L&BE-UNIT-4
COMPANIES ACT

Back Ground

- Growth of business and rapid industrialization in early 19^{th} century witnessed considerable changes in types of business organizations.
- Business continued to expand and capital to an unlimited extent was required.
- First law regulating companies took birth in 1850, as Joint Stock Companies Act. It was followed by the English Companies Act, 1856.
- The working of the Act revealed several loopholes. Following English Companies Act of 1908,Indian Companies Act,1913 was passed. Even the Act of 1913 proved inadequate and therefore, it was amended several times.
- World war II witnessed many changes in the organisation and management of joint stock companies. Government of India, therefore, appointed a committee under the Chairmanship of Mr.H.L.Bhabha on 25^{th}oct 1950 of 12 members representing various interests.
- Committee submitted its report in April 1952. Based on this report, present companies Act, 1956 was enacted in the lines of English Companies Act 1948. Companies Act,1956 regulates entire organization and management of the companies in India. It came into force in and from 1^{st} April 1956.

COMPANY (Sec3)

A company is a form of business organisation in which the funds of a large number of investors are managed by few person for the purpose of earning profits which are shared by all the investors.

Section 3 (1) (i) of the companies Act, 1956

"A Company means a company formed and registered under this Act".

Company is defined as "A voluntary incorporated association which is an artificial person, created by law with limited liability having a common seal and perpetual succession"

Characteristics /features of a company:

Registration:A Company is to be compulsorily registered under the Companies Act

Distinct person /Separate legal entity:A company is a distinct person possessing its own identity.

Perpetual succession: A company incorporated never dies. It has a perpetual succession.

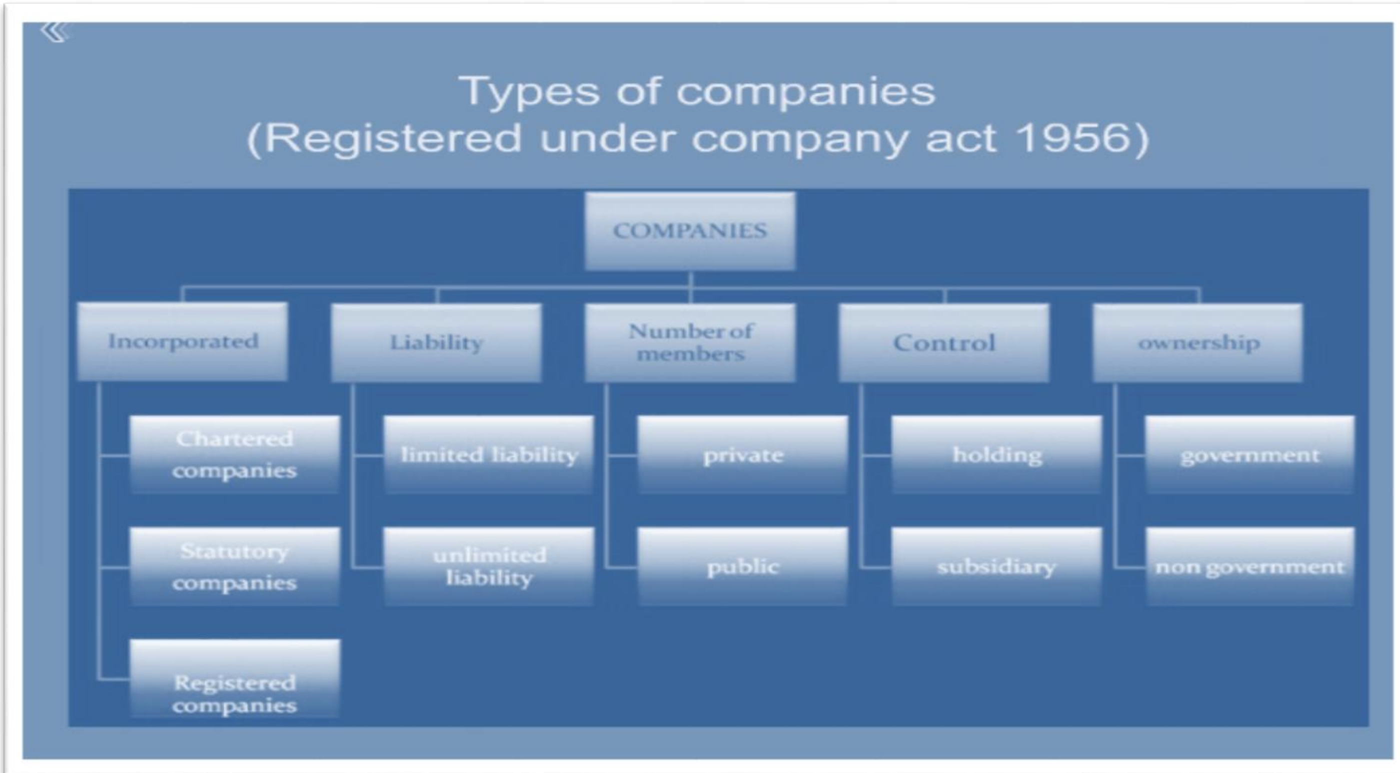
Artificial person: The Company is an artificial person. It functions through its Board of Directors.

Transferable shares: A Company has the greatest advantage of its shares being easily transferable. SEC 82 CA provides that the shares or debentures, shall be movable property, transferable in the manner provided for in the articles of the company.

Common seal: The Company has a separate legal existence under its own common seal. The common seal of the company gives it an independent existence.

Separate property: The Company being a distinct and legal personality can own, enjoy and dispose off property in its own name.

Capacity to sue and be sued: A company can sue and be sued in its corporate name.



CLASSIFICATION OF COMPANIES

On the basis of incorporation

- Royal Charter or Chartered companies
- Statutory Companies
- Registered Companies

On the basis of liability

- Companies Limited By Shares
- Companies Limited By Guarantee
- Unlimited Companies

On the basis of number of members

- Private limited company
- Public limited company

On the basis of control

- Holding company
- Subsidiary company

On the basis of incorporation

- Government company
- Foreign company

Chartered Companies: These Companies are incorporated under a special Royal charter issued by the King or Queen. The charter governs them.

Ex: - East India Company, Bank of England.

Statutory Companies: These Companies are formed under the special Statutory Act of the parliament of State Legislature. These companies are governed by the Act of Parliament or by State of Legislature.

RBI, SBI, IFCI, LIC etc.,

Registered Companies: Companies registered under the Companies Act, 1956 or under any pervious Companies Act. All Companies are now regulated by the provision of the Companies Act,1956. These companies have Memorandum of Association and Articles of Association for their external and internal regulation. Companies registered under this Act are

*Companies limited by shares*Companies limited by Guarantee *Unlimited Companies

Holding companies:A company is known as the holding company of another company if it has the control over that other company. A company is deemed to be the holding company of another if, but only if, that other is its subsidiary.

Subsidiary company:A company is known as a subsidiary of another company when control is exercised by the holding company over the former called a subsidiary company.

Government company: A government company means any company in which not less than 51% of the paid-up share capital is held by-

a) The central government, or
b) Any state government, or governments, or
c) Partly by central government and partly by one or more state government.

Foreign company: It means any company incorporated outside India which has an established place of business in India.Where a minimum of 50% of the paid up share capital of a foreign company is held by one or more citizens of India or/and by one or more bodies corporate incorporated in India, whether singly or jointly, such company shall comply with such provisions as may be prescribed as if it were an Indian company.

Private company: A company which has a minimum paid-up capital of Rs 1,00,000 or such higher paid up capital as may be prescribed, and by its articles

a. Restricts the right to transfer its shares, if any
b. Limits the number of its members to 50.
c. Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company,
d. Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

Public company:

A public company means a company which-

(a) has a minimum paid-up capital of Rs. 5 lakh or such higher paid-up capital, as may be prescribed;
(b) is a private company which is a subsidiary of a company which is not a private company;

PRIVATE LTD *vs* PUBLIC LIMITED COMPANIES

Basis of differences	Private limited company	Public limited company
▪ Name	Use the words "private limited" at the end of its name.	Use the words "limited" at the end of its name.
▪ Members	Min: 2 Max: 200(amended in 2013)	Min: 7 Max: unlimited
▪ Directors	Min: 2	Min: 3
▪ Restrictions on appointment of directors	No restrictions	Directors must file their consent to act as a director with registrar
▪ Public invitation	Cannot invite public to subscribe to its share capital	Can invite public to subscribe to its share capital
▪ Transfer of shares	Transfer of shares is strict	Easily transfer the shares
▪ Privileges	It enjoy certain privileges	It has no privileges
▪ Legal control	Less legal control	More legal control
▪ Loans	Directors can borrow from the private company	Directors cannot borrow from the private company
▪ Minimum paid up capital	One lac rupees	Five lac rupees

Some of the privileges enjoyed by a Private Company are:

1. The minimum number of members required to form a private company is only 2, whereas it is 7 in case of a public Company.

2. A private company can start its business immediately after its incorporation. It need not obtain the Certificate of Commencement of business.

'Certificate of Commencement of Business is issued by the Registrar of Companies to public Companies. Once a Company has been registered or formed, it shall apply for the Certificate of commencement of business in the prescribed form to the ROC (Registrar of Companies). Only after this certificate has been obtained it can commence its business. This certificate has to be obtained within 6months from the date of incorporation of a Company.'

3. No Qualification shares and consent of the Director to act as a Director is required to be filed with the ROC at any time during the tenure of the Company, as in case of a public Company.
4. A private company is not required to issue or file a prospectus or statement in lieu of prospectus with the Registrar of Companies.
'Prospectus is an important document for a public Company. It is nothing but an invitation to the public to subscribe for the shares of the Company. In case a public Company does not intend to invite the public to subscribe to the shares, it has to file a Statement in lieu of prospectus.'
5. It is not required to have an index of members, as in case of a public Company, the reason being the Companies Act limits the maximum number of members required for a private Company to 50.
6.It is not required to hold a statutory meeting or file a statutory report.
'Statutory meeting is a general Meeting of the shareholders of the Company which has to be held within a period of not less than one month and not more than 6 months from the date from the date on which it is entitled to commence its business."
7. It is not required to offer new shares to existing shareholders in proportion to their shareholdings.
In case of a public Company further issue of Capital shall be made the persons who at the date of the issue are holders of the equity shares of the Company in proportion to their holding.
8. A private company need to have a minimum of two directors only whereas a public Company needs to have a minimum of three directors.
9.All the directors may be appointed by a single resolution in case of a private Company.
10. The directors of a private company need not to retire by rotation i.e. they can be permanent directors.
In case of a Public Company, not less than $2/3^{rd}$ of the total number of directors are liable to retire by rotation and shall be eligible for re appointment.
11. Directors of a private company can vote on a contract in which they are interested. But in case of public Companies, interested directors cannot vote on that matter.
12. Two persons personally present can constitute the quorum for the meeting of a private company.
13. If a private company refuses to register a transfer or transmission of shares, the aggrieved person cannot appeal to the Company Law Board for redressal.
14. Profit and Loss Account of an independent private company filed with the Registrar cannot be inspected by general public.
15. The appointment, re-appointment and remuneration of whole-time or managing director does not require permission of the Central Government
16. There are no restrictions on loan given by a Company to directors.
17. There are no restrictions on the remuneration payable to, nor it is required to obtain sanction of the Central Government to increase the remuneration of directors.
18. There are no restrictions on the number of Directorships held by a person in case of a private Company.

Registration & Certificate of incorporation:

A Company obtains separate legal existence only after it is registered under the companies Act and is issued a certificate of incorporation by the Registrar of Companies of the State where registered office of the Company is situated.

Certificate of Incorporation is a document which certifies that the company has been registered with the Registrar of Companies under the Companies Act on a particular date.

Memorandum of Association (Sec 2 (28))

According to Sec of C.A Memorandum of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.

MOA is the document which contains the rules regarding constitution and activities or objects of the company.

The Memorandum of Association of company is in fact its charter; it denes its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edice of the company is built.

Object of registering a memorandum of association:

- It contains the object for which the company is formed and therefore identies the possible scope of its operations beyond which its actions cannot go.
- It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.

A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.

- The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires the company and void.

As per Section 4, Memorandum of a company shall be drawn up in such form as is given in Tables A, B, C, D and E in Schedule I of the Companies Act, 2013.

Table A is a form for memorandum of association of a company limited by shares.

Table B is a form for memorandum of association of a company limited by guarantee and not having a share capital.

Table C is a form for memorandum of association of a company limited by guarantee and having a share capital.

Table D is a form for memorandum of association of an unlimited company.

Table E is a form for memorandum of association of an unlimited company and having share capital. The memorandum and articles of a company must be as closed to model forms, as possible, depending upon the circumstances.

Articles of Associations Sec 2(2) & 26 to 29

- Articles of Association is another contract document which provides the detail of working of the company.
- AOA are the rules and regulations of a company framed for the purpose of internal management of its affairs.
- AOA deals with the rights of the members of the company
- The articles are framed for carrying out the aims and objects of the MOA

Contents of AOA: Articles usually contain provisions relating to the following amongst other matters

- ✓ Share capital and alteration thereof

- ✓ Payment, call, transfer, forfeiture of shares
- ✓ Share certificate and warrants
- ✓ Rights of shareholders
- ✓ Meetings of the company
- ✓ Appointment, remuneration, qualification, power, etc of BOD

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S.No	Memorandum of Association	Articles of Association
1	It is a charter of a company or it is "life giving" document	It contains rules and regulations regarding internal management
2	It is a fundamental charter	It is subsidiary to memorandum
3	Every company must	Public Company limited by shares may or may not have
4	Alteration of Memorandum is much difficult and strictly regulated	Articles can be easily altered by a special resolution

Prospectus - sec 2(36)

Prospectus mans any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits form the public for the subscription or purchase of any shares in, or debentures of a body corporate

Merely Prospectus is a document by which an invitation is issued to the public to take shares or debentures of the company.

SHARE CAPITAL

Share capital mans that amount which the company raises by issue of shares. It is classified as

Authorized or Nominal Capital: This is the capital with which the company is registered

Issued capital: The entire authorized capital may not be required to be raised by the company initially. It is less than the Authorized or Nominal Capital.

Subscribed capital: That part of the issued capital which is agreed to be taken up by the public.

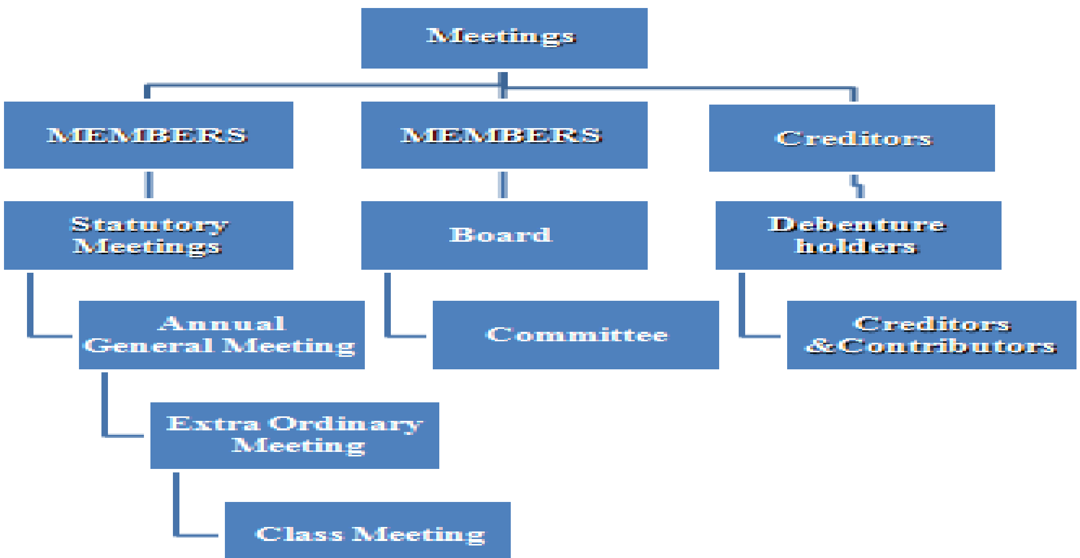
Paid-up capital: The amount actually paid up by the subscribers towards the capital accepted by them.

Un-called capital: The company may not require the full amount of the subscribed capital. It may call up only a part of the capital subscribed and that part which has not been called up (the remainder of the subscribed capital is un called capital)

Equity share capital: with reference to any company limited by shares, means all share capital which is not preference share capital.

Preference share capital: with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to— payment of dividend and repayment.

KINDS OF MEETINGS



Statutory Meeting (Sec165): Every Company limited by shares &every company limited by guarantee &having a share capital, shall within a period of not less than one month nor than 6 months.

Annual General Meeting (Sec 166,167,&172):A Company may holds its first annual general meeting within 18 months from the date of its incorporation. A company cannot hold more than one annual general meeting in any year.

Extra Ordinary Meeting (Sec 169): Any Meeting other than Statutory Meeting & annual general meeting is called an Extra Ordinary Meeting. The Extra Ordinary Meeting is convinced to transact any urgent or special business.

- By the board of directors.
- By the board of directors on the requisition of not less than $1/10^{th}$ of members holding paid – up capital of the company the right of voting.
- By the board of directors in case of the company not having share capital on the requisition of the members holding $1/10^{th}$ of the total voting power.

Meetings of Creditors and Debenture holders

Meetings of Creditors and Debenture holders are generally held in case of winding up of the company or in case of proposed scheme of arrangement.

WINDING UP OF COMPANIES

- Winding up or liquidation of a company represents the last stage in its life.
- it means proceedings of a company is dissolved.
- The assets of a company are disposed, the debts are paid off out of the realized assets, and the surplus, ifany, then distributed among the members in proportion to their holdings in the company.
- The two terms winding up and liquidation are used interchangeably.
- Winding up of a company is a process whereby its life is ended and its property administered for the benefit of its creditors and members.
- An administrator, called liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in a accordance with their rights.

Modes of winding up

There are three modes of winding up of a company, viz…,

1. Winding up by the court
2. Voluntary winding up. This may be
   a) Member's voluntary winding up, or
   b) Creditor's voluntary winding up
3. Winding up subject to supervision of court

THE INDIAN PARTNERSHIP ACT-1932

What is Partnership?

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all **(Section 4)**. It, therefore, follows that a partnership consists of three essential elements:

(i) It must be a result of an agreement between two or more persons.
(ii) The agreement must be to share the profits of the business.
(iii) The business must be carried on by all or any of them acting for all.

Essential Elements of Partnership

(1)Agreement: Partnership must be the result of an agreement between two or more persons.An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.

(2) Sharing profits of the business: First, there must exist a business i.e. trade, occupation and profession. The motive of the business is the acquisition of gains.Therefore there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

Secondly, there must be an agreement to share profits. The agreement to share losses is not an essential element. However in the event of losses, unless agreed otherwise, these must be born in the profit sharing ratio.

(3)Business carried on by all or any of them acting for all: Each partner carries on the business as a principle as well as the agent on behalf of the other partners. This is the cardinal principle of the partnership Law. Therefore, the true test of partnership is mutual agency rather than sharing of profits.

Distinction between partnership and firm: Persons who have entered into partnership with one another are called individual "Partners" and "collectively" and the name under which the business is carried on is called "firm name". Partnership is merely an abstract legal relation between the partners. A firm is a concrete thing signifying the collective entity for all the partners. Partnership is thus that invisibility which binds the partners together and firm is the visible form of those partners who are thus bound together.

Partnership vs. Joint Stock Company

1. Personality : A firm is not legal entity I.e., it has no legal personality distinct from the personalities of its constituent members. On the other hand, a registered company is a judicial person distinct from its members.
2. Agency: In a firm, every partner is an agent of the other partners, as well as that of the firm, but in the case of the company a member is not an agent of the other members or of the company.
3. Distribution of profits: the profits of the firm must be distributed among the partners according to the term of the partnership deed but there is no such compulsion in the case of company.
4. Extent of liability : In a firm,the liability of the partners is unlimited. while in the case of the company the liability of the shareholder is limited to the amount, if any unpaid on his shares, in the case of the company limited by shares; otherwise to the guaranteed amount.
5. Property: The firms property is that which is the joint state of all the partners as distinguished from the separate state of any of them and it does not belong to a body distinct from its members. So in the case of insolvency , the joint estate, after meeting the liability in respect of the joint debts devolves on the partners.
6. Transfer of shares: In a firm,a share in the partnership cannot be transferred without the consent of all the partners but in the public limited company it is freely transferable.
7. Management: In the absence of an express agreement to the contrary all the partners are entitled to participate in the management of the firm but the members of the company are not entitled to participate in the management unless they have been appointed as directors.
8. Number of membership: In the case of a firm carrying banking business the number of members cannot exceed 10 but otherwise 20.A private company may have as many as 50 members but not less than two and a public company may have any number of members but not less than seven.

Partnership vs. Hindu Undivided Family

1. **Creation:** The relation of partnership is created necessarily by an agreement, whereas the right in the joint family is created by status. The creation of a right by status means its creation by birth in the family.
2. **Death:** Death of a partner ordinarily leads to the dissolution of partnership. But the death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
3. Management: The right of management of joint family business generally vests in the Karta, the governing male member of the family. But in the case of a partnership, all the partners are equally entitled to take part in the partnership business.
4. Authority to bind the firm: In the joint family, the Karta or the manager, has the authority to contract for the family business. In partnership, every partner can, by his act, bind the firm.
5. Liability: In a partnership, the liability of a partner is unlimited; but in a Hindu undivided family, only the liability of the Karta is unlimited, and the other copartners are liable only to the extent of their share in the profits of the family business, unless they take part in the act performed or transactions entered into by the Karta.
6. Calling for accounts: On the separation of the joint family, a member is not entitled to ask for account of the family business. But a partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.
7. Governing Law: A partnership is governed by the Partnership Act; a Joint Hindu family business is

governed by the Hindu Law.
8. Minor's capacity: In a partnership, a minor cannot become a partner, though the can be admitted to the benefits of partnership, only with the consent of all the partners. In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
9. Continuity: A Joint Hindu Family has the continuity till it is divided. The status of Joint Hindu Family is not thereby affected by the death of a member, but a firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.

CLASSIFICATION OF PARTNERSHIP

It can be classified on the following two bases, namely;

1. On the basis of duration;
(a) Partnership at will
(b) Partnership for a fixed period
2. On the basis of extent of business
(a) Particular Partnership
(b) General Partnership

Partnership for a fixed term: When the duration is fixed, and partnership comes to an end on the expiry of the stipulated period. It is called partnership for a fixed term.
Particular partnership: When two or more persons agree to do business for a particular adventure, it is called particular partnership.
Partnership-at-will: When no duration of the partnership is made, it is partnership at will. There is no provision for determination or termination of the partnership. It can be dissolved by any partner giving notice in writing to all the partners or by filing a suit for dissolution.

TYPES OF PARTNERS

1. Actual or ostensible or working partner
2. Dormant or sleeping partner
3. Nominal partner
4. Partner in profit only
5. Sub-partner
6. Partner by estoppel or holding out

Types of Partners
1. 'Partner' by holding out' (Section 28)
A person may himself, by his words or conduct have induced other to believe that he is a partner or he may have allowed others to represent him as a partner, though actually he is not. He is liable like a partner in the firm to any one who on the faith of such representation has given credit to the firm. The result in both the cases is identical. Partnership by 'holding out' is also known as partnership by estoppel.
2. Sub-partnership: A sub-partnership may arise when, consequent upon an agreement between a partner in a firm and a stranger, the latter is vested with interest jointly with that partner so far as his share in the firm is concerned. Such an agreement will not render the stranger a partner of the main firm. A sub-partner can claim the agreed share from the actual partner, but he can have no right against the main firm to take part in or to interfere with its business or to examine its account.

Minor’s Position in Partnership

Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under **Section 30** of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under **Section 30** as follows:

Rights:

(i) A minor partner has a right to his agreed share of the profits of the firm.

(ii) He can have access to, inspect and copy the accounts of the firm.

(iii) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.

(iv) On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

REGISTRATION OF A FIRM

Introduction: It is not compulsory. It is *optional* for the firm either to get itself registered or not. There is no penalty for non-registration of a firm. Moreover, the non-registration does not affect the partnership agreement or any transaction between the partners and third party. Yet indirectly, the registration of a firm becomes necessary at one time or the other. The reason for the same is that the Indian Partnership Act introduced certain disabilities

When can a firm are registered: Since the registration of a firm is not compulsory, it can be effected at any stage

When does registration becomes effective: Registration becomes effective from the date of filing of the duly signed and verified statement along with the prescribed form and not from the date of issue of certificate of registration since the act of the Registrar in recording any entry of the statement of the Register of firms is only a clerical act

Note : The name of the firm shall not contain words like ‘Crown’, Emperor’, ‘Empress’, ‘Empire’, ‘Imperial’, ‘King’, ‘Queen’, ‘Royal’, or any word expressing or implying the sanction approval or patronage of government or the crown.

Effects if non-registration of a firm:

A. The partners cannot file a suit against the firm or other partners
B. The firm cannot file a suit against third parties
C. The partner of the firm cannot claim a set-off

Mutual Rights and Duties of Partners

The contract may provide that a partner shall not carry on any business other that that of the firm while he is a partner **(Section 11)**. Subject to a contract between the partners the mutual rights and liabilities are as follows:

Rights:

(1) **Right to take part in the conduct of the Business:** Every partner has the right to take part in the business of the firm. This is because partnership business is a business of the partners and their management powers are generally coextensive.Now suppose this management power of the particular partners is interfered with and he has been wrongfully precluded from participating therein. Can the Court interfere in these circumstances? The answer is in the affirmative. The Court can, and will, by Injunction, restrain other partners from doing so.
The main point is that a partner who has been wrongfully deprived of the right of participation in the management has also other remedies, e.g., a suit for dissolution, a suit for accounts without seeking dissolution, etc. The above mentioned provisions of law will be applicable only if there is no contract to the contrary between the partners.
2. Right to be consulted: Where any difference arises between the partners with regard to the business of the firm, it shall be determined by the views of the majority of them, and every partner shall have the right to express his opinion before the matter is decided. But no change in the nature of the business of the firm can be made without the consent of all the partners [Section 12(c)].
3. Right to remuneration: No partner is entitled to receive any remuneration in addition to his share in the profits of the firm for taking part in the business of the firm. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration.
4. Interest on Capital: The interest will be payable only out of profits. As a general rule, interest on capital subscribed by partners is not allowed unless there is an agreement or usage to that effect. The principle underlying this provision of law is that regards the capital brought by a partner in the business, he is not a creditor of the firm but an adventure.
5. Interest on advances: The partner is entitled to claim interest thereon @6% per annum [Section 13(d)]. While interest in capital account ceases to run in dissolution, the interest on advances keep running even often dissolution and up to the date of payment.
6. Right to share profits: partners are entitled to share equally in profits earned and so contribute equally to the losses sustained by the firm(section 13(b))
7. Right to access the books of accounts: Every partner whether active or sleeping is entitled to have access to any books of firm and to inspect and take out the copy thereof(Sec12(d))
8. Right to be indemnified: Every partner has the right to be indemnified by the firm with respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business as well as in the performance of an act in an emergency for protecting the firm from any loss. (Section 13(e))
9. Right to stop admission of a new partner: Every partner has the right to stop the introduction of the new partner without the consent of other partners.(section 31)
10. Right to retire: Every partner has the right to retire with the consent of other partners and in the case of partnership at will, by giving notice to that effect to all other partners.(section 32(1))
11. Right not to be expelled: Every partner has got a right not to be expelled from the firm by the majority of the partners.(Section33)
12. Right to dissolve the firm: Every partner has the right to dissolve the partnership with the consent of other partners and in the case of partnership at will,by any partner giving notice to that effect to all other partners.(section 40)
13. Right of outgoing partner to carry on competing business: An outgoing partner can carrying on business competing with the firm and he may advertise such business, but without using the firm name or representing himself as carrying on the business of the firm or soliciting the custom of persons who were dealing with the firm before he ceased to be a partner (Section36(1)).
14. Right of outgoing partner to share subsequent profits: When any partner has died or ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of the accounts as between them and the outgoing partner, than at the representative option, can either take the proportion of the profits attributable to the share of property or interest at the rate of 6% per annum.

Duties:

1. Partners are bound to carry on business of the firm
   a. to the greatest common advantage
   b. To be just and faithful to each other
   c. To render to any partner or his legal representative a true account and full information of all the things affecting the firm(Section9)
2. Every partner is liable to indemnify the firm for any damage caused ti it by the reason of its fraud in the conduct of his business of the firm(Section10)
3. Every partner is bound to attend diligently to his duties relating to the conduct of the firms business(Section12(b))
4. All the partners are liable to contribute equally to the loss sustained by the firm.
5. If a partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm or the firm's name then he is bound to account for that profit and refund it to the firm.(Section16(a)
6. A partner must identify the firm for any loss caused to it by the willful neglect of the business of the firm.(Section13(f))
7. If a partner carries on business of the same nature as and competing with that of the firm, then he must account for and pay to the firm all profits made by him in the business and the firm is not liable for any loss(Section16(b))

Implied Authority of a Partner of the firm

If the act is "outside the usual course of the business of the firm" it will not bind the firm even if it is prudent or has benefited the firm unless it is ratified and approved by all the partners. Power to do the usual does not include power to do the unusual.

A partner has implied authority to bind the firm by all acts done by him in all matters connected with the partnership business and which are done in the usual way and are not in their nature beyond the scope of partnership.

If there is no usage or custom of trade to the contrary, the implied authority of the partner does not empower him to:

(a) Submit a dispute to the business of the firm to arbitration as it is not the ordinary business of partnership firm to enter into a submission for arbitration:
(b) Open a bank account on behalf of the firm in his own name;
(c) Compromise or relinquish any claim or portion of a claim by the firm against a third party.
(d) Withdraw a suit or proceedings filed on behalf of the firm;
(e) Admit any liability in a suit or proceedings against the firm;
(f) Acquire immovable property on behalf of the firm;
(g) Transfer immovable property on belonging to the firm; and
(h) Enter into partnership on behalf of the firm.

Liability to Third Parties (Section 25 to 27)

1. Contractual liability: Under **Section 25**, it is necessary that the act of the firm, in respect of which liability is bought to be enforced against a party, must have been done while he was a partner.
2. Liability for tort or wrongful act: Section 26, the fact that the method employed by the partner in doing it was unauthorised or wrongful would not affect the question. Furthermore, all the partners in a firm are liable to a third party for loss or injury caused to him by the negligent act of a partner acting in the ordinary course of the

business.

3. Liability for misappropriation by a partner: Section 27 provides that **(a)** when a partner, acting within his apparent authority, receives money or other property from a third person and misapplies it or **(b)** where a firm, in the course of its business, received money or property from a third person and the same is misapplied by a partner, while it is in the custody of the firm, is liable to make good the loss. Mercantile Law: The Indian

DISSOLUTION OF PARTNERSHIP

Meaning of dissolution: The term 'dissolution' stands for discontinuation Under the Indian Partnership Act, 1932 the dissolution may be either of partnership or of a firm

Meaning of dissolution of partnership: Dissolution of partnership refers to the change in the existing relations of the partners. The firm continues its business after being reconstituted

Modes of dissolution of partnership:

1. Admission of a new partner
2. Retirement of a partner
3. Death of a partner
4. Change in profit sharing ratio

Meaning of dissolution of firm : It means dissolutions of partnership between all the partners of a firm

Modes of dissolution of firm : The modes of dissolutions of a firm are contained in Sections 40 to 44 of the Indian Partnership Act. These may be discussed under the following two heads

- *Dissolution with out the intervention of the court*
- *Dissolution with the intervention of the court*

Dissolution with out the intervention of the court :A firm may be dissolved without the intervention of the court i.e., without going to the court of law. The dissolution without the intervention of the court may take place in any of the following ways:

(a) Dissolution by consent of all partners
(b) Dissolution by contract between the partners
(c) Compulsory dissolution(*Insolvency of all the partners & Business of the firm becoming unlawful)*
(d) Dissolution on the happening of certain contingencies
(i) *Expiry of fixed term*
(ii) Completion of the adventure or undertaking
(iii) Death of a partner
(iv) Insolvency of a partner
(V) Dissolution by notice

Dissolution with the intervention of the court : Sometimes a partner wants that the firm should be dissolved but the other *partners may not agree to the dissolution*. In such cases he can go to the court of law and file a suit for the dissolution of the firm on any one of the **following grounds** and the court may dissolve the firm if it is satisfied about the same

a). Insanity of active partner on petition by any other partner or next friend of insane partner
b). Permanent incapacity of active partner on a suit by any other partner
c). Misconduct on a suit by any other partner
d). Willfully or persistent breach of agreement on a suit by any other partner
e). Transfer of whole interest to a third party
f). Perpetual losses
g). Any other just and equitable ground

Information Technology Act, 2000

In 1996, the United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce (e-commerce) to bring uniformity in the law in different countries. Further, the General Assembly of the United Nations recommended that all countries must consider this model law before making changes to their own laws. India became the 12th country to enable cyber law after it passed the Information Technology Act, 2000.While the first draft was created by the Ministry of Commerce, Government of India as the E-Commerce Act, 1998, it was redrafted as the 'Information Technology Bill, 1999', and passed in May 2000.

Objectives of the Act

The Information Technology Act, 2000 provides legal recognition to the transaction done via electronic exchange of data and other electronic means of communication or electronic commerce transactions. This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies. Further, this act amended the Indian Penal Code 1860, the Indian Evidence Act 1872, the Bankers' Books Evidence Act 1891, and the Reserve Bank of India Act 1934.

The objectives of the Act are as follows:

i. Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.

ii. Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication

iii. Facilitate the electronic filing of documents with Government agencies and also departments

iv. Facilitate the electronic storage of data

v. Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions

vi. Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

Features of the Information Technology Act, 2000

a. All electronic contracts made through secure electronic channels are legally valid.

b. Legal recognition for digital signatures.

c. Security measures for electronic records and also digital signatures are in place

d. A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized

e. Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.

f. An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court

g. Digital Signatures will use an asymmetric cryptosystem and also a hash function

h. Provision for the appointment of the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Controller to act as a repository of all digital signatures.

i. The Act applies to offences or contraventions committed outside India

j. Senior police officers and other officers can enter any public place and search and arrest without warrant

k. Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

Applicability and Non-Applicability of the Act

Applicability: According to Section 1 (2), the Act extends to the entire country, which also includes Jammu and Kashmir. In order to include Jammu and Kashmir, the Act uses Article 253 of the constitution. Further, it does not take citizenship into account and provides extra-territorial jurisdiction.Section 1 (2) along with Section 75, specifies that the Act is applicable to any offence or contravention committed outside India as well. If the conduct of person constituting the offence involves a computer or a computerized system or network located in India, then irrespective of his/her nationality, the person is punishable under the Act.Lack of international cooperation is the only limitation of this provision.

Non-Applicability: According to Section 1 (4) of the Information Technology Act, 2000, the Act is not applicable to the following documents:

1. Execution of Negotiable Instrument under Negotiable Instruments Act, 1881, except cheques.
2. Execution of a Power of Attorney under the Powers of Attorney Act, 1882.
3. Creation of Trust under the Indian Trust Act, 1882.
4. Execution of a Will under the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
5. Entering into a contract for the sale of conveyance of immovable property or any interest in such property.
6. Any such class of documents or transactions as may be notified by the Central Government in the Gazette.

Digital Signature

Digital signature is a mathematical scheme to verify the authenticity of digital documents or messages. Also, a valid digital signature allows the recipient to trust the fact that a known sender sent the message and it was not altered in transit. Like written signatures, digital signatures provide authentication of the associated input or messages.

Further, digital signatures authenticate the source of messages like an electronic mail or a contract in electronic form.

According to the Information Technology Act, 2000, digital signatures mean authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3. Further, the IT Act, 2000 deals with digital signatures under Sections 2, 3, and 15.

Section 2(1)(p)

According to Section 2(1)(p), digital signature means '*authentication of any electronic record using an electronic method or procedure in accordance with the provisions of Section 3*'.

Digital signatures mean the authentication of any electronic record using an electronic method or procedure in accordance with the provisions of the Information Technology Act, 2000. Also, a handwritten signature scanned and digitally attached with a document does not qualify as a Digital Signature.

The three important features of digital features are:

1. **Authentication** – They authenticate the source of messages. Since the ownership of a digital certificate is bound to a specific user, the signature shows that the user sent it.
2. **Integrity** – Sometimes, the sender and receiver of a message need an assurance that the message was not altered during transmission. A digital certificate provides this feature.
3. **Non-Repudiation** – A sender cannot deny sending a message which has a digital signature.

Cybercrime/Cyber Frauds

Cybercrime is a crime that involves a computer and a network. The computer may have been used to commit the crime and in many cases, it is also the target. Cybercrime may threaten a person or a nation's security and financial health.

Definition of Cybercrime

Any offenses committed against individuals or groups of individuals to harm the reputation or cause physical or mental trauma through electronic means can be defined as Cybercrime. Electronic means can include but are not limited to, the use of modern telecommunication networks such as the Internet (networks including chat rooms, emails, notice boards and groups) and mobile phones (Bluetooth/SMS/MMS).

Why is Cybercrime considered a grave offense?

There are many privacy concerns surrounding cybercrime when sensitive information is intercepted and leaked to the public, legally or otherwise. Some of that information may include data about military deployments, internal government communications, and even private data about high-value individuals. Cybercrime is not confined to individuals alone. Internationally, both governmental and non-state actors engage in cybercrimes, including espionage, financial theft, and other cross-border crimes. Cybercrimes crossing international borders and involving the actions of at least one nation-state is sometimes referred to as cyber warfare.

In 2018, a study by Center for Strategic and International Studies (CSIS), in partnership with McAfee, a leading cyber security firm concludes that close to $600 billion, nearly one percent of global GDP, is lost to cybercrime each year.

Cybercrimes / Cyber frauds in India

Cyber frauds refer to various forms of fraudulent activities that are committed using digital technologies, often with the intention to steal money, data, or sensitive information from individuals or organizations. These activities are typically carried out over the internet and can involve a wide range of tactics, from phishing and identity theft to online scams and hacking. Cyber fraud can have serious financial and reputational consequences for victims, ranging from individuals to large corporations. Ever since the introduction of cyber laws in India, the Information Technology Act (IT Act) 2000 covers different types of crimes under cyber law in India. The following types of cybercrimes are covered under the IT Act 2000.

Here are some common types of **cyber fraud**:

1. Phishing

Phishing is one of the most common forms of cyber fraud. It involves sending fraudulent emails, text messages, or phone calls pretending to be a legitimate entity (like a bank or an online service) to trick individuals into providing personal or financial information such as login credentials, credit card details, or social security numbers.

2. Identity Theft

In identity theft, cybercriminals steal someone's personal information to commit fraud, such as opening bank accounts, applying for loans, or making fraudulent purchases in the victim's name. This often begins with stealing personal details from data breaches, phishing scams, or social engineering.

3. Online Shopping Fraud

Cyber fraudsters often target online shoppers by creating fake e-commerce websites or fraudulent listings on legitimate platforms. They may sell non-existent products, charge for items but never deliver them, or create counterfeit products that are sold as originals.

4. Investment Scams

Investment frauds can be perpetrated through fake online investment opportunities or Ponzi schemes. Fraudsters may promise high returns with little or no risk, aiming to persuade individuals to transfer money into their accounts, which they then steal.

5. Ransomware Attacks

In a ransomware attack, cybercriminals encrypt a victim’s files or system and demand payment (usually in crypto currency) to restore access. These attacks can affect individuals, businesses, and even government agencies, causing significant disruption and financial loss.

6. Credit Card Fraud

Fraudsters can steal credit card details through various methods, including hacking into databases, phishing, or card skimming (where a small device is placed on ATMs or point-of-sale terminals to collect card information). They then use the stolen information to make unauthorized transactions.

7. Business Email Compromise (BEC)

BEC scams involve cybercriminals hacking into a legitimate business email account and using it to impersonate an executive or employee. They then request wire transfers or financial transactions to fraudulent accounts, often with the goal of stealing large sums of money.

8. Social Engineering

Social engineering refers to manipulating people into giving up confidential information by exploiting their trust, emotions, or curiosity. Cybercriminals often use tactics like creating a sense of urgency or pretending to be someone of authority.

9. Tech Support Scams

In these scams, fraudsters impersonate legitimate tech support agents (e.g., from Microsoft or Apple) and convince individuals that their computers are infected with malware or have other problems. They then ask for remote access to the victim's computer, stealing sensitive data or charging for fake repairs.

10. Crypto currency Fraud

With the rise of digital currencies, crypto currency-related frauds have become more prevalent. Fraudsters may promote fake investment schemes, fake wallets, or even conduct "pump-and-dump" schemes, where they artificially inflate the price of a crypto `currency and then sell it off to unsuspecting investors.

11. Online Dating Scams

In online dating scams, cybercriminals create fake profiles on dating websites and social media platforms to form relationships with victims. They then fabricate emotional stories to persuade the victim to send money, often under the guise of an emergency or a travel situation.

12. Fake Charities and Donation Scams

Cybercriminals often exploit the goodwill of people by creating fake charities or donation websites, especially after natural disasters or during times of crisis. They trick individuals into donating money for causes that do not exist.

13. SIM Swap Scams

In a SIM swap scam, fraudsters impersonate the victim and convince their mobile carrier to transfer the victim's phone number to a new SIM card. This allows them to intercept two-factor authentication (2FA) codes and gain access to accounts like email, social media, and bank accounts.

14. Malware and Trojans

Cyber fraudsters may use malware or trojan horses to infect a victim’s device and steal data, such as login credentials, financial information, or sensitive business data. Some malware is also used to create botnets for executing larger-scale attacks, like Distributed Denial of Service (DDoS) attacks.

Preventing Cyber Fraud:

To protect yourself from cyber frauds, it's crucial to adopt cyber security best practices:

- **Be cautious** when clicking on links or downloading attachments in unsolicited emails.
- **Enable two-factor authentication (2FA)** on your accounts to add an extra layer of security.
- **Keep your software** and devices up-to-date to protect against vulnerabilities.
- **Monitor bank statements** and credit reports regularly for suspicious activity.
- **Use strong passwords** and avoid reusing them across multiple accounts.

Cyber fraud is an ongoing and growing threat, and awareness and vigilance are key in preventing it.