K.T.S.P Mandal's

Hutatma Rajguru Mahavidyalaya,

Rajgurunagar, Tal-Khed, Dist-Pune, 410505

Department Of BBA

CLASS - SY.BBA SEM - III

Subject-Mercantile Law

Unit 2- Overview of Business Laws & Consumer Protection.

By - Prof.Gate S.J.

Indian Partnership Act, 1932

Introduction

- The **Indian Partnership Act, 1932** deals with the laws relating to partnership in India.
- It is one of the oldest mercantile laws.
- Earlier, partnership provisions were included in the **Indian Contract Act, 1872 (Sections 239–266)**.
- In 1932, partnership law was separated into a distinct Act.
- The Indian Partnership Act, 1932, supplements the Indian Contract Act, 1872.
- It explains the rights and duties of partners.
- A partnership agreement must satisfy the basic requirements of a valid contract, such as:
    1. Free consent
    2. Competent parties
    3. Lawful object
    4. Lawful consideration
    5. Legally enforceable agreement.

Features of the Act

1. **Central Act:** The Indian Partnership Act, 1932, is a Central Act enacted by Parliament.
2. **Specific Contract:** It deals specifically with partnership contracts.
3. **Supplementary Act:** It supplements the Indian Contract Act, 1872.
4. **Earlier Provisions:** Initially, partnership provisions were included in Sections 239–266 of the Indian Contract Act, 1872.

Concept of Partnership

Meaning:

- Partnership is an agreement between two or more persons to carry on a business and share its profits.
- The business may be carried on by all partners or by any one partner acting on behalf of all.
- At least **2 persons** are required to form a partnership.

Definition under Section 4:

According to the Indian Partnership Act, 1932, partnership is:
" The relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."

Definitions by Different Authors

1. **J. I. Hauson:** Partnership is a form of business organisation in which two or more persons join together to undertake business activities.

2. **Kimball:** Partnership is a group of people who contribute capital or services to carry on an enterprise.

3. **Haney:** Partnership is the relationship between persons competent to contract who agree to carry on a lawful business together with the aim of earning profit.

Types of Partners

1. Actual or Ostensible Partner

- A person who becomes a partner through an agreement and actively participates in the business.
- He acts as an **agent of the other partners**.
- He is liable for the debts and obligations of the firm.

  Example: A and B run a shop together and both participate in its management.

2. Sleeping or Dormant Partner

- A partner who contributes capital and shares profits and losses but does not participate in the daily management of the business.
- He is liable for the firm's debts like other partners.
- He may have money to invest but no time to manage the business.

  Example: A invests money in B's business but does not take part in its daily operations.

3. Nominal Partner

- A person who lends his name to a firm but does not make a real contribution to its business.
- Generally, he does not invest capital, share profits or participate in management.
- He may be liable to third parties for the firm's debts if they extend credit relying on his representation as a partner.

  Example: A famous businessman allows a firm to use his name as a partner without participating in its operations.

4. Partner in Profits Only

- A partner who agrees to share the profits of the firm but is not required to share losses **as agreed between the partners**.
- However, he remains liable to third parties for the firm's debts, like other partners.

  Example: A and B agree that A will receive 30% of profits but will not bear losses internally.

5. Sub-Partner

- A person with whom an existing partner agrees to share his share of profits.
- A sub-partner is not a partner of the original firm.
- He cannot represent himself as a partner of that firm.
- He has no direct rights or liabilities toward the original firm merely because of the sub-partnership.

  Example: A is a partner in a firm and agrees to give 20% of his profits to C. C is a sub-partner.

6. Incoming Partner

- A person who joins an already existing partnership firm.
- Usually, the consent of all existing partners is required unless the partnership agreement provides otherwise.
- He is generally not liable for acts of the firm that occurred before he joined, unless he agrees to assume those obligations with the relevant consent.

  Example: A and B run a business. Later, C joins them as a new partner.

7. Outgoing Partner

- A partner who leaves a firm while the remaining partners continue the business.
- A partner may cease to be a partner through:

1. Retirement
2. Expulsion, subject to legal requirements
3. Insolvency
4. Death

Example: A, B and C run a firm. A retires, while B and C continue the business.

8. Partner by Estoppel or Holding Out

- A person who is not actually a partner but represents himself as one, or knowingly allows others to represent him as one, may become liable to third parties who extend credit on that belief.
- This principle protects people who rely on such representations in good faith.

Example: A retired businessman knowingly allows a firm to present him as a partner. A supplier gives credit believing the representation and may hold him liable, subject to the legal requirements.

9. Minor Admitted to the Benefits of Partnership

- A minor cannot become a full-fledged partner because a minor is not competent to enter into a partnership contract.
- Under **Section 30 of the Indian Partnership Act, 1932**, a minor may be admitted to the benefits of an existing partnership with the consent of all partners.
- A minor can receive an agreed share of profits and property.
- The minor's share in the firm is liable for the acts of the firm, but the minor is not personally liable for the firm's debts.
- A minor cannot be admitted to the benefits of a newly formed partnership as a substitute for a competent partner.

Example: A and B are partners. With the consent of both, their minor child C is admitted to the benefits of their existing firm.

Registration of Partnership Firm

- Registration of a partnership firm is **not compulsory** under the Indian Partnership Act, 1932.
- It is the choice of the partners whether to register their firm or not.
- However, an unregistered firm faces certain legal disadvantages under **Section 69** of the Act.

Procedure for Registration (Sections 58 and 59)

The following steps are involved in registering a partnership firm:

Step 1: Obtain the prescribed form

Obtain the prescribed statement or application for registration from the Registrar of Firms of the relevant area.

Step 2: Mention the required details

The statement should contain the following information:

1. Name of the firm.
2. Principal place of business of the firm.
3. Names of other places where the firm carries on business.
4. Date on which each partner joined the firm.
5. Full names and permanent addresses of all partners.
6. Duration of the firm.

Step 3: Sign and verify the statement
The statement must be signed and verified by all partners or their authorised agents, as required by law.

Step 4: Submit the statement and fees
Submit the completed statement to the Registrar of Firms along with the prescribed registration fees.

Step 5: Registration by the Registrar

- The Registrar examines the statement and checks compliance with Section 58.
- If satisfied, the Registrar records the statement in the **Register of Firms** and files it.
- The Registrar then issues a certificate of registration under Section 59.

Dissolution of Partnership Firm

Introduction

- The **Indian Partnership Act, 1932** explains the dissolution of a partnership and the dissolution of a firm.
- **Section 39** states that the dissolution of partnership between all the partners of a firm is called the **dissolution of the firm**.
  Dissolution of a firm means the business relationship between all partners comes to an end and the firm is wound up.

Difference between Dissolution of Partnership and Dissolution of Firm

- **Dissolution of Partnership:** The relationship between partners changes, but the firm may continue its business.
- **Dissolution of Firm:** The relationship between all partners ends and the firm is wound up.

Laws Governing LLP (2008)

LLP Act, 2008

Introduction-

- The **Limited Liability Partnership Act, 2008** was introduced to regulate Limited Liability Partnerships (LLPs) in India.
- The LLP Bill was passed by the Lok Sabha on **13 December 2008**.
- The Act received the President's assent on **7 January 2009**.
- The Act provides a legal framework for forming and operating LLPs in India.

Why was the LLP Act, 2008 introduced?

1. **Limitations of the Companies Act:** The Companies Act was designed mainly for companies and was not considered suitable for the flexible partnership-style structure of LLPs.
2. **Unlimited Liability in Traditional Partnerships:** Under a traditional partnership, partners generally have unlimited liability. This can put their personal assets at risk.
3. **Need for Flexibility:** Businesses wanted the flexibility of a partnership along with the limited liability protection of a company.
4. **Professional Businesses:** LLPs are suitable for businesses involving professionals such as lawyers, accountants, IT specialists and consultants.

5. **JJ Irani Committee:** The committee recommended introducing a separate legal framework for LLPs.

Main Objective of the LLP Act, 2008

The main objective is to **combine the flexibility of a partnership with the benefits of limited liability and a separate legal identity**.

The Act bridges the gap between:

- A company governed by company law.
- A traditional partnership governed by the Indian Partnership Act, 1932.

Limited Liability Partnership (LLP)

Meaning:

- LLP stands for **Limited Liability Partnership**.
- It combines the features of a partnership firm and a company.
- It provides the flexibility of a partnership and the benefit of limited liability like a company.
- An LLP has a separate legal identity from its partners.
- It continues to exist even if a partner leaves or dies.

Definition:

A Limited Liability Partnership (LLP) is a form of business organisation in which partners enjoy limited liability, and the business operates as a separate legal entity.

Basic Features of LLP

1. Limited Liability

- The liability of partners is generally limited to their agreed contribution to the LLP.
- Their personal assets are generally protected from the LLP's debts.
- However, a partner remains liable for their own wrongful acts or fraud.

2. Number of Partners

- Minimum number of partners required: **2**.
- There is **no maximum limit** on the number of partners.
- At least two partners are required to form an LLP.
- Every LLP must have at least two designated partners who are individuals, subject to the applicable legal requirements. At least one designated partner must be resident in India.

3. Body Corporate

- An LLP is a separate legal entity under the Limited Liability Partnership Act, 2008.
- It can own property in its own name.
- It can enter into contracts.
- It can sue others and can be sued in its own name.

4. Perpetual Succession

- An LLP continues to exist even if a partner retires, dies or leaves.
- Changes in partners do not automatically dissolve the LLP.

5. Ability to Borrow

- An LLP can borrow money from banks and financial institutions in its own name.
- It can obtain loans to carry on its business, subject to applicable rules.

6. Taxation

- An LLP is generally taxed as a separate entity.
- In India, LLP income is generally subject to income tax at **30%**, plus applicable surcharge and cess.
- The actual tax treatment depends on the applicable tax provisions.

Difference between Partnership Firm and LLP

No.	Basis	Partnership Firm	LLP
1	Regulating Law	Indian Partnership Act, 1932	LLP Act, 2008
2	Registration	Optional	Compulsory
3	Creation	By agreement	By registration
4	Separate Legal Entity	No	Yes
5	Name of Entity	Any suitable name	Name ends with LLP
6	Perpetual Succession	May be affected by changes in partners	Continues despite changes in partners
7	Charter Document	Partnership Deed	LLP Agreement
8	Common Seal	Not required	May have a common seal
9	Incorporation Formalities	Deed and registration application, if registering	LLP Agreement, prescribed forms and fees
10	Time Taken to Incorporate	Depends on the process	Depends on approval and formalities
11	Can Sue Third Party?	Registered firm can sue, subject to law	Can sue in its own name
12	Foreign National as Partner	Subject to applicable laws	Subject to applicable laws
13	Number of Members	Minimum 2; maximum generally 50	Minimum 2; no maximum limit
14	Ownership of Assets	Assets belong to the firm	Assets belong to the LLP
15	Rights and Duties	Governed by Partnership Deed	Governed by LLP Agreement

16	Digital Signature	Generally not required for an ordinary partnership	Required for relevant electronic filings
17	Dissolution	As per law and partnership agreement	Voluntarily or through legal process
18	Maintenance of Minutes	Generally not compulsory	Depends on applicable requirements
19	Annual Filing	No general annual return under the Partnership Act	Annual filing is compulsory
20	Audit of Accounts	Audit as required under Income Tax laws	Audit as required under LLP laws
21	Compromise / Arrangement	No equivalent general statutory framework	Statutory provisions are available
22	Merger / Amalgamation	No equivalent general LLP-style procedure	Provision available under the LLP Act
23	Whistle-Blowing	No equivalent specific provision under the Partnership Act	Specific provisions are available
24	Admission of Minor	Minor can be admitted to benefits of partnership	Minor cannot become a partner
25	Liability of Partners	Generally unlimited liability	Generally limited liability
26	Legal Compliance	Partners share responsibilities under law	Designated partners have specific compliance duties

Consumer Protection Act, 2019

Introduction to the Act

- The **Consumer Protection Act, 2019** came into force on **20 July 2020**.
- The main purpose of this Act is to protect consumers and safeguard their rights.
- It empowers consumers to seek justice against unfair trade practices and defective goods or services.
- The Act aims to provide **speedy, simple and effective** resolution of consumer complaints.
- It introduced new provisions to address modern consumer issues, including online shopping and e-commerce.
- Compared with the Consumer Protection Act, 1986, the new Act provides additional mechanisms for consumer protection.

Three-Tier Consumer Dispute Redressal System

The Act provides three levels of consumer dispute redressal commissions:

1. **District Commission** – Works at the district level.
2. **State Commission** – Works at the state level.
3. **National Commission** – Works at the national level.

Objectives of Consumer Protection Act, 2019

1. Better Protection of Consumers' Interests

The main objective of the Act is to protect the interests of consumers.
It protects consumers against exploitation by sellers and service providers.

2. Protection of Consumer Rights

The Act recognises the following six consumer rights:

1. **Right to Safety:** Protection against goods and services hazardous to life and property.
2. **Right to Information:** Right to know the quality, quantity, purity, standard and price of goods.
3. **Right to Choose:** Access to a variety of goods and services at competitive prices.
4. **Right to Be Heard:** Consumers' complaints and interests must receive proper consideration.
5. **Right to Seek Redressal:** Right to seek remedies against unfair trade practices and exploitation.
6. **Right to Consumer Education:** Right to gain knowledge about consumer rights and responsibilities.

3. Consumer Protection Councils

The Act provides for Consumer Protection Councils at the Central, State and District levels.
Their purpose is to promote and protect consumer rights.
They help create awareness about consumer interests.

4. Quasi-Judicial Machinery for Speedy Redressal

The Act provides a three-tier system to resolve consumer disputes.
These bodies are the District Commission, State Commission and National Commission.
They aim to provide simple, speedy and effective justice to consumers.
They can order appropriate remedies, including compensation where legally justified.

Scope of Consumer Protection Act, 2019

The **Consumer Protection Act, 2019** has a wide scope. It protects consumers from unfair trade practices, defective goods, deficient services and misleading advertisements.

1. **Protection of Consumers:** Protects consumers against exploitation by sellers and service providers.
2. **Goods and Services:** Covers complaints relating to defective goods and deficient services.
3. **E-commerce:** Covers online shopping and consumer transactions through electronic platforms.
4. **Unfair Trade Practices:** Protects consumers against false claims, unfair selling methods and misleading business practices.
5. **Misleading Advertisements:** Provides measures against misleading advertisements and allows action against responsible parties as provided by law.
6. **Consumer Rights:** Protects consumers' rights to safety, information, choice, being heard, redressal and consumer education.
7. **Consumer Dispute Redressal:** Establishes a three-tier system:

- District Consumer Commission
- State Consumer Commission
- National Consumer Commission

8. **Central Consumer Protection Authority (CCPA):** Establishes the CCPA to protect consumer rights and address unfair trade practices and misleading advertisements.
9. **Product Liability:** Provides for compensation claims for harm caused by defective products in circumstances specified by the Act.
10. **Mediation:** Provides mediation as a means of resolving suitable consumer disputes.

Consumer – Section 2(7)

Definition:

A consumer is a person who buys goods or hires or avails services for consideration (payment), but does not include a person who obtains goods for resale or for a commercial purpose, subject to the exceptions provided by law.

Types of consumers:

- **Buyer of goods:** A person who purchases goods for personal use.
- **User of goods:** A person who uses purchased goods with the buyer's approval.
- **User of services:** A person who hires or uses services for payment.
- **Beneficiary of services:** A person who benefits from services with the approval of the person who paid for them.

Example: A person who buys a refrigerator for home use is a consumer.

Consumer Dispute

Definition:

A consumer dispute is a disagreement between a consumer and a seller or service provider regarding goods or services.

Examples:

- Receiving defective goods.
- Being charged more than the displayed price.
- Receiving poor-quality services.
- Facing unfair trade practices.

Consumer disputes can be taken to the appropriate District, State or National Consumer Commission, according to the applicable rules.

Consumer Rights – Section 2(9)

Definition:

Consumer rights are the rights provided by law to protect consumers from exploitation and ensure fair treatment.

The six consumer rights are:

1. **Right to Safety:** Protection against goods and services hazardous to life and property.
2. **Right to Information:** The right to know the quality, quantity, purity, standard and price of goods and services.
3. **Right to Choose:** Access to a variety of goods and services at competitive prices, wherever possible.
4. **Right to Be Heard:** The right to have consumer interests considered by appropriate forums.
5. **Right to Seek Redressal:** The right to seek remedies against unfair or restrictive trade practices and exploitation.
6. **Right to Consumer Awareness:** The right to gain knowledge and awareness about consumer rights.

Consumer Responsibilities

Definition:
Consumer responsibilities are the duties consumers should follow to protect their own interests and promote fair business practices.

1. Responsibility to Be Aware

Consumers should check the quality, price, quantity, expiry date and safety of products before buying.
Example: Checking the expiry date before purchasing food.

2. Responsibility to Think Independently

Consumers should make their own purchasing decisions according to their needs and budget.
Example: Not buying a product only because the seller insists on it.

3. Responsibility to Speak Out

Consumers should raise their voice against defective goods and poor services.
Example: Reporting a defective product to the seller.

4. Responsibility to Complain

Consumers should file complaints when sellers or service providers fail to resolve genuine problems.
Example: Filing a complaint for a faulty appliance that is not repaired as promised.

5. Responsibility to Be an Ethical Consumer

Consumers should act honestly and avoid false complaints or supporting illegal trade practices.
Example: Refusing to purchase counterfeit or adulterated products.

Consumer Disputes Redressal Agencies

1.District Commission – Section 28

The District Consumer Disputes Redressal Commission is a consumer dispute redressal body established by the State Government in each district to resolve consumer complaints.

- The State Government establishes a District Commission by notification.
- It may establish more than one District Commission in a district if required.

➢ Composition of District Commission

Each District Commission consists of:

1. **President**
2. **Members:** At least two members, with the prescribed maximum number as determined under applicable rules.

➢ Qualifications (Section 29)

- The President and members must fulfil the qualifications prescribed by law.
- Members must have the required educational qualifications and relevant experience.

➢ Salary and Conditions of Service (Section 30)

- The State Government prescribes the salary, allowances and service conditions of the President and members.

➢ Jurisdiction (Section 34)

- **Pecuniary Jurisdiction:** Generally, complaints involving consideration paid up to ₹50 lakh.
- **Territorial Jurisdiction:** A complaint can be filed where:

1. The opposite party resides or carries on business.
2. The cause of action arises.
3. The complainant resides or personally works for gain.

➢ Place of Functioning

- The District Commission ordinarily functions at the district headquarters.

2.State Commission

➢ Establishment (Section 42)

- The State Government establishes a State Consumer Disputes Redressal Commission by notification.

➢ Composition

- One President.
- At least four members, as prescribed by law.

➢ Qualifications (Section 43)

- The Central Government prescribes the qualifications, recruitment, appointment, tenure, resignation and removal of the President and members.

➢ Appointment

- The President and members are appointed according to the prescribed procedure and selection committee recommendations.

➢ Salary and Service Conditions

- The State Government prescribes the salary, allowances and other service conditions according to applicable rules.

➢ Jurisdiction (Section 47)

The State Commission has the power to:

1. **Consumer Complaints:** Hear complaints where the consideration paid exceeds ₹50 lakh but does not exceed ₹2 crore, under the current prescribed limits.
2. **Unfair Contracts:** Hear complaints against unfair contracts within its prescribed pecuniary jurisdiction.
3. **Appeals:** Hear appeals against District Commission orders within the State.
4. **Revision:** Call for records of District Commissions and pass appropriate orders where jurisdiction has been exercised illegally or improperly.

➢ Territorial Jurisdiction

A complaint can be filed where:

- The opposite party resides or carries on business.
- The cause of action arises wholly or partly.
- The complainant resides or personally works for gain.

3. National Commission

➢ Establishment (Section 53)

- The Central Government establishes the National Consumer Disputes Redressal Commission.
- It ordinarily functions in the National Capital Region.
- Regional benches may also be established.

➢ Composition (Section 54)

- One President.
- At least four members, as prescribed by law.

➢ Qualifications of Members (Section 55)

- The Central Government prescribes qualifications, appointment, tenure, salary and service conditions.
- The term of office cannot exceed five years.
- Maximum age: President – 70 years; other members – 67 years.
- Members may be reappointed, subject to applicable rules.

➢ Appointment

- The President and members are appointed according to the prescribed legal procedure.

➢ Salary and Service Conditions

- The Central Government determines the salary, allowances and other service conditions.

➢ Jurisdiction (Section 58)

The National Commission has the power to:

1. **Consumer Complaints:** Hear complaints where the consideration paid exceeds ₹2 crore, under the current prescribed limits.
2. **Unfair Contracts:** Hear eligible complaints against unfair contracts.
3. **Appeals:** Hear appeals against orders of State Commissions.
4. **CCPA Orders:** Hear appeals against orders of the Central Consumer Protection Authority, as provided by law.

5. **Revision:** Review records of State Commission proceedings where jurisdiction has been exercised illegally or improperly.

➢ **Benches**

- The President may constitute benches with one or more members.
- The senior-most member presides over the bench.
- Decisions are generally made by majority opinion.

Procedure for Disposal of Complaints

1. Filing and Notice

- The Consumer Commission receives the complaint.
- A copy is sent to the opposite party to submit their reply within **30 days**, extendable by **15 days**.

2. Testing of Goods

- If the defect requires laboratory testing, the Commission sends a sealed sample to an appropriate laboratory.
- The laboratory generally submits its report within **45 days**, or within an extended period allowed by the Commission.
- Both parties are given an opportunity to raise objections to the report.

3. Hearing and Evidence

- Both parties are given a reasonable opportunity to present their case.
- If the opposite party disputes the complaint, the Commission considers the evidence of both parties.
- If the opposite party fails to respond, the Commission may decide the case based on the complainant's evidence.

4. Principles of Natural Justice

- Both parties must receive a fair opportunity to be heard.
- The Commission follows the prescribed procedure for fair dispute resolution.

5. Appeal Against District Commission Order

- An aggrieved person may appeal to the **State Commission within 45 days** under the Consumer Protection Act, 2019.
- A delayed appeal may be accepted if sufficient cause is shown.

6. Appeal Against State Commission Order

- An aggrieved person may appeal to the **National Commission within 30 days**, where permitted by law.
- The prescribed deposit requirement applies to certain appeals.

7. Disposal of Appeals

- Appeals should be heard as expeditiously as possible.
- An endeavour should be made to dispose of appeals within **90 days of admission**.

Companies Act, 2013

Meaning of Company

A **company** is an association of persons formed and registered under the law to carry on business or achieve a common objective.

Definition under Companies Act, 2013

According to Section 2(20) of the Companies Act, 2013:

"Company means a company incorporated under this Act or under any previous company law."

Definitions by Different Authors

1. **Prof. Haney:** A company is an artificial person created by law, having a separate entity and perpetual succession.
2. **Chief Justice Marshall:** A corporation is an artificial being, invisible and intangible, existing only in the contemplation of law.
3. **Lindley, L.J.:** A company is an association of persons who contribute money or money's worth to a common stock and use it for a common business purpose, sharing profits or losses.

Nature and Characteristics of a Company

1. **Artificial Person with Separate Legal Entity:** A company is created by law and has a legal identity separate from its members. It can own property, enter into contracts and sue or be sued in its own name.

2. **Voluntary Association:** A company is formed voluntarily by individuals who come together for a common business objective by following legal requirements.

3. **Perpetual Succession:** A company continues to exist even if its members die, retire or transfer their shares. It ends only through legal dissolution.

4. **Common Seal:** A common seal is an official seal that may be adopted by a company. It is not compulsory under the Companies Act, 2013.

5. **Limited Liability:** The liability of members is generally limited to the unpaid amount on their shares or the amount they have agreed to contribute, depending on the type of company.

Types of Companies

1. On the Basis of Incorporation

1. **Chartered Companies:** Companies formed under a royal charter granted by a king or ruler. Example: East India Company.
2. **Statutory Companies:** Companies established by a special Act of Parliament or State Legislature. Example: Reserve Bank of India (RBI).
3. **Registered Companies:** Companies registered under the Companies Act, 2013, or previous company law. Example: Tata Motors Ltd.

2. On the Basis of Liability

1. **Company Limited by Shares:** Members' liability is limited to the unpaid amount on their shares.
2. **Company Limited by Guarantee:** Members agree to contribute a specified amount towards the company's liabilities in the event of winding up.
3. **Unlimited Company:** Members may have unlimited liability for the company's debts.

3. On the Basis of Transferability of Shares

1. **Private Limited Company:** Restricts the transfer of shares and generally limits membership to 200, excluding permitted categories under the Act.
2. **Public Limited Company:** A company that is not a private company and can offer shares to the public subject to legal requirements.

4. On the Basis of Nationality

1. **Indian Company:** A company incorporated in India under Indian company law.
2. **Foreign Company:** A company incorporated outside India that has a place of business in India and conducts business activities in India as defined by law.

5. On the Basis of Ownership

1. **Government Company:** A company in which at least 51% of the paid-up share capital is held by the Central Government, State Government(s), or jointly by them.
2. **Private Sector Company:** A company owned and controlled by private individuals or organisations.

- **Holding Company:** A company that controls another company.
- **Subsidiary Company:** A company controlled by another company.

3. **Joint Sector Undertaking:** A business enterprise established with participation from both government and private-sector organisations.
4. **One Person Company (OPC):** A company that has only one member.

Private Company

Meaning and Definition

According to Section 2(68) of the Companies Act, 2013, a **private company** is a company whose Articles of Association:

1. Restrict the right to transfer its shares.
2. Limit the number of members to **200**, except permitted categories.
3. Prohibit invitations to the public to subscribe to its securities.

A private company requires a minimum of **2 members** and **2 directors**.

Features of a Private Company

1. **Private Ownership and Control:** Owned and controlled by private individuals or groups.

2. **Profit-Oriented:** Generally established to earn profits and provide returns to owners.

3. **Private Finance:** Raises funds through owners, private investors, loans and other permitted sources.

4. **Independent Management:** Managed by its directors according to the Companies Act and its Articles of Association.

5. **Restricted Public Participation:** Cannot invite the general public to subscribe to its securities.

6. **Capital:** There is no general minimum paid-up capital requirement under the Companies Act, 2013.

7. **Number of Members:** Minimum 2 members and maximum 200 members, subject to legal exceptions.

Benefits of Private Companies

1. **Variety and Competitive Prices:** Competition encourages businesses to offer different products at competitive prices.

2. **Employment Opportunities:** Private companies generate employment for many people.

3. **Customer-Oriented:** They focus on customer needs and satisfaction.

4. **Innovation:** They encourage new ideas, technology and product development.

5. **Flexibility:** They can respond quickly to changes in the market and customer preferences.

Public Company

Meaning and Definition

According to Section 2(71) of the Companies Act, 2013, a **public company** is a company that is not a private company and satisfies the requirements prescribed by law.

Main Characteristics

1. It is not a private company.
2. It generally has no maximum limit on the number of members.
3. It can invite the public to subscribe to its securities, subject to legal requirements.
4. Its shares are generally transferable, subject to applicable law.
5. It requires a minimum of **7 members** and **3 directors**.

Features of Public Sector Enterprises

1. **State Ownership:** The government owns all or a substantial part of the enterprise.

2. **State Control:** The government influences or controls its management and operations.

3. **Public Accountability:** It is accountable to the public and relevant government authorities.

4. **Autonomy:** It may have freedom in day-to-day operations within its legal framework.

5. **Wide Coverage:** It operates in various sectors, such as transport, energy, banking and infrastructure.
6. **Service Provision:** It provides essential goods and services for public welfare.

7. **Resource Allocation:** It helps distribute resources according to public and economic priorities.

8. **Policy Development:** It supports the implementation of government policies.

9. **Legal Framework:** It must follow applicable laws, financial rules and reporting requirements.

10. **Non-Exchange Transactions:** Certain public sector activities involve taxes, fees, penalties and social benefits rather than direct commercial exchanges.

Benefits of Public Sector Enterprises

1. **Filling Gaps in Capital Goods:** Develops heavy industries such as steel, machinery and fertilisers.

2. **Employment Opportunities:** Creates jobs and supports workers' welfare.

3. **Balanced Regional Development:** Establishes industries in backward and underdeveloped areas.

4. **Economic Development:** Supports industrial growth and national development.

5. **Sound Infrastructure:** Develops roads, railways, electricity and other essential facilities.

6. **Job Security:** Often provides relatively stable employment.

7. **Monopoly in Certain Sectors:** May operate as a monopoly in selected strategic sectors.

8. **Protection of Sick Industries:** Can support struggling industries to protect jobs and productive assets.

9. **Prevention of Discrimination:** Helps provide essential goods and services to different sections of society at reasonable prices.

One Person Company (OPC)

Meaning and Definition

According to Section 2(62) of the Companies Act, 2013, **One Person Company (OPC)** means a company that has only one person as its member.

An OPC provides the benefits of a private limited company to a single entrepreneur, including limited liability and a separate legal identity.

Features of One Person Company

1. **Limited Liability:** The member's liability is generally limited to the amount unpaid on their shares. Personal assets are protected, subject to legal exceptions.
2. **Perpetual Succession:** The company continues to exist even after the death or incapacity of its member.

3. **Nominee for the Shareholder:** A nominee is appointed to become the member in the event of the original member's death or incapacity.

4. **Single Member:** An OPC has only one member, who may also act as its director.

5. **Separate Legal Entity:** The OPC has a legal identity separate from its member.

6. **Easy Management:** A single member can make business decisions quickly.

7. **Personal Freedom:** An individual can establish and operate a business independently.

Benefits of One Person Company

1. **Legal Company Status:** An OPC has a separate legal identity from its member.

2. **Easy to Obtain Funds:** It can obtain loans and raise funds from eligible investors, subject to applicable laws.

3. **Less Compliance:** An OPC enjoys certain exemptions from compliance requirements under the Companies Act, 2013.

4. **Easy Incorporation:** It can be incorporated with one member and one nominee.

5. **Easy to Manage:** Decision-making is quick because there is only one member.

6. **Limited Liability Protection:** The member's personal assets are generally protected from the company's debts.

7. **Business Continuity:** The nominee arrangement helps ensure continuity after the member's death or incapacity.

Section 8 Company

Meaning and Definition

A **Section 8 Company** is a non-profit organisation registered under Section 8 of the Companies Act, 2013. It is established to promote charitable and social objectives rather than earn profits for its members.Examples of objectives include education, charity, science, sports, social welfare and environmental protection.

Main Requirements of a Section 8 Company

1. **Charitable Objectives:** It must promote commerce, art, science, education, sports, research, social welfare, religion, charity or environmental protection.
2. **Utilisation of Profits:** Its profits and income must be used to achieve its objectives.
3. **No Dividend:** It cannot distribute dividends to its members.

Benefits of a Section 8 Company

1. **Social Welfare:** It works for charitable purposes and the welfare of society.
2. **No Minimum Capital:** There is no prescribed minimum paid-up capital requirement.
3. **Government Licence:** It is licensed under Section 8 of the Companies Act, 2013.
4. **Limited Liability:** Members generally have limited liability, subject to the law.

5. **No Dividend Distribution:** Profits are reinvested in the company's objectives.
6. **Stamp Duty Relaxation:** Stamp duty concessions may be available, depending on the state and applicable rules.
7. **No Suffix Required:** It may omit the words “Limited” or “Private Limited” from its name.
8. **Tax Benefits:** It may obtain eligible tax exemptions by meeting the applicable requirements under income-tax law.

Difference Between Company and LLP

Basis of Distinction	Company	LLP
1. Prevailing Law	Governed by the Companies Act, 2013.	Governed by the Limited Liability Partnership Act, 2008.
2. Motive	Can be formed for profit or non-profit purposes, subject to applicable law.	Generally formed to carry on business for profit.
3. Cost of Formation	Generally involves higher incorporation costs.	Generally involves lower incorporation costs.
4. Charter Document	Memorandum of Association (MOA) and Articles of Association (AOA).	LLP Agreement.
5. Common Seal	May have a common seal; it is not compulsory.	May have a common seal as per the LLP Agreement.
6. Formalities of Incorporation	Requires prescribed forms, documents and fees to be filed with the Registrar of Companies (ROC).	Requires prescribed forms, documents and fees to be filed with the Registrar of LLPs.
7. Number of Members	Private company: minimum 2 members; maximum 200. Public company: minimum 7 members; no general maximum limit.	Minimum 2 partners; no maximum limit on the number of partners.
8. Liability of Members/Partners	Members' liability is generally limited to the unpaid amount on their shares.	Partners' liability is generally limited to their agreed contribution, subject to exceptions such as fraud.
9. Transfer of Interest in Case of Death	Shares may be transmitted to the legal heirs according to applicable law.	Legal heirs do not automatically become partners; their rights depend on the LLP Act and LLP Agreement.
10. Transferability of Interest	Shares of a public company are generally freely transferable; private companies restrict share transfers through their Articles.	A partner may transfer economic rights subject to the LLP Act and LLP Agreement. Transfer alone does not automatically make the transferee a partner.

Salient Features of the Companies Act, 2013

1. **Dormant Companies:** Introduced the concept of dormant companies for companies with no significant accounting transactions, subject to legal conditions.

2. **National Company Law Tribunal (NCLT):** Established the NCLT to deal with company law matters.

3. **Self-Regulation:** Emphasises transparency, disclosure and corporate governance instead of relying only on government approvals.

4. **Electronic Records:** Provides for electronic maintenance and filing of prescribed company documents.

5. **Fast Mergers:** Simplifies certain merger procedures, including specified fast-track and cross-border mergers.

6. **Official Liquidators:** Provides simplified winding-up procedures for eligible companies under applicable legal provisions.

7. **One Person Company (OPC):** Introduced the concept of a company with a single member.

8. **Independent Directors:** Requires independent directors for prescribed classes of companies.

9. **Women Directors:** Requires prescribed classes of companies to appoint at least one woman director.

10. **Corporate Social Responsibility (CSR):** Requires eligible companies to constitute a CSR committee, formulate a CSR policy and comply with applicable CSR provisions.

11. **Key Managerial Personnel (KMP) and Promoter:** Defines these terms to establish responsibility and accountability.

12. **Duties of Directors:** Specifies directors' duties towards the company and requires them to act in good faith while considering relevant interests.

13. **Small Shareholders' Director:** Provides for the representation of small shareholders on the boards of eligible listed companies, subject to applicable rules.

14. **Limit on Directorships:** A person can generally hold a maximum of 20 directorships, including not more than 10 public-company directorships.

15. **Investigation Powers:** Provides statutory powers for investigation into company affairs, including search and seizure where legally authorised.

16. **Freezing of Assets:** Provides mechanisms to prevent the disposal of assets or recovery of illegal gains in specified cases.

17. **Control over Deposits:** Introduces stricter provisions governing the acceptance of deposits by companies.

18. **Internal Audit:** Requires prescribed classes of companies to appoint internal auditors.

19. **Auditor's Liability:** Strengthens auditor accountability and restricts specified non-audit services to protect independence.

20. **National Financial Reporting Authority (NFRA):** Provides for the establishment of NFRA to oversee accounting and auditing standards and related professional matters.

Applicability and Scope of the Companies Act, 2013 (Section 1)

1. **Name of the Act:** This Act is called the Companies Act, 2013.

2. **Extent:** It extends to the whole of India.

3. **Commencement:** Different provisions of the Act came into force on dates notified by the Central Government.

4. **Applicability:**
The Act applies to the following:
i) Companies incorporated under the Companies Act, 2013, or any previous company law.
ii) **Insurance Companies:** Applies unless inconsistent with the Insurance Act, 1938 or the IRDA Act, 1999.
iii) **Banking Companies:** Applies unless inconsistent with the Banking Regulation Act, 1949.
iv) **Electricity Companies:** Applies to companies generating or supplying electricity unless inconsistent with the Electricity Act, 2003.
v) **Companies Governed by Special Acts:** Applies unless inconsistent with the provisions of the relevant special Act.
vi) **Other Bodies Corporate:** Applies to bodies corporate incorporated under other laws if specified by the Central Government through notification, subject to prescribed exceptions and modifications.

Formation of a Company (Section 3)

A company may be formed under the Companies Act, 2013, for any **lawful purpose** by the following number of persons:
1. **Public Company:** Minimum **7 persons** are required to form a public company.

2. **Private Company:** Minimum **2 persons** are required to form a private company.

3. **One Person Company (OPC):** Minimum **1 person** is required to form an OPC, which is a type of private company.

Legal Procedure for Formation of a Company

A company is a separate legal entity and must follow the legal procedures prescribed under the Companies Act, 2013 for its formation.

The formation of a company involves the following four stages:

1. Promotion Stage

In this stage, the business idea is identified and the promoters take the initial steps to establish the company.

- Discovery of a business idea.
- Investigation of business opportunities.
- Preparation of the business plan.
- Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA).
- Selection of the first directors.

2. Incorporation Stage

In this stage, the company is legally registered with the Registrar of Companies (ROC).

- Submission of the required documents.
- Consent and details of directors.
- Filing the statutory declarations.
- Payment of prescribed registration fees.
- Obtaining the Certificate of Incorporation.

3. Subscription / Floatation Stage

In this stage, the company arranges the capital required to start its business.

- Appointment of brokers, agents and underwriters, where necessary.
- Issue of a prospectus, where applicable.
- Obtaining SEBI approval or complying with applicable requirements, where necessary.
- Receiving the minimum subscription, where applicable.
- Allotment of shares.
- Applying for listing on a stock exchange, if required.

4. Commencement of Business Stage

In this stage, the company completes the applicable legal requirements before commencing business.

- Filing the required declaration of commencement of business under Section 10A, where applicable.
- Filing the prescribed return of allotment, where applicable.
- Ensuring that the applicable minimum subscription and other requirements are fulfilled.

Conclusion: The four stages of company formation are **Promotion, Incorporation, Subscription/Floatation and Commencement of Business.** These stages help establish the company legally and prepare it to carry on business.

Incorporation of a Company (Section 7)

Meaning

Incorporation is the second stage of company formation. It is the legal registration of a company as a separate body corporate under the Companies Act, 2013.

After incorporation, the company can own property, enter into contracts, sue and be sued in its own name.

Legal Formalities for Incorporation

1. **Memorandum and Articles:** Submit the Memorandum of Association (MOA) and Articles of Association (AOA), signed by all subscribers.
2. **Declaration:** Submit a declaration by the prescribed professional and a person named as a director, manager or secretary confirming compliance with legal requirements.
3. **Affidavit:** Subscribers and first directors must provide the required declarations regarding offences, fraud and the correctness of documents.
4. **Correspondence Address:** Provide an address for correspondence until the registered office is established.
5. **Particulars of Subscribers:** Submit the names, addresses, nationality and identity proofs of subscribers.
6. **Particulars of Directors:** Submit the prescribed details, Director Identification Number (DIN), identity proof and consent of the first directors.
7. **Interests of Directors:** Disclose the interests of the first directors in other firms or corporate bodies, as required.

Duties of the Registrar

8. **Registration of Documents:** The Registrar of Companies (ROC) registers the documents and information submitted.
9. **Certificate of Incorporation:** The ROC issues a Certificate of Incorporation as proof of the company's legal existence.
10. **Corporate Identity Number (CIN):** The ROC allots a unique CIN to the company.
11. **Preservation of Documents:** The company must preserve copies of the incorporation documents at its registered office until dissolution.

Consequences of False Information

12. **Penalty:** A person providing false information or suppressing material facts may face action under Section 447 of the Companies Act, 2013.
13. **Liability for Fraud:** Promoters, first directors and persons making declarations may face legal action if incorporation is obtained fraudulently.
14. **Orders by Tribunal:** The Tribunal may order changes in management, unlimited liability of members, removal of the company's name from the register, winding-up or other appropriate measures. The company must be given a reasonable opportunity to be heard.

Memorandum of Association (MOA)

1. Meaning and Definition of MOA

The **Memorandum of Association (MOA)** is a legal document that defines the scope, objectives, and permitted activities of a company. It lays down the basic constitution of the company.
According to **Section 2(56) of the Companies Act, 2013**:

"Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act."

2. Main Purposes of MOA

The MOA serves two main purposes:
1. **For shareholders:** It helps intending shareholders understand the company's objectives, the purpose for which their investment will be used, and the risks involved in investing in the company.

2. **For outsiders:** It helps people dealing with the company understand the scope and limits of its permitted activities.

3. Important Features of MOA

- It defines the scope of the company's activities.
- It states the objectives of the company.
- It lays down the company's basic constitution.
- It must be properly stamped, signed, and attested as required by law.
- It may be altered according to the provisions of the Companies Act, 2013.

4. Number of Subscribers

- **Private company:** Minimum 2 subscribers.
- **Public company:** Minimum 7 subscribers.

The persons who sign the Memorandum of Association at the time of incorporation are called **subscribers** or original subscribers.

Articles of Association (AOA)

1. Meaning of Articles of Association

The **Articles of Association (AOA)** is a legal document that contains the rules and regulations for managing the internal affairs of a company and conducting its business.

It defines the duties, rights, powers, and authority of the management and the Board of Directors. It also explains how the company's business should be carried out.

2. Definition under the Companies Act, 2013

According to **Section 2(5) of the Companies Act, 2013**:

"Articles means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act."

3. Section 5 of the Companies Act, 2013

Section 5 deals with the Articles of Association (AOA).

1. **Rules for management:** The articles of a company must contain regulations for the management of the company.
2. **Prescribed matters:** The articles must contain the matters prescribed under the Companies Act, 2013.
3. **Additional matters:** A company can include additional rules and regulations in its articles as necessary for its management.

4. Main Features of AOA

- It governs the internal management of the company.
- It defines the rights and duties of directors and management.
- It specifies the powers and authority of the Board of Directors.
- It explains how the company's business is to be conducted.
- It contains rules and regulations for the company's internal affairs.

Prospectus

Meaning and Definition

- A **Prospectus** is a legal document issued by a company to invite the public to subscribe to or purchase its securities.
- It provides important information about the company, its objectives, financial position and securities to help investors make informed decisions.
- A prospectus may be issued in the form of a notice, circular, advertisement or other document.

  According to Section 2(70) of the Companies Act, 2013: "Prospectus means any document described or issued as a prospectus and includes a red herring prospectus referred to in Section 32 or shelf prospectus referred to in Section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate."

Essential Conditions of a Prospectus

1. It must invite the public to subscribe to or purchase securities.
2. It must contain relevant information about the company and its securities.
3. It should help investors make informed investment decisions.
4. The information provided must comply with applicable legal requirements.

Importance of a Prospectus

1. **Provides Information:** Gives details about the company and its securities.
2. **Helps Investors:** Enables investors to make informed decisions.
3. **Raises Capital:** Helps companies raise funds from the public.
4. **Ensures Transparency:** Promotes disclosure of relevant information.
5. **Protects Investors:** Legal requirements help protect investors against misleading statements.