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# 1. THE GENERAL CLAUSES ACT, 1897

**Q.NO.1 BRIEFLY DISCUSS THE NEED OF GENERAL CLAUSES ACT.**

**ANSWER:**

1. The General Clauses Act, 1897 (Act) was enacted on 11th March, 1897 to consolidate and extend the General Clauses Act, 1868 and 1887.
2. The General Clauses Act, 1897 contains 'definitions' of certain terms and general principles of interpretation.
3. The general definitions provided are applicable to all Central Acts and Regulations in the absence of definition of a particular word in any Central Act or Regulation, unless there is anything repugnant in the subject or context.
4. The General Clauses Act, 1897 also comes for a rescue in the absence of clear definition in the specific enactments and where there is a conflict between the pre-constitutional laws and post-constitutional laws.
5. The Act gives a clear suggestion for the conflicting provisions and differentiates the legislation according to the commencement and enforcement to avoid uncertainty.

**Example:** *Wherever the law provides that court will have the power to appoint, suspend or remove a receiver, the legislature simply enacted that wherever convenient the court may appoint receiver and it was implied within that language that it may also remove or suspend him. (Rayarappan V. Madhavi Amma, A.I.R. 1950 F.C. 140)*

**Q.NO.2 STATE THE OBJECT OR PURPOSE OF GENERAL CLAUSES ACT?**

**ANSWER:**

**OBJECT, PURPOSE AND IMPORTANCE OF THE GENERAL CLAUSES ACT**

**A.** The objects of the Act are several, namely:

1. To shorten the language of **Central Acts**;
2. To provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use;
3. To state explicitly certain convenient rules for the construction and interpretation of Central Acts;
4. To guard against slips and oversights by importing into every Act certain common form clauses, which otherwise ought to be inserted in every central Act.

The General Clauses Act, thus, makes provisions as to construction of General Acts and other laws of all- India application. Its importance, therefore, in point of the number of enactments to which it applies, is obvious.

## B. PURPOSE:

1. The purpose of the Act has been stated by the Supreme Court in the case of *The Chief Inspector of Mines v. Karam Chand Thapar*.

2. It stated that the purpose of this Act is to place in one single Statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and regulations.
3. The purpose of the Act is to avoid superfluity of language in statutes wherever it is possible to do so.

So, whatever General Clauses Act says whether as regards to the meaning of words or as regards legal principles, has to be read in every statute to which it applies.

**Example:** *A claim of the right to catch fish came under the consideration of court in Ananda Behera v. State of Orissa. The court tended to decide whether the right to catch or carry fish is a movable or immovable property.*

Note: Refer Immovable Property definition – Point 12 of Q.No.4

**Purpose-** to place in one single statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations

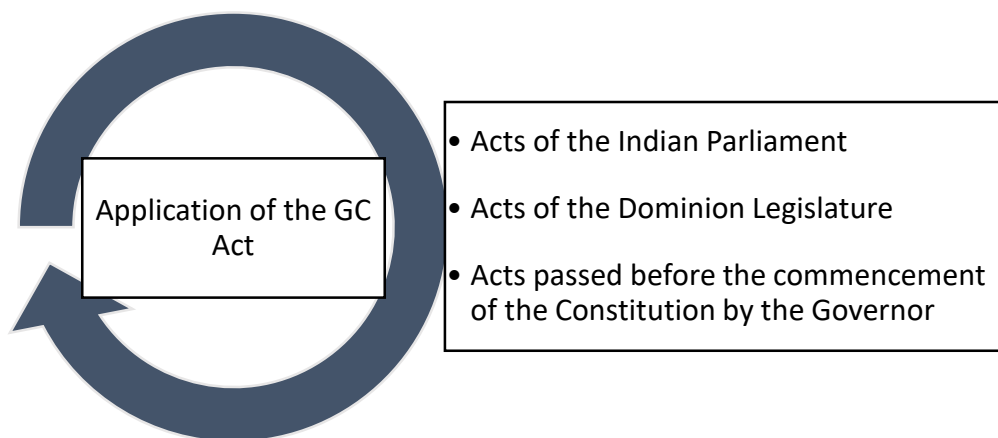
## Q.NO.3 DISCUSS THE APPLICABILITY OF GENERAL CLAUSES ACT.

### ANSWER:

#### APPLICATION OF THE GENERAL CLAUSES ACT

1. The Act does not define any “territorial extent” clause. Its application is primarily with reference to all Central legislation and also to rules and regulations made under a Central Act.
2. It is in a sense a part of every Central Acts or Regulations. If a Central Act is extended to any territory, the General Clauses Act would also deem to be applicable in that territory and would apply in the construction of that Central Act.
3. The Central Acts to which this Act **apply** are: —
  - a. Acts of the Indian Parliament (Central Act) along with the rules and regulations made under the Central Act;
  - b. Acts of the Dominion Legislature passed between the 15<sup>th</sup> August, 1947 and the 26<sup>th</sup> January, 1950;

- c. Acts passed before the commencement of the Constitution by the Governor-General in Council or the Governor-General acting in a legislative capacity. The Act does not define any “territorial extent” clause.



4. Article 367 of the Constitution of India authorises use of the General Clauses Act for the interpretation of constitution. Article 367 states that:
- “Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India”.**
5. The provisions of the General Clauses Act, 1897 are mere rules of interpretation and it applies automatically in each and every case. It all depends on the facts and circumstances of each case.
6. In many countries, Legislatures similar to the General Clauses Act are called Interpretation Acts. But, as the provisions of the General Clauses Act (whether relating to definitions and meanings of words and terms or dealing with construction and interpretation) are, so far as may be necessary, common to every Central Act, the title “General Clauses Act” is not less appropriate than the title “Interpretation Act”.
7. **The Supreme Court had observed in the case of Chief Inspector of Mines v. K. C. Thapar** “Whatever the General Clauses Act says, whether as regards the meanings of words or as regards legal principles, has to be read into every Act to which it applies.”
8. The scope and effect of each section **depends** upon the text of the particular section.

**Example:**

**Section 3** of the General Clauses Act, which deals with the definitional clause, applies to the General Clauses Act itself and to all Central Acts and Regulations made after the commencement of the General Clauses Act in 1897.

**Section 4** of the General Clauses Act which deals with the application of foregoing definitions to previous enactment, applies to Central Acts and after January 3, 1868 and to regulations made after January 14, 1887.

So, there is a difference in the applicability of each section as regards the statutes to which it applies.

9. The language of each section of the General Clauses Act has to be referred to ascertain to which class of instruments or enactment it applies. In certain cases, even if no section of the General Clauses Act applies to particular case, the court applies the general principles of the General Clauses Act.
10. It may also be noted that the Act also serves as a model for State General Clauses Act. It is evident that the State General Clauses Acts should conform to the General Clauses Act of 1897, for, otherwise, divergent rules of construction and interpretation would apply and as a result, great confusion might ensue.

#### **Q.NO.4 BASIC UNDERSTANDING OF LEGISLATION.**

##### **ANSWER:**

##### **SOME BASIC UNDERSTANDING OF LEGISLATION**

##### **A. PREAMBLE:**

1. Every Act has a preamble which expresses the scope, object and purpose of the Act.
2. It is the main source for understanding the intention of lawmaker behind the Act.
3. Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to construction of the Act.
4. The Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provisions of the Act but if the wording of the statute gives rise to doubts as to its proper construction,  
*Example: Where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.*

Note: The Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

**Example:** Preamble of the Negotiable Instruments Act, 1881 states - "An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheque."

**Example:** Preamble of the Companies Act, 2013 states – “An Act to consolidate and amend the law relating to companies.”

**B. ACT:**

1. Act is a bill passed by both the houses of Parliament and assented to by the President.
2. Whereas ‘Bill’ is a draft of a legislative proposal put in the proper form which, when passed by both houses of Parliament and assented to by the President becomes an Act. On getting assent from President, an Act is notified on the Official Gazettes of India.

**C. DEFINITIONS:**

1. Every Act contains definition part for the purpose of that particular Act and that definition part are usually mentioned in the Section 2 of that Act but in some other Acts, it is also mentioned in Section 3 or in other initial sections. Hence, definitions are defined in the Act itself.
2. The object of the definition clause is to avoid the necessity of frequent repetitions in describing all the subject matter to which the word or expression so defined is intended to apply.
3. However, if there may be words which are not defined in the definitions of the Act, the meaning of such words may be taken from General Clauses Act, 1897.
4. Words are defined in the respective Act. Sometimes, definitions are referred in other statutes. If words are not defined in the respective Acts, such words are to be taken from General Clauses Act.

**Example:** The word ‘Company’ used in the Companies Act, 2013, is defined in section 2(20) of the respective Act.

**Example:** Word ‘Security’ used in the Companies Act, 2013, is not defined in the respective Act. It has been defined under section 2(h) of the Securities Contracts (Regulations) Act, 1956. This word is equivalently applicable on the Companies Act, 2013. Similarly, the word ‘Digital signature’ used in the Companies Act, shall be construed as per the section 2(1) (p) of the Information Technology Act, 2000.

Clause 95 of Section 2 of the Companies Act, 2013 clearly says that –

Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

**Example:** The word ‘Affidavit’ used in section 7 during the incorporation of company, in the Companies Act, 2013, shall derive its meaning from the word ‘Affidavit’ as defined in the General Clauses Act, 1897.

#### D. “Means” and/or “include”:

1. Some definitions use the word “means”. Such definitions are exhaustive definitions and exactly define the term.

**Example:** Definition of ‘Company’ as given in section 2(20) of the Companies Act, 2013. It states, “Company” means a company incorporated under this Act or under any previous company law.

**Example:** Section 2(34) of the Companies Act, 2013 defines the term director as “director” means a director appointed to the Board of a company.

2. Some definitions use the word “include”. Such definitions do not define the word but are inclusive in nature. Where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive. The word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

**Example:** Word ‘debenture’ defined in section 2(30) of the Companies Act, 2013, states that “debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not”. This is a definition of inclusive nature.

**Example:** “Body Corporate” or “Corporation” includes a company incorporated outside India. [Section 2(11) of the Companies Act, 2013]

The above definition of Body Corporate does not define the term Body Corporate, but just states that companies incorporated outside India will also cover under the definition of Body Corporate, apart from other entities which are called as Body Corporate.

3. We may also find a word being defined as ‘means and includes’ such and such, here again the definition would be exhaustive.

**Example:** Share defined under section 2(84) of the Companies Act, 2013, states that “Share” means a share in the share capital of a company and includes stock.

On the other hand, if the word is defined ‘to apply to and include’, the definition is understood as extensive.

#### E. “Shall” and “May”:

1. The word ‘shall’ is used to raise a presumption of something which is mandatory or imperative while the word ‘may’ is used to connote something which is not mandatory but is only directory or enabling. However, sometimes the words “may and shall” can be interpreted interchangeably depending on the intention of the legislator.



**Example:** Section 3 of the Companies Act, 2013 states that “A company may be formed for any lawful purpose by.....”

Here the word used “may” shall be read as “shall”. Usage of word ‘may’ here makes it mandatory for a company for the compliance of section 3 for its formation.

**Example:** Section 21 of the Companies Act, 2013, provides that documents/proceeding requiring authentication or the contracts made by or on behalf of the company, may be signed by any Key Managerial Personnel or an officer of the company duly authorised by the Board in this behalf.

**2. Usage of the ‘may’ shall be read as ‘may’.**

The use of word ‘shall’ with respect to one matter and use of word ‘may’ with respect to another matter in the same section of a statute, will normally lead to the conclusion that the word ‘shall’ imposes an obligation, whereas word ‘may’ confers a discretionary power (Labour Commr., M.P.V. v. Burhanpur Tapti Mill, AIR, 1964 SC1687).

In Sainik Motors v. State of Rajasthan J. Hidayatullah observed “the word Shall is ordinarily mandatory but it is sometimes not so interpreted if the context or the intention otherwise demands.

Our approach in this text is to provide basic understanding of law while studying any legislation.

**F. PRELIMINARY [SECTION 1]**

1. Preliminary is the introductory part of any law which generally contains Short Title, extent, commencement, application etc.
2. The title although the part of the Act is in itself not an enacting provision. Every Act is given a title to carve out its own identity just like people are given their names to identify them.
3. The General Clauses Act, 1897 contains only short title in the Preliminary part of the Act.

**G. SHORT TITLE [Section 1(1)]:** This Act may be called the General Clauses Act, 1897.

**H. DEFINITIONS [SECTION 3]:** In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context

1. **ACT [Section 3(2)]:** ‘Act’, used with reference to an offence or a civil wrong, shall **include** a series of acts, and words which refer to acts done extend also to illegal omissions;
  - a. An act required to be done cannot necessarily mean a positive act only and may also include acts which one is precluded from doing from decree. This definition is based on sections 32 and 33 of the Indian Penal Code and applies to civil wrongs as well as crimes.

- b. 'Act' includes illegal omissions as well but it does not include an omission which is not illegal.

*In the illustration to section 36 of the Indian Penal Code, the act by which A causes Z's death consists of a series of acts, namely, the blows given in beating him, plus a series of illegal omissions, namely, wrongfully neglecting or refusing to supply him with food at proper times.*

- 2. **AFFIDAVIT [Section 3(3)]:** Affidavit shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. There are two important points derived from the above definition:

- a. Affirmation and declaration,
- b. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

- 3. **CENTRAL ACT [Section 3(7)]:** 'Central Act' shall mean an Act of Parliament, and shall include-
  - a. An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution\*, and
  - b. An Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;

*\*The date of the commencement of the Constitution is 26th January, 1950.*

- 4. **CENTRAL GOVERNMENT [Section 3(8)]:**

Central Government' shall-

- a. In relation to anything done before the commencement of the Constitution, mean the Governor General in Council, as the case may be; and shall include,-
  - i. In relation to functions entrusted under section 124(1) of the Government of India Act, 1935, to the Government of a Province, the Principal Government acting within the scope of the authority given to it under that subsection; and
  - ii. In relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under section 94(3) of the said Act; and
- b. In relation to anything done or to be done after the commencement of the constitution of the Constitution, mean the President; and shall include;-
  - i. In relation to function entrusted under clause (1) of the article of the Constitution, to the Government of a state, the State Government acting within the scope of the authority given to it under that clause;

- ii. In relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956\*, the Chief Commissioner or the Lieutenant Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and
  - iii. In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;
- \*The date of commencement of the Constitution (Seventh Amendment) Act, 1956 is 01st January, 1956.*

The new Constitution of India, which came into force on 26 January 1950, made India a sovereign democratic republic. The new republic was also declared to be a "Union of States". Between 1947 and 1950 the territories of the princely states were politically integrated into the Indian Union. The constitution of 1950 distinguished between three main types of states and a class of territories:

**Part A states**, which were the former governors' provinces of British India, were ruled by a Governor appointed by the President and an elected state legislature. The nine Part A states were Assam, Bihar, Bombay, Madhya Pradesh (formerly Central Provinces and Berar), Madras, Orissa, Punjab (formerly East Punjab), Uttar Pradesh (formerly the United Provinces), and West Bengal.

**Part B states**, which were former princely states or groups of princely states, governed by a Raj pramukh, who was usually the ruler of a constituent state, and an elected legislature. The Raj pramukh was appointed by the President of India. The eight Part B states were Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union (PEPSU), Rajasthan, Saurashtra, and Travancore-Cochin.

**Part C states** included both the former chief commissioners' provinces and some princely states, and each was governed by a chief commissioner appointed by the President of India. The ten Part C states were Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Cutch, Manipur, Tripura, and Vindhya Pradesh.

The sole **Part D** territory was the Andaman and Nicobar Islands, which were administered by a Lieutenant Governor appointed by the Central Government.

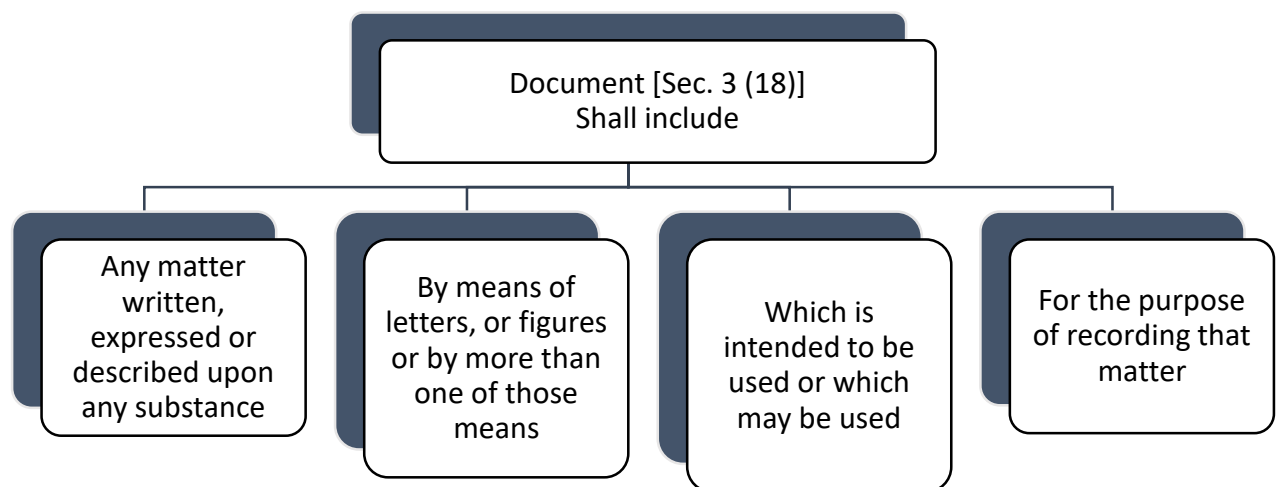
- 5. COMMENCEMENT [Section 3(13)]:** 'Commencement' used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have legal force and effect.

A Law cannot be said to be in force **unless** it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation.

The theory of a statute being “in operation in a constitutional sense” though it is not in fact in operation has no validity. [State of Orissa Vs. Chandrasekhar Singh Bhoi, Air 1970 SC 398]

- 6. DOCUMENT [Section 3(18)]:** ‘Document’ shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter.



Thus, the term “Document” includes any substance upon which any matter is written or expressed by means of letters or figures for recording that matter.

*For example, book, file, painting, inscription and even computer files are all documents.*

*However, it does not include Indian currency notes.*

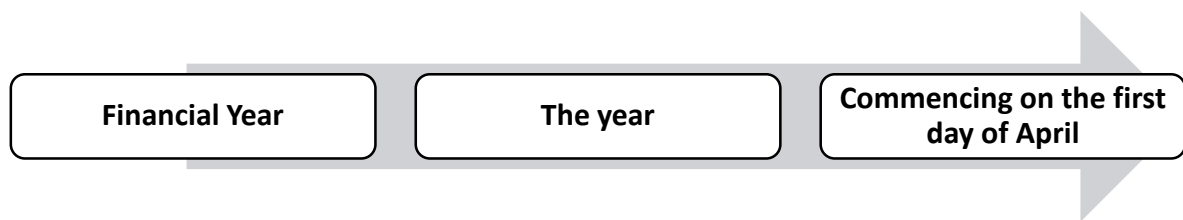
- 7. ENACTMENT [Section 2(19)]:** ‘Enactment’ shall include a Regulation (as hereinafter defined) and any Regulation of Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

Rules and regulation are nothing but a species of legislation. The legislature instead of enacting the same itself delegates the power to other person. Whatever is enacted by the delegate of legislature is also enactment.

- 8. FINANCIAL YEAR [Section 3(21)]:** Financial year shall mean the year commencing on the first day of April.

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per General Clauses Act, Year means calendar year which starts from January to December.

**Difference between Financial Year and Calendar Year:** Financial year starts from first day of April but Calendar Year starts from first day of January.



**9. GOOD FAITH [Section 3(22)]:**

- a. A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not;
- b. The question of good faith under the General Clauses Act, 1897 is one of fact. It is to determine with reference to the facts and circumstances of each case. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

*Example: An authority is not acting honestly where it had a suspicion that there was something wrong and did not make further enquiries*

- c. The term “good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context.

*In Maung Aung Pu Vs. Maung Si Maung, it was pointed out that the expression “good faith” is not defined in the Indian Contract Act, 1872 and the definition given here in the General Clauses Act, 1897 does not expressly apply the term on the Indian Contract Act.*

- d. The definition of good faith as is generally understood in the civil law and which may be taken as a practical guide in understanding the expression in the contract Act is that nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence.
- e. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

**10. GOVERNMENT [Section 3(23)]:** ‘Government’ or ‘the Government’ shall include both the Central Government and State Government.

The object of this definition is to make it clear that the word ‘Government’, frequently used as a convenient abbreviation, may be construed according to the context in either of the two senses indicated.

Government generally connotes three wings, the Legislature, the Executive and the Judiciary; but in a narrow sense it is used to connote the Executive only. Meaning to be assigned to that expression, therefore, depends on the context in which it is used.

**11. GOVERNMENT SECURITIES [Section 3(24)]:** 'Government securities' shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the Government of any Part B state.

**12. IMMOVABLE PROPERTY [Section 3(26)]:** 'Immovable Property' shall include:

- i. Land,
- ii. Benefits to arise out of land, and
- iii. Things attached to the earth, or
- iv. Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements:

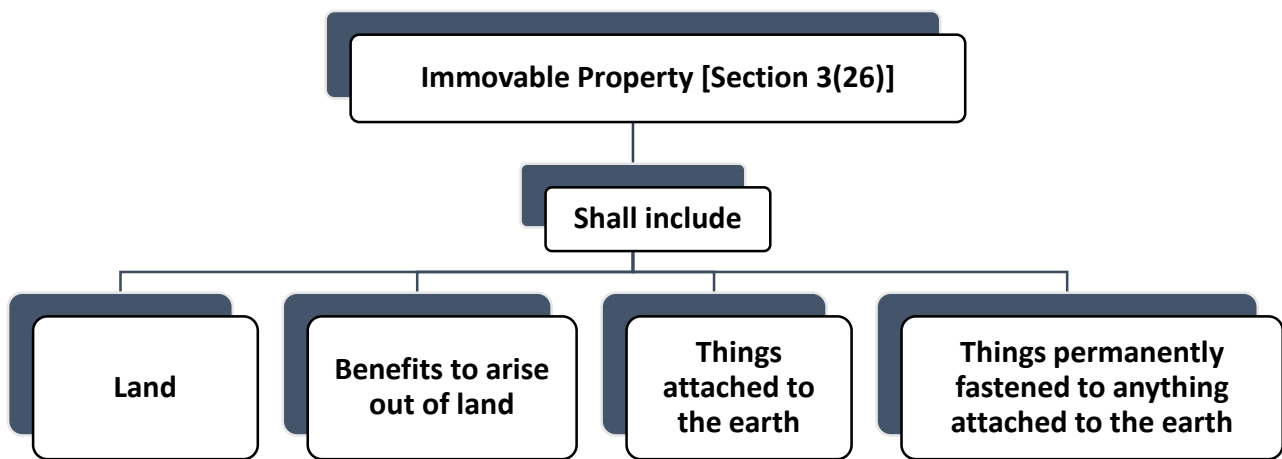
- a. Land,
- b. Benefits to arise out of land,
- c. Things attached to the earth and
- d. Things permanently fastened to anything attached to the earth.

Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

**Example:** In *Shantabai v. State of Bombay*, the Supreme Court pointed out that **trees must be regarded as immovable property** because they are attached to or rooted in the earth.

An agreement to convey forest produce like tendu leaves, timber, bamboos etc., the soil for making bricks, the right to build on and occupy the land for business purposes and the right to grow new trees and to get leaves from trees that grow in further are all included in the term immovable property.

**Example:** Right of way to access from one place to another, may come within the definition of Immovable property whereas right to drain of water is not immovable property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897.



**13. IMPRISONMENT [Section 3(27)]:** ‘Imprisonment’ shall mean imprisonment of either description as defined in the Indian Penal Code;

By section 53 of the Indian Penal Code, the punishment to which offenders are liable under that Code are imprisonment, which is of two descriptions, namely, rigorous, that is with hard labor and simple.

So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple.

**14. INDIAN LAW [Section 3(29)]:** ‘Indian law’ shall mean any Act, Ordinance, Regulation, rule, order, bye law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof or thereafter has the force of law in any Part A or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;

**f. MONTH [Section 3(35)]:** ‘Month’ shall mean a month reckoned according to the British calendar;

**g. MOVABLE PROPERTY [Section 3(36)]:** ‘Movable Property’ shall mean property of every description, except immovable property.

Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property.

**15. OATH [Section 3(37)]:** ‘Oath’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

**16. OFFENCE [Section 3(38)]:** ‘Offence’ shall mean any act or omission made punishable by any law for the time being in force.

Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.

**17. OFFICIAL GAZETTE [Section 3(39)]:** ‘Official Gazette’ or ‘Gazette’ shall mean:

- i. The Gazette of India, or
- ii. The Official Gazette of a state.

The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press.

**18. PERSON [Section 3(42)]: Person shall include:**

- i. Any company, or
- ii. Association, or
- iii. Body of individuals, whether incorporated or not

**19. REGISTERED [Section 3(49)]:** 'Registered' used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.

**20. RULE [Section 3(51)]:** 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;

**21. SCHEDULE [Section 3(52)]:** 'Schedule' shall mean a schedule to the Act or Regulation in which the word occurs;

**22. SECTION [Section 3(54)]:** 'Section' shall mean a section of the Act or Regulation in which the word occurs;

**23. SUB-SECTION [Section 3(61)]:** 'Sub-section' shall mean a sub-section of the section in which the word occurs;

**24. SWEAR [Section 3(62)]:** "Swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing.

**Note:** The terms "Affidavit", "Oath" and "Swear" have the same definitions in the Act.

**25. WRITING [Section 3(65)]:** Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms.

**26. YEAR [Section 3(66)]:** 'Year' shall mean a year reckoned according to the British calendar.



**Q.NO.5 DISCUSS APPLICATION TO FOREGOING DEFINITIONS TO PREVIOUS ENACTMENTS.**

**ANSWER:**

**APPLICATION TO FOREGOING DEFINITIONS TO PREVIOUS ENACTMENTS [Section 4]** - There are certain definitions in section 3 of the General Clauses Act, 1897 which would also apply to the Acts and Regulations made prior to 1897 i.e., on the previous enactments of 1868 and 1887. This provision is divided into two parts-

**1. APPLICATION OF TERMS/EXPRESSIONS TO ALL [CENTRAL ACTS] MADE AFTER 3<sup>RD</sup> JANUARY, 1868, AND TO ALL REGULATIONS MADE ON OR AFTER THE 14<sup>TH</sup> JANUARY, 1887-**

Here the given relevant definitions in section 3 of the following words and expressions, that is to say, 'affidavit', 'immovable property', 'imprisonment', 'month', 'movable property', 'oath', 'person', 'section', 'and 'year' apply also, unless there is anything repugnant in the subject or context, to all Central Acts made after the 3rd January, 1868, and to all Regulations made on or after the 14th January, 1887.

**2. APPLICATION OF TERMS/EXPRESSIONS TO ALL CENTRAL ACTS AND REGULATIONS MADE ON OR AFTER THE 14<sup>TH</sup> DAY OF JANUARY, 1887-** The relevant given definitions in the section 3 of the following words and expressions, that is to say, 'commencement', 'financial year', 'offence', 'registered', 'schedule', 'sub-section' and 'writing' apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

**3. APPLICATION OF CERTAIN DEFINITIONS TO INDIAN LAWS [SECTION 4A]-**

- a. The definitions in section 3 of the expressions 'Central Act', 'Central Government', 'Gazette', 'Government', 'Government Securities', 'Indian Law', and 'Official Gazette', 'shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.
- b. In any Indian law, references, by whatever form of words, to revenues of the Central Government or of any State Government shall, on and from the 1<sup>st</sup> day of April, 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be.

**Q.NO.6 DISCUSS GENERAL RULES OF CONSTRUCTION [SECTION 5 TO SECTION 13].**

**ANSWER:**

**GENERAL RULES OF CONSTRUCTION: [SECTION 5 TO SECTION 13]**

**A. COMING INTO OPERATION OF ENACTMENT [Section 5]:**

- a. Where any Central Act has not specifically mentioned a particular date to come into force,

- b. it shall be implemented on the day on which it receives the assent of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution and/or, of the President in case of an Act of Parliament.

**Example:** *The Companies Act, 2013 received assent of President of India on 29th August, 2013 and was notified in Official Gazette on 30th August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.*

**Note:** Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date.

**Example:** *SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Here, this regulation shall come into force on 1st January, 2016 rather than the date of its notification in the gazette.*

*The Supreme Court in A.K. Roy v. UOI, AIR 1982 SC 710, observed that where an Act empowers the government to bring any of the provisions into operation on any day which it deems fit, no Court can issue a mandamus with a view to compel the Government to bring the same into operation on particular day.*

*However, in Altemeis Rein v. UOI AIR 1988 SC 1768, it was held that if a sufficient time has elapsed since an Act or any of its provisions has been passed and it has not been brought into force (operation) by the Government, the Court through a writ can direct the Government to consider the question as to when the same should begin to operate.*

*In the case of State of Uttar Pradesh v. Mahesh Narain, AIR 2013 SC 1778, Supreme Court held that effective date of Rules would be when the Rules are published vide Gazette notification and not from date when the Rules were under preparation.*

*Also, law takes no cognizance of fraction of day, thus where an Act provides that it is to come into force on the first day of January, it will come into force on as soon as the clock has struck 12 on the night of 31st December.*

**c. PRESUMPTION AGAINST RETROSPECTIVITY**

All laws which affect substantive vested rights generally operate prospectively and there is a presumption against their retrospectivity till there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence, the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched.

**B. EFFECT OF REPEAL [Section 6]:** Where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- a. **Revive anything not enforced** or prevailed during the period at which repeal is effected or;
- b. **Affect the previous operation** of any enactment so repealed or anything duly done or suffered thereunder; or
- c. **Affect any right**, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- d. **Affect any penalty**, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- e. **Affect any inquiry, litigation or remedy** with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

*In State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act.*

*In Kolhapur Canesugar Works Ltd. v. Union of India, AIR 2000, SC 811, Supreme Court held that Section 6 only applies to repeal and not to omissions and applies when the repeal is of a Central Act or Regulation and not of a Rule.*

*In Navrangpura Gam Dharmada Milkat Trust v. Ramtaji Ramaji, AIR 1994 Guj 75: 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed. For the purpose of this section, the above distinction between the two is essential.*

**C. REPEAL OF ACT MAKING TEXTUAL AMENDMENT IN ACT OR REGULATION [Section 6A]-**

Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

**D. REVIVAL OF REPEALED ENACTMENTS [Section 7]-**

1. In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressed to state that purpose.

2. This section applies also to all Central Acts made after the third day of January, 1968 and to all Regulations made on or after the fourteenth day of January, 1887.

In other words, to revive a repealed statute, it is necessary to state an intention to do so.

#### **E. CONSTRUCTION OF REFERENCES TO REPEALED ENACTMENTS [Section 8]-**

1. Where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.
2. Where before the 15<sup>th</sup> day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

***Gauri Shankar Gaur v. State of U.P., AIR 1994 SC 169***, It was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

***Example:*** In section 115 JB of the Income Tax Act, 1961, for calculation of book profits, the Companies Act, 1956 are required to be referred. With the advent of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income Tax Act, 1961. On referring of section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013.

- #### **F. COMMENCEMENT AND TERMINATION OF TIME [Section 9]:** In any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

***Example:*** A company declares dividend for its shareholder in its Annual General Meeting held on 30/09/2022. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e., from 01/10/2022 to 30/10/2022. In this series of 30 days, 30/09/2022 will be excluded and last 30th day i.e., 30/10/2022 will be included.

**G. COMPUTATION OF TIME [Section 10]:** Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

*K. Soosalrathnam v. Div. Engineer, N.H.C. Tirunelveli, It was held by Madras High Court that since the last date of the prescribed period was subsequent to the date of notification, declared to be a holiday on the basis of the principles laid down in this section the last date of prescribed period for obtaining the tender schedules was extended to the next working day.*

**H. MEASUREMENT OF DISTANCES [Section 11]:** In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

**I. DUTY TO BE TAKEN PRO RATA IN ENACTMENTS [Section 12]:** Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Pro rata is a Latin term used to describe a proportionate allocation.

**Example:** Where several debtors are liable for the whole debt and each is liable for his own share or proportion only, they are said to be bound pro rata.

**Example:** When a company pays dividends to its shareholders, each investor is paid according to their holdings. If a company has 100 shares outstanding, for example, and issues a dividend of ₹ 2 per share, the total amount of dividends paid will be ₹ 200. No matter how many shareholders there are, the total dividend payments cannot exceed this limit. In this case, ₹ 200 is the whole, and the pro rata calculation must be used to determine the appropriate portion of that whole due to each shareholder.

Assume there are only four shareholders who hold 50, 25, 15, and 10 shares, respectively. The amount due to each shareholder is their pro rata share. This is calculated by dividing the ownership of each person by the total number of shares and then multiplying the resulting fraction by the total amount of the dividend payment.

The majority shareholder's portion, therefore, is  $(50/100) \times ₹ 200 = ₹ 100$ . This makes sense because the shareholder owns half of the shares and receives half of the total dividends. The remaining shareholders get ₹ 50, ₹ 30, and ₹ 20, respectively.

**J. GENDER AND NUMBER [Section 13]:** In all legislations and regulations, unless there is anything repugnant in the subject or context-

1. Words importing the masculine gender shall be taken to include females, and
2. Words in singular shall include the plural and vice versa.

In accordance with the rule that the words importing the masculine gender are to be taken to include females, the word men may be properly held to include women, and the pronoun 'he' and its derivatives may be construed to refer to any person whether male or female. So, the words 'his father and mother' as they occur in Section 125(1) (d) of the CrPC, 1973 have been construed to include 'her father and mother' and a daughter has been held to be liable to maintain her father unable to maintain himself.

But the general rule in Section 13(1) has to be applied with circumspection of interpreting laws dealing with matters of succession. Thus, the words "male descendants" occurring in Section 7 and Section 8 of the Chota Nagpur Tenancy Act, 1908 were not interpreted to include female descendants.

Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

**Q.NO.7 DISCUSS POWER AND FUNCTIONARIES [SECTION 14 TO SECTION 19].**

**ANSWER:**

**POWER AND FUNCTIONARIES [SECTION 14 TO SECTION 19]**

**A. POWER CONFERRED TO BE EXERCISABLE FROM TIME TO TIME [Section 14]:**

1. Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.
2. This section applies to all Central Acts and Regulations made on or after the 14<sup>th</sup> day of January, 1887. Relying on Section 14, the SC has held that the power under Section 51(3) of the States Reorganisation Act, 1956 can be exercised by the Chief Justice as and when the occasion arose for its exercise.

**B. POWER TO APPOINT TO INCLUDE POWER TO APPOINT EX-OFFICIO [Section 15]:**

Whereby any legislation or regulation, a power to appoint any person to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment, may be made either by name or by virtue of office.

Ex-officio is a Latin word which means by virtue of one's position or office. Provision under this section states that where there is a power to appoint, the appointment may be made by appointing ex-officio as well.

- C. POWER TO APPOINT TO INCLUDE POWER TO SUSPEND OR DISMISS [Section 16]:** The authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

*Order 40, Rule 1(a) of CPC, 1908, which authorises a court to appoint a receiver, has been construed to embrace power of removing a receiver.*

*Article 229(1) of the Constitution which empowers the Chief Justice to make appointment of officers and servants of a High Court has been interpreted to include a power to suspend or dismiss.*

- D. SUBSTITUTION OF FUNCTIONARIES [Section 17]:**

1. In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.
2. This section applies also to all Central Acts made after the 3<sup>rd</sup> day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887.

- E. SUCCESSORS [Section 18]:**

1. In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.
2. This section shall also apply to all Central Acts made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887.

- F. OFFICIAL CHIEFS AND SUBORDINATES [Section 19]:** A law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior. This section applies to all the Central Acts made after the third day of January, 1868, and to all Regulations made on or after the 14<sup>th</sup> day of January, 1887.

*In K.G. Krishnayya v. State, AIR 1959 it was held that it is not essential that same statutory authority that initiated a scheme under the Road Transport Corporation Act 1950, should also implement it. It is open to the successor authority to implement or continue the same.*

*Similarly, in case under the Preventive Detention Act, where there is a change in the Advisory Board after service of the detention order, the new Advisory Board can consider the case pending before the earlier board.*

**Q.NO.8 DISCUSS PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS.**

**ANSWER:**

**PROVISION AS TO ORDERS, RULES ETC. MADE UNDER ENACTMENTS [SECTION 20 TO SECTION 24]**

**A. CONSTRUCTION OF ORDERS, ETC., ISSUED UNDER ENACTMENTS [Section 20]:** Where by any legislation or regulation, a power to issue any notification, order, scheme, rule, form, or by-law is conferred, then expression used in the notification, order, scheme, rule, form or bye-law, shall, unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or regulation conferring power.

***Example:** The term ‘collector’ used in Rule 4 of the Land Acquisition (Companies) Rule, 1963, will have the same meaning as in Section 3(c) of the Land Acquisition Act, 1894.*

*In Subhash Ram Kumar v. State of Maharashtra, AIR 2003 SC 269, it was held that ‘Notification’ in common English acceptance mean and imply a formal announcement of a legally relevant fact and “notification publish in Official Gazette” means notification published by the authority of law. It is a formal declaration and should be in accordance with the declared policies or statute. Notification cannot be substituted by administrative instructions.*

**B. POWER TO ISSUE, TO INCLUDE POWER TO ADD TO, AMEND, VARY OR RESCIND**

**NOTIFICATIONS, ORDERS, RULES OR BYE-LAWS [Section 21]:** Where by any legislations or regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye laws so issued.

*In Rasid Javed v. State of Uttar Pradesh, AIR 2010 SC 2275, Supreme Court held that under Section 21 of the Act, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in the like manner.*

*In Shreesidhbal Steel Ltd. v. State of Uttar Pradesh, AIR 2011 SC 1175, Supreme Court held that power under section 21 of the Act is not so limited as to be exercised only once power can be exercised from time to time having regard to exigency of time.*

**C. MAKING OF RULES OR BYE-LAWS AND ISSUING OF ORDERS BETWEEN PASSING AND**

**COMMENCEMENT OF ENACTMENT [Section 22]:** Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with



respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

Note: It validates rules, bye laws and orders made before the coming into force of the enactment, provided they are made after its passing and as preparatory to the enactment coming into force.

#### **D. PROVISIONS APPLICABLE TO MAKING OF RULES OR BYE-LAWS AFTER PREVIOUS PUBLICATIONS**

**[SECTION 23]:** Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

1. The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
2. The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes.
3. There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
4. The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
5. The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-laws has been duly made.

**Section 23(5) raises a conclusive presumption** that after the publication of the rules in the Official Gazette, it is to be inferred that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.

It is also open to the authority publishing the draft and entitled to make the rules to make suitable changes in the draft before finally publishing them. It is not necessary for that authority to re-publish the rules in the amended form before their final issue so long as the changes made are ancillary to the earlier draft and cannot be regarded as foreign to the subject matter thereof.

#### **E. CONTINUATION OF ORDERS ETC., ISSUED UNDER ENACTMENTS REPEALED AND RE-ENACTED**

**[SECTION 24]:** Where any Central Act or Regulation, is, after, the commencement of this Act, repealed and re-enacted with or without modification, then **unless** it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, continue in force, and be deemed to have been made or issued under the notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the Scheduled District Act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

This section accords statutory recognition to the general principle that if a statute is repealed and re-enacted in the same or substantially the same terms, the re-enactment neutralizes the previous repeal and the provisions of the repealed Act which are re-enacted, continue in force without interruption.

If, however, the statute is repealed and re-enacted in somewhat different terms, the amendments and modifications operate as a repeal of the provisions of the repealed Act which are changed by and are repugnant to the repealing Act.

*In State of Punjab v. Harnek Singh, AIR 2002 SC 1074, It was held that investigation conducted by Inspectors of Police, under the authorization of notification issued under Prevention of Corruption Act, of 1947 will be proper and will not be quashed under new notification taking the above power, till the aforesaid notification is specifically superseded or withdrawn or modified under the new notification.*

*The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Rules made under the repealed Act must be deemed to continue in force by virtue of this section until superseded. Where an Act is repealed and re-enacted, the fact that the repealed Act stated that rules made under that Act shall have effect as if enacted in the Act does not mean that the rules automatically disappear with the repeal of the Act under which they are made and that there is no room for the application of this section.*

## Q.NO.9 MISCELLANEOUS [SECTION 25 TO SECTION 30].

### ANSWER:

#### A. RECOVERY OF FINES [Section 25]:

Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

#### B. PROVISION AS TO OFFENCE PUNISHABLE UNDER TWO OR MORE ENACTMENTS [Section 26]:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

**Note:** *Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once.*

According to the Supreme Court, a plain reading of section 26 shows that there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice for the same offence.

*In State of M.P. v. V.R. Agnihotri, AIR 1957 SC 592 it was held that when there are two alternative charges in the same trial, e.g., section 409 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act, the fact that the accused is acquitted of one of the charges will not bar his conviction on the other.*

#### C. PROVISIONS OF SECTION 26 AND ARTICLE 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

#### D. MEANING OF SERVICE BY POST [Section 27]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

1. Properly addressing
2. Pre-paying, and
3. Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

**United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181:** A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable nor based upon sound exposition of law.

**Jagdish Singh.v Natthu Singh, AIR 1992 SC 1604:** It was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

**Smt. Vandana Gulati v. Gurmeet Singh alias Mangal Singh, AIR 2013 All 69:** It was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved. Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

**E. CITATION OF ENACTMENTS [Section 3(28)]:**

1. In any Central Act or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and years thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.
2. In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

**F. SAVING FOR PREVIOUS ENACTMENTS, RULES AND BYE LAWS [Section 29]:** The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

**G. Application of Act to Ordinances [Section 30]:** In this Act the expression Central Act, wherever it occurs, except in Section 5 and the word 'Act' in clauses (9), (13), (25), (40), (43), (53) and (54) of section 3 and in section 25 shall be deemed to include Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861 or section 72 of the Government of India Act, 1915, or section 42 of the Government of India Act, 1935 and an Ordinance promulgated by the President under Article 123 of the Constitution.

## TEST YOUR KNOWLEDGE

### MCQ Based Questions

1. Which of the following is not an Immovable Property?
  - a. Land
  - b. Building
  - c. Timber
  - d. Machinery permanently attached to the land
  
2. Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which:
  - a. It receives the assent of the President
  - b. It receives the assent of the Governor General
  - c. It receives assent of both the houses of Parliament
  - d. It receives assent of the Prime Minister
  
3. An act or omission constitutes an offence under two enactments. Referring to the provisions of the General Clauses Act, 1897, state which among the following is correct in such a situation:
  - a. The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted last and not under the other enactment.
  - b. The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted first and not under the other enactment.
  - c. The offender shall be liable to be prosecuted and punished under both the enactments.
  - d. The offender shall be liable to be prosecuted and punished under that either or any of those enactments, but shall not be punished twice for the same offence.
  
4. Every Act has a ..... which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act.
  - a. Definition
  - b. Preamble
  - c. Affidavit
  - d. Document

5. What among the following could be considered in the term 'Immovable Property' as defined under section 3(26) of the General Clauses Act, 1897?

- i. The soil for making bricks
  - ii. Right to catch fish
  - iii. Right to drain water
  - iv. Doors and Windows of the house
- a. Only i. and iv.
  - b. Only i., ii. and iv.
  - c. Only i. and ii.
  - d. Only ii., iii. and iv.

**Answer to MCQ based Questions**

1.	c.	Timber
2.	a.	It receives the assent of the President
3.	d.	The offender shall be liable to be prosecuted and punished under that either or any of those enactments, but shall not be punished twice for the same offence
4.	b.	Preamble
5.	b.	Only i., ii. and iv.

### **DESCRIPTIVE QUESTIONS**

#### **Q.NO.1. WHAT IS “FINANCIAL YEAR” UNDER THE GENERAL CLAUSES ACT, 1897?**

##### **ANSWER:**

According to Section 3(21) of the General Clauses Act, 1897, ‘Financial Year’ shall mean the year commencing on the first day of April.

The term year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, Year means calendar year which starts from January to December.

Hence, in view of both the above definitions, it can be concluded that Financial Year is a year which starts from first day of April to the end of March.

#### **Q.NO.2. WHAT IS “IMMOVABLE PROPERTY” UNDER THE GENERAL CLAUSES ACT, 1897?**

##### **ANSWER:**

According to Section 3(26) of the General Clauses Act, 1897, ‘Immovable Property’ shall include:

- i. Land,
- ii. Benefits to arise out of land, and
- iii. Things attached to the earth, or
- iv. Permanently fastened to anything attached to the earth.

For example, trees are immovable property because trees are benefits arise out of the land and attached to the earth. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property.

#### **Q.NO.3. AS PER THE PROVISIONS OF THE COMPANIES ACT, 2013, A WHOLE TIME KEY MANAGERIAL PERSONNEL (KMP) SHALL NOT HOLD OFFICE IN MORE THAN ONE COMPANY EXCEPT ITS SUBSIDIARY COMPANY AT THE SAME TIME. REFERRING TO THE SECTION 13 OF THE GENERAL CLAUSES ACT, 1897, EXAMINE WHETHER A WHOLE TIME KMP CAN BE APPOINTED IN MORE THAN ONE SUBSIDIARY COMPANY?**

##### **ANSWER:**

Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of the General Clauses Act, 1897 provides that the word ‘singular’ shall include the ‘plural’, unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

**Q.NO.4. A NOTICE WHEN REQUIRED UNDER THE STATUTORY RULES TO BE SENT BY “REGISTERED POST ACKNOWLEDGMENT DUE” IS INSTEAD SENT BY “REGISTERED POST” ONLY. WHETHER THE PROTECTION OF PRESUMPTION REGARDING SERVING OF NOTICE BY “REGISTERED POST” UNDER THE GENERAL CLAUSES ACT IS TENABLE? REFERRING TO THE PROVISIONS OF THE GENERAL CLAUSES ACT, 1897, EXAMINE THE VALIDITY OF SUCH NOTICE IN THIS CASE.**

**ANSWER:**

**PROVISION:** As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- i. Properly addressing,
- ii. Pre-paying, and
- iii. Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

**ANALYSIS AND CONCLUSION:** Therefore, in view of the above provision, since the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by ‘registered post acknowledgement due’, then, if notice was sent by ‘registered post’ only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected. Furthermore, in similar case of In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181, a notice when required under the statutory rules to be sent by ‘registered post acknowledgement due’ is instead sent by ‘registered post’ only, the protection of presumption regarding serving of notice under ‘registered post’ under this section of the Act is neither tenable nor based upon sound exposition of law.

**Q.NO.5. X OWNED A LAND WITH FIFTY TAMARIND TREES. HE SOLD HIS LAND AND THE TIMBER (OBTAINED AFTER CUTTING THE FIFTY TREES) TO Y. X WANTS TO KNOW WHETHER THE SALE OF TIMBER TANTAMOUNT TO SALE OF IMMOVABLE PROPERTY. ADVISE HIM WITH REFERENCE TO PROVISIONS OF THE GENERAL CLAUSES ACT, 1897.**

**ANSWER:**

**PROVISION: “Immovable Property” [Section 3(26) of the General Clauses Act, 1897]:**

‘Immovable Property’ shall include:

- i. Land,
- ii. Benefits to arise out of land, and



- iii. Things attached to the earth, or
- iv. Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

**ANALYSIS AND CONCLUSION:** In the instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

**Q.NO.6. WHAT IS THE MEANING OF SERVICE BY POST AS PER PROVISIONS OF THE GENERAL CLAUSES ACT, 1897?**

**ANSWER:**

**“Meaning of Service by post”** [Section 27 of the General Clauses Act, 1897]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- i. Properly addressing
- ii. Pre - paying, and
- iii. Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

**Q.NO.7. KOMAL LTD. DECLARES A DIVIDEND FOR ITS SHAREHOLDERS IN ITS AGM HELD ON 27TH SEPTEMBER, 2022. REFERRING TO PROVISIONS OF THE GENERAL CLAUSES ACT, 1897 AND THE COMPANIES ACT, 2013, ADVICE:**

- i. THE DATES DURING WHICH KOMAL LTD. IS REQUIRED TO PAY THE DIVIDEND?
- ii. THE DATES DURING WHICH KOMAL LTD. IS REQUIRED TO TRANSFER THE UNPAID OR UNCLAIMED DIVIDEND TO UNPAID DIVIDEND ACCOUNT?

**ANSWER:**

**PROVISION:** As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

- i. **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e., from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and last 30th day, i.e., 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).
- ii. **Transfer of unpaid or unclaimed dividend:** As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA).

**CONCLUSION:** Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive).

**Q.NO.8. 'REPEAL' OF PROVISION IS DIFFERENT FROM 'DELETION' OF PROVISION. EXPLAIN AS PER THE GENERAL CLAUSES ACT, 1897.**

**ANSWER:**

In Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided that 'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

**Q.NO.9. THE COMPANIES ACT, 2013 PROVIDES THAT THE AMOUNT OF DIVIDEND REMAINED UNPAID/UNCLAIMED ON EXPIRY OF 30 DAYS FROM THE DATE OF DECLARATION OF DIVIDEND SHALL BE TRANSFERRED TO UNPAID DIVIDEND ACCOUNT WITHIN 7 DAYS FROM THE DATE OF EXPIRY OF SUCH PERIOD OF 30 DAYS. IF THE EXPIRY DATE OF SUCH 30 DAYS IS 30.10.2022, DECIDE THE LAST DATE ON OR BEFORE WHICH THE UNPAID/UNCLAIMED DIVIDEND AMOUNT SHALL BE REQUIRED TO BE TRANSFERRED TO A SEPARATE BANK ACCOUNT IN THE LIGHT OF THE RELEVANT PROVISIONS OF THE GENERAL CLAUSES ACT, 1897?**

**ANSWER:**

**PROVISION:** Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

**ANALYSIS AND CONCLUSION:** As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October, 2022 will be excluded and 6th November 2022 shall be included, i.e., 31st October, 2022 to 6th November, 2022 (both days inclusive).

**Q.NO.10. REFERRING TO THE PROVISIONS OF THE GENERAL CLAUSES ACT, 1897, FIND OUT THE DAY/ DATE ON WHICH THE FOLLOWING ACT/REGULATION COMES INTO FORCE. GIVE REASONS ALSO,**

1. AN ACT OF PARLIAMENT WHICH HAS NOT SPECIFICALLY MENTIONED A PARTICULAR DATE.
2. THE SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (FIFTH AMENDMENT) REGULATIONS, 2015 WAS ISSUED BY SEBI VIDE NOTIFICATION DATED 14TH AUGUST, 2015 WITH EFFECT FROM 1ST JANUARY, 2016.

**ANSWER:**

**PROVISION:**

1. According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.
2. If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date.

**ANALYSIS AND CONCLUSION:** Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the Gazette.

## 2. INTERPRETATION OF STATUTES

1. As a Chartered Accountant in practice or in service, you will be required to read various laws and statutes. Often these enactments may be capable of more than one interpretation. It is in this context that awareness of interpretation as a skill becomes relevant.
2. This chapter will enable you to understand certain rules of interpretation as well as the various internal and external aids to interpretation. We shall also discuss the art of interpreting deeds and documents.
3. This study relates to **'Interpretation of Statutes, Deeds and Documents'**. So, it is necessary that we understand what these words and certain other terms denote.

**Q.NO.1 DEFINE THE TERM STATUTE.**

**ANSWER:**

**STATUTE:**

1. To the common man the term **'Statute'** generally means laws and regulations of various kinds irrespective of the source from which they emanate.
2. The word "statute" is now synonymous with an Act of Parliament. Broadly speaking it is the written law that the legislature establishes directly.  
*Maxwell defines "statute" as the will of the legislature.*  
*In India 'statute' means an enacted law i.e., the law either enacted by the Parliament or by the state legislature.*  
*In India the constitution provides for the passing of a bill in Lok Sabha and Rajya Sabha and finally after obtaining the assent of the President of India to it, it becomes an Act of Parliament or Statute.*
3. Thus, that which originates through legislation is called "enacted law" or statute as against "unenacted" or "unwritten law". However, the Constitution does not use the terms 'statute' though one finds the terms 'law' used in many places.
4. The term 'law' is defined as including any ordinance, order, bye- law, rule, regulation, notification, and the like. In short 'statute' signifies written law as against unwritten law.

## Q.NO.2 DEFINE THE TERM DOCUMENT, INSTRUMENT, DEED.

### ANSWER:

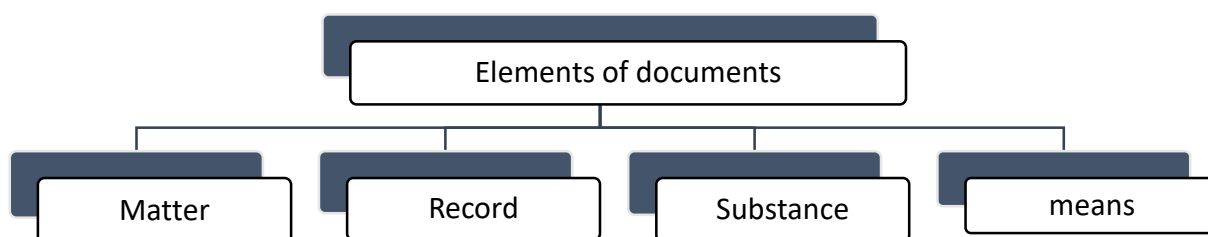
#### A. DOCUMENT:

1. A document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form.
2. Section 3 of the Indian Evidence Act, 1872 states that 'Document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

**Example:** A writing is a document; any words printed, photographed are documents.

Section 3(18) of the General Clauses Act, 1897 states that the term 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording this matter.

Generally, documents comprise of following four elements:



- Matter**—This is the first element. Its usage with the word “any” shows that the definition of document is comprehensive.
- Record**—This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.
- Substance**—This is the third element on which a mental or intellectual elements comes to find a permanent form.
- Means**—This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.

#### B. INSTRUMENT:

1. Instrument means a formal legal document which creates or confirms a right or records a fact.
2. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form.

3. It also means a formal legal document having legal effect, either as creating a right or liability or as affording evidence of it.
4. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

**C. Deed:**

1. Deed' as an instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition.
2. Simply stated deeds are instruments though all instruments may not be deeds. However, in India no distinction seems to be made between instruments and deeds.

**Q.NO.3 WHAT IS MEANT BY INTERPRETATION AND STATE ITS SIGNIFICANCE?**

**ANSWER:**

**INTERPRETATION:**

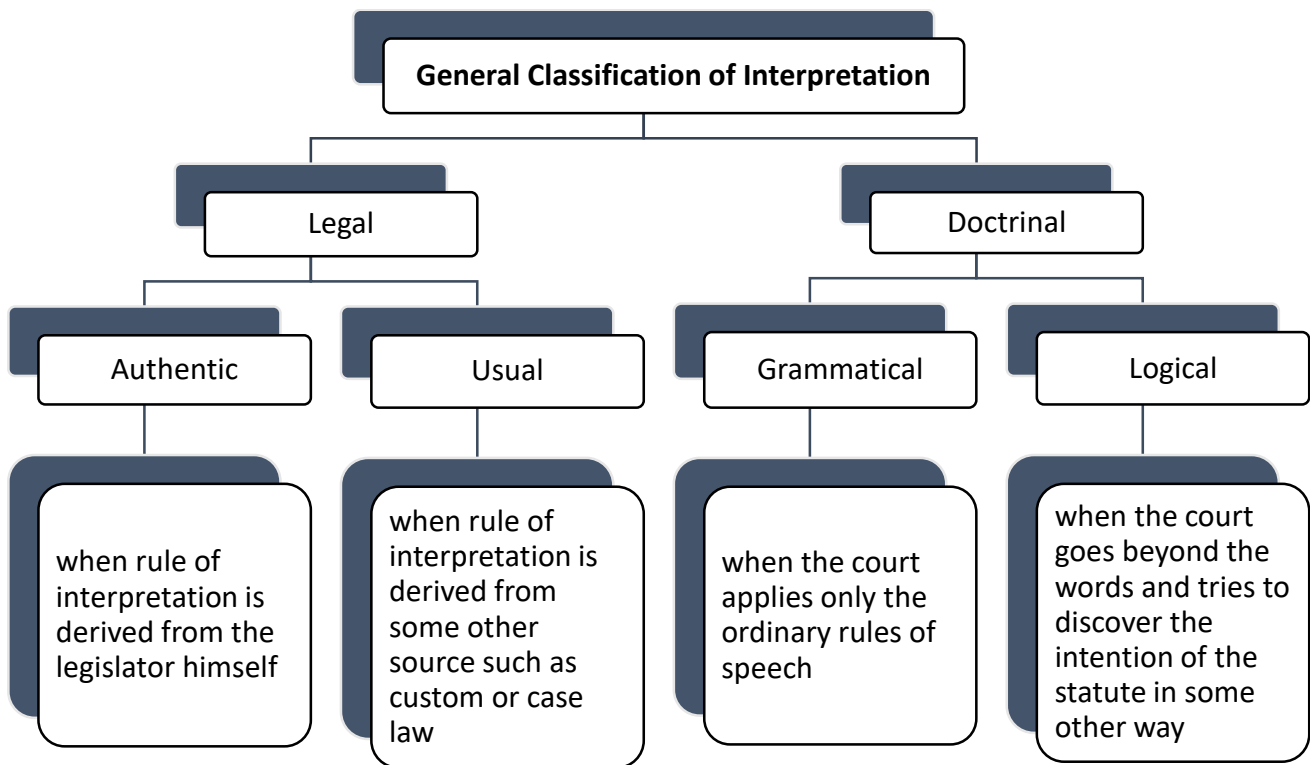
1. Interpretation is meant the process by which the Courts seek to ascertain the meaning of the legislature through the medium of the words in which it is expressed.
2. Interpretation is the process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained.
3. Interpretation is resorted to in order to resolve any ambiguity in the statute. It is the art of finding out the true sense of words that is to say the sense in which their author intended to convey the subject matter.

**IMPORTANCE OF INTERPRETATION:**

1. Interpretation, thus, process of considerable significance. In relation to statute law, interpretation is of importance because of the inherent nature of legislation as a source of law.
2. The process of statute making and the process of interpretation of statutes take place separately from each other, and two different agencies are concerned.
3. Interpretation serves as the bridge of understanding between the two.

**CLASSIFICATION OF INTERPRETATION:**

1. JOLOWICZ: Interpretation is classified into Legal or Doctrinal
2. FITZERALD: Interpretation is classified into Literal or Functional



#### Q.NO.4 DEFINE JOLOWICZ VERSION OF INTERPRETATION?

##### **ANSWER:**

**Jolowicz**, in his **Lectures on Jurisprudence** (1963 ed., p. 280) speaks of interpretation thus:

Interpretation is usually said to be either 'legal' or 'doctrinal'. It is 'legal' when there is an actual rule of law which binds the Judge to place a certain interpretation of the statute. It is 'doctrinal' when its purpose is to discover 'real' and 'true' meaning of the statute.

**1. 'Legal' interpretation is sub-divided into 'authentic' and 'usual'.**

- a. It is 'authentic' when rule of interpretation is derived from the legislator himself;
- b. It is 'usual' when it comes from some other source such as custom or case law.

Thus, when Justinian ordered that all the difficulties arising out of his legislation should be referred to him for decision, he was providing for 'authentic' interpretation, and so also was the Prussian Code, 1794, when it was laid down that Judges should report any doubt as to its meaning to a Statute Commission and abide by their ruling.

**2. 'Doctrinal' interpretation may again be divided into two categories: 'grammatical' and 'logical'.**

- a. It is 'grammatical' when the court applies only the ordinary rules of speech for finding out the meaning of the words used in the statute.
- b. On the other hand, when the court goes beyond the words and tries to discover the intention of the statute in some other way, then it is said resort to what is called a 'logical' interpretation.

#### Q.NO.5 DEFINE FITZERALD VERSION OF INTERPRETATION?

##### ANSWER:

According to **Fitzerald**, interpretation is of two kinds – ‘literal’ and ‘functional’.

1. The **literal interpretation** is that which regards conclusively the verbal expression of the law. It does not look beyond the ‘literalis’. The duty of the Court is to ascertain the intention of the legislature and seek for that intent in every legitimate way, but first of all in the words and the language employed.
2. **Functional’ interpretation**, on the other hand, is that which departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature. In other words, it is necessary to determine the relative claims of the letters and the spirit of the enacted law.

In all ordinary cases, the Courts must be content to accept the letter of the law as the exclusive and conclusive evidence of the spirit of the law (**Salmon: Jurisprudence**, 12th ed., pp. 131-132). It is essential to determine with accuracy the relations which subsist between the two methods.

#### Q.NO.6 DEFINE THE TERM CONSTRUCTION ALSO STATE THE DIFFERENCES BETWEEN INTERPRETATION AND CONSTRUCTION?

##### ANSWER:

**A. CONSTRUCTION** as applied to a written statute or document means to determine from its known elements its true meaning or the intention of its framers. Construction involves drawing conclusions beyond the actual expressions used in the text. This is done by referring to other parts of the enactment and the context in which the law was made. Thus, when you construe a statute you are attempting to ascertain the intention of the legislature.

##### **B. DIFFERENCE BETWEEN INTERPRETATION AND CONSTRUCTION:**

1. Interpretation is the art of ascertaining the meaning of words and the true sense in which the author intended that they should be understood.
2. It is the drawing of conclusions from a statute that lie beyond the direct expression of the words used therein. [Bhagwati Prasad Kedia v. C.I.T, (2001)]
3. It is the duty of the courts to give effect to the meaning of an Act when the meaning can be equitably gathered from the words used. Words of legal import occurring in a statute which have acquired a definite and precise sense, must be understood in that sense. (State of Madras v. Gannon Dunkerly Co. AIR 1958)



4. Thus, where the Court adheres to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here, the court would be resorting to 'construction'. Conclusions drawn by means of construction are within the spirit though not necessarily within the letter of the law.
5. In practice construction includes interpretation and the terms are frequently used synonymously.

**Q.NO.7 DISCUSS THE IMPORTANCE OR NEED OF INTERPRETATION/ CONSTRUCTION.**

**ANSWER:**

1. While every care is taken to ensure that laws framed for passing by the legislature are free from ambiguity and absurdity, it is scarcely possible to express them in such terms as shall be free from all ambiguity. Such a degree of precision is perhaps unattainable.
2. The legislators cannot foresee all contingencies at the time of the passing of the law. This is further compounded by the want of views sufficiently comprehensive as to the "intention of the legislation.
3. It is quite possible that the words of a statute are vague, ambiguous or reasonably capable of more than one meaning. It is then that a need for interpretation or construction arises. Hence rules of interpretation are required in order to ensure just and uniform decisions.

*No better explanation can be given for the need for interpretation than that provided by Denning L.J., that ultimate repository of legal erudition:*

*It is not within human powers to foresee the manifold sets of facts which may arise; and that, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges' trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.*

4. It has been rightly said that a statute is the will of the legislature. The fundamental rule of interpretation of a statute is that it should be expounded according to the intent of those that made it.
5. In the event of the words of the statute being precise and unambiguous in themselves it is only just necessary to expound those words in their natural and ordinary sense. Thus far and no further. This is because these words distinctly indicate the intention of the legislature.
6. The purpose of interpretation is to discern the intention which is conveyed either expressly or impliedly by the language used. If the intention is express, then the task becomes one of 'verbal construction' alone. But in the absence of any intention being expressed by the statute on the question to which it gives rise and yet some intention has to be, of necessity, imputed to the legislature regarding it, then the interpreter has to determine it by inference based on certain legal principles.
7. In such a case, the interpretation has to be one which is commensurate with the public benefit. Consequently, if a statute levies a penalty without expressly mentioning the recipient of the penalty, then, by implication, it goes to the coffers of the State.

#### **Q.NO.8 INTERPRETATION MAY BE EITHER 'GRAMMATICAL' OR 'LOGICAL'. COMMENT.**

##### **ANSWER:**

Interpretation may be either '**grammatical**' or '**logical**'.

1. Grammatical or literal interpretation concerns itself with the words and expressions used in a statute and only that. In other words, the emphasis in grammatical interpretation is on "what the law says."
2. The Logical interpretation, on the other hand, seeks to ascertain "what the law means".

**absoluta sententia  
expositore non  
indiget**

Normally, grammatical interpretation is the only approach to be adopted.

The court cannot add to or modify a single word or phrase used in an enactment. This is based on the principle of absoluta sententia expositore non indiget meaning "clear words need no explanation."

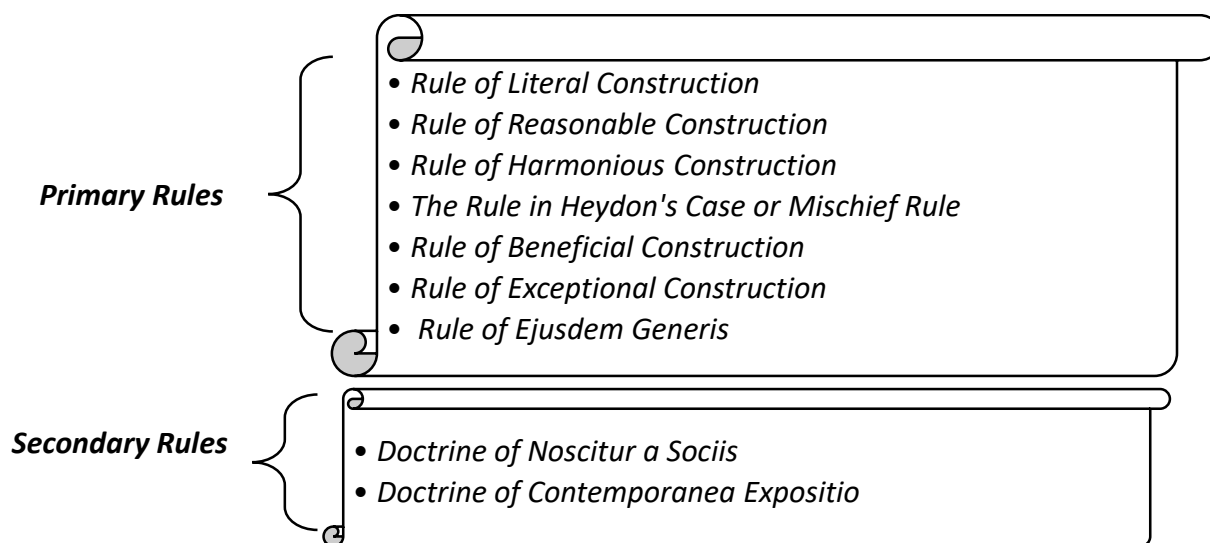
However, where the grammatical interpretation leads to a manifest absurdity or is logically flawed, the courts can adopt the logical interpretation that will advance the true purpose or intention of the legislation rather than reduce it to a futility.

Where there are two constructions reasonably applicable to a provision, one of which is mechanical and based on the rules of grammar, while the other is vibrant and more in tune with the basic intention of the Act of Parliament, the latter shall be preferred to the former. (Arora v. State of UP)

**But where the law is clear and unambiguous the court shall construe it based on the strict grammatical meaning.** The law when clear shall be strictly applied, however harsh or burdensome it may be. The court shall administer the law as it stands and shall not attempt an alternative interpretation based on logic that is ostensibly just or reasonable.

### ***RULES OF INTERPRETATION/ CONSTRUCTION***

*Over a period, certain rules of interpretation/construction have come to be well recognized. However, these rules are considered as guides only and are not inflexible. These rules can be broadly classified as follows:*



### **Q.NO.9 DISCUSS RULE OF LITERAL INTERPRETATION.**

#### **ANSWER:**

#### **RULE OF LITERAL CONSTRUCTION:**

1. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself.
2. It is a cardinal rule of construction that a statute must be construed literally and grammatically giving the words their ordinary and natural meaning.
3. When the language of a statute is plain and unambiguous it is not open to the courts to adopt any other hypothetical construction simply with a view to carrying out the supposed intention of the legislature.
4. Thus, it is the primary duty of the court to interpret the words used in legislation according to their ordinary grammatical meaning in the absence of any ambiguity or doubt.
5. This principle is contained in the Latin maxim “absoluta sententia expositore non indiget” which literally means “an absolute sentence or preposition needs not an expositor”. In other words, **plain words require no explanation.**

6. Sometimes, occasions may arise when a choice has to be made between two interpretations – one narrower and the other wider or bolder. In such a situation, if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.

*When we talk of disclosure of ‘the nature of concern or interest, financial or otherwise’ of a director or the manager of a company in the subject-matter of a proposed motion (as referred to in section 102 of the Companies Act, 2013), we have to interpret in its broader sense of referring to any concern or interest containing any information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon. What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them. Here a restricted narrow interpretation would defeat the very purpose of the disclosure.*

7. Similarly, when a matter which should have been, but has not been, provided for in a statute cannot be supplied by courts as to do so would amount to legislation and would not be construction.
8. This Rule of literal interpretation can be read and understood under the following headings:

**a. Natural and grammatical meaning:**

Statutes are to be first understood in their natural, ordinary, or popular sense and must be construed according to their plain, literal and grammatical meaning.

If there is an inconsistency with any express intention or declared purpose of the statute, or it involves any absurdity, repugnancy, inconsistency, the grammatical sense must then be modified, extended or abridged only to avoid such an inconvenience, but no further. [(State of HP v. Pawan Kumar (2005)]

**Example:** *In a question before the court whether the sale of betel leaves was subject to sales tax. The Supreme Court held that betel leaves could not be given the dictionary, technical or botanical meaning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use, it must be understood in its popular sense by which people are conversant with it as also the meaning which the statute dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to sale tax. (Ramavtar v. Assistant Sales Tax Officer, AIR 1961 SC 1325)*

- b. Technical words are to be understood in technical sense:** This point of literal construction is that technical words are understood in the technical sense only.

*In construing the word 'practice' in the Supreme Court Advocates Act, 1951, it was observed that practice of law generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party. When legislature confers upon an advocate the right to practice in a court, it is legitimate to understand that expression as authorizing him to appear and plead as well as to act on behalf of suitors in that court. (Ashwini Kumar Ghose v. Arabinda Bose AIR 1952 SC 369)*

#### Q.NO.10 DISCUSS RULE OF REASONABLE CONSTRUCTION.

##### ANSWER:

##### RULE OF REASONABLE CONSTRUCTION:

1. According to this Rule, the words of a statute must be construed '**ut res magis valeat quam pereat**' meaning thereby that words of statute must be construed so as to lead to a sensible meaning.
2. Generally, the words or phrases of a statute are to be given their ordinary meaning. It is only when the words of an enactment are capable of two constructions that there is scope for interpretation or construction. Then, that interpretation, which furtheres the object, can be preferred to that which is likely to defeat or impair the policy or object.
3. Similarly, when the grammatical interpretation leads to a manifest absurdity then the courts shall interpret the statute so as to resolve the inconsistency and make the enactment a consistent whole.
4. This principle is based on the rule that the words of a statute must be construed reasonably so as to give effect to the enactment rather than reduce it to a futility.
5. This principle is contained in the Latin maxim, **Interpretatio fienda est ut res magis valeat quam pereat.** In short, Statutes should be construed grammatically.
6. Thus, when grammatical interpretation leads to certain absurdity, it is permissible to depart there from and to interpret the provision of the statutes in a manner so as to avoid that absurdity. This departure from the grammatical construction is permissible only to the extent it avoids such absurdity and no further. This is also called the Golden Rule of Interpretation.

**Ut res magis valeat  
quam pereat**

**Interpretatio fienda est  
ut res magis valeat  
quam pereat**

## Q.NO.11 DISCUSS RULE OF HARMONIOUS CONSTRUCTION.

### ANSWER:

#### **RULE OF HARMONIOUS CONSTRUCTION:**

1. It is a recognized rule of interpretation of statutes and deeds that the expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute.
2. The opposite of “harmony” is conflict. Thus, this rule is applied when there is a conflict between two provisions of a statute. Similarly, this Rule comes to our aid when there is conflict between the provisions of a statute and the object, which the legislature had in view.
3. It is a basic rule of interpretation that if it is possible to avoid a conflict between two provisions on a proper construction thereof, then it is the duty of the court to so construe them that they are in harmony with each other.
4. The statute must be read as a whole and every provision in the statute must be construed with reference to the context and other clauses in the statute so as to make the statute a consistent enactment and not reduce it to a futility.
5. But where it is not possible to give effect to both the provisions harmoniously, collision may be avoided by holding that one section which is in conflict with another merely provides for an exception or a specific rule different from the general rule contained in the other.
6. **A specific rule will override a general rule.** This principle is usually expressed by the maxim, **“generalia specialibus non derogant”**.
7. In some cases, the statute may give a clear indication as to which provision is subservient and which overrides. This is done by the use of the terms “subject to”, “notwithstanding” and “without prejudice”.

**generalia  
specialibus non  
derogant**

#### **a. Subject to**

The impact of the words “subject to” when used in a provision is that when the same subject matter is covered by that provision and by another provision or enactment subject to which it operates and there is a conflict between them, then the latter will prevail over the former. This limitation cannot operate, when the subject matter of the two provisions is not the same. Thus, a clause that uses the words “subject to” is subservient to another.

**Example:** Section 13(2) of the Companies Act, 2013, “Any change in the name of a company shall be subject to the provisions of sub-sections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing.”

*This implies that the any change in the name of the company has to in accordance with the provisions of the section 4(2) and section 4(3) of the Companies Act, 2013.*

## b. Notwithstanding

**non-obstante**

A clause that begins with the words “notwithstanding anything contained”

is called a **non-obstante** clause. Unlike the “subject to” clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein. (K. Parasurammaiah v. Pakari Lakshman AIR 1965 AP 220)

**Example:** A notwithstanding clause can operate at four levels.

	Clause	Effect	Example
1.	Notwithstanding anything contained in another section or sub– section of that statute.	The clause will override such other section(s) / sub– section(s)	Section 42(11) of the Companies Act, 2013 “(11) Notwithstanding anything contained in subsection (9) and sub– section (10), any private placement issue not made in compliance of the provisions of subsection (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.”
2.	Notwithstanding anything contained in a statute.	The clause will override the entire enactment.	Section 8(8) of the Companies Act, 2013 “(8) ..... amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution.....”
3.	Notwithstanding anything contained in specific section(s) or sub–section(s) or all the provisions	The clause will prevail over the other enactment.	(i) Section 7A of the Securities Contracts (Regulation) Act, 1956 “...and on such publication, the rules as approved by the Central Government shall be deemed to have been validly made notwithstanding

	<i>contained in another statute.</i>		<i>anything contained in the Companies Act, 1956.” (ii) Section 183 of the Companies Act, 2013 “183(1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.”</i>
<b>4.</b>	<i>Notwithstanding anything contained in any other law for the time being in force.</i>	<i>The clause will override all other laws.</i>	<p><b>(i)</b> <i>Section 8 of the Securities Contracts (Regulation) Act, 1956 “... the rules so made are amended shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force, have effect...”.</i></p> <p><b>(ii)</b> <i>Section 243(1B) of the Companies Act, 2013 “Notwithstanding anything contained in any other provisions of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other officer connected with the conduct and</i></p>



			<i>management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of officer.”</i>
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**c. Without prejudice**

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions the particular provisions would not restrict or circumscribe the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.

**Example:** Section 4(3) of the Companies Act, 2013, “Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains.....”

*This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.*

**Q.NO.12 DISCUSS RULE IN HEYDON’S CASE OR MISCHIEF RULE.**

**ANSWER:**

**THE RULE IN HEYDON’S CASE OR MISCHIEF RULE:**

1. Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in Heydon’s case.
2. The intention of this rule is always to make such construction as shall suppress the mischief and advance the remedy according to the true intention of the legislation.
3. In Heydon’s case (1584 3 Co Rep 79 P. 637), it was laid down by the Barons of the Exchequer that “for the true and sure interpretation of all Statutes in general, four things are to be discerned and considered.
  - i. What was the law before the making of the act?
  - ii. What was the defect, mischief, hardship caused by the earlier law?
  - iii. How does the act of Parliament seek to resolve or cure the mischief or deficiency?
  - iv. What are the true reasons for the remedy?

And then the courts shall make such construction as will suppress the mischief and advance the remedy and suppress the subtle inventions and evasions for the continuance of the mischief.”

4. Thus, applying Heydon's case courts will be bound to look at the state of the law at the time of the passing of the enactment and not only as it then stood, but under previous Statutes too.

*In India, in Kanai Lal Paramnidhi, 1957 S.C.A 1033, the Hon'ble Supreme Court held that the observations made by the Chief Baron and Barons of the Exchequer in Heydon's Case 1584 3 Co Rep. 79, have been so frequently cited with approval by the courts administering provisions of welfare enactments that they have now attained the status of a classic on the subject and their validity cannot be challenged.*

*But the mischief rule can be applied only if there is any ambiguity in the present law. (CIT Vs. Sodra Devi, 1957 SC 823 at 832 – 835).*

**Example 6:** Application of this mischief rule is also well-found in the construction of section 2(d) of the Prize Competition Act, 1955. This section defines 'prize competition' as "any competition in which prizes are offered for the solution of any puzzle based upon the building up arrangement, combination or permutation of letters, words or figures". The issue was whether the Act applies to competitions which involve substantial skill and are not in the nature of gambling. Supreme Court, after referring to the previous state of law, to the mischief that continued under that law and to the resolutions of various states under Article 252(1) authorizing Parliament to pass the Act has stated as follows: "having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend on any substantial degree of skill." (RMD Chamarbaugwalla V. Union of India, AIR 1957 SC 628).

#### **Q.NO.13 DISCUSS RULE OF BENEFICIAL CONSTRUCTION.**

##### **ANSWER:**

##### **RULE OF BENEFICIAL CONSTRUCTION:**

1. This is strictly speaking not a rule but a method of interpreting a provision liberally so as to give effect to the declared intention of the legislation.
2. Beneficial construction will be given to a statute, which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past.
3. In such cases it is permissible to give an extended meaning to words or clauses in enactments. But this can only be done when two constructions are reasonably possible and not when the words in a statute are quite unequivocal.

## Q.NO.14 DISCUSS RULE OF EXCEPTIONAL CONSTRUCTION.

### ANSWER:

#### RULE OF EXCEPTIONAL CONSTRUCTION:

We have already seen that the words of a statute must be construed so as to give a sensible meaning to them if possible. They ought to be construed ut res magis valeat quam pereat.

In fact, Maxwell goes to the extent of stating, “notwithstanding the general rule that full effect must be given to every word, yet if no sensible meaning can be given to a word or phrase, or if it would defeat the real object of the enactment, it may, or rather it should, be eliminated.”

#### 1. “And” and “Or”

“And” is a particle joining words and sentences and expressing the relation of connection or addition. The word “and” is normally conjunctive. In its conjunctive sense the word is used to conjoin words, clauses or sentences, signifying that something is to follow in addition to that, which precedes.

The word “or” is a disjunctive particle that marks an alternative, generally corresponding to “either”, as “either this or that”.

Can “and” be read as “or” and vice versa?

The word “and” is normally conjunctive, while “or” is disjunctive. But sometimes “and” is read as “or” and vice versa to give effect to the manifest intention of the legislature as disclosed from the context. (Municipal Council v. Bishandas Nathumal AIR 1969 MP 147).

“And” may legitimately be construed as “or” when the intention of the legislature is clear and when any other construction would tend to defeat such intention. (Amulya Chandra Roy v. Pashupathi Nath AIR 1951 Cal 48).

Not only in Statutes but also in documents the two words “and” and “or” are sometimes used synonymously and in the same sense. That would depend on the context and meaning of other provisions in the same statute or document. Similarly, where statements or stipulations are coupled by “and/or” they are to read either disjunctively or conjunctively.

#### 2. “May”, “Must” and “Shall”

- a. Where the enactment or provision prescribes that the contemplated action be taken without any option or discretion, then such statute or provision or enactment will be called **mandatory**.
- b. Where, the acting authority is vested with discretion, choice or judgment, the statute or provision will be called **directory**.

In deciding whether the statute is directory or mandatory, the question is whether there is anything that makes it the duty of the person on whom the power is conferred to exercise that power. If it is so then the Statute is a mandatory one; otherwise it is directory.

The words 'may', 'shall', and 'must' should initially be deemed to have been used in their natural and ordinary sense.

- i. 'May' signifies permission and implies that the authority has been allowed discretion.
- ii. "Shall" in the normal sense imports a command.
- iii. 'Must' is doubtlessly a word of command. In all cases, however, the intention of the legislature will guide the interpreter in his search of meaning.

The question as to whether a statute is mandatory depends upon the intent of the legislature and not upon the language in which the intent is clothed.

- a. In cases where the normal significance of imperative and permissive terms leads to absurd, inconvenient or unreasonable results, they should be discarded.
- b. "May" though permissive sometimes has compulsory force and is to be read as shall. Although it is well – settled that ordinarily the word 'may' is always used in a permissive sense, there may be circumstances where this word will have to be construed as having been used in a mandatory or compulsory sense.

Where the word 'may' has been used as implying a requisite condition to be fulfilled, the court will and ought to exercise the powers which it should and in such a case the word 'may' will have a compulsory force.

"May," observed Cotton, L.J., "can never mean 'must' so long as the English language retains its meaning; but it gives a power and then it may be a question, in what case, when any authority or body has a power given to it by the word 'may' it becomes its duty to exercise that power." [In re Baker Nichols v. Baker (1890) 44 Ch. D. 262].

**"Shall" though mandatory is to be read as may.**

It is well – settled that the use of the word 'shall' does not always mean that the enactment is obligatory or mandatory; it depends upon the context in which the word 'shall' occurs and the other circumstances.

The employment of the auxiliary verb 'shall' is inconclusive and similarly the mere absence of the imperative is not conclusive either.

#### **Q.NO.15 DISCUSS RULE OF EJUSDEM GENERIS.**

##### **ANSWER:**

##### **RULE OF EJUSDEM GENERIS:**

The term 'ejusdem generis' means 'of the same kind or species'. Simply stated, the rule is as follows:

**Where specific words pertaining to a class or category or genus are followed by general words, the general words shall be construed as limited to the things of the same kind as those specified.**

This rule applies when:

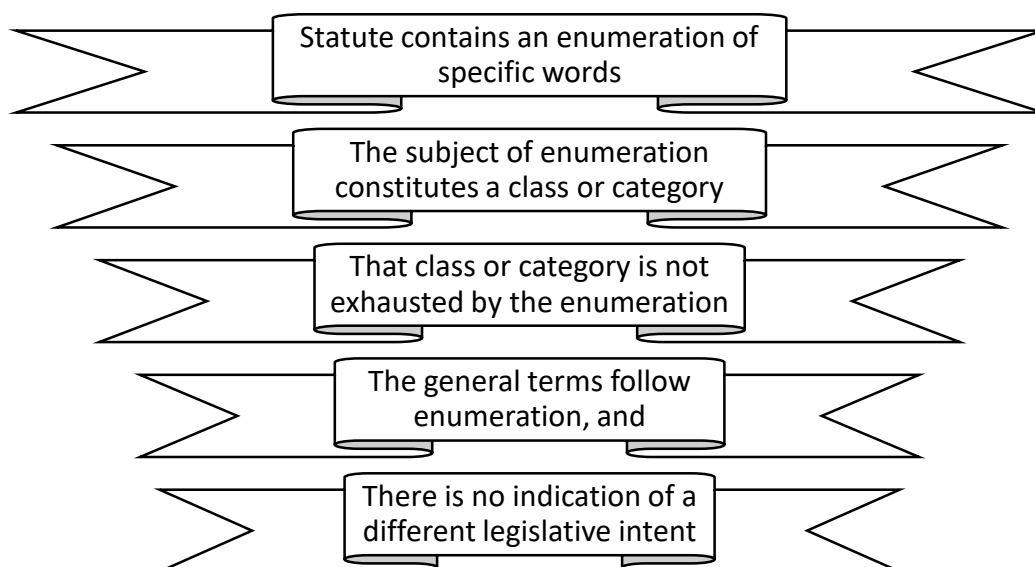
1. The statute contains an enumeration of specific words
2. The subject of enumeration constitutes a class or category;
3. That class or category is not exhausted by the enumeration
4. General terms follow the enumeration; and
5. There is no indication of a different legislative intent.

The rule of ejusdem generis is not an absolute rule of law but only a part of a wider principle of construction and therefore this rule has no application where the intention of the legislature is clear.

#### Exceptions:

1. If the preceding term is general, as well as that which follows this rule cannot be applied.
2. Where the particular words exhaust the whole genus.
3. Where the specific objects enumerated are essentially diverse in character.
4. Where there is an express intention of legislature that the general term shall not be read ejusdem generis the specific terms.
  - a. This rule has to be applied judiciously. This rule may be understood as an attempt to settle a conflict between specific and general words.
  - b. The fifth ground contained in Section 271 (e) of the Companies Act, 2013 shall not be read ejusdem generis the earlier five although it is a general phrase following specific phrases.
  - c. This is because the earlier grounds are essentially diverse in character.

#### RULE OF EJUSDEM GENERIS APPLIES WHEN-



## Q.NO.16 DISCUSS DOCTRINE OF NOSCITUR A SOCIIS.

### ANSWER:

#### DOCTRINE OF NOSCITUR A SOCIIS

**Noscitur a Sociis** means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is the meaning of the more general word being restricted to a sense analogous to that of the less general.

*Examples of the principal of Noscitur a Sociis are as follows:*

***Fresh orange juice is not a fruit juice.***

*While dealing with a Purchase Tax Act, which used the expression “manufactured beverages including fruit-juices and bottled waters and syrups”.*

*It was held that the description ‘fruit juices’ as occurring therein should be construed in the context of the preceding words and that orange-juice unsweetened and freshly pressed was not within the description. (Commissioners. v. Savoy Hotel, (1966) 2 All. E.R. 299)*

***Private Dispensary of a doctor is not a commercial establishment***

*In dealing with the definition of commercial establishment in Section 2 (4) of the Bombay Shops and Establishments Act, 1948, which reads, “commercial establishment means an establishment which carries on any business, trade or profession”, the word ‘profession’ was construed with the associated words ‘business’ and ‘trade’ and it was held that a private dispensary of a doctor was not within the definition. (Dr. Devendra M. Surti v. State of Gujrat, A.I.R. 1969 SC 63)*

## Q.NO.17 DISCUSS DOCTRINE OF CONTEMPORANEA EXPOSITIO.

### ANSWER:

#### DOCTRINE OF CONTEMPORANEA EXPOSITIO

This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim “Contemporanea Expositio est optima et fortissima in lege” means “contemporaneous exposition is the best and strongest in the law.” This means a law should be understood in the sense in which it was understood at the time when it was passed.

The maxim “optima legum interpret est consuetude” simply means, “Custom is the best interpreter of law”. Thus, the court was influenced in its construction of a statute of Anne by the fact that it was that which had been generally considered as the true one for one hundred and sixty years. (Cox Vs. Leigh 43 LJQB 123).

**Contemporanea  
Expositio est  
optima et  
fortissima in lege**

**Optima legum  
interpret est  
consuetude**

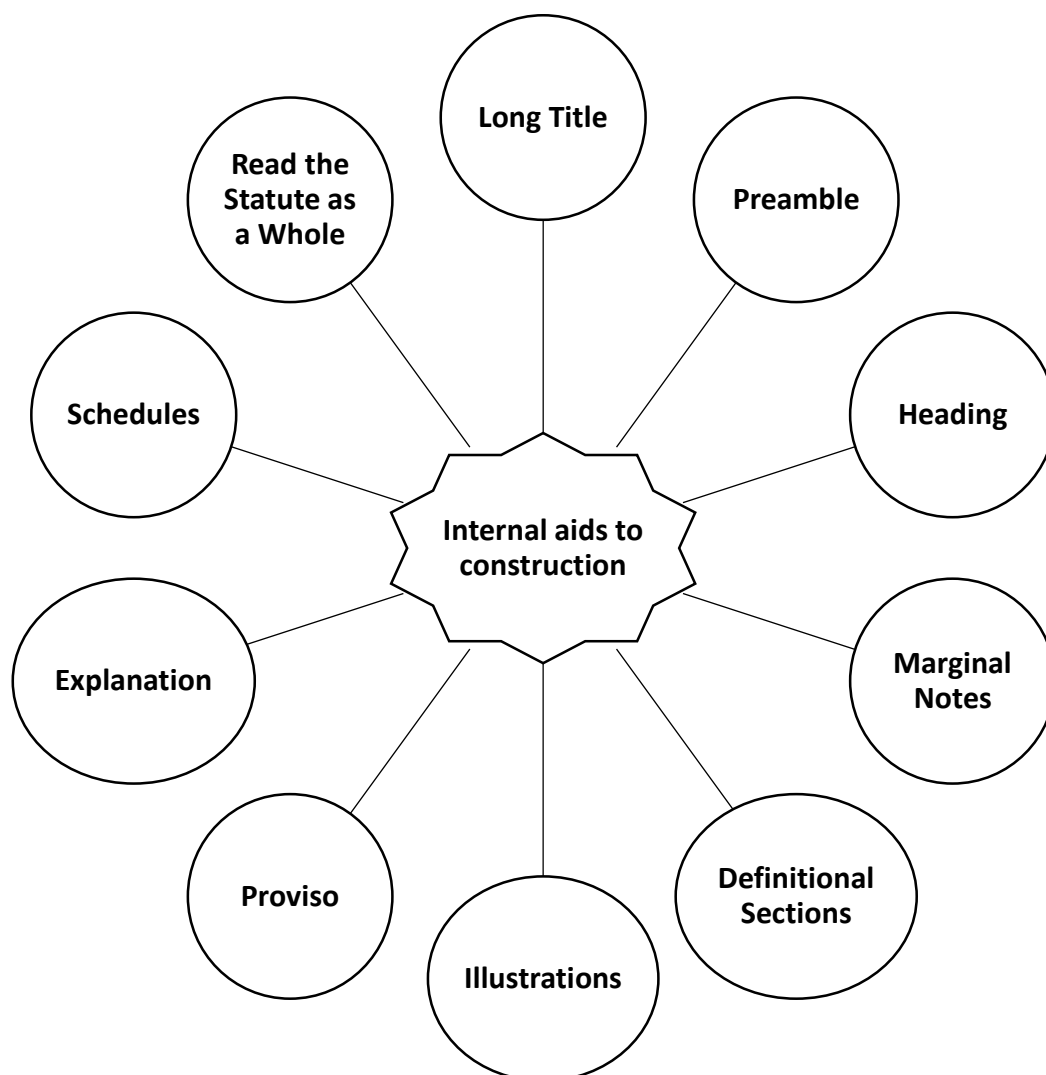
Note: This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

**Q.NO.18 DISCUSS INTERNAL AIDS TO INTERPRETATION/CONSTRUCTION.**

**ANSWER:**

**INTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION**

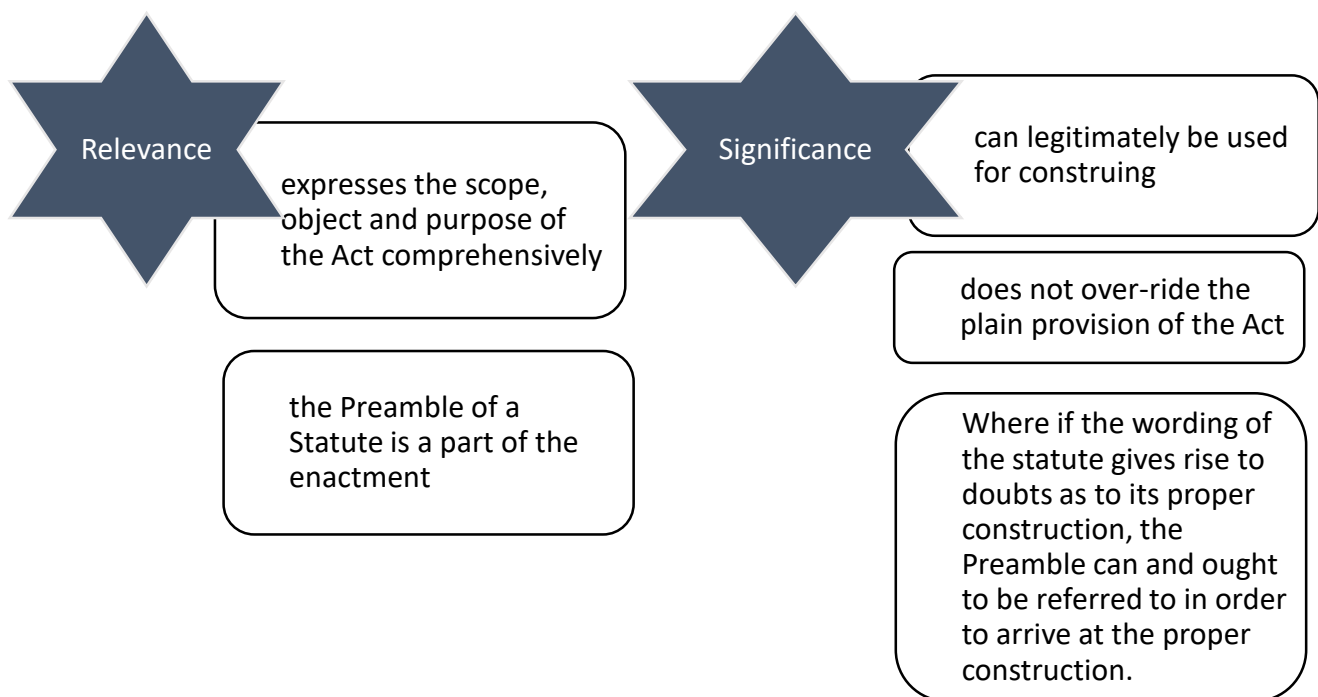
The various parts of an enactment enumerated below may be referred to while interpreting or construing an enactment. They are referred to as internal aids to interpretation and can be of immense help in interpreting/construing the enactment or any of its parts.



- a. LONG TITLE:** An enactment would have what is known as a 'Short Title' and also a 'Long Title'.
- The 'Short Title' merely **identifies the enactment** and is chosen merely for convenience,
  - The 'Long Title' on the other hand, **describes the enactment** and does not merely identify it.
- It is now settled that the Long Title of an Act is a part of the Act. We can, therefore, refer to it to ascertain the object, scope and purpose of the Act and so is admissible as an aid to its construction.

**Example 7:** Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an Act to authorize Advocates of the Supreme Court to practice as of right in any High Court.

So, the title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment. [Aswini kumar Ghose v. Arabinda Bose, AIR 1952 SC]



#### b. PREAMBLE:

The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title.

The Preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.

Like the Long Title, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase have more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.



**Example 8:** Use of the word ‘may’ in section 5 of the Hindu Marriage Act, 1955 provides that “a marriage may be solemnized between two Hindus.....” has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: ‘An Act to amend and codify the law relating to marriage among Hindus’ [Gullipoli Sowria Raj v. Bandaru Pavani, (2009)1 SCC714]

**c. HEADING AND TITLE OF A CHAPTER:**

If we go through any Act, we would generally find that a number of its sections referring to a particular subject are grouped together, sometimes in the form of chapters, prefixed by headings and/or Titles.

These Heading and Titles prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.

The headings of different portions of a Statute can be referred to determine the sense of any doubtful expression in a section ranged under any particular heading.

They cannot control the plain meaning of the words of the enactment though, they may, in some cases be looked at in the light of preamble if there is any ambiguity in the meaning of the sections on which they can throw light.

It may be noted that headings may sometimes be referred to know the scope of a section in the same way as the preamble. But a heading cannot control or override a section.

**d. MARGINAL NOTES:**

Marginal notes are summaries and side notes often found at the side of a section or group of sections in an Act, purporting to sum up the effect of that section or sections.

They are not a part of the enactment, for they were not present when the Act was passed in Parliament but inserted after the Act has been so passed.

Hence, they are not an aid to construction.

*In C.I.T. v. Ahmedbhai Umarbhai & Co. (AIR 1950 SC 134 at 141), Patanjali Shastri, J., had declared: “Marginal notes in an Indian statute, as in an Act, of Parliament cannot be referred to for the purpose of construing the statute”, and the same view has been taken in many other cases. Many cases show that reference to marginal notes may be permissible in exceptional cases for construing a section in a statute. [Deewan Singh v. Rajendra Pd. Ardevi, (2007)10 SCC, Sarabjit Rick Singh v. Union of India, (2008) 2 SCC]*

However, marginal notes appended to Articles of the Constitution have been held to be part of the Constitution as passed by the Constituent Assembly and therefore have been used in construing the Articles.

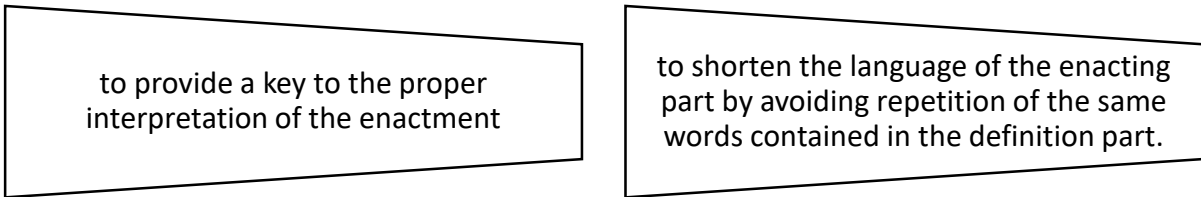
**e. DEFINITIONAL SECTIONS/ INTERPRETATION CLAUSES:**

The legislature has the power to embody in a statute itself the definitions of its language and it is quite common to find in the Statutes 'definitions' of certain words and expressions used in the body of the statute.

The Court cannot ignore an exhaustive statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.

The purpose of a definition clause is two-fold:

- i. to provide a key to the proper interpretation of the enactment, and
- ii. to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part every time the legislature wants to refer to the expressions contained in the definition.



to provide a key to the proper interpretation of the enactment

to shorten the language of the enacting part by avoiding repetition of the same words contained in the definition part.

**Construction of definitions may be understood under the following headings:**

- i. Restrictive and extensive definitions
- ii. Ambiguous definitions
- iii. Definitions subject to a contrary context

- i. **RESTRICTIVE AND EXTENSIVE DEFINITIONS:** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to '**mean**' such and such, the definition is 'prima facie' restrictive and exhaustive we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to '**include**' such and such, the definition is 'prima facie' extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

We may also find a word being defined as '**means and includes**' such and such. In this case, the definition would be exhaustive.

On the other hand, if the word is defined **‘to apply to and include’**, the definition is understood as extensive.

**Example:** The usage of word ‘any’ in the definition connotes extension for ‘any’ is a word of every wide meaning and prima facie the use of it excludes limitation.

It has been a universally accepted principle that where an expression is defined in an Act, it must be taken to have, throughout the Act, the meaning assigned to it by the definition, unless by doing so any repugnancy is created in the subject or context.

**Example:** Inclusive definition of lease given under section 2(16)(c) of the Stamp Act, 1899 has been widely construed to cover transaction for the purpose of Stamp Act which may not amount to a lease under section 105 of the Transfer of property Act, 1882. [State of Uttarakhand v. Harpal Singh Rawat, (2011) 4 SCC 575]

Section 2(m) of the Consumer Protection Act, 1986 contains an inclusive definition of ‘person’. It has been held to include a ‘company’ although it is not specifically named therein [Karnataka Power Transmission Corporation v. Ashok Iron Works Pvt. Ltd., (2009)3 SCC 240]

A definition section may also be worded as **‘is deemed to include’** which again is an inclusive or extensive definition as such a words are used to bring in by a legal fiction something within the word defined which according to its ordinary meaning is not included within it.

**Example:** If A is deemed to be B, compliance with A is in law compliance with B and contravention of A is in law contravention of B.

- ii. **Ambiguous definitions:** Sometime, we may find that the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined. Such type of definition is not to be read in isolation.

It must be read in the context of the phrase which it defines, realising that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict it or depose it altogether.

**Example:** Termination of service of a seasonal worker after the work was over does not amount to retrenchment as per the Industrial Disputes Act, 1947. [Anil Bapurao Karase v. Krishna Sahkari Sakhar Karkhana, AIR 1997 SC 2698]. But the termination of employment of a daily wager who is engaged in a project, on completion of the project will amount to retrenchment if the worker had not been told when employed that his employment will end on completion of the project. [S.M. Nilajkar v. Telecom District Manager Karnataka, (2003)4 SCC].

**iii. Definitions subject to a contrary context:** When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.

**f. ILLUSTRATIONS:**

Many sections have illustrations appended to them. These illustrations follow the text of the Sections and, therefore, do not form a part of the Sections.

However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the sections.

However, illustrations cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section.

***Example:** In holding that section 73 of the Indian Contract Act, 1872 does not permit the award of interest as damages for mere detention of debt, the privy Council rejected the argument that illustration given in the Act can be used for arriving at a contrary result. It was observed that nor can an illustration have the effect of modifying the language of the section which alone forms the enactment.*

**g. PROVISO:**

The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. Usually, a proviso is embedded in the main body of the section and becomes an integral part of it. Provisos that are so included begin with the words, "provided that".

The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

- i. Exception clauses are intended to restrain the enacting clause to particular cases.
- ii. Savings clause is used to preserve from destruction certain rights, remedies, or privileges already existing.

It is a cardinal rule of interpretation that a proviso or exception to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765).

### Distinction between Proviso, exception and saving Clause

'Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing
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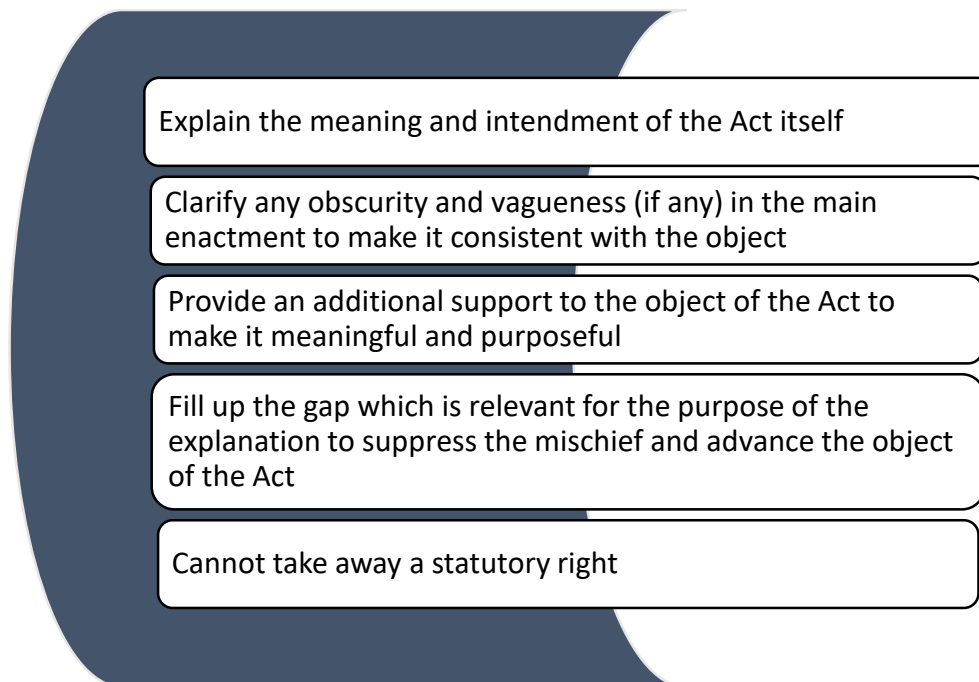
#### h. EXPLANATION:

An Explanation is at times appended to a section to explain the meaning of certain words or phrases used in the section or of the purport of the section.

An Explanation may be added to include something within the section or to exclude something from it.

An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

In Sundaram Pillai v. Pattabiraman, Fazal Ali, J. gathered the following objects of an explanation to a statutory provision:



However, it would be wrong to always construe an explanation as limited to the aforesaid objects. The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

#### i. SCHEDULES:

The Schedules form part of an Act. Therefore, they must be read together with the Act **for all purposes of construction.**

However, the expressions in the Schedule cannot control or prevail over the expression in the enactment. If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.

They often contain details and forms for working out the policy underlying the sections of the statute

*Example: schedules appended to the Companies Act, 2013, to the Constitution of India.*

**j. 'READ THE STATUTE AS A WHOLE':**

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.

The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

*Example: If one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.*

**Q.NO.19 DISCUSS EXTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION.**

**ANSWER:**

**EXTERNAL AIDS TO INTERPRETATION/ CONSTRUCTION**

*Society does not function in a void. Everything done has its reasons, its background, the particular circumstances prevailing at the time, and so on. These factors apply to enactments as well. These factors are of great help in interpreting/construing an Act and have been given the convenient nomenclature of 'External Aids to Interpretation'. Apart from the statute itself there are many matters which may be taken into account when the statute is ambiguous. These matters are called external aids. Some of these factors are enumerated below:*

External Aids					
Historical Setting	Consolidating Statutes & Previous Law	Usage	Earlier & Later Acts and Analogous Acts	Dictionary Definitions	Use of Foreign Decisions

**a. HISTORICAL SETTING:**

The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment.

We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.

History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.

We have also to consider whether the statute in question was intended to alter the law or leave it where it stood before.

**b. CONSOLIDATING STATUTES & PREVIOUS LAW:**

The Preambles to many Statutes contain expressions such as “An Act to consolidate” the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law. They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.

**c. USAGE:**

Usage is also sometimes taken into consideration in construing an Act. The acts done under a statute provide quite often the key to the statute itself.

It is well known that where the meaning of the language in a statute is doubtful, usage – how that language has been interpreted and acted upon over a long period – may determine its true meaning.

It has been emphasized that when a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public, the Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so.

**d. EARLIER & LATER ACTS AND ANALOGOUS ACTS:**

**i. Exposition of One Act by Language of Another:**

The general principle is that where there are different Statutes in ‘pari materia’ (i.e., in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

If two Acts are to be read together then every part of each Act has to be construed as if contained in one composite Act. But if there is some clear discrepancy then such a discrepancy may render it necessary to hold the later Act (in point of time) had modified the

earlier one. However, this does not mean that every word in the later Act is to be interpreted in the same way as in the earlier Act.

Where the later of the two Acts provides that the earlier Act should, so far as consistent, be construed as one with it then an enactment in the later statute that nothing therein should include debentures was held to exclude debentures from the earlier statute as well.

Where a single section of one Act (say, Act 'A') is incorporated into another statute (say Act 'B'), it must be read in the sense which it bore in the original Act from which it is taken consequently, it would be legitimate to refer to all the rest of Act 'A' to ascertain what that Section means, though one Section alone is incorporated in the new Act (Act 'B').

Suppose the earlier bye-law limited the appointment of the chairman of an organisation to a person possessed of certain qualifications and the later bye-law authorises the election of any person to be the chairman of the organisation. In such a case, the later bye-law would be so construed as to harmonise and not to conflict with the earlier bye-law: the expression 'any person' used in the later bye-law would be understood to mean only any eligible person who has the requisite qualifications as provided in the earlier bye-law.

**ii. Earlier Act Explained by the Later Act:**

Not only may the later Act be construed in the light of the earlier Act but it (the later Act) sometimes furnishes a legislative interpretation of the earlier one, if it is '**pari materia**' and if, but only if, the provisions of the earlier Act are ambiguous.

Where the earlier statute contained a negative provision but the later one merely omits that negative provision. This cannot by itself have the result of substantive affirmation. In such a situation, it would be necessary to see how the law would have stood without the original provision and the terms in which the repealed sections are re-enacted.

**iii. Reference to Repealed Act:** Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part of the Act may still be taken into account for construing the un-repealed part. This is so because it is part of the history of the new Act.

**e. DICTIONARY DEFINITIONS:**

First, we have to refer to the Act in question to find out if any particular word or expression is defined in it.

Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.

However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.



It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear.

Further, judicial decisions laying down the meaning of words in construing Statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms reference may be made to technical dictionaries.

**f. USE OF FOREIGN DECISIONS:**

Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute.

Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

**Q.NO.20 DISCUSS RULES OF INTERPRETATION/ CONSTRUCTION OF DEEDS AND DOCUMENTS.**

**ANSWER:**

**RULES OF INTERPRETATION/ CONSTRUCTION OF DEEDS AND DOCUMENTS**

The first and foremost point that has to be borne in mind is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

The principle of construction in case of a document and a deed, as of statute, does not differ so much except in some minor details. A deed must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be so interpreted as to bring them in harmony with other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. – Lord Watson.

In all cases endeavour shall be made to find out how a reasonable and well-informed person would understand by the words used in the deed or document.

The golden rule of construction is to ascertain the intention of the parties to the instrument after considering all the words in their ordinary, natural sense.

Very often the status and the training of the parties using the words have to be taken into consideration.

It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has to a trained conveyancer a clear and definite significance and one can be sure about the sense in which such conveyancer

would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. (Ramkishorelal v. Kamalnarayan, 1963 (Sup.) 2 S.C. R. 417).

It is inexpedient to construe the terms of one deed by reference to the terms of another. (Nirmala Bala Ghose v. Balai Chand Ghose (1965) 2 S.C. W.R. 988).

It is an elementary rule of construction that the same word cannot have two different meanings in the same document unless the context compels the adoption of such a course. (Kultar Singh v. Mukhtiar Singh, 1964, 7 S.C.R. 790).

The document must be read as a whole and the intention deduced therefrom as to what the actual term the parties intended to agree.

It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.

Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.

## TEST YOUR KNOWLEDGE

### MCQ Based Questions

1. The Rule in Heydon's case is also known as—
  - a. Purposive construction
  - b. Mischief Rule
  - c. Golden Rule
  - d. Exceptional Construction
  
2. Pick the odd one out of the following aids to interpretation—
  - a. Preamble
  - b. Marginal Notes
  - c. Proviso
  - d. Usage
  
3. \_\_\_\_\_ is the cardinal rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude.
  - a. Rule of Literal Construction
  - b. Rule of Harmonious Construction
  - c. Rule of Beneficial Construction
  - d. Rule of Exceptional Construction
  
4. An internal aid that may be added to include something within the section or to exclude something from it, is—
  - a. Proviso
  - b. Explanation
  - c. Schedule
  - d. Illustrations
  
5. When there is a conflict between two or more statutes or two or more parts of a statute then which rule is applicable:
  - a. Welfare construction
  - b. Strict construction
  - c. Harmonious construction
  - d. Mischief Rule

### Answer to MCQ based Questions

1.	b.	Mischief Rule
2.	d.	Usage
3.	a.	Rule of Literal Construction
4.	b.	Explanation
5.	c.	Harmonious construction

### DESCRIPTIVE QUESTIONS

**Q.NO.1. EXPLAIN THE RULE IN 'HEYDON'S CASE' WHILE INTERPRETING THE STATUTES QUOTING AN EXAMPLE?**

**ANSWER:**

Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an Act:

1. What was the law before making of the Act,
2. What was the mischief or defect for which the law did not provide,
3. What is the remedy that the Act has provided, and
4. What is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus, in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions. However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)].

**Q.NO.2. EXPLAIN THE PRINCIPLES OF “GRAMMATICAL INTERPRETATION” AND “LOGICAL INTERPRETATION” OF A STATUTE. WHAT ARE THE DUTIES OF A COURT IN THIS REGARD?**

**ANSWER:**

**Principles of Grammatical Interpretation and Logical Interpretation:** In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

**Meaning:** Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

**Application of the principles in the court:** In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

**Q.NO.3.**

**i. WHAT IS THE EFFECT OF PROVISIO? DOES IT QUALIFY THE MAIN PROVISIONS OF AN ENACTMENT?**

**ii. DOES AN EXPLANATION ADDED TO A SECTION WIDEN THE AMBIT OF A SECTION?**

**ANSWER:**

- i. Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. [Ram Narian Sons Ltd. v. Commissioner of Sales Tax AIR (1955) S.C. 765]
- ii. Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

**Q.NO.4. GAURAV TEXTILE COMPANY LIMITED HAS ENTERED INTO A CONTRACT WITH A COMPANY. YOU ARE INVITED TO READ AND INTERPRET THE DOCUMENT OF CONTRACT. WHAT RULES OF INTERPRETATION OF DEEDS AND DOCUMENTS WOULD YOU APPLY WHILE DOING SO?**

**ANSWER:**

The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words maybe used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense. It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.

**Q.NO.5. HOW WILL YOU INTERPRET THE DEFINITIONS IN A STATUTE, IF THE FOLLOWING WORDS ARE USED IN A STATUTE?**

**i. MEANS**

**ii. INCLUDES**

**GIVE ONE ILLUSTRATION FOR EACH OF THE ABOVE FROM STATUTES YOU ARE FAMILIAR WITH.**

**ANSWER:**

**Interpretation of the words “Means” and “Includes” in the definitions**—The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to ‘mean’ such and such, the definition is ‘prima facie’ restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example—

Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word “means” suggests exhaustive definition.

Definition of Whole-time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole-time employment of the company. The word “includes” suggests extensive definition. Other directors may be included in the category of the whole-time director.

**Q.NO.6. DIFFERENTIATE MANDATORY PROVISION FROM A DIRECTORY PROVISION. WHAT FACTORS DECIDE WHETHER A PROVISION IS DIRECTORY OR MANDATORY?**

**ANSWER:**

Practically speaking, the distinction between a provision which is ‘mandatory’ and one which is ‘directory’ is that when it is mandatory, it must be strictly observed; when it is ‘directory’ it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- a. The nature of the thing empowered to be done,
- b. The object for which it is done, and
- c. The person for whose benefit the power is to be exercised.

**Q.NO.7. DEFINE GRAMMATICAL INTERPRETATION. WHAT ARE THE EXCEPTIONS TO GRAMMATICAL INTERPRETATION?**

**ANSWER:**

**GRAMMATICAL INTERPRETATION AND ITS EXCEPTIONS:** 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:

- i. Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.
- ii. If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

**Q.NO.8. WHEN CAN THE PREAMBLE BE USED AS AN AID TO INTERPRETATION OF A STATUTE?**

**ANSWER:**

While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.

The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

**When will courts refer to the preamble as an aid to construction?**

**Situation 1:** Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

**Situation 2:** Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.



**Q.NO.9. EXPLAIN HOW 'DICTIONARY DEFINITIONS' CAN BE OF GREAT HELP IN INTERPRETING/ CONSTRUCTING AN ACT WHEN THE STATUTE IS AMBIGUOUS.**

**ANSWER:**

**Dictionary Definitions:** First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in pari materia will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

**Q.NO.10. PREAMBLE DOES NOT OVER-RIDE THE PLAIN PROVISION OF THE ACT. COMMENT. ALSO GIVE SUITABLE EXAMPLE.**

**ANSWER:**

**Preamble:** The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

**Example:** Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus' [GullipoliSowria Raj v. BandaruPavani, (2009)1 SCC714].

**Q.NO.11. AT THE TIME OF INTERPRETING A STATUTE WHAT WILL BE THE EFFECT OF 'USAGE' OR 'CUSTOMS AND PRACTICES'?**

**ANSWER:**

**Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

- i. 'Optima Legum interpret est consuetude' (the custom is the best interpreter of the law); and
- ii. 'Contemporanea Expositio est optima et fortissinia in lege' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statutes in India.

# 3. THE FOREIGN EXCHANGE MANAGEMENT ACT,

## 1999

1. The change in the economic scenario, globalization of capital, free trade across the globe, **necessitated** the need for managing foreign exchange in the country in an orderly manner.
2. To facilitate cross border trade and cross border capital flows, exchange control law was required.
3. Foreign exchange control led to introduction of exchange control law through Defense of India rules by the Britishers in 1939.
4. Subsequently, Foreign Exchange Regulation Act (FERA) was enacted in 1947 which was later replaced with 'the Foreign Exchange Regulation Act, 1973' (FERA).
5. Government as part of its agenda of liberalization of the Indian economy in 1991, permitted free movement of foreign exchange in connection to trade related receipts and payments as well as Foreign Investment in various sectors. This increased the flow of foreign exchange to India and consequently foreign exchange reserves increased substantially.
6. The Foreign Exchange Management Act, 1999 was enacted and made effective from 1st June 2000. This Act enables management of foreign exchange reserves for the country.



### **BROAD STRUCTURE OF FEMA**

The Act consists of 7 Chapters dealing with following areas:

Chapters	Matters	Sections
i.	Preliminary	1 – 2
ii.	Regulation and Management of Foreign Exchange	3 – 9
iii.	Authorised Person	10 – 12
iv.	Contravention and Penalties	13 – 15
v.	Adjudication and Appeal	16 – 35
vi.	Directorate of Enforcement	36 – 38
vii.	Miscellaneous	39 – 49

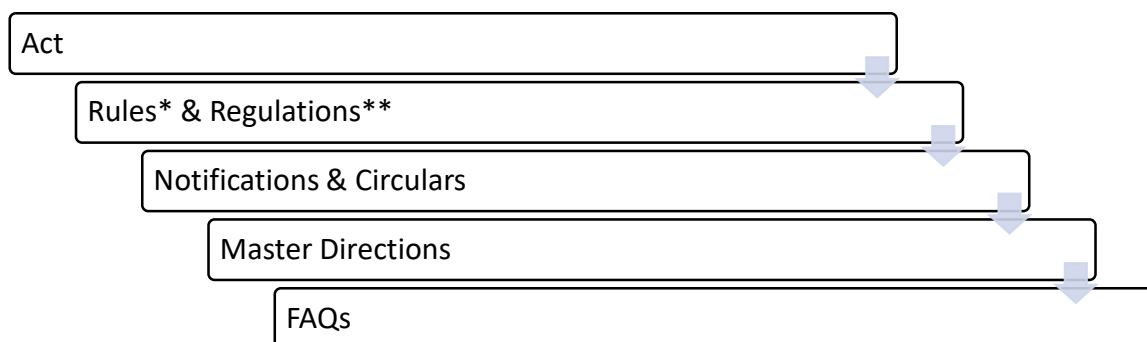
## Q.NO.1 DISCUSS THE SALIENT FEATURES OF FEMA ACT 1999.

### ANSWER:

#### SALIENT FEATURES OF THE ACT:

1. It provides for-
  - a. Regulation of transactions between residents and non-residents
  - b. Investments in India by non-residents and overseas investments by Indian residents
  - c. Freely permissible transactions on current account subject to reasonable restrictions that may be imposed.
  - d. Reserve Bank of India (RBI) and Central Government control over capital account transactions
  - e. Requirement for realisation of export proceeds and repatriation to India
  - f. Dealing in foreign exchange through 'Authorised Persons' like Authorised Dealer/ Money Changer/ Off-shore banking unit
  - g. Adjudication and Compounding of Offences
  - h. Investigation of offences by Directorate of Enforcement
  - i. Appeal provisions including Special Director (Appeals) and Appellate Tribunal.
2. **ENFORCEMENT OF FEMA:** Though RBI exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to a separate 'Directorate of Enforcement' formed for this purpose. [Section 36].

#### How to Read FEMA:



*\*Rules are notified by the Ministry of Finance, Government of India*

*\*\* Regulations are notified by the Reserve Bank of India*

## Q.NO.2 DISCUSS THE PREAMBLE, EXTENT, APPLICATION AND COMMENCEMENT OF FEMA, 1999.

### ANSWER:

- A. PREAMBLE:** This Act aims to consolidate and amend the law relating to foreign exchange with the objective of —
- a. Facilitating external trade and payments and

- b. For promoting the orderly development and maintenance of foreign exchange market in India.

**B. EXTENT AND APPLICATION [SECTION 1]:**

- a. FEMA, 1999 extends to the whole of India.
- b. In addition, it shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

**C. COMMENCEMENT:** The Act, 1999 came into force with effect from 1<sup>st</sup> June 2000.

**Q.NO.3 DEFINITIONS [SECTION 2]** In this Act, unless the context otherwise requires:

**1. "AUTHORISED PERSON" means**

- a. an authorised dealer,
- b. money changer,
- c. off-shore banking unit or
- d. any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities; [Section 2(c)]

**2. "CAPITAL ACCOUNT TRANSACTION" means a transaction, which alters the**

- a. assets or liabilities, including contingent liabilities, outside India of persons resident in India or
- b. assets or liability in India of persons resident outside India, and includes transactions referred to in Section 6(3); [Section 2(e)]

**3. "CURRENCY" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank. [Section 2(h)]**

**4. "CURRENCY NOTES" means and includes cash in the form of coins and bank notes; [Section 2(i)]**

**5. "CURRENT ACCOUNT TRANSACTION" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,**

- i. Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- ii. Payments due as interest on loans and as net income from investments.
- iii. Remittances for living expenses of parents, spouse and children residing abroad, and
- iv. Expenses in connection with foreign travel, education and medical care of parents, spouse and children; [Section 2(j)]

6. **“EXPORT”**, with its grammatical variations and cognate expressions means
- the taking out of India to a place outside India any goods.
  - provision of services from India to any person outside India; [Section 2(l)]
7. **“FOREIGN CURRENCY”** means any currency other than Indian currency; [Section 2(m)]
8. **“FOREIGN EXCHANGE”** means foreign currency and includes:
- Deposits, credits and balances payable in any foreign currency,
  - Drafts, travelers’ cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
  - Drafts, travelers’ cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency; [Section 2(n)]
9. **“FOREIGN SECURITY”** means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency; [Section 2(o)]
10. **“IMPORT”**, with its grammatical variations and cognate expressions, means bringing into India any goods or services; [Section 2(p)]
11. **“PERSON”** includes:
- An individual,
  - A Hindu undivided family,
  - A company,
  - A firm,
  - An association of persons or a body of individuals, whether incorporated or not,
  - Every artificial juridical person, not falling within any of the preceding sub-clauses, and;
  - Any agency, office or branch owned or controlled by such person; [Section 2(u)]
12. **“PERSON RESIDENT IN INDIA”** means:
- A person residing in India for more than 182 days during the course of the preceding financial year but does not include—
    - A person who has gone out of India or who stays outside India, in either case—
      - For or on taking up employment outside India, or
      - For carrying on outside India a business or vocation outside India, or
      - For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.
    - A person who has come to or stays in India, in either case, otherwise than:

- a. For or on taking up employment in India, or
  - b. For carrying on in India a business or vocation in India, or
  - c. For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- ii. Any person or body corporate registered or incorporated in India,
  - iii. An office, branch or agency in India owned or controlled by a person resident outside India,
  - iv. An office, branch or agency outside India owned or controlled by a person resident in India;
- [Section 2(v)]

**13. "PERSON RESIDENT OUTSIDE INDIA"** means a person who is not resident in India; [Section 2(w)]

**14. "TRANSFER"** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. [Section 2(ze)]

#### **Q.NO.4 DISCUSS RESIDENTIAL STATUS UNDER FEMA, 1999.**

##### **ANSWER:**

##### **A. RESIDENTIAL STATUS UNDER FEMA, 1999**

1. The definition of "person" is similar to the definition contained in the Income-tax Act, 1961.
2. The term '**person**' includes entities such as companies, firms, individuals, HUF, Association of Persons (AOP), artificial juridical persons agencies, as well as offices and branches.
3. Agencies, offices and branches do not have independent status separate from their owners. Yet these have been considered as persons.
4. Under FEMA such offices and branches are included in definition of Person Resident in India. Therefore, they have been included in the definition of "Person".

##### **B. THE TERM 'PERSON RESIDENT IN INDIA' MEANS THE FOLLOWING ENTITIES:**

1. **A person who resides in India for more than 182 days during the preceding financial year;**  
The following persons are NOT persons resident, in India even though they may have resided in India for more than 182 days.
  - a. A person who has gone out of India or stays outside India for any of the three purposes given below,
  - b. A person who has come to or stays in India OTHERWISE THAN for any of the three purposes given below;

##### **Three Purposes**

- i. For or on taking up Employment

ii. For carrying on a business or Vacation

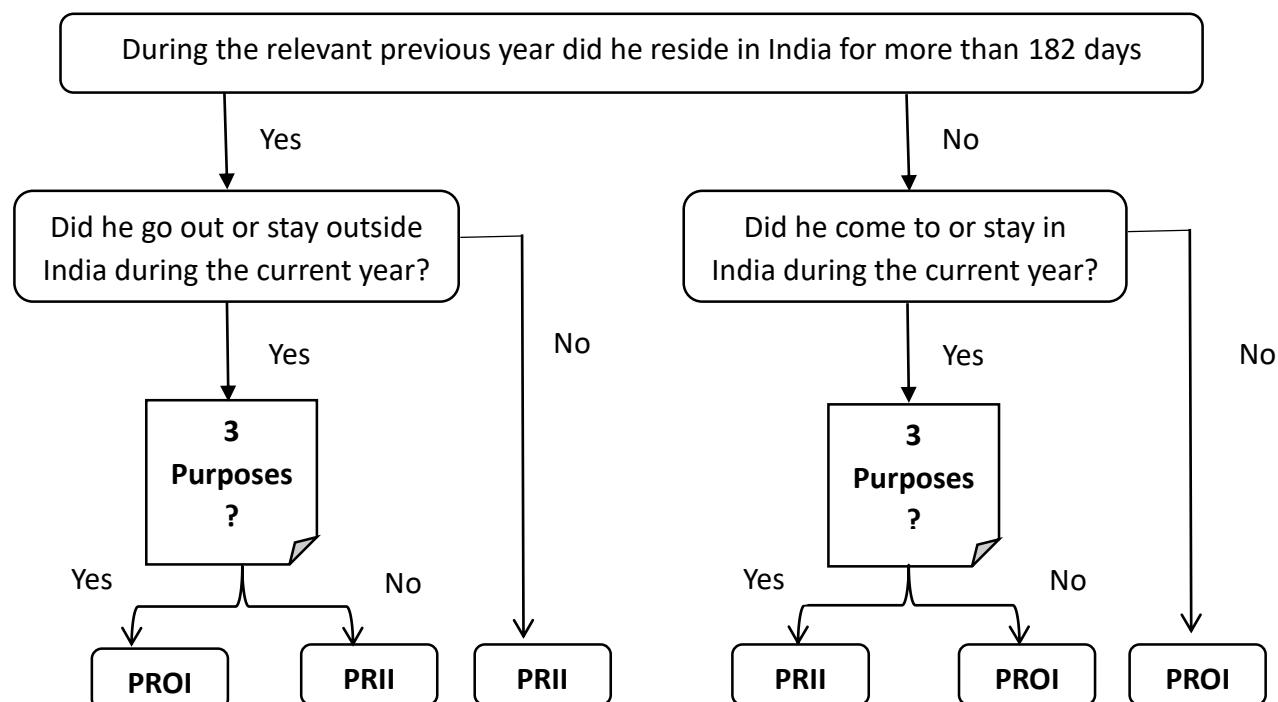
iii. For any other purpose in such circumstances as would indicate stay for an uncertain period.

2. Any person or body corporate registered or incorporated in India;

3. An office, branch or agency in India owned or controlled by a person resident outside India;

4. An office, branch or agency outside India owned or controlled by a person resident in India.

**C. PERSON RESIDENT OUTSIDE INDIA MEANS A PERSON WHO IS NOT RESIDENT IN INDIA.**



**SITUATIONS:**

1. In the case of **individuals**, to be considered as “resident”, the person should have resided in India in the preceding financial year for more than 182 days. Citizenship is not the criteria for determining whether or not a person is resident in India.

There are three limbs in the definition. The first limb prescribes the number of days stay. Then there are two limbs which are exceptions to the first limb.

**a. First limb** – It states that a person who is in India for more than 182 days in the “preceding year” will be a Person Resident in India. Thus, at the threshold or basic level, one has to consider the period of stay during the preceding year.

**Example:** If a person resides in India for more than 182 days during FY 2020-21, then for the FY 2021-22, the person will be an Indian resident. For FY 2020-21, one will have to consider residence during FY 2019-20, and so on.

There are two exceptions provided in clauses (A) and (B).

Clause (A) is for persons going out of India.



Clause (B) is for persons coming into India.

Exceptions carve out situations that do not fall under the main body of a section, even though they satisfy the criteria.

This means that even if a person is an Indian resident based on the test provided in the first limb, the person will be a “Person Resident Outside India (PROI) if he falls within limb (A) or limb (B).

- b. Clause (A) – second limb** – It states that if a person leaves India in any of the THREE PURPOSES we saw above, he will not be a PRII. He will be a PROI.

*Thus, in the **example** given for the first limb above, if a person leaves India on 1st November 2021, he will be a non-resident from 2nd November 2021 – even though his number of days in India was more than 182 days in FY 2020-2021. Similarly, if a person goes and stays out of India for carrying on any business, he will be a PROI from that date. For FY 2021-2022 the person will be a PRII till 1st November 2021. He will then be a PROI. From 1st April 2022, the person will continue to be a PROI as long as he stays out of India for employment.*

*An **example** for clause (iii) can be a person who has a green card in the USA. The green card entitles a person to stay in the USA and eventually become a US citizen. If a person goes abroad and starts staying in the USA, he will be a non-resident from that date as his stay abroad indicates that he is going to stay there for an uncertain period.*

- c. Clause (B) – third limb** – This is a complex clause as first limb read with third limb has two exceptions. Limb one uses the phrase “but does not include”. Third limb uses the phrase “otherwise than”. Use of two exceptions make it complex reading.

It states that if a person has come to India for any reason otherwise than for - employment, business or circumstances which indicate his intention to stay for uncertain period – he will be a non-resident. This will be so even if the person has stayed in India for more than 182 days in the preceding year.

*For **example**, if a person comes to India on 1<sup>st</sup> June 2021 for visiting his parents. However, his parents fall sick and he stays till 31<sup>st</sup> March 2022. Thereafter he continues to stay in India. It is however certain that he will leave India in next 6 months when his parents recover. His stay in India is neither for employment, nor for business, nor for circumstances which show that he will stay in India for an uncertain period. In such a case, even if he has resided in India for more than 182 days in FY 2021-2022, he will continue to be a non-resident from 1<sup>st</sup> April 2022 also. In FY 2021-2022, he is of course a PROI as he did not reside in India for more than 182 in FY 2020-2021.*

*If a person comes to India on 1st June 2021 for employment, business or circumstances which indicate his intention to stay in India for an uncertain period, he will be a PRII from 1<sup>st</sup> June 2021.*

### **SPECIAL POINTS**

- a. Residential status is not for a year. It is from a particular date. This is different from income-tax law.
- b. Under income-tax law, a person has to pay tax in respect of the income of the previous year. Therefore, it is possible to look at a complete year for determining residential status under the Income Tax Act, 1961.
- c. FEMA is a regulatory law. One has to know the person's status at the time of undertaking a transaction.

*If for **example**, a person comes to India for employment, and if his status can be known only when the year is completed, how will he and other people enter into commercial transactions with each other? If he is considered as a PROI till the year is over, then people will not be able to enter into transactions with him. This is the reason why the residential status is not for a year but from particular date.*

### **Note:**

- a. It is understood that this condition applies only to individuals. It will not apply to HUF, AOP or artificial juridical person as they cannot get employed, cannot go out of India, or come to India.
  - b. Hence, they do not come within the ambit of the second and third limbs. These entities like HUF and AOP are not required to be registered or incorporated like corporate entities nor the definition can be far stretched to cover by applying the criteria of 'owned or controlled'. Hence legally the definition for HUF, AOP, BOI fail.
  - c. Practically if the HUF, AOP etc. are in India, they will be considered as Indian residents.
- 2. PERSON OR BODY CORPORATE:** Any person or body corporate registered or incorporated in India, will be considered a PRII. This definition too, does not apply to AOP, BOI etc.
- 3. OFFICE, BRANCH OR AGENCY:**
- a. Any agency, branch or agency outside India but owned or controlled by PRII will be considered as person resident in India (PRII). Thus, one cannot set up a branch outside India and attempt to avoid FEMA provisions.
  - b. Any agency, branch or agency in India but owned or controlled by a person resident outside India (PROI) will be considered as a person resident in India. This is relevant as Indian residents can deal with such branch in India without considering FEMA. If such branch is considered as a PROI then it will be difficult to undertake several transactions.

**Q.NO.5 DISCUSS THE PROVISIONS OF FEMA, 1999 IN REGULATING AND MANAGING FOREIGN EXCHANGE.**

**ANSWER:**

**REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE**

**1. DEALING IN FOREIGN EXCHANGE, ETC. [SECTION 3]**

No person shall-

- a. Deal in or transfer any foreign exchange or foreign security to any person not being an authorised person (AP);
- b. Make any payment to or for the credit of any person resident outside India in any manner;
- c. Receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation—For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

- d. Enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.
- e. The above transactions may be carried on:
  - i. As otherwise provided in this Act; or
  - ii. With the general or special permission of the **Reserve Bank**.

Explanation — For the purpose of this clause, “**financial transaction**” means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

- f. This section imposes blanket restrictions on the specified transactions. This section applies to PRIs and PROs. The purpose of this section is to regulate inflow and outflow of Foreign Exchange through Authorised dealers and in a permitted manner.

***Examples:***

- i. ***Example pertaining to clause (a)- Dealing in foreign exchange*** – A PRO comes to India and would like to sell US\$ 1,000 to his friend who is resident in India. The friend offers him a rate better than the banks. This cannot be done as it would amount to dealing in foreign exchange.

- ii. **Example pertaining to clause (b)** – A PROI has an insurance policy in India. He requests his brother in India to pay the insurance premium. This will amount to payment for the credit of non-resident. This is not permitted.
- iii. **Example pertaining to clause (c)**– A foreign tourist comes to India and he takes food at a restaurant. He would like to pay US\$ 20 in cash to the restaurant. The restaurant cannot accept cash as it will be a receipt otherwise than through Authorised Person. The restaurant will have to take a money changers license to accept foreign currency.
- iv. **Example pertaining to clause (d)**–Transactions covered by this sub-section are known as Hawala transactions. An Indian resident gives ₹ 70,000 in cash to an Indian dealer. For this transaction, the brother in Dubai will get US\$ 1,000 from a Dubai dealer. The two dealers may settle the transactions later. However, transaction is not permitted.

## 2. HOLDING OF FOREIGN EXCHANGE [SECTION 4]

Except as provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India. This section prevents Indian residents to acquire, hold, own, possess or transfer any foreign exchange, foreign security or immovable property **abroad**.

Then through separate notifications, acquisition of these assets has been permitted subject to certain conditions and compliance rules.

**Example:** If an Indian resident receives bank balance of US\$ 10,000 from his uncle in London, the Indian resident cannot hold on to the foreign funds. He is supposed to bring back the funds as provided in section 8.

## Q.NO.6 WRITE A SHORT NOTE ON CURRENT ACCOUNT TRANSACTION.

### ANSWER:

### CURRENT ACCOUNT TRANSACTIONS [SECTION 5]

The term 'Current Account Transaction' is defined negatively by Section 2(j) of the Act. It means a transaction **other than a capital account transaction** and includes the following types of transactions:

- i. Payments in the course of ordinary course of foreign trade, other services such as short-term banking and credit facilities in the ordinary course of business etc.
- ii. Payments in the form of interest on loans or income from investments.
- iii. Remittances for living expenses of parents, spouse, or children living abroad
- iv. Expenses in connection with foreign travel, education etc.

**Example:** An Indian resident imports machinery from a vendor in UK for installing in his factory. As per accounts and income-tax law, machinery is a “capital expenditure”. However, under FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor is owed anything in the other country. Hence it is a Current Account Transaction.

**Example:** An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. As per accounts and income-tax law, for the credit period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction [Section 2(j)(i)], “short-term banking and credit facilities in the ordinary course of business” are considered as a Current Account Transaction. Hence, import of machinery on credit terms is Current Account Transaction.

**Example:** A Person Resident in India transfers US\$ 1,000 to his NRI brother in New York as “gift”. The funds are sent from the PRII’s Indian bank account to the NRI brother’s bank account in New York. Under accounts and income-tax law, gift is a “capital receipt”. However, under FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transaction is over. Hence, it is a Current Account Transaction.

### **SPECIAL POINTS**

- a. **GIFT:** If gift is a current account transaction, why is there a restriction under Current Account regulations? It is because while there is no restriction on Current Account transactions, some reasonable restrictions can be imposed. Otherwise, people may transfer funds abroad under the garb of current account transactions.

If however the PRII gives a PROI a gift in India in Indian currency, for the PROI it will result in funds lying in India (alteration of Indian asset). For PRII, there is no creation of asset or a liability. As this transaction creates an asset in India for the PROI, it is a Capital Account transaction.

In a similar manner, if a PROI gives a gift to a PRII by remitting funds in India, there is no restriction. However, if the PROI gives the funds abroad, the resident cannot keep it abroad. He has to bring it to India.

- b. Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction.
- c. The Central Government may, in public interest and in consultation with the Reserve Bank, impose such **reasonable restrictions** for current account transactions as prescribed under the FEM (Current Account Transactions) Rules, 2000.
- d. The general rule to be understood is that Current Account transactions are freely permitted unless specifically prohibited and Capital Account transactions are prohibited unless specifically or generally permitted.

**Q.NO.7 WRITE A SHORT NOTE ON RESTRICTIONS IMPOSED BY CENTRAL GOVERNMENT IN REGULATING CURRENT ACCOUNT TRANSACTIONS.**

**ANSWER:**

Section 5 of the Act permits any person to sell or draw Foreign Exchange to or from an Authorised person to undertake any current account transaction. The Central Government has the power to impose reasonable restrictions, in consultation with the RBI and in public interest on current account transactions. The Central Government has in exercise of this power issued the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Let us now see the various schedules to the Rules that lay down the restrictions:

**I. SCHEDULE I (Prohibited Transactions)**

Transactions for which drawal of foreign exchange is prohibited:

- i. Remittance out of lottery winnings.
- ii. Remittance of income from racing/riding, etc., or any other hobby.
- iii. Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- iv. Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- v. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- vi. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
- vii. Payment related to "Call Back Services" of telephones.
- viii. Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

**Note:** Schedule I (Transactions which are prohibited)-Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time.

**II. SCHEDULE II**

Transactions, which require prior approval of the Government of India for drawal of foreign exchange:

Schedule II (Transactions which require prior approval of the Central Government) - Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)

<u>Advertisement</u> in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.	Ministry of Finance, Department of Economic Affairs
Remittance of <u>freight of vessel chartered</u> by a PSU	Ministry of Surface Transport (Chartering Wing)
<u>Payment of import</u> through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e., other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport (Chartering Wing)
<u>Multi-modal transport operators</u> making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
Remittance of <u>hiring charges</u> of transponders by a. TV Channels b. Internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology.
Remittance of <u>container detention charges</u> exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
Remittance of <u>prize money/ sponsorship of sports activity abroad by a person other than International/ National/State Level sports bodies</u> , if the amount involved exceeds US \$ 100,000	Ministry of Human Resource Development (Department of Youth Affairs and Sports)
Remittance for <u>membership of P &amp; I Club</u>	Ministry of Finance (Insurance Division)

### III. SCHEDULE III

#### 1. Facilities for individuals—Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 250,000 only.:

- i. Private visits to any country (except Nepal and Bhutan)
- ii. Gift or donation.
- iii. Going abroad for employment

- iv. Emigration
- v. Maintenance of close relatives abroad
- vi. Travel for business or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
- vii. Expenses in connection with medical treatment abroad
- viii. Abroad
- ix. Any other current account transaction

Any additional remittance in excess of the said limit for the said purposes shall require prior approval of the Reserve Bank of India.

However, for the purposes mentioned at item numbers (iv), (vii) and (viii) above, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme as provided in regulation 4 to FEMA

Notification 1/2000-RB, dated the 3rd May, 2000 (here in after referred to as the said Liberalised Remittance Scheme) if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:

**SPECIAL POINTS:**

- A. Further, if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 (US Dollars 250,000 Only) by the amount so remitted:
- B. Further, that for a person who is resident but not permanently resident in India and-
  - a. Is a citizen of a foreign State **other than** Pakistan; or
  - b. Is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed 3 years, is a resident but not permanently resident:

- C. Further, a person other than an individual may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above.



**2. Facilities for persons other than individual—The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India:**

- i. Donations exceeding one per cent. of their foreign exchange earnings during the previous 3 financial years or USD 5,000,000, whichever is less, for-
  - a. Creation of Chairs in reputed educational institutes,
  - b. Contribution to funds (not being an investment fund) promoted by educational institutes; and
  - c. Contribution to a technical institution or body or association in the field of activity of the donor Company.
- ii. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is **more**.
- iii. Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

Explanation—For the purposes of this sub-paragraph, the expression “infrastructure” shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.
- iv. Remittances exceeding 5 % of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

**3. Procedure—**The procedure for drawal or remittance of any foreign exchange under this schedule shall be the same as applicable for remitting any amount under the said Liberalised Remittance Scheme.

**If the transaction is not listed in any of the above three schedules, it can be freely undertaken.**

- A. Exemption for remittance from RFC Account** – No approval is required where any remittance has to be made for the transactions listed in Schedule II and Schedule III above from an Resident Foreign Currency (RFC) account.
- B. Exemption for remittance from EEFC Account** – If any remittance has to be made for the transactions listed in Schedule II and Schedule III above from Exchange Earners' Foreign Currency (EEFC) account, then also no approval is required. However, if payment has to be made for the following transactions, approval is required even if payment is from EEFC account:

- a. Remittance for membership of P & I Club.
- b. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more. Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

**C. Exemption for payment by International Credit Card while on a visit abroad** – If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

**Note: Liberalised Remittance Scheme (LRS):** Under the Liberalised Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. This is inclusive of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of Foreign Exchange Management (CAT) Amendment Rules 2015, dated May 26, 2015.

**SPECIAL POINTS:**

**In case of remitter being a minor,** the LRS declaration form must be countersigned by the minor's natural guardian. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

**Consolidation of remittance of family members** - Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.

**Exception:** Clubbing is **not permitted** by other family members for **capital account transactions** such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/investment/property.

**Q.NO.8 WRITE A SHORT NOTE ON CAPITAL ACCOUNT TRANSACTION.**

**ANSWER:**

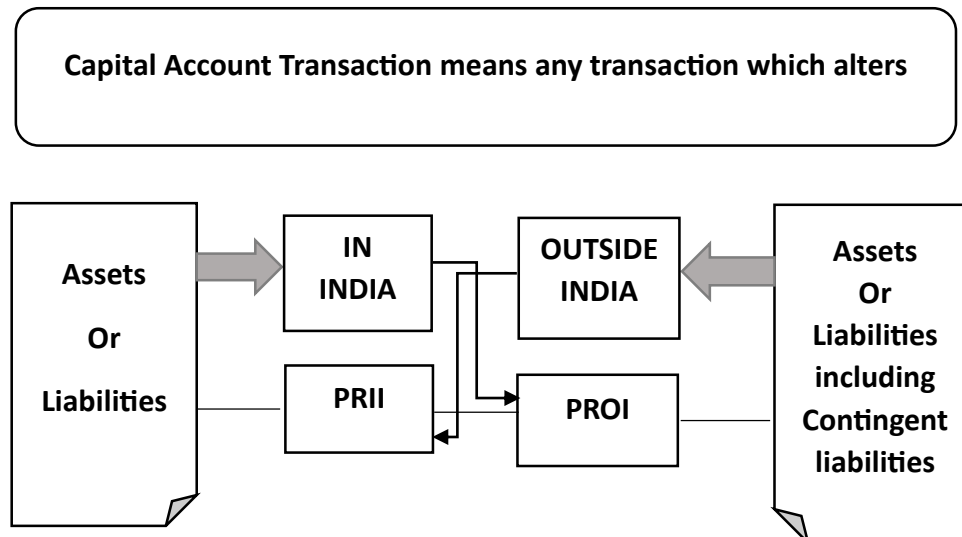
**CAPITAL ACCOUNT TRANSACTIONS [SECTION 6]**

1. The regulations under FEMA apply to a transaction based on whether the transaction is “Capital Account Transaction” or a “Current Account Transaction”.
2. These transactions broadly outline the basics and whole approach of the Act. Basically, these two transactions have to be understood as being similar to the concepts of items relating to the

- a. Profit and loss account or revenue items (with respect to current account transactions) and
- b. Of Balance Sheet or capital items (with respect to capital account transactions).

**3. CAPITAL ACCOUNT TRANSACTIONS** means “A transaction which alters the

- a. assets or liabilities including contingent liabilities outside India of persons resident in India or
- b. assets or liabilities in India of persons resident outside India would be a capital account transaction.”



- 4. Capital Accounts Transaction in India can be carried out only to the extent permitted because Indian Rupee is not yet fully convertible.
- 5. Capital and current account transactions are intended to be mutually exclusive.
- 6. A transaction which alters the asset or liabilities in India of non-residents falls under the category of capital account. However, as far as residents are concerned transactions which alter the contingent liabilities outside India are also capital account transactions.

**Q.NO.9 DISCUSS THE RESTRICTIONS IMPOSED BY RBI ON CAPITAL ACCOUNT TRANSACTION.**

**ANSWER:**

The Reserve Bank of India may by regulations place restrictions on various specified capital account transactions. In simple terms, cross border transactions pertaining to investments, loans, immovable property, transfer of assets are Capital Account Transactions.

- 1. Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
- 2. Reserve Bank had the power to specify the Capital Account transactions which are permitted and the relevant limits, terms and conditions. By Finance Act 2015, powers for regulation of Capital Account Transactions for Non-debt instruments were transferred to Central Government.

3. RBI continued to have powers to regulate debt instruments. The amendments have however been made effective from 15<sup>th</sup> October 2019. Now the regulations are as under: The Reserve Bank may, in consultation with the Central Government, specify:
  - a. Any class or classes of capital account transactions,<sup>5</sup> involving debt instruments, which are permissible;
  - b. The limit up to which foreign exchange shall be admissible for such transactions;
  - c. Any conditions which may be placed on such transactions;
4. The Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.
  - a. RBI has issued notification for Debt instruments specifying the terms and conditions. These regulations for foreign investment in debt instruments. For investment by Indian residents outside India, RBI continues to have power to regulate the transactions for equity and debt.
  - b. The Central Government may, in consultation with the Reserve Bank, prescribe—
    - i. any class or classes of capital account transactions, not involving debt instruments, which are permissible;
    - ii. the limit up to which foreign exchange shall be admissible for such transactions; and
    - iii. any conditions which may be placed on such transactions.

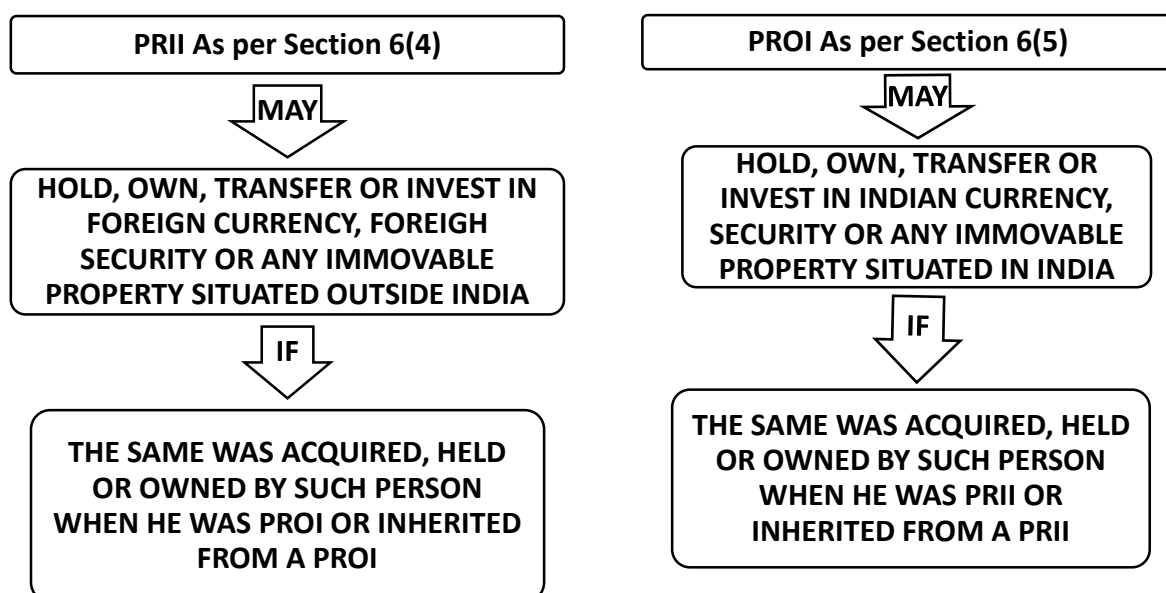
Central Government has issued notification for Non-debt instruments specifying the terms and conditions. RBI has issued notification for mode of payment and reporting of Non-debt instruments.
5. Before 15th October 2019, Section 6(3) specified a list of capital account transactions which could be regulated by RBI [apart from the general powers which it had under Section 6(2)]. This list has now been deleted from 15th October 2019.
6. A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

**CLARIFICATIONS:** The RBI vide A.P. (DIR Series) Circular No. 90 dated 9th January, 2014 has issued a clarification on section 6(4) of the Act. This circular clarifies that section 6(4) of the Act covers the following transactions:

- i. Foreign currency accounts opened and maintained by such a person when he was resident outside India;

- ii. Income earned through employment or business or vocation outside India taken up or commenced which such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
  - iii. Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
  - iv. A person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to extant FEMA provisions.
7. A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by a such person when he was resident in India or inherited from a person who was resident in India.
8. Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

#### Capital Account Transactions [Sec. 6(4) & 6(5)]



9. For the purposes of this section, the term “debt instruments” shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

**Q.NO.10 DISCUSS THE RELAXATIONS GIVEN BY RBI ON CAPITAL ACCOUNT TRANSACTION.**

**ANSWER:**

The section gives a liberty by providing that any person may sell or draw foreign exchange to or from an authorised person for capital account transactions. However, the liberty to do so is subject to the provisions of sub-section (2) and (2A), which states that the Reserve Bank and the Central Government may specify class or classes of capital account transactions, which are permissible limit up to, which the foreign exchange shall be admissible for such transactions and the conditions which may be placed on such transactions.

Capital account transaction is basically split into the following categories under **Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000:-**

- I. Transaction, which are permissible in respect of persons resident in India and outside India.
- II. Transaction on which restrictions cannot be imposed; and
- III. Transactions, which are prohibited.

**I. Permissible Transactions**

RBI has issued the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. The Regulations specify the list of transaction, which are permissible in respect of persons resident in India in Schedule-I and the classes of capital account transactions of persons resident outside India in Schedule-II.

Further, subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules; provided that the transaction is within the limit, if any, specified in the regulations relevant to the transaction.

**SCHEDULE I**

The list of permissible classes of transactions made by persons resident in India is:

- a. Investment by a person resident in India in foreign securities.
- b. Foreign currency loans raised in India and abroad by a person resident in India.
- c. Transfer of immovable property outside India by a person resident in India.
- d. Guarantees issued by a person resident in India in favour of a person resident outside India.
- e. Export, import and holding of currency/currency notes.
- f. Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.

- g. Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- h. Taking out of insurance policy by a person resident in India from an insurance company outside India.
- i. Loans and overdrafts by a person resident in India to a person resident outside India.
- j. Remittance outside India of capital assets of a person resident in India.
- k. Undertake derivative contracts

## **SCHEDULE II**

The list of permissible classes of transactions made **by persons resident outside India** is:

- a. Investment in India by a person resident outside India, that is to say,
  - i. Issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
  - ii. Investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of a person in India.
- b. Acquisition and transfer of immovable property in India by a person resident outside India.
- c. Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- d. Import and export of currency/currency notes into/from India by a person resident outside India.
- e. Deposits between a person resident in India and a person resident outside India.
- f. Foreign currency accounts in India of a person resident outside India.
- g. Remittance outside India of capital assets in India of a person resident outside India.
- h. Undertake derivative contracts.

## **II. Transactions with no restriction**

They are:

1. For amortisation of loan and
2. For depreciation of direct investments in ordinary course of business.

Also, restrictions cannot be imposed when drawal is of the purpose of repayments of loan installments.

## **III. Prohibited Transactions**

On certain transactions, the Reserve Bank of India imposes prohibition.

- a. No person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction,

provided that-

- i. Subject to the provisions of the Act or the rules or regulations or directions or orders made or issued thereunder, a resident individual may, draw from an authorized person foreign exchange not exceeding USD 250,000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule I.

Explanation: Drawal of foreign exchange as per item number 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated 3rd May 2000 as amended from time to time, shall be subsumed within the limit under proviso (a) above.

- ii. Where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds USD 250,000 per financial year, or as decided by Reserve Bank from time to time as the case may be, the limit specified in the regulations relevant to the transaction shall apply with respect to such drawal.
- iii. No part of the foreign exchange of USD 250,000, drawn under proviso (a) shall be used for remittance directly or indirectly to countries notified as non-co-operative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by the Reserve Bank of India to all concerned.

- b. The person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:

- i. In **the business of chit fund**;

- 1. Registrar of Chits or an officer authorised by the state government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non-resident Indians.
- 2. Non- resident Indians shall be eligible to subscribe, through banking channel and on non- repatriation basis, to such chit funds, without limit subject to the conditions stipulated by the Reserve Bank of India from time to time

- ii. As **Nidhi company**.

- iii. In **agricultural or plantation activities**.

- iv. In **real estate business, or construction of farmhouses** or

Explanation: In "real estate business" the term shall not include development of townships, construction of residential/commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.; or



**v. In trading in Transferable Development Rights (TDRs).**

'Transferable Development Rights' means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole;

- c. No person resident in India shall undertake** any capital account transaction which is not permissible in terms of Order *S.O. 1549(E) dated April 21, 2017*, as amended from time to time, of the Government of India, Ministry of External Affairs, with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the Central Government to carry on any transaction.
- d. The existing investment transactions, with any person** who is, a citizen of or resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic of Korea, by a person resident in India, which is not permissible in terms of Order *S.O. 1549(E) dated April 21, 2017*, as amended from time to time, of the Government of India, Ministry of External Affairs shall be closed/ liquidated/disposed/settled within a period of 180 days from the date of issue of this Notification, unless there is specific approval from the Central Government to continue beyond that period."

Thus, a capital account transaction is permitted only if it is specifically permitted under the regulations. If the transaction is not stated as generally permitted, a prior specific approval is required.

## ILLUSTRATIONS

### **Illustration 1.**

**Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?**

#### **Answer**

As explained in the above illustration, Mr. X will be considered as a 'person resident in India' from 1st April 2020. As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021.

If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, has not left India for any of these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

### **Illustration 2.**

**Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021- 2022?**

#### **Answer**

Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

### **Illustration 3.**

**Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its headquarters in Mumbai and has a branch in Singapore. The Headquarters at Mumbai controls the Singapore branch of the robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?**

#### **Answer**

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

The robotic unit headquartered in Mumbai, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'.

### **Illustration 4.**

**Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?**

#### **Answer**

Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.

If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

## TEST YOUR KNOWLEDGE

### MCQ Based Questions

1. In September, 2021, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US\$ 50,000 from his banker State Bank of India, New Delhi branch. In December, 2021 he further, withdrew US\$ 50,000 from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2022, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US\$ 75,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2022, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2022 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2022, he again withdrew US\$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US\$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew foreign exchange on various occasions from his banker State Bank of India.
- a. In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2021-22, Mr. Purshottam Saha is not required to obtain any prior approval.
  - b. In respect of withdrawal of US\$ 35,000 in the last week of March, 2022, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US\$ 1,75,000.
  - c. After withdrawing US\$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021-22, otherwise SBI would not have permitted further withdrawals.
  - d. After withdrawing US\$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021-22, otherwise SBI would not have permitted further withdrawals.

2. M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:
- a. For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
  - b. For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.
  - c. For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
  - d. For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).
3. Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident in India' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalised and Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000 (assuming 1 USD = ₹ 70). According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to be remitted in USD to the Head Office of M/s. Super Seller located in USA. Considering the relevant provisions of Foreign Exchange Management Act, 1999, which statement out of the four given below is correct (ignoring TDS implications arising under the Income-tax Act, 1961):

- a. There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.
  - b. There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.
  - c. There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
  - d. It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
4. Mohita Periodicals and Mags Publications Limited, having registered office in Chennai, has obtained consultancy services from an entity based in France for setting up a software programme to strengthen various aspects relating to publications. The consideration for such consultancy services is required to be paid in foreign currency. The compliance officer of Mohita Periodicals and Mags Publications Limited, Mrs. Ritika requires your advice regarding the foreign exchange that can be remitted for the purpose of obtaining consultancy services from abroad without prior approval of Reserve Bank of India. Out of the following four options, choose the one which correctly portrays the amount of foreign exchange remittable for the given purpose after considering the provisions of the Foreign Exchange Management Act, 1999 and regulations made thereunder:
- a. Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 50,000,000.
  - b. Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 10,000,000.
  - c. Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 5,000,000.
  - d. Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 1,000,000.

5. After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2021, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of ₹ 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brass ware, jewellery, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2022- 23 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:

- a. For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.
- b. For the financial year 2022-23, Mr. Umesh is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.
- c. For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.
- d. For the financial year 2022-23, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.

#### Answer to MCQ based Questions

1.	a.	In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2021-22, Mr. Purshottam Saha is not required to obtain any prior approval.
2.	c.	For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
3.	d.	It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
4.	d.	Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 1,000,000.
5.	c.	For the financial year 2022-23, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.

### **DESCRIPTIVE QUESTIONS**

**Q.NO.1. 'PRINTEX COMPUTER' IS A SINGAPORE BASED COMPANY HAVING SEVERAL BUSINESS UNITS ALL OVER THE WORLD. IT HAS A UNIT FOR MANUFACTURING COMPUTER PRINTERS WITH ITS HEADQUARTERS IN PUNE. IT HAS A BRANCH IN DUBAI WHICH IS CONTROLLED BY THE HEADQUARTERS IN PUNE. WHAT WOULD BE THE RESIDENTIAL STATUS UNDER THE FEMA, 1999 OF PRINTER UNITS IN PUNE AND THAT OF DUBAI BRANCH?**

**ANSWER:**

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)).

**PROVISION:** Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi).

**ANALYSIS AND CONCLUSION:** Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

**Q.NO.2. MR. SANE, AN INDIAN NATIONAL DESIRES TO OBTAIN FOREIGN EXCHANGE FOR THE FOLLOWING PURPOSES:**

- i. REMITTANCE OF US DOLLAR 50,000 OUT OF WINNINGS ON A LOTTERY TICKET.
- ii. US DOLLAR 100,000 FOR SENDING A CULTURAL TROUPE ON A TOUR OF U.S.A.

**ADVISE HIM WHETHER HE CAN GET FOREIGN EXCHANGE AND IF SO, UNDER WHAT CONDITIONS?**

**ANSWER:**

**PROVISION:** Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.



- i. In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane cannot withdraw Foreign Exchange for this purpose.
- ii. Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

**CONCLUSION:** In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c).

**Q.NO.3. STATE WHICH KIND OF APPROVAL IS REQUIRED FOR THE FOLLOWING TRANSACTIONS UNDER THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999:**

- i. X, A FILM STAR, WANTS TO PERFORM ALONG WITH ASSOCIATES IN NEW YORK ON THE OCCASION OF DIWALI FOR INDIANS RESIDING AT NEW YORK. FOREIGN EXCHANGE DRAWAL TO THE EXTENT OF US DOLLARS 20,000 IS REQUIRED FOR THIS PURPOSE.
- ii. R WANTS TO GET HIS HEART SURGERY DONE AT UNITED KINGDOM. UP TO WHAT LIMIT FOREIGN EXCHANGE CAN BE DRAWN BY HIM AND WHAT ARE THE APPROVALS REQUIRED?

**ANSWER:**

**PROVISION: APPROVAL TO THE FOLLOWING TRANSACTIONS UNDER FEMA, 1999:**

- i. Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.
- ii. Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However, in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment.

**Q.NO.4. REFERRING TO THE PROVISIONS OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999, STATE THE KIND OF APPROVAL REQUIRED FOR THE FOLLOWING TRANSACTIONS:**

- i. M REQUIRES U.S. \$ 5,000 FOR REMITTANCE TOWARDS HIRING CHARGES OF TRANSPONDERS.**
- ii. P REQUIRES U.S. \$ 2,000 FOR PAYMENT RELATED TO CALL BACK SERVICES OF TELEPHONES.**

**ANSWER:**

**PROVISION:** Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions.

**CONCLUSION:** Accordingly,

- i. It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.**
- ii. Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US \$ 2,000 for the said purpose.**

**Q.NO.5. SURESH RESIDED IN INDIA DURING THE FINANCIAL YEAR 2020-2021. HE LEFT INDIA ON 15TH JULY 2021 FOR SWITZERLAND FOR PURSUING HIGHER STUDIES IN BIOTECHNOLOGY FOR 2 YEARS. WHAT WOULD BE HIS RESIDENTIAL STATUS UNDER THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 DURING THE FINANCIAL YEARS 2021-2022 AND 2022-2023? MR. SURESH REQUIRES EVERY YEAR USD 25,000 TOWARDS TUITION FEES AND USD 30,000 FOR INCIDENTAL AND STAY EXPENSES FOR STUDYING ABROAD. IS IT POSSIBLE FOR MR. SURESH TO GET THE REQUIRED FOREIGN EXCHANGE AND, IF SO, UNDER WHAT CONDITIONS?**

**ANSWER:**

**PROVISION:** According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period.

**ANALYSIS AND CONCLUSION:** In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Mr. Suresh will be treated as person resident in India for Financial Year 2021- 2022 till 16th July 2021 and from 17th July 2021, he will be considered as person resident outside India.

However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

**Q.NO.6.**

- i. **MR. P HAS WON A BIG LOTTERY AND WANTS TO REMIT US DOLLAR 20,000 OUT OF HIS WINNINGS TO HIS SON WHO IS IN USA. ADVISE WHETHER SUCH REMITTANCE IS POSSIBLE UNDER THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999.**
- ii. **MR. Z IS UNWELL AND WOULD LIKE TO HAVE A KIDNEY TRANSPLANT DONE IN USA. HE WOULD LIKE TO KNOW THE FORMALITIES REQUIRED AND THE AMOUNT THAT CAN BE DRAWN AS FOREIGN EXCHANGE FOR THE MEDICAL TREATMENT ABROAD.**

**ANSWER:**

**PROVISION: REMITTANCE OF FOREIGN EXCHANGE (SECTION 5 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999):** According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed. As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawl of foreign exchange.
  - i. Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence Mr. P cannot withdraw foreign exchange for this purpose.

- ii. "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 250,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

**CONCLUSION:** Therefore, Mr. Z can draw foreign exchange up to the USD 250,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

**Q.NO.7. MR. ROHAN, AN INDIAN RESIDENT INDIVIDUAL DESIRES TO OBTAIN FOREIGN EXCHANGE FOR THE FOLLOWING PURPOSES:**

**A. US\$ 120,000 FOR STUDIES ABROAD ON THE BASIS OF ESTIMATES GIVEN BY THE FOREIGN UNIVERSITY.**

**B. GIFT REMITTANCE AMOUNTING US\$ 10,000.**

**ADVISE HIM WHETHER HE CAN GET FOREIGN EXCHANGE AND IF SO, UNDER WHAT CONDITION(S)?**

**ANSWER:**

**PROVISION:**

**A. Remittance of Foreign Exchange for studies abroad:**

Foreign exchange may be released for studies abroad up to a limit of US \$ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad.

**CONCLUSION:** In this case since US \$ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required.

**B. Gift remittance exceeding US \$ 10,000:**

Under the provisions of section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US \$ 250,000 can be made after obtaining prior approval of the RBI.

**CONCLUSION:** In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.