers.

2) The articles of association, if any. It is important to note that a public company limited by shares need not prepare and file a copy of the articles if it has adopted table A given in the schedule to the Act.

3) The agreement, if any, which the company proposes to make with an individual for appointment as its managing or whole time director or manager.

4) A statutory declaration that all the legal requirements of the Act precedent to incorporation have been complied with. It must be signed by an advocate of the Supreme Court or High Court or an attorney or pleader entitled to appear before a High Court or a company secretary or a chartered accountant in whole time practice who is engaged in the formation of the company or by a person named in the Articles as a director, manager or secretary of the company.

5) A list of persons who have consented to become the directors of the company and their written consent to act as such and to take up the qualification shares as per section 266.

6) According to section 146(2), within 30 days of the incorporation of the company, a notice situation of the registered office of the company shall be given to the Registrar.

If the Registrar is satisfied that all the aforesaid requirements have been complied with by the company, he will register the company and issue the certificate of registration. On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is limited. From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum and any other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

CAPITAL SUBSCRIPTION

A private company or a public company not having share capital can commence business immediately on incorporation. Public companies having share capital have to pass through two more stages before they can commence business or exercise borrowing powers.

According to section 149(1) of the Companies Act, where a company having a share capital has issued a prospectus inviting the public to subscribe to its shares, it is necessary to appoint brokers, underwriters, bankers etc. and to arrange with the stock exchange for the enlistment of the securities, issue the prospectus etc.

- Thereafter, the following documents must be filed with the Registrar :

(i) A copy of the prospectus.

(ii) A statutory declaration verified by a director or the secretary of the company to the effect that :

a) The directors have taken up and paid for the qualification shares in cash an amount equal to the amount payable by other subscribers on application and allotment;

b) The shares allotted are not less than the amount of minimum subscription, and

c) No money has become liable to refund by reason of the failure to apply for or to obtain permission of the stock exchange for dealing in its shares or debentures.

(iii) Where a company having a share capital has not issued a prospectus inviting the public to subscribe to its shares, the company shall not commence any business or exercise borrowing powers as per section 149(2) of the Act unless-

a) a statement in lieu of prospectus has been filed with the Registrar,

b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash;

c) a statutory declaration verified by one of the directors or the secretary of the company that the directors have taken up and paid for their qualification shares in cash an amount equal to that payable by other subscribers on application and allotment.

The company can not allot shares unless the amount of minimum subscription stated in the prospectus has been subscribed. If the company fails to receive the minimum subscription within 120 days of the issue of prospectus, all the money received shall be refunded with out interest as per the provisions of section 69(5).

COMMENCEMENT OF BUSINESS

It is the last stage in the process of formation of a company. A private company can commence business immediately after incorporation. But in the case of a public company, the certificate for the commencement of business has to be obtained as per the provisions of section 149. This becomes necessary where a company has issued a prospectus inviting the public to subscribe to its shares. The certificate to commence business will be granted only after getting the declaration signed by any director of the company or its secretary that the following requirements have been complied with. This declaration should be filed with the Registrar.

- The conditions to be complied with are as follows :

a) Shares payable in cash must have been allotted up to the amount of the minimum subscription;

b) The directors must have paid in cash the application and allotment money in respect of the shares contracted to be taken by them for cash;

c) No money is liable to become refundable to the applicants by reason of failure to apply for or to obtain permission for shares for debentures to be dealt in on any recognized stock exchange.

It any company commences business or exercises borrowing powers before getting the certificate to commence business, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues.

When the Registrar is satisfied about the requirements, he will issue the certificate to commence business. If the company does not commence business within a year of its incorporation, it may be wound up by the court.

This is how companies are formed and registered under the Companies Act, 1956.

INCORPORATION OF DIFFERENT TYPES OF COMPANIES

- According to Incorporation:

The act of forming a corporation or company is called incorporation. It is the process of uniting a group of persons into a legal body by following the prescribed procedure. According to the mode of incorporation, companies may be divided into the following three categories :

1. Chartered Companies
2. Statutory Companies
3. Registered Companies

1. Chartered Companies

- These companies are incorporated under the Royal or a special charter granted by the British King or Queen. The powers and nature of business of the companies of this type are defined in the charter. The sovereign has the power to put an end to the charter if the company fails to follow its terms. The objective of these companies was generally to rule over certain territories, perpetuate army control or to hold trade. The East India Company, which was incorporated by a charter of Queen Elizabeth on 31st December, 1600 with the objective of holding trade with India and which established the British rule in India, is an example of this type of companies. Bank of England, Standard Chartered Bank, the British Broadcasting Corporation and Dutch East India Company of Holland are other examples of chartered companies.

2. Statutory Companies

- These companies are incorporated by a special act passed by central or state legislature. The objective or objectives, scope, rights and responsibilities of these companies are clearly mentioned in the Act under which these are incorporated. These companies are formed to undertake business of public welfare and national importance. The Reserve Bank of India, The State Bank of India, The Life Insurance Corporation of India and the Food Corporation of India are governed by their respective acts and need not have either the Memorandum of Association or Articles of Association. They also need not use the word 'Limited' with their names. These companies are in many ways like the companies formed and registered under the Companies Act, 1956. The provisions of this act are also applicable to these companies provided they are not inconsistent with the provisions of the special act under which they are formed. It should be kept in mind that though a statutory company is owned by the Government yet it has a separate legal entity and we can not consider it a department of the Government.

3. Registered Companies

- Companies formed by registration under the Companies Act 1956 are known as registered companies. Most of the companies in India belong to this type. Any existing company which had been formed and registered under any of the earlier Companies Acts, is also included in this category. It must be noted that such companies come into existence only when they are registered under the Act and a certificate of incorporation is granted to them by the Registrar of Companies. The registered companies are governed by the provisions of the Companies Act, 1956 and by the rules and regulations laid down in 'memorandum' and 'articles' of association of the companies. The liability of the members of this type of company is limited up to the unpaid value of their shares or the amount of guarantee undertaken by them.

UNIT – II

Laws related to contract with special reference to its Performance, Breach and Remedies

INTRODUCTION

We enter into contracts day after day. Taking a seat in a bus amounts to entering into a contract. When you put a coin in the slot of a weighing machine, you have entered into a contract. You go to a restaurant and take meals, you have entered into a contract. In such cases, we do not even realize that we are making a contract. In the case of people engaged in trade, commerce and industry, they carry on business by entering into contracts. The law relating to contracts is to be found in the Indian Contract Act, 1872.

The law of contracts differs from other branches of law in a very important respect. It does not lay down so many precise rights and duties which the law will protect and enforce; it contains rather a number of limiting principles, subject to which the parties may create rights and duties for themselves, and the law will uphold those rights and duties. Thus, we can say that the parties to a contract, in a sense make the law for themselves. So long as they do not transgress some legal prohibition, they can frame any rule they like in regard to the subject matter of their contract and the law will give effect to their contract.

OBJECT OF THE ACT

- The main objective of the Contract Act is to ensure that the rights and obligations arising out of a contract are honoured and that legal remedies are made available to an aggrieved party against the party failing to honour his part of agreement. The Act is of great importance to businessmen as it enables them to plan ahead with the knowledge that what has been promised to them will be performed by the promisors failing which they will be liable for the loss suffered.

DEFINITION OF CONTRACT

A contract is a legally binding agreement, that is, an agreement which will be enforced by the courts. Salmond defines contract as, “an agreement creating and defining obligation between the parties.” Halsbury defines a contract to be, “an agreement between two or more persons which is intended to be enforceable at law and is constituted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act.”

The definition of the term ‘contract’ given in the Act is based on the definition given by Halsbury. Section 2(h) of the Indian Contract Act defines a contract as, “An agreement which is enforceable by law.”

PERFORMANCE OF CONTRACT

- A contract creates an obligation which continues till the contract has been discharged by actual performance or attempted performance. Performance of a contract consists in doing or causing to be done what the promisor has promised to do. Section 37 of the Indian Contract Act provides that the parties to a contract must either (i) perform their respective promises or (ii) offer to perform the same, unless (iii) such performance is dispensed with or (iv) excused under the provisions of this act or any other law.

Performance may be actual or attempted. When a party has done what he undertook to do there is nothing left for him to do. Then he is said to have performed his obligation. The performance of the contract in order to be complete must, however, be made in accordance with the terms of the contract. Performance of a contract has two effects:

(i) A party who wishes to enforce the other party's promise may have to show that he has performed or is willing to perform his own promise.

(ii) A party who performs, or tenders performance is thereby discharged from his obligations under the contract.

The contract is completely terminated when both parties completely and precisely perform the exact thing which, each has agreed to do. If one party only performs his promise, he alone, is discharged and he acquires a right of action against the other party.

- A contract creates a legal obligation which continues till the contract has been performed or otherwise discharged. Performance of a contract is, however, the most natural and usual mode of extinction of an obligation. Performance may be actual performance or attempted performance. When a party has done what has agreed to, a party to contract is said to have actually performed his promise. Tender or attempted performance is of two types namely tender of goods and tender of money. The tender of performance, in order to have its effect must fulfill contain conditions. Promisor, or his agent, or his legal representative, or third person should perform a contract. It is for the parties to contract to decide the time and place for the performance of the contract. Sometimes, the parties to a contract specify the time for its performance; and in that case either party is expected to perform his obligation at the stipulated time. Accordingly, where a party to a contract promises to do a thing within a specified time but fails to do so it, then the contract becomes voidable at the option of the other party provided the intention of the parties was that the time should be the essence of the contract.

BREACH OF CONTRACT

A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. In case of breach, the aggrieved party (i.e., the party not at fault) is relieved from performing his obligation and gets a right to proceed against the party at fault.

A contract terminates by breach of contract. Breach of contract may arise in two ways

(a) Anticipatory Breach, and (b) Actual Breach.

(a) Anticipatory Breach of Contract (Sec. 39):

Anticipatory breach of contract occurs, when a party repudiates it before the time fixed for performance has arrived or when a party by his own act disables himself from performing the contract.

(b) Actual Breach of Contract:

The actual breach may take place (a) at the time when performance is due, or (b) during the performance of the contract.

- Actual breach of Contract, at the time when performance is due. If a person does not perform his part of the contract at the stipulated time, he will be liable for its breach.
- Breach during the Performance of the Contract. Actual breach of contract also occurs when during the performance of the contract one party fails or refuses to perform his obligation under the contract.

REMEDIES FOR BREACH OF CONTRACT

A remedy is the course of action available to an aggrieved party (i.e. the party not

- at default) for the enforcement of a right under a contract. Whenever there is breach of a contract, the injured party becomes entitled to any one or more of the following remedies against the guilty party :

1. Rescission of the contract
2. Restitution
3. Suit for specified performance of the contract.
4. Suit for an injuction
5. Suit for damages.
6. Suit upon quantum meruit

As regard the last two remedies stated above, the law is regulated by the Specific Relief Act.

Rescission of the Contract

When there is a breach of contract by one party, the other party may rescind the contract and need not perform his party of obligations under the contract and may sit quietly at home if he decides not to take any legal action against the guilty party. But in case the aggrieved party intends to sue the guilty party for damages for breach of contract, he has to file a suit for rescission of the contract. When the court grants rescission, the aggrieved party is freed from all his obligations under the contract; and

- becomes entitled to compensation for any damage which he has sustained through the
- nonfulfilment of the contract (Sec. 75).

Restitution

It means return of the benefit received by one party to the contract from the other under a void contract. When a contract becomes void it need not be performed by either party. Section 65 provides that when an agreement is discovered to be void or when a contract becomes void any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it.

Specific Performance

Under certain circumstances a person aggrieved by the breach of the contract can file a suit for specific performance i.e. for an order by the court upon the party guilty of breach of contract directing him to perform what he promised to do. Specific performance is a discretionary remedy which is allowed only in a limited number of cases. Rules regarding the granting of this relief are contained in the Specific Relief Act.

Injuction

An aggrieved party can sue for an injuction i.e. an order, of the court restraining the wrong does from doing or continuing the wrongful act complained of. Injuctions are usually granted to enforce negative stipulations in cases where damages are not adequate relief. Injuctions is a preventive relief. It is particularly appropriate in cases of anticipatory breach of contract.

Suit for Damages

Damages are a monetary compensation allowed to the injured party for the loss or injury suffered by him as a result of the breach of contract. The fundamental principle underlying damages is not punishment but compensation. By awarding damages the court aims to put the injured party into the position in which he would have been, had there been performance and not breach, and not to punish the defaulter party. As a general rule, “compensation must be commensurate with the injury or loss sustained, arising naturally from the breach.” “If actual loss is not proved, no damages will be awarded.”

Suit upon Quantum Meruit (Sections 65 and 70)

Another remedy for a breach of contract available to an injured party against the guilty party is to file a suit upon quantum meruit. The phrase quantum meruit literally means “as much as is earned” or “in proportion to the work done.” A right to sue upon quantum meruit arises where a contract, partly performed by one party, has been discharged by breach of contract by the other party or, is discovered void or becomes void. This remedy may be availed of either without claiming damages (i.e., claiming reasonable compensation only for the work done) or in addition to claiming damages for breach (i.e., claiming reasonable compensation for part performance and damages for the remaining unperformed part).

UNIT – III

Consumer protection laws and Rights of consumers.

CONSUMER PROTECTION LAWS

- INTRODUCTION

A number of important changes such as checking of unfair trade practices, grant of interim injunction and grant of compensation were enacted in the 1984 Amendment of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) to make it more effective and useful. However, nothing of much importance and use could come out of this exercise. Absence of time-bound disposal of cases, court-like proceedings of the MRTP commission's work, centralization of MRTP Commission in Delhi, etc., continued to act as limitations of MRTP Act. Consequently, it was felt necessary to enact a more comprehensive legislation to protect the consumers' rights and the speedy, simple and inexpensive redressal of consumer disputes. In this background, the Consumer Protection Act, 1986 was introduced aiming at protection of the interests of consumers as stated in the preamble of the Act. It provides for the establishment of consumer councils and other authorities for the settlement of consumers' disputes.

Every human being is a consumer of one kind or other. In the distant past, the consumers were governed by the terms of contract between themselves and the traders. These terms were mostly one sided and obviously in favour of the traders. Moreover, the state showed least enthusiasm in coming to the rescue of consumers when, they were deceived, or cheated. The concept of absolute freedom of contract and the system of lassie fair appeared to be too bookish. All the more, for making huge profits or becoming rich overnight, the traders, businessmen, employers, producers and sellers, etc. at the cost of consumers' interest were adopting all sorts of abominable means and methods, or malpractices. Even today, meeting of goods which are injurious to health and life, deception of the consumers through unfair trade practices such as, substandard quality, adulteration, non-supply of correct quantity, excess pricing, etc., are rampant in our society. The plight of the consumer in the country is worse confounded, because of his ignorance, illiteracy and weak economic position.

In order to protect the consumer from the unfair trade practices, the Union Government of India has enacted various legislations. But due to lack of proper co-ordination and integration among these legislations, it is observed that consumers are not fully and properly protected. Very prominently, this is because of poor and inadequate implementing machinery of the government, and rampant corruption and dishonesty.

A silver line was traced in the era of .consumer protection during 1986 as it was the year of dawning of visible and tangible consumer movement in India. It was the year when the Consumer Protection Act came into force. It really gave pep to the existing consumer protection activities in the country.

SCOPE OF THE CONSUMER PROTECTION ACT, 1986

The Consumer Protection Act, 1986 extends to the whole of India except the State of Jammu and Kashmir. The provisions of the Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force. This Act applies to all types of goods and services unless specifically exempted by the central government by notification. The Act provides for setting-up of Consumer Protection Councils at Central and State levels and Consumers' Complaints Redressal Agencies at Central, State and District levels of the country wherein states include union territories also.

CONSUMER PROTECTION COUNCIL AND DISTRICT-CONSUMER FORUM

The central government is empowered to constitute the Central Consumer Protection Council which consists of the following 150 members, viz.

1. The Minister in-charge of Department of Civil Supplies who shall be the chairman of the Central Council;
2. The Minister of State (where he is not holding independent charge) or Deputy Minister in the Department of Civil Supplies who shall be the vice-chairman of the Central Council;
3. The Minister of Food and Civil Supplies of Minister in-charge of consumer affairs in states;
4. Eight members of Parliament, five from the Lok Sabha and three from the Rajya

Sabha;

5. The Commissioner from scheduled castes and scheduled tribes;
6. Representatives of the Central Government Department, autonomous organisation concerned with consumer interest not exceeding twenty;

7. Representatives of the consumer organisations or consumers, not less than thirty- five;
8. Representatives of women, not less than ten;
9. Representatives of farmers, trade and industries, not exceeding twenty;
10. Persons capable of representing consumer interest not specified above, not exceeding fifteen, and
11. The Secretary in the Department of Civil Supplies shall be the member secretary of the Central Council.

The term of the council shall be three years. The council may meet as and when necessary, but not less than three meetings of the council shall be held every year. Each meeting of the council shall be called by giving not less than 10 days notices in writing to every member, specifying the time, place and agenda of the meeting. However, no proceedings of the councils shall be invalid merely by reasons of existence of any vacancy in or defect in the constitution of the council.

The council is empowered to constituted from amongst its members, such working groups as it may deem necessary. Every working group so constituted shall perform such functions as are assigned to it by the central council. It seems that such working groups may prove to be more useful and effective in dealing with the specific problems allocated to them. The findings of such working groups are required to be placed before the council for its consideration. The resolutions by the council shall be recommendation in nature.

Objectives of the Central Council: The COPRA, 1986 provides that the objectives of the Central Council shall be to promote and protect the rights of the consumers, such as:

(a) The right to be protected against marketing of goods which are hazardous to life and property;

(b) The right to be informed about the quality, quantity, potency, purity, standard and prices of goods so as to protect the consumer against unfair trade practices;

(c) The right to be assured, wherever possible, access to a variety of goods at competitive prices;

(d) The right to be heard and to be assured that consumer interests will receive due consideration at appropriate fora;

(e) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) The right to consumer education.

The central council may have a significant role in the formulation of the Central Government's Economic Policy. In addition, it may respond to request for information and advice on particular issues relating to the protection of consumers. Though the decisions of the council are recommendation, they have a significant impact on several authorities concerned with the matters of consumer protection.

State Consumer Protection Councils: The state governments are also empowered to establish Consumer Protection Councils for their respective states. The State Councils shall consist of such members as may be notified by the state governments by notification from time to time. The objectives of every State Council (like Central Council) shall be to promote and protect within the state, the rights of the consumers as laid down in its clauses (a to b) of Section 6. So far, 22 states and Union Territories have set up the consumer Protection Councils under the Act. How far these councils have been successful in protecting the consumer interest is not tree from doubt.

District Forum: A Consumer Disputes Redressal Forum to be known as the District Forum is required to be established by the state government with the prior approval of the central government in each district of the state.

i) Composition of the District Forum: The Act provides that each district forum shall consist of a president, who is required to be a qualified district Judge nominated by the state government. It shall consist of two members; among them, one should be a .woman social worker. The members may hold the office for a period of five years or up to the age of 65 years whichever is earlier and they are not eligible for re-appointment. Vacancy occurred by members' the state government may fill resignation and it has entire authority about deciding salary or honorarium to be paid to the members.

ii) Jurisdiction of the District Forum: District Forum has the jurisdiction to entertain the complaints where the value of the goods or services or compensation claimed is less than Rs.5,00,000 (earlier it was Rs.1,00,000). It can take complaints where opposite party/parties reside/s or carries on business in the district and the cause of action, wholly or in part, arises.

iii) Procedure to be followed by the District Forum: Section 13 of the COPRA, 1986 lays down the procedure to be followed for the settlement of consumer dispute by the District Forum. After receiving a complaint from the complainant, it refers a copy of the complaint to the opposite party directing him to give his version within 30 days or such extended period not exceeding 15 days. If the opposite party denies or disputes the allegations contained in the complaint or omits or fails to take any action to represent his case within the time given by the District Forum, then the forum shall take the following if the complaint relates to goods. If complaint alleges a defect in the goods which cannot be determined by proper analysis, then the District Forum shall take a sample and send it to a laboratory with prescribed fee (from the complainant) and then it has to send a copy of the laboratory report to the opposite party of the complainant disputes with the correctness of report of the laboratory, then they may submit in writing their objections and then the District Forum gives a reasonable opportunity to the parties of being heard and issue an appropriate order.

If the complaint relates to service and where the opposite party on receipt of a copy of the complaint denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the Forum, the Forum shall proceed to settle the consumer dispute on the basis of:

(i) Evidence brought to its notice by the complainant and the opposite party denies or disputes the allegations contained in the complaint, or

(ii) Evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

If the District Forum is satisfied that the goods complained against any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things:

(i) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(ii) to replace the goods with new goods of similar description which shall be free from any defect;

(iii) to return to the complainant the price, or as the case may be the charges paid by the complainant; and

(iv) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

The person (whether complainant or opposite party) dissatisfied with the order made by the District Forum may prefer an appeal against such order to the State commission within a period of 30 days from the date of order.

STATE COMMISSION FOR CONSUMER PROTECTION

- The state commission is the consumer disputes redressal agency at the state level which is established by the state government with the prior approval of the central government. It consists of a president who is or has been a Judge of a High Court and two members one of them is a woman.

i) Jurisdiction of the State Commission: The State Commission can entertain the complaints where the value of the goods and compensation if any, claimed exceeds Rs.5,00,000 but does not exceed Rs.20,00,000 (earlier it was Rs.1,00,000 and Rs.10,000,000 respectively). It can entertain appeals against the orders of any District Forum within the state and it can call for the records and pass appropriate order in any consumer dispute which is pending before or has been decided by any District Forum within the state, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by Law or has failed to exercise a jurisdiction legally or with material irregularity. Hence, the jurisdiction of the State Commission is original as well as appellate.

ii) Procedure: While disposing of the complaints, State Commission have to follow the Sections 12,13 and 14 and the rules made hereunder with such modifications as may necessarily be applicable to it. The Rule 10 of the Consumer Protection Act as are vested to the District Forum regarding the production documents, search and seizure. It may, however, be noted that the State Governments have yet to make their own rules in exercise of their powers under Section 30 (2) of the, Act. It is submitted that the State Government may adopt the similar rules as laid down by the central government, viz., Consumer Protection Rules, 1987. It will help in maintaining uniformity in Law all over the country.

Appeal against the Orders of the State Commission: Section 19 of the Act provides that the person aggrieved by an order made by the State Commission on a complaint may prefer an appeal against such order to the National Commission within a period of 30 days from the date of the order. The National Commission may entertain an appeal after the expiry of the said period of 30 days if it is within that period.

It may be noted that an order made by the State Commission on an appeal against the orders of the District forum is not appealable to the National Commission. Thus, provision exists only for a single appeal to the State Commission, from the order of the State Commission to the National Commission.

NATIONAL COMMISSION FOR CONSUMER PROTECTION

This is the highest authority to settle the consumer disputes under the Act. It is an independent statutory body.

i) Composition of the National Commission: The National Commission shall consist of a president appointed by the central government who is or has been a Judge of Supreme Court and four other members who are eminent in any field of knowledge - one of whom should be a woman. However, no sitting judge of the Supreme Court shall be appointed under the previously mentioned provisions except after consultation with the Chief Justice of India. The COPRA and the Rules have laid down many provisions to rescue the independence of National Commission. The terms and conditions of the service to the president and the members should be varied to their disadvantage.

ii) Jurisdiction of the National Commission: Jurisdiction of National Commission is original as well as appellate. The original jurisdiction is limited tothe complaints where the value of the goods or service and compensation exceeds Rs.20,00,000 (earlier, it was Rs.10,00,000). The appellate jurisdiction is confined to appeal against the orders of any State Commission. Further, the commission is empowered to call for records and pass appropriate orders in any consumer dispute where it appears that the State Commission has acted illegally or with material irregularity or exceeded its jurisdiction or has exercised its jurisdiction.

iii) **Procedure**: The procedure to be followed in dealing With the complaints is specified by Section 22 of the COPRA, which is similar to the powers of a civil court. It may also follow the procedure, which is prescribed by the central government. Accordingly, the procedure has been laid down in the Rule 14 of the consumer Protection Rules. These rules provide that a complaint containing the following particulars should be presented by the complainant in person or by his agent to the National Commission or be sent by registered post to the Commission:

(a) the name, description and address of the complainant;

(b) the name, description and address of the opposite party or parties;

(c) the facts relating to the complaint and when and where it arose;

(d) documents in support of the allegations contained in the complaint, and

(e) the relief which the complainant claims.

iv) **Appeal against the order of the National Commission**: A person dissatisfied with the order made by the National Commission may prefer an appeal against such order to the Supreme Court within a period of 30 days from the date of the order made by the National Commission and on an appeal preferred from the orders of the State commission shall be final and no further appeal against such orders should be preferred to the Supreme Court.

Filling of Complaints and Model Forms: Whoever wants to lodge a complaint either in the District Forum or State Commission or National Commission should use a form specifically meant for fil1ing complaints in respective redressal agencies. They general1y consist of name and addresses of both complainant(s) and the opposite party(ies), facts relating to the complaint, the value of the compensation claimed, and a declaration.

Consumer Rights

There are six broad consumer rights defined as per the Consumer Protection Act, 1986. These are:

- **Right to Safety**

The Consumer Protection Act defines this right as a protection against goods and services that are ‘hazardous to life and property’. This particularly applies to medicines, pharmaceuticals, foodstuffs, and automobiles. The right requires all such products of critical nature to life and property to be carefully tested and validated before being marketed to the consumer.

- **Right to Information**

This right mentions the need for consumers to be informed about the quality and quantity of goods being sold. They must be informed about the price of the product and have access to other information specific to the product that they wish to consume.

- **Right to Choose**

The consumer must have the right to choose between different products at ***competitive prices***. Thus, the concept of a competitive market where many sellers sell similar products must be established to ensure that the consumer can actually choose what to consume and in what quantity. This is to avoid monopoly in the market.

- **Right to Seek Redressal**

When a consumer feels exploited, he/she has the right to approach a ***consumer court*** to file a complaint. A consumer court is a forum that hears the complaint and provides justice to the party that has been hurt. Thus, if the consumer feels he/she has been exploited, they can approach the court using this right.

- **Right to be Heard**

The purpose of this right is to ensure that the consumer gets due recognition in consumer courts or redressal forums. Basically, when a consumer feels exploited, he has the right to approach a consumer court to voice his complaint. This right gives him/her due respect that his/her complaint will be duly heard. The right empowers consumers to fearlessly voice their concerns and seek justice in case they are exploited.

- **Right to Consumer Education**

Consumers must be ***aware*** of their rights and must have access to enough information while making consumption decisions. Such information can help them to choose what to purchase, how much to purchase and at what price. Many consumers in India are not even aware that they are protected by the Act. Unless they know, they cannot seek justice when they are actually hurt or exploited.

UNIT – IV

Basic provisions of Pollution control, Environment protection and Intellectual property rights

BASIC PROVISION OF POLLUTION CONTROL

Introduction

* In 1976, when the Indian parliament passed the 42nd amendment to its constitution safeguarding the environment, it became the first country in the world to do so.
* The amendment was to "endeavor to protect and improve the environment and to safeguard the forests and wild life of the country."
* It imposes a duty on every Indian citizen "to protect and improve the natural environment including forests, lakes, rivers, and wild life, and to have compassion for living creatures."
* According to the Environment Protection Act of 1986, Environment is that which includes the "inter-relationship which exists among and between water, air, and land and human beings, other living creatures, plants, micro-organism and property."

SEVEN POLLUTION REGULATION:

Basically, there are seven Pollution regulations.

1. The Water (Prevention &Control of Pollution) Act, 1974, and its amendments
2. The Water (Prevention & Control of Pollution) Cess Act, 1974 and its amendments
3. The Air (Prevention & Control of Pollution) Act, 1981 and its amendments
4. The Environment (Protection) Act, 1986 and its amendments
   (a) National Environmental Tribunal Act of 1995 and
   (b) National Environmental Appellate Authority Act of 1997
5. Hazardous Waste (Management and Handling) Rules, July 1989
6. The Public Liability Insurance Act, 1991.

The Public Liability Insurance Act 1991 has been included as the sixth environmental regulation because it is the first regulation which gives some teeth to the other five pollution regulations listed above.

THE CENTRAL AND STATE BOARDS

* It was the Water Act of 1974 which established a Central Pollution Board and a State Pollution Control Board.
* Subsequently, the same Boards have been given the power to govern all the pollution regulations passed since then and any other to be put in regulations in the future.

CONSTITUTION AND AUTHORITY OF THE BOARD

* Pollution Boards are to be headed by a Chairman and a few members who are all appointed.
* The Chairman as well as the Board members are appointed by the respective governments.
* The members to be appointed to the Boards are to be selected from various interest groups such as Corporations, Public Health Engineering, Agriculture, Forestry, Fishery, etc.

* Basic purpose of these Boards are to advise their respective governments on any matter concerning the prevention and control of pollution in their area of jurisdiction.
* The Central Board coordinates as well as oversees all the other State Boards and their functions.
* To implement any environmental pollution control act, the Board has the power to obtain information "make surveys of any area and gauge and keep records of the flow of volume of the stream." It has the power to take samples, analyze any matter from the industry.
* The Boards also have the authority to establish or recognize any laboratory for chemical analytical work.

THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 AND ITS AMENDENTS

THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 AND ITS AMENDMENTS

* The purpose of this act is "to provide for the prevention and control of water pollution and the maintenance or restoring wholesomeness of water for the establishment, with a view to carrying out the purpose of aforesaid of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith."
* This is the Act that established the Central and a State Board and also the authority and power to constitute as many committees as it feels essential to carry out specific functions for it.
* The Act specifically prohibits "any poisonous, noxious or polluting matter' into any stream or well.
* A consent from the State Board is required for any type of new discharge into any new stream or well.

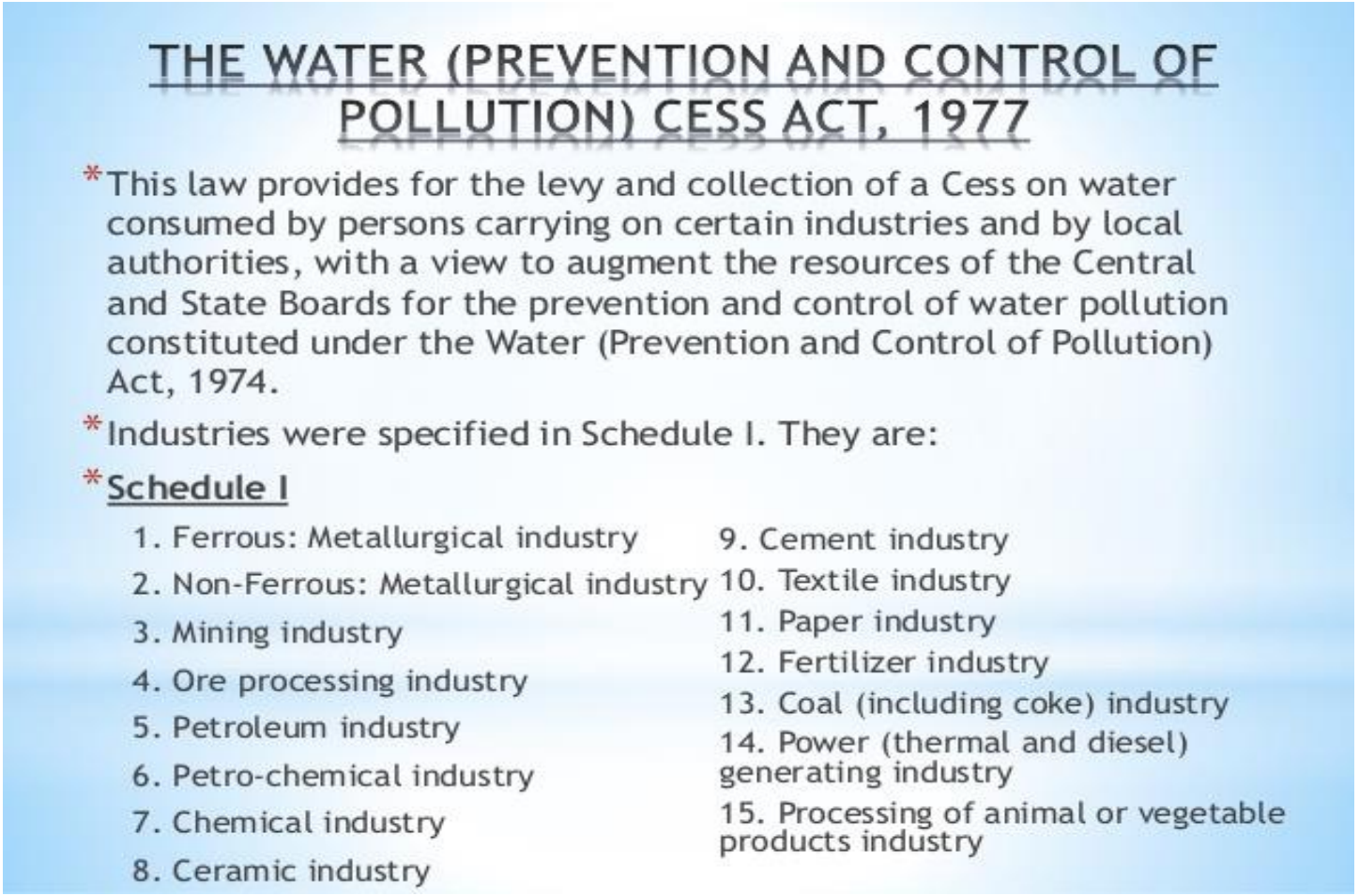
* This also includes consent for “temperature” discharges as done by cooling tower users.
* In general, this means that a State consent or permit is required for all types of intake and/or discharge of any type of liquid or water either from a running stream or well.
* Under these rules, “effluent standards to be complied with by persons while causing discharge of sewage or silage or both” have been specified. Standards for small scale industries have been specified separately.
* Penalties for non-compliance with the permit or polluting in any way are imprisonment for three months and fine of Rs. 10,000 or fine up to Rs. 5,000 per day of violation or both plus any expenses incurred by the Board for sampling, analysis, inspection etc.
* These penalties can also be imposed for “obstructing any person acting under the orders or direction of the Board” or for “damages to any work or property of the Board.”

* There are penalties also which extend up to seven years plus other monetary fines for other similar offenses.
* Any "director, manager, secretary or other officer of the company may also be deemed to be guilty" if proved that the offense occurred with their "consent or connivance." In case of the government, department head could be held liable.

Laboratory

* The central as well as the state government can start a lab to do analysis on samples of water or of sewage or trade effluents for tests.
* A fee will be charged for these services.
* The law can also stop or restrain a person from discharging any pollutant to any stream or well "which is likely to cause such pollution from so causing."
* Imprisonment up to three months and a fine up to Rs. 10,000 for every day of violation during which such failure continues after the conviction for first such offense.

THE WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977

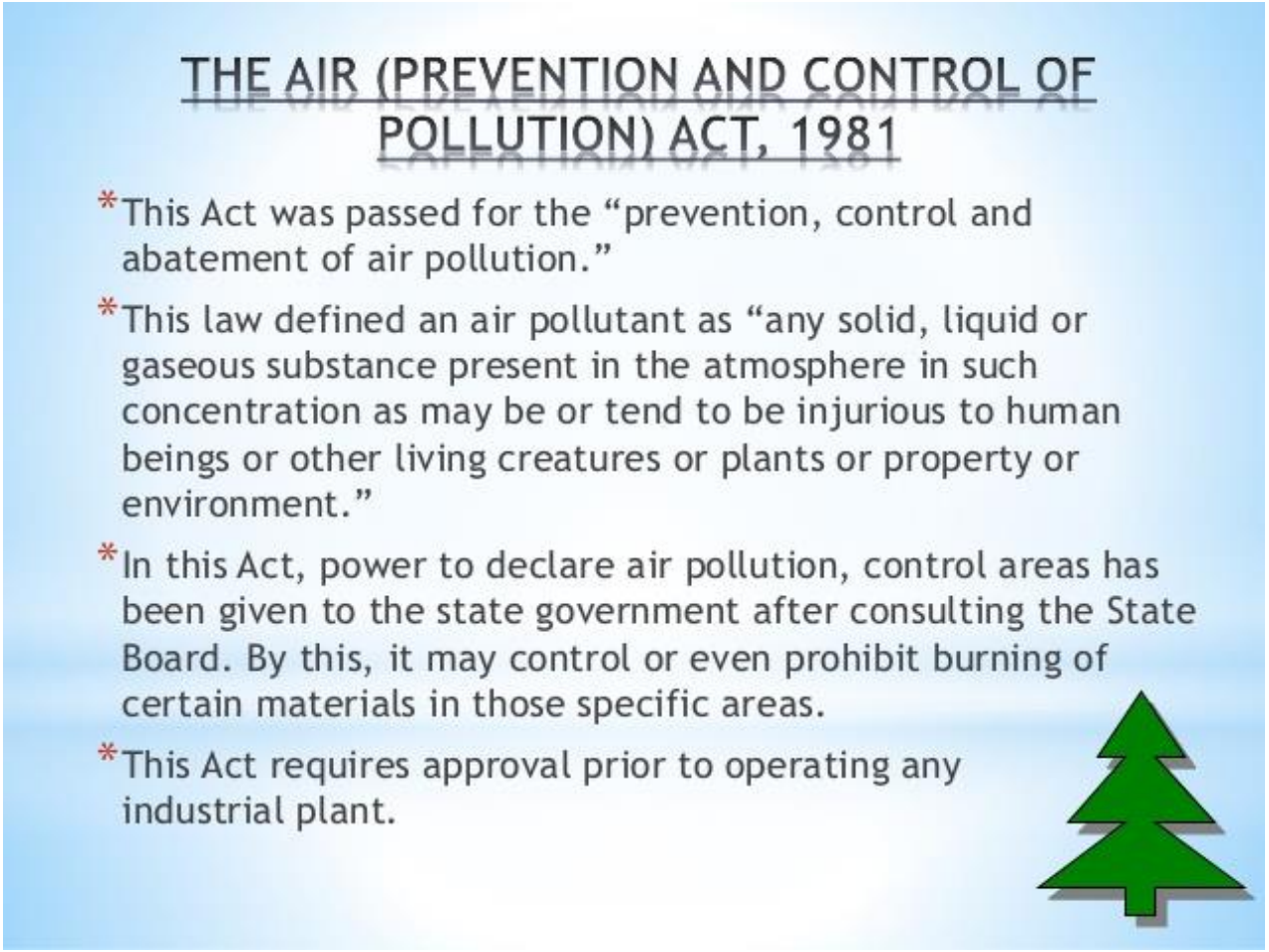


* Collection of Cess was based on the quantity of water consumed. The State government had the authority to collect the Cess from the industry.
* **The purpose of which water is consumed follows:**

S.No	Purpose for which water is consumed	Maximum Rate Under Sub Section 2A of Section 3
1.	Industrial Cooling, spraying in mine pits or boiler feed	Two and one fourth of a paisa per kilo litter (One US penny equals about thirty six Indian paisa)
2.	Domestic purpose	Three paisa per kilo litter
3.	Processing whereby water gets polluted and the pollutants are easily biodegradable	Seven and one half paisa per kilo liters
4.	Processing whereby water gets polluted and the pollutants are not easily bio-degradable and are toxic	Nine and a half paisa per kilo liter

* Under Rule 6, industry-wise maximum quantity of water usage allowed has been specified.

THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981



* Government may suggest “control equipment” prior to giving its consent to any industry for its operation.
* It may include chimney etc. In case there is any new technology for emission control, then the Board may insist on this to being installed. Standards specific to industries have been specified.
* Penalties were for a minimum of six months imprisonment to a maximum of seven years and fine up to Rs. 5,000 for every day during which contravention continues after conviction for the first such contravention.
* This law makes it clear that when offenses are committed by a company, its director, manager, secretary or other officers could be held guilty and punished accordingly.

THE ENVIRONMENT (PROTECTION ACT, 1986)

THE ENVIRONMENT (PROTECTION ACT, 1986)

* The Act was enacted to "provide for the protection and improvement of environment and for matters connected therewith."
* This act defined environment which includes "water, air, and land and the inter-relationship which exists among and between "water, air and land, and human beings, other living creatures, plants, micro-organisms and property."
* It also defined a hazardous substance as "any substance or preparation which, by reason of its chemical or physics-chemical properties, or handling, is liable to cause harm to human beings, other living creatures, plants, microorganisms, property or the environment."

* This law enlists general powers of the central government which included “all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.”
* The law also included “the standards of quality of air, water, or soil for various areas and purposes, the maximum allowable limits of concentration of various environmental pollutants procedures and safeguards for the handling of hazardous substances.”
* The Act also deals with prevention, control and abatement of environmental pollution by specifying the restrictions allowed to the discharge or emit any environmental pollutant in excess of such standards as may be prescribed.
* Nor is anyone allowed to handle hazardous substances except “as may be prescribed.” In case of discharge of excess of any material the industry must forthwith.

* Under Section 3(1) and Rule 5(3)(d) of this Act, Coastal Regulation Zone (CRZ) have been declared and which restrictions on industries and processes have been imposed.
* This restricts setting up or expansion of any industry. "(a) Intimate the fact of such occurrence or (b) be bound, if called upon, to render all assistance, to such authorities or agencies."
* This law requires that all companies must have some sort of a Spill Prevention Control and Countermeasures Plan (SPCC).
* Environmental auditing is required by this law starting in 1993. This report is to be submitted to the State Pollution Control Board.
* The law indicates that the government may "recognize one or more lab as environmental lab to carry out tests, etc."
* Penalty for contravention of the act may be punishable by imprisonment up to seven years or fine up to Rs 1 lakh (One lakh equals one hundred thousand). Additional fine of up to Rs 5,000 for every day of violation

NATIONAL ENVIRONMENTAL TRIBUNALS ACT OF 1995

NATIONAL ENVIRONMENTAL TRIBUNALS ACT OF 1995

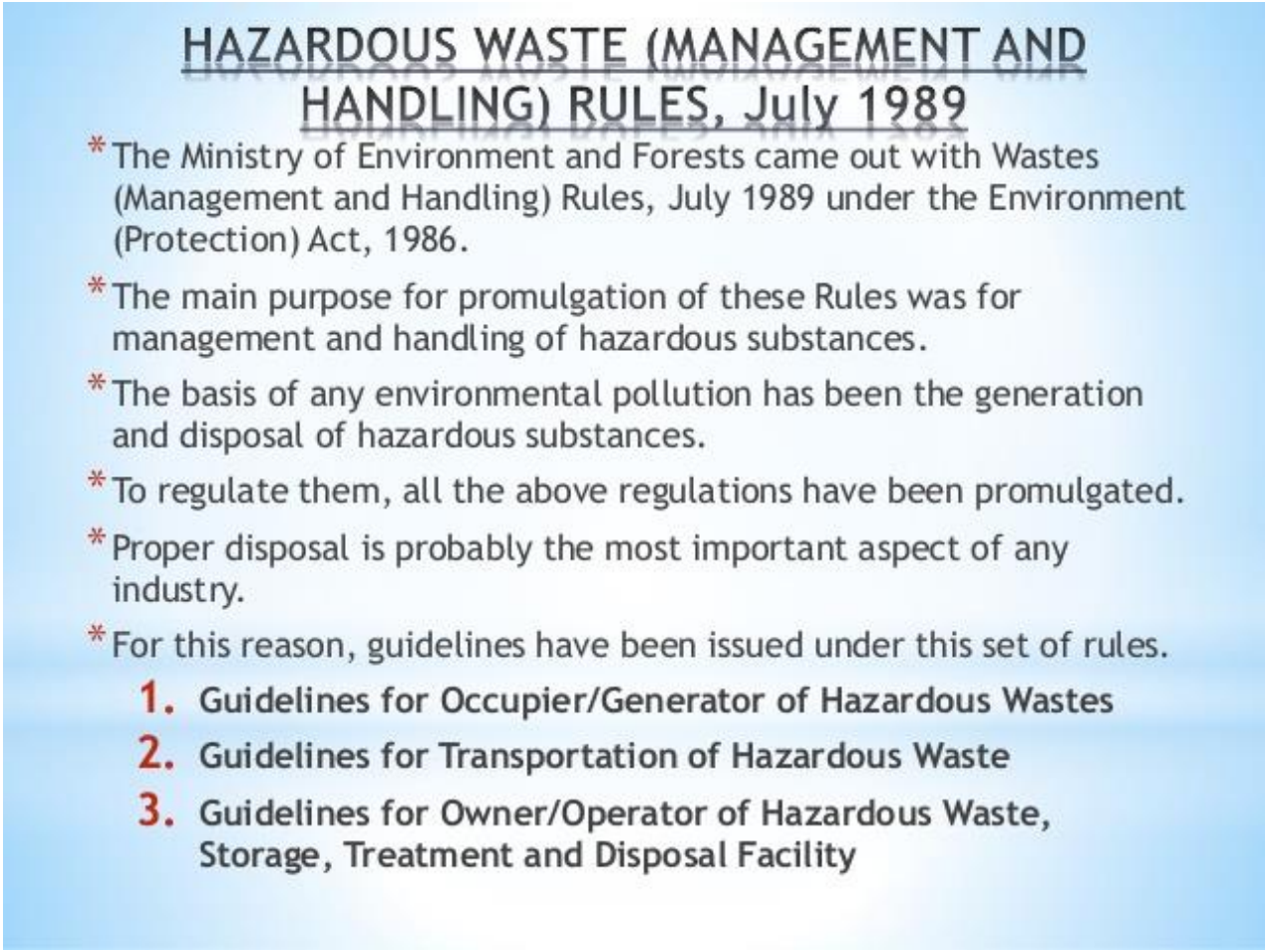
* The National Environmental Tribunal Act of 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance.
* For the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accidents, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.

NATIONAL APPELLATE AUTHORITY ACT OF 1997

NATIONAL APPELLATE AUTHORITY ACT OF 1997

* This Act has been enacted to "hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or process shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto."
* According to Section 12 of the Act the Authority shall not be bound by the procedure laid down in the code of civil procedure, 1908, but shall be guided by the principles of natural justice.
* Subject to the other provisions of this Act and of any rules made by Central Government, the Authority shall have power to regulate its own procedure, including the fixing of places and times of its enquiry and deciding whether to sit in public or private.
* Also, with the effect from the date of establishment of the Authority, no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is empowered by or under this Act.

HAZARDOUS WASTE (MANAGEMENT AND HANDLING) RULES, July 1989



THE PUBLIC LIABILITY INSURANCE ACT, 1991

THE PUBLIC LIABILITY INSURANCE ACT, 1991

* The purpose of this Act is "to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.
* The Act defines an "accident" as involving a fortuitous, sudden or unintentional occurrence while handling any hazardous substance resulting in continuous damage to any property but does not include an accident by reason only of war or radioactivity.
* For the first time, this Act holds the owner liable for death or injury to any person, damage to any property resulting from an accident.
* The "claimant shall not be required to plead and establish that death, injury or damage in respect of which the claim has been made was due to any wrongful act. neglect or default of any person.
* Only Workman has been excluded from this Act as he is covered under the Workmen's Compensation Act, 1923 (8 of 1923).

* The Owner is required to take out insurance policies so that he can give relief under sub-section (1) of section 3.
* This insurance is required within a period of one year from such commencement.
* Minimum amount of insurance is the paid-up capital of the undertaking handling any hazardous substance or Rs. 5 Crores maximum.
* Penalty for not taking insurance coverage is imprisonment for one year and six months and fine of not less than one lakh rupees or both.
* Under this Act, Environment Relief Fund has been established. This fund may be used in case of any emergency.
* Non-compliance is punishable by 3 months imprisonment or fine which may extend to Rupees ten thousand or both.
* Medical expenses are also payable under this Act.

* This Act provides for immediate relief of Rs. 25,000 per person in case of death and Rs. 12,500 in case of injury to be paid immediately.
* This amount is payable by the insurance coverage of the spiller or the company where the accident has occurred.
* Additional compensation, if any, will have to be settled through court.
* List of chemicals with quantities for Application of Public Liability Insurance Act are specified.
* It also lists chemicals which are extremely hazardous.

POLLUTION FROM AUTOMOBILES AND THEIR STANDARDS

POLLUTION FROM AUTOMOBILES AND THEIR STANDARDS

To combat this increasing pollution from vehicles, new and tougher auto standards are being enforced.

The Environment (Pollution) Rules, 1986 contain these regulations.

1. The standards recommended during idling for all four wheeled petrol driven vehicles for carbon monoxide shall not exceed 3 percent by volume.
2. Idling carbon monoxide emission limit for all two and three wheeled petrol driven vehicles shall not exceed 4.5 percent by volume.
3. Cars with mass less than 1,020 kg. load on the axle will be permitted to emit a maximum of five grams of carbon monoxide per kilometer.
4. The combined emission of nitrous oxide and hydro carbons shall not exceed 2 grams per kilometer.
5. The above standards are for petrol driven vehicles only.

For diesel driven vehicles, the regulations are different.

1. For all medium and heavy diesel vehicles with capacity over 3.5 tons, they should not emit more than 11.2 grams. of carbon monoxide per kilowatt hour (kWh) equivalent burning of fuel.
2. The maximum permissible levels for nitrous oxide and hydro carbons are 14.4 and 2.4 grams. per kWh.

* The Ministry of Environment and Forests, Government of India now also issues the ECOMARK notifications.
* They are issued to consumer products that meet certain Indian Standards Institute guidelines.
* The product should be friendly to the environment.

LIST OF PROJECTS REQURING ENVIRONMENTAL CLEARANCE FROMT THE CENTRAL GOVERNMENT

LIST OF PROJECTS REQUIRING ENVIRONMENTAL CLEARANCE FROM THE CENTRAL GOVERNMENT

1. Nuclear Power and related projects such as Heavy Water Plants, Nuclear Fuel Complex, Rare Earths.
2. River Valley projects including hydro power, major irrigation and their combination including flood control.
3. Ports, Harbors, Airports (except minor ports and harbors).
4. Petroleum Refineries including crude and product pipelines.
5. Chemical Fertilizers (Nitrogenous and Phosphates other than single super phosphate).
6. Pesticides (Technical).
7. Petrochemical complexes (Both Olefinic and aromatic) and Petro-chemical intermediates such as DMT, Caprolactam LAB etc. and production of basic plastics such as LLDPE, HDPE, PP, PVC.
8. Bulk drugs and pharmaceuticals.
9. Exploration for oil and gas and their production, transportation and storage.
10. Synthetic Rubber.

11. Asbestos and Asbestos products.
12. Hydrocyanic acid and its derivatives
13. (i) Primary metallurgical industries (such as production of Iron and Steel, Aluminum, Copper Zinc, Lead and Ferro Alloys) and also

    (ii) Electric arc furnaces (Mini Steel Plants).
11. Chlor-alkali industry.
12. Integrated paint complex including manufacture of resins and basic raw materials required in the manufacture of paints.
13. Viscose Staple fiber and filament yarn.
14. Storage batteries integrated with manufacture of oxides of lead and lead antimony alloys.
15. All tourism projects between 200m - 500 meters of High Water Lin and at locations with an elevation of more than 1,000 Meters with investment of more than Rs. 5 Crores.
16. Thermal Power Plants.
17. Mining Projects (major minerals) with leases more than 5 hectares.

21. Highway Projects.
22. Tarred Roads in Himalayan and or Forest areas.
23. Distilleries.
24. Raw Skins and Hides.
25. Pulp, Paper and newsprint,
26. Dyes.
27. Cement.
28. Foundries (individual).
29. Electroplating.

Intellectual Property Right

Intellectual property rights are the legal rights that cover the privileges given to individuals who are the owners and inventors of a work, and have created something with their intellectual creativity. Individuals related to areas such as literature, music, invention, etc., can be granted such rights, which can then be used in the business practices by them.

The creator/inventor gets exclusive rights against any misuse or use of work without his/her prior information. However, the rights are granted for a limited period of time to maintain equilibrium.

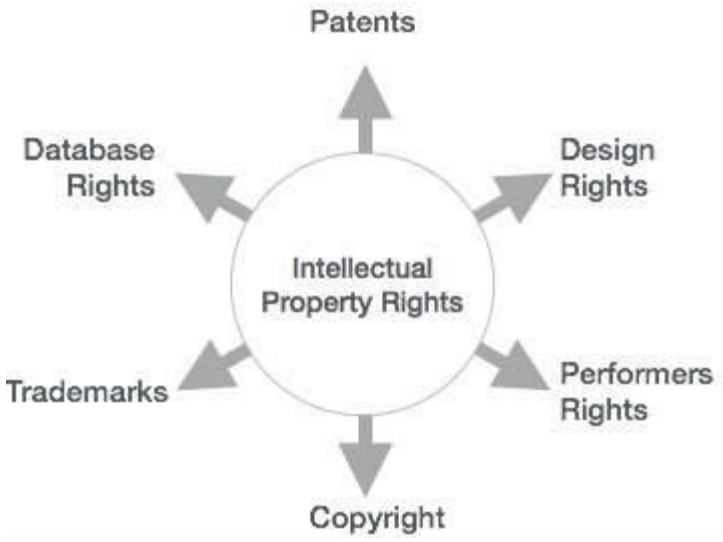
The following list of activities which are covered by the intellectual property rights are laid down by the World Intellectual Property Organization (WIPO) –

- Industrial designs
- Scientific discoveries
- Protection against unfair competition
- Literary, artistic, and scientific works
- Inventions in all fields of human endeavor
- Performances of performing artists, phonograms, and broadcasts
- Trademarks, service marks, commercial names, and designations
- All other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields

Types of Intellectual Property Rights

Intellectual Property Rights can be further classified into the following categories –

- Copyright
- Patent
- Patent
- Trade Secrets, etc.



Advantages of Intellectual Property Rights

Intellectual property rights are advantageous in the following ways −

- Provides exclusive rights to the creators or inventors.
- Encourages individuals to distribute and share information and data instead of keeping it confidential.
- Provides legal defense and offers the creators the incentive of their work.
- Helps in social and financial development.

Intellectual Property Rights in India

To protect the intellectual property rights in the Indian territory, India has defined the formation of constitutional, administrative and jurisdictive outline whether they imply the copyright, patent, trademark, industrial designs, or any other parts of the intellectual property rights.

Back in the year 1999, the government passed an important legislation based on international practices to safeguard the intellectual property rights. Let us have a glimpse of the same −

- The **Patents** (Amendment) Act, 1999, facilitates the establishment of the mail box system for filing patents. It offers exclusive marketing rights for a time period of five years.
- The **Trade Marks** Bill, 1999, replaced the Trade and Merchandise Marks Act, 1958
- The **Copyright** (Amendment) Act, 1999, was signed by the President of India.
- The ***sui generis*** legislation was approved and named as the Geographical Indications of Goods (Registration and Protection) Bill, 1999.
- The **Industrial Designs** Bill, 1999, replaced the Designs Act, 1911.
- The **Patents (Second Amendment)** Bill, 1999, for further amending the Patents Act of 1970 in compliance with the TRIPS.

UNIT – V

Laws related to mergers & acquisitions in view of the multinational companies operating in India

INTRODUCTION

- M&As are taking place all over the world irrespective of the industry, and therefore, it is necessary to understand the basic concepts pertinent to this activity. The given below (Figure) is the clear presentation of the notion of M&A.

Figure -1.2 Kinds of M&A

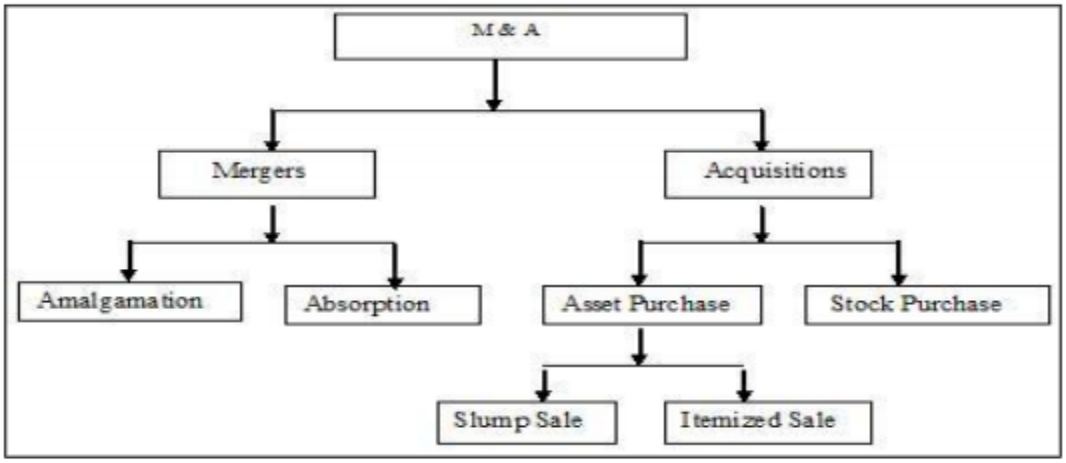
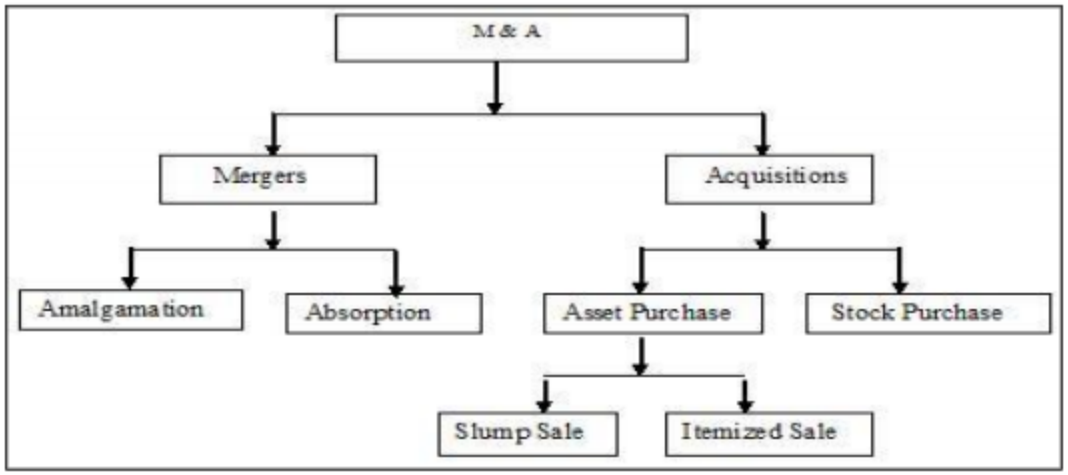


Figure -1.2 Kinds of M&A



MERGER

Merger is said to occur when two or more companies combine into one company. Merger is defined as a ‘transaction involving two or more companies in the exchange of securities and only one company survives’.

When the shareholders of more than one company, usually two, decide to pool resources of the companies under a common entity it is called ‘merger’.

If as a result of a merger, a new company comes into existence it is called as ‘amalgamation’. The merger of Bank of Punjab and Centurion Bank resulting in formation of Centurion Bank of Punjab; or merger of Indian Rayon Ltd, Indo Gulf Fertilizers Limited (IGFL) and Birla Global Finance Limited (BGFL) to form a new entity called Aditya Birla Nuvo is an example of amalgamation.

As a result of a merger, one company survives and others lose their independent entity, it is called ‘absorption’. The merger of Global Trust Bank Limited (GTB) with Oriental Bank of Commerce (OBC) is an example of absorption. After the merger, the identity of GTB is lost. But the OBC retains its identity.

ACQUISITION

Acquisition is an act of acquiring effective control by a company over the assets (purchase of assets either by lump sum consideration or by item-wise consideration) or management (purchase of stocks/shares or gaining control over Board) of another company without combining their businesses physically. Generally a company acquires effective control over the target company by acquiring majority shares of that company. However, effective control may be exercised with a less than majority shareholding, usually ranging between 10 percent and 40 percent because the remaining shareholders, scattered and ill organized, are not likely to challenge the control of the acquirer. Takeover is considered as a form of acquisition. Takeover is a business strategy of acquiring control over the management of target company either directly or indirectly

Advantages of Mergers and Acquisitions

- The most common reason for firms to enter into merger and acquisition is to merge their power and control over the markets.
- Another advantage is Synergy that is the magic power that allow for increased value efficiencies of the new entity and it takes the shape of returns enrichment and cost savings.
- Economies of scale is formed by sharing the resources and services (Richard et al, 2007). Union of 2 firm's leads in overall cost reduction giving a competitive advantage, that is feasible as a result of raised buying power and longer production runs.
- Decrease of risk using innovative techniques of managing financial risk.
- To become competitive, firms have to be compelled to be peak of technological developments and their dealing applications. By M&A of a small business with unique technologies, a large company will retain or grow a competitive edge.

MERGERS AND ACQUISITIONS IN INDIA

India in recent past has seen great potential in case of Merger and Acquisition (M&A) deals. It is being played vigorously in many industrial sectors of the economy. Many Indian companies have been growing the inorganic way to gain access to new markets and many foreign companies are targeting Indian companies for their growth and expansion. It has been spreading far and wide through various verticals on all business platforms.

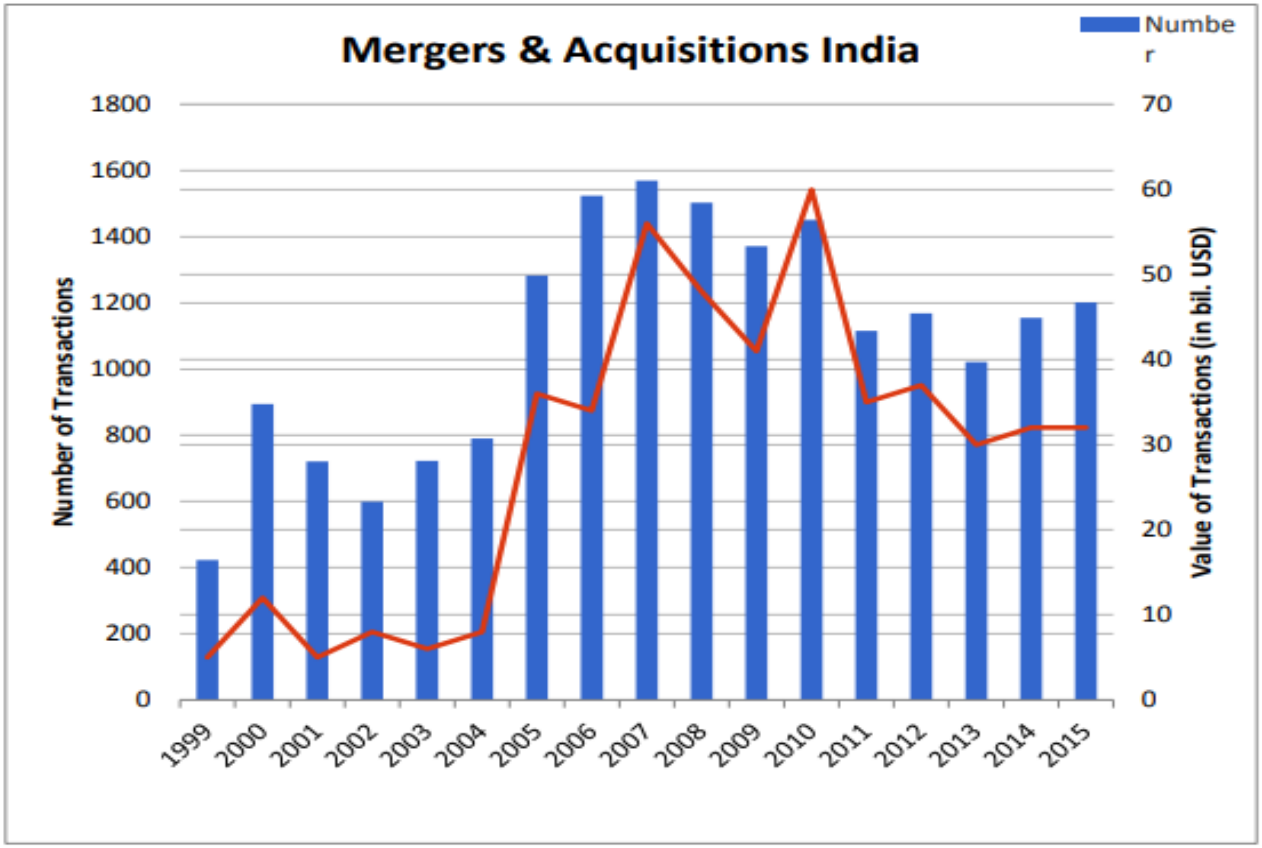
The volume of M&A deals has been trending upwards particularly in the fields of pharmaceuticals, FMCG, finance, telecom, automotive and metals. Various factors which lead to this robust growth of mergers and acquisitions in India were liberalization, favorable government policies, economic reforms, need for investment, and dynamic attitude of Indian corporations. Almost all sectors have been opened up for the foreign investors in different degrees which has attracted this market and enabled industries to grow.

The post-world war period was regarded as an era of M&As. Large number of M&A's occurred in industries like jute, cotton textiles, sugar, banking & insurance, electricity and tea plantation.

However after independence, during the initial years, very few corporations came together and when they did it was a friendly negotiated deal. The reason behind less number of companied involved in mergers and acquisitions were due to the provisions of MRTP act, 1969 wherein such a firm had to follow a pressurized procedure to get approval for the same which acted as a deterrent.

Although this doesn't mean that mergers and acquisitions in India were uncommon during this controlled system. In fact there were cases where the government encouraged mergers to revive the sick units. Additionally the creation of Life Insurance Corporation (LIC) and nationalization of life insurance business resulted in takeover of 243 insurance companies in the year 1956.

Chart - 1.6 Merger and Acquisitions in India



The concept of mergers and acquisitions in India was not very popular until the year 1988. This year saw an unfriendly takeover by Swaraj Paul to overtake DCM ltd. which later had turned out to be ineffective.

After the economic reforms that took place in the 1991, there were huge challenges in front of Indian industries both nationally as well as internationally. The intense competition compelled the Indian companies to opt for M&A's which later on became a vital option for them to expand horizontally and vertically. Indian corporate enterprises started refocusing in the lines of core competence, market share, global competitiveness and consolidation.

The early nineties saw M&A transactions led by Indian IT and pharmaceutical firms primarily to place themselves near to their major clients in other developed economies and also break into new markets for expansion.

In this backdrop, Indian corporate enterprises undertook restructuring exercises primarily through M&A's to create a formidable presence and expand in their core areas of interest. Since then there has been no looking back and India is being considered one of the top countries entering merger and acquisitions. However, the complications involved in the acquisition process has also increased caused by evolving legal frameworks, funding concerns and competition norms which pose a constraint for the deal to be successful

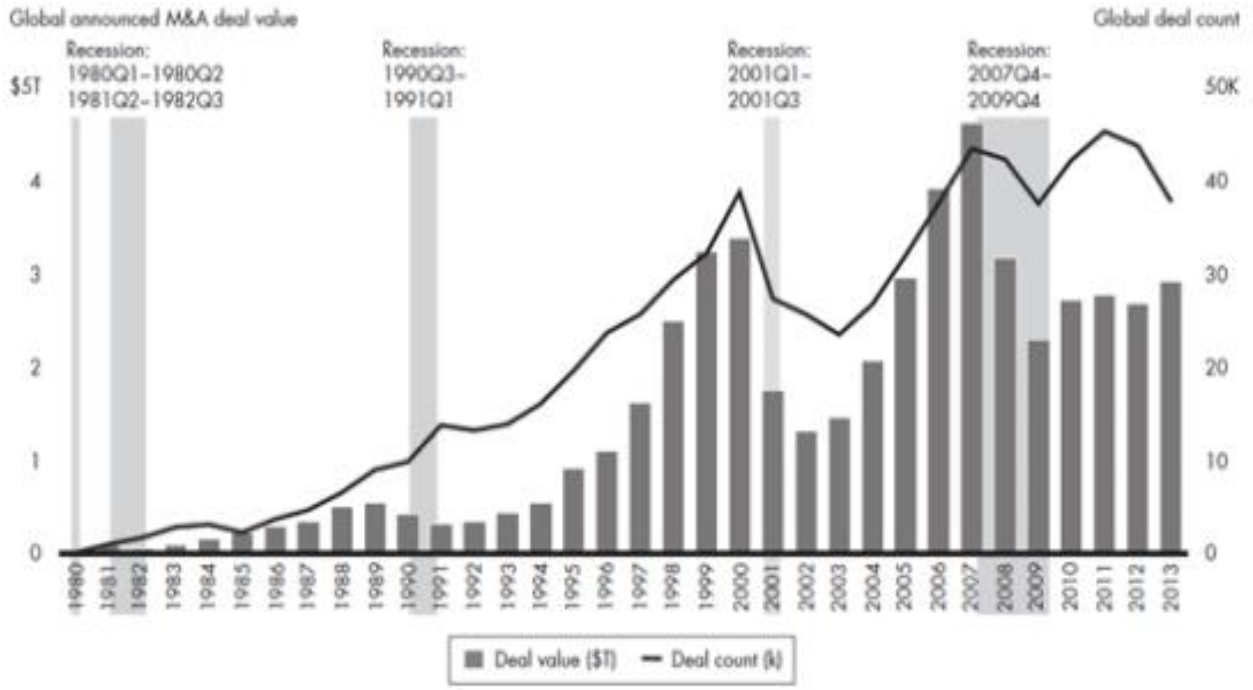
Recent trends of Mergers and Acquisitions in India

There are various factors that facilitate mergers and acquisitions in India. Government policies, resilience in economy, liquidity in the corporate sector, and vigorous attitudes of the Indian businessmen are the key factors behind the fluctuating trends of mergers and acquisitions in India.

Considering the trends in previous years, Year 2012 saw a slowdown in mergers and acquisitions in India. It hit a three year low down by almost 61% from its preceding year. This was majorly caused by the tough macro-economic climate created due to euro zone crisis and other domestic reasons such as inflation, fiscal deficit, and currency depreciation. However that year also saw a key trend that emerged and it was the increase in domestic deals compared to cross border M&As. The domestic agreement value stood at USD 9.7 billion, up by almost 50.9% in comparison with 2011.

Chart - 1.7 Mergers and Acquisitions Trends : India

Figure 1: The global M&A market is cyclical



Source: Thomson Financial (until 2000); Dealogic (from 2000)

This year 2014, has started off on a positive note for inbound M&A deals in India which has so far seen 15 deals in the first two months. The general elections due in the coming months would have a huge impact on the on the mergers and acquisitions in India. Though the investment sentiments have improved the foreign companies are awaiting the effect of elections before putting in money in India.

The country is strong enough in its rudiments which will drive its business and economic growth.

Challenges to Mergers and Acquisitions in India

With the increase in number of M&A deals in India, the legal environment is increasingly becoming more and more refined. M&A forms a major part of the economic transactions that take place in the Indian economy. There are a few challenges with mergers and acquisitions in India which have been discussed below;

Regulatory Ambiguity: M&A laws and regulations are still developing and trying to catch up with the global M&A scenario. However because of these reasons the interpretation of these laws sometimes goes for a toss since there is ambiguity in understanding them Several regulators interpreting the same concept differently increase confusion in the minds of foreign investors. This adversely affects the deal certainty which needs to be resolved if the Indian system wants to attract investments from foreign economies

Legal Developments: There have been consistently new legal developments such as the Competition Act, 2002 , the restored SEBI Takeover Regulations in 2011 and also the notification of limited sections of the new Companies Act, 2013, has led to issues in India relating to their interpretations and effect on the deals valuations and process.

Shareholder Involvement: Institutional investors in the minority position have become active in observing the investee companies. Proxy advisory companies are closely scrutinizing the related party transactions, appointment of several executives and their remuneration. There are cases where the approval of minority shareholders is required. The powers to the minority shareholders have been revamped, one of them includes to sue company against oppression and mismanagement.

These are some of the issues that pose a challenge towards the growth of mergers and acquisitions in India which need considerate attention from the government to make our market attractive for foreign investment.

On a positive note Confederation of Indian Industry (CII), the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) – the three main regulators of the mergers and acquisition activities – have been striving hard to further liberalize the norms that have been one of the biggest contributors to the country's industrial expansion.

FUTURE OUTLOOK OF M & A IN INDIA

India is becoming a highly sought after destination for M&A deals. This also means that it is now more vulnerable to the impulses and uncertainties of the global economic scenario. Considered to be the lifeblood of Indian business now, it needs the support and constancy to ensure that it remains progressive in the coming years.

India must concentrate upon refining the processes, increasing the simplicity in doing business abroad and the legalities involved in them. It is not wrong to say that the mergers and acquisitions in India and the system related to that are in the infant stage but this economy is huge enough to provide opportunities to foreign investments.

The key to success keeping fundamentals in place i.e. to bring into line acquisitions to the entire business strategy, plan and execute a vigorous integration process and take adequate Mergers and Acquisitions in India

CONCLUSION

The last two decades have witnessed extensive mergers and acquisitions as a strategic means for achieving sustainable competitive advantage in the corporate world. Mergers and Acquisitions (M&A) have become the major force in the changing environment. The policy of liberalization, decontrol and globalization of the economy has exposed the corporate sector to domestic and global competition. Mergers and Acquisitions (M&A) have also emerged as one of the most effective methods of corporate structuring, and have therefore, become an integral part of the long-term business strategy of corporate sector all over the world. Almost 85 percent of Indian companies are using M&A as a core growth strategy