



*Orion School of Security & Intelligence Management*

India's First Recognised Security & Intelligence  
Education and Training Institute

**PART-II**  
**Diploma in Security &  
Intelligence Management  
(Correspondence Course)**



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## **CHAPTER – 1 - INTRODUCTION , EVOLUTION, SUPREMACY OF CONSTITUTION OF INDIA, STRUCTURAL SOURCES**

### **Contents**

- ✓ Introduction
- ✓ Evolution
- ✓ Supremacy of Constitution
- ✓ Structure/ Structural Sources
- ✓ Revision Questionnaire

### **Introduction.**

Constitution is a complex document and not to be construed as mere law, but as the machinery by which laws are made, it provides for the democratic function of the Government of India. Our Constitution is a written Constitution. It was adopted on 26<sup>th</sup> November, 1949 and came into force on 26<sup>th</sup> January, 1950. The Constitution defines and determines the relation between:

- (a) Various institutions and the areas of government,
- (b) Executive, the legislature and the judiciary,
- (c) Central government, State governments and the local governments,
- (d) People and the government,
- (e) Political, social and economic issues.

In our Constitution the federal system has been discussed in detail. It prescribes the Constitution for the Union and the State governments along with clear-cut and well defined division of power of Union and State Governments. The Chapters like legislative relations, administrative relations, financial relations and inter-state trade and commerce discuss the detailed and elaborate approach to these issues.

### **Evolution**

#### **The Cabinet Mission**

World War II in Europe came to an end on May 9, 1945. In July, a new government came to power in the United Kingdom. The new British government announced its Indian Policy and decided to convene a constitution drafting body. Three British cabinet ministers were sent to find a solution to the question of India's independence. This team of ministers was called the Cabinet Mission.

The Cabinet Mission discussed the framework of the constitution and laid down in some detail the procedure to be followed by the constitution drafting body. Elections for the 296 seats assigned to the British Indian provinces were completed by July-August 1946. With the

independence of India on August 15, 1947, the Constituent Assembly became a fully sovereign body. The Assembly began work on 9 December 1947.

**The Constituent Assembly.** The Constituent Assembly was the body that framed the constitution of India. The people of India elected the members of the provincial assemblies, who in turn elected the constituent assembly. [Rajendra Prasad](#), Sardar Patel, Maulana Abul Kalam Azad and Shyama Prasad Mukherjee were some important figures in the Assembly. There were more than 30 members of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H.P. Modi. The Chairman of the Minorities Committee was Harendra Coomar Mookerjee, a distinguished Christian who represented all Christians other than Anglo-Indians. Constitutional experts like Alladi Krishnaswamy Iyer, B.R. Ambedkar, B.N. Rau and K.M. Munshi were also members of the Assembly. Sarojini Naidu and Vijaylakshmi Pandit were important women members.

Dr. Sachidanand Sinha was the first president of the Constituent Assembly. Later, Dr. [Rajendra Prasad](#) was elected president of the Constituent Assembly while B.R. Ambedkar was appointed the Chairman of the Drafting Committee.

The Constituent Assembly met for 166 days, spread over a period of 2 years, 11 months and 18 days. Its sessions were open to the press and the public

### **The Supremacy of the Constitution**

The Constitution lays down the basic structure of government under which the people are to be governed. It establishes the main organs of government - the executive, the legislature and the judiciary. The Constitution not only defines the powers of each organ, but also demarcates their responsibilities. It regulates the relationship between the different organs and between the government and the people.

The Constitution is superior to all other laws of the country. Every law enacted by the government has to be in conformity with the Constitution. The Constitution lays down the national goals of India - Democracy, Socialism, Secularism and National Integration. It also spells out the [rights](#) and [duties](#) of citizens.

The Constitution applies to the State of Jammu and Kashmir with certain exceptions and modifications as provided in article 370 (which is a temporary provision) and the Constitution (Application to Jammu and Kashmir) Order, 1954.

### **Objectives Resolution**

The underlying principles of the Constitution were laid down by Pandit [Jawaharlal Nehru](#) in his Objectives Resolution:

- India is an Independent, Sovereign, Republic;
- India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union;

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- Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union;
- All powers and authority of sovereign and independent India and its constitution shall flow from the people;
- All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities before law; and fundamental freedoms - of talk, expression, belief, faith, worship, vocation, association and action - subject to law and public morality;
- The minorities, backward and tribal areas, depressed and other backward classes, shall be provided adequate safeguards;
- The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nations;
- The land would make full and willing contribution to the promotion of world peace and welfare of mankind.

### Features

The Constitution of India draws extensively from Western legal traditions in its enunciation of the principles of liberal democracy. It is distinguished from many Western constitutions, however, in its elaboration of principles reflecting aspirations to end the inequities of traditional social relations and enhance the social welfare of the population. According to constitutional scholar Granville Austin, probably no other nation's constitution "has provided so much impetus toward changing and rebuilding society for the common good." Since its enactment, the constitution has fostered a steady concentration of power in the hands of the central government - especially the Office of the Prime Minister. This centralization has occurred in the face of the increasing assertiveness of an array of ethnic and caste groups across Indian society. Increasingly, the government has responded to the resulting tensions by resorting to the formidable array of authoritarian powers provided by the Constitution. However, a new assertiveness shown by the Supreme Court and the Election Commission suggests that the remaining checks and balances among the country's political institutions are resilient and capable of supporting Indian democracy. Furthermore regional parties are gaining popularity at the expense of national parties which has led to coalition governments at the centre. As a consequence, power is becoming more decentralised.

### Structure

The Constitution, in its current form (March 2011), consists of a preamble, 22 parts containing 450-articles, 12 schedules, 2 appendices and 97 amendments to date (latest being related to co-operative societies in 2012). Although it is federal in nature it also has a strong unitary bias.

### Parts

The individual Articles of the Constitution are grouped together into the following Parts:

- **Preamble**
- **Part I**– Union and its Territory
- **Part II** Citizenship.
- **Part XII** – Finance, Property, Contracts and Suits
- **Part XIII** – Trade and Commerce within the

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- **Part III** – Fundamental Rights.
- **Part IV**– Directive Principles of State Policy.
- **Part IVA** - Fundamental Duties.
- **Part V**- The Union.
- **Part VI** – The States.
- **Part VII**-States in the B part of the First schedule (*Repealed*).
- **Part VIII**– The Union Territories
- **Part IX**– The Panchayats.
- **Part IXA** - The Municipalities.
- **Part X** – The scheduled and Tribal Areas
- **Part XI** – Relations between the Union and the States.
- territory of India
- **Part XIV** – Services Under the Union, the States.
- **Part XIVA** - Tribunals.
- **Part XV** – Elections
- **Part XVI** – Special Provisions Relating to certain Classes.
- **Part XVII** – Languages
- **Part XVIII** – Emergency Provisions
- **Part XIX** – Miscellaneous
- **Part XX** – Amendment of the Constitution
- **Part XXI** – Temporary, Transitional and Special Provisions
- **Part XXII** – Short title, date of commencement, Authoritative text in Hindi and Repeals

### Schedules

Schedules are lists in the Constitution that categorize and tabulate bureaucratic activity and policy of the Government.

- **First Schedule** (Articles 1 and 4)- This lists the states and territories of India, lists any changes to their borders and the laws used to make that change.
- **Second Schedule** (Articles 59, 65, 75, 97, 125, 148, 158, 164, 186 and 221)- – This lists the salaries of officials holding public office, judges, and [Comptroller and Auditor-General of India](#).
- **Third Schedule** (Articles 75, 99, 124, 148, 164, 188 and 219)—Forms of Oaths – This lists the oaths of offices for elected officials and judges.
- **Fourth Schedule** (Articles 4 and 80) – This details the allocation of seats in the [Rajya Sabha](#) (the upper house of Parliament) per State or Union Territory.
- **Fifth Schedule** (Article 244) – This provides for the administration and control of Scheduled Areas and [Scheduled Tribes](#) (areas and tribes needing special protection due to disadvantageous conditions).
- **Sixth Schedule** (Articles 244 and 275)— Provisions for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram.
- **Seventh Schedule** (Article 246)—The union (central government), state, and concurrent lists of responsibilities.
- **Eighth Schedule** (Articles 344 and 351)—The official languages.
- **Ninth Schedule** (Article 31-B) – Articles mentioned here are immune from judicial review.
- **Tenth Schedule** (Articles 102 and 191)—"Anti-defection" provisions for Members of Parliament and Members of the State Legislatures.
- **Eleventh Schedule** (Article 243-G)—*Panchayat Raj* (rural local government).
- **Twelfth Schedule** (Article 243-W)—Municipalities (urban local government).

The basic form of the Union Government envisaged in the Constitution is as follows,

“ A democratic executive must satisfy three conditions:

1. It must be a stable executive, and
2. It must be a responsible executive.

Unfortunately, it has not been possible so far to devise a system which can ensure both conditions in equal degree. .... The daily assessment of responsibility, which is not available in the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the parliamentary system of Executive has preferred more responsibility to stability. ”

### **Federal Structure**

The Constitution provides for distribution of powers between the Union and the States. It enumerates the powers of the [Parliament](#) and State Legislatures in three lists, namely Union list, State list and Concurrent list. Subjects like national defence, foreign policy, issuance of currency are reserved to the Union list. Public order, local governments, certain taxes are examples of subjects of the State List, on which the Parliament has no power to enact laws in those regards, barring exceptional conditions. Education, transportation, criminal law are a few subjects of the Concurrent list, where both the State Legislature as well as the Parliament have powers to enact laws. The residuary powers are vested with the Union.

The upper house of the Parliament, the [Rajya Sabha](#), which consists of representatives of States, is also an example of the federal nature of the government.

### **Parliamentary Democracy**

The [President of India](#) is elected by the Parliament and State Legislative Assemblies, and not directly by the people. The President is the [head of state](#), and all the business of the Executive and Laws enacted by the Parliament are in his/her name. However, these powers are only nominal, and the President must act only according to the advice of the [Prime Minister](#) and the [Council of Ministers](#).

The Prime Minister and the Council of Ministers exercise their offices only as long as they enjoy a majority support in the [Lok Sabha](#), the lower house of the Parliament, which consists of members directly elected by the people. The ministers are answerable to both the houses of the Parliament. Also, the Ministers must themselves be elected members of either house of the Parliament. Thus, the Parliament exercises control over the Executive.

A similar structure is present in States, where the directly elected [Legislative Assembly](#) enjoys control over the [Chief Minister](#) and the State Council of Ministers.

### **Independent Judiciary**

The [Judiciary of India](#) is free of control from either the executive or the Parliament. The judiciary acts as an interpreter of the constitution, and as an intermediary in case of disputes between two States, or between a State and the Union. An act passed by the Parliament or a Legislative



Assembly is subject to judicial review, and can be declared unconstitutional by the judiciary if it feels that the act violates the provisions of the Constitution.

### **Changing the constitution**

Main article: [Amendment of the Constitution of India](#)

Amendments to the Constitution are made by the Parliament, the procedure for which is laid out in Article 368. An amendment bill must be passed by both the Houses of the Parliament by a two-thirds majority and voting. In addition to this, certain amendments which pertain to the federal nature of the Constitution must be ratified by a majority of state legislatures.

As of January 2012 there have been 115 amendment bills presented in the Parliament, out of which 115 have been passed to become Amendment Acts. Most of these amendments address issues dealt with by statute in other democracies. However, the Constitution is so specific in spelling out government powers that many of these issues must be addressed by constitutional amendment. As a result, the document is amended roughly twice a year.

The Supreme Court has ruled in [Kesavananda Bharati v. State of Kerala](#) case that not every constitutional amendment is permissible, the amendment must respect the "[basic structure](#)" of the constitution, which is immutable.

### **Judicial review of laws**

Judicial review is adopted in the Constitution of India from the [Constitution of the United States of America](#). In the Indian constitution, Judicial review is dealt with under Article 13. Judicial Review refers that the Constitution is the supreme power of the nation and all laws are under its supremacy. Article 13 states that:

1. All pre-constitutional laws, if in part or completely in conflict with the Constitution, shall have all conflicting provisions deemed ineffective until an amendment to the Constitution ends the conflict. In such situation the provision of that law will again come into force, if it is compatible with the constitution as amended. This is called the *Doctrine of Eclipse*.
2. In a similar manner, laws made after adoption of the Constitution by the Constituent Assembly must be compatible with the constitution, otherwise the laws and amendments will be deemed to be void *ab initio*.
3. In such situations, the Supreme Court or High Court interprets the laws to decide if they are in conformity with the Constitution. If such an interpretation is not possible because of inconsistency, and where a separation is possible, the provision that is inconsistent with constitution is considered to be void. In addition to article 13, articles 32, 124, 131, 219, 228 and 246 provide a constitutional basis to judicial review in India

### **REVISION QUESTIONNAIRE**

1. Write down the evolution of the Constitution of India.
2. What do you understand by the supremacy of the Constitution of India.?
3. What do you understand by Independent Judiciary?

## CHAPTER - 2- PREAMBLE

### Contents

- ✓ Introduction
- ✓ Importance of Preamble
- ✓ Explanation of Some Words
- ✓ Revision Questionnaire

### Introduction

**PREAMBLE.** The Preamble is the basic structure of the Constitution. The Preamble says that people are the ultimate authority and the constitution emerges from them.

In fact the Preamble contains with the declaration that “to secure to all citizens’ justice, social, economic and political, liberty of thought, expression, belief, faith and worship – equality of status and of opportunity.

The Preamble emphasizes the unity of Nation and it proceeds further to define the objectives of the India Republic of India. The Preamble has been amended in 1976. The preamble contains a specified objective that is the basic structure. The preamble may be invoked to determine the ambit of the fundamental rights and Directive principles of State Policy. It is the soul of the Constitution and as such is the precious part of the Constitution. Preamble states that the Constitution was adopted on 26<sup>th</sup> November 1949 which is observed as the Law Day, though it came into force from 26<sup>th</sup> January, 1950;

### The importance of the Preamble

The wording of the Preamble highlights some of the fundamental values and guiding principles on which the Constitution of India is based. The Preamble serves as a guiding light for the Constitution and judges interpret the Constitution in its light. In a majority of decisions, the Supreme Court of India has held that the objectives specified in the preamble constitute the basic structure of the Indian Constitution, which cannot be amended. Though the Preamble is a part of the constitution still it nor any of its content is legally enforceable.

The first words of the Preamble - "*We, the people*" - signifies that power is ultimately vested in the hands of the people of India. The Preamble lays down the most important national goals which every citizen and the government must try to achieve, such as socialism, secularism and

national integration. Lastly, it lays down the date for the adoption of the Constitution - 26 November 1949.

### **Explanation of some of the important words in the Preamble**

#### **Sovereign**

The word sovereign means supreme or independent. India is internally and externally sovereign - externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people.

#### **Socialist**

The word socialist was added to the Preamble by the 42<sup>nd</sup> amendment act of 1976. It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds of caste, colour, creed, sex, religion, language, etc. Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavour to make the distribution of wealth more equal and provide a decent standard of living for all. This is in effect emphasizing a commitment towards the formation of a welfare state.

India has adopted a mixed economy and the government has framed many laws to achieve the aim and the Child Labour Prohibition Act.

#### **Secular**

The word secular was inserted into the Preamble by the 42<sup>nd</sup> amendment act of 1976. It implies equality of all religions and religious tolerance. India, therefore does not have an official state religion. Every person has the right to preach, practice and propagate any religion they choose. The government must not favour or discriminate against any religion. It must treat all religions with equal respect. All citizens, irrespective of their religious beliefs are equal in the eyes of law. No religious instruction is imparted in government or government-aided schools. The Supreme Court in *S.R Bommai v. Union of India* held that secularism was an integral part of the basic structure of the constitution.

#### **Democratic**

[India](#) is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as 'One man one vote'. Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, religion or education.

## **Republic**

As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The Post of the President Of India is not hereditary. Every citizen of India is eligible to become the President of the country.

## **Schedules**

Schedules can be added to the constitution by amendment. The twelve schedules in force cover the designations of the

1. States and Union Territories;
2. Emoluments for High-Level Officials;
3. Forms of Oaths;
4. Allocation of the number of seats in the Rajya Sabha (Council of States - the upper house of Parliament) per State or Union Territory;
5. Provisions for the administration and control of Scheduled Areas and Scheduled Tribes (areas and tribes needing special protection due to disadvantageous conditions);
6. Provisions for the administration of tribal areas in Assam;
7. The Union (central government), State, and Concurrent (dual) lists of responsibilities;
8. The Official Languages;
9. Article 31B-Validity excluded from Court's Review (land and tenure reforms; the association of [Sikkim](#) with India);
10. Anti-Defection provisions for Members of Parliament and Members of the State Legislatures;
11. Panchayat Raj (Rural Development);
12. Municipality (Urban Planning).

## **REVISION QUESTIONNIRE**

1. What do you understand by the ' Preamble' of the Indian Constitution.
2. What is the importance of the Preamble?
3. What do you understand by the word 'Secular' as contained in the Preamble?

## **CHAPTER - 3 - FUNDAMENTAL RIGHTS**

### **CONTENTS**

- ✓ Introduction.
- ✓ Fundamental Rights.
- ✓ Right to Equality.
- ✓ Right to Particular Freedom.
- ✓ Cultural and Educational Rights.
- ✓ Right to Freedom of Religion.
- ✓ Right Against Exploitation.
- ✓ Right to Constitutional Remedies.
- ✓ Revision Questionnaire.

### **INTRODUCTION**

- 1 The Fundamental Rights embodied in the Indian constitution act as a guarantee that all Indian citizens can and will lead their lives in peace as long as they live in Indian democracy. These civil liberties take precedence over any other law of the land. They include individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion, and the right to constitutional remedies for the protection of civil rights such as habeas corpus.
- 2 In addition, the Fundamental Rights for Indians are aimed at overturning the inequities of past social practices. They have also been used to in successfully abolishing the "untouchability"; prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth; and forbid trafficking in human beings and also the forced labor. They go beyond conventional civil liberties in protecting cultural and educational rights of minorities by ensuring that minorities may preserve their distinctive languages and establish and administer their own education institutions.

### **FUNDAMENTAL RIGHTS**

- 3 Originally, the right to property was also included in the Fundamental Rights; however, the Forty-fourth Amendment, passed in 1978, revised the status of property rights by stating that "No person shall be deprived of his property save by authority of law." Freedom of speech and expression, generally interpreted to include freedom of the press, can be limited "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."
- 4 Here we have defined the six fundamental rights as per the constitution of India:-
  - (a) Right to Equality.
  - (b) Right to Particular Freedom.

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- (c) Cultural and Educational Rights.
- (d) Right to Freedom of Religion.
- (e) Right Against Exploitation.
- (f) Right to Constitutional Remedies.

### **Rights to Equality**

- 5 The right to equality is one of the six rights that have been granted to us. In the Indian Constitution this right has been described as given under:-
- (a) The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them
  - (b) No citizen shall, on grounds of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
  - (c) Nothing in this article shall prevent the State from making any special provision for women and children
  - (d) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

### **Equal Opportunity for All**

- 6 There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (a) No citizen shall, on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
  - (b) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
  - (c) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered

together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent.

- 7 Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

### **The Right to Freedom**

- 8 The right to freedom is one of the most important fundamental rights that have been granted to us by the founder of Indian Constitution. This right allows every citizen of India to be free from the ancient form of slavery. All citizens shall have the following rights as related to the right to freedom:-
- (a) The freedom of speech and expression.
  - (b) To assemble peaceably and without arms.
  - (c) To form associations or unions.
  - (d) To move freely throughout the territory of India.
  - (e) To reside and settle in any part of the territory of India.
  - (f) To practice any profession, or to carry on any occupation, trade or business.
- 9 Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India , the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence
- 10 Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of [the sovereignty and integrity of India ] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause
- 11 Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of (the sovereignty and integrity of India) public order morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
- 12 Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

### **The Cultural and Educational Rights**

- 13 The Cultural and Educational Rights is one of the six fundamental rights that have been granted to us in the Indian Constitution. This right allows every citizen of India to follow

culture and education of one's own choice. This fundamental right is described in the constitution as given beneath:-

- (a) Any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same.
  - (b) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
  - (c) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
  - (d) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
- 15 The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

### **The Right to Freedom Of Religion**

- 16 The right to freedom of religion allows Indian citizens to choose any religion that he / she wants to choose. This fundamental right was chosen after lot of thought regarding the process of person choosing his / her own religion. This fundamental right is described in the constitution as described the succeeding paragraphs.
- 17 The right to freedom of religion is a fundamental right guaranteed under Article 25 of the Constitution of India. **Article 25** reads as follows:-
- 18 **Article 25. (1).** Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion freely.
- 19 **Article 25. (2).** Nothing in this article shall affect the operation of any existing law or prevent the State from making any law: -
- (a) Regulating or restricting any economic financial political or other secular activity which may be associated with religious practice.
  - (b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
  - (c) This Article guarantees that every person in India shall have the freedom of conscience and shall have the right to profess, practice and propagate religion, subject to the restrictions that may be imposed by the State on the following grounds, namely:-
    - (i) Public order, morality and health.
    - (ii) Other provisions of the Constitution.
    - (iii) Regulation of non-religious activity associated with religious practice



(iv) Social welfare and reform.

20 Throwing open of Hindu religious institutions of a public character to all classes of Hindus

### **The Right against Exploitation**

21 The right against exploitation allows Indian citizens to stand up against any kind of exploitation that he/ she might be going through. This fundamental right is described in the constitution as:

22 **Article 23.** Prohibition of traffic in human beings and forced labour.

23 Traffic in human beings and ‘beggar ‘ and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

24 Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

25 **Article 24.** Prohibition of employment of children in factories, etc.- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

### **The Right to Constitutional Remedies**

26 The right to constitutional remedies allows Indian citizens to stand up for their rights against anybody even the Government of India. This fundamental right is described in the constitution as given in the succeeding paragraphs.

27 **Article 32.** Remedies for enforcement of rights conferred by this Part:-

(a) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(b) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantors and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(c) Without prejudice to the powers conferred on the Supreme Court by clauses (a) and (b), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (b).

(d) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

28 **Article 33.** Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to:-

(a) The members of the Armed Forces; or

(b) The members of the Forces charged with the maintenance of public order; or

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- (c) Persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
  - (d) Persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.
- 29 **Article 34.** Restriction on rights conferred by this Part while martial law is in force in any area.- Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.
- 30 **Article 35.** Legislation to give effect to the provisions of this Part.- Notwithstanding anything in this Constitution,
- (a) Parliament shall have, and the Legislature of a State shall not have, power to make laws-
  - (b) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and (ii) for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause.

## SOME OTHER IMPORTANT FACTORS

- 31 **Before 44<sup>th</sup> Amendment in 1978** the right to property was a Fundamental right under Article 31, but now it is the legal and Constitutional right under Article 300A
- (a) Article 13 makes all laws and administrative actions which abridge fundamental rights ipso facto null and void.
  - (b) Article 14 guarantees to all, equality before law and equal protection of laws. The President and the Governor are an exception to the equality mandate.
  - (c) Article 15 Prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth or any of them.
  - (d) Article 16 provides for equality of opportunity in the matters of public employment.
  - (e) Article 17 abolishes untouchability.
  - (f) Article 18 abolishes titles. But it does not prevent other institutions to confer titles or honors.
  - (g) Article 19 guarantees freedom of speech, freedom to assemble peacefully without arms, to form associations or unions, to move throughout the territory of India, to reside and settle in any part of the territory of India, to practice any profession, or to carry on any occupation, trade or business.
  - (h) Articles 20 provides that no person shall be convicted for any offence except the

## SECURITY MANAGEMENT

violation of a law in force, no person shall be punished for the same offence more than once, no person shall be compelled to be a witness against himself.

- (i) Article 43A provides for participation of workers in management of industries.
- (j) Article 44 makes the provision for uniform civil code for the citizens.
- (k) Article 45 makes the provision for free and compulsory education to children below the age of 14 years.
- (l) Article 46 makes the provision for the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.
- (m) Article 47 States about the duty of State to raise the level of nutrition and the standard of living to improve public health.
- (n) Article 48 provides for organization of agriculture and animal husbandry.
- (o) Article 48A provides for protection and improvement of environment and safeguarding of forests and wild life.
- (p) Article 49 makes the provision for protection of monuments and places and objects of national importance.
- (q) Article 50 provides for separation of judiciary from executive.
- (r) Article 51 provides for promotion of international peace and security.

### **REVISION QUESTIONNAIRE**

- 1 Describe Fundamental Rights?
- 2 What do you understand by Equality of Law?
- 3 Describe in brief the following:-
  - (a) The Right to Constitutional Remedies.
  - (b) The Right against Exploitation.
  - (c) The Right to Freedom of Religion.
  - (d) The Cultural and Educational Rights.
  - (e) The Right to Freedom.

## **CHAPTER- 4 - FUNDAMENTAL DUTIES & DIRECTIVE PRINCIPLES**

### **CONTENTS**

- ✓ Introduction.
- ✓ Fundamentals Duties.
- ✓ Directive Principles.
- ✓ Revision Questionnaire.
- ✓ Conclusion.

### **INTRODUCTION**

- 1 The Fundamental Rights, Directive Principles of State Policy and Fundamental Duties are sections of the Constitution of India that prescribe the fundamental obligations of the State to its citizens and the duties of the citizens to the State. These sections comprise a constitutional bill of rights and guidelines for government policy-making and the behaviour and conduct of citizens. These sections are considered vital elements of the constitution, which were developed between 1947 and 1949 by the Constituent Assembly of India.
- 2 The Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the courts, subject to specific restrictions.
- 3 The Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions set out in Part IV of the Constitution—are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws.
- 4 The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties set out in Part IV–A of the constitution—concern individuals and the nation. Like the Directive Principles, they are not legally enforceable.

### **FUNDAMENTALS DUTIES**

- 5 Articles 51A deals with the fundamental duties. This provision was introduced by the 42<sup>nd</sup> amendment of Constitution in the year 1976 by inserting Part IVA in the Constitution. These duties cannot be enforced by writs. They can be promoted by Constitutional methods.
- 6 There are 11 fundamental duties as given below :-
  - (a) To abide by the Constitution and, respect its ideals and institutions, the National Flag and the National Anthem. [Article 51A (a)].
  - (b) To cherish and follow the noble ideals which inspire our national struggle for freedom. [Article 51A (b)].
  - (c) To uphold and protect the sovereignty, unity and integrity of India. [Article 51A(c)].

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- (d) To defend the country and render national service when called upon to do so. [Article 51A (d)].
- (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women. [Article 51A (e)].
- (f) To value and preserve the rich heritage of our composite culture. [51A (f)].
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. [Article 51A (g)].
- (h) To develop the scientific temper, humanism and the spirit of inquiry and reform. [Article 51A (h)].
- (i) To safeguard public property and to abjure violence. [Article 51A (i)].
- (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement. [Article 51A (j)].
- (k) The parent or guardian to provide opportunities for education to his child or ward, as the case may be, between 6 to 14 years of age. [Article 51A (k)].

### **DIRECTIVE PRINCIPLES**

7 The directive principles in Indian Constitution are as under:-

- (a) Articles 36 to 51 deal with the Directive Principles of State Policy.
- (b) Article 36 defines the State.
- (c) Article 37 provides that provision of the directive principles shall not be enforceable by any court.
- (d) Article 38 provides that State shall secure social order for promotion of welfare of the people.
- (e) Article 39 states that the States shall regulate ownership and control of the means of production and distribution, prevent concentration of wealth and income, ensure their more equitable distribution and enact laws to protect the interests of the workers.
- (f) Article 39 A provides for equal justice and free legal aid.
- (g) Article 40 provides for organization of village Panchayats.
- (h) Article 41 provides for right to work, right to education and right to public assistance in cases on unemployment, old age, sickness and disablement, etc.
- (i) Article 42 provides for just and humane conditions of work and maternity relief.
- (j) Article 43 provides for living wage, conditions of work ensuring the decent standard of life and full enjoyment of leisure, social and culture, opportunities for all workers, agricultural, industrial, or otherwise and provision for the promotion of cottage industries in rural areas. Parliament can abolish the legislative council in the States. [Article 169].
- (k) The Legislative Assembly of a State shall consist of 500 members maximum

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and 60 members in minimum elected, directly by the people of their territorial constituencies. [Article 170].

- (l) Members of Legislative Council shall not exceed  $\frac{1}{3}^{\text{rd}}$  of total number of members in the Legislative Assembly in that State but the total numbers in Legislative Council shall not be less than 40. [Article 171]
  - (m) Duration of State legislature is five years from the date of its first meeting. [Article 172].
  - (n) A person to be qualified for being a member of Legislative Assembly must be a citizen of India, must be of 25 years of age and in case of member of Legislative Council the minimum age is 30 years at the time of membership. [Article 173].
  - (o) According to the Constitution 91<sup>st</sup> Amendment in 2003 the total number of ministers including Chief Minister shall not exceed 15% of the total number of members in the Legislative Assembly.
  - (p) Speaker and Deputy Speaker of the Legislative Assembly -The Speaker and Deputy Speaker are appointed by the Legislative Assembly of State. [Article 178].
  - (q) Every member of Legislative Assembly or Legislative Council takes oath from the Governor. [Article 188].
  - (r) The decision for disqualification of members rests upon Governor. [Article 192].
  - (s) A money bill is not introduced in legislative council; it is introduced in the Legislative Assembly. [Article 198].
  - (t) A Bill is money bill or not is provided in Article 199.
- 8 A Bill to be converted into an Act is presented to Governor for his assent, after being passed by Legislative Assembly or by the Legislative Assembly and Legislative Council if there are bicameral system like in States of Bihar, Karnataka, Maharashtra and Uttar Pradesh. [Article 200].

### CONCLUSION

The Fundamental Duties of citizens were added by the 42nd Amendment Act in 1976. The ten Fundamental Duties—given in Article 51-A of the constitution—can be classified as either duties towards self, duties concerning the environment, duties towards the State, and duties towards the nation. The 11th Fundamental Duty, which states that every citizen "who is a parent or guardian, to provide opportunities for education to his child or, ward between the age of six and fourteen years" was added by the 86th constitutional amendment in 2002.

Citizens are morally obligated by the constitution to perform these duties. However, these are non-justifiable, incorporated only with the purpose of promoting patriotism among citizens. These obligations extend not only to the citizens, but also to the State. There is reference to such duties in international instruments such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. The Fundamental Duties obligate all citizens to respect the national symbols of India (including the constitution), to cherish its

heritage, and assist in its defence. It aims to promote the equality of all individuals, protect the environment and public property, to develop "scientific temper", to abjure violence, to strive towards excellence, and to provide free and compulsory education.

**REVISION QUESTIONNAIRE**

1. Explain in brief the fundamental duties of an Indian citizen.
2. Write a brief note on Directive Principles enshrined in the constitution of India.

## **CHAPTER - 5- THE SUPREME COURT, HIGH COURTS AND LOWER COURTS**

### **CONTENTS**

- ✓ Introduction.
- ✓ Supreme Court
- ✓ High Courts in The States
- ✓ Subordinate Courts/ Lower Courts
- ✓ Union Territories
- ✓ Comparison of the powers of Supreme Court and High Court
- ✓ Revision questionnaire

### **INTRODUCTION**

1. India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. India's commitment to law is created in the Constitution which constituted India into a Sovereign Democratic Republic, containing a federal system with Parliamentary form of Government in the Union and the States, an independent judiciary, guaranteed Fundamental Rights and Directive Principles of State Policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

### **SUPREME COURT OF INDIA**

2. Supreme Court of India is the highest judicial body. The role of Supreme Court is that of a guarding of the constitution and the highest court of appeal. The Supreme Court has original, appellate and advising jurisdiction.

### **HIGH COURTS IN THE STATES**

3. In each State there is one High Court. [Article 214].
4. Every High Court is the Court of Record and shall have all the powers of such a court including the power for contempt. [Article 215].
5. Every High Court consists of Chief Justice and some other Judges as per President's discretion. [Article 216].
6. Every Judge of High court is appointed by President of India and holds office up to the age of 62 years. A Judge addresses his resignation to the President of India. [Article 217]
7. A Judge of a High Court is administered oath by the Governor of that State. [Article 219].
8. A retired judge of a High Court cannot practice in same High Court but he can practice in the other High Courts and in the Supreme Court. [Article 220].
9. The High Court has power to issue to any person or authority, any direction, order or writs including writs in nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari



for the enforcement of any fundamental rights. [226].

10. Every High Court has power of superintendence over all courts and tribunals throughout its territories of that State. [Article 227].

### **SUBORDINATE COURTS**

11. The District Judge is appointed by the Governor in consultation with High Court. His appointment is subject to recommendation of High Court. [Article 233].

12. Other judicial officers, other than District Judges are appointed by the Governor in consultation with the State Public Service Commission and the High Court. [Article 234].

### **UNION TERRITORIES**

13. Every Union territory is administered by President of India through the administrator appointed by him with such designation as may specify. [Article 239].

### **ARTICLES 32, 226, 311 AND 355**

14. The four articles selected for study can be grouped in three parts. Articles 32 and 226 can be grouped together as “Right to constitutional Remedies” and form part for Fundamental Rights. Article 311 “safeguards the service interests of Government servants” and article 355 gives “overriding authority and responsibility to the Government of India to safeguard the security and safety of the state”.

15. **Right to Constitutional Remedies – Articles. 32 and 226:-** Both these Articles have been incorporated in the constitution for enforcement of the fundamental rights enshrined in Part III of the constitution of India. Article 32 empowers the Supreme Court to issue directions or orders or writs in the whole of India and is itself a fundamental right. Article 226 empowers all High Courts to issue writs for the enforcement of the fundamental rights within its territory. The sole object of these articles is enforcement of the fundamental right granted by the constitution. Hence, wherever alternative remedies are open to aggrieved parties, they shall not have right to seek constitutional remedies under these articles. These articles can only be activated when fundamental right are infringed. Thus the guarantee of fundamental rights makes complete provision for remedy for the enforcement of these rights. It may be said that a right without a remedy for the enforcement of the right is of little avail.

16. Since the Supreme Court is the apex court, a question arises whether a person has the right to move court under article 32 without first seeking relief from the High Court under article 226. There was also some wavering on the questions whether a writ under article 32 will lie after an application under article 226 on the same grounds which has been heard and rejected by the High Court. It has since been established that:-

- (a) Where an application under article 226 has been dismissed on merits another, under article 32 on the same facts and on the same grounds, will not lie for obtaining similar writs or orders.
- (b) Whenever a writ petition under article 226 has been dismissed, has been withdrawn, or is dismissed on grounds of disputed facts which can only be decided in a regular suit, an application under article 32 would not be heard.

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- (c) If a petition under article 226 is dismissed not on merits, but on the grounds of laches (negligence or unreasonable delay in pursuing a legal remedy) or, acquiescence or on the grounds when there was alternative remedy available to the petitioner, then under article 32, it would lie. However, the court may consider if these were sufficient grounds for its dismissal.
- (d) The Supreme Court has made an exception in cases of the writ of Habeas Corpus and has laid down that even where an application has been dismissed by the High Court, another application for the same writ under article 32 will lie before it.
- (e) The right of the Supreme Court extends to the whole country while that of the High Court extends only within its jurisdiction. For the purpose of easy understanding the provisions of articles 32 is explained and thereafter its relations with article 226 has been pointed out.

### 17 Who May Apply Under Article 32

- (a) Any person who complains of breach of one's fundamental rights. Thus a person who does not possess fundamental rights cannot seek remedy. For example under article 16, the citizens have the right of not being discriminated against on the basis of religion, race etc. Hence the alien cannot seek redress if they are discriminated against.
- (b) A company and its share holders are separate legal entities. Hence infringement of the right of one does not give the right to seek remedy to the other.
- (c) The right must belong to the petitioner, but an exception has been made in case of Habeas Corpus. Not only the man who is imprisoned or detained in confinement, but any one provided he is not absolutely a stranger, can institute proceedings to obtain a writ of Habeas Corpus for the release of the unlawfully detained person.
- (d) Question of title to property cannot be decided under article 32
- (e) The supreme court shall not exercise appellate powers under article 32
- (f) Article 32 will arise only when fundamental rights have been infringed.
- (g) Laches and acquiescence do not take away the jurisdiction of the Supreme Court under article 32 but the court may refuse to grant leave in the exercise of its writ jurisdiction because of delay in seeking remedy.
- (h) The Supreme Court may also refuse to provide remedy in case of vague pleading, points not specifically taken in the pleading and the petition becoming infractions since the same relief has been obtained by him in another proceedings.

18. The powers of the High Court under article 226 and 32 are not confined to "prerogative writs" and the High Court in issuing such relief may travel beyond the contents of the writs of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari. Thus, the remedy available in India is wider than that available in U.K. for the prerogative writs and the Courts in India are not shackled by the procedural technicalities of the English Courts. The Court may also mould the relief to meet the peculiar and complicated requirements of the country provided the constitution or the law declared by the Supreme Court is not contravened. Art. 226 (1) states

that writs can be issued for enforcement of Fundamental Rights and for any other purpose. This makes the jurisdiction of the High Court more expensive than that of the Supreme Court.

19. This phrase means a purpose for which any of the writs could, according to well established principles, be issued. The result is that while under the first part, a writ may be issued under the article only after a decision that the aggrieved party has a fundamental right and that it has been infringed under the second part, it may be issued only after a finding that the aggrieved party has a legal right which entitles him to any of the aforesaid writs and that such right has been infringed. In short, any other purpose means the enforcement of any 'legal right' and performance of any legal duty. A legal right, of course, means any legally enforceable right, and includes contractual right, other than merely personal rights.

20. Another question that may arise is whether a writ shall lie against the Supreme Court or the High Courts themselves. These courts function in two capacities, viz; judicial capacity and administrative capacity. Wherever the courts function in judicial capacity they have immunity against issuance of any writ against them. This immunity has been extended to a Judge acting as an arbitrator also. However, whenever the Judges act in administrative capacity a writ shall lie against their decision or order.

21. In general writs shall lie against all administrative authority for violation of fundamental rights. Moreover writs will also lie in the following cases:-

- (a) Governor exceeding his power under Article 161.
- (b) State exercising executive power over matters included in the Union list under Article 162.
- (c) Appointment of a person as Advocate-General in contravention of Article 165.
- (d) Order issued without complying with requirements of the Article – Art 165.
- (e) Challenging the due constitution of a legislature according to the provisions of the constitution. Arts. 168, 170 and 171.
- (f) Art. 213(1), proviso: (3) an ordinance dealing with such matters, if made by governor without previous instruction of President.
- (g) Judge entering office without taking oath-Art.219.
- (h) A tax imposed by executive order or custom, without legislative authority – Art. 265.
- (i) Sales tax imposed in contravention of limitations imposed by the Article – Art. 286.
- (j) Formal requirements for Governments contract – Art. 299.
- (k) Direct interference with the freedom of trade guaranteed by the Article, unless protected by Art. 302 or 304 (b) – Art. 301.
- (l) Discriminatory taxation in respect of goods produced in another state – Art. 303.
- (m) Violation of the limitations of the Article. Art. 304 (b).
- (n) State Public Service commission taking up function other than those specified in the Article.

22. This list is only illustrative and not exhaustive.

### **WRITS IN PARTICULAR**

23. In Indian Constitution, the writs are as under:

- (a) **Writ of Habeas Corpus**: - It is a writ in the nature of an order calling upon the person who has detained another then produce the latter before the Court, in order to let the court know on what grounds he has been confined and to set him free if there is no legal jurisdiction for the imprisonment. The word Habeas Corpus literally means “produce the body”. Normally a writ of Habeas corpus shall lie only when the offence under which a person is detained appears to be without jurisdiction. It shall lie not only against the state but also when a person is detained by any other private individuals. However, in case of private individuals writs shall lie only under article 226 and not article 32, because article 226 can be availed in “other purposes” also. This is not open to article 32.
- (b) **Mandamus**: - Mandamus literally means a “Command”. It differs from the writs of Prohibition and certiorari as it demands some activity on the party of the body or the person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior court or Government requiring him or them to do some particular thing there in specified which appertains to his or their office and is in the nature of a public duty.

24. **Conditions Precedent to the Issue of Mandamus** According to the constitution of India, the conditions precedents to the issue of mandamus are as under:-

- (a) Petitioner must show that he has a legal right to the performance of a legal duty (as distinguished from discretion) by the party against whom mandamus is sought and this must be subsisting on the date of the petition.
- (b) The duty enjoined must be imposed by the constitution, a statute or rules or orders having the force of law as distinguished from a contract.
- (c) It must be a ministerial duty as distinguished from discretion.
- (d) The right must be judicial – enforceable right.
- (e) The writ shall lie only to compel performance of duties of a public nature and does not issue against a private individual, unless he was acting in relation with a public authority.
- (f) Mandamus shall not be issued to direct Government to refrain from enforcing the provision of a valid law.
- (g) As a general rule mandamus is not issued in anticipation of injury except in the case of threat to a fundamental right. Application for issue of this writ must be made by the aggrieved party. Even though an act is likely to be held ultra-virus, a public authority or the Government to whom a writ of mandamus is directed, must enforce that writ. The prima-facie illegality of the original order shall not constitute justifiable ground for refusal to comply with mandamus and it can be refused only at the peril of the refuser.

25. **Writ of Prohibition**:- Prohibition is a judicial writ issued by the supreme court and the High Court to an inferior court to prevent the inferior court from usurping jurisdiction with which it

is not only legally vested, or, in other words, to compel court with judicial duties to keep within the limits of their jurisdiction. Thus writ of Prohibition will issue in the following cases:-

- (i) When a Tribunal proceeds to act without or in excess of jurisdiction,
- (ii) Proceeds to act in violation of natural justice,
- (iii) Proceeds to act under a law which is itself ultra-virus or un- constitutional,
- (iv) Proceeds to act in contravention of fundamental rights.

(a) This writ lies only against judicial or quasi- judicial proceedings and can be issued only so long as the proceedings are pending before the inferior court or tribunal. Prohibition is not available where the inferior tribunal has jurisdiction but exercises it regularly or erroneously, as distinguished from illegally.

**26. Writ of Certiorari:** Whenever any body of persons (a) having legal authority, (b) to determine questions affecting the rights of subjects, (c) having the duty to act judicially and (d) act in excess of their legal authority, certiorari may issue to remove the proceedings from such body to the High Court and quash a decision that goes beyond jurisdiction. The object of this writ is to keep the exercise of powers by judicial and quasi-judicial tribunals within the limit of jurisdiction assigned to them by law, and to refrain them from acting in excess of their authority. Unless all the four conditions mentioned in the first sentence are satisfied, the remedy of certiorari will not be available. Mere inconvenience or absence of other remedy also does not create a right to certiorari. It will be seen that this writ and the writ of Prohibition are very much a like. However, the primary difference between the two writs is the stage at which the writ is available. Prohibition is issued when the proceedings in a subordinate court or tribunal is still pending, while certiorari will issue after the tribunal has already made the order without jurisdiction.

**27. Writ of Quo Warranto:** Quo Warranto is a remedy or proceedings whereby the state enquires into the legality of the claim which a party asserts to an office or franchise, to oust him from this enjoyment if the claim being not well founded. Hence petition for the issue of Quo Warranto has to substantiate the following grounds:-

- (i) Office must be public. It will not lie in respect or office of private charitable institution or of a private association. The test of a public office is whether the duties of office are public in nature. The office must be substantial in character, i.e., an office independent in title.
- (ii) It must have been created by a statute or by constitution itself. Thus, the writ will not lie against Managing Committee, not created by any statute, or by rules having statutory force, of a private educational institution. On the other hand, the writ would issue in respect of offices of (i) members of local municipal bodies created by a statute (ii) judge of High Court (iii) Statutory tribunal.
- (iii) The respondent must have asserted his claim to the office.
- (iv) The respondent is not legally qualified to hold the office or to remain in the office because of contravention of some constitution or statutory provisions.

### **COMPARISON OF THE POWERS OF SUPREME COURT AND HIGH COURT**

28. The High Court and Supreme Court have concurrent jurisdiction in issuing writs for the purpose of enforcement of fundamental rights. It is not obligatory for the petitioner to move the High Court first for the purpose of enforcement of his rights; he may approach the Supreme Court directly. However, if a petitioner has moved a High Court under article 226 for the enforcement of fundamental rights, and the High Court dismisses the petition on merits, it is not open to the petitioner to move the Supreme Court under article 32 on the basis of same facts for obtaining similar relief. However, he has the right to go in for appeal before the Supreme Court. The difference between the two is that under article 32 (1), the citizen has “right to move the Supreme Court by appropriate proceeding for the enforcement of rights conferred by this part is guaranteed”. This means that the Supreme Court is not limited to prerogative writs only. On the other hand article 226 empowers the High Courts to issue writs “for the enforcement of any of the rights conferred by Part. III and for any other purpose”. Thus the Supreme Court is not shackled by the technicalities of prerogative writs while the High Courts can go beyond the scope of Part-III of the constitution and enforce even the legal rights. The Supreme Court may hear appeal against the orders of the High Court, but cannot exercise original jurisdiction beyond the scope of Part. III of the Constitution.

### **PROTECTION OF SERVICE INTERESTS – ARTICLE: 311**

29. Article 311 lays down 2 conditions as under:-

That an employee shall not be dismissed or removed by any authority subordinate to that by which he was appointed;

- (a) That such an employee shall not be dismissed or removed or reduced in rank without an enquiry into the charges against him and without offering him an opportunity of making representation.

30. However, this does not any way, alter or affect the doctrine that every Government servant holds his office at the pleasure of the President or Governor, as the case may be.

31. Similarly article 311 does not apply to persons;

- (a) In military service including civilians in defense services.
- (b) To persons who do not serve under the Union or State but under a statutory Corporation such as L.I.C. or Hindustan Steel Limited.
- (c) To cases of penalties other than dismissal, removal or reduction in rank or to cases of adverse entry in confidential report.

### **PROVISION TO ARTICLE 311(II)**

32. Provision to article 311(II) lays down that the enquiry may be dispensed with in the following cases:-

- (a) Where the person is dismissed or removed or reduced in rank on the grounds of

conduct which has led to his conviction on criminal charges.

- (b) Where an authority empowered to dismiss or remove a Person or reduce him in rank is satisfied that for some reason, to be recorded by the authority in writing, it is not reasonably practicable to hold each enquiry, or
- (c) Where the President or Governor, as the case may be, is satisfied that in the interest of the security of the state it is not expedient to hold such enquiry.

### **AUTHORITY AND RESPONSIBILITIES OF THE CENTRAL GOVERNMENT – ARTICLE: 355**

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**33.** “It shall be the duty of the Union to protect every state against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution”.

34. It has been said earlier, while discussing the federal features of the Constitution, that our Constitution is federal with unitary features. Article 355 further lends credence to this statement. Law and order is a state subject under schedule 7 of the Constitution. However, in case of total break down of law and order, the Union may intervene, rather it is its bounden duty to intervene and restore law and order.

35. Similarly, if the Government of India comes to the conclusion that any state is not being governed in accordance with the provisions of the Constitution, it has to take over the administration of that state. Generally a report is submitted to President by the Governor of the State, in case of the break down of the constitutional machinery and, after considering this report, the President decides either to take over the administration of the State or to let the Status-quo continue. The report, to be submitted to the President, is made independently by the Governor and not with the aid or advice of the Council of Ministers. It is only natural that it should be so because the report recommends dismissal of the Ministry ( State Legislative Assembly).

#### **Conclusion.**

37. From the above, it will be seen that the Constitution provides ample safeguards for freedom and independence of all Government servants, whenever any drastic action is taken against any Government servant, he is to be given proper opportunity to voluntarily defend himself. If such an opportunity is denied to him or suffers from any lacuna, then the courts shall step in and quash the proceedings. Decision in departmental enquiry is based on “Preponderance of Probability” as against “beyond all reasonable doubts” in cases of criminal trials. Hence where the procedure prescribed is faithfully adhered to, the Courts do not question the right of the competent authority to impose the punishment deemed fit by said authority.

**REVISION QUESTIONNAIRE**

1. Write a short note on structure of judiciary system in India.
2. Explain what you understand by “Constitutional Remedies” provided in our Constitution.
3. Mention the types of ‘Writs’ and explain each one briefly.



**CHAPTER – 6 - THE INDIAN EVIDENCE ACT- 1872****CONTENTS**

- ✓ Introduction
- ✓ Definitions
- ✓ Admissions/Confessions
- ✓ Opinion of the Third Person
- ✓ Burden of Proof
- ✓ Communication/Examination
- ✓ Revision Questionnaire

**Introduction:**

The Indian Evidence Act, 1872 originally passed by the British Parliament in 1872, sets forth rules on issues governing admissibility of evidence in the Indian courts of law. Though some amendments have been made to the provisions of the Act, it retains its original form. Before the enactment of Indian Evidence Act, 1872, there were different rules of evidences in practice. The parameters were varied and discriminatory, influenced by caste, community, religion and social position of the Subject. With the introduction of this path-breaking judicial measure, a standard set of law became applicable to all Indians. Thus, the new Act redefined the entire system of concepts pertaining to admissibility of evidences in the Indian Courts of Law.

The Act has eleven chapters and 167 sections and is divided into three parts and elaborates on subjects as under:

- **Part I** - Relevancy of facts in terms of what facts may or may not be proved. These are dealt with in detail in sections 5 to 55.
- **Part II**- How the relevant facts are to be proved- matters which need not be proved under law and how facts-in-issue or relevant facts which are to be proved through oral and documentary evidence (Section 56 to 100) are dealt with.
- **Part III**- Who and in what manner must produce the evidence. It lays down the procedure for production of evidence and the effects of evidence. (Section 101 to 167).

**GENERAL PRINCIPLES OF CRIMINAL JURISPRUDENCE**

1. The general principles of Criminal Jurisprudence are as under:-

## SECURITY MANAGEMENT

- (a) Accused is always presumed to be innocent until the prosecution proves him to be guilty.
  - (b) Evidence must be such as to exclude every responsible doubt regarding the guilt of the accused.
  - (c) In case of reasonable doubt the benefit of such doubt shall be given to the accused.
  - (d) There must always be a clear proof of corpus delicti (Fact of the crime).
  - (e) Let a guilty person go unpunished rather than an innocent person is punished.
  - (f) Accused should not be condemned unless he is heard.
2. In order to ensure the senility of this evidence certain safe guards are observed.
- (a) False evidence is an offence punishable under law.
  - (b) Evidence is required to be given either on oath or affirmation.
  - (c) Reject testimony of suspected person.
  - (d) Evidence is subjected to the scrutiny of cross examination.
  - (e) The person who tenders Evidence must be a competent witness.

### **DEFINITIONS**

- 3. Evidence is derived form Latin work “Evidea” which means to make clear to sight.
- 4. Evidence means and includes :-
  - (a) All statements which the court permits or requires to be made before it by witnesses, in relation to matter of fact under inquiry. Such statements are called Oral evidence.
  - (b) All documents produced for the inspection of the court are called documentary evidence.
- 5. During the whole of working life we are in a state of perception, tangible fact is pursued by work sense.
- 6. **Relevant**: One fact is said to relevant to another when one is connected to another in any of the ways referred to in the provisions of Indian Evidence Act 1872 relating to the relevancy of facts.
- 7. If two or more facts are so related to one another as to render the existence or non existence of one fact by it self or in connection with other facts probable according to common course of nature we say the fact is / are relevant connection but that must be like cause and effect and must be visible / open / reasonable and proximate.
- 8. **Facts in Issue**: The expression “facts in issue” means and includes - any fact from which, either by itself or in connection with other facts, the existence, non existence, nature, or extent of any right, liability, or disability asserted or denied in any suit or proceeding, necessarily follows
- 9. It is the main fact which controls the case and its proof often depends upon relevant facts. In Civil Procedure the matters in dispute are sorted out and framed into issue.

They therefore become facts in issue in civil suit. In criminal trial the ingredients of the offences become the facts in issue as they are ascertained or denied in the proceeding.

10. **Proved:** A fact is said to be proved when after considering the matters before it the court either believes to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
11. **Disproved:** A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.
12. **"Not proved"** - A fact is said not to be proved when it is neither proved nor disproved.
13. **"May presume"** - Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.
14. **"Shall presume"** - Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.
15. **"Conclusive proof"** - When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

### **RELEVANCY OF FACTS**

16. **Sec. 5:- Evidence may be given of facts in issue and relevant facts.** Evidence may be given in any suit or proceedings of the existent or non-existent of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.
17. **Sec. 6 Relevancy of facts forming part of same transaction.** Facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times or places
18. **Sec.7. Facts which are the occasion, cause or effect of facts in issue** - Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.
19. **Sec.8. Motive preparation and previous or subsequent conduct** - Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.
20. **Sec.10 Things said or done by conspirator in reference to common design** - Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the

existence of the conspiracy as for the purpose showing that any such person was a party to it.

21. **Sec. 16: Existence of course of business when relevant.** When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

The question is, whether a particular letter was despatched. The facts that it was ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was in that place, are relevant.

### **ADMISSION**

22. An admission is a statement ( oral or documentary or contained in electronic form) which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances mentioned in the Act (IEA).

- (a) An admission is received in evidence because no such person will incriminate himself unless it is true.
- (b) Admission may be oral or documentary. It may be found in deposition, bail application, letter and account book etc.
- (c) Admission is generally made behind the back of the court. Yet it is made relevant contrary to the rule of hearsay on account of its inherent quality of truthfulness.
- (d) Admission acts some times as a stopped.
- (e) Admission made to a police officer which is not a confession is received in evidence. It is made before the commencement of investigation.
- (f) Admission by conduct is not a statement.

**23 Sec. 31:-** Admission is evidence against the person who has made it so we are bound to believe it. A stopped means that a man is stopped from denying or withdrawing his previous assumption.

### **CONFESSION: (24-29)**

- 24. Confession is a complete acknowledgement of guilt. The confession is not defined in the act.
- 25. When the confession contains explanatory fact suggesting that the death of the victim was caused in self defense or due to circumstances beyond the control of the accused it is not confession.
- 26. Conduct of the accused is not his confession. Though there is a conflict of judicial opinion. It is highly dangerous to regard gesture of the accused person as indication of his acknowledgment of guilt / confession.

Kind of confession: - There are two types of confessions:

(I) Judicial (II) Extra Judicial.

27. When a Magistrate records the confession of accused during investigation under section of the 164 Cr. P. C., it is a judicial confession.
28. And rest is the confession taken by any body including magistrate in other circumstances are extra judicial.
29. Motive for Confession: - It is not necessary to establish the motive of the confession by the accused who made a confession since various persons are moved by different emotions. What is absolutely necessary to find out whether the confession is voluntary and not veracious?
30. The word accused person found in the beginning of the sec 24 does not mean that the person making the confession should be an accused at the time of making confession. It is sufficient if at the time of confession criminal proceedings were in contemplation against the maker.
31. Appears of the court: - Appear indicates lesser degree of probability than the word 'who'. If the court reasonably suspects that the confession was called by inducement, it is sufficient to prove it out of consideration.
32. Confession should be free from inducement. Inducement is often by deceitful person. It may some times take the form of promise. Threat is nothing but intimidation and it may be read out not even by word but also by conduct. If confession is made by inducement, threat or promise by person, it is not admission. Expressions like, (I) I will save you. (II) I will be favorable to you. (III) You need not be afraid- of had been taken to imply inducement and promise. It is sufficient to reject the admissibility of the confession made in consequence of such exhortation.

### **EVIDENTIAL VALUE OF CONFESSION**

33. Judicial opinion seems to differ against the fact of confession in the scale of proof. Some judges of evidence denounce it as weak and suspicious while others describe it as the highest and most satisfactory proof of guilt. Judicial confession stands on a higher platform. Observance of precaution by the magistrate at the time when he records confession is assurance to its voluntary character.
34. Extra Judicial Confession are subject to imperfection, mistake and are also easy to be concrete, as such degree of acceptability has to differ from judicial to extra judicial; courts are very relevant to act upon extra judicial confession.
35. **Retreated Confession**: -If the accused adheres to the previous judicial or extra judicial trial and court believes it true, it can be acted upon without corroboration. Judicial or extra judicial confessions are viewed by court circumfused retreated confession are an indulgence source of exactly as the court has to be doubly sure of its voluntary confession where should retreated confession are to be exceeded or not is not a matter of law but a

prudence. There is grave danger emphasized by court to accept such confession without corroboration

**Police officer:** - Police officer invested with police powers includes police officer not on duty, Police officer working in all branches as well, SI on deputation as security officer in heavy engineering corp. is a P.O. in sec. 25. Plain cloth P.O. is also a P.O. In other cases a public servant can also come within this meaning. Supreme Court has put certain guidelines as to when public servant is taken in to be a P.O. What is pertinent is not the totality of powers put the kind of powers which enables the public servant to exercise such powers as that of police officer.

36. **Sec. 32:-** Statement given by person before his death is a dying declaration. It narrates the cause or circumstances of his death which is under inquiry. As far as the cause of death is concerned, there is no difficulty, e.g., 'B' states that 'A' had stabbed him and died subsequently to such injury. It is dying declaration as it shows cause of B's death. If B's injury is healed up, but he died 20 days after he left the hospital of pneumonia then it is not a dying declaration because tabled injury was not the cause of his death. (1964 S. C. Moti Singh's case). But with regard to the phrase, any of these circumstances of the transaction which resulted in his death, the interpretation put on him is varied of uncertainty. It is held to be wide enough to include statement made long before receiving injury or any reason to anticipate being killed but at the same time which is construed/ interpreted to be normal as brought or / and goes as circumstantial evidence or rest some any incriminating circumstance however relevant it might be or any party of the transaction. However, contemporary it might be cannot it come under the ambit of this phrase unless it is also cause of death before the actual murder. It was admitted as a dying declaration as a circumstance resulting in his death. e.g. A letter written by the deceased or dead 3 years before his death referring to various incidents showing feeling between himself and wife was strained and entries in a diary relate to their stay at her Para meal and the incident that occur were held admissible in the trial of wife and paramour for the murder of husband. (Ranjeet Singh v/s H.P. 1952)

### **OPINIONS OF THIRD PERSON**

37. **Sec. 45:** - As a general rule evidence is to be given only of facts which are within the knowledge of witness. Several times court has to confront message which are technically complicated and professionally sophisticated, and in such situation the court has to take the oath of person who have devoted time and studies in the acquisition of special knowledge to form opinion or draw inference in the court of giving such decision in a case as an exception to the general rule opinion given by a expert rule is admitted as relevant when opinion is useful in decision making, before the expert testimony is admitted two things must be established.

- (a) Subject requires expert opinion.

- (b) Witness is really an expert. Under this Section oral evidence given by an expert in appreciable circumstances is admissible.
38. **Sec. 46 Facts bearing upon opinion of experts** : -\_This Section is again an exception to the general rule which is based on that evidence of collateral facts cannot be received but where the question is a matter of science or artifacts which are themselves not relevant may be taken as admissible if they tend to illustration to opinion of expert, in other words the expert merely stated facts relating to other cases bear in similarity to the case under inquiry in order to support his opinion. Evidence of such other transaction which is inconsistent with the opinion of expert may also be given to revert his opinion.
39. **Sec 47** It deals with the question of identification of hand writing of the person with the opinion of ordinary witnesses. In other words hand writing may be proved by the opinion of any witness other than the expert, who is acquainted with the hand writing of a person?
40. A witness may be acquainted with the hand writing of a person is 3 ways:
- (a) When he has seen that person write, or
  - (b) when he has received documents purporting to have been written by that person in answer to documents written by himself or under his authority and addressed to that person, or
  - (c) When in the ordinary course of business, document purporting to be written by that person have been habitually submitted to him.

### **BURDEN OF PROOF**

41. **Sec 101:-** Burden of proof of a particular fact lies on the party who alleges or ascents it, but not on him who denies it. Fact is to be proved by a person who states in affirmative and not by a person who states a negative. Negative is usually incapable of being substantiated. The general rule envisages in Sec.101 is that whoever asserts the particular fact must prove it. But it is subject to two exceptions:
- (a) He will not be required to prove such facts as are especially with in the knowledge of the other party.( Sec. 106)
  - (b) He will not be required to prove so much of his allegation in respect of which there is any presumption of law (107-113) or in some cases of fact Sec.114 in his favor.
- When a person is bound to prove a fact it is pointed out in Sec.101, then the Burden of Proof lies on that person.
42. **Sec.102:-** He who alleges on the fact must prove it. He who seeks the aid of the court should prove his case. Mostly these cases apply to civil proceedings and it is in the nature of introducing evidence or burden of evidence.
43. **Sec 103:-** Obviously it is one more test from the test indicated in 101 and 102 to

determine on whom the Burden of proof lies. This sec shows that whoever asserts a particular fact in what ever form, it may be affirmative or have to prove it further. It provides for the proof of some particular fact unlike sec. 101, which advice to the whole of facts which the party alleges. All the facts however numerous and complicated which go to make up the guilt of the accused must be proved by the prosecution as per sec. 101. If the accused wishes to prove a particular fact such as his alibi, it is for him to prove it.

- 44. Sec.104:-** Sec 101-103 incorporate the general rules with respect to burden of proof or evidence where as Sec. 104 to 112 deals with the burden of proof or evidence about a particular fact on the specified person. Whenever it is necessary to prove any fact in order to render evidence to another fact admissible, the burden of proving that fact is on the person who wants to give such evidence.
- 45. Sec.105:- Burden of proving that case of accused comes within exceptions** - When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (XIV of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.
- (a) A, accused of murder, alleges, that by reason of unsoundness of mind, he did not know the nature of the act.
- (b) The burden of proof is on A.
- 46. Burden of proving fact especially within knowledge** - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
- (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
- (b) A is charged with traveling on a railway without a ticket. The burden of proving that he had ticket is on him.
- 47. Sec.107, Burden of proving death of person known to have been alive within thirty years.** - When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.
- 48. Sec.108. Burden of proving that person is alive who has not been heard of for seven years.** - Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.
- 49. Sec.109. Burden of proof as to relationship in the case of partners, landlord and tenant, principal and agent** - When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been



acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it.

50. **Sec.110. Burden of proof as to ownership** - When the question is, whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.
51. **Sec.111. Proof of good faith in transactions where one party is in relation of active confidence.** - Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.
52. **Sec.112. Birth during marriage, conclusive proof of legitimacy** - The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.
53. **Sec.114. Court may presume existence of certain facts** - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

### **WITNESSES**

54. **Sec.118. Who may testify?** - All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answer to those questions, by tender years, extreme old age, disease, whether of body and mind, or any other cause of the same kind.
55. **Sec.119. Dumb witnesses** - A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.
56. **Sec 120:-** Husband and wife are competent witness for and against each other in civil as well as criminal proceedings.

### **COMMUNICATIONS/EXAMINATIONS**

57. **Sec.122. Communications during marriage** - No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.
58. **Sec.123. Evidence as to affairs of State** - No one shall be permitted to give any

evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

59. **Sec.124. Official communications** - No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.
60. **Sec.125. Information as to commission of offences** - No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-Officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.
61. **Sec126:- Professional communications.** No barrister, attorney, pleader or 'vakil' shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader attorney or 'vakil' by or on behalf of his client, or to state the contents or the condition of any documents with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.
62. **Sec.137:-** When a person is summoned in court to give evidence in legal proceeding he becomes a witness and what ever he is asked to speak on relevant facts on oath or affirmations is generally known as examination. Examination of witness in court passes 3 stages.
68. **Exam- in- chief** is the stage where in the party who calls the witness ascertains facts from him. Cross examination in the subsequent stage where in the adverse party attempts to discredit the witness by eliciting prejudicial facts from him and re-examination is last stage where the party who called him tries to reconcile the discrepancies that have a reason on account of cross examination.
69. Examination- in chief or direct examination is usually in the form of question and answer. But there is no legal principal which prevents a witness from giving him testing in a narrative form if he is requested to do so by the council.
70. The purpose of cross examination is to test the truth of the statement made by a witness on direct evidence or to put the witness in his proper setting to weaken or disprove the other sides case and to test the capacity for re- collection , opportunity for observation, variety and prejudice of the witness. It is directed to separate knowledge from hearsay, truth from opinion or from fact or inference form recollecting and to test the intelligence, memory, impartiality and integrity of the witness. It is one of the safe guard set up to combat a reliable testimony. It may shape the testimony to render it incredible. The court has a large discretion and control over the cross exam.
71. **Manner of cross examination:** - Broadly speaking there are 2 ways of cross examination a witness either the approach may be courteous or attack may be direct and devastating to unnerve the witness.

72. **Re-examination:** - is limited to explanation of matter to the cross examination. It partly lies on the nature of examination- in- chief in as much as no leading question can be asked at the stage of re- exam. The witness may be questioned about contradiction and in-consistencies which develop during cross-examination.
73. **Sec.139:-** when a person is summoned to produce a document he does not become a witness, so he can't be subjected to examination in court. If person summoned merely to produce a document shall be deemed to have complied to a summons, if he causes such document to be produced instead of attending personally to produce the same, such person producing a document need not be given any oath or affirmation. Omission to produce a document when ordered by the court is an offence under Sec.175 IPC
74. **Sec.140:-** If witness calls witnesses or to his good character or the prosecution has a right to revert it by cross examination of such witnesses.
75. **Sec. 141- 143:-** Leading question is one which suggests to the witness the answer which is desired. He should put the words in the mouth of the witness to be echoed back is a leading question.
76. These questions prepare the witness to give the desired answer, may suggest the subject or topic of the answer. Such questions may be necessary where the witness is unable to recall the dormant fact until some details are mentioned. Leading question can't ordinarily be asked in examination- in- chief or re- examination. But in cross exam leading question may be asked. Leading questions can only be asked in exam- in- chief, when they refer to matters who are:
- (a) Introduction e. g. Do you know the accord?
  - (b) Un-disputed e. g. Brothers are living in the same house, one of the brothers is asked do you live in the same house.
  - (c) Sufficiently proved e. g. 3 projection witness stated that the dead body was lying near the gate. Question to the 4<sup>th</sup> witness may be, did you see the dead body at the gate? All these questions are made with a view to ensure that the examination may not be in conveniently protected. In other circumstances the court may allow leading questions in examination –in- chief in the following manner.
    - (i) When it expedites of the trial without carrying un- justice.
    - (ii) Where the young witness or children fall in this category.
    - (iii) Where the witness is very old lacking in memory.
    - (iv) Where the witness is deficient or impaired of hearing.
    - (v) Where the witness is stupid, in confusion or agitated.
    - (vi) Where there is a demand of modesty.
77. **Sec. 146-152:-** Provide for wide ranging questions that could be asked during cross examination and also holds some restriction in the exercise of power of such cross examination, Sec 138 as clearly lays down that question. But Sec. 146 extends the

power far beyond the limits of Sec. 138. It entitles the following questions be asked during cross examination which tend:

- (a) To test the veracity, that is, truthfulness or accuracy of a witness.
- (b) To discover who he is and what is his position/ status in life.
- (c) To seek his credit by injuring his character although his answer might incriminate him or expose him to penalty or forfeiture.

78. Though such wide powers are there it will be misleading to say that cross examination can be directed to diverting disparagement of the character of the witness. Character includes both reputation and disposition, bad general character discredits a witness and it necessarily involves impairment in truth telling capacity and it shows moral degeneration. Where questions are put to a witness not for the purpose of proving or disproving the point in issue but merely to discredit the witness by injuring this character, the court has to decide under Sec.148 whether he shall be compelled to answer it or not and may warn the witness that he is not obliged to answer. Sec.148 protects the witness from the evils of reckless and unjustifiable cross examination under the guise of credit. As per Section 149 no question should be asked without reasonable grounds. If the court is of the opinion that any such question was asked by any advocate without reasonable ground, it may report the matter to the high court or bar council for disciplinary action.
79. **Sec. 151-152:-** All questions which are indecent or scandalous unless they relate to the facts in issue are to be avoided similarly the questions that are calculated to insult or annoy or needlessly offence must be avoided. In the code category of questions, the court may forbid the cross examination. Where as in the latter category of questions, the court shall forbid the cross examiner. Sec. 151 or 152 empower the court to forbid indecent scandalous or insulting or angriest questions.
80. **Sec.153:-** It is obvious that question asked merely to discredit a witness introduces matter all together action to the enquiry and that if the controversy about the matter so introduced, the court would occupy in deciding not the merits of the case and that of the witnesses and the case may be indefinitely protected. Main issues may be fogged by subsequent inquires. If the witness is asked whether he has been previously convicted and he denies it, the previous conviction may be proved or if he is asked about and denies any fact tending to pitch his impartiality, he may afterwards be charged with giving false evidence.
81. Are you not the planted brother or have you not received a bride from the defendant such facts may proved. Where the fact inquired is collateral to the issue as the character of the witness, Council must be satisfied with the answer which the witness chooses to give to him as it is the object of the sec. 153 to prevent facts being spun out to an unreasonable every answer given by a witness upon the additional facts mentioned in Sec. 146. could be made the subject of fresh inquiry and the trial might never end. When a witness deposes to fact which are relevant he may be contradicted to what he has stated by other facts but what he deposes to adhere only his credit no evidence to

contradict him can be laid for the sole purpose of taking the credit by injuring his character or however such a witness for giving false answer can be prosecuted under sec. 193 of IPC.

### **REVISION QUESTIONNAIRE**

1. Define the following terms:
  - (a) Evidence.
  - (b) Proved/disproved.
  - (c) Facts in Issue.
  - (d) Relevant.
  - (e) Presumption.
2. Write a short note on 'General principals of Criminal Jurisprudence'.
3. What do you understand by 'Relevancy of Facts' and explain it with suitable examples.
4. Explain the circumstances when the statements of persons who can not be called as witness are relevant.
5. What do you understand by:
  - (a) Opinion of third person.
  - (b) Examination of witnesses.
  - (c) Burden of Proof.
  - (d) Who may testify?
  - (e) Admission.
6. What do you understand by confession and when it is relevant?
7. Which types of questions are generally not allowed to be asked during cross examinations?

## CHAPTER – 7 - INDIAN PENAL CODE

### Contents

- ✓ Introduction
- ✓ Right of Private Defence
- ✓ General Exceptions
- ✓ Offences against Body
- ✓ Offences against Property
- ✓ Criminal Trespass, House trespass/House Breaking
- ✓ Unlawful Assembly
- ✓ Revision Questionnaire

### INTRODUCTION

1. This Act shall extend to The Whole of India except The state of Jammu and Kashmir.
2. Every person shall be liable to punishment under this code and not otherwise for every act or omission contrary to the provisions thereof, of which, he shall be guilty with in India.
3. Any person liable by Indian law to be tried for an offence committed beyond India shall be dealt with according to provisions of this code for any act committed beyond India in the same manner as if such act had been committed with in India.

### RIGHT OF PRIVATE DEFENCE

4. **Nature of Right to Self- Defence.** Every person has a right to defend his own person against injury or restraint, and his own property against theft, robbery, mischief or criminal trespassing or against an attempt to commit such an offence. And what he may do for any one else under similar circumstances. The right of private defenses is the right inherent in man and is based on the cardinal principle that it is the first duty of man to protect him.
5. The provision of section **47 CrPC.** shall apply to arrests under sub-section (1) of section 60 CrPC. Although the person making any such arrest is not acting under a warrant, and is not a police officer having authority to arrest [Section 60(2)].
6. There are many special Acts under which the Security Managers and other officials can arrest the culprits and apprehend the suspects and also cause their removal from the premises of the undertaking, for specific violations of the law.
7. There is a provision of the power to arrest without warrant persons committing dangerous offences under section 13 of The Indian Explosives Act, 1884. Section 97 of the I.P.C. the Right of Private Defenses of Property.

### PUBLIC SERVANT

8. The words public servant denotes a person falling under any of the description mentioned below:-
9. Every commissioned officer in the Army, Navy, Air Forces in India.

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10. Every judge including any person empowered by law to discharge any adjudicatory functions.
11. Every officer of court of justice.
12. Every juryman, assessor or member of Panchayat assisting a court of district or public servant.
13. Every arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice.
14. Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.
15. Every officer of the govt. whose duty is to prevent offence, to give information of offences, to bring offenders to justice or to protect the public health, safety, or conveyance.
16. Every officer, whose duty is to take, receive, keep, or expand any property on behalf of government, to execute revenue process or to investigate.
17. Every person who holds any office by virtue of which he is empowered to prepare, publish, maintain, or revise an Electoral Roll or to conduct any election or part of election.
18. Every person in the service or pay of Govt. or remunerated by fees or commission fees for the performance of any public duty prescribed the Govt. In the service or pay of local authority, a corporation established by or under control, provincial or state Act or a Govt. Company as defined in section 617 of the Companies Act 1956.

### **GENERAL EXCEPTIONS (SEC – 76 TO 106)**

19. **Section:- 76:** - Nothing is an offence which is done by a person who is or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.
20. **Illustrations:-**
  - (a) "A", a soldier fires on a mob by the order of his superior officer, in conformity with the commands of the law, 'A' has committed no offence.
  - (b) "A", an officer of a court of justice, being ordered by the court to arrest y, and after due enquiry, believing 'z' to be 'y', arrest z. A has committed no offence.
21. **Sect. 77-** Act of judge when acting judicially.
22. **Sect. 78** – Act done pursuant to the judgment or order of The Court.
23. **Sect. 79** – Act done by a person justified or by mistake of fact believing himself justified by law.
24. **Sect. 80** - Accident doing a lawful act.  
**Explanation** 'A' is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of 'A', the act is executable and not an offence.
25. **Sect. 81** – Act likely to cause harm, but done without criminal intent, and prevent other harm.

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26. **Sect. 82.** Act of a child under seven years of age.
27. **Sect. 83.** Act of a child above seven and under twelve of immature understanding.
28. **Sect. 84.** Act of a person of unsound mind
29. **Sect. 85.** Act of a person incapable of judgment by reason of intoxication caused his organized will.
30. **Sect. 87.** Act not intended and not known to be likely to cause death or grievous hurt, done by consent.
31. **Sect. 88.** Act not intended to cause death, done by consent in good faith, for person's benefit.
  - (a) Section 105 I.P.C. right to defend the property of himself or any other person against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass or an attempt to commit such offence.
  - (b) Section 103 I. P. C.
  - (c) Section 104 I. P. C.
  - (d) Section 99 I. P. C.
  - (e) Section 96 to 106 IPC.
32. As per Sec.96 of IPC "Nothing is an offence which is done in the exercise of the right of private defence". The limits of such a right have been enacted in Sections 97 and 99. The extent and latitude of the rights within such limits have been enacted in Sections 100, 101, 103, 104 and 106. The commencement and continuance of right of private defenses have been dealt with by Sections 102 and 105.
33. **OFFENSES AGAINST PUBLIC TRANQUILITY:**
  - b) Unlawful Assembly (IPC/Sec.141)
  - c) Rioting (IPC/Sec.146)
34. **OFFENSES AGAINST PERSONS:**
  - (a) Murder(IPC/Sec.302)
  - (b) Attempt to Murder (IPC/Sec.307)
  - (c) Wrongful restraint (IPC/Sec.339)
  - (d) Wrongful Confinement (IPC/Sec.340)
  - (e) Assault (IPC/Sec.351)
  - (f) Kidnapping from lawful Guardianship (IPC/Sec.361)
  - (g) Abduction (IPC/Sec.362)
36. **OFFENSES AGAINST PROPERTY**
  - (a) Theft (IPC/Sec.378)
  - (b) Punishment for Theft (IPC/Sec.379)
  - (c) Robbery (IPC/Sec.390)
  - (d) Dacoity (IPC/Sec.391)



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- (e) Criminal breach of Trust (IPC/Sec.405)
  - (f) Cheating (IPC/Sec.415)
  - (g) Cheating and Dishonestly inducing delivery of Property (IPC/Sec.420)
  - (h) Mischief (IPC/Sec.425)
  - (i) Criminal Trespass (IPC/Sec.441)
  - (j) Forgery (IPC/Sec.463)
37. **Sec. 86.** Offence requiring a particular intent or knowledge committed by one who is intoxicated
38. **Offence Against Body: - Offences against Human Body** These offences have been maintained in the chapter XVI of the IPC and gist of these offences is given below:-
39. **Culpable Homicide:** (Sec 299) Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offences of the culpable homicide.
40. **Murder (Sec 300):** - Culpable homicide is murder if the act by which the death is caused is done with the intention of causing death or
41. Secondly: If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.
42. Thirdly: If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or
43. Fourthly: If the person committing the act knows that it is so imminently dangerous that it must, in all probably, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid .

### **WHEN CULPABLE HOMICIDE IS NOT MURDER:** -

44. **Exception 1.** Culpable homicide is not murder if the offender is deprived of self control by grave and sudden provocation; cause the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
45. This above exception is subject to the following provisios:-
- (a) That the provocation is not sought or voluntary provoked by the offender as and excuse for killing or doing harm to any person.
  - (b) That the provocation is not given by anything done in obedience to the law or by public servant in the lawful excuse of the powers of such public servant.
  - (c) That the provocation is not given by anything done in the lawful excuse of the right of private defence.
46. **Exception 2:** - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is

necessary for the purpose of such defence.

**Illustration:** - Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

47. **Exception. 3.** – Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.
48. **Exception. 4.** – Culpable homicide is not murder if it committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.  
Explanation – It is immaterial in such cases which party offers the provocation or commits the first assault.
49. **Exception. 5** - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.
50. **Punishment for murder:- Sec 302:** - Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine. Punishment for culpable homicide not amounting to murder can vary from imprisonment up to 10 years or life imprisonment U/S 304 or with fine.
51. **Suicide:** - Attempt to commit suicide (**Sec 309**): - Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both. Sec 306 of IPC provides punishment for abetment of suicide which may extend to 10 years of imprisonment and shall also to be liable to fine.
52. **Hurt ( Sec 319):** - Whoever cause bodily pain, disease or infirmity to any person is said to cause hurt.
53. **Grievous hurt ( Sec 320).**  
The following kinds of hurts only are designated as grievous:
- a) Emasculation (Castrate), remove testicles, unsex, sterilize.
  - b) Permanent privation of the sight of either eye.
  - c) Permanent privation of the hearing of either ear.
  - d) Privation of any member or joint.
  - e) Destruction or permanent impairing of the powers of any member or joint.
  - f) Permanent disfiguration of the head or face.
  - g) Fracture or dislocation of a bone or tooth.

- h) Any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain or unable to follow his ordinary pursuits.
54. **Voluntarily causing hurt (Sec 321):** - Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause to any person, is said to “voluntarily causing hurt”.
55. **Voluntarily Causing grievous hurt (Sec 322):** - Whoever voluntarily causes hurt, which he intends to cause or knows himself to be likely to cause grievous hurt and of the hurt which he causes is grievous hurt is said to have caused grievous hurt voluntarily.
56. **Punishment for Voluntarily Causing hurt (Sec 323):** - Whoever except the case provided by Sec 334 (sudden provocation) voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year or with fine up to Rs 1000/- or with both.
57. **Punishment for voluntarily causing grievous hurt (Sec 325):** - Whoever except Sec 335 voluntarily causes grievous hurt shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.
58. **Wrongful restraint and confinement**
- Wrongful restraint (Sec 339):** - Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said to restrain that person wrongfully.
- Wrongful confinement- Sec 340:** - Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limit is said ‘wrongfully to confine’ that person.
- Punishment** for wrongful restraint is simple imprisonment up to one month or fine up to Rs. 500/- or both. Whereas punishment for wrongful confinement is imprisonment of either description up to one year or fine up to Rs. 1000/- or both. If wrongful confinement is for three or more days then punishment shall be imprisonment of either description up to two years or with fine or both.

### **CRIMINAL FORCE AND ASSAULT**

59. **Criminal Force (Sec 350):** - Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of an offence or intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to the other.
60. **Assault: Sec 351:** - Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause anybody present to apprehend that the who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
61. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months or with fine up to Rs 500/- or

with both. ( Sec 352)

62. **Use of assault or criminal force**

To deter public servant from discharge of his duty- punishment up to 2 years imprisonment or fine or both.

To woman with intent to outrage her modesty- punishment up to 2 years imprisonment or fine or both.

**KIDNAPPING, ABDUCTION AND RAPE**

63. Kidnapping is of two kinds:

- (a) Kidnapping from India.
- (b) Kidnapping from lawful guardianship of any minor under 16 years in case of a male and 18 years in case of a female or any person of unsound mind without the consent of the guardian.

64. **Abduction**: - Whoever by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.

65. **Punishment for kidnapping**: (Sec. 363) Whoever kidnaps any person from India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. Kidnapping or maiming a minor for purpose of begging is an offence punishable with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

66. **Rape** (Sec 375): – A man is said to commit rape who except in the case herein- after excepted has sexual intercourse with a woman under any of the six following descriptions:

- (a) First – Against her will.
- (b) Secondly – Without her consent.
- (c) Thirdly – With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- (d) Fourthly – With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- (e) Fifthly --- With her consent, when at the time of giving such consent, by reason of unsound mind or intoxication or administration by him personally or through another of any stupefying or unwholesome some substance, she is unable to understand the nature and consequences of that to which she gives consent.
- (f) Sixthly--- With or without her consent, when she is under 16 years of age.
- (g) Exception--- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

67. **Punishment of rape** (U/S 376): - A person who commits rape shall be punished with imprisonment of either description for a term shall not be less than seven years but which may be for life or for a term which may extend to ten the years and shall to be

also fine unless the woman raped is his own wife and is not under 12 years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

### **OFFENCES AGAINST PROPERTY**

68. **Theft (Sec 378)** Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.
69. Who ever commits theft shall be punished with imprisonment of either description for a term which may extend to the three years or with fine or with both. (**Sec 379**)
70. **Extortion (Sec 383)** Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be connected into a valuable security commits 'extortion'. Extortion is punishable with imprisonment of either description for a term which may extend to three years or with five or with both.
71. **Robbery (Sec 390):** - In all robbery there is either theft or extortion.
- (a) **When theft is robbery:** Theft becomes robbery when the person committing theft voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant or of instant wrongful restraint.
- (b) **When extortion is robbery** :- Extortion is robbery if the offender, at the time of committing the extortion puts the person in fear of instant death, of instant hurt, or of instant wrongful restraint or to some other person and by so putting in fear, induces the person so put in fear then and there deliver up the thing extorted.
- (c) **Dacoity** :- (**Sec 391**): - When five or more persons jointly commit or attempt to commit a robbery, every person present and aiding such commission or attending is said to commit Dacoity.
- (d) **Punishment of robbery (Sec 392):** - Who ever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine; and if the robbery is committed on the highway between sunset and sunrise the imprisonment may be extend to 14 years.

### **CRIMINAL MISAPPROPRIATION AND CRIMINAL BREACH OF TRUST.**

80. **Criminal misappropriation: (Sec 403):** - Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.
- (a) **Explanation -1:** - A dishonest misappropriation for a time only is a misappropriation with in the meaning of this section.
- (b) **Explanation -2:** - A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for or of restoring it to the owner, does not take or misappropriate it dishonestly , is not guilty of an offence; but he is guilty of the offence if he appropriates it to his own use when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has

kept the property for a reasonable time to enable the owner to claim it.

- (c) It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to his own property, or in good faith believes that the real owner cannot be found.
  - (d) Dishonest misappropriation of property possessed by the deceased person at the time of his death is an offence and the offender shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. If the offender at the time of such person's death was employed by him as a clerk, or servant, the imprisonment may extend to seven years. ( Sec 404)
81. **Criminal breach of Trust (Sec 405)**: - Whoever, being in any manner entrusted with property or with any dominium over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law, prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust or willfully suffers any others person so to do, commits criminal breach of trust.
82. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both. (Sec 406)
83. **Receiving of the Stolen Property**
- (a) **Stolen Property** – Property, the possession of which has been transferred by theft, or by extortion or by robbery and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed, is designed as stolen property.
  - (b) Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.
  - (c) Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to cheat (sec 415).
  - (d) Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both (Sec 417)
84. **Mischief (Sec 425)**: - Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits mischief.
- (a) Explanation –I: - It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or

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destroyed. It is sufficient if he intends to cause or knows that he is likely to cause wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

- (b) Explanation – II: - Mischief may be committed by an act affecting property belonging to the person who commits the act or to that person and others jointly.
  - (c) Punishment: Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months or with fine or both. (Sec 426).
85. **Criminal Trespass**: - Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence is said to commit 'Criminal Trespass' (Sec 441).
86. **House Trespass (Sec 442)**: - Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building, used as a place for worship or as a place for the custody of property is said to commit 'house trespass'.
- Explanation:- The introduction of any part of criminal trespasser's body is entering is sufficient to constitute house trespass.
87. **Lurking house trespass**: Whoever commits house trespass having taken precautions to conceal such house trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit lurking house trespass . (Sec 443)
88. Whoever commits lurking house trespass after sunset and before sunrise, is said to commit 'lurking house trespass by night'
89. (Lurking means – lie in ambush, stay on clandestinely.)
90. **House breaking (Sec 445)**: - A person is said to commit 'house breaking' who commits house trespass if he effects his entrance into the house or any part of it in any of the six ways given below; or if being in the house or any part of it for the purpose of committing any offence or having committed an offence therein, he quits the house or any part of it in any of the six ways; that is to say:
- (a) **Firstly**– If he enters or quits through a passage by himself or by any abettor of the house trespass in order to the committing of the house trespass.
  - (b) **Secondly**: If he enters or quits any passage not intended by any person, other than himself or an abettor of the offence, for human entrance or through any passage to which he has obtained access by scaling or climbing over any wall or building.
  - (c) **Thirdly**: If he enters or quits through any passage which he or any abettor of the house-trespass has opened in order to committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

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- (d) Fourthly: If he enters or quits by opening any lock in order to the committing of the house trespass or in order to the quitting of the house after a house-trespass.
  - (e) Fifthly: if he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.
  - (f) Sixthly- if he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been un- fastened by himself or by an abettor of the house-trespass.
92. **House breaking by Night**: - Whoever commits house-breaking after sunset and before sunrise is said to commit house breaking by night.
93. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to Rs. 500/- or with both (Sec 447).
94. **Punishment for house-trespass** - Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year or with fine up to Rs 1000/- or with both.

## **UNLAWFUL ASSEMBLY AND RIOTING**

95. **Unlawful Assembly. (Sec 141)** An assembly of five or more persons is designated an unlawful assembly, if the common object of the persons composing that assembly is:
- (a) To overawe by criminal force or show of criminal force to the Central or any State Govt or parliament or, Legislature of any State or any public servant in the exercise of the lawful power of such public servant, or
  - (b) To resist the execution of any law or of any legal process; or
  - (c) To commit any mischief or criminal trespass or other offence; or
  - (d) By means of criminal force or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment or to enforce any right or supposed right; or
  - (e) By means of criminal force or show of criminal force to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.
96. Explanation: An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.
97. **Being Member of Unlawful Assembly. (Sec142)** Whoever being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly or continues in it is said to be a member of unlawful assembly.
98. **Punishment**: Whoever is a member of unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both (Sec 143).
99. **Rioting (Sec 146)**. Whenever force or violence is used by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly; every member of such assembly is guilty of the offence of rioting.



100. **Punishment:** - Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.
101. Rioting armed with already weapon shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

### **ABETMENT AND CONSPIRACY**

102. **Abetment of a thing ( Sec-107)** - A person abets the doing of a thing, who:
- (a) Instigates any person to do that thing; or
  - (b) Engages with one or more other person or persons in any conspiracy for the doing of that thing.
  - (c) Intentionally aids by any act or illegal omission, the doing of that thing
103. **Criminal Conspiracy (Sec 120A)** When two or more persons agree to do or cause to be done,
- (a) An illegal act.
  - (b) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.
104. **Punishment of criminal conspiracy (Sec 120 B)**. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life, rigorous imprisonment for a term of two years or upwards or be punished in the same manner as he had abetted such offence.

**REVISION QUESTIONNAIRE**

1. Write a self explanatory note on “Right of Private Defence.”
2. What are “The General Exceptions” which are mentioned in the IPC with regard to self defence?
3. What are the offences against human body and punishment prescribed for the same?
4. Enumerate the Offences against property and punishment for the same.
5. Explain the circumstances when culpable homicide is not murder.
6. Write brief note on the following:
  - (a) Grievances Hurt.
  - (b) Rape.
  - (c) Criminal conspiracy.
  - (d) Wrongful Constraint.
  - (e) Wrongful Confinement.
  - (f) Unlawful assembly.
  - (g) Kidnapping.
  - (h) Robbery & Dacoity.
  - (i) Criminal breach of trust.
  - (j) Mischief.
  - (k) Criminal trespass.

## CHAPTER – 8 - THE CODE OF CRIMINAL PROCEDURE – 1973

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- ✓ F. I. R.
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### INTRODUCTION & DEFINITIONS

1. It is an Act to consolidate and amend the law relating to criminal procedure. It extends to the whole of India except the state of J & K.
2. Following terms/words have been frequently used in the Act and the same may be defined as under:-
  - (a) **Offence**: - It means any act or omission made punishable by any law being in force.
  - (b) **Complaint**: It means any allegation made orally or in writing to a magistrate with a view to his taking action under this code, that some person, whether known or unknown has committed an offence, but does not include a police report.
  - (c) **Bailable offence**: An offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being in force.
  - (d) **Non-bailable offence**: Any other offence in which bail can not be granted.
  - (e) **Cognizable offence**: Means an offence for which a police officer in accordance with the First Schedule may arrest without warrant.
  - (f) **Police Report**: Means a report forwarded by a police officer to a magistrate under subsection (2) of section 173 of this Act.
  - (g) **Police Station**: Means any post or place declared generally or specifically by the State Govt. to be a police station.
  - (h) **Warrant case**: Means a case relating to offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
  - (i) **Summons case**: Means a case relating to any offence and not being a warrant case

### **CLASSES OF COURTS**

3. Besides the High Court in the State, the following criminal courts are there in every State:-

- (a) **Court of Session;** (Sec 9) Every State shall consist of sessions Divisions/ District/ Metropolitan areas (whose population is more than one million. )The State Govt. shall establish a Court of Session for every sessions Division/Districts.

Every Court of Session shall be presided over by a judge to be appointed by the High Court. The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges.

- (b) **Court of Justice:** - It denotes a judge who is empowered by law to Act judicially alone or body of judges which is empowered by law to act judicially as a body.
- (c) **Court of Judicial Magistrate (Sec. 11)** In every district there ( not being a metropolitan area) there shall be established as many courts of Judicial Magistrates of the 1<sup>st</sup> class and 2<sup>nd</sup> class, and at places as the State Govt. may , after consultation with the High Court, by notification, specify. The presiding officers of such courts shall be appointed by the High Courts.
- (d) **Court of Metropolitan Magistrate (Sec 16)** In every metropolitan area there shall be established as many Courts of Metropolitan Magistrates and at such places as the State Govt. may , after consultation with the High Court, by notification, specify. Presiding officers of such Court shall be appointed by the High court. The High court shall appoint one of them as a Chief Metropolitan Magistrate.
- (e) **Executive Magistrate (Sec. 20)** The State Govt. may appoint as many persons as it thinks fit to be Executive Magistrates in a district/metropolitan area and shall appoint one of them to be the District Magistrate/ Additional District Magistrate.
- The state Govt. may also place an Executive Magistrate in charge of a sub-division and he shall be called as Sub-Division Magistrate.
- All Executive Magistrates other than Additional District Magistrate, shall be subordinate to the District Magistrate.

### **ARRESTS**

4. **Arrest of Persons:** - Arrest means taking a person in custody in a lawful manner. It is of three kinds:-

- (a) **Arrest by Police:- (Sec 41)** Any Police officer may without an order from a magistrate and with out warrant arrest a person:-
- (i) Who commits, in the presence of a police officer, a cognizable offence.
  - (ii) Against whom a reasonable complaint has been made or creditable information has been received or reasonable suspicions exists; that he has committed a cognizable offence.
  - (iii) Who has in his possession without lawful excuse any implement of house breaking.

## SECURITY MANAGEMENT

- (iv) Who has been proclaimed as an offender.
  - (v) Who is in possession of a stolen property.
  - (vi) Who obstruct a police officer in his execution of his duty or who has escaped or attempts to escape from lawful custody?
  - (vii) Who is reasonably suspected to be a deserter from any of the armed forces of the Union.
  - (viii) Who has committed an act at any place out of India which if committed in India would have been punishable as an offence or
  - (ix) Who being a released convict, commits a breach of any rule under Sub Sec (5) of section 356.
  - (x) For whose arrest any requisition whether written or oral has been received from another police officer.
  - (xi) Any officer in charge police station may arrest any person belonging to one or more of the categories of persons specified in Sec 109 or section 110. Any Executive Magistrate can seek sureties for good behavior from suspected person U/S 109 and form habitual offender U/S 110.
  - (xii) **Arrest on refusal to give name (U/S 42)**: - When any person who, in the presence of a police officer, has committed or has been accused of committing a non -cognizable offence refuses to give his name and residence or gives false name and address, he can be arrested by the police officer.
- (b) **Arrest by Magistrate (Section 44)**: - When any offence is committed in the presence of a Magistrate whether Executive or Judicial with in his jurisdiction, he may himself arrest or order any person to arrest the offender.
- (c) **Arrest by Private Person: (Sec. 43)**
- (i) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable cognizable offence, or any proclaimed offender and may hand over him to the police at the earliest possible moment
  - (ii) If there is a reason to believe that such person comes under the provision of Sec. 41, a police officer shall re-arrest him.
  - (iii) If there is a reason to believe that he has committed a non-cognizable offence and he refuse to give his name and residence or gives false name and residence, on the demand of a police officer.

### 5. **Arrest how made**

**Section 46** of CrPC. has laid down the procedure for making arrest. This section states that:-

- (a) The police officer or the other person making the arrest shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action.
- (b) If such person forcibly resist the endeavor to arrest him or attempts to evade

arrest such police officer or other person may use all means necessary to affect the arrest.

- (c) Nothing in this Section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him such free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purposes, and demand of admittance duly made, he cannot otherwise obtain admittance

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

### **51. Search of arrested persons.**

(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to, furnish bail.

The officer making the arrests or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe Custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2). Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

#### SEARCH OF WOMAN AND OTHER PERSONAL SAFEGUARDS

5. **(a)** Section 47(2) of the Code of Criminal Procedure requires that no place or apartment which is in the occupation of a female and who is not the person to be arrested shall be searched by any police officer etc before giving of a notice to the female occupier thereof that she is at liberty to withdraw therefrom.
- (b)** As per section 100(3) of the Code of Criminal Procedure, if a female is reasonably suspected of concealing about her person any article for which search can be made, such shall only be conducted by another woman with strict regard to decency.
- (c)** No male person below the age of fifteen years or woman can be called by any police officer to the police station in connection with investigation of any case.
- (d) (i)** It is laid down in para 26.18-A, Volume 3 of Punjab Police Rules 1934 (framed under the Police Act, 1861) that all arrests of women whether with or without warrant, and whether in bailable or non-bailable offences, shall only be carried out by a police officer not below the rank of Assistant Sub-Inspector of the Police, or when no such officer is available, then by a head constable in the presence of responsible male relatives of such woman and responsible officials of the village/town.
- (ii)** Arrest of a woman has also to be intimated by the arresting officer to the Superintendent of police, and reasons have to be specified if the arrest was made by an officer lower in rank than Assistant Sub-Inspector.
- (iii)** The said rule further requires that no woman in police custody shall be lodged even for a night in a Police Station except in unavoidable circumstances and the gazetted police officer supporting an application for remand to police custody of any woman shall be responsible for taking necessary measures for decent custody of such prisoner.
- (iv)** The above quoted rule further requires that women attending police investigations and enquiries (as distinct from those under arrest) shall not be detained for any period than absolutely necessary and further more they shall not to be required to visit the police station between sun-set and sun-rise.
- (e)** If a woman is arrested, it is imperative on the part of the arresting officer to prepare a memo indicating the reasons for arrest, the place where the arrested person will be detained after arrest and when she/he will be produced before the Court. Copy of such memo of arrest is also required to be given to the family members or relatives or neighbour of the arrested person as so directed by the Hon'ble Supreme Court in the case titled D. K. Basu vs. State of West Bengal reported in 1997(1) SCC 416.
- (f)** Every woman under arrest is entitled to get free legal services as so provided in Section 12 of Legal Services Authorities Act, 1987 and it is the duty of the court before whom such arrested person is produced that he/she is entitled to get free legal services as so laid down in the case titled Khatri and others vs. State of Bihar reported in AIR 1981 SC 928 and followed in the subsequent case titled Sukh Dass vs. Union Territory of Arunachal Pradesh reported in AIR 1986 SC 991.

(g) In the event of a female upon trial being sentenced to death for commission of heinous offences such as murder etc., her sentence of execution is required to be postponed and can even be commuted to imprisonment for life as so provided under Section 416 of the Code of Criminal Procedure.

### **DISPERSAL OF UNLAWFUL ASSEMBLY**

6. **Section 129 of Cr. P. C** deals with dispersal of assembly by use of civil force and Sec. 130 deals with use of armed force to disperse assembly.

7. **Section 129** states that any Executive Magistrate or officer in-charge of a police station or any other police officer not below the rank of sub inspector may command any unlawful assembly or any assembly of five or more persons likely to cause disturbance of the public place to disperse and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

8. If upon being so commanded any such assembly does not disperse, any Executive Magistrate or police officer may proceed to disperse such assembly by force and if necessary, may arrest and confine persons of such assembly.

9. The Executive Magistrate of the highest rank who is present on the site may cause it to be dispersed by the armed forces (**Sec 130**). Every such officer of the armed forces shall obey such requisition and he shall use as little force as may be consistent with dispersing the assembly and arresting and detaining such persons.

10. When the public security is endangered by any such unlawful assembly and no Executive Magistrate can be communicated with, any commissioned officer or gazetted officer of the armed forces may disperse such assembly with the help of the armed forces under his command. But if, while he acting under this section, it becomes practicable for him to communicate with an Executive Magistrate he shall do so,

11. **Section 132 of the Act** provides protection against prosecution for act done under sections 129 and 130.

### **PROHIBITORY ORDERS**

12. **Sec 144:** - In case where in the opinion of District Magistrate, SDM or any other Executive Magistrate especially empowered by the State Govt. in this behalf, there is sufficient ground for proceeding under this section, such Magistrate may, by written order stating material facts of the case, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent obstruction, annoyance or injury to any person lawfully employed or damage to human life, health, safety, or a disturbance of the public tranquility or a riot or an affray.

13. No order under this section shall remain in force for more than two months from the making thereof. However, if the state govt. considers it necessary, it may by notification,



direct that on order made by a Magistrate shall remain in force up to six months from the date on which the order made by the Magistrate would have expired.

14. The state Govt. or the Magistrate either on its own motion or on the application of the aggrieved person may rescind or alter any order made by himself or any Magistrate subordinate to him. The Magistrate or the State Govt. shall afford to the applicant an early opportunity of appearing before him or it, either in person or through pleader to show the cause against the order. The Magistrate or the State Govt may reject the application wholly or in part and shall record in writing the reasons for so doing.

#### **RECORDING OF CONFESSIONS AND STATEMENTS U/S 164**

15. Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of investigation or at any time afterwards before the commencement of the enquiry or trial. However, no confession shall be recorded by a police officer on whom any power of a magistrate has been conferred under any law.

16. The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him. The Magistrate shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.

17. If at any time before confession is recorded, the person appearing before the Magistrate states that he is no willing to make the confession, the Magistrate shall not authorize the detection of such person in police custody.

18. The Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the court and shall be signed by the Magistrate. The record shall , if practicable, be in the language in which the accused is examined.

19 .The record shall be shown or read over to the accused or interpreted to him if he does not under stand the language in which statement is recorded. Then, it shall be signed by the accused and the Magistrate.

20. The Magistrate shall make a memorandum at the foot of such record to the following effect:-

I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct and it contains a full and true account of the statement made by him.

21. The Magistrate recording a confession or statement shall forward it to the Magistrate by whom the case is to be inquired into or tried.

**F. I. R.**

22. Section 154 of CrPC. deals in detail about the FIR.

23. First information of a cognizable crime is commonly known as First Information Report (FIR).

24. A FIR is a written document prepared by the police in the country when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report.

25. It is generally a complaint (not in legal meaning) lodged with the Police by the victim of a cognizable offence or by someone on his/her behalf. Anyone can report the commission of a cognizable offence either orally or in writing to the police.

**26. Who can lodge F.I.R**

- (a) Complainant who is an aggrieved person or somebody on his behalf.
- (b) By any person who is aware of the offence (a) as an eyewitness and (b) as a hearsay account.
- (c) By the accused himself.
- (d) By the SHO on his own knowledge or information even when a cognizable offence is committed. Under the order of Magistrate under section 156 (3) of Criminal Procedure Code, when a complaint is forwarded to officer in-charge without taking cognizance.
- (e) By a medical certificate or doctor's ruqqa about arrival of the injured, then he (SHO) should enter it in daily diary and go to hospital for recording detailed statement of injured.

**27. Objective of F.I.R:** - The primary objective of the FIR is to make a complaint to the police to set the criminal law in motion. It's secondary, though equally important object is to obtain early information of an alleged criminal activity.

**28. Delay in lodging F.I.R:** - The longer the delay, the stronger the suspicion is that the case is false wholly or in material particulars, so the delay should satisfactorily be explained.

**29. Issues to be kept in mind while lodging complaint.**

- (a) Care should always be taken that the names of witnesses are mentioned in the FIR. If the names of witnesses do not appear in it and they are examined later on, the presumption is that they were not present at the spot and have been procured later on.
- (b) Care should be taken that all the material facts are mentioned in FIR (as much available at that time).
- (c) Names of the accused persons should occur in FIR and their particulars also (if information is available at that time).

(d) It is not necessary to put up or cite all the witnesses in court.

**30. Possible reasons of delay:** Reasons of the delay on the part of complainant are mentioned as “DOC”. Reasons of the delay on the part of police are mentioned as “DOP”.

- (a) Physical condition of the informer (DOC).
- (b) Psychological condition of the informer (DOC).
- (c) Natural calamities (Both)
- (d) Distance of place of occurrence (Both)
- (e) Ignorance of law of informer (DOC)
- (f) Late detection of commission of crime (DOC)
- (g) Due to threat, promise and undue influence (DOC)
- (h) Economic, social and undue influence(DOC)
- (i) Dispute over the jurisdiction of Police Station (DOP)
- (j) Uncertainty of place of occurrence due to continuous offence (DOP)
- (k)** Shortage of staff(DOP)
- (l)** Unavoidable departmental formalities (including delay due to opinion of experts) (DOP)
- (m)** Reasons of delay should be explained in the FIR.

**31. F.I.R in corruption cases:** - In cases of corruption, not registered on traps laid, but on complaints, always a suitable preliminary enquiry into the allegation, is required. Such preliminary enquiries are relevant before the registration of case and are permissible under law. But as soon as it becomes clear to enquiring officer that the public servant appears to be guilty of severe misconduct, it is his duty to lodge FIR and proceed further in the investigation.

**32. Who can write F.I.R**

- (a) A F.I.R is always to be written by an officer in-charge of a police station. (Definition of officer in-charge is given in section 2 of Criminal Procedure Code.)
- (b) Police officers superior in rank to officer in-charge of a police station may exercise the same powers through the local area to which they are appointed, as may be exercised by SHO with in the limits of his police station.
- (c) Sometimes it so happens that the information is given by the informer to a police officer who is out in the illaqa or to an in-charge of a local police post. Strictly speaking, the officers are not officers in-charge of a police station and such information lodged with them are not reports. These officers record the statement of the informers and send the same to the SHO of a police station for recording FIR's. These statements are, however, admissible under section 157 of Evidence Act.

33. Jurisdiction is an essential factor in registering a FIR.

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34. **Essential of an F.I.R:** - The recording officer and the complainant should know to the extent possible the 11 Ws while recording/reporting the FIR.

- (a) In what capacity?
- (b) Who committed the crime?
- (c) Against whom was it committed.?
- (d) When (time)?
- (e) Where(place)?
- (f) Why (motive)?
- (g) Which way (actual occurrence)?
- (h) Witnesses?
- (i) What was taken away?
- (j) What traces were left by the accused?

35. **Descriptions in F.I.R:** - The recording officer should try to fix clearly the identity of accused, the prosecution witnesses ( PW) and of the stolen property, (to the extent possible).

36. **Difference between complaint and FIR.**

**Complaint** can be made before the Metropolitan Magistrate and can be of cognizable or non-cognizable offence and can be filed by only aggrieved person.

**FIR** can be lodged before the SHO of police station and can be lodged in cognizable offences and by any person, who has knowledge of the happening of a cognizable offence.

37. **Summarized ingredients:**

- (a) It must be information in relation to the commission of a cognizable offence.
- (b) It must be given to an officer-in-charge of a police station.
- (c) It must be reduced to writing, if given orally.
- (d) It should be appended by the signature of the informer (refusal to sign the report is punishable under Section 180 of the IPC).
- (e) It should be read over to the informer.
- (f) The gist of the information should be entered in the station General Diary.
- (g) A copy should be given forthwith free of cost to the informer.
- (h) Informer must be produced in the court to prove and corroboration of it.

38. **Do's**

- (a) FIR should be lodged immediately.
- (b) It should be recorded in first person.
- (c) Attitude/behaviors towards the victim should be sympathetic.

## SECURITY MANAGEMENT

- (d) Technical words should be avoided and as far as possible language of the informer/complainant should be used.
- (e) Written complaint should be taken.
- (f) But it should be complainant's discretion to give a written statement.
- (g) Written statement should be duly signed.
- (h) Only a report of cognizable offence should be lodged in FIR.
- (i) Authentic information should be mentioned in FIR.
- (j) Place, date and time of occurrence should be mentioned in the FIR.
- (k) Arrival and departure of the informer should be mentioned in the FIR as well as Daily Dairy Register.
- (l) Delay, if any, in registering the case should be covered in FIR.
- (m) 11 "Ws" should be strictly followed.
- (n) Description and role of every accused involved in the commission of offence should be covered in FIR.
- (o) Kind of physical damage and property destroyed should be mentioned in the FIR.
- (p) Weapon of offence and observation of scene of crime should be mentioned in the FIR.
- (q) Telephone number, if any, of the complainant should also be mentioned.
- (r) Four copies of FIR should be prepared simultaneously by carbon paper process.
- (s) FIR should be lodged in neat and clean handwriting and be kept in safe custody being a permanent record.
- (t) A copy of FIR should be sent to the magistrate concerned immediately
- (u) A copy of FIR should be provided to the complainant free of cost.

### 39. **Don'ts**

- (a) Complainant should not be puzzled.
- (b) Harsh language should not be used.
- (c) Aggression should be avoided.
- (d) Unnecessary details should be avoided
- (e) Overwriting / scoring should be avoided.
- (f) Offence should not be minimized
- (g) Do not forget to take thumb impression or signature of the informer.
- (h) FIR should not be lodged on the basis of telephone, telegram or hearsay rumor without verifying the facts and getting the signature of the informer/ complainant.

### 40. **Summary of FIR**

- (a) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station shall be reduced in writing by him

## SECURITY MANAGEMENT

under his direction, be read over fully to the informant and every such information whether given in writing or reduced in writing, shall be entered in a book to be kept by the Officer in such a form as the state government prescribe.

- (b) It is a statement made immediately after the occurrence when memory is still fresh.
- (c) There is no time available for fabrication or embellishment.
- (d) FIR is to be signed by the Officer after the informant has signed it.
- (e) One copy of the FIR is to be given to the informant free of cost.
- (f) It is not necessary to be that of an eyewitness.
- (g) It can be given on phone or by telegram.
- (h) Once recorded, FIR cannot be cancelled.
- (i) It includes date, time and scene of crime, name and/or details of the accused, witnesses, name of the injured, description of injury, description of stolen property, value and mark of identification.

### REVISION QUESTIONNAIRE

1. Define the following terms:-
  - (a) Bailable offences.
  - (b) Offences.
  - (c) Warrant/summon.
  - (d) Cognizable Offences
  - (e) Non-cognizable offences.
  - (f) Office in charge of police station.
  - (g) Police Station.
2. Define Arrest and explain how it is made?
3. Write a note on unlawful assembly.
4. Who can lodge F.I.R.?
5. Write a self explanatory note on how to write F.I.R.
6. Explain the circumstances under which a police officer can arrest a person without warrant?
7. Write a note on procedure of recovery Confession/statement under section 164CrPC.
8. Write short notes on the following:-
  - (a) Dispersal of Unlawful Assemblies.
  - (b) Differences between Compliant & F.I.R.
  - (c) Classes of Courts.

## **INDUSTRIAL LAW**

### **CHAPTER- 9 - INDUSTRIAL EMPLOYMENT STANDING ORDER ACT**

This Act require employers in industrial establishments formally to define conditions of employment under than and to make the said condition known to workmen employed by them.

It extends to whole of India and applies to every industrial establishment where in one Hundred more workmen are employed or were employed on any day of the proceeding 12 months.

#### **Definitions**

**Certifying officer**- means a labour commissioner or a Regional labour commissioner and includes any other officer appointed by the appropriate govt.

**Employer**- means the owner of the industrial establishment to which this Act applies.

**Submission of draft standing orders**:- With six months from date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the certifying officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

Provision shall be made in such draft for every matter set out in the schedule which may be applicable to the industrial establishment.

Draft standing orders shall be accompanied by a statement giving prescribed particulars of the workmen employed there in, including name of the Trade Union if any.

Draft standing order should be in conformity with the provision of the Act.

**Certification of standing orders**: - on receipt of the Draft, the certifying officer shall forward a copy thereof to the Trade Union of the workmen of seek their objections if any with in 15 days.

After giving the employer Trade Union or representatives of workers the certifying officer shall decide whether or not any modification or addition to the draft submitted by the employer is necessary and shall make an order in writing accordingly.

After that, the certifying officer shall certify the order and send the same with in 7 days to the employer and the representative of the workmen.

**Register of standing order-** A copy of all the standing orders as finally certified shall be filed in a register in the prescribed manner.

**Posting of standing orders:** - Text of the standing order shall be posted by the employer in English and the language understood by majority of his workmen in special board near the entrance through which majority of the workmen passes.

This standing order shall not be modified with in Six months changes can be made after six months by agreement between employer and workmen.

#### **Payment of subsistence allowance**

Where any workman is suspended by employer pending investigation or enquiry into the complaint, the employer shall pay at the rate of 50 % of wages for the first 90 days and thereafter 75% of the wages for the remaining period of suspensions if the delay conducting the enquiry is not on the part of work man.

**Penalties:-** An employee who fails to submit draft standing orders with in time or modifies his standing orders other wise them in accordance of the Act, shall be punishable with fine up to Rs 5000/-. Fine may extend to Rs 200/- for every day after the first during which the offence continues.

#### **Model standing orders**

Following should be included in model standing order: -

1. Classification of workers.
  - Permanent
  - Probationers
  - Badlis
  - Fixed term employment
  - Temporary
  - Casual



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### Apprentice

2. Tickets to all permanent workmen
3. Publication of working time
4. Publication of holidays and paydays
5. Publication of wage rates
6. Shift working
7. Notice of change in shift working
8. Attendance and late committer
9. leave
10. Casual leave
11. Payment of wages
12. Stoppage of work in the event of fire, breakdown of machinery, stoppage of power and water
13. Termination of employment
14. Disciplinary action for misconduct
15. Complaints
16. Certificate on termination of service
17. Liability of the employer to follow the standing orders
18. Exhibition of standing orders.

- ✓ Badlis
- ✓ Fixed term employment
- ✓ Temporary
- ✓ Casual
- ✓ Apprentice

19. Tickets to all permanent workmen
20. Publication of working time
21. Publication of holidays and paydays
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23. Shift working
24. Notice of change in shift working
25. Attendance and late committer
26. leave
27. Casual leave
28. Payment of wages
29. Stoppage of work in the event of fire, breakdown of machinery, stoppage of power and water
30. Termination of employment
31. Disciplinary action for misconduct
32. Complaints
33. Certificate on termination of service
34. Liability of the employer to follow the standing orders
35. Exhibition of standing orders.

## **CHAPTER - 10 - FACTORIES ACT- 1948**

### **Contents**

- ✓ Introduction
- ✓ Definitions
- ✓ Powers Of Inspector
- ✓ Duties o Certifying Surgeon
- ✓ Safety Measures
- ✓ Welfare Related Facilities
- ✓ Revision Questionnaire

### **Introduction**

Factories Act is meant to provide protection to the workers from being exploited by the greedy business establishment and it also provided of the improvement of working condition within the factory premises.

This Act extends to whole of India

### **Definitions**

Adult means a person who has completed 18th year of age;

Adolescent means a person who has completed 15th year of age but has not completed his 18th year.

Child means a person who has not completed his 15th year of age

Hazardous process – means any process or activity in relation in relation to an industry specified in First schedule where unless special care is taken, raw material used there in or the intermediate or finished product, by products, wastes or effluents thereof would.

1. cause material impairment to the health of the persons engaged in or connected there with or
2. results in pollution of the general environment

Key Points / Methods

Machinery includes prime movers, transmission machinery and all other appliances whereby power

## SECURITY MANAGEMENT

is generated, transformed transmitted or applied.

Worker means a person employed, directly or by or through any agency including a contractor with or without the knowledge of the principal employee, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process or in cleaning any part of machinery or premises used for manufacturing process. It does not include any member o the armed forces of the Union.

**Factory:** - means any premises including the precincts thereof-

1. where an 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the out of power or
2. Where on 20 or more workers if manufacturing process is being carried on without the aid of power.

But does not include a 'mine' subject to the operation of the mines Act,1952, any mobile Unit of Armed forces, railway running shed or a hotel restaurant or eating place.

Occupier of a factory means the person who has ultimate control over the affairs of the factory.

Inspecting staff

Inspectors: - (sec 8)

The state govt. may, by notification in the official Gazette appoint such persons as possess the prescribed 9 notification to be the inspectors and may assign to them such local limits as it may think fit.

Similarly the state govt. may also appoint chief inspector, additional chief inspector, Joint chief Inspector, Deputy Chief Inspectors etc,

The person so appointed should not have direct or indirect interest in a factory.

Every District Magistrate shall be an Inspector for his district

### **Powers of Inspector**

He can enter in any place which is used or has reason to believe is used, as a factory with a view to

- (a) make examination of premises, plant, machinery
  - (b) inquire into any accident or dangerous occurrence
  - (c) Require the production seize, take copies of any prescribed register or any other document relating to factory as he may consider necessary in respect of an offence.
- Key Points / Methods

- (d) Direct the occupier not to disturb anything lying there in for so long as necessary for examining them.
- (e) Take measurement/photograph and make such recording as maybe necessary to the purpose of examining.

Provided that no person shall be compelled to answer any question or give any evidence tending to incriminate him.

### **Certifying surgeons**

The state govt. may appoint qualified medical practitioner to be certifying surgeons for the purpose of this Act with in such local limits or for such factory or class or description of factories as it may assign to them respectively.

A certifying surgeon may with the approval of the state govt. authorize any qualified medical practitioner to exercise any of his powers.

The certifying surgeon or his nominee should not have direct or indirect interest in the factory.

**Duties of certifying surgeons**

1. Examination and certification of young persons
2. Examination of person engaged in Factories in such dangerous occupation or process as maybe prescribed
3. Exercising of such medical supervision as may be prescribed for any factory or class like
  - (a) Cases of illness due to nature of manufacturing process or condition of work.
  - (b) By reason of any change in manufacturing process carried on or in the substance used there in.
  - (c) Young persons are or are about to be employed in any work which is likely to cause injury to their health.

Health: - Adequate measures for cleanliness, disposal of wastes and effluents ventilation and Temperature; dust and fume, artificial humidification, over crowding, lighting, drinking water, latrines and urinals and spittoons.

**Safety measures**

Fencing of machinery: - In every factory following are to be fenced:-

1. Every moving part of a prime mover and every fly wheel connected t a prime mover whether it is in engine house or not
  2. the headrace and tailrace of every water wheel and water turbine
  3. any part of a stock-bar which projects beyond the head stock of a lathe
  4. every part of an electric generator, a motor or rotary converter
  5. every part of transmission machinery
- Key Points / Methods

6. every dangerous part of any other company.

A machinery or part there of dangerous if in the ordinary course of its working danger may reasonably be anticipated from it when working without protection.

Work on or near machinery in motion:-

## SECURITY MANAGEMENT

While the machinery is in motion, its examination or operation shall be made or carried out only by specially trained adult male worker wearing tight fitting clothing. Such workers shall not handle a belt at a moving pulley unless- it is properly safe guarded.

No women or young person shall be allowed to clean, lubricate or adjust any part of a prime move or if any transmission machinery.

Employment of young persons on dangerous machines:-

No young person shall be required or allowed to work at any machine to which this section applies unless he has been warned of the consequences and the procedure to use such machine

Working gear and devices for cutting off power

In every factory suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belt to and from fast and loose pulleys which form part of the transmission machinery. Driving belts when not in use shall not be allowed to rest or ride upon shafting in motion

Suitable devices for cutting off power in emergencies form running machinery shall be provided and maintained in every workroom.

Prohibition of employment of women and children near

Cotton openers (Sec 27)

No women or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.

Hoists and lift (Sec 28)

Every hoist and lift shall be of good mechanical construction, ground material and adequate strength, properly maintained and shall be thoroughly examined by a competent person at least once in six months.

Lifting machines, chains, ropes and lifting tackles shall be maintained in good condition.

Revolving machinery (Sec 30)

A notice indicating the maximum safe working peripheral speed of every grind stone, or abrasive wheel, speed of shaft shall be permanently affixed to or placed near each machines.

Key Points / Methods

The speed indicted in notices shall not be exceeded and all other effective measures shall be taken to ensure safety of the workers.

Pressure Plant- Effective measures shall be taken to ensure that safe working pressure of such plant or machinery is not exceeded

Floors stairs and other means of access: - shall be of sound construction and properly maintained

Excessive weight - No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury

Protection of eyes: - eyes are to be protected from the risk of injury to the eyes from particles or fragments thrown off in the causes of the process and risk by the reason of exposure to excessive light.

Precaution against dangerous fumes, gases etc

No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe etc or any other confined space in any factory in which any gas fume etc is likely to be present to such an extent as to involve risk to persons.

#### Safety officers

In every factory wherein one thousand or more worker are ordinarily employed or where in any manufacturing process or operation is carried on which involves risk of bodily injury poisoning or disease or any other hazard to health, to the process employed in the factory. The occupier shall employ such number of safety officer as may be specified by the state govt. in its notification.

The duties, qualification and condition of service of safety officer shall be such as may be prescribed by the govt.

#### Welfare officer

In every factory following welfare related facilities are to be provided for the use of workers therein:-

- (a) washing facilities for male and female workers separately
- (b) Facilities for storing / drying clothing
- (c) Facilities for sitting
- (d) First aid appliances
- (e) Canteens where more then 250 workers ordinarily employed
- (f) Shelters, rest rooms and lunch rooms where more than 150 worker all ordinarily employed
- (g) Crèches in every factory wherein more than 30 workers are ordinarily employed.

### REVISION QUESTIONNAIRE

1. What down a short note on the following:-
  - (a) Factory as contained in the Factory Act.
  - (b) Powers of Inspector.
  - (c) Fencing of Machinery.



**CHAPTER – 11 - INDUSTRIAL DISPUTES ACT-1947****CONTENTS**

- ✓ Introduction
- ✓ Definitions
- ✓ Authorities under this Act
- ✓ Application for registration
- ✓ Unfair labour practices
- ✓ Labour Unrest
- ✓ Revision Questionnaire

**INTRODUCTION**

1. The Industrial Disputes Act, 1947 came into existence in April 1947. It was enacted to make provisions for investigation and settlement of industrial disputes and for providing certain safeguards to the workers.

**DEFINITIONS**

2. "**Industry**" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or a vocation of workmen;
3. "**Industrial dispute**" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person

**AUTHORITIES UNDER THIS ACT**

4. **Works Committee**
  - (a) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months; the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment; however that, the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer.
  - (b) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.
5. **Conciliation Officers**

## SECURITY MANAGEMENT

- (a) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

### 6. **Boards of Conciliation**

- (a) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting, the settlement of an industrial dispute.
- (b) A Board shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

### 7. **Courts of Inquiry**

- (a) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for inquiring into a matter appearing to be connected with or relevant to an industrial dispute.
- (b) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

### 8. **Labour Courts**

- (a) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes.
- (b) A Labour Court shall consist of one person only to be appointed by the appropriate Government.
- (c) A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless -
  - (i) He is, or has been, a Judge of a High Court; or
  - (ii) He has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
  - (iii) He has held any judicial office in India for not less than seven years ;
  - (iv) He has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

### 9. **Tribunals**

- (a) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter and for performing such other functions as may be assigned to them under this Act.
- (b) A Tribunal shall consist of one person only to be appointed by the appropriate Government.
- (c) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:

## SECURITY MANAGEMENT

- (i) He is, or has been, a Judge of a High Court; or
- (ii) He has, for a period of not less than three years, been a District Judge or an Additional District Judge.

### 10. **Disqualifications For The Presiding Officers Of Labour Courts, Tribunals And National Tribunals**

- (a) No person shall be appointed to, or continue in, the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal, if -
  - (i) He is not an independent person; or
  - (ii) He has attained the age of sixty-five years.

### 11. **Notice of Change**

- (a) No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter, shall effect such change.
  - (i) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
  - (ii) within twenty-one days of giving such notice:

## **APPLICATION FOR REGISTRATION**

12. Any Union which has for the whole of the period of at least three months during the period of six months immediately preceding the calendar month in which it so applies under this section a membership of not less than fifteen percent of the total number of workmen employed in unit of an industry may apply in the prescribed form to the Registrar for registration as a Representative Union.

## **REGISTRATION OF UNION**

13. On receipt of an application from a union for registration and on payment of the fee prescribed, the Registrar shall, if, after holding such inquiry as he deems fit he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied and that the union is not otherwise disqualified for registration, enter the name of the union in the appropriate register in such form and issue a certificate of registration in such form as may be prescribed.
14. Once a union has been registered as a representative union under this Act the registration of the union shall be held valid for a period of two years from the date of its registration and shall continue to hold valid unless the registration is cancelled under or another union is registered in its place.

## **CANCELLATION OF REGISTRATION**

15. The Registrar shall cancel the registration of a Union –
- (a) If, after holding such an inquiry, if any, as he deems fit he is satisfied
  - (b) that it was registered under mistake, misrepresentation or fraud; or
  - (c) that the membership of the union has for a continuous period of three months at any time after two years from the date of its registration fallen below the minimum required under section 9-D for its registration .

### **REGISTRATION OF ANOTHER UNION IN PLACE OF EXISTING REGISTERED UNION**

16. If any Union (hereinafter in this section referred to as 'applicant Union') makes an application to the Registrar for being registered in place of the Union (hereinafter in this section referred to as 'representative Union') for a unit of an industry at any time after a lapse of two years from the date of registration of the representative union on the ground that it has a larger membership of workmen employed in such unit of the industry, the Registrar shall call upon the representative Union by a notice in writing to show cause within one month of the receipt of such notice why the applicant Union should not be registered in its place. An application made under this sub-section shall be accompanied by such fee as may be prescribed.

### **APPLICATION FOR RE-REGISTRATION**

17. Any Union, the registration of which has been cancelled on the ground that -it was registered under a mistake or on the ground specified, at any time after three months from the date of such cancellation and on payment of such fees as prescribed, may apply for re-registration.
18. A Union the registration of which has been cancelled on any other ground shall not, save with the permission of the State Governments, be entitled to apply for re-registration.

### **UNFAIR LABOUR PRACTICES**

#### **On the part of employers and trade unions of employers.**

19. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say:
- (a) threatening workmen with discharge or dismissal, if they join a trade union;
  - (b) threatening a lock-out or closure, if a trade union is organized;
  - (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union organisation.
20. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say:
- (a) An employer taking an active interest in organising a trade union of his workmen; and
  - (b) An employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.
  - (c) To establish employer sponsored trade unions of workmen.
21. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say:
- (a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;
  - (b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

## SECURITY MANAGEMENT

- (c) changing seniority rating of workmen because of trade union activities;
  - (d) refusing to promote workmen to higher posts on account of their trade union activities;
  - (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;
  - (f) Discharging office-bearers or active members of the trade union on account of their trade union activities.
22. To discharge or dismiss workmen :
- (a) by way of victimisation;
  - (b) not in good faith, but in the colorable exercise of the employer's rights;
  - (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
  - (d) for patently false reasons;
  - (e) on untrue or trumped up allegations of absence without leave;
  - (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
  - (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.
23. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
24. To transfer a workman *mala fide* from one place to another, under the guise of following management policy.
25. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.
26. To show favoritism or partiality to one set of workers regardless of merit.
27. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
28. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
29. To recruit workmen during a strike which is not an illegal strike?
30. Failure to implement award, settlement or agreement.
31. To indulge in acts of force or violence.
32. To refuse to bargain collectively, in good faith with the recognised trade unions.
33. Proposing or continuing a lock-out deemed to be illegal under this Act.

### On the part of workmen and trade unions of workmen

34. To advise or actively support or instigate any strike deemed to be illegal under this Act.
35. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say :
  - (a) For a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
  - (b) To indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
36. For a recognized union to refuse to bargain collectively in good faith with the employer.
37. To indulge in coercive activities against certification of a bargaining representative.
38. To stage, encourage or instigate such forms of coercive actions as willful "go slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
39. To stage demonstrations at the residences of the employers or the managerial staff members.
40. To incite or indulge in willful damage to employer's property connected with the industry.
41. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

Labor unrest is a term used by [employers](#) or those generally in the [business community](#) to describe [organizing](#) and [strike actions](#) undertaken by [labor unions](#), especially where [labor disputes](#) become [violent](#) or where [industrial actions](#) in which members of a [workforce](#) obstruct the normal process of business and generate [industrial unrest](#) are essayed.

Such a conception of labor action was common in the [United States](#) in the nineteenth century most prominently amongst [mining interests](#) in the [American West](#), and remained common in the twentieth century CE amongst [totalitarian](#) states, such as the [Soviet Union](#) and [People's Republic of China](#) in which complete control of the [working class](#) is desired

### **INDUSTRIAL DISPUTE**

- 1 A disputes or difference between :
  - (a) Employees and employers.
  - (b) Employers and workmen.
  - (c) Workmen and workmen.

## SECURITY MANAGEMENT

- 2 The dispute or difference should be connected with :
  - (a) Employment or non employment.
  - (b) Terms of employment.
  - (c) Conditions of labour of any person.
- 3 The dispute may be in relation to any workman or workmen or any other person in whom they are interested as a body.

### **LAY-OFF**

- 4 An employer, who is willing to employ, fails or refuses or is unable to provide employment for reasons beyond his control.
- 5 Any such failure or refusal to employee or worker may be on account of:
  - (a) Shortage of coal, power or raw material.
  - (b) The accumulation of stock.
  - (c) The breakdown of machinery.
  - (d) Natural calamity.
  - (e) Any other connected reasons.
6. A workman who is so deprived of employment must be such whose name is borne on the muster roll of his industrial establishment.
7. The workman must not have been retrenched.

### **LOCKOUT**

8. Lockout means the closing of a place of employment or the suspension of the work or the refusal by an employer to continue to employ any number of persons employed by him.
9. Lockout is the action of keeping the labour away from the work by an employer with the view to resist their claim. There are four ingredients of lockout.
10. It will include:
  - (a) Temporary closing of any place of employment by the employer.
  - (b) Suspension of work by the employer.
  - (c) Refusal by an employer to continue to employ any number of persons employed by him.
- 11 The above mentioned acts of employer should be motivated by coercion.
- 12 It should be an industry as defined in the Act.
- 13 A dispute in such industry.

### **STRIKE**

- 14 Cessation of work by a body of persons employed in any industry acting in combination.
- 15 A concerted refusal of any number of persons who are or have been employed in any industry to continue to work or to accept employment.

## SECURITY MANAGEMENT

16 A refusal under a common understanding of any number of persons who are or have been employed in an industry to work or to accept employment.

17 **Types of strikes**

- General strikes
- Stay-in-strike
- Go-slow-strike

**Under section 2(q) of the ID Act these are not termed as strikes**

- Sympathetic strike
- Hunger strike
- Work to rule.

**DIFFERENCE BETWEEN LOCKOUT AND LAY-OFF**

- 18 Lockout may be temporary whereas lay-off/ closure is permanent.
- 19 Lockout is a weapon of coercion in the hands of employer; lay-off/closure is generally for trade reasons as discussed in the definition.
- 20 Lockout is during an industrial dispute whereas in the case of closure there need not be any dispute.

**ROLE OF SECURITY STAFF DURING INDUSTRIAL UNREST**

- 21 Ensure safety and security of personnel, material and machinery during the periods of strikes, lockout, lay-off or closure, etc.
- 22 All the actions of senior manager and management will depend upon the labour intelligence reports submitted by the security Head/ Manager from time to time.

**In order to remain alert/ vigilant, the SOs have: -**

- Up to date knowledge of the Labour Unions and their activities/ plans.
- Knowledge of the past activities of the Labour Unrest in the Company.

**Knowledge of Past Labour Unrest**

- Read past events/ history of the Labour Unrest.
- Read in detail and also should get necessary update from personnel manager and labour officer.
- Study the cases files of all previous strikes etc in the organization.
- Get to know the events along with their reasons, details of unions and their leaders; what was the outcome?
- Study the details of actions taken by the security staff and management.
- Ascertain whether the nature of strikes were violent or peaceful.
- Was any arrests made, any interference by police?
- Whether management declared any lockout consequence to the strike.



**Note**

- All these information will assist him (SO) in keeping a close watch on the anticipated moves of the employees and the labour unions.
- Information of Labour Unions.
- Security officer should have a comprehensive knowledge about the labour unions which are operating inside the premises or even supporting from out side. Some valuable points are as under: -
  - Unions leaders are either from within the industry or they are from outside.
  - What are the political connections of the labour union, which are the local, state or the national level leaders supporting the union?
  - Whether the political leaders are hostile or sympathetic towards management.
  - Have there been some changes in the union leadership from the past, if so, what are the reasons?
  - What is the attitude of present leaders towards the organizations?
  - What is the integrity and loyalty of union leaders?

**REASONS FOR RIFTS TO BECOME UNION UNREST**

- 42 There are many reasons for union unrest as given under:-
- (a) Shop/Machine floor rifts between workers and supervisor/manager.
  - (b) Managerial attitude towards redresses of grievances put up by the employees.
  - (c) Fixation of wages/salary structures.
  - (d) Dearness allowance or grant of bonus.
  - (e) Union rivalry in the initial stages.
  - (f) Procedure followed in settling various employees' demands.
  - (g) Procedure adopted for promotion concerning one or more employees.

**ACTIONS BY SECURITY OFFICERS, IN CASE WARNING OF STRIKE IS RECEIVED**

- 42 Activate all the sources to gather all the information about impending strike/unrest.
- 43 Plan and position at various important places adequate security guards inside the factory premises to ensure full protection for materials and machines, etc.
- 44 Depending upon the analysis of threat, adequate protection should be provided for management and other senior officers/ managers.
- 45 Proper information/report must be made to the concerned police station. Necessary information from time to time must be passed about the strike.
- 46 Security officers must observe carefully the negotiations, if any, going on between the union leaders and management. If the demands are met then strike may not take place at all.

- 47 Sometimes it is possible that “Lightening Strike” may be there in the industry without any proper notice. So a security officer must be very alert and keep a track of all the labour activities.

#### **ACTION BY SECURITY OFFICER DURING STRIKE**

- 48 The complete security department must be able to occupy their assigned duties as per industry’s standing orders, in case of a strike. In case the strength of the guards is considered inadequate, then requisite number of security guards must be arranged from the local agency.
- 49 Constant police liaison must be kept with the police station and all the important information should be passed on to the police officer at regular intervals or on occurrence.
- 50 Security officer or Personnel Manager/ Administration Manager must obtain injunction order from the civil court or a labour court. Those orders should be enforced by the police as these are always essential for such actions. Injunction order’s enforcement is very important in order to safeguard the organization’s property.
- 51 In case some workers wish to join the work, then adequate protection must be given for them during the strike.

The security officer is the only officer possibly during the strike whose report from time to time will matter a lot for the management to chalk out their future plans and strategy to resolve the labour problem.

#### **REVISION QUESTIONNAIRE**

1. Write a note on objectives and scope of the Industrial Disputes Act.
2. Write a note on salient provisions of the Act.
3. What do you understand by Industrial Disputes?
4. What are the authorities and their functions under this Act?
5. What are offences and penalties under the Act?
6. How works committees are constituted?
7. Define the following terms:-  
(a) Strikes (b) Lock-outs (c) Lay-off (d) Retrenchment.
8. Write a note on “Labour unfair practices” on the part of employees and Trade Unions.

**CHAPTER - 12 - INDIAN BOILERS ACT-1923****Contents**

- ✓ Introduction
- ✓ Definitions
- ✓ Registration and Prohibition of Use
- ✓ Powers of Chief Instructor
- ✓ Revision Questionnaire

**Introduction**

Regulation of boilers was a provincial subject. There were seven provincial Boiler Acts. Some of them were enacted several years earlier any they were out of date, and all of them were inconsistent with each other. To secure uniformity through out India in all technical matters connected with boiler regulations this Act was enacted.

The Act extends to the whole of India except the state of J and K.

**Definitions**

**Accident:-** means an explosion of a boiler or stem pipe or any damage to a boiler or stem pipe which is calculated to weaken the strength thereof so as to render it liable to explode.

**Boiler:-** means any closed vessel exceeding 22-75 liters in capacity which is used expressly for generating stem under pressure and includes any mounting or other fitting attached to such vessel, which is wholly or party under pressure when stem is put off

**Owner:** - includes any person using a boiler as agent of the owner thereof and any person using a boiler which he has hired or obtained on loan from the owner thereof.

**Prohibition of use of unregistered or uncertified boiler: (Sec 6)**

No owner of a boiler shall use the boiler or permit it to be used

- (a) Unless it has been registered in accordance with the provisions of this Act
- (b) In the case of any boiler which has been transferred from one state to another, until the transfer has been reported in the prescribed manner;
- (c) Unless a certificate or provisional order authorizing the use of the boiler is for the time being in force under this Act
- (d) At a pressure higher than maximum pressure recorded in such certificate or provisional order;
- (e) The boiler shall be in charge of persons holding certificate of proficiency or competency.

**Registration:** - The owner of any boiler which is not registered under the Act may apply to the inspector to have the boiler registered. The inspector shall fix the date for inspection with in 30 days of receipt of application for the examination of the boiler and shall give the owner thereof not less than 10 days notice of the date so fixed.

The chief inspector shall, on registering the boiler issue a certificate to the owner of the boiler.

The chief inspector may at any time withdraw or revoke any certificate on the report of the inspector:-

- (a) If the certificate has been fraudulently obtained.
- (b) If the boiler has sustained injury.
- (c) If the in charge of the boiler is not competent to have charge thereof.

**Penalties:** - If any owner of a boiler refuses or without reasonable excuse neglects to surrender provisional order on the expiry of six months from the date on which it was granted; produce a certificate on demand shall be punished with five up to Rs 100/-.

Any owner of a boiler uses boiler illegally i.e. with out registration certificate or at a higher pressure than that allowed thereby shall be punishable with five up to Rs 500/- and in the case of continuing offence with an additional five up to Rs 100/- per day.

**REVISION QUESTIONNAIRE**

1. Define the following:-
  - (a) Accident.
  - (b) Boiler.
  - (c) Owner.
2. What is the prohibition on the use of unregistered boiler?s

**CHAPTER –13 - THE TRADE UNIONS ACT – 1926****CONTENTS**

- ✓ Introduction
- ✓ Definitions
- ✓ Registration of Trade Unions
- ✓ Rights and liabilities of registered trade unions
- ✓ Regulations
- ✓ Penalties and procedure
- ✓ Revision Questionnaire

**INTRODUCTION**

1. The earliest known trade unions in India were:
  - (a) The Bombay Millhand's Association formed in 1890.
  - (b) The Amalgamated Society of railway servants of India and Burma formed in 1897.
  - (c) Printers' Union formed in Calcutta in 1905, the Bombay Postal Union which was formed in 1907, and the Kamgar Hitwardhak Sabha Bombay formed in 1910.
  - (d) Trade Union movement began in India after the end of First World War. After a decade following the end of First World War the pressing need for the coordination of the activities of the individual unions was recognized.
  - (e) The All India Trade Union Congress was formed in 1920 on a National Basis, the Central Labour Board, Bombay and the Bengal Trades Union Federation were formed in 1922.
  - (f) The All India Railwaymen's Federation was formed in 1922 and this was followed by the creation of both Provincial and Central federations of unions of postal and telegraph employees.
  - (g) The origin of the passing of a Trade Unions Act in India was the historic Buckingham Mill case of 1940 in which the Madras High Court granted an interim injunction against the Strike Committee of the Madras Labour Union forbidding them to induce certain workers to break their contracts of employment by refusing to return to work.
  - (h) Trade Union leaders found that they were liable to prosecution and imprisonment for bona fide union activities and it was felt that some legislation for the protection of trade union was necessary.
  - (i) In March, 1921, N. M. Joshi, then General Secretary of the All India Trade Union Congress, successfully moved a resolution in the Central Legislative Assembly recommending that Government should introduce legislation for the registration and protection of trade unions.

## SECURITY MANAGEMENT

- (j) Opposition from employers to the adoption of such a measure was, however, so great that it was not until 1926 that the Indian Trade Unions Act was passed.
- (k) The Indian Trade Unions Bill, 1925 was introduced in the Central Legislative Assembly to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions in Provinces of India.

### **DEFINITIONS**

- 2. **Trade Dispute:** "Trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person.
- 3. **Workmen** means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.
- 4. **Trade Union:** "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

### **MODE OF REGISTRATION**

- 5. Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.
- 6. Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application.

### **APPLICATION FOR REGISTRATION**

- 7. Every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:-
  - (a) The names, occupations and address of the members making application;
  - (b) The name of the Trade Union and the address of its head office; and
  - (c) The titles, names, ages, addresses and occupations of the 3[office-bearers] of the Trade Union.
  - (d) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

### **PROVISIONS TO BE CONTAINED IN THE RULES OF A TRADE UNION**

8. A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely:-
- (a) The name of the Trade Union;
  - (b) The whole of the objects for which the Trade Union has been established;
  - (c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
  - (d) The maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the 1[office-bearers] and members of Trade Union.
  - (e) The admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers;
  - (f) The payment of a subscription by members of the Trade Union which shall be not less than twenty-five paise per month per member;
  - (g) The conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members:
  - (h) The manner in which the rules shall be amended, varied or rescinded;
  - (i) The manner in which the members of the executive and the other office-bearers of the Trade union shall be appointed and removed;
  - (j) The safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and
  - (k) The manner in which the Trade Union may be dissolved.

### **CERTIFICATE OF REGISTRATION**

9. The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

### **CANCELLATION OF REGISTRATION**

10. A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar-
- (a) On the application of the Trade Union to be verified in such manner as may be prescribed
  - (b) If the Registrar; is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has willfully and after



notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing for any matter provision for which is required by section 6:

### **REGISTERED OFFICE**

11. All communications and notices to a registered Trade Union may be addressed to its registered office. Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing and the changed address shall be recorded in the register referred to in section 8.

### **INCORPORATION OF REGISTERED TRADE UNION**

12. Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

### **RIGHTS AND LIABILITIES OF REGISTERED TRADE UNIONS**

13. Objects on which general funds may be spent:-
  - (a) The payment of salaries, allowances and expenses to office-bearers of the Trade Union
  - (b) The payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;
  - (c) The prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person who is an employee.
  - (d) The conduct of trade disputes on behalf of the Trade Union or any member thereof;
  - (e) The compensation of members for loss arising out of trade disputes;
  - (f) Allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;
  - (g) The issue of, or the undertaking of liability under, policies of assurance on the lives of members, or (under) policies insuring members against sickness, accident or unemployment;
  - (h) The provision of education, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;
  - (i) The upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
  - (j) The payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general.

- (k) Subject to any conditions contained in the notification, any other object notified by the appropriate Government in the Official Gazette.

### **CONSTITUTION OF A SEPARATE FUND FOR POLITICAL PURPOSES**

14. A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members.

### **CRIMINAL CONSPIRACY IN TRADE DISPUTES**

15. No office-bearer or member of a Registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code, 1860 (45 of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.

### **IMMUNITY FROM CIVIL SUIT IN CERTAIN CASES**

16. No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union.
17. A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortuous act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union.

### **RIGHT TO INSPECT BOOKS OF TRADE UNION**

18. The account books of a registered Trade Union and the list of members thereof shall be open to inspection by an office-bearer or member of the Trade Union at such times as may be provided for in the rules of the Trade Union

### **RIGHTS OF MINORS TO MEMBERSHIP OF TRADE UNIONS**

19. Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary.
20. And may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquaintances necessary to be executed or given under the rules.

### **DISQUALIFICATIONS OF OFFICE-BEARERS OF TRADE UNIONS**

21. He has not attained the age of eighteen years.
22. He has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.
23. Has been convicted of any offence involving moral turpitude and sentenced to imprisonment, shall on the date of such commencement cease to be such member or office-bearer unless a period of five years has elapsed since his release before that date.
24. In its application to the State of Jammu and Kashmir, reference in sub-section (2) to the commencement of the Indian Trade Unions (Amendment) Act, 1964, shall be construed as reference to the commencement of this Act in the said State.

### **PROPORTION OF OFFICERS TO BE CONNECTED WITH THE INDUSTRY**

25. No less than one-half of the total number of the office-bearers of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Unions connected.

### **CHANGE OF NAME**

26. Any registered Trade Union may, with the consent of not less than two thirds of the total number of its members and subject to the provisions of section 25, change its name.

### **AMALGAMATION OF TRADE UNIONS**

27. Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions

### **DISSOLUTION**

28. When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution be sent to the Registrar,
29. Shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.
30. Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

### **RETURNS**

31. There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date,
32. And of the assets and liabilities of the Trade Union existing on such 31st day of December.
33. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

### **PENALTIES AND PROCEDURE**

34. Failure to Submit Returns:-
- (a) If default is made on the part of any registered Trade Union will give any notice or send any statement or other document as required by or under any provision of this Act, every office-bearer or other person bound by the rules of the Trade Union to give or send the same.
  - (b) Any person who willfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 28 or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees.

**SUPPLYING FALSE INFORMATION REGARDING TRADE UNIONS**

35. Any person who, with intent to deceive, gives to any member of a registered Trade Union or to any person intending or applying to become a member of such Trade Union any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same.
36. Which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

**COGNIZANCE OF OFFENCES**

37. No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.
38. No court shall take cognizance of any offence under this Act, unless complaint thereof has been made by, or with the previous sanction of, the Registrar or, in the case of an offence under section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed

**REVISION QUESTIONNAIRE**

1. What are the objectives, scope and coverage of the Trade Unions Act?
2. Write a note on salient provisions of the Act.
3. Write down the procedure for registration of a Trade Union and its cancellation.
4. What are the obligations of a registered Trade Union?
5. What are the offences and penalties prescribed in the Act?
6. Who can be a member/office bearer of a Trade Union?

## CHAPTER – 14- THE EXPLOSIVE ACT - 1884

### CONTENTS

- ✓ Introduction/Definitions
- ✓ Manufacture, in Relation to an explosive includes the process.
- ✓ Power to make rules as to licensing of the manufacture, possession, use, sale, transport, import and export of explosives.
- ✓ Power for Central Government to prohibit the manufacture, possession or importation of especially dangerous explosives.
- ✓ Prohibition of manufacture, possession, sale, or transport of explosive by young persons and certain other persons.
- ✓ Grant/Refusal of licences.
- ✓ Inquiry into accidents.
- ✓ Punishment of certain offences.
- ✓ Offences by companies.
- ✓ Forfeiture of explosives.
- ✓ Power to arrest without warrant persons committing dangerous offences.
- ✓ Saving and power to exempt.
- ✓ Procedure for making publication and confirmation of rules.
- ✓ Revision Questionnaire

### INTRODUCTION

1. An Act to regulate the manufacture, possession, use, sale, transport, import and export of explosives;
2. Whereas it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives.
3. This Act may be called the Explosives Act, 1884.
4. It extends to the whole of India.

### DEFINITIONS OF THE EXPLOSIVE ACT

5. **Explosive:** Explosive means gunpowder, nitroglycerine, nitroglycol, gun cotton di-nitro-toluene, tri-nitro-toluene picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclotrimethylene trinitramine, pentaerythritol-tetranitrate, totryl, nitro gannidine, lead azide, lead styphynate, fulminate of mercury or any other metal diazo-di-nitrophenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used.
6. Or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all description and every adaptation of preparation of an explosive as defined in this clause.
7. **Export:** Means taking out of India to a place outside India by land, sea or air.

8. **Import** Means to bring into India from a place outside India by land, sea or air.

### **MANUFACTURING PROCESS**

9. Dividing the explosive into its component parts or otherwise breaking up or unmaking the explosive, or making fit for use any damaged explosive, and.
10. Re-making, altering or repairing the explosive;
11. Prescribed means prescribed by rules made under the Act.
12. Vessel includes any ship, boat, sailing vessel, or other description of vessel used in navigation whether propelled by cars or otherwise and anything made for the conveyance, mainly by water, of human beings or of goods and a caisson.

### **POWER TO MAKE RULES**

13. The Central Government may for any part of India make rules consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a licence granted as provided by those rules, the manufacture, possession, sale, transport, import and export of explosives, or any specified class of explosives.
14. Rules under this section may provide for all or any of the following among other matters, that is to say:
- (a) The authority by which licences may be granted.
  - (b) The fees to be charged for licences, and the other sums (if any) to be paid for expenses by applicants for licences.
  - (c) The manner in which applications for licences must be made, and the matters to be specified in such applications.
  - (d) The form in which, and the conditions on and subject to which, licences must be granted.
  - (e) The period for which licences are to remain in force.
  - (f) The authority to which appeals may be preferred under Section 6-F, the procedure to be followed by such authority and the period within which appeals shall be preferred, the fees to be paid in respect of such appeals and the circumstances under which such fees may be refunded.
  - (g) The total quantity of explosives that a licensee can purchase in a given period of time.
  - (h) The fees to be charged by the Chief Controller of Explosives or any officer authorised by him in this behalf, for services rendered in connection with the manufacture, transport, import or export of explosives.
  - (i) The exemption absolutely or subject to conditions of any explosives or any person or class of persons from the operation of the rules.

### **CARRYING OUT BUSINESS WITHOUT LICENCE**

15. Notwithstanding anything in Section 5 or in the rules made thereunder where, immediately before the commencement of the Indian Explosives (Amendment) Act,

1978, any person was carrying on the business or manufacture, sale, transport, import or export of any explosive for which no licence was required under this Act before its amendment by the Indian Explosives (Amendment) Act, 1978, then, such person shall be entitled to continue to carry on such business without licence in respect of such explosive:

- (a) For a period of three months from the date of such commencement; or
- (b) If before the expiry of the said period of three months, such person has made an application for grant of licence under this Act for such licences in such explosive, until the final disposal of his application,

### **POWERS - CENTRAL GOVERNMENT**

- 16. Notwithstanding anything in the rules under the last foregoing section, the Central Government may from time to time, by notification in the Official Gazette, prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Central Government, it is expedient for the public safety to issue the notification.
- 17. The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive, as they have for the time being in respect of any article, the importation of which is prohibited or regulated by the law relating to sea customs and the vessel containing the same, and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

### **PROHIBITION OF MANUFACTURE, POSSESSION, SALE, OR TRANSPORT OF EXPLOSIVE BY YOUNG PERSONS AND CERTAIN OTHER PERSONS**

- 18. **No person**
  - (a) Who has not completed the age of eighteen years.
  - (b) Who has been sentenced on conviction of any offence involving violence or moral turpitude for a term of not less than six months, at any time during a period of five years after the expiration of the sentence?
  - (c) Who has been ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping the peace or for good behaviour, at any time during the term of the bond.
  - (d) Whose licence under this Act has been cancelled, whether before or after the commencement of the Indian Explosives (Amendment) Act, 1978, for contravention of the provisions of this Act or of the rules made thereunder, at any time during a period of five years from the date of cancellation of such licence?
- 19. **Shall**
  - (a) Manufacture, sell, transport, import or export any explosive.
  - (b) Possess any such explosive as the Central Government may, having regard to the nature thereof, by notification in the Official Gazette, specify.

## SECURITY MANAGEMENT

- (c) No person shall sell, deliver or despatch any explosive to a person whom he knows or has reason to believe at the time of such sale, delivery or dispatch,
- (d) To be prohibited under clause (a) to manufacture, sell, transport, import, export or possess such explosive.
- (e) To be of unsound mind.

### **GRANT OF LICENCES**

- 20. Where a person makes an application for licence under Section 5, to the authority prescribed in the rules made under that section for grant of licences (hereinafter referred to in this Act as the licensing authority), after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing either grant the licence or refuse to grant the same.
- 21. The licensing authority shall grant a licence.
- 22. Where it is required for the purpose of manufacture of explosive if the licensing authority is satisfied that the person by whom licence is required.
- 23. Possesses technical know-how and experience in the manufacture of explosives.
- 24. Has in his employment or undertaken to employ a person or persons possessing such technical know-how and experience.
- 25. Where it is required for any other purpose, if the licensing authority is satisfied that the person by whom licence is required has a good reason for obtaining the same.

### **REFUSAL OF LICENCES**

- 26. Notwithstanding anything contained in Section 6-B, the licensing authority shall refuse to grant a licence.
- 27. Where such licence is required in respect of any prohibited explosive.
- 28. Where such licence is required by a person whom the licensing authority has reason to believe.
- 29. To be prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive.
- 30. To be of unsound mind.
- 31. To be for any reason unfit for a licence under this Act.
- 32. Where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.
- 33. Where the licensing authority refuses to grant a licence to any person, it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of opinion that it will not be in the public interest to furnish such statement.

### **PUNISHMENT FOR CERTAIN OFFENCES**

- 34. Whoever, in contravention of rules made under Section 5 or of the conditions of a licence granted under the said rules?



## SECURITY MANAGEMENT

- (a) Manufactures, imports or exports any explosive shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;
  - (b) Possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both; and
  - (c) In any other case, with fine which may extend to one thousand rupees.
35. Whoever,
- (a) manufactures, sells, transports, imports, exports or possesses any explosive in contravention of the provisions of clause (a) of Section 6; or
  - (b) sells, delivers or dispatches any explosive in contravention of the provisions of Clause (b) of that section,
  - (c) shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; or
  - (d) In contravention of the provisions of Section 8 fails to give notice of any accident shall be punishable
  - (e) with fine which may extend to five hundred rupees or if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or with fine or both.

### **OFFENCES BY COMPANIES**

36. Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

### **FORFEITURE OF EXPLOSIVES**

37. When a person is convicted of an offence punishable under this Act, or the rules made under this Act, the court before which he is convicted may direct that the explosive, or ingredient of the explosive or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall with the receptacles containing the same, be forfeited.

### **POWER TO ARREST WITHOUT WARRANT PERSONS COMMITTING DANGEROUS OFFENCES**

38. Whoever is found committing any act for which he is punishable under this Act, or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, aircraft or vessel may be apprehended without a warrant by a police officer or by the

occupier of, or the agent or servant of, or other person authorised by the occupier of, that place or by any agent or servant of, or other person authorised by the Railway Administration or conservator of the port or officer in charge of the airport and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

### **PROCEDURE FOR MAKING PUBLICATION AND CONFIRMATION OF RULES**

39. An authority making rules under this Act shall, before making the rule, (1)publish a draft of the proposed rules for the information of persons likely to be affected thereby.(2) The publication shall be made in such manner as the Central Government, from time to time, by notification in the Official Gazette, prescribes.
40. There shall be published with the draft a notice specifying date at or after which the draft will be taken into consideration.
41. The authority making the rule shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

### **REVISION QUESTIONNAIRE**

1. Define the following terms:-
  - (a) Explosive.
  - (b) Import & Export of explosives.
  - (c) Manufacturer.
2. Name the competent authority and mention the points which need to be covered while framing rules for granting license under the Act.
3. What are the penalties prescribed under the Act?
4. Who are prohibited to manufacture, possess, sale or transport of explosives under the Explosive Act?
5. What steps or measures are to be taken in case of any accident under the Act?
6. Explain the powers invested in the police or other categories of persons, if any, to arrest persons committing dangerous offences under the Act?

**LABOUR LAW, PSAR ACT, LABOUR UNREST**

**CHAPTER- 15 - THE EMPLOYEES' PROVIDENT FUND ACT-1952**

**CONTENTS**

- ✓ Introduction & objective
- ✓ Membership of the fund
- ✓ Contribution
- ✓ Duties of Contractor
- ✓ Revision Questionnaire

**INTRODUCTION & OBJECTIVE**

1. It extends to whole of India except the state of J&K.
2. It applies to every establishment in which 20 or more persons are employed.

**MEMBERSHIP OF THE FUND**

3. Every employee including the one employed through a contractor who is in receipt of wages up to Rs 6500/- shall be eligible for becoming the member of the fund.

**RETENTION OF THE MEMBERSHIP**

4. A member of the fund shall continue to be member until he withdraws the amount standing to his credit in the fund.

**CONTRIBUTION**

5. Contribution payable by employee shall be @ 12% of the basic wages.
6. Contribution payable by the employer in respect of such employee shall not be under an obligation to pay any contribution over and above his contribution in case the employee chooses to contribute more than 12% of his basic wages.

**PAYMENT OF CONTRIBUTION**

7. The Employer shall pay both the contributions payable by himself and also on behalf of members employed by him directly or by or through a contract, and the contribution payable by such member.
8. Employer's share not to be deducted from member's wages.
9. Recovery of member's share of contribution is to be made by means of deduction from the wages of the member and not otherwise.
10. Recovery of damages for default in payment of contribution to be made by way of penalty, damages at the rates given below:-

## SECURITY MANAGEMENT

<u>Period of Default</u>	<u>Rate of damages (% per annum)</u>
✓ less than two months	17
✓ Two months and less than 4 months	22
✓ 4 Months and less than 6 months	27
✓ 6 Months & above	37

### **PREPARATION OF CONTRIBUTION CARDS BY THE EMPLOYER**

11. Employer to send a consolidated return to the P.F. Commission within 15 days of the close of month or the day an employee required or entitled to become member giving details of wages etc.
12. Every employer shall maintain an inspection book giving details of the amount contributed to the fund maintained.

### **DUTIES OF CONTRACTOR**

13. Every contractor shall within seven days of the close every month, submit to the principal employer a statement showing the recoveries of contributions in respect of employees employed by or through him.
14. Allotment of Account member:
15. Fixation of Administrative Charges:
16. Contributions to be entered in the contribution card, nominations, payments & withdrawals from the fund:

### **REVISION QUESTIONNAIRE**

1. Write a short note on Scope and Coverage of the Employees' Provident Funds Act.
2. Write a short note on salient provisions of the Act.
3. What are the obligations of the employer under the Act?
4. What are the rights of employers and employees?

## CHAPTER – 16 - ESI ACT, 1948- IMPLICATIONS, BENEFITS AND PROCEDURE

### Contents

- ✓ Objective:
  - ✓ Application of the Act
  - ✓ Contribution
  - ✓ Contribution Period and Benefit Period
  - ✓ Benefits under ESI Scheme
  - ✓ Punishments/Penalties
1. **Objective:** Provide certain benefit to employees in case of sickness, maternity & employment injury.
  2. **Application of the Act**
    - (a) It is applicable to non-seasonal power using factories employing 10 or more persons and non-power using factories employing 20 or more persons.
    - (b) The Scheme has been extended to shops, hotels, restaurants, cinemas including preview theatre, road motor transport undertakings and newspaper establishment employing 20 or more persons.
    - (c) The existing wage-limit for coverage under the Act is Rs.15000/- per month effective from 01 May - 2010.
  3. **Contribution** - The employee's contribution rate (w.e.f. 1.1.97) is 1.75% of the wages and that of employer's is 4.75% of the wages paid/payable in respect of the employees in every wage period.
  4. **Contribution Period and Benefit Period** - There are two contribution periods each of six months duration and two corresponding benefit periods also of six months duration as under.
 

<u>Contribution period</u>	<u>Benefit period</u>
(a) 1st April to 30th Sept.	1st January of the following year to 30th June
(b) 1st Oct. to 31st March	1st July to 31st December of the year following
  5. **Benefits under ESI Scheme**
    - (a) **Sickness benefit:** A workman, if certified sick & in capable of working will receive for a period not exceeding 91 days in a year a cash allowances equal to half average daily wages drawn during previous 6 months. He will also be entitled to receive medical care & treatment in hospital to which the factory in which he is employed may be allotted.
    - (b) **Maternity Benefit:** for 12 weeks besides medical aids.
    - (c) **Disablement & Dependents benefits:** Monthly pension equivalent to half of his average wages during the last one year – (full disablement) is payable for life.

- (d) **In Case of Death:** Pension to widow or widow's child/dependant. The rate of payment is about 70% of wages sharable among dependants in a good ratio.

6. **Medical Benefits**

- (a) The Employees' State Insurance Scheme provides full medical care in the form of medical attendance, treatment, drugs and injections, specialist consultation and hospitalization to insured persons and also to members of their families where the facility for Specialist consultation, hospitalization has been extended to the families.
- (b) **Full medical care -** This consists of hospitalization facilities and includes specialist services, drugs and dressings and diets as required for in-patients.
- (c) **System of treatment:** Generally, **the allopathic system** of medicine is used for providing Medical Benefit. However, where a substantial number of workers demand treatment by Indian system of medicine and **Homoeopathy** (ISM & H) other than Allopathy. The various ISM &H systems of treatment in vogue are:, **Ayurvedic, Unani, Sidha, Yoga therapy and Homeopathy.**

7. **Medical Benefits – Scale of Medical Benefit**

- (a) **To Insured Persons:-** IPs are entitled to avail treatment in ESI dispensary/Hospital/Diagnostic Centre and recognised institutions, to which he is attached such as:-
- (i) Outpatient treatment
  - (ii) Domiciliary treatment by visits at their residences.
  - (iii) Specialists Consultation.
  - (iv) In-patient treatment(Hospitalisation)
  - (v) Free supply of drugs dressings and artificial limbs, aids and appliances.
  - (vi) Imaging and laboratory services.
  - (vii) Integrated family welfare, immunisation and MCH Programme and other national health programme etc.
  - (viii) Ambulance service or re-imburement of conveyance charges for going to hospitals, diagnostic centres etc.
  - (ix) Medical Certification and
  - (x) Special provisions.
- (b) **To Family Members of Insured Persons:-** While in all implemented areas, IPs are entitled to medical care as detailed above, members of a family of an IP are entitled to one or other of the following scales of Medical Benefits:-
- (i) **"FULL" Medical Care** i.e., all facilities as for IPs including hospitalisation.
  - (ii) Sickness Benefit represents periodical cash payments made to an IP during the period of certified sickness occurring in a benefit period when IP requires medical treatment and attendance with abstention from work on medical grounds.

- (iii) Sickness benefit is roughly 50% of the average daily wages and is payable for 91 days during 2 consecutive benefit periods.

8. **Other Sickness Benefits**

- (a) An IP suffering from certain long term diseases is entitled to ESB, only after exhausting Sickness Benefit to which he may be eligible. A common list of these long term diseases for which ESB is payable is as follows:
  - (i) Infectious Diseases
  - (ii) Neoplasms
  - (iii) Endocrine,
  - (iv) Nutritional and Metabolic Disorders,
  - (v) Disorders of Nervous System,
  - (vi) Disease of Eye,
  - (vii) Diseases of Cardiovascular System,
  - (viii) Chest Diseases,
  - (ix) Diseases of the Digestive System,
  - (x) Orthopaedic Diseases,
  - (xi) Psychoses, and
  - (xii) Others (More than 20% burns with infection/complication, Chronic Renal Failure, and Reynaud's disease/Burger's disease)

9. **Enhanced Sickness Benefits in certain Cases**

- (a) Insured Persons eligible to ordinary sickness benefit are paid enhanced sickness benefit at double the rate of sickness benefit i.e., about full average daily wage for undergoing sterilization operations for family welfare. Duration of enhanced Sickness Benefits is from the date of operation or from the date of admission in the hospital as the case may be. The period is extendable in case of post operative complications.
  - (i) Up to 7 days in the case of Vasectomy and
  - (ii) Up to 14 days in the case of the Tubectomy

10. **Maternity Benefit**

- (a) Maternity Benefit is payable to an Insured Woman in the following cases subject to contributory conditions:-
  - (i) Confinement-payable for a period of 12 weeks (84 days)
  - (ii) Miscarriage or Medical Termination of Pregnancy (MTP)-payable for 6 weeks (42 days) from the date following miscarriage-on the basis of doctor recommendations.

## SECURITY MANAGEMENT

- (iii) Sickness arising out of Pregnancy, Confinement, Premature birth-payable for a period not exceeding one month-on the basis of doctor's recommendation.
- (iv) In the event of the death of the Insured Woman during confinement leaving behind a child, Maternity Benefit is payable to her nominee.
- (v) Maternity benefit rate is double the Standard Benefit Rate, or roughly equal to the average daily wage

### 11. **Two Benefits not to be combined:**

- (a) Both sickness benefit and maternity benefits or both sickness benefit and disablement benefit for temporary disablement are not to be combined.
- (b) Both maternity benefit & disablement benefit for temporary disablement not to be combined
- (c) Person is to choose which benefit he shall receive.

### 12. **Punishment:**

- (a) **For bogus claim:** imprisonment upto 6 months or fine upto Rs. 2000/ or both.
- (b) **Failure to pay contribution-** 3 years maximum & 1 year minimum,
- (c) 6 months or imprisonment in other cases, Rs. 5000/ as fine

## **DISABILITY BENEFITS**

### 13. **Temporary Disability Benefit -**

- (a) There is no prescribed limit for the duration of TDB. This is payable as long as temporary disablement lasts and significant improvement by treatment is possible.
- (b) If a Temporary Disablement spell lasts for less than 3 days (excluding day of accident), IP will be paid sickness benefit, if otherwise eligible. A special point for IMOs/IMPs is that some IPs may resist taking a Final Certificate especially before 3 days for fear of loss of TDB.

### 14. **Permanent Disability Benefit**

- (a) PDB is payable to an IP who suffers permanent residual disablement and results in loss of earning capacity.
- (b) The duration of PDB may be for the period given by Medical Board, if assessment is provisional or for entire life if assessment is final.
- (c) PDB Rate: The PDB rate is calculated as percentage of loss of earning capacity as assessed by the Medical Board/MAT/EI Court in relation to TDB.
- (d) List of injuries deemed to result in permanent total disablement. The maximum rate of PDB can be equal to the rate of TDB.

### 15. **Dependant's benefit**

- (a) The dependants' benefit is payable to the dependants in cases where an IP dies as result of EI.



- (b) The minimum rate of DB is Rs.14/- per day and these rates of the DB are increased from time to time. (The latest enhancement is with effect from 01.08.2002)

**Benefits under the ESI Scheme and Contributory Conditions etc**

Benefits	Contributory Conditions	Duration	Rate of payment
Sickness Benefits	On payment of contribution for not less than 78 days in the relevant contribution period	Upto 91 days in any two consecutive benefit periods in the event of sickness	50 % of the wages (approx.)
(a) Extended Sickness Benefit (For 34 specified long-term diseases)	Continuous employment for a period of two years	124/309 days, which may be extended upto Two years on medical advice during a period of three years	70 % of the wages (approx.)
(b) Enhanced Sickness Benefit (For Tubectomy/ Vasectomy operations)	Same as against (I) above	14 days for Tubectomy extendable on medical advice. 7 days for vasectomy	Full wages (approx.)
DISABLEMENT BENEFIT	No Condition	As long as temporary disablement lasts and for life, in case of permanent disablement	70% of wages for TDB & proportionate to loss of earning capacity for permanent disability.
DEPENDANTS' BENEFIT	No Condition	For life, to the widow / widowed mother or until her re - marriage and to each legitimate or adopted son until eighteen years of age and in case of unmarried daughter until she attains 18 years of age or marriage, whichever is earlier	proportionate rate based on 70% of the wages. (approx)
MATERNITY	Payment of	12 weeks in case of normal	Full wages (approx.)

BENEFIT	contribution for 70 days in two preceding consecutive contribution periods	delivery	
MEDICAL BENEFIT	<p>Insured Persons/families eligible from the date of entry into insurable employment. Medical Benefit is also available against a monthly contribution of Rs. 10/- to;</p> <p>(a) Retired Insured Persons (and their spouses) with a minimum of 5 years service.</p> <p>(b) Disabled Insured Persons (due to Employment Injury) and their spouses, till the age of super-annuation.</p>	<p>Till the temporary disability/disease lasts.</p> <p>Period for which, contribution is paid.</p> <p>Period for which, contribution is paid, till attaining the age of super-annuation</p>	<p>Full medical care for Insured Persons, Families are provided full/expanded/restricted medical facilities depending on the facilities extended to the centre.</p>
Funeral Expenses	No condition	Not Applicable	Actual funeral expenses subject to a maximum of Rs. 2,500.00
Rehabilitation Allowance	No condition	For the period an Insured Person remains admitted in an artificial limb centre	50% of the wages (approx.)

**REVISION QUESTIONNAIRE**

1. Write a brief note on ESI Act.?
2. Explain in brief applicability of the act and contribution benefit period?
3. What kind of benefits has been provided in the Act?
4. What are the penalties/punishments provided in the act?

**CHAPTER – 17 - THE MINIMUM WAGES ACT, 1948****CONTENTS**

- ✓ Introduction
- ✓ Objective and coverage
- ✓ Provisions of the Act.
- ✓ Revision Questionnaire

**INTRODUCTION**

1. The concept of minimum wages is not a new one. It arose from the conditions created by the payment of low and sweating wages; both in the organized and unorganized sectors of industry and consequent the need for protecting workers from such exploitation.

**OBJECTIVE AND COVERAGE**

2. This legislation aims at protecting low paid workers from being exploited and improving the level of wages. Initially the Act covered agricultural employment apart from 12 others mentioned in its Schedule. The Act, however, empowers the appropriated Government to extend its provisions to various employments other than those specified in the Schedule. Both the Central and State Governments have made extensive use of this power by adding as many as 251 more employments to the Schedule for fixing minimum wages.
3. The Act covers all employees who are engaged to do any work skilled or unskilled, manual or clerical in a scheduled employment, including out-workers, to whom articles or materials are given out by another person for manufacturing or processing in his own home or elsewhere. The Act may also apply to any other employee declared to be an employee by the Government, but does not cover any member of Armed Forces.

**PROVISIONS OF THE ACT:**

4. The important provisions of the Act are:
  - (a) **Fixing the Minimum Rates of Wages:** The Government concerned may fix minimum wages payable to the employees of Scheduled employment's whether for the whole State or a part of the State or for any specified class or classes of such employment. Minimum rates of wages may be fixed both for time and piece works and also for overtime. The minimum wages so fixed may be reviewed from time to time as the Government may consider necessary.
  - (b) **Minimum Rates of Wages:** Minimum rates of wages fixed or revised under the Act may consist of:
    - (i) A basic rate of wages and a special allowance at a rate to be adjusted to the living index applicable to such workers from time to time: or
    - (ii) A basic rate of wages with or without the cost of living allowance and value of the concession in respect of supplies of essential commodities at concession rates where so authorized: or
    - (iii) An all-inclusive rate allowing for basic rate, the cost of living allowance, cash value of the concession if any

## SECURITY MANAGEMENT

- (c) **Procedure for fixing and Revising Minimum Wages:** Minimum wages may be fixed or revised either:-
- (i) By notifying the proposals in the Government Gazette two months before they are to be taken into consideration or
  - (ii) After considering the advice of any Minimum Wages Committee or Sub-committee appointed by the Government for making necessary enquires and recommendations. The minimum rates that the Government may notify finally will come into effect after three months from the date of notification.
- (d) **Advisory Boards:** The Central Government may constitute a Central Advisory Board comprising employees and employers' representatives in equal number and some independent persons for advising the Central and State Government in regard to the fixation of minimum rates of wages and other matters. The State Governments may also constitute their own tripartite Advisory Board for co-ordinating the work of their committees and sub-committees for fixing minimum wages in various employments.
- (e) **Wages in Kind:** Minimum wages payable under the Act must be paid in cash. The Government may however permit the payment of minimum wages wholly or partly in kind where it is customary to do so and also allow the supply of essential commodities at concession rates
- (f) **Payment of Minimum Wages:** Every employer of a scheduled employment has to pay to his employees wages at rates not less than the rates fixed under the Act without making any deductions except as authorized under the Payment of Wages Act. If an employee is employed on piece –work basis, the employer shall pay to him, wages at not less than minimum time rate.
- (g) **Normal working day and Overtime:** The Government may fix the number of hours, which may constitute a normal working day, inclusive of the rest intervals. The Government may also fix overtime rates and provide for a day of rest in a period of seven days and payment for such days of rest. All these provisions are not to be different from what is provided under the Factories Act where this Act is applicable. If an employee works less than the normal working hours on any day for no fault of the employer, he will be entitled to proportionately fewer minimum wages for the day.
- (h) **Claims and Recovery:** All claims for non payment of minimum wages or short payments should be made within six months from the date minimum wages become payable to the Authority appointed by the Government. This Authority , if satisfied with the claim may direct the payment of amount short of minimum wages payable together with some compensation not exceeding ten times the amount short of minimum wages to the employees concerned. If the case is any other claims compensation to be awarded is not to exceeding Rs 10/- The payment due from the employer may be recovered by the Authority as fine if the Authority is a Magistrate, and otherwise by some other Magistrate on receiving an application from the Authority for recovering the money due.
- (i) **Penalties:** The Act provides imprisonment up to six months or fine of Rs 500/-, or both for payment of wages less than the minimum wages fixed or due under

the Act and for contravention of any rule or order regarding normal working hours fixed under the Act. Contravention of any other provision of the Act is punishable with fine up to Rs. 500/-.

### **REVISION QUESTIONNAIRE**

1. Define the following the terms:-
  - (a) Employer.
  - (b) Employee.
  - (c) Wages.
2. To which categories of workers, the act applies.
3. Describe the procedure for fixing and revising minimum wages.
4. Describe the procedure for clearing for non-payment of minimum wages or short payments.
5. What offences/penalties have been provided in the act for contravention of provisions?
6. What are the rights of employees and employers?
7. Write a note on deductions which can be made from the wages.

**CHAPTER – 18 - THE PAYMENT OF WAGES ACT, 1936****CONTENTS**

- ✓ Objective
- ✓ Definitions
- ✓ Application of the Act
- ✓ Fines
- ✓ Deduction Which May be Made From Wages
- ✓ Revision Questionnaire

**OBJECTIVE**

1. The Act aims at protecting the earned wages of workers by ensuring their regular and timely payment and regulating the amount of fine that can be imposed and the type and amount of deductions that can be made from wages.

**DEFINITION-WAGES**

2. The term wages is defined under the Act as all remuneration (whether by way of salary, allowances or otherwise) which can be expressed in terms of money, and are payable to persons while in employment. This, however, does not include the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded from the computation of wages by general or special order of the Government. Pensions and Provident Fund contributions, traveling allowance or concession, and gratuity payable on discharge are also not considered as wages under the Act.

**APPLICATION OF THE ACT**

3. The Act is applicable all over India to persons employed in any factory, and any railway establishment employed directly or through contractor or sub-contractor and persons employed in any other industrial establishment as may be notified by the Government from time to time. The Central Government administers the Act in relation to railways mines, Oil fields and air transport service and in regard to other establishments. The State Government is the appropriate Government for administering and enforcing the Act.

**RESPONSIBILITY FOR PAYMENT OF WAGES**

4. Every employer or the persons named or nominated by him is to be responsible for the payment to persons employed by him of all wages required to be paid under the Act.

**FIXATION OF WAGES PERIOD**

5. Every person responsible for the payment of wages must fix and notify periods for which wages are payable and no such wage period is to exceed one month.

**TIME OF PAYMENT OF WAGES**

6. The wages of every person employed in an establishment where the number of persons employed is less than 1000 then the wages must be paid before the expiry of the 7<sup>th</sup> day after the last day of the wage period. And in other cases, the wages are to be paid before the expiry of the 10<sup>th</sup> day. The workers whose services are terminated must be paid their wages before the expiry of the 2<sup>nd</sup> working day from the day his employment is terminated. All payments of wages are to be made on a working day, and that also in cash (in current coin or currency notes or both) and not in kind.

**FINES**

7. No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of the State Government or of the prescribed authority may have specified by notice under subsection (2).
8. A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places.
9. No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
10. The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.
11. No fine shall be imposed on any employed person who is under the age of fifteen years.
12. No fine imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.
13. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
14. All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.



15. Explanation : When the persons employed upon or in any railway, factory or industrial or other establishment are part of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

### **DEDUCTION WHICH MAYBE MADE FORM WAGES**

16.All wages earned by a worker must be paid to him without any deductions except those authorized under or by this Act. Every payment made by a worker to him agent is to be considered as a deduction from wages. Deductions permitted under the Act are:-

- (a) Fines
- (b) Deduction for absence form duty
- (c) Deduction for damages or loss of goods or money expressly entrusted to the worker concerned if the loss can be attributed directly to his neglect or default
- (d) Deduction for house accommodations supplied by the employer
- (e) Deductions for such amenities and services supplied by the employer and authorities prescribed the Government.
- (f) Deductions for recovery of advances or for adjustment of overpayment of wages or for income-tax payable by the employed person, for subscription to and repayment of advances made from Provident Fund approved by the Government
- (g) Deductions required to be made by order of a court or other authority competent to make such order.
- (h) Deductions for payment to co-operative societies or for payments in furtherance of any Saving Scheme authorized by the Government or for the purchase of Government Securities. Deduction for loss or damage can be made only after giving opportunity to the worker concerned for showing cause against such deductions and such deductions if made are not to exceed the actual amount of loss or damage caused

### **REVISION QUESTIONNAIRE**

5. Define the following :-
  - (a) Wage(s) period.
  - (b) Wages.
  - (c) Employee.
  - (d) Time of payment of Wages.
6. Describe the deductions which may be made from wages.
7. Explain the fines which can be imposed on a workman.

## CHAPTER – 19 - THE PAYMENT OF BONUS ACT - 1965

### Contents

- ✓ Introduction
  - ✓ Definitions.
  - ✓ Application of the Act.
  - ✓ Provisions of the act.
  - ✓ Revision Questionnaire
1. **Introduction**
    - (a) A Tripartite Commission was set by the Government of India by their resolution No.WB-20(9)/61, dated 6th December, 1961 to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government.
    - (b) The Commission's Report containing their recommendations was received by the Government on 24th January, 1964. In their Resolution No. WB-20(3)/64, dated the 2nd September, 1964, the Government announced acceptance of the Commission's recommendations subject to a few modifications as were mentioned therein.
    - (c) With a view to implement the recommendations of the Commission as accepted by the Government, the Payment of Bonus Ordinance, 1965, was promulgated on 29th May, 1965. The object of the Bill is to replace the said Ordinance. The bill was passed by both houses of parliament and it received assent of the president on 25<sup>th</sup> Sept-1965
  2. **Objective:** - An Act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.
  3. **Definitions** - In this Act, unless the context otherwise requires,
    - (a) "Accounting year" means -
      - (i) In relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced.
      - (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
    - (b) In any other case -
      - (i) the year commencing on the 1<sup>st</sup> day of April; or
      - (ii) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31<sup>st</sup> day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced

## SECURITY MANAGEMENT

4. **Application of the Act** - The Act is applicable all over India to:
- (a) Every factory registered under the Factories Act;
  - (b) Every other establishment where 20 or more workers are employed on any day during a year and
  - (c) All employees including supervisors, managers, and administrators, technical and clerical staff whose salary or wages do not exceed Rs. 10,000 per month. For the purpose of this Act the wage or salary of a worker comprises wage and dearness allowance only where wages of an employee exceeds Rs.3500/=PM. The bonus payable to such employee shall be calculated as if his salary/wages were Rs.3500/=Month
5. **Nothing is this Act applies to:-**
- (a) Apprentices
  - (b) Employees of an establishment in an industry carried on by or under the authority of the Central Government or a local authority.
  - (c) Employees of establishments in public sector which compete with establishments in private sector to the extent of 20%
  - (d) Seamen and employees registered or listed under any scheme and under the Dock Workers (Regulation of Employment) Act of 1948.
  - (e) Employees who had entered before May 29, 1965 into an agreement with their employers for payment bonus linked with production or productivity in lieu of profit bonus.
  - (f) Employees of the Life Insurance Corporation, General Insurance Company, Indian Red Cross Society. Inland Water Transport establishments operated on routes passing through any other country and University and other educational institutions.
6. **Determination of Bonus Payable** - The Act lays down the method for determining the bonus payable to employees covered by the Act. First the gross profit is to be worked out in the manner specified in the first and second Schedules to the Act. **From** the gross profit the following prior charges are to be deducted and the balance left will be known as "Available surplus".
- (a) First the gross profit is to be worked out.
  - (b) Deduct following from the gross profit: -
    - (i) Depreciation as admissible under the Income Tax Act
    - (ii) Direct taxes payable by the employers
    - (iii) Development rebate which the employer can deduct from his income under the Income Tax Act
    - (iv) Direct Taxes payable by employers
    - (v) 8.5% return on paid-up capital and 6% on reserves shown in the balance sheet in case of the banking company this deduction is to be allowed at 7.5% on the paid-up capital and 5% on the reserves of the available surplus so worked out 60% is to be allocated for bonus to be distributed

to workers. This is to be called as 'Allocable surpluses. In the case of a foreign company the allocable surplus is to be 67% of the available surplus

7. **Eligibility for Bonus** - Every employee is entitled to be paid bonus by his employer in an accounting year as required under this Act, if he has worked in the establishment for not less 30 working days in that years.
8. **Disqualification for Bonus** - An employee is disqualified from receiving bonus if he has been dismissed from the service for fraud or riotous or violent behaviour while on the premises of the establishment or for theft misappropriation or sabotage of any property of the establishment.
9. **Payment of minimum Bonus** - Every employer has to pay in an accounting year a minimum bonus equivalent to 8.33% of the salary or wage earned by the employee during the accounting year Or Rs 80/-whichever is higher, whether there are profits in the accounting year or not, if any employee is less than 15 years of age he is entitled to a minimum bonus of Rs 50 or 8.1/3% of his Averages earned during the accounting year whichever is higher.
10. **Maximum Bonus** - Maximum bonus payable to an employee in an accounting year is limited to 20% of the salary or wage earned during that year.
11. **Computation of Number of Working Days**
  - (a) An employee will be considered to have worked in an establishment in any accounting year also on the days on which he is laid off or he is on leave with salary wages or he is absent on account temporary disablement or she is on maternity leave with salary or wage
  - (b) Bonus to be paid within 8 months of closing of the 'Accounting Year'
  - (c) No bonus in case of new establishment upto 5 years of there is no profit.
12. **Penalty** - If any person –
  - (a) Contravenes any of the provisions of this Act or any rule made there under; or
  - (b) To whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition. He shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **REVISION QUESTIONNAIRE**

1. Explain the area/fields in which the Bonus Act – 1965 applies.
2. Define the following terms:-
  - (a) Accounting Year
  - (b) Allocable Surplus.
  - (c) Minimum Bonus
3. Explain the procedure for calculating Bonus Payable.
4. Explain the salient features of the Bonus Act – 1965.
5. Explain the offences/penalties prescribed in the Act for Contravention.

**CHAPTER –20 - PRIVATE SECURITY AGENCIES (REGULATION) ACT-2005****CONTENTS**

- ✓ Introduction
- ✓ Provisions of the Act.
- ✓ Revision Questionnaire

**INTRODUCTION**

1. **Private Security**: - Means security provided by a person, other than a public servant, to protect or guard any person or property or both and includes provision of armoured car service. Section 2 (f).
2. **Private Security Agency**: - means a person or body of persons other than a Govt. agency, department or organization engaged in the business of providing private security services including training to private security guards or their supervisor or providing private security guards to any industrial or business undertaking or a company or any other person or property. Section 2 (g).
3. **Private Security Guard**: - means a person providing private security with or without arms to another person or property or both and includes a supervisor. Section 2 (h).
4. **Business**: - no person shall carry on or commence the business of private security agency unless he holds a license issued under this act. Section 4.

**PROVISIONS OF THE ACT-**

5. Every private security agency shall, within six months of obtaining the license, commence its activities. Section 9 (1).
6. Every private security agency shall ensure imparting of such training and skills to its private security guards and supervisors as may be prescribed. Section 9 (2).
7. A private security agency shall not employ or engage a person as a supervisor unless he fulfils the conditions specified in sub-section (1) of Section 10. Section 9 (4).
8. While engaging a supervisor of private security guards, every private security agency shall give preference to a person who has experience of serving in the Army, Navy, Air force, or any other Armed Force of the Union or State Police including armed constabulary and Home Guards for a period of not less than three years. Section 9 (5).
9. A private security agency shall not employ or engage any person as a private security guard unless he— Section 10 (1)
  - (a) is a citizen of India or a citizen of such other country as the Central Government may, by notification in the Official Gazette, specify;
  - (b) has completed eighteen years of age but has not attained the age of sixty-five years;
  - (c) satisfies the agency about his character and antecedents in such manner as may be prescribed;
  - (d) has completed the prescribed security training successfully;

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- (e) fulfils such physical standards as may be prescribed; and
  - (f) Satisfies such other conditions as may be prescribed.
10. Every private security agency shall exhibit its licence or copy thereof in a conspicuous place of its business. Section 12.
11. The Controlling Authority may cancel any licence on any one or more of the following grounds, namely:— that there have been repeated instances when the private security guard or guards provided by the private security agency—
- (a) Failed to provide private security or were guilty of gross negligence in not providing such security;
  - (b) Committed a breach of trust or misappropriated the property or a part thereof which they were supposed to protect;
  - (c) Were found habitually drunk or undisciplined;
  - (d) Were found to be involved in committing crimes; or
  - (e) Had connived or abetted a crime against the person or property placed under their charge; or that the licence holder has done any act which poses a threat to national security, or did not provide assistance to the police or other authority in the discharge of its duties or acted in a manner prejudicial to national security or public order or law and order. Section 13 (k and l).
12. Every private security agency shall maintain a register containing—
- (a) the names and addresses of the persons managing the private security agency;
  - (b) the names, addresses, photographs and salaries of the private security guards and supervisors under its control;
  - (c) The names and addresses of the persons whom it had provided private security guards or services; and such other particulars as may be prescribed. Section 15(1).
13. Every private security guard shall be issued a photo identity card, by the private security agency employing or engaging the guard. Section 17 (1).
14. The photo identity card under sub-section (1) shall be issued in such form as may be prescribed. Section 17 (2).
15. Every private security guard or supervisor shall carry on his person the photo identity card issued under sub-section (1) and shall produce it on demand for inspection by the Controlling Authority or any other officer authorized by it in this behalf. Section 17 (3).
16. All private security guards of a private security agency shall render necessary assistance to the police or to such authority in the process of any investigation pertaining to the activities of that agency. Section 18 (2).
17. If violation of any law is noticed by any private security guard during the course of discharge of his duties, he shall bring it to the notice of his superior, who in turn shall inform the police either through his employer or agency or on his own. Section 18 (3).
18. If any private security guard or supervisor wears the uniform of the Army, Air Force, Navy or any other armed forces of the Union or Police or any dress having the appearance or bearing any of the distinctive marks of that uniform, he and the proprietor

of the private security agency shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both. Section 21.

### **REVISION QUESTIONNAIRE**

1. Write a brief account of objectives of PSAR Act, 2005.
2. Write short notes on the following:-
  - (a) Eligibility to be a Security Guard.
  - (b) Register(s) to be maintained by private security agencies.
3. Write self explanatory note on salient features of the Act.

## **CHAPTER - 21 - LABOUR UNREST**

**Labor unrest** is a term used by employers or those generally in the business community to describe organizing and strike actions undertaken by labor unions, especially where labor disputes become violent or where industrial actions in which members of a workforce obstruct the normal process of business and generate industrial unrest are essayed.

Such a conception of labor action was common in the United States in the nineteenth century most prominently amongst mining interests in the American West, and remained common in the twentieth century CE amongst totalitarian states, such as the Soviet Union and People's Republic of China in which complete control of the working class is desired.



## **MINOR ACTS**

### **CHAPTER – 22 - PREVENTION OF CORRUPTION ACT – 1988**

#### **CONTENTS**

- ✓ Definitions
- ✓ Public Servant.
- ✓ Offences & Penalties.
- ✓ Taking gratification, in order, by corrupt or illegal means to influence public servant is punishable – (Sec. 8)
- ✓ Criminal misconduct by a public servant
- ✓ Taking gratification, in order, by corrupt or illegal means to influence public servant.
- ✓ Criminal misconduct by a Public Servant
- ✓ known sources of income
- ✓ Revision Questionnaire

#### **INTRODUCTION**

1. The Act extends to the whole of India except the state of the Jammu and Kashmir and it applies also to all citizens of India outside India.

#### **DEFINITION**

2. “Election” means any election, by whatever means held under any law for the purpose of selecting members of Parliament or any Legislature, local authority or other public authority;
3. Public duty: - Means a duty in the discharge of which the state, the public or the community at large has an interest/here state includes a corporation established by or under a central or state Act or companies Act.
4. Explanation- In this clause “State” includes a Corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

#### **PUBLIC SERVANT**

5. Any person in service or pay of the government.
6. Any person in the service or pay of local authority.
7. Any person in the service or pay of a corporation setup under the state, center Act or companies Act.
8. Any judge.
9. Any person authorized by a court of justice to performance any duty.

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10. Any arbitrator or other person to whom any cause or matter has been referred for decision by a competent public authority.
11. Any person who is engaged in any type of election work.
12. Any person who is an office bearer of a registered coop. society receiving or having received any financial aid from the central/state govt.
13. Any person who is chairman, member or employee of any Public Service commission.
14. Any person who is a Vice-Chancellor or Member of Governing body, any teacher or other employee of a university.
15. Any person who is an office bearer or an employee of any scientific, educational, social cultural institution receiving aid from the central/ state govt.

### **OFFENCES/ PENALTIES**

16. Any public servant who accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or rewards for doing or forwarding to do any official act or for showing or forbearing to show, in the excuse of his official functions favors or disfavor to any person for rendering or attempting to render any service or disservice to any person, shall be punishable with imprisonment which shall be not less than 6 months but may extend to five years and shall also be liable to fine. (Sec. 7).
17. An act does not cease to become official act, even if it does not come within the scope of the function of office.
18. A mere demand or solicitation amount to an offence. It is not necessary that the act for which bribe is given is actually performed. A representation by a public servant that he has done or he will do an act, impliedly includes a representation that it was or is which in his power to do that act.

### **TAKING GRATIFICATION, IN ORDER, BY CORRUPT OR ILLEGAL MEANS TO INFLUENCE PUBLIC SERVANT IS PUNISHABLE – (SEC. 8)**

19. Whoever accepts or obtains or agree to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the central govt. or any state govt. or Parliament or the legislature of any state of with any local authority or with any public servant, whether named or otherwise, shall be--- punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall to be liable to fine also.
20. The receipt of gratification will complete the offence. It is not necessary that the person who received the gratification should have succeeded in inducing the public servant.
21. The receipt of gratification as a motive or reward for the purpose of inducing the public servant by corrupt or illegal means will complete the offence, Who ever accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person gratification as a motive or reward for inducing by the exercise of the personal influence any public servant shall be punishable with imprisonment for a term

which shall be not less than six months but which may extend to five years and shall also be liable to fine(sec-9)

22. Punishment for abetment by public servant of offences defined in Sec.8 or 9 is imprisonment for a term which shall be not less than six months but may extend to five years and shall also be liable to fine. (Sec 10).
23. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant may be punished to the extend of imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

### **CRIMINAL MISCONDUCT BY A PUBLIC SERVANT**

24. A public servant is said to commit the offence of criminal misconduct:
  - (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Sec-7 or
  - (b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate from any person who he knows to have been, or to be, or to be likely concerned in any proceeding or business transacted or about to be transacted by him.
  - (c) If he dishonestly or fraudulently misappropriates
  - (d) or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or
  - (e) if he:
    - (i) By corrupt or illegal means, if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so or obtains for himself or for any other person any valuable thing or pecuniary advantage or
    - (ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.
    - (iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.
  - (f) If he or any person on his behalf is in possession or has at anytime during the period of his office, been in possession for which public servant cannot satisfactorily account of pecuniary resource property disproportionate to his known sources of income.

### **KNOWN SOURCES OF INCOME**

25. Means income received from any lawful source and such receipt has been intimated in accordance with the provision of any law, rules or orders for the time being applicable to a public servant.

26. Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

**INGREDIENTS THAT MUST BE PROVED TO SUBSTANTIATE A CHARGE U/S 13 (I) (A)**

27. Prosecution must prove the following ingredients to substantiate a charge:
- (a) The prosecution must prove that the accused is a public servant.
  - (b) The nature and extent of pecuniary resources or property which are found in his possession.
  - (c) This must be proved as to what were his known sources of income -to the prosecution.
  - (d) It must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income. Once the above ingredients are satisfactorily proved, the offence of criminal misconduct U/S 13 (i) (e) is complete, unless the accused is able to account for such resources or property and it is only thereafter the burden shifts to the accused to prove his innocence (M. Krishna Reddy V. State, by Supdt. Police Hyderabad ; 1993 SC 3/3).

**REVISION QUESTIONNAIRE**

1. Define Public Duty.
2. Who is Public Servant?
3. What constitutes an offence under the Prevention of Corruption Act and penalties for the same?
4. What do you understand by the term Criminal Misconduct by a Public Servant?
5. Define Known sources of Income.
6. Explain the ingredients which must be proved to sustain a charge U/S 13 (I) (A).

**CHAPTER – 23 - OFFICIAL SECRET ACT – 1923 (OSA)****CONTENTS**

- ✓ Definitions of Official Secrets.
- ✓ Communicating/Receiving.
- ✓ Documents regarding official Secrets.
- ✓ Prohibited Places in Offices
- ✓ Penalties for spying.
- ✓ Punishment.
- ✓ Procedure to declare an installation as prohibited place.
- ✓ Impersonation by use or wear armed forces/police uniforms and penalties.
- ✓ Revision Questionnaire

**INTRODUCTION**

1. The Act extends to the whole of India and also applies to servants of the Govt. and to citizens of India outside India.

**Definition**

2. Govt. Places- Any reference to a place belonging to Govt. includes a place occupied by any department of the Govt., whether the place is or is not actually vested in Govt.

**COMMUNICATING/RECEIVING -DEFINITION**

3. Expression referring to communication or receiving include any communicating or receiving, whether in whole or in part and whether the sketch, plan, model, article note document or information itself or the substance, effect or description thereof only be communicated or received;
4. Expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document; and
5. Expressions referring to the communication of any sketch, plan, model, article note or document include the transfer or transmission of the sketch, plan model, article, note or document.

**DOCUMENTS REGARDING OFFICIAL SECRETS**

6. Document – It includes part of a document.
7. Model – includes design, pattern and the specimen.
8. Office under Govt. includes any office or employment in or under any department of the Govt.
9. Photograph includes an undeveloped film or plate.

10. Sketch includes any photograph or any other made of representing any place or thing

### **PROHIBITED PLACES IN OFFICES**

11. Any work of defence belonging to, or occupied by or on behalf of govt.
12. Any place not belonging to govt. where any munitions of war, any sketches, models, plans or documents relating to are being made, repaired, stored under contract with or with any person on behalf of govt.
13. Any place declared by central govt. by notification in official Gazette to be prohibited place on the ground that information with respect there to or damage there to would be useful to an enemy. Copy of the notification be affixed in English and in the vernacular language of the locality.
14. Any railway, road, way or channel or other means of communication by land or water or any place used for gas, water or electricity works declared by notification to be prohibited place on the ground that information with respect there to, or the destruction or abstraction thereof, or interference therewith would be useful to an enemy and to which a copy of the notification has been affixed.

### **PENALTIES FOR SPYING**

15. If any person for any purpose prejudicial to the safety or interest of the state:
  - (a) Approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place.
  - (b) Makes any sketch, plan, model or note which might be useful to the enemy
  - (c) Obtains, collects, records or publishes or communicates to any other person any secret official code or password or any sketch, plan, model, article or note or other document or information which is useful to the enemy.

### **PUNISHMENT**

16. May extend upto 14 years if the matter relates to defence and three years in other cases. It is not necessary to show that the accused person was guilty of any particular act prejudicial to the interest of the country.
17. A person accused of spying may be convicted if from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was prejudicial to the safety or interest of the state, such sketch, plan, model article, note document, obtained, collected, recorded published or communicated for a purpose prejudicial to the safety or interest of the state.
18. If any person knowingly harbors any person who he knows or has reasonable grounds for supposing to be a person who is a spy, he shall be guilty of an offence under Section 10.
19. It shall be the duty of every person having harbored any such person (Spy) to inform any police officer regarding such person.
20. If he does not do so, he shall be guilty of an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

**PROCEDURE TO DECLARE AN INSTALLATION AS PROHIBITED PLACE**

21. Any place belonging to or used for the purpose of Govt. can be declared by the central Govt. as prohibited place by issuing a notification in the official Gazette on the ground that information with respect there to, or damage threats would be useful to an enemy. A copy of the notification or a board in respect thereof is to be affixed in English and in the vernacular of the locality.

**IMPERSONATION BY USE OR WEAR ARMED FORCES/POLICE UNIFORMS AND PENALTIES**

22. Unauthorized use of defence uniforms, falsification of reports forgery, personating and false document are offences under the Act if any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the state.
- (a) Uses or wears without lawful authority any Naval, Military, Airforce, Police or other official uniform or any uniform so nearly resembling the same as to be calculated to deceive or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform.
  - (b) Personates or falsely represents himself to be a person holding or in the employment of a person holding office under Govt.
  - (c) He shall be guilty of an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

**REVISION QUESTIONNAIRE**

1. Define the following terms:-
  - (a) Govt. Place.
  - (b) Document.
  - (c) Photograph.
  - (d) Office.
2. What do you understand by communicating/receiving?
3. Define Prohibited Place.
4. What is the procedure of declaring a place as prohibited place?
5. What are the penalties for spying under the Official Secret Act?
6. What are the penalties for impersonation by use or wear of Armed Forces/Police uniform?

**CHAPTER –24 - THE MOTOR VEHICLES ACT – 1988****CONTENTS**

- ✓ Definitions
- ✓ Necessity of Driving Licenses
- ✓ Penalties for Offences
- ✓ Questions & Exercises
- ✓ The Motor vehicles Act 1988 extends to the whole of India
- ✓ Revision Questionnaire

**DEFINITIONS**

1. **Certificate of Registration:** - means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with provisions of the Act.
2. **Conductor:** - means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from the stage carriage and performing such other functions as may be prescribed.
3. **Conductor license:** - means the license issued by a competent authority under the Act authorizing the person specified therein to act as a conductor
4. **Contract carriage:** - means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract for the use of such vehicle as a whole for the carriage of passengers mentioned therein.
5. **Driver:** - The person who acts as a steers man of the drawn vehicle.
6. **Driving license:** - means the license issued by a competent authority authorizing a person specified therein to drive other wise than a learner.
7. **Goods:** - includes livestock and anything carried by a vehicle except living person, but does not include luggage or person effects carried in a motor car or in a trailer attached to a motorcar or the personal luggage of passengers traveling in the vehicle.
8. **Goods carriage:** - means any motor vehicle constructed for use solely for the carriage of goods or any other vehicle not so constructed when used for the carriage of goods.
9. **Heavy goods vehicle:** - means any goods carriage the gross vehicle weight of which or a tractor or a road roller the un-laden weight of either of which exceeds 12000 kgs.
10. **Heavy passenger motor vehicle:** - means any public service vehicle or private service vehicle or educational institution bus whose un-laden weight exceeds 12000 kgs.
11. **Learners License:** - means the license issued by a competent authority authorizing a person to drive as a learner, a motor vehicle of a specified class.
12. **Light motor vehicle:** - means transport vehicle or omni bus, the un- laden gross vehicle weight of which does not exceed 7500 kgs.



## SECURITY MANAGEMENT

13. **Medium goods/ passenger vehicle:** - means any vehicle other than a light or heavy vehicle.
14. **Motor cab:** - means a vehicle made to carry not more than six passengers excluding the driver for hire or reward.
15. **Omni bus:** - means any motor vehicle constructed to carry more than six persons excluding the driver.
16. **Registering authority:-** means an authority empowered to register motor vehicle.

### **NECESSITY FOR DRIVING LICENSE**

17. No person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to him authorizing him to drive the vehicle; and no person shall drive a transport vehicle (other than a motor cab or motor cycle) hired for his own use or rented under any scheme unless his driving license specifically entitles him to do so.
18. This condition shall not apply to a person receiving instruction in driving a motor vehicle (sec 3).
19. No person under the age of eighteen years shall drive a motor vehicle in any public place provided that a motor cycle with engine capacity not exceeding 50 cc may be driven in a public place by a person after attaining the age of sixteen years.
20. No person under the age of twenty years shall drive a transport vehicle in any public place. (Sec 4).
21. No owner or person in-charge of a motor vehicle shall cause or permit any person who does not satisfy provisions of sections 3 and 4.
22. No person shall be granted a learners license to drive a transport vehicle unless he has held a driving license to drive a light motor vehicle for at least one year.
23. No person under the age of 18 years shall be granted a learner license to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's license.

### **GRANT OF DRIVING LICENSE: - (SEC 9)**

24. Any person who is not for the time being disqualified for holding or obtaining a driving license may apply to the licensing authority having jurisdiction in the area:
  - (a) In which the ordinarily resides or carries on business or in which the driving school imparting training in driving of motor vehicle is located where in the applicant has received training.
  - (b) Driving license can be revoked on grounds of disease or disability as a result of which he becomes unfit to drive a motor vehicle (sec 16)
  - (c) If L. A. is satisfied after giving the holder of a driving license an opportunity of being heard, that he:
    - (i) Is a habitual criminal or habitual drunkard; or
    - (ii) Is a habitual addict to any narcotic drug; or
    - (iii) Is using or has used the vehicle in commission of a cognizable offence, or

- (iv) Has by his previous conduct as a driver of a motor vehicle shown that his driving is likely to be attended with danger to public
- (v) Has obtained any driving license by fraud or misrepresentation.

### **PENALTIES FOR OFFENCES**

25. Whoever contravenes any provisions of this Act shall, if no penalty is provided for the offense be punishable for the first offense with fine which may extend to Rs 100/- and for any second or subsequent offense with fine which may extend to Rs 300/-.
26. Traveling without pass or ticket and dereliction of duty on the part of conductor and refusal to ply contract carriage are punishable with fine which may extend to Rs 500/- (Sec 178).
27. Disobedience of orders, obstruction and refusal of information given by any authority under the Act is punishable with fine which may extend to Rs 500/- (sec 179)
28. Allowing unauthorized persons to drive vehicle shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to Rs 1000/- or both.
29. Driving of vehicle in contravention of sec 3 and 4 i.e. without license shall be punishable with imprisonment for a term which may extend to three months or with fine up to Rs 500/- or with both (sec 181)
30. Who ever being disqualified under this Act for holding/obtaining driving license / conductor's license drives a vehicle in a public place or applies for or obtains a license shall be punishable to imprisonment which may extend to three months or fine up to Rs 500/- or both. (Sec 182).
31. Driving at excessive speed, driving dangerously driving by a drunken person/under influence of drugs, driving when mentally or physically unfit to drive using vehicle unsafe condition, racing and trials of speed without written consent of the state govt.
32. Sale of vehicle in or alteration of vehicle to condition contravening this Act, using vehicle without registration/permit; driving vehicle exceeding permissible weight.
33. Driving uninsured vehicle, taking vehicle without authority; causing obstruction to free flow of traffic are some of the offences under the Act and are punishable.
34. A police officer in uniform may arrest without warrant any person who in his presence commits an offense punishable under sec 184 (Driving dangerously); Sec 185 (Driving by drunken person) or Sec 197 (Taking vehicle without authority).
35. The police officer may require any person who has committed an offense under section 185 to under go 'Breath tests'/any other laboratory test.
36. Police officers have power under section 206 to impound vehicle's document and under section 207 power to detain vehicle used without certificate of registration permit etc.

**REVISION QUESTIONNAIRE**

1. Define the following terms:-
  - (a) Light Motor Vehicle.
  - (b) Heavy Motor Vehicle.
2. What is the necessity of “driving licence” and how it is obtained and how it can be cancelled?
3. What are the conditions for obtaining a “driving licence” in respect of different types of vehicles?
4. Mention the offences and penalties provided under the Motor Vehicles Act.

## CHAPTER –25 - THE ARMS ACT- 1959

### CONTENTS

- ✓ Introduction
- ✓ Definitions
- ✓ Acquisition & Possession of Arms/Ammunition
- ✓ Provisions Relating to Licenses Grant of Arms Licenses (Sec.13)
- ✓ Power to demand licences
- ✓ Offences and Penalties
- ✓ Revision Questionnaire

### INTRODUCTION

1. The Arms Act 1959 regulates the acquisition, possession or carrying of fire arms and ammunition and provides punishment for contravention of the provision of the Act. The act extends to whole of India.
2. As per Section 3 of the Act no person shall acquire, have in his possession or carry any fire arm or ammunition unless he holds in this behalf a license issued.
3. Section 5 of the Act lays down that license for manufacture; sale etc of arms and ammunition is must. Non compliance of these provisions amount to an offence and are punishable.
4. The Act has empowered any police officer to demand production of license and he has power to arrest any person found carrying or conveying any arms or ammunition under suspicious circumstances.
5. The court has power to confiscate arms / ammunition from any person who has been convicted for any offence committed by him in respect of the arms/ammunition under the Act.

### DEFINITIONS

6. **Arms:** it means articles of any description designed or adopted as weapons for offence or defence and includes firearms, sharp edged & other deadly weapons, and parts of, and machinery for manufacturing arms. It does not include articles designed solely for domestic or agriculture uses such as a Lathi or walking stick and weapons incapable of being used otherwise than as toys or being converted into sensible weapons.
7. **Fire-Arms:** Means arms of any description designed or adopted to discharge a projectile of any kind by the action of any explosive or other forms of energy.
8. **Acquisition** with its grammatical variations and cognate expressions includes hiring, borrowing or accepting as a gift.
9. **Licensing Authority:** Means an officer or authority empowered to grant or renew License under rules made under this Act and includes the Govt.
10. **Prohibited Arms :** Fire Arms so designed or adopted that if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty.

Weapons of any description designed or adopted for the discharge of any noxious liquid, gas or other such thing. And includes, anti-aircraft and anti-tank fire-alarms and such other arms as the central govt. may by notification in the official gazette, specify to be prohibited arms.

### **ACQUISITION & POSSESSION OF ARMS/AMMUNITION**

11. License for acquisition and possession of fire-arms and ammunition is a must. No person shall acquire, have possession, or carry any fire-arms or ammunition unless he holds in this behalf a license issued in accordance with the provisions of this act.
12. A person may, however without himself holding a license carry any fire arms or ammunition in the presence or under the written authority, of the holder of the license for repair or for renewal of the license or for the use by such holder.
13. No person shall acquire more than three fire-arms. This shall not apply to any dealer in fire-arms or to any member of rifle or to any member of rifle club or rifle association licensed or recognized by central Govt. using a point 22 bore rifle or an air rifle for target practice. (Sec-3)

### **PROHIBITION OF ACQUISITION OR POSSESSION OR MANUFACTURE OR SALE OF PROHIBITED ARMS OR PROHIBITED AMMUNITION (SEC. 7)**

14. **No person shall**
  - (a) Acquire, have in his possession or carry or
  - (b) Manufacture, sell , transfer, convert, repair, test or prove;
  - (c) Expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof,
  - (d) Any prohibited arms or prohibited ammunition unless he has been specially authorised by the central govt. in this behalf.
  - (e) No person shall sell or transfer of fire-arms not bearing identification marks(Sec.8)
  - (f) No person, who has not completed the age of 21 years or who has been sentenced on conviction of an offence at any time during a period of five years after the expiration of the sentence or who has been ordered to execute a bond for keeping peace or for good behaviors, at any time during the time of the bond, shall acquire, have in possession or carry any fire-arms or ammunition.

### **PROVISIONS RELATING TO LICENSES (SEC.13)**

16. An application for the grant of a license shall be made to the licensing authority and shall be in such form containing such particulars and be accompanied by such fee, if any
17. The Licensing authority shall refuse to grant
  - a) A license, under Sec-3, Sec-4 or Sec-5 where such license is required in respect of any prohibited arms or prohibited ammunition.
  - b) A license in any other case under chapter 11

## SECURITY MANAGEMENT

18. Where such license is required by a person whom the Licensing authority has reason to believe-
  - (a) To be prohibited by this Act or by any other law in force;
  - (b) To be of unsound mind;
  - (c) To be for any reason unfit for a license under this act.
19. Where the licensing authority deems it necessary for the Security of the Public Peace or for Public safety to refuse to grant such license.

### **Duration & Renewal of License**

20. A license under sec.3 shall unless revoked earlier, continue to be in force for a period of three years from the date on which it is granted. License can also be granted for a short period also and reasons thereof are to be recorded by the L.A. Every license shall be renewable for the some period for which the license was originally granted.
21. Licensing authority may vary the conditions subject to which a License has been granted and may ask the license holder in writing to deliver up the License to it with in a specified period.

### **Powers to Demand License**

22. Any police officer or any other office empowered by the Central Govt. on this behalf may demand the production of his license from any person who is carrying the arms or ammunition.
23. If the person refuses or fails to produce the License the officer concerned may require him to give his name and may seize the Arms/ammunition which he carries.
24. If that person refuses to give his name/address or gives false address or he intends to ascend, such officer may arrest him without warrant. (Sec 19)
25. Any person found carrying or conveying any arms or ammunition under suspicious circumstances any magistrate, any police officer, any other public servant may arrest him without warrant and seize from him such arms or ammunition (Sec-20)

### **Offences and Penalties**

26. Punishment for certain offences (Sec 25)
  - (a) Whoever
    - (i) Manufactures, sells, transfer, converts, repairs, tests or proves or express or offers for sale or transfer,
    - (ii) Shortens the barrel of a fire-arms or converts on invitation fire-arms,
    - (iii) Brings into or takes out of India any arms or ammunition of any class,
    - (iv) Shall be punished with an imprisonment for a term which shall not be less than three years and can extend to seven years.

**REVISION QUESTIONNAIRE**

1. How an arms license is obtained and under what conditions it can be cancelled?
2. Write a note on various provisions relating to arms licence?
3. What are the offences and penalties mentioned under the Act?
4. Write a note on powers of a police officer to demand Arms Licence?

# **INTELLIGENCE**

## **Aim**

- ✓ The aim of teaching Industrial & Corporate Intelligence is to apprise the trainees about the fundamentals of Industrial & Corporate Intelligence & adopt suitable preventive measures to safeguard the interest of the Industry/Corporation.

## **Learning Outcomes**

The trainees will be able to:

- ✓ Differentiate between information and intelligence.
- ✓ Gather the information/Intelligence from various sources.
- ✓ Acquire knowledge about intelligence cycle
- ✓ Understand Espionage, its types and its prevention.
- ✓ Understand the importance of classification of documents and the information security.



**CHAPTER – 1 – INTELLIGENCE****CONTENTS**

- ✓ Introduction to Intelligence
- ✓ Fundamentals of Intelligence
- ✓ Levels and Types of Intelligence
- ✓ Intelligence Cycle
- ✓ Sources of Information and Under Cover Operations
- ✓ Types of Espionage
- ✓ Prevention of Espionage
- ✓ Techno Terrorist
- ✓ Defending against Information Warfare Attacks
- ✓ Classification of Documents
- ✓ Preventive Measures
- ✓ Changed Management
- ✓ Information Classification: A Corporate Implementation Guide
- ✓ Business Impact Analysis
- ✓ Established Classifications
- ✓ Information - Minimum Control
- ✓ Software - Minimum Control
- ✓ Classified Information and Application
- ✓ Revision Questionnaire

**INTRODUCTION**

1. Intelligence is the effort of a government, private individual or body, devoted to the collection, collation, evaluation, analysis, integration, interpretation, dissemination and eventual use of all information, open or secret, that has been purposefully and, often clandestinely, collected and produced in the aforesaid manner to yield a product concerning foreign nations, political groups, parties, military forces, movements or other associations including insurgent/ terrorist organizations which have been assessed to be sources of that to the security of that government, private 'individual or body, and which is immediately or potentially important for planning and decision-making in the context of countering those threats."

**MEANING AND SCOPE**

2. It is a kind of information, which satisfies a certain collectivity of parameters. Intelligence includes summaries and analysis of recent events. It is that information, which gives an idea of the unseen 'hostile', moves emanating threat.

### **FUNDAMENTALS OF INTELLIGENCE**

3. Intelligence aims at the collection of facts, the making of judgments and finally the presentation of these to policy makers.
4. The problem is that these elements are common to all decision-making processes, whether by nations or business corporations. There is nothing specific about them that could use them exclusively to the intelligence, which nations seek.
5. "Intelligence is the product resulting from the collection, evaluation and analysis of all available information which concerns foreign countries' activities, and which is immediately or potentially significant to planning and decision-making."
6. It is also "the effort by a government, or of a private individual body, devoted to the collection, analysis, production, dissemination and use of information which relates to any other government, political party, military force, movement or other association which is believed to be related to the group's or government's security."
7. However, a satisfactory definition of intelligence must include the concept of threat, since, without threats, there would be no need for intelligence because existence of threats, or the possibility of such, which forces the governments to collect intelligence and then plan to counter the threats.
8. It must be kept in mind that a threat is not simply an unknown factor, which may adversely affect one's interests but is the one, which is capable of causing serious harm or injury. The seriousness of a threat depends on the degree of harm, which may arise, and the likelihood of the threat being carried out. Therefore, Intelligence relates to that information which, in turn, is related to threats.
9. The second important feature, which has been overlooked in the definitions given so far, is related to secrecy.
10. Hence, a unique characteristic of intelligence is the secret collection of the other's secrets. As long as this secrecy is maintained, the state will be able to reduce the threat or even eliminate it by the acquisition of intelligence.

### **LEVELS/TYPES OF INTELLIGENCE**

11. **Strategic:** Strategic intelligence is the intelligence required for the formulation of policy and military plans and operations of the national and international level.
  - (a) It concentrates on the national, political, economic and military considerations of nation state, the support for governments, and their ability to go for war, their national political objective and big personalities of national-leaders.
  - (b) It identifies nation's ability to support friendly force and operations (for example, rations, refueling facilities, transportation infrastructure, etc.) .
  - (c) It predicts other nations' responses to theatre operations of friendly forces.
14. **Operational:** Operational intelligence is the intelligence produced to support the planning and execution of operations. Intelligence at this level serves as a bridge between strategic and tactical levels of intelligence because it focuses primarily on the intelligence needs of commanders.
15. **Tactical Intelligence** Tactical intelligence is the intelligence supporting military plans at the military unit level. It includes the tactical support for the execution of battles and

engagements.

### **Miscellaneous Types of Intelligence**

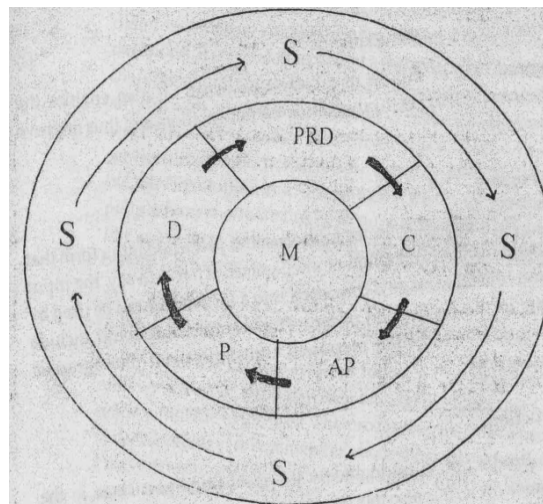
16. **Basic Intelligence**: - It includes factual, fundamental and generally permanent information about all aspects of a nation. These include physical, social, economic, political, biographical and cultural aspects, which are used as a base for intelligence production in support of planning, policy-making and military operations.
17. **Departmental Intelligence**: - It is the intelligence, which government departments and agencies use in support of their own activities.
18. **Political Intelligence**: - It is the intelligence relating to activities or conditions within a country, which threaten internal security.
  - (a) **Economic Intelligence**: - It includes the intelligence concerning foreign economic resources, activities and policies..
  - (b) **National intelligence**: - It is the intelligence, which bears on the broad aspects of national policy for national security. It is of concern to more than one department or agency.
  - (c) **Scientific and Technical Intelligence**: - It includes the intelligence concerning foreign progress in basic and applied 'scientific or technical research and development, including engineering, R & D. new technology and weapon systems.
19. **Corporate Intelligence**: - Today information is the new raw material, which leads to new products, services and marketing strategies. It aims at generating competitive intelligence, which is required not only to gain an edge but also to retain it in corporate sector. A basic common factor between an intelligence organization and a business corporation is that both are concerned with human activity. Both are keen to know what the individuals who have been heading the competitor's or adversary's establishment are planning and doing. Good information about the thinking and behavior of the other is the essential requirement for success.

### **THE INTELLIGENCE CYCLE**

20. The intelligence cycle is composed of five phases as given below:-
  - (a) **Direction**. Deciding what is to be monitored and analyzed. In order to carry out the mission, the commander needs certain resources: personnel, a budget, communications, infrastructure, and also information/intelligence from open and closed sources. The commander's requirement initiates the Intelligence cycle - direction to the intelligence team to provide timely, accurate, appropriate and consumable information to help make informed decisions and carry out the mandate.
  - (b) **Collection**. The obtaining of raw information using a variety of collection disciplines. The intelligence team then analyses the problem against a matrix of available collection sources and assets to generate the collection plan, i.e. what is required, its source and priority. Intelligence sources and assets could include HUMINT (human intelligence), IMINT (imagery intelligence), ELINT (electronic intelligence), SIGINT (Signals Intelligence), publicly available (open source) information, etc. Each intelligence source and asset has different characteristics which can be used but which may also be limiting.

## SECURITY MANAGEMENT

- (c) **Processing/Analysis.** Refining and analyzing the information. Once the collection plan is in place and raw or semi-processed information is coming into the analysis section, it is collated into a format that can be analyzed for accuracy, relevancy, significance, and signature. The process includes filtering and sorting information including deciding what is potentially relevant to needs.
- (d) **Production.** This stage includes determining the quality, relevance and potential significance of the information and identifying links with other information to be followed by Interpretation, meaning thereby, in essence any changes to existing assessments and the implications relative to the commander's concerns.
- (e) **Dissemination.** Providing the results of processing to consumers, including consumers in the intelligence community, including use of intelligence information in net assessment and strategic gaming. A daily briefing (paper); a briefing (oral); that can be updated in real-time; a weekly summary. Dissemination has different strengths and weaknesses. The disseminated product has a security rating, such as top secret.



- (i) M - Mission.
- (ii) PRD - Planning, Requirements and Direction.
- (iii) C - Collection.
- (iv) AP - Analysis and Processing.
- (v) P - Production.
- (vi) D - Dissemination.
- (vii) S - Synchronization.

### Sources of Information

- 23. Kautilya had advised his "guptchar(s)" to concentrate on following targets as a good source of information generation:-
  - (a) Who were greedy for money and power?

## SECURITY MANAGEMENT

- (b) Who had a weakness for sex?
- (c) Who was dissatisfied with their rulers, had been humiliated, or exiled?
- (d) Who had been deprived of their rightful inheritance to some office or otherwise?
- (e) Whose property had been confiscated?
- (f) Who had been wrongly imprisoned?
- (g) Whose women had been molested and they had not been given justice?
- (h) Who were prone to blackmail due to some weakness? Are good sources of information.

## UNDER-COVER OPERATIONS

### Surveillance.

24. Surveillance is the systematic covert observation of a target. Those who carry out this observation are known as watchers, shadows or "tail".

### Espionage.

25. The English word "espionage" comes from the French word "espionnage" which, in turn, has its roots in the word "espion", meaning a spy. Espionage is the practice of spying or using spies, especially to obtain secret information. The espionage centers on recruiting and handling human sources (agents) to acquire "protected" or "denied" information. Espionage demands a very high level of commitment, daring, courage, presence of mind, professional competence and nerves of steel.
26. Espionage is the use of illegal means or deceptive practices to gather information.

### 27. Types of Espionage

- (a) **Industrial Espionage:** - (or Economic Espionage) is the clandestine collection of sensitive, restricted or classified information. This information by its very nature is not openly accessible and can only be obtained through covert collection means. Industrial Espionage might include the theft of sensitive or restricted competitor's information (such as financial data, restricted manufacturing processes, customer accounts, etc.), covert recruitment of sources within a competitor's firm, and other such methods. e. g. one report on corporate espionage produced by the National Counterintelligence Agency suggests that U.S. businesses lost \$24 billions annually in the nineties. Currently, it is believed that theft of trade secrets exceeds \$100 billion annually. It is an epidemic – an epidemic that is not being openly discussed nor fully addressed. Many of today's most successful enterprises have been hit hard by electronic espionage incidents and the number is climbing.
- (b) **Corporate Espionage:** - Corporate espionage is typically thought of as a high

tech crime. While this is often true, corporate spies are perfectly happy to get information from the easiest and most available sources including the trash. Both insiders within the corporation as well as individuals and organizations take information external to a corporation.

- (c) There are five major types of insider threats, which are used to facilitate corporate espionage.
- **Bribery**. Employees may be approached directly by outside corporate intelligence agents offering cash to provide them with proprietary or confidential data.
  - **Social Engineering**. The manipulation of a network administrator or other IT personnel (by insiders or outsiders) to divulge information, such as log on or other authentication information, which can be used to obtain access to sensitive information.
  - **Group Collusion**. When several employees band together to use their collective knowledge and privileges to gain access to information.
  - **Employee's Access Privileges**. Using the employee's own access privileges to enable them to access proprietary or confidential information.
  - **Disgruntled Employee**. A disgruntled employee is more likely to sell proprietary information for profit than a satisfied employee.
28. **Industrial and Economic Espionage**: - Industrial espionage is defined as an individual or private business entity sponsorship or coordination of intelligence activity conducted for the purpose of enhancing a competitor's advantage in the marketplace. According to the FBI, economic espionage is defined as: "Government-directed, sponsored, or coordinated intelligence activity, which may or may not constitute violations of law, conducted for the purpose of enhancing that country's or another country's economic competitiveness."
29. **Economics, World Trade, and Technologies**: - What has allowed this proliferation of technologies to occur? Much of it was due to international business relationships among nations and companies. Some of it was due to industrial and economic espionage.
30. The information age has brought with it more international businesses, more international competitors, and more international businesses working joint projects against international competitors. This has resulted in more opportunities to steal from partners. Moreover, one may be a business partner on one contract while competing on another; thus, providing the opportunity to steal vital economic information. Furthermore, the world power of a country, today, is largely determined by its economic power. Thus, in reality, worldwide business competition is viewed by many as the economic war. This world competition, coupled with international networks and telecommunications links, has provided more opportunities for more people such as hackers, phreakers, and crackers to steal information through these networks. The end of the Cold War has also made many out-of-work spies available to continue to practice their craft, but in a capitalistic environment.

### **Proprietary Economic Information**

31. This new world environment makes a corporation's proprietary information more valuable than previously. Proprietary economic information according to the FBI is "...all forms and types of financial, scientific, technical, economic, or engineering information including but not limited to data, plans, tools, mechanisms, compounds, formulas, designs, prototypes, processes, procedures, programs, codes, or commercial strategies, whether tangible, or intangible... and whether stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing...". This statement assumes that the owner takes reasonable measures to protect it, and that it is not available to the general public.
32. A security association's survey taken among 32 corporations disclosed that proprietary information had been stolen from their corporations. These thefts included research, proposals, and plans, manufacturing information, pricing, and product information. The costs to these corporations were substantially in terms of legal costs, product loss, administrative costs, lost market share, security cost increases, research and development costs, and loss of corporate image in the eyes of the public.

### **Economic Espionage Vulnerabilities**

33. The increase in economic espionage is also largely due to corporate vulnerabilities to such threats. Corporations do not adequately identify and protect their information, nor do they adequately protect their computer and telecommunications systems. They do not have adequate security policies and procedures; employees are not aware of their responsibilities to protect their corporation's proprietary information. Many of the employees and also the management of these corporations do not believe that they have any information worth stealing or believe that it could happen to them.

### **Economic Espionage Risks**

34. When corporations fail to adequately protect their information they are taking risks that will in all probability cause them to lose market share, profits, business, and also help in weakening the economic power of their country.
35. The following are some actual cases of economic espionage:-
  - (a) A foreign government intelligence service compiled secret dossiers of proprietary proposals of two companies from two other countries. Then, they gave that information to one of their country's companies, also bidding on the same contract. Their country's company won a billion dollar contract.
  - (b) A company contracted with a foreign government for a product. After disagreements, the government gave the proprietary information to one of their own companies.
  - (c) Foreign businessmen were arrested in a government agent sting operation for stealing proprietary information from their competitor.
  - (d) An employee of a U.S. microprocessor corporation admitted selling technology information from two companies where he had been employed. The information

was alleged to have been sold to China, Iran, and Cuba.

- (e) A foreign company, which could be a foreign government-fronted company, buys into a contract at a bid below its costs. They used the opportunity to steal technology information to be used by their country.

### **Economic Espionage Threats**

- 36. Economic espionage --- that espionage supported by a government to further a business is becoming more prevalent, more sophisticated, and easier to conduct due to technology. Business and government share a responsibility to protect information in this information age of international business competition.
- 37. Businesses must identify what needs protection; determine the risks to their information, processes, and products; and develop, implement, and maintain a cost-effective security program. Government agencies must understand that what national and international businesses do affect their country. They must define and understand their responsibilities to defend against such threats, and they must formulate and implement plans that will assist their nation in the protection of its economy. Both business and government must work together, because only through understanding, communicating, and cooperating will they be able to assist their country in the world economic competition.
- 38. It is quite obvious from the preceding discussion that when it comes to economic espionage, a new form of information warfare, the information systems and security professional must play an active role in the economic information protection efforts. These efforts will help protect Indian companies or government agencies and will enhance the India's ability to compete in the world economy.

### **Prevention Of Espionage**

- 39. Subversion basically means destroying the loyalty of a member to his organization. It is a mean by which the enemy can achieve the objective of espionage or even sabotage. Followings are few suggested tactics to prevent espionage.
  - (a) To carryout character/antecedent checks of employees appointed in the organization.
  - (b) To conduct loyalty program within the enterprise regularly.
  - (c) To define 'Need to Know' Policy in professional terms as 'Restrictive Security'.
  - (d) To upgrade security system on the basis of Security Audit.
  - (e) To design building protection against the larger threats of espionage, subversion, and sabotage.
  - (f) To strengthened the Front Office.
  - (g) To have well trained security who could pickup warning signals of espionage.
  - (h) To analyze the risk to assess the threat environment facing the enterprise.
  - (i) To analyze the kind of crimes and dangerous situations to which the key leader of that outfit is vulnerable.
  - (j) To have the fairly comprehensive idea of movement of the protected person both in the official as well as the private time to the security person.



## SECURITY MANAGEMENT

- (k) To have security persons physically fit, with requisite education qualification, intelligence orientation and preferably having skills like driving and ability to direct counter surveillance moves.
- (l) To have electronic systems installed for security purposes.
- (m) To take lessons from others in the same field and make improvements accordingly.
- (n) To provide security cover to family members of the important persons in the enterprise.
- (o) To have Do's and don't for Security personnel.

## **TERRORISTS AND TECHNOLOGY (TECHNO-TERRORISTS): A FORM OF INFORMATION WARFARE**

42. The twenty-first century will bring an increased use of technology by terrorists. Terrorism is basically the use of terror or violence, or the use of violent and terrifying actions for political purposes by a government to intimidate the population or by an insurgent group to oppose the government in power.

### **The Results of Terrorist Actions**

43. Acts of terrorism tend to increase security efforts. It may cause the government to decrease the freedom of its citizens to protect them. This, in turn, may cause more citizens to turn against the government, thus supporting the terrorists. It also causes citizens to become aware of the terrorists and their demands.
44. The beginning of this trend can be seen in the U.S. and some other countries. Americans are willing to give up some of their freedom and privacy to have more security and personal protection. Examples include increased airport security searches and questioning of passengers.
45. Terrorists cause death, damage, and destruction as a means to an end. Sometimes, it may cause a government to listen, and it may also cause social and political changes. Current terrorist targets have included transportation systems, citizens, buildings, and government officials.

### **Terrorists' Technology Threats**

46. Today's terrorists are using technology to communicate and to commit crimes to fund their activities. They are also beginning to look at the potential for using technology in the form of information warfare against their enemies. It is estimated that this use will increase in the future.
47. Because today's technology oriented countries rely on vulnerable computers and telecommunications systems to support their commercial and government operations, it is becoming a concern to businesses and government agencies throughout the world. The advantage to the terrorist of attacking these systems is that the techno-terrorist acts can be done with little expenses, by a few people and yet cause a great deal of damage to the economy of a country. They can conduct such activities with little risk to themselves, because these systems can be attacked and destroyed from a base in a country that is friendly to them. In addition, they can do so with no loss of life; thus not causing the extreme backlash against them as would occur had they destroyed buildings, causing much loss of life.

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48. The following are some actual and potential techno-terrorist actions:-
- (a) Terrorists, using a computer, penetrate a control tower computer system and send false signals to aircraft, causing them to crash in mid-air or fall to the ground.
  - (b) Terrorists use fraudulent credit cards to finance their operations.
  - (c) Terrorists penetrate a financial computer system and divert millions of dollars to finance their activities.
  - (d) Terrorists bleach \$1 bill and, by using a color copier, reproduce them as \$100 bills and flood the market with them to destabilize the dollar.
  - (e) Terrorists use cloned cellular phones and computers over the Internet to communicate, using encryption to protect their transmissions.
  - (f) Terrorists use virus and worm programs to shut down vital government computer systems.
  - (g) Terrorists change hospital records, causing patients to die because of an overdose of medicine or the wrong medicine. They may also change computerized tests and alter the results.
  - (h) Terrorists penetrate a government computer and cause it to issue checks to all its citizens.
  - (i) Terrorists destroy critical government computer systems processing tax returns.
  - (j) Terrorists penetrate computerized train routing systems, causing passenger trains to collide.
  - (k) Terrorists take over telecommunications links or shut them down.
  - (l) Terrorists take over satellite links to broadcast their messages over televisions and radios.
49. Some may wonder if techno-terrorist activities can actually be considered as information warfare ( IW). Most IW professionals believe that techno-terrorism is part of IW, assuming that the attacks are government sponsored and that the attacks are done in support of a foreign government's objectives.

### **Defending Against Information Warfare Attacks**

50. To defend against information warfare attacks, the information systems security professionals must be aggressive and proactive. Now, as in the past, the basic triads of information security processes are usually installed as given below:-
- (a) Individual accountability.
  - (b) Access control.
  - (c) Audit trail systems.
51. This passive defense kept the honest user honest, but did not do much to stop the more computer-literate user such as the hacker, cracker, or phreakers. Management support was not always available unless something went wrong. Then, management became concerned with information systems security albeit only until the crisis was over. This passive approach, supported by short-lived proactive efforts, was and continues to be

“how information security is done.”

### **Attacking a Commercial Target May Be a Prelude to War**

52. In a time of war, would government systems be the primary target? A new age in warfare, commonly known as the Revolution in Military Affairs (RMA), is being entered. As previously discussed, there is a worldwide economic war being waged, where balance of trade statistics determine the winners and losers, along with the unemployment trends and the trends indicating the number of businesses moving overseas. In the information systems business, that trend also continues and may be increasing. Microprocessors are made in Malaysia and Singapore, software is written in India, and systems are integrated and shipped from Indonesia, for example. No one checks to determine if malicious code is embedded in the firmware or software, waiting for the right sequence of events to be activated to release that new, devastating virus or to reroute information covertly to adversaries.

### **SECURITY OF DOCUMENTS**

- (a) **Top Secret Documents:** This classification is given only to those papers which are of vital importance to the very existence of the undertaking or the organization. e.g. Matters related to defence, Security of the State, Trade Secret, Important and Sensitive Drawings, Blue Print, Plan Documents, Some important Chemical Formulae or Production Documents, Industrial Policy Papers etc.
  - (b) **Secret:** This classification is earmarked for documents containing sensitive information, the leakage of which may cause adverse effects on the interest or prestige of the undertaking/organization and embarrassment to the management/Government. e.g. future expansion programme, sensitive decisions regarding the functioning of the organization, business deals, list of important customers, papers relating to loan/debt, case matters, etc.
  - (c) **Confidential Documents:** This classification is for documents containing information which will not endanger the survival or prestige of the undertakings/organization but these may cause considerable administrative inconvenience or embarrassment to the organization which may be exploited by the adversary. e.g. ACR, Trade Union Activities, Special Inquiry Report, Vigilance Report etc.
  - (d) **Personal – Not for Publication document:** This classification is given to those documents which are sent to the members of Public wherein it is desired that the contents of the letter should not be published.
54. **Physical Protection/Custody of Keys** Classified documents should always be kept under lock and key and should not be left over the table, even for short periods of absence.
- (a) The room should always be locked if the officer leaves the room and the key should be kept in personal custody.
  - (b) The office should not be left open during lunch hours, tea breaks or periods when meetings are attended at other places.
  - (c) Standard steel almirah should be provided to keep classified documents.

## SECURITY MANAGEMENT

- (d) After office hours all doors, windows should be locked and the key of the room handed over to the caretaker. The key of the almirah containing top secret and secret document must be retained with the designated officer himself.
- (e) The lock of the office room should be sealed/opened in presence of the caretaker.
55. **Computer Security:** - Today computers are being used very extensively by the executives in industry, business and by technocrats as well as scientists to process and store vital information and data, while the versatility of the computers has proved a great boon; they are also easy targets for manipulation by industrial spies. Information about processes, formulae, know-how, manufacturing and marketing plans, that lay stored in computers, have been stolen by rivals using technology as a tool.
- There is therefore, a great need to create awareness among the computer users, in general and the executives in particular.
  - **Vulnerability of Computer Systems:** - It has been proved time and again that computerized information has been tampered with. On some occasions, due to hostile interference, the computers stopped working all together when stored data and the computerized communication system were most needed.
  - **Threats:** - Complicity, While Installing Computer Systems Common Modus Operandi. Unusual working pattern of employees, disgruntled employees, unauthorized use of personal computers, transferred employees, sudden spurt in computer consumables.
  - **Electronic Data Security:** - Computer data can be electronically stolen and computers can be tampered with. Computer users in the organization should be classified as: -
    - (a) Limited Permission.
    - (b) Access to limited data.
    - (c) No Modification.
  - **Counter Measures**
    - (a) Magnetic Shielding of Storage Point.
    - (b) Electronic Sweeping.
    - (c) Radio Frequency Shielding.
    - (d) Prevention from Viruses.
    - (e) Terminal Control.
    - (f) User Identification.
    - (g) Passwords.
    - (h) Security of Computer Hardware.
  - **Preventive Measures**
    - a. Administrative Controls.

- b. Organizational Controls.
- c. Physical Controls.

### **Personal Security**

56. Human factor is probably the greatest single source of risk, including both human error and failure. An Organization employee is now considered a corporate resource and asset, requiring constant care and management. The safety of officers who have access to sensitive information cannot be over emphasized. Leakage of classified information may be attributed to the following reasons:-
- (a) Political Affiliations.
  - (b) Personal Gain.
  - (c) Loose talks and carelessness in handling classified documents.
  - (d) Lack of Integrity.
  - (e) Personal or group enmity.
  - (f) Religious fanaticism/Linguistic Chauvinism.
  - (g) Favoritism to persons, groups or trade union bodies.
  - (h) Under duress due to blackmailing or pressure from unscrupulous officers.

### **Information Security**

57. Information security is the process of protecting data from unauthorized access, use, disclosure, destruction, modification, or disruption. Information security is concerned with the confidentiality, integrity and availability of data regardless of the form the data may take: electronic, print, or other forms. Protecting confidential information relating to business. For the individual, information security has a significant effect on Privacy.
58. **Classification System**: - An important aspect of information security is recognizing the value of information and defining appropriate procedures and protection requirements for the information. Not all information is equal and so not all information requires the same degree of protection. This requires information to be assigned a security classification.
- (a) The first step in information classification is to identify a member of senior management as the owner of the particular information to be classified.
  - (b) Next, develop a classification policy.
  - (c) The policy should describe the different classification labels.
  - (d) Define the criteria for information to be assigned a particular label.
  - (e) List the required security controls for each classification.
59. **Computer security** is a branch of technology known as information security as applied to computers. The objective of computer security varies and can include protection of information from theft or corruption, or the preservation of availability, as defined in the security policy.
60. Computer security imposes requirements on computers that are different from most system requirements because they often take the form of constraints on what computers are not supposed to do. This makes computer security particularly challenging because

we find it hard enough just to make computer programs just do everything they are designed to do correctly. Furthermore, negative requirements are deceptively complicated to satisfy and require exhaustive testing to verify, which is impractical for most computer programs. Computer security provides a technical strategy to convert negative requirements to positive enforceable rules. For this reason, computer security is often more technical and mathematical than some computer science fields.

61. Change management is a formal process for directing and controlling alterations to the information processing environment. This includes alterations to desktop computers, the network, servers and software. The objectives of change management are to reduce the risks posed by changes to the information processing environment and improve the stability and reliability of the processing environment as changes are made. It is not the objective of change management to prevent or hinder necessary changes from being implemented.
62. Any change to the information processing environment introduces an element of risk. Even apparently simple changes can have unexpected effects. One of Management's many responsibilities is the management of risk. Change management is a tool for managing the risks introduced by changes to the information processing environment. Part of the change management process ensures that changes are not implemented at inopportune times when they may disrupt critical business processes or interfere with other changes being implemented.
63. Not every change needs to be managed. Some kinds of changes are a part of the everyday routine of information processing and adhere to a predefined procedure, which reduces the overall level of risk to the processing environment. Creating a new user account or deploying a new desktop computer are examples of changes that do not generally require change management. However, relocating user file shares, or upgrading the Email server pose a much higher level of risk to the processing environment and are not a normal everyday activity.
64. The critical first steps in change management are (i) defining change and communicating that definition (b) defining the scope of the change system.
65. Change management is usually overseen by a Change Review Board comprised of representatives from key business areas, security, networking, systems administrators, Database administration, applications development, desktop support and the help desk. The tasks of the Change Review Board can be facilitated with the use of automated work flow application. The responsibility of the Change Review Board is to ensure that the organizations' documented change management procedures are followed. The change management process is as follows:-
  - (a) **Requested:** Anyone can request a change. The person making the change request may or may not be the same person that performs the analysis or implements the change. When a request for change is received, it may undergo a preliminary review to determine if the requested change is compatible with the organizations business model and practices, and to determine the amount of resources needed to implement the change.
  - (b) **Approved:** Management runs the business and controls the allocation of resources. Therefore, Management must approve requests for changes and assign a priority for every change. Management might choose to reject a change request if the change is not compatible with the business model, industry

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standards or best practices. Management might also choose to reject a change request if the change requires more resources than can be allocated for the change.

- (c) **Planned.** Planning a change involves discovering the scope and impact of the proposed change; analyzing the complexity of the change; allocation of resources and, developing, testing and documenting both implementation and backout plans. Need to define the criteria on which a decision to backout will be made.
- (d) **Tested:** Every change must be tested in a safe test environment, which closely reflects the actual production environment, before the change is applied to the production environment. The backout plan must also be tested.
- (e) **Scheduled:** Part of the change review board's responsibility is to assist in the scheduling of changes by reviewing the proposed implementation date for potential conflicts with other scheduled changes or critical business activities.
- (f) **Communicated:** Once a change has been scheduled it must be communicated. The communication is to give others the opportunity to remind the change review board about other changes or critical business activities that might have been overlooked when scheduling the change. The communication also serves to make the Help Desk and users aware that a change is about to occur. Another responsibility of the change review board is to ensure that scheduled changes have been properly communicated to those who will be affected by the change or otherwise have an interest in the change.
- (g) **Implemented:** At the appointed date and time, the changes must be implemented. Part of the planning process is to develop an implementation plan, testing plan and, a back out plan. If the implementation of the change should fail or, the post implementation testing fails or, other "drop dead" criteria have been met, the back out plan should be implemented.
- (h) **Documented:** All changes must be documented. The documentation includes the initial request for change, its approval, the priority assigned to it, the implementation, testing and back out plans, the results of the change review board critique, the date/time the change was implemented, who implemented it, and whether the change was implemented successfully, failed or postponed.
- (i) **Post change review:** The change review board should hold a post implementation review of changes. It is particularly important to review failed and backed out changes. The review board should try to understand the problems that were encountered, and look for areas for improvement.
- (j) Change management procedures that are simple to follow and easy to use can greatly reduce the overall risks created when changes are made to the information processing environment. Good change management procedures improve the over all quality and success of changes as they are implemented. This is accomplished through planning, peer review, documentation and communication.
- (k) ISO 2000 Visible Ops and Information Technology Infrastructure Library, all provide valuable guidance on implementing an efficient and effective change management program.

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- (l) Business Continuity. The mechanism by which an organization continues to OPERATE its CRITICAL BUSINESS UNITS, during planned or unplanned DISRUPTIONS that affect normal business operations, by invoking planned and managed procedures... is called as Business Continuity.
- (m) Unlike what most people think Business Continuity is not necessarily an IT system or process, simply because it is about the business. Today disasters or disruptions are a reality. Whether the disaster is natural or man-made (the TIME magazine has a website on the top 10), it affects normal life and so business. So why is planning so important? Let us face reality that "all businesses recover", whether they planned for recovery or not, simply because business is about earning money for survival.
- (n) The planning is merely getting better prepared to face it, knowing fully well that the best plans may fail. Planning helps to reduce cost of recovery, operational overheads and most importantly sail through some smaller ones effortlessly.

### **INFORMATION CLASSIFICATION: A CORPORATE IMPLEMENTATION GUIDE**

- 66. **Introduction:** - Classifying corporate information based on business risk, data value, or other criteria, makes good business sense. Not all information has the same value or use, or is subject to the same risks. Therefore, protection mechanisms, recovery processes, etc. are — or should be — different, with differing costs associated with them. Data classification is intended to lower the cost of protecting data, and improve the overall quality of corporate decision making by helping ensure a higher quality of data upon which the decision makers depend.
- 67. The benefits of an enterprise wide data classification program are realized at the corporate level, not the individual application or even departmental level. Some of the benefits to the organization are;
  - (a) Data confidentiality, integrity, and availability are improved because appropriate controls are used for all data across the enterprise.
  - (b) The organization gets the most for its information protection money because protection mechanisms are designed and implemented where they are needed most and less costly controls can be put in place for non-critical information.
  - (c) The quality of decisions is improved because the quality of the data upon which the decisions are made has been improved.
  - (d) The company is provided with a process to review all business functions and informational requirements on a periodic basis to determine priorities and values of critical business functions and data.
  - (e) The implementation of information security architecture is supported, which betters the position of the company for future acquisitions and/or mergers.
- 68. **The processes and techniques required to establish and maintain a corporate data classification program.** There are costs associated with this process; however, most of these costs are front-end start-up costs. Once the program has been successfully implemented, the cost savings derived from the new security schemes, as well as the improved decision making, should more than offset the initial costs over the long haul,



and certainly the benefits of the ongoing program outweigh the small, administrative costs associated with maintaining the data classification program.

69. Although not the only methodology that could be employed to develop and implement a data classification program, the one described here has been used and proved to work. The following topics will be addressed:
- (f) Getting started: questions to ask
  - (g) Policy
  - (h) Business Impact Analysis
  - (i) Establishing classifications
  - (j) Defining roles and responsibilities
  - (k) Identifying owners
  - (l) Classifying information and applications
  - (m) Ongoing monitoring
70. **Sample Information Security Policy.** All information, regardless of the form or format, which is created or used in support of company business activities, is corporate information. Corporate information is a company asset and must be protected from its creation, through its useful life, and authorized disposal. It should be maintained in a secure, accurate, and reliable manner and be readily available for authorized use. Information will be classified based on its sensitivity, legal, and retention requirements, and type of access required by employees and other authorized personnel.
71. Information security is the protection of data against accidental or malicious disclosure, modification, or destruction. Information will be protected based on its value, confidentiality, and/or sensitivity to the company, and the risk of loss or compromise. At a minimum, information will be update-protected so that only authorized individuals can modify or erase the information.
72. The above policy is the minimum requirement to proceed with developing and implementing a data classification program. Additional policies may be required, such as an Information Management Policy which supports the Information Security Policy. This policy would:
- (a) Define information as an asset of the business unit.
  - (b) Declare local business managers as the owners of information.
  - (c) Establish Information Systems as the custodians of corporate information.
  - (d) Clearly define roles and responsibilities of those involved in the ownership and classification of information.
  - (e) Define the classifications and criteria that must be met for each.
  - (f) Determine the minimum range of controls to be established for each classification.
73. The supporting processes, procedures, and standards required to implement the Information Security and Information Management policies must be defined at an operational level and be as seamless as possible. These are the “mechanical” portions

of the policies, and represent the day-to-day activities that must take place to implement the policies. These include but are not limited to:

- (a) The process to conduct a Business Impact Analysis ( BIA)
- (b) Procedures to classify the information, both initially after the BIA has been completed, and to change the classification later, based on business need.
- (c) The process to communicate the classification to industrial security/ staff in a timely manner so the controls can be applied to the data and software for that classification.
- (d) The process to periodically review:-
  - (i) Current classification to determine if it is still valid.
  - (ii) Current access rights of individuals and/or groups who have access to a particular resource.

74. **Business Impact Analysis:** - From the information gathered, the team can determine universal threats that cut across all business functional boundaries. This exercise can help place the applications in specific categories or classifications with a common set of controls to mitigate the common risks. In addition to the threats and their associated risks, sensitivity of the information, ease of recovery, and criticality must be considered when determining the classification of the information.
75. **Established Classifications:** - Once all the risk assessment and classification criteria has been gathered and analyzed, the team must determine how many classifications are necessary and create the classification definitions, determine the controls necessary for each classification for the information and software, and begin to develop the roles and responsibilities for those who will be involved in the process. Relevant factors, including regulatory requirements, must be considered when establishing the classifications.
76. **Information/Software Classification Criteria:** - Following is a sample of classification definitions that have been used in many organizations:
- (a) Public — Information, that if disclosed outside the company, would not harm the organization, its employees, customers, or business partners.
  - (b) Internal Use Only — Information that is not sensitive to disclosure within the organization, but could harm the company if disclosed externally.
  - (c) Company Confidential — Sensitive information that requires “need to know” before access is given.
77. It is important to note that controls must be designed and implemented for both the information and software. It is not sufficient to classify and control the information alone. The software, and possibly the hardware on which the information and/or software resides, must also have proportionate controls for each classification the software manipulates.

**INFORMATION — MINIMUM CONTROLS**

78. **Encryption** — Data is encrypted with an encryption key so that the data is “scrambled”. When the data are processed or viewed, the data must be decrypted with the same key used to encrypt the data. The encryption key must be kept secure and known only to those who are authorized to have access to the data. Public/private key algorithms could be considered for maximum security and ease of use.
79. **Review and approve** — A procedural control, the intent of which is to ensure that any change to the data is reviewed by someone technically knowledgeable to perform the task. The review and approval should be done by an authorized individual other than the person who developed the change.
80. **Backup and recovery** — Depending on the criticality of the data and ease of recovery, plans should be developed and periodically tested to ensure the data are backed up properly, and can be fully recovered.
81. **Separation of duties** — The intent of this control is to help ensure that no single person has total control over the data entry and validation process, which would enable someone to enter or conceal an error which is intended to defraud the organization or commit other harmful acts. An example would be not allowing the same individual to establish vendors to an Authorized Vendor File, and then also be capable of authorizing payments to a vendor.
82. **Universal access: none** — No one has access to the data unless given specific authority to read, update, etc. This type of control is generally provided by security access control software.
83. **Universal access: read** — Everyone with access to the system can read data with the control applied; however, update authority must be granted to specific individuals, programs, or transactions. This type of control is provided by access control software.
84. **Universal access: update** — Anyone with access to the system can update the data, but specific authority must be granted to delete the data. This control is provided by access control software.
85. **Universal access: alter** Anyone with access to the system can view, update, or delete the data. This is virtually no security.
86. **Security access control software** — This software allows the administrator to establish security rules as to who has access rights to protected resources. Resources can include data, programs, transactions, individual computer IDs, and terminal IDs. Access control software can be set up to allow access by classes of users to classes of resources, or at any level of granularity required to any particular resource or group of resources.

**SOFTWARE — MINIMUM CONTROLS**

87. **Review and approve.** The intent of this control is that any change to the software be reviewed by someone technically knowledgeable to perform this task. The review and approval should be an authorized individual other than the person who developed the change.

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88. **Review and approve test plan and results.** A test plan would be prepared, approved, documented, and followed.
89. **Backup and recovery** . Procedures should be developed and periodically tested to ensure backups of the software are performed in such a manner that the most recent production version is recoverable within a reasonable amount of time.
90. **Audit/history** . Information documenting the software change such as the work request detailing the work to be performed, test plans, test results, corrective actions, approvals, who performed the work, and other pertinent documentation required by the business.
91. **Version and configuration control** Refers to maintaining control over the versions of software checked out for update, being loaded to staging or production libraries, etc. This would include the monitoring of error reports associated with this activity and taking appropriate corrective action.
92. **Periodic testing** .Involves taking a test case and periodically running the system with known data which have predictable results. The intent is to ensure the system still performs as expected, and does not produce results that are inconsistent with the test case data. These tests could be conducted at random or on a regular schedule.
93. **Random checking** . Production checking of defined data and results.
94. **Separation of duties.** This procedural control is intended to meet certain regulatory and audit system requirements by helping ensure that one single individual does not have total control over a programming process without appropriate review points or requiring other individuals to perform certain tasks within the process prior to final user acceptance. For example, someone other than the original developer would be responsible for loading the program to the production environment from a staging library.
95. **Access control of software.** In some applications, the coding techniques and other information contained within the program are sensitive to disclosure, or unauthorized access could have economic impact. Therefore, the source code must be protected from unauthorized access.
96. **Virus checking.** All software destined for a PC platform, regardless of source, should be scanned by an authorized virus-scanning program for computer viruses before it is loaded into production on the PC or placed on a file server for distribution. Some applications would have periodic testing as part of a software quality assurance plan.

### **DEFINING ROLES AND RESPONSIBILITIES**

97. To have an effective Information Classification program, roles and responsibilities of all participants must be clearly defined. An appropriate training program, developed and implemented, is an essential part of the program. The Study Team identified to conduct the Business Impact Analysis is a good starting point to develop these roles and responsibilities and identify training requirements. However, it should be noted that some members of the original team such as Legal, Internal Audit, or Business Continuity Planning, most likely will not be interested in this phase. They should be replaced with representatives from the corporate organizational effectiveness group, training, and possibly corporate communications.
98. Not all of the roles defined in the sections which follow are applicable for all information classification schemes and many of the roles can be performed by the same individual. The key to this exercise is to identify which of the roles defined is appropriate for your

particular organization; again, keeping in mind that an individual may perform more than one of these when the process is fully functional.

99. **Information owner** — Business executive or business manager who is responsible for a company business information asset. Responsibilities include, but are not limited to:
- (a) Assign initial information classification and periodically review the classification to ensure it still meets the business needs.
  - (b) Ensure security controls are in place commensurate with the classification.
  - (c) Review and ensure currency of the access rights associated with information assets they own.
  - (d) Determine security requirements, access criteria, and backup requirements for the information assets they own.
  - (e) Perform or delegate, if desired, the following:
    - (i) Approval authority for access requests from other business units or assign a delegate in the same business unit as the executive or manager owner.
    - (iii) Backup and recovery duties or assign to the Custodian.
    - (iii) Approval of the disclosure of information act on notifications received concerning security violations against their information assets.
- (3) **Information custodian** — The information custodian, usually an information systems person, is the delegate of the Information Owner with primary responsibilities dealing with backup and recovery of the business information. Responsibilities include the following:
- (i) Perform backups according to the backup requirements established by the Information Owner.
  - (ii) When necessary, restore lost or corrupted information from backup media to return the application to production status.
  - (iii) Perform related tape and DASD(Direct Access Storage Device) management functions as required to ensure availability of the information to the business.
  - (iv) Ensure record retention requirements are met based on the Information Owner's analysis.
- (4) **Application owner** — Manager of the business unit who is fully accountable for the performance of the business function served by the application. Responsibilities include the following:
- (i) Establish user access criteria and availability requirements for their applications.
  - (ii) Ensure the security controls associated with the application are commensurate to support the highest level of information classification used by the application.
  - (iii) Perform or delegate the following:
    - Day-to-day security administration.

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- Approval of exception access requests.
  - Appropriate actions on security violations when notified by security administration.
  - The review and approval of all changes to the application prior to being placed into the production environment.
  - Verification of the currency of user access rights to the application.
- (5) **User manager** — He is the immediate manager or supervisor of an employee. They have ultimate responsibility for all user IDs and information assets owned by company employees. In the case of non-employee individuals such as contractors, consultants, etc. this manager is responsible for the activity and for the company assets used by these individuals. This is usually the manager responsible for hiring the outside party. Responsibilities include the following:
- (i) Inform security administration of the termination of any employee so that the user ID owned by that individual can be revoked, suspended or made inaccessible in a timely manner.
  - (ii) Inform security administration of the transfer of any employee if the transfer involves the change of access rights or privileges.
  - (iii) Report any security incident or suspected incident to Information Security.
  - (iv) Ensure the currency of user ID information such as the employee identification number and account information of the user ID owner.
  - (v) Receive and distribute initial passwords for newly created user IDs based on the manager's discretionary approval of the user having the user ID.
  - (vi) Educate employees with regard to security policies, procedures, and standards to which they are accountable.
- (6) **Security administrator** — Any company employee who owns a user ID which has been assigned attributes or privileges which are associated with access control systems, such as ACF2, Top Secret, or RACF. This user ID allows them to set system; wide security controls or administer user IDs and information resource access rights. These security administrators may report to either a business division or Information Security within Information Systems. Responsibilities include the following:
- (i) Understanding the different data environments and the impact of granting access to them.
  - (ii) Ensuring access requests are consistent with the information directions and security guidelines.
  - (iii) Administering access rights according to criteria established by the Information Owners.
  - (iv) Creating and removing user IDs as directed by the User Manager.
  - (v) Administering the system within the scope of their job description and functional responsibilities.
  - (vi) Distributing and following up on security violation reports.

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- (vii) Sending passwords of newly created user IDs to the manager of the user ID owner only.
- (7) **Security analyst** — Person responsible for determining the data security directions (strategies, procedures, guidelines) to ensure information is controlled and secured based on its value, risk of loss or compromise, and ease of recoverability. Duties include the following:
  - (i) Provide data security guidelines to the information management process.
  - (ii) Develop basic understanding of the information to ensure proper controls are implemented.
  - (iii) Provide data security design input, consulting and review.
- (8) **Change control analyst** — Person responsible for analyzing requested changes to the IT infrastructure and determining the impact on applications. This function also analyzes the impact to the data bases, data-related tools, application code,
- (9) **Data analyst** — This person analyzes the business requirements to design the data structures and recommends data definition standards and physical platforms, and is responsible for applying certain data management standards. Responsibilities include the following:
  - (i) Designing data structures to meet business needs.
  - (ii) Designing physical data base structure.
  - (iii) Creating and maintaining logical data models based on business requirements.
  - (iv) Providing technical assistance to data owner in developing data architectures.
  - (v) Recording Meta data in the data library.
  - (vi) Creating, maintaining, and using Meta data to effectively manage data base deployment.
- (10) **Solution Provider** — Person who participates in the solution (application) development and delivery processes in deploying business solutions; also referred to as an integrator, application provider/programmer, IT provider. Duties include the following:
  - (i) Working with the data analyst to ensure the application and data will work together to meet the business requirements.
  - (ii) Giving technical requirements to the Data Analyst to ensure performance and reporting requirements are met.
- (11) **End user** — Any employees, contractors, or vendors of the company who use information systems resources as part of their job. Responsibilities include:
  - (i) Maintaining confidentiality of log-on password(s).
  - (ii) Ensuring security of information entrusted to their care.
  - (iii) Using company business assets and information resources for

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management approved purposes only.

- (iv) Adhering to all information security policies, procedures, standards, and guidelines.
  - (v) Promptly reporting security incidents to management.
- (12) **Process owner** — This person is responsible for the management, implementation, and continuous improvement of a process that has been defined to meet a business need. This person:
- (i) Ensures data requirements are defined to support the business process.
  - (ii) Understands how the quality and availability affect the overall effectiveness of the process.
  - (iii) Works with the data owners to define and champion the data quality program for data within the process.
  - (iv) Resolves data-related issues that span applications within the business processes.
- (13) **Product line manager** — Person responsible for understanding business requirements and translating them into product requirements, working with the vendor/user to ensure the product meets requirements, monitoring new releases, and working with the stakeholders when movement to a new release is required. This person:
- (i) Ensures new releases of software are evaluated and upgrades are planned for and properly implemented.
  - (ii) Ensures compliance with software license agreements.
  - (iii) Monitors performance of production against business expectations.
  - (iv) Analyzes product usage, trends, options, and competitive sourcing, etc. to identify actions needed to meet project demands of the product.
- (14) **Identifying Owners**: - The steps previously defined are required to establish the information classification infrastructure. With the classifications and their definitions defined, and roles and responsibilities of the participants articulated, it is time to execute the plan and begin the process of identifying the information owners. As stated previously, the information owners must be from the business units. It is the business unit that will be most greatly affected if the information becomes lost or corrupted; the data exist solely to satisfy a business requirement. The following criteria must be considered when identifying the proper owner for business data:
- (i) Must be from the business; data ownership is not an I/T responsibility.
  - (ii) Senior management support is a key success factor.
  - (iii) Data owners must be given (through policy, perhaps) the necessary authority commensurate with their responsibilities and accountabilities.
  - (iv) For some business functions, a multi-level approach may be necessary.



### **CLASSIFIED INFORMATION AND APPLICATIONS**

- (15) The information owners, after completing their training, should begin collecting the Meta data about their business functions and applications. A formal data collection process should be used to ensure a consistency in the methods and types of information gathered. This information should be stored in a central repository for future reference and analysis. Once the information has been collected, the information owners should review the definitions for the information classifications, and classify their data according to those criteria. The owners can use the following information in determining the appropriate controls for the classification:
- (i) Audit information maintained; how much and where it is, and what controls are imposed on the audit data.
  - (ii) Encryption requirements.
  - (iii) Data protection mechanisms; and access controls defined based on classification, sensitivity, etc.
  - (iv) Universal access control assigned.
  - (v) Backup and recovery processes documented.
  - (vi) Change control and review processes documented.
  - (vii) Confidence level in data accuracy.
  - (viii) Data retention requirements defined.
  - (ix) Location of documentation.
  - (x) The following application controls are required to complement the data controls, but care should be taken to ensure all controls (both data and software) are commensurate with the information classification and value of the information:
    - (xi) Audit controls in place.
    - (xii) Develop and approve test plans.
    - (xiii) Separation of duties practiced.
    - (xiv) Change management processes in place.
    - (xv) Code tested, verified for accuracy.
    - (xvi) Access control for code in place.
    - (xvii) Version controls for code implemented.
    - (xviii) Backup and recovery processes in place.
- (16) **Ongoing Monitoring**: - Once the information processes have been implemented and data classified, the ongoing monitoring processes should be implemented. The internal audit department should lead this effort to ensure compliance with policy and established procedures. Information Security, working with selected information owners, Legal, and other interested parties,

should periodically review the information classifications themselves to ensure they still meet business requirements.

- (17) The information owners should periodically review the data to ensure they are still appropriately classified. Also, access rights of individuals should be periodically reviewed to ensure these rights are still appropriate for the job requirements. The controls associated with each classification should also be reviewed to ensure they are still appropriate for the classification they define.

### **REVISION QUESTIONNAIRE**

1. What do you understand by Intelligence?
2. Write a brief note on the Intelligence Cycle.
3. Enumerate types of Intelligence and explain them in brief.
4. What do you understand by 'Espionage' and how it can be stopped?
5. Explain, what do you mean by sources of intelligence and who can be good sources?
6. How the documents are classified and what are its types?
7. How the Information is classified and what are its types?
8. Explain the procedure for protecting the information/Data stored in a computer.
9. Define the following terms:-
  - (a) Economic/Corporate Espionage.
  - (b) Surveillance.
  - (c) Subversion.
  - (d) Terrorist/Technology Threats.
  - (e) Sources/Assets.