

**CONSUMER PROTECTION ACT AND INTRODUCTION OF CYBER LAWS  
– UNIT – V**

**Consumer Protection Act – Consumer rights, Procedures for Consumer grievances redressal, Types of consumer Redressal Machinaries and Forums – Competition Act 2002 – Cyber crimes, IT Act 2000 and 2002, Cyber Laws, Introduction of IPR – Copy rights, Trade marks, Patent Act.**

**Table of Contents**

<b>5.1 CONSUMER PROTECTION ACT.....</b>	<b>4</b>
<b>5.1.1 Meaning.....</b>	<b>4</b>
<b>5.1.2 Objectives of Consumer Protection Act.....</b>	<b>4</b>
<b>5.2 CONSUMER RIGHTS.....</b>	<b>5</b>
<b>5.3 PROCEDURE FOR CONSUMER GRIEVANCES REDRESAL.....</b>	<b>6</b>
<b>5.3.1 Consumer Meaning.....</b>	<b>6</b>
<b>5.3.2 Consumer Duties.....</b>	<b>6</b>
<b>5.3.3 Consumer Protection Councils.....</b>	<b>7</b>
<b>5.3.4 State Consumer Protection Councils [Sections 7 &amp; 8].....</b>	<b>9</b>
<b>5.3.5 District Consumer Protection Council.....</b>	<b>9</b>
<b>5.3.6 Procedure for Consumer Grievance Redressal.....</b>	<b>10</b>
<b>5.3.6.1 Who can File Complaint under the Consumer Protection Act, 1986.....</b>	<b>10</b>
<b>5.3.6.2 Documents for Filing Complaint.....</b>	<b>10</b>
<b>5.3.6.3 Procedure for Complaint under the Act.....</b>	<b>11</b>
<b>5.4 TYPES OF CONSUMER REDRESSAL MACHINARIES AND FORUMS.....</b>	<b>15</b>
<b>5.4.1 Establishment of Consumer Redressal Machinaries and Forums.....</b>	<b>15</b>
<b>5.4.2 District Forums.....</b>	<b>16</b>
<b>5.4.3 State Commission.....</b>	<b>18</b>

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

<b>5.4.4 National Commission.....</b>	<b>20</b>
<b>5.5 COMPETITION ACT, 2002.....</b>	<b>22</b>
<b>5.5.1 Objectives of the Competition Act.....</b>	<b>22</b>
<b>5.5.2 Features of the Competition Act.....</b>	<b>23</b>
<b>5.5.3 Major Areas of Competition Act, 2002.....</b>	<b>23</b>
<b>5.5.4 Competition Commission of India.....</b>	<b>24</b>
<b>5.5.5 Offences and Penalties.....</b>	<b>25</b>
<b>5.6 CYBER CRIMES / CYBER LAW.....</b>	<b>26</b>
<b>5.6.1 Meaning of Cyber Crime/Computer Crime.....</b>	<b>26</b>
<b>5.6.2 Acts which are Considered as a Cyber Crime.....</b>	<b>28</b>
<b>5.6.3 Types of Cyber Crime.....</b>	<b>28</b>
<b>5.6.4 Factors Contributing to Cyber Crime.....</b>	<b>31</b>
<b>5.6.5 Prevention of Cyber Crime.....</b>	<b>32</b>
<b>5.6.6 Offences and Penalties.....</b>	<b>34</b>
<b>5.6.7 Adjudication.....</b>	<b>36</b>
<b>5.7 INFORMATION TECHNOLOGY ACT, 2000 &amp; 2002.....</b>	<b>37</b>
<b>5.7.1 Introduction to Information Technology Act, 2000.....</b>	<b>37</b>
<b>5.7.2 Objectives of the Information Technology Act, 2000.....</b>	<b>38</b>
<b>5.7.3 Features of the Information Technology Act, 2000.....</b>	<b>38</b>
<b>5.7.4 Scope and Application of the Information Technology Act, 2000.....</b>	<b>39</b>
<b>5.8 INTELLECTUAL PROPERTY RIGHT (IPR).....</b>	<b>40</b>
<b>5.8.1 Introduction of IPR.....</b>	<b>40</b>
<b>5.8.2 Categories of Intellectual Property Rights (TRIPS).....</b>	<b>40</b>
<b>5.9 COPYRIGHTS.....</b>	<b>41</b>
<b>5.9.1 Meaning of Copyrights.....</b>	<b>41</b>

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

<b>5.9.2 Object of Copyrights.....</b>	<b>42</b>
<b>5.9.3 Indian Copyrights Act, 1957.....</b>	<b>42</b>
<b>5.9.4 Term/Duration of Copyrights.....</b>	<b>42</b>
<b>5.9.5 Registration of Copyrights.....</b>	<b>42</b>
<b>5.9.6 Infringement of Copyrights.....</b>	<b>43</b>
<b>5.10 TRADE MARKS.....</b>	<b>43</b>
<b>5.10.1 Meaning of Trade Mark.....</b>	<b>43</b>
<b>5.10.2 Meaning of Service Marks.....</b>	<b>43</b>
<b>5.10.3 Meaning of Good Trade Marks.....</b>	<b>44</b>
<b>5.10.4 Trade Marks and Merchandise Act, 1999.....</b>	<b>44</b>
<b>5.11 PATENT ACT.....</b>	<b>47</b>
<b>5.11.1 Meaning of Patent.....</b>	<b>47</b>
<b>5.11.2 Characteristics of Patent.....</b>	<b>47</b>
<b>5.11.3 Indian Patent Act, 1970.....</b>	<b>48</b>
<b>5.11.4 Application for Patents.....</b>	<b>48</b>
<b>5.11.5 Registration of Patents.....</b>	<b>48</b>
<b>5.11.6 Revocation of Patents [Section 64, 66 and 85] .....</b>	<b>49</b>
<b>5.12 REFERENCE.....</b>	<b>51</b>

## 5.1 CONSUMER PROTECTION ACT

### 5.1.1 Meaning

The Consumer Protection Act, 1986 is one of the most beneficent legislations of recent times and it is intended to promote and protect the interest of consumers. The Consumer Protection Act is intended to protect the legitimate interests of the consumers against traders, suppliers, etc. Most of the consumers are small consumers who may not be educated or conversant with law.

### 5.1.2 Objectives of Consumer Protection Act

#### 1. Better Protection of Interests of Consumers:

The Act seeks to provide for better protection of the interests of consumers and for that purpose, makes provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith (Preamble to the Act).

#### 2. Protection of Rights of Consumers:

The Act is intended to protect following rights of the consumers [under Section 6]:

- a. The right to be protected against marketing of goods, which are hazardous to life and property.
- b. The right to be informed about the quality, quantity, potency, purity, standard, and price of goods to protect against unfair trade practices.
- c. The right to be assured, and wherever possible, access to a variety of goods at competitive prices.
- d. The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums.
- e. The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers.
- f. The right to consumer education.
- g. The right to healthy environment.

#### 3. Consumer Protection Councils:

The above objects are sought to be promoted and protected by the Consumer Protection Councils established at the Central and State levels.

**4. Quasi-Judicial Machinery for Speedy Redressal of Consumer Disputes:**

The Act seeks to provide speedy and simple redressal to consumer disputes. For this purpose there has been set-up the quasi-judicial machinery at the District, State and Central levels. These quasi-judicial bodies are supposed to observe the principles of natural justice and are empowered:

- a. To give relief of a specific nature, and
- b. To award, wherever appropriate, compensation to consumer.

## **5.2 CONSUMER RIGHTS**

**1. Right to Safety:**

The goods or services used/bought should not be hazardous to the health or life of consumers. The products available in the market should not bring any physical danger to them.

**2. Right to be informed:**

Consumers should be protected against fraudulent, deceitful or grossly misleading information, advertising, labelling or other practices. They should be provided with full information concerning the product or service such as the quality and performance standards, ingredients of the product, operational requirements, freshness of the product, possible adverse side-effects, etc. This right also enables consumers to make a better choice and to bargain.

**3. Right to Choose:**

Consumers should be assured, wherever possible of access to a variety of products and services at competitive prices. Even in a competitive market, consumers should have an assurance of satisfactory quality and services at fair prices.

**4. Right to be heard:**

Consumers should be assured that their interest will receive full and sympathetic consideration in the formulation of Government policy and fair and expeditious treatment in its administrative tribunals.

**5. Right to Seek Redressal:**

This right ensures compensation to consumers for the loss suffered by them or injury caused to them by the sellers. In a broader sense, the term 'redress' includes all the means open to consumers to set right the perceived wrongs or to prevent future abuses.

**6. Right to Consumer Education:**

Mere legislative measures will not ensure protection to consumers. Unless consumers are made aware of their rights and the remedies available to them, they cannot protect themselves against the unfair and unethical trade practices of unscrupulous traders. Therefore, consumers should be educated about their rights through consumer education. Such education can be provided by educational institutions, voluntary organizations, and institutional agencies.

**7. Right to Healthy Environment:**

The products or services supplied to the public should not bring any harmful effect to the physical environment. They should not pollute air or water. They should not adversely affect the lives of users as well as non-users. Every consumer has the right to a healthy environment.

**8. Right to Basic Needs:**

The right to basic needs means the right to basic goods and services which guarantee survival. It includes adequate food, clothing, shelter, healthcare, education and sanitation.

## **5.3 PROCEDURES FOR CONSUMER GRIEVANCES REDRESSAL**

### **5.3.1 Consumer Meaning**

- An individual who buys products or services for personal use and not for manufacture or resale.
- A consumer is someone who can make the decision whether or not to purchase an item at the store, and someone who can be influenced by marketing and advertisements.
- Any time someone goes to a store and purchases a toy, shirt, beverage, or anything else, they are making that decision as a consumer.

### **5.3.2 Consumer Duties**

1. **Duty to be Careful:** It is the duty of every consumer to be careful while buying, about the quality of the goods. He is to ensure himself that the goods which he is buying are not dangerous and get assurance from the seller that they are free from defects. He may insist for the guarantee for safe products.
2. **Duty to Insist on Information:** The consumer should insist on getting all the information about the product or service before making a choice this will help him in taking a decision whether to buy or not from a particular dealer. Also, this information will protect him from becoming a victim of high pressure.

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

3. **Duty to Inspect Goods:** The consumer should inspect a variety of goods before making a decision as to which one to buy. Of course, while taking a decision, he will compare weight, quality, price, durability, etc., of goods of different manufactures. No doubt, he can exercise this duty only in a competitive market where a variety of goods are available at competitive prices.
4. **Duty to Form Association:** The consumer should form consumers' associations. Every person must be aware of the consumer association in some way or the other, the consumer should not hesitate.
5. **Duty to Make Complaint:** Further, it is the duty of every consumer to make complaints to the appropriate authority for his genuine grievances. Many a time, his complaint may be of small value but its impact on the society, as a whole, may be very significant.
6. **Duty to be Aware of Rights:** Lastly, every consumer should acquire knowledge about different rights and duties enshrined in some law or the other. An informed consumer should help overcome ignorance of less informed or ill-informed.

### 5.3.3 Consumer Protection Councils

#### **Central Consumer Protection Council [Section 4]:**

The Act provides for the establishment of a Central Consumer Protection Council by the Central Government and a State Consumer Protection Council in each State by the respective State Governments. The State shall consist of such members as may be specified by the State Government by notification from time to time.

#### **Establishment:**

Section 4 empowers the Central Government to establish, by notification, a Council to be known as the Central Consumer Protection Council (referred to as the Central Council).

#### **Membership:**

The Central Council shall consist of the following members, namely:

1. The Minister-in-Charge of consumer affairs in the Central Government, who shall be its Chairman; and
2. Such number of other official or non-official members representing such interest as may be prescribed. According to Rule 3 of the Consumer Protection Rules, 1987, the Central Council shall consist of the following 150 members, namely:
  - The Minister-in-Charge of consumer affairs in the Central Government, who shall be the Chairman of the Central Council.

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

- The Minister of State (where he is not holding independent charge) or Deputy Minister in the Department of Civil Supplies who shall be the Vice-Chairman of the Central Council.
- The Ministers of Food and Civil Supplies or Minister-in-Charge of consumer affairs in States.
- 8 Members of Parliament, 5 from the Lok Sabha, and 3 from the Rajya Sabha.
- The Commissioner for Scheduled Castes and Scheduled Tribes.
- Representatives of the Central Government Departments, autonomous organisations concerned with consumer interests, not exceeding 20.
- Representatives of the Consumer Organisations or consumers - not less than 35.
- Representatives of women - not less than 10.
- Representatives of farmers, trade and industries - not exceeding 20.
- Persons capable of representing consumer interests - not exceeding 15.
- The Secretary in the Department of Civil Supplies shall be the Member Secretary of the Central Council.

### **Term of Office:**

The term of the Council shall be 3 years.

### **Filling of Vacancy:**

Any member may, by writing under his hand to the Chairman of the Central Council, resign from the Council. The vacancies so caused or otherwise, shall be filled from the same category by the Central Government. The person shall hold office so long as the member whose place he fills would have been entitled to hold office, if the vacancy-had not occurred.

### **Procedure for Meetings of the Central Council [Section 5]:**

1. The Central Council shall meet as and when necessary and at least one meeting of the Council shall be held every year.
2. It shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

**5.3.4 State Consumer Protection Councils [Sections 7 & 8]**

**Establishment [Section 7]:**

The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council referred to as the State Council.

**Membership:**

The State Council shall consist of the following members, namely:

1. The Minister-in-Charge of consumer's affairs in the State Government who shall be its Chairman;
2. Such number of other official or non-official members representing such interest as may be prescribed by the State Government.

**Meetings:**

The State Council shall meet as and when necessary but not less than 2 meetings shall be held every year.

**Time and Place of Meetings and Procedure:**

The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

**Objects of the State Council [Section 8]**

The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in Section 6.

**5.3.5 District Consumer Protection Council**

**Establishment [Section 8-A]:**

The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.

**Membership:**

The District Consumer Protection Council (or the District Council) shall consist of the following members, namely:

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

1. The Collector of the District (by whatever name called), who shall be its Chairman; and
2. Such number of other official and non-official members representing such interests as may be prescribed by the State Government.

**Meetings:**

The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

**Time and Place of Meetings and Procedure:**

The District Council shall meet at such time and place within the District as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

**Objects of the District Council:**

The objects of every District Council shall be to promote and protect within the District the rights of the consumer laid down in Section 6 (a) to (f).

**5.3.6 Procedure for Consumer Grievance Redressal**

**5.3.6.1 Who can File Complaint under the Consumer Protection Act, 1986**

The following persons can file a complaint under the Consumer Protection Act, 1986:

1. A consumer,
2. Any voluntary consumer association registered under the Companies Act, 1956, or under any other law for the time being in force,
3. The Central Government, or
4. Any State Government, and
5. One or more consumers, where there are numerous consumers having the same interest.

**5.3.6.2 Documents for Filing Complaint**

All papers to be kept in paper file in following order:

1. Complaint;
2. List of documents;
3. Vakalatnama;
4. Application for condonation of delay (if any).

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

5. Affidavit;
6. Documents;
7. Application for injunction (if any);

### 5.3.6.3 Procedure for Complaint under the Act

#### 1. Entitlement of File Complaint

Section 12 provides that a complaint, in relation to any goods sold or delivered or any service provided or agreed to be provided, may be filed with the District Forum by:

- a. The consumer to whom such goods are sold or delivered or agreed to be sold or delivered of such service provided or agreed to be provided.
- b. Any recognized consumer association, whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided, is a member of such association or not.
- c. One or more consumers, where there are numerous consumers having the same interest with the permission of the District Forum, on behalf of or for the benefit of, all consumer so interested.
- d. The Central or the State Government.

#### 2. Recognized Consumer Association

A recognized consumer association means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force. These provisions shall also apply to complaints filed before, the State Commissions. The rule of privity of contract or locus standi which permits the aggrieved party to take action has thus, been relaxed in such cases in the spirit of public interest litigation.

In this manner, the Act provides affected consumers, who may be unable to file a complaint due to ignorance, illiteracy or poverty, a modus operandi to file such complaint through any recognized consumer association.

#### 3. Procedure to be followed at District Forum or State Commission

Section 13 lays-down the procedure to be followed by the District Forum or State Commission on receipt of the complaint. According to Section 13(1) and (b):

- a. On receipt of the complaint, a copy of the same is required to be referred to the opposite party (or each of the opposite party, where there more than one) directing him to give his reply within 30 days. This period may be extended by another 15 days.

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

- b. In case the opposite party admits the allegation contained in the complaint, the complaint will be decided on the basis of material on record.
- c. In case the opposite party denies or disputes the allegation contained in the complaint or omits or fails to take any action to represent his case within the time provided, the dispute will be settled in the following manner:
  - In Case of Dispute Relating to any Goods: Section 13(1)(c) provides that where the complaint alleges any defects in the goods, which cannot be determined without proper analysis or test of the goods, a sample of the goods shall be obtained from the complainant, sealed and authenticated in the manner prescribed (by the consumer protection rules) for referring to the appropriate laboratory for the purpose of any analysis or test, whichever may be necessary, so as to find out whether such goods suffer from any other defect. The appropriate laboratory would be required to report its finding to the referring authority, i.e., the District Forum or State Commission within a period of forty five days from the receipt of the reference or within such extended period as may be granted by these agencies.
  - In Case of Dispute Relating to Goods not Requiring Testing or Analysis or Relating to Service: Section 13(2)(b) provides that where the opposite party denies or dispute the allegations contained in the Complaint within time given by the District Forum of State Commission, the agency concerned shall dispute of the complaint on the basis of evidence tendered by the party, in case of failure by opposite party to represent his case within the prescribed time, the complaint shall be disposed of on the basis of evidence tendered by the complainant.

#### **4. Procedure Applicable to National Commission**

Section 22 lays down the procedure to be followed at the National Commission for disposal of any complaint or proceedings before it. The Central Government has been empowered to prescribe detailed procedure in this regard.

##### **4.1 Procedure for Complaints**

Rule 14 of the Consumer Protection Rules, 1987 lays down the following procedure for hearing of complaint:

- a. A complaint containing the following particulars shall be presented by the complainant or his agent to the National Commission in person or sent by registered post:
  - The name description and address of the complainant.
  - The name description and address of the opposite party or parties, which should be ascertainable,
  - The facts relating to the complaint and when and where the same have arisen.
  - The documents in support of the allegations made in the complaint.
  - The relief or reliefs claimed by the complainant.

**KV Institute of Management and Information Studies**  
**BA5104 – Legal Aspects of Business**

---

- b. The National Commission shall dispose of any complaint filed before it by following the same procedure as prescribed under Section 13(1) and (2).
- c. It shall be obligatory for the parties or their agents to appear before the Commission on the date of hearing or any adjournments thereof. If the complainant fails to appear before the Commission on such dates, it may dismiss the complaint and where the opposite party fails to appear on such dates, it may proceed to decide the case ex parte.
- d. The Commission shall as far as possible decide the complaint within a period of three months for the date of receipt of notice by the opposite party, where no tests or analysis is required and within a period of five months, where it requires analysis of testing of commodities.
- e. The National Commission shall issue such orders to the opposite party or parties as it may decide as contained in Section 14(1).
- f. Where no appeal has been preferred against the order passed by the National Commission, or where an order passed by the Commission has been affirmed by the Supreme Court, it may direct publication of its Order in the Official Gazette.

**4.2 Procedure for Filing the Appeal**

- a. Procedure in Respect of Goods where the Defect Alleged Requires no Testing or Analysis
  - i. Refer a copy of the admitted complaint within 21 days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days, as may be granted by the District Forum.
  - ii. Where the opposite party, on admission of a complaint referred to him under Clause (a), denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer disputes in the manner specified in Clauses (c) to (g) hereunder.
- b. Procedure in Respect of Goods where the Defect Alleged Requires Analysis or Testing
  - i. Where a complainant alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed. It shall then refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

thereof to the District Forum within a period of 45 days of the receipt of the reference or within such extended period as may be granted by the District Forum [Clause (c)].

- ii. Before any sample of the goods is referred to any appropriate laboratory under [Clause (c)], the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question [Clause (d)].
  - iii. The District Forum shall remit the amount deposited to its credit under [Clause (d)] to the appropriate laboratory to enable it to carry-out the analysis or test as aforesaid.
  - iv. If any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the method of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory [Clause (f)].
  - v. The District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under [Clause (f)] and issue an appropriate order under Section 14 [Clause (g)].
- c. If the complaint relates to goods in respect of which the aforesaid procedure cannot be followed or if the complaint relates to any services, the District Forum shall after following the procedure in Clause (a) and (b) of sub- section (1) of Section 13 (noted above) proceed to settle the consumer dispute:
- i. On the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party derives or disputes the allegations contained in the complaint; or
  - ii. Ex parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.
- d. Where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.
- e. No proceedings complying with the procedure as aforesaid shall be called in question in any Court on the ground that the principle of natural justice has not been complied with.

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

- f. Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of 3 months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities, and within 5 months if it so requires.
- g. Where during the pendency of any proceedings before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

**5. Limitation Period for Filing of Complaint**

Section 24A provides that the District Forum, the State Commission, or the National Commission shall not admit a complaint, unless it is filed within two year from the date on which the cause of action has arisen. However, where the complainant satisfy the Forum or Commission, as the case may be, that he had sufficient cause for not filing the complaint within one year, such complaint may be entertained by it, after recording the reasons for ignoring the delay.

**5.4 TYPES OF CONSUMER REDRESSAL MACHINARIES AND FORUMS**

**5.4.1 Establishment of Consumer Redressal Machinaries and Forums**

There shall be established for the purposes of this Act, the following agencies, namely:

1. A Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the State by notification. It is provided that the State Government may, if it deems fit, establish more than one District Forum in a District.
2. A Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by Notification.
3. A National Consumer Disputes Redressal Commission established by the Central Government by notification.

**Manner in which complaint shall be made**

The manner in which complaint shall be made is as follows:

1. By Whom – A complaint in relation to any goods sold or delivered agreed to may be filled by:
  - A consumer to whom such goods are sold or delivered.
  - Any consumer association.
  - Where there are numerous consumers having the same interest.

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

- The Central or State Government as the case may be either in its individual or as a representation of interest of the consumers in general.
2. Prescribed Form – There is a prescribed form for submission of complaint. It must be written on any plain paper and following details must be given:
    - Name and address of complainant.
    - Name and address of opposite party.
    - Description of facts of complaints.
    - Documentary evidence regarding complaint.
    - Relief expected as redressal of complaint.
    - Signature of the complainant, etc.
  3. Fees – There is no fee for submission of complaint. But if testing and analysis of the sample of any goods is obligatory, then the necessary fee must be paid.

### 5.4.2 District Forums

"District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of Section 9; Composition of District Forums (**For dealing cases involving up to Rs 20 lac**).

The State Government shall set-up a District Forum in each district of the State. The District Forum shall consist of:

1. A person who is, or has been, or is qualified to be a District Judge nominated by the State Government shall be its President.
2. Two other members one of whom shall be a woman.

### Qualification of Members

The member shall have following qualifications:

1. Not less than 35 years of age.
2. Possess a Bachelor's Degree from recognised University.
3. Person having judicial background.

### Disqualification for Appointment as Member of District Forum

A person is disqualified from being appointed as a member if he:

1. Has been convicted and sentenced to imprisonment for an offense which, in the opinion of the State Government, involves moral turpitude; or
2. Is an undischarged insolvent; or
3. Is of unsound mind and stands so declared by a competent court; or

**KV Institute of Management and Information Studies**  
**BA5104 – Legal Aspects of Business**

---

4. Has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
5. Has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a members; or
6. Has such other disqualification as may be prescribed by the State Government.

**Appointment on the Recommendation of Selection Committee**

Every appointment shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:

1. The President of the State Commission – Chairman.
2. Secretary, Law Department of the State – Member.
3. Secretary of the Consumer Affairs Department – Member.

**Term of Office**

Every member of the District Forum shall hold office for a term of 5 years or up to the age of 65 years, whichever is earlier. He shall not be eligible for re-appointment.

**Resignation**

A member may resign his office in writing under his hand addressed to the State Government. On such resignation being accepted, his office shall become vacant. The vacancy so caused may be filled by an appointment of a person possessing the qualifications in relation to the category of the member who has resigned.

**Salary and Terms of Condition of Service**

The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the District Forum shall be such as may be prescribed by the State Government.

**Jurisdiction [Section 11]**

The District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed "rupees twenty lac". This is however subject to other provisions of this Act.

A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction:

1. The opposite party (i.e., the person who answers complaint or claim) or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

and voluntarily resides or carries on business or has a branch office, or personally works for gain.

2. Any of the opposite parties, where there is more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries-on business or has a branch office, or personally works for gain. But in such a case either the permission of the District Forum is given, or the opposite parties should not reside, or carry-on business or have a branch office, or personally work for gain, as the case may be, and must acquiesce in such institution.
3. The cause of action, wholly or in part, arises.

### **5.4.3 State Commission**

Section 16 of the Consumer Protection Act, 1986 empowers State Government to establish in each State the State Consumer Dispute Redressal Commission. (**More than 20 lac & less than 1 crore**).

#### **Composition of State Commission**

Each State Commission shall consist of:

1. A person who is or has been judge of a High Court appointed by the State Government who shall be its President.
2. Two other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of or have shown capacity in dealing with problems relating to Economics, Law, Commerce, Accountancy, Industry, Public Affairs or Administration. One of them shall be a woman.

An appeal against the orders of a State Commission can be filed before the National Commission within 30 days from the date of the order.

#### **Disqualification for Appointment as a Member of State Commission**

Provided further that a person shall be disqualified for appointment as a member, if he:

1. Has been convicted and sentenced to imprisonment for an offense which, in the opinion of the State Government, involves moral turpitude; or
2. Is an undischarged insolvent; or
3. Is of unsound mind and stands so declared by a competent court; or
4. Has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
5. Has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

6. Has such other disqualification as may be prescribed by the State Government.

**Appointment on the Recommendation of Selection Committee**

Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:

1. President of the State Commission – Chairman.
2. Secretary of the Law Department of the State – Member.
3. Secretary-in-Charge of Department dealing with Consumer Affairs in the State – Member.

**Term of Office**

Every member of the State Commission shall hold office for a term of five years or up to the age of sixty seven years, whichever is earlier.

**Resignation**

A member may resign his office in writing under his hand addressed to the State Government. On such resignation being accepted, his office shall become vacant. The vacancy so caused may be filled by an appointment of a person possessing the qualifications in relation to the category of the member who has resigned.

**Salary and Terms of Condition of Service**

The salary or honorarium and other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government. It is provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

**Jurisdiction [Section 17]**

The State Commission shall have jurisdiction:

1. To entertain:
  - i. Complaints where the value of the goods or services and compensation, if any, claimed exceeds "rupees twenty lakhs but does not exceed rupees one crore".
  - ii. Appeals against the orders of any District Forum within the State.
2. To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears to the State Commission that such District Forum:

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

- i. Has exercised a jurisdiction not vested in it by law, or
- ii. Has failed to exercise a jurisdiction so vested, or
- iii. Has acted in exercise of its jurisdiction illegally or with material irregularity.

#### **5.4.4 National Commission**

The Central Government shall establish a National Consumer Disputes Redressal Commission. The National Commission can entertain complaints where the value of goods and services and the compensation, if any, claimed exceeds rupees one crore. An appeal against the orders of the National Commission can be filed in the Supreme Court within 30 days from the date of the order. (**More than 1 Cr**)

#### **Composition [Section 20]**

The National Commission shall consist of:

1. A person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President. However, no appointment under this Clause shall be made except after consultation with the Chief Justice of India.
2. Four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with problems relating to Economics, Law, Commerce, Accountancy, Industry, Public Affairs or Administration. One of these members shall be a woman. However, every appointment under this Clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following namely:
  - i. A person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India - Chairman.
  - ii. The Secretary in the Department of Legal Affairs in the Government of India - Member.
  - iii. Secretary of the Department dealing with Consumer Affairs Government of India - Member.

#### **Disqualification for Appointment as a Member of National Commission**

Provided further that a person shall be disqualified for appointment, if he:

1. Has been convicted and sentenced to imprisonment for an offense which, in the opinion of the Central Government, involves moral turpitude; or

**KV Institute of Management and Information Studies**  
**BA5104 – Legal Aspects of Business**

---

2. Is an undischarged insolvent; or
3. Is of unsound mind and stands so declared by a competent court; or
4. Has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
5. Has, in the opinion of the Central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
6. Has such other disqualification as may be prescribed by the Central Government.

**Appointment on the Recommendation of Selection Committee**

Every appointment shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:

1. A person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India – Chairman.
2. The Secretary in the Department of Legal Affairs in the Government of India – Member
3. Secretary of the Department dealing with Consumer Affairs in the Government of India – Member.

**Term of Office**

Every member of the National Commission shall hold office for a term of 5 years or up to the age of 70 years, whichever is earlier and shall not be eligible for re-appointment.

**Resignation**

A member may resign his office in writing under his hand addressed to the Central Government. On such resignation being accepted, his office shall become vacant. The vacancy so caused may be filled by an appointment of a person possessing the qualifications in relation to the category of the member who has resigned.

**Salary and Terms of Condition of Service**

The salary or honorarium and other allowances payable to and the occupy terms and conditions of service of the members of the National Commission shall be prescribed by the Central Government.

**Jurisdiction [Section 21]**

Subject to the other provisions of this Act, the National Commission shall have jurisdiction:

1. To entertain:

**KV Institute of Management and Information Studies**  
**BA5104 – Legal Aspects of Business**

---

- i. Complaints where the value of the goods or services and compensation, if any, claimed exceeds "rupees one, crore", and
  - ii. Appeals against the orders of any State Commission.
2. To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission:
- i. Has exercised a jurisdiction not vested in it by law, or
  - ii. Has failed to exercise a jurisdiction so vested, or
  - iii. Has acted in the exercise of its jurisdiction illegally or with material irregularity.

**Penalties [Section 27]**

Failure or omission by a trader or other person against whom a complaint is made or the complainant to comply with any order of the State Commission or the National Commission shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to 3 years, or with fine of not less than Rs.2,000 but which may extend to Rs.10,000 or with both. However, if it is satisfied that the circumstances of any case so requires, the District Forum or the State Commission or the National Commission may impose a lower fine or a shorter term of imprisonment.

**5.5 COMPETITION ACT, 2002**

**5.5.1 Objectives of the Competition Act**

The principal objectives of the Act are:

1. To shift the focus from curbing monopolies to promoting competition.
2. To ensure fair competition in India by prohibiting trade practices which cause adverse effect on competition in markets within India.
3. To establish a quasi-judicial body to be called the Competition Commission of India (CCI) and shall also undertake competition advocacy for creating awareness and imparting training on competition issues.
4. To curb negative aspects of competition through the medium of CCI.
5. To promote and sustain competition in markets.
6. To protect the interests of consumers.

7. To ensure freedom of trade carried-on by other participants in markets in India.
8. To create a fund to be called the Competition Fund.

### 5.5.2 Features of the Competition Act

The salient features of the Act are:

1. Competition Commission of India (CCI) to be established.
2. Repeal of MRTP Act and dissolution of MRTPC.
3. Pre-merger notification made optional.
4. Prohibition of abuse of dominant position.
5. Pending cases of MRTPC to be transferred to CCI.
6. Pending unfair trade practices to be covered under Consumer Protection Act, 1986.
7. Competition Fund to be created.

### 5.5.3 Major Areas of Competition Act, 2002

#### 1. Prohibition of Anti-Competitive Agreements:

It includes prohibition of anti-competitive agreements (including cartels), which determine prices or control or limit or share markets among players or result in bid rigging.

#### 2. Prohibition against Abuse of Dominant Position:

It includes prohibition of abuse of dominant position through unfair and discriminatory prices or conditions (including predatory pricing) limiting or restricting production, denying market access, etc.

#### 3. Regulation of Combinations:

It seeks to regulate combination (acquisition, mergers and amalgamations etc.) that causes or likely to cause appreciable adverse effect on competition.

#### 4. Advocacy of Competition Policy:

It aims to entrust the Competition Commission the responsibility of undertaking competition advocacy, awareness and training about competition issues.

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

### 5.5.4 Competition Commission of India

The Sections 7 to 17 under Chapter III provides for the establishment, composition, term, resignation, removal, restrictions on employment of Chairperson, his powers, salary, etc.

#### 1. Establishment of Commission

- a. The Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".
- b. The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable and to contract and shall, by the said name, sue or be sued.
- c. The Head Office of the Commission shall be at such place as the Central Government may decide from time to time.
- d. The Commission' may establish offices at other places in India.

#### 2. Composition of Commission

- a. The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government. It is provided that the Central Government shall appoint the Chairperson and a Member during the first year of the establishment of the Commission.
- b. The Chairperson and every other Member shall be a person of ability, integrity and standing and who, has been, or is qualified to be, a Judge of a High Court or has special knowledge of and professional experience of not less than fifteen years in International Trade, Economics, Business, Commerce, Law, Finance, Accountancy, Management, Industry, Public Affairs, Administration or in any other matter which, in the opinion of the Central Government, may be useful to the Commission.
- c. The Chairperson and other Members shall be whole-time Members.

#### 3. Duties of Competition Commission of India

It shall be the duty of the Commission:

- a. To eliminate practices having adverse effect on competition,
- b. To promote and sustain competition,
- c. To protect the interests of consumers,

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

- d. To ensure freedom of trade carried on by other participants, in markets in India, and
- e. To make inquiries into certain agreements and dominant position of enterprise and about combinations.

The Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country.

#### 4. Powers of Competition Commission of India

The Competition Commission of India has the following powers:

- a. Power to Grant Interim Relief (Section 33),
- b. Power to Award Compensation (Section 34),
- c. Power of Commission to regulate its own Procedure (Section 36),
- d. Review of Orders of Commission (Section 37),
- e. Rectification of Orders (Section 38).

#### 5.5.5 Offences and Penalties

Various offences and penalties are as follows:

1. Contravention of Orders of Commission [Section 42]
  - a. Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lac or both.
  - b. The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order and any person who commits breach of or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lac.

**KV Institute of Management and Information Studies**  
**BA5104 – Legal Aspects of Business**

---

2. Penalty for Failure to Comply with Directions of Commission and Director General [Section 43]: If any person fails to comply with a direction given by:
  - a. The Commission under sub-section (5) of Section 36; or
  - b. The Director General while exercising powers referred to in sub-section (2) of Section 41, the Commission shall impose on such person a penalty of rupees one lac for each day during which such failure continues.
3. Penalty for Making False Statement or Omission to Furnish Material Information [Section 44]: If any person, being a party to a combination:
  - a. Makes a statement which is false in any material particular, or knowing it to be false; or
  - b. Omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lac but which may extend to rupees one crore, as may be determined by the Commission.
4. Penalty for Offences in Relation to Furnishing of Information [Section 45]

Without prejudice to the provisions of Section 44, if any person, who furnishes or is required to furnish under this Act any particulars, documents or any information:

- a. Makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
- b. Omits to state any material fact knowing it to be material; or
- c. Wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, the Commission shall impose on such person a penalty which may extend to rupees ten lac.

## **5.6 CYBER CRIMES / CYBER LAW**

### **5.6.1 Meaning of Cyber Crime/Computer Crime**

Cyber-crime is a growing threat to society caused by the criminal or irresponsible actions of individuals who are taking advantage of the widespread use and vulnerability of computers and the Internet and other network. It thus presents a major challenge to the ethical use of information technologies. Cyber-crime poses serious threats to the integrity, safety, and survival of most E-business systems, and thus makes the development of effective security methods a top priority. Cyber-crime (and its sub-categories) is:

1. The criminal use of any computer network or system on the Internet;

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

2. Attacks or abuse against the systems and networks for criminal purposes;
3. Crimes and abuse from either existing criminals using new technology; or
4. New crimes that have developed with the growth of the Internet.

According to Association of Information Technology Professionals (AITP), Cyber-crime includes things like:

1. The unauthorized use, access, modification, and destruction of hardware, software, data, or network resources;
2. The unauthorized release of information;
3. The unauthorized copying of software;
4. Denying an end user access to his or her own hardware, software, data, or network resources;
5. Using or conspiring to use computer or network resources to illegally obtain information or tangible property".

Cyber-crime is defined as the act of using a computer to commit an illegal act. This broad definition of cyber-crime can include:

**1. Targeting a Computer for Committing an Offense:**

In such cases, the culprit gains unauthorized access to a computer system and tries to cause damage to the computer system or to the data it contains. This is an illegal action in which a computer is the object of the crime. In other words, any act, means or purpose of which is to affect the functioning of computer is a cyber-crime. Any incident associated with computer systems, where the intruder caused harm or would have caused harm to confidential data or the computer system itself is a cyber-crime.

**2. Using a Computer to Commit an Offense:**

In such cases, computer users may steal credit card numbers from websites or a company's database, withdraw money from bank accounts, or make unauthorized electronic fund transfers from financial institutions. This is an illegal action where computers are used as a tool for committing the crime. Any incident associated with computer technology in which a victim has suffered or would have suffered loss and a perpetrator, by intention, made or would have made a gain is a cyber-crime.

**3. Using Computers to Support a Criminal Activity:**

In such cases, computers are not actually targeted. The offender uses the computer system as an aid for performing the illegal action. For example, Drug dealers and other professional criminals may use computers to store records of their illegal transactions. Any incident wherein illegal information is stored in or transmitted through computers is a cyber-crime.

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

### 5.6.2 Acts which are Considered as Cyber Crimes

When a person performs any of the following acts, he has actually committed a computer crime:

1. If he intentionally:
  - a. Accesses and without permission, copies or makes use of any data or computer database from a computer or network.
  - b. Accesses and without permission, alters, damages, deletes, or destroys computer database, software (programs), computer or network.
  - c. Without permission disrupts or causes disruption of computer services to an authorized user of a computer or network.
  - d. Without permission provides or assists in providing a means of accessing a computer or network.
  - e. Uses any data, computer database, computer or network to execute any unlawful scheme, to deceive or extort to obtain money, property, or data.
  - f. Obtains or attempts to obtain, or helps in obtaining any commercial computer service by false representation, unauthorized charging to the account of other person or any other intention to defraud.
  - g. Introduces or allows the introduction of any computer contaminant or computer virus into any computer or network.
  - h. Recklessly destroys or allow others to destroy or tamper computer equipment.
2. If he does Unauthorized Computer Access:

In general, a person who gains access to a computer system, when he is not permitted, is cyber-criminal. Unauthorized access means, that the person who has gained entry to a computer system has no authority or right to use it.

### 5.6.3 Types of Cyber Crimes Various types of cyber-crimes are as follows:

1. **Data Diddling:** In data diddling, raw data is modified when it is being keyed or processed into the computer. Later, the offender may change it back after the process is completed to hide his offense. For Example:
  - a. A student breaks into his university's grade-recording system and changes the grades he earned in last semester exam, thus raising his grade or average.

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

- b. Debtors who are under heavy debts may cancel their debts without proper authority or reduce outstanding amounts of money owed.
2. **Internet Time Theft:** In Internet time theft, an unauthorized person uses Internet hours paid by other person.
  3. **Salami Slicing:** Salami slicing is a form of data diddling, where a small change is made; the alteration is so insignificant that in a single case it can easily go unnoticed. Here the attacker saves small amounts from financial accounts and deposits them in his personal account. For example, a bank employee inserts a program into the bank's server which deducts a small amount of money (say Rs. 2 a month) from the account of every customer and deposits it into a fake account. Usually, account holders do not notice this minute unauthorized debit, while the bank employee can make a substantial amount of money every month.
  4. **Virus Attack:** Usually, hackers unleash virus into networks to grab confidential data, which can prove to be a media of making money in the form of ransom.
  5. **Phreaking:** Phreaking constitute crimes committed against telephony service providing companies, computers with the aim of making free long distance calls and diverting calls to the numbers of intruder's choice. The perpetrator may also disrupt telephone service of subscribers.
  6. **Pornography:** The word, pornography, is drawn from the Greek words 'porne' (female captive) and 'graphos' (writing or drawing). However, today it is not limited to females but children are also main victims (kiddie porn). Pornography is a crime where such material (either pictures or photos or words) appear on websites. Pornographic magazines produced using computers (to publish and print the material) also constitute this crime.
  7. **Cloning:** Cloning is a cellular phone fraud accomplished through computers. Here scanners are used to steal the Electronic Series Numbers of cellular phones, which are sent for billing purposes and are broadcast as calls are made. Clone mobile phones are made by replacing their ESN by the stolen ones with the help of software. These clones are then used to make 'free' calls that are billed to the owner of the original cell phone.
  8. **Carding:** In carding, credit card numbers are stolen online by culprits for preparing duplicate cards. Nowadays, sophisticated equipment and material including printers for making forged payment cards are easily available and can be purchased via the Internet with almost certain assurances of anonymity. Forged plastic cards are made with stolen credit card numbers and are used to charge merchandise against victim's accounts.
  9. **Piggy-Backing or Shoulder-Surfing (ATM Fraud):** The act of prying on others important data to use it later for some benefit is called shoulder-surfing. Piggy-backing can occur anywhere, in offices, banks, ATMs, and other work places. Shoulder-surfing at ATMs simply involves standing in line behind a card user, looking over his shoulder and memorizing the card's Personal Identification Number (PIN). With the help of right equipment, the stolen

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

numbers are then placed on false access cards and used to withdraw cash from the victim's account.

10. **Social Engineering:** Social engineering is a hacker's trick of getting to know the secrets of computer networks like passwords, merely using the human tendency to trust. The hacker's aim is to gain key information, from company employees, which will allow unauthorized access to unlock confidential information from a company's network. They do so by posing (acting) as a magazine journalist, telephone company employees or forgetful co-worker to fool honest employees to reveal vital information regarding the security of data. This information is then used by the intruders to break into the computer system and gain access to confidential data. Apart from actually visiting the workplace, the hackers use media like phone and online connection where they pose as network administrator and ask for password, convincing that it is required for some important system administrative work.
11. **Mail Bombings:** In mail bombing, the cyber-criminal creates havoc by simply bombarding a person's e-mail address. The victim's e-mail account is overwhelmed with mails to such an extent that the entire system shuts-down.
12. **Dumpster Diving:** Dumpster diving is also known as Trashing. It does not require any technical expertise as the hacker simply has to go through dumpsters (trash) and garbage cans for company documents, credit card receipt, phone books, meeting minutes, and other papers containing sensitive information, which might be useful. The trash may also include outdated hardware like disks and tapes, which might be storing a huge amount of vital data.
13. **Software Piracy:** The practice of making illegal copies of software is called software piracy. Software piracy involves unauthorized use of copyrighted patented material by bootlegging. This is the most widespread crime, wherein, the culprit copies and/or distributes copyrighted software without the permission of the copyright holder. Making unauthorized copies can be expressed in other words as stealing software. It causes copyright infringement and trademark violations.
14. **Identity Theft:** Identity theft is a crime in which the offender obtains some other person's personal information like name, social security number, tax file number, etc., to pose like the legitimate user and gain money, merchandise, or service on his account. This fraud or deception is flourishing as lot of information is available on Internet and people are going for online transactions, which helps the culprit to get personal information, so that he may establish credit and charge items to the victim. Before anyone understands anything, the techno-thief gains economically and the person comes to know of it when the bills start rolling-in.
15. **Spoofing:** In spoofing, the spoofer uses a program to duplicate an organization's login screen. It is a trick used to steal passwords of legitimate accounts. What actually happens is when the legitimate user logs on to the system, the counterfeit (false) screen responds with an error message, but secretly copies the user's ID and password. The user thinks that there must have been some typing mistake and re-types the login ID and password. Meanwhile, the intruder

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

gets the access to the network through the stolen login id and password and uses computer time and resources.

16. **Phishing:** Phishing is one way of spoofing; however, in spoofing, a particular company is targeted, whereas, phishing covers all inherent users. In phishing, 'spoofed' e-mails and fraudulent websites are used to fool recipients. The phisher poses as a well-known bank, online retailer, or a credit card company so that recipients give away personal financial data, such as, credit card number, account usernames and passwords, social security numbers, etc. The victim's vital personal information can then be used by the culprits for identity theft.
17. **Sniffing:** Any personal computer needs a NIC (Network Interface Card) to get connected to a network. This NIC contains unique information, which differentiates a user from others. Sniffer is a program, which sets the NIC of the targeted computer into such settings that it allows the intruder to capture packets of information going in and out of the PC through network. Thus, the perpetrator gets access to all the information of legitimate user including password.

### 5.6.4 Factors Contributing to Cyber Crime

1. **Global Reach:** For Internet user, sky is the limit. No one owns it, yet people of all nationalities use it. A person using Internet can be in any part of the world and can affect another Internet user situated anywhere on the globe.
2. **Popularity of Internet:** There is no class of Internet users. Right from teenagers to aged people, everybody use Internet. Persons from all fields make use of Internet, may be professional or students or housewives. There is no profile of Internet user, no age bar, no gender bar. The only condition required is technical knowledge. As the number of users is inflating, so is the crime.
3. **Large Amount of Information Available on Internet:** More the number of users more are the contribution to volume of information on Internet and vice versa. Due to the trends like online shopping, online banking, etc., confidential and personal data can be made easily available on the Internet. Internet is the easiest way to grab trade secrets, strategies, policies, etc., as the data traffic on Internet has increased; it tempts people to indulge in crimes.
4. **Easy System Accessibility:** Another factor, which tempts people to indulge in cyber-crimes, is anonymity it offers. Information regarding any organization can be made available to any Internet user without any authentication. A person may give a fake identity; there is little aid to trace identity of users. There is no perfect way (like license or ID card) to identify a user before giving access to information.
5. **Advancement of Electronic Technology:** Due to rapid advancements in technology, more and more companies, irrespective of their size, are gaining online presence. Once a company's data is available online, security risks increase.

## KV Institute of Management and Information Studies

### BA5104 – Legal Aspects of Business

---

6. **Easy Availability:** To use Internet, the user need not have Internet connection; moreover he need not have even a computer. There are in numerous Internet cafes spread over even in smallest cities, which allow the citizens to use Internet PCs at as low rates as Rs. 15 per hour.
7. **Human Involvement:** Digital divide is reducing. This is good news. The gap between the number of computer literates and computer illiterates is contracting, but, this means that more and more people are getting trained to gain access to networked computers. More users mean more crime as for most of the cyber-crimes; the criminal has to have appropriate technical knowledge. That is why, larger percentage of criminals is found among insiders (company employees) and cyber-crimes are considered as "white collar crimes".
8. **Lack of Appropriate Laws (National and International) and Harsh Penalties:** Many countries do not follow any Internet laws. Those countries, which have such IT laws, are not amended time to time with the advent of new crimes. Internet crosses national borders; however, there is no unification of Internet laws. Among huge number of cyber criminals, many go unnoticed, untraced; they escape the imprisonment and penalties, and if caught, the punishments are not too severe to deter them in future from indulging in cyber-crimes.

#### 5.6.5 Prevention of Cyber Crime

As computers and information systems have become fundamental part of any business, chances of misusing and abusing information, computers, and systems have increased. This new-wired world we live in is quite vulnerable to cyber-attacks. To stop the increasing cyber-crimes or to at least reduce the crime rate, severe penalties must be assessed and imposed. People from almost every field have started using Internet for different purposes. The global reach of computer networks has raised concern over copyrights, privacy, and security among all user groups. Ownership rights of those who create software and other copyrighted material, which is spread across networks, must be protected. When financial and healthy data is collected about individuals and stored on computers, that information should not be made freely available to anyone who can retrieve it.

Usually, Indians have the tendency of 'latching the door when the horse has run out of stable'. Cyber-crime has the potential of disestablishing the country's economy. It is high time, Indian Government adopt suitable strategies to combat cyber-crime like:

1. India must participate in International Conference to join discussions and get knowledge about new laws for preventing cyber-crimes, beforehand.
2. CBI must take-up updated sessions to offer training to the state policies personnel to keep them well informed about latest cyber-crimes and related laws.

In the coming years, a steady increase in number of computer crimes is expected. So, proper precaution has become today's necessity. As such, India is heading towards adopting preventive measures in the field of computer/data security. It has already formulated the Information Technology Act in 2000. However, looking at the variety of cyber-crimes coming-up, it has become

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

necessary to make amendments. As the impact of cyber-crime has become enormous, a multi-facet strategy is required to fight it. The two main dimensions of the strategy are:

### 1. Universal Methodology:

- a. Computer crime is such an offense that it crosses transnational borders. This is mainly due to Internet, whose users are spread worldwide; therefore, this malpractice extends across the globe within hours. As such, combined or joint efforts, i.e., international cooperation are required to effectively combat this crime.
- b. Frequent international meets must be arranged to exchange technology pertaining to data security. Advanced countries should take initiative in encouraging international collaborations.
- c. National seminars on computer crime must be organized on large-scale in India for public awareness regarding security of information.
- d. It has become obligatory to develop concepts/guidelines (manual) for computer security. The implementation of such manual should be made mandatory at all levels 'within an organization and between organizations. It should be made compulsory on the part of companies/institutions to provide their annual reports, which will confirm that data security standards, as prescribed by the manual, have been adopted.
- e. Computer experts from various fields must be invited to participate in seminars to discuss on the issue of cyber-crime and find suitable solutions.
- f. The users must take care while implementing transaction-oriented system by allowing only "read only" or "enquiry only" access to others. This offers a greater degree of protection as compared to a system, which offers access for programming (writing/modifying).
- g. Users must adopt themselves to change passwords frequently. They must use different passwords for different accounts. Passwords must be long, combination of alphanumeric characters and must not be easy enough for guesser to break it, depending on clues like child's name, birth date, etc.

### 2. Lawful Deterrents:

- a. How many of us lodge a complaint with CBI, when our computer gets injected by virus from the email? Most 'of the computer users are unable to demark between the conduct which is "right" and that which is "wrong". There must be proper demarcation of activities which constitute offenses and which are non-offenses.

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

- b. Timely improvements in the Indian Penal Code and other related laws must be brought about. Amendments must be made in the domestic criminal law of all countries, based on an international understanding, in order to prevent computer-related crimes.
- c. Victims of cyber-crime must take the social responsibility of bringing to light the evil face of cyber-crimes. There is also some confusion relating to reporting of cyber-crimes. Businesses are unlikely to contact the local police, after discovering that the corporate network has been infected; to avoid ill reputation, which may affect their business. Many people are not aware of the procedures to be carried out when they come across a cyber-crime, as a result of which only a few come forward to report cyber-crimes.
- d. Effective prosecution must be carried-out against cyber criminals. Legal proceedings must be adopted by using the existing criminal procedure law. Adoption of a procedure for the investigation of computer crime is essential to bring into action, a new piece of legislation or supplementation of existing law.
- e. The guidelines or rules should specify the procedural aspects relating to search of the premises, seizure of incriminating documents/materials, the duty of witnesses, etc.

In addition to the above, considering the fast changing nature of cyber-crimes, it is desirable to adopt the guidelines and classification suggested by the Organizations for Economic Cooperation and Development (OECD) with necessary amendments to suit national requirements.

### 5.6.6 Offences and Penalties

1. **Tampering with Computer Source Documents [Section 65]:** Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer program, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lac rupees, or with both.
2. **Hacking with Computer System [Section 66]:**
  - a. Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hack.
  - b. Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend up to two lac rupees, or with both.
3. **Publishing of Information which is Obscene in Electronic Form (Section 67):** Whoever publishes or transmits or causes to be published in the electronic form, any material which is

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lac rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lac rupees.

4. **Power of Controller to give Directions [Section 68]:**

- a. The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder.
- b. Any person who fails to comply with any order under Sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two lac rupees or to both.

5. **Directions of Controller to a Subscriber to Extend Facilities to Decrypt Information [Section 69]**

- a. If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource.
- b. The subscriber or any person in-charge of the computer resource shall, when called upon by any agency which has been directed under sub-section (1), extend all facilities and technical assistance to decrypt the information. iii) The subscriber or any person who fails to assist the agency referred to in sub-section (2) shall be punished with an imprisonment for a term which may extend to seven years.

6. **Protected System [Section 70]**

- a. The Appropriate Government may, by notification in the Official Gazette, declare that any computer, computer system or computer network to be a protected system.
- b. The Appropriate Government may, by order in writing, authorise the persons who are authorised to access protected systems notified under sub-section (1).
- c. Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this Section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

**7. Penalty for Misrepresentation [Section 71]:**

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any license or Digital Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lac rupees, or with both.

**8. Penalty for Breach of Confidentiality and Privacy [Section 72]:**

Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document, or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lac rupees, or with both.

**9. Penalty for Publishing Digital Signature Certificate False in certain Particulars [Section 73]:**

No person shall publish a Digital Signature Certificate or otherwise make it available to any other person with the knowledge that:

- a. The Certifying Authority listed in the certificate has not issued it; or
- b. The subscriber listed in the certificate has not accepted it; or
- c. The certificate has been revoked or suspended, unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation.

**5.6.7 Adjudication**

The provisions regarding adjudication are as follows:

1. **Appointment of Adjudicating Officer:** Whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made there under the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.
2. **Reasonable Opportunity for Making Representation:** The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that Section.

3. **Qualification for Appointment as Adjudicating Officer:** No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.
4. **Jurisdiction of Adjudicating Officer:** Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.
5. **Powers of Adjudicating Officer:** Every adjudicating officer shall have the powers of a Civil Court which are conferred on the Cyber Appellate Tribunal under sub-section (2) of Section 58, and
  - a. All proceedings before it shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code.
  - b. Shall be deemed to be a Civil Court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973.
6. **Factors to be taken into Account by the Adjudicating Officer:** While adjudging the quantum of compensation, the adjudicating officer shall have due regard to the following factors, namely:
  - a. The amount of gain of unfair advantage, wherever quantifiable, made as a result of the default,
  - b. The amount of loss caused to any person as a result of the default, and
  - c. The repetitive nature of the default.

## 5.7 INFORMATION TECHNOLOGY ACT, 2000 & 2002

### 5.7.1 Introduction to Information Technology Act, 2000

The IT Act 2000, the cyber law of India, gives the legal framework so that information is not denied legal effect, validity or enforceability, solely on the ground that it is in the form of electronic records. The Indian Information Technology Act 2000 ('Act') came into effect from October 17, 2000. E-commerce is a fast-growing form of carrying-out business transactions. It is the process of conducting business operations through the medium of computer internet. Any business transaction has to pass through several stages to be given effect to. Each stage consists of various types of exchanges between the two sides:

1. Information,

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

2. Documents,
3. Goods,
4. Services,
5. Money, etc.

To the extent these exchanges are conducted through the modern technology of internet, e-commerce would be said to be in use. Increasing use of Internet in all walks of life and the growth of e-commerce necessitated the creation of relevant cyber- law and dynamic and effective regulatory mechanisms to build and strengthen a legal infrastructure for e-commerce and other similar computer-using activities all over the world. Only then would these activities gain reliability, effectiveness and wide acceptability. The Information Technology Act, 2000 and the institutional infrastructure derived out of it are very important components of the regulatory regime in the field of internet-use in India.

### **5.7.2 Objectives of the Information Technology Act, 2000**

The Information Technology Act objectives:

1. To grant legal recognition for transactions carried-out by means of electronic data interchange and other means of electronic communication commonly referred to as "Electronic commerce" in place of paper based methods of communication.
2. To give legal recognition to Digital Signature for authentication of any information or matter and this requires authentication under any law.
3. To facilitate electronic filing of documents with Government departments.
4. To facilitate electronic storage of data.
5. To facilitate and give legal sanction to electronic fund transfers between banks and financial institutions.
6. To give legal recognition for keeping books of account by Bankers in electronic form.

### **5.7.3 Features of the Information Technology Act, 2000**

In the light of the various objectives of the Act and provisions contained therein, the following may be described as the main features of the Act:

1. Electronic contracts have been made legally valid if made through 'secure electronic communications'.
2. Legal recognition has been granted to digital signatures.
3. Security procedures for electronic records and digital signatures have been laid down.

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

4. Digital signatures are required to be effected by the use of 'asymmetric crypto system' and 'hash function'.
5. Recognition has been granted to the right of licensed Certifying Authorities (CAs) to issue digital signature certificates and a provision has been made for the appointment of Controller of Certifying Authorities (CCA) to grant license to and regulate the working of certifying authorities.
6. The Controller is to act as repository (a storehouse, i.e., who will maintain an authentic and complete information) of all digital signature certificates.
7. To facilitate e-governance, provisions have been included to build the required system.
8. Various types of computer-related crimes have been defined and stringent penalties provided under the Act.
9. A procedure has been laid down under the Act for appointment of Adjudicating Officers for holding inquiries.
10. A provision has been made under the Act for the establishment of Cyber Regulatory Appellate Tribunal; an appeal against the order of the Controller or Adjudicating Officer can be made to this Tribunal only and not to any Civil Court.
11. An appeal against the order of the Cyber Appellate Tribunal can be made in the High Court.
12. The Act will also apply on offences or contraventions committed outside India.
13. Senior police officers and other officers have been given power to enter any public place and search and arrest without warrant.
14. Provision has been made for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and the Controller.

### **5.7.4 Scope and Application of the Information Technology Act, 2000**

The Act extends to whole of India and shall also apply to any violation or contravention of the provisions of the Act done by any person anywhere in the world. However the Act shall not apply to:

1. A negotiable instrument (other than a cheque) as defined in Section 13 of the Negotiable Instruments Act, 1881. The provisions of the Act shall apply to electronic cheques and the truncated cheques as defined in Section 6 of the Negotiable Instruments Act, 1881, subject to such modifications and amendments as may be necessary for carrying-out the purposes of the Negotiable Instruments Act, 1881 [Section 81-A].
2. A power-of-attorney as defined in Section 1A of the Powers-of-Attorney Act, 1882.

**KV Institute of Management and Information Studies**  
**BA5104 – Legal Aspects of Business**

---

3. A trust as defined in Section 3 of the Indian Trusts Act, 1882.
4. A will as defined in clause (h) of Section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.
5. Any contract for the sale or conveyance of immovable property or any interest in such property.
6. Any such class of documents or transactions as may be notified by the Central Government in the Official Gazette (Section 1).

## **5.8 INTELLECTUAL PROPERTY RIGHT (IPR)**

### **5.8.1 Introduction of IPR**

The possession and utilisation of various kinds of properties is essential for the development of trade, industry and commerce (business). Right from the beginning of civilisation itself the concept or origin of property rights can be traced. The Indian Constitution protects the right to property of an individual.

There are two types of property present in nature:

1. **Tangible Property:**

It includes:

- a. **Immovable Property:** Like land, building or permanent structures.
- b. **Movable Property:** Like goods and shares.

2. **Intangible or Incorporeal Property:**

It includes any benefit other than a material thing like actionable claims, goodwill and intellectual property rights such as patents, copyright and trademarks.

### **Intellectual Property**

Every kind of intellectual property is in the nature of 'intangible' property. Intellectual Property (IP) is the creation of human intellect. It refers to the ideas, knowledge, invention, innovation, creativity, research, etc., all being the product of human mind and is similar to any property, whether movable or immovable, wherein the proprietor or the owner may exclusively use his property at will and has the right to prevent others from using it, without his permission. The rights relating to intellectual property are known as 'Intellectual Property Rights'. Intellectual Property Rights, by providing

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

exclusive rights to the inventor or creator, encourages more and more people to invest time, efforts and money in such innovations and creations.

### 5.8.2 Categories of Intellectual Property Rights (TRIPS)

1. **Trade Secrets:** Trade secrets or Knowhow is another important form of intellectual property generated by R&D institutions that does not have the benefit of patent or copyright protection. Such know-how is kept undisclosed as trade secrets. A Trade Secret or undisclosed information is any information that has been intentionally treated as secret and is capable of commercial application with an economic interest. It protects information that confers a competitive advantage to those who possess such information, provided such information is not readily available with or discernible by the competitors.
2. **Integrated Circuits:** An "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.
3. **Geographical Indications:** The Geographical Indication of Goods (Registration and Protection) Act, 1999 has been enacted to provide for the registration and better protection of geographical indications relating to goods. According to the Act, the term 'geographical indication' (in relation to goods) means "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods, one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be".
4. **Industrial Design:** In every language, an industrial design generally refers to a product's overall form and function. An armchair is said to have a "good industrial design" when it is comfortable to sit in and we like the way it looks. For businesses, designing a product generally implies developing the product's functional and aesthetic features taking into consideration issues such as the product's marketability, the costs of manufacturing or the ease of transport, storage, repair and disposal.
5. **Copyrights:** Detailed below.
6. **Trademarks:** Detailed below.
7. **Patents:** Detailed below.

## 5.9 COPYRIGHTS

### 5.9.1 Meaning of Copyrights

---

This material is proprietary to KV Institute of Management, a Nationally Ranked B School in Coimbatore and cannot be copied or duplicated for use outside of KV. Violators will face infringement proceedings of copyright laws.

Copyrights give protection for the expression of an idea and not for the idea itself. For example, many authors write textbooks on physics covering. Various aspects like mechanics, heat, optics etc. Even though these topics are covered in several books by different authors, each author will have a copyright on the book written by him/her, provided the book is not a copy of some other book published earlier.

### **5.9.2 Object of Copyrights**

Copyrights ensure certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

### **5.9.3 Indian Copyrights Act, 1957**

The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea.

### **5.9.4 Term/Duration of Copyrights**

Term/duration of copyrights is as follows:

1. The term of the copyright in any literary, dramatic, musical or artistic work (other than a photograph) is:
  - a. If published within the lifetime of the author until 60 years from the beginning of the calendar year, next following the year in which the author dies.
  - b. If published or pseudonymously, until 60 years from the beginning of the calendar year next following the year in which the work is first published. If, however, the identity of the author is disclosed before the expiry of the said period, then copyright shall subsist as per (a.) above.
  - c. In posthumous works, until 60 years from the beginning of the calendar year next following the year in which the work is first published.
2. The term of the copyright in case of a photographs, cinematograph film, sound recording, government work, work of public undertaking and the works of an international organisation, shall subsist until 60 years from the beginning of the calendar year next following the year in which the work is first published.

### 5.9.5 Registration of Copyrights

Registration of copyright is optional. A register of copyright is kept in the copyright office. All details of works in which registration is applied for is entered in the register. Register of copyrights is prima facie evidence of the particulars enter therein. The register is open for inspection and extracts of it can be obtained. The entries in the register can be corrected or rectified and shall be publish. A certificate of registration becomes a crucial prima facie evidence before a court in the ownership of the material and other facts recorded therein.

For registration, the office of the Registrar of Copyrights has been created. The register of copyrights is maintained in the copyright office of the Department of Education. The register contains the following six parts:

1. **Part 1:** Literary works other than computer programs, tables, and compilations, including computer databases and Dramatic Works.
2. **Part 2:** Musical Works.
3. **Part 3:** Artistic Works.
4. **Part 4:** Cinematograph Films.
5. **Part 5:** Sound Recordings.
6. **Part 6:** Computer Programs, tables and compilations, including computer databases.

### 5.9.6 Infringement of Copyrights

Some of the acts which are considered as no infringement of copyright are:

1. Private use including research.
2. Criticism or review.
3. Computer program - making copies for the purpose for which it was supplied or make backup copies.
4. Reporting current events in a newspaper/magazine or by broadcast or in a cinematograph film, or by means of photographs.

## 5.10 TRADE MARKS

### 5.10.1 Meaning of Trade Mark

Trade mark is a mark or symbol used by a trader in association with specific goods manufactured and or sold; mark may be a symbol of reputation of some kind in the goods for its origin or quality or both. The Brand name, Label or Logo of a company can be registered as a Trade mark. Once it is registered then it is protected against misuse by the third parties. The Registered Trade Mark is a valuable property, which can be transferred or sold or licensed to third parties.

In India, The Trade Marks Act, 1999 governs this and the law encourages registration of Trade marks, as registration confers on the owner an exclusive right to use the mark.

### 5.10.2 Meaning of Service Marks

The Trade Marks Act provided the facility to register marks for services as well as goods. "Services" has been defined to mean a service of any description which is made available to potential users and includes the provision of services in connection with business in any industrial or commercial matter, such as banking, communication, education, finance, insurance, real estate, transport, storage, material treatment, processing, supply of energy, lodging, entertainment, construction, repair, conveyance of news and advertising.

### 5.10.3 Meaning of Good Trade Marks

Any device or word which has no direct reference to the quality or character of the goods or services is a good trade mark. Invented words or original artistic devices are very good Trade Marks. The best marks are invented words, non-descriptive words and distinctive devices. The Trade Mark should be registerable.

### 5.10.4 Trade Marks and Merchandise Act, 1999

The Trade Marks and Merchandise Act, 1999 provides for the registration renewal, remedy etc. of trade marks and service marks. The brief overview of the Act is discussed hereinafter.

#### **Trade Marks not Registerable**

No trade marks shall be registered in respect of any goods, descriptive of goods or a service which is identical with or deceptively similar to a Trade mark which is already registered. Descriptive words, surnames and geographical names are not registerable.

#### **Procedure for Registration**

1. The Application is filed.
2. Then the application is examined by the Trade Marks Office and objections, if any, are raised.
3. After clearing the objections, if any, the marks are advertised in Trade Marks Journal and are open to third party opposition for a period of 4 months.
4. The registration certificate is issued in 4-6 months after the completion of opposition period, if there is no opposition by the third party during this period.
5. In case of opposition, registration certificate is issued when the opposition is dismissed.

#### **Requirements for Making an Application**

1. Ten representations of the Trade marks.
2. The name, constitution (e.g. Proprietorship, Partnership or Limited Liability Company)

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

3. List of goods or services in respect of which the registration is sought.
4. If the mark has been used in India, the date since the mark is used.
5. An authorisation of agent on Form TM - 48 (on Stamp Paper of requisite value) if application is to be made through an authorised Trade Marks Attorney.

**Revocation of Registration**

After the acceptance of the application for registering a trademark, its revocation of registration is possible by the Registrar if he/she is satisfied that:

1. The application has been accepted in error; or
2. In the circumstances of the case of the trademark should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted.

**Duration, Removal & Restoration, and Registration**

1. The Registrar shall, on application made by the registered proprietor of a trademark in the prescribed manner and within the prescribed period and subject to payment of the prescribed fee, renew the registration of the trademark for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as the expiration of the last registration).
2. At the prescribed time before the expiration of the last registration of a trademark the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trademark from the register.
3. Where a trademark has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the trademark, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the trademark to the register and renew the registration of the trademark either generally or subject to such conditions or limitations as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

**Renewal**

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

The registration of Trade Mark is valid for 10 years. An application for the renewal of registration of a Trade Mark shall be made on the form along with prescribed fee at any time not more than 6 months before the expiration of the last registration.

### **Remedies in Case of Breach/Offences and Penalties Relating to Trade marks**

Criminal offences relating to trademarks are given in Section 101-121 of the Trade marks Act, 1999. The following offences are punishable under the Act:

1. **Falsifying a Trademark:** A person is said to falsify a trademark if he makes a trademark without the assent of the proprietor.
2. **Falsely Apply a Trademark:** When a person applies to goods a trademark belonging to another person without the assent of the proprietor of that mark, he is said to falsely apply the trademark.
3. **Making or Possessing Instruments for Falsifying Trademarks:** A person who possesses, disposes of, instrument like die, block, machine for falsifying a trademark is said to commit an offense. In such a case he is punishable with imprisonment and fine.
4. **Applying False Trade Description:** Trade description includes description of the number, quantity, quality, name, and address of manufacturer, etc. Any person who applies any false trade description to goods or services is regarded as an offense and is punishable with imprisonment and fine.
5. **Applying False Indication of Country of Origin:** When a person applies a false description of the country, place, name, or address to goods, he is punishable with imprisonment and fine.
6. **Tampering with an Indication of Origin already Applied to Goods:** If a person tampers or alters an indication of origin, which has already been applied to goods, he is punishable with imprisonment and fine.
7. **Selling Goods Falsely Marked:** If a person sells or possesses for sale goods applied with false trade description, is punishable with imprisonment and fine.
8. **Removing Piece Goods:** If a person removes piece goods, etc., the government will forfeit all such goods and such person shall be punishable with fine which may extend to one thousand rupees.
9. **Falsely Representing a Trademark as Registered:** The use of the word 'R' or 'Registered' inscribed in a circle shows that a particular trademark is registered. False representation of a trademark as registered is an offense punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

10. **Falsely Describing a Place of Business as Connected with the Trademarks Office:** If a person uses words which would make a belief that his place of business is connected with the trademark office, he is punishable with imprisonment for a term which may extend to two years, or with fine, or with both.
  
11. **Falsification of Entries in the Register:** When a person makes a false entry in the register, it is termed as an offense and is punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

## 5.11 PATENT ACT

### 5.11.1 Meaning of Patent

The original word 'patent' has come up from the Latin term 'patere', which means 'to lay open' or 'available for public usage'. A patent is, "an exclusive right granted by a country to the owner of an invention to make, use, manufacture and market the invention, provided the invention satisfies certain conditions stipulated in the law". Exclusive right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder. This right is available for a limited period of time. Patent is the part of the intellectual property right, which connotes with all those rights which are granted to any person for protecting its invention, process, discovery, composition or new useful development, etc., from its further usage without any authentication.

### 5.11.2 Characteristics of Patent

Characteristics of patent are as follows:

1. If more than two persons have jointly applied for patent license, both will own the patent separately.
2. In spite of the ownership of the rights, the use or exploitation of the rights by the owner of the patent may not be possible due to other laws of the country which has awarded the patent. These laws may relate to health, safety, food, security, etc. Further, existing patents in similar area may also come in the way.
3. A patent in the law is a property right and hence, can be gifted, inherited, assigned, sold or licensed.
4. As the right is conferred by the State, it can be revoked by the State under very special circumstances even if the patent has been sold or licensed or manufactured or marketed in the meantime.

# KV Institute of Management and Information Studies

## BA5104 – Legal Aspects of Business

---

5. The patent right is territorial in nature and inventors/their assignees will have to file separate patent applications in countries of their interest, along with necessary fees, for obtaining patents in those countries.
6. A new chemical process or a drug molecule or an electronic circuit or a new surgical instrument or a vaccine is a patentable subject-matter provided all the stipulations of the law are satisfied.

### 5.11.3 Indian Patent Act, 1970

Patent protection was first introduced in 18th century. Patent Right varies from country to country. In India the law which govern patent right is "Indian Patent Act 1970".

Indian Patent Act, 1970 grants exclusive right to the inventor for his invention for limited period of time. Generally 20 years' time has been granted to the patent-holder but in case of inventions relating to manufacturing of food or drugs or medicine it is for seven years from the date of patent. There is certain legal procedure which needs to be followed in order to register. There are several attorney helping inventor in patent registration by providing them best well informed knowledge.

In India, patent registration can be filed individually or jointly. In case of deceased inventor this can be done his legal representative on behalf of him. All the required documents need to be filed along with the application form. Only after verification registration certificate is provided to the applicant.

### 5.11.4 Application for Patents

An application for obtaining a patent can be filled at respective office by:

1. A true and first inventor (individuals(s) who holds the rightful ownership in invention due to fact that he invented the same.
2. A person/company who is an assignee of first and true inventor and
3. A legal representative of the first and true inventor, in case of death of the true and first inventor. A patent application can be filled by himself or by patent agent/attorney on behalf of. The inventor assignee/legal representative.

### 5.11.5 Registration of Patents

Registration of patents is as follows:

1. Patents are registered with the controller general of patents, designs and trademark. The Head Office is in Calcutta, with branch offices in Delhi, Mumbai and Chennai. Application must be filled in appropriate office, with a provisional specification or a complete specification. The patent application and specifications are studied by the examiners (eighteen months' time is given to examine).

KV Institute of Management and Information Studies  
BA5104 – Legal Aspects of Business

---

2. Once specification is accepted, the notice of patent is advertised in Government's Official Gazette. Three months' time is given for notice of opposition. The opposition is to be replied to by the applicant within a month. Thereafter, the application is accepted or rejected. If application is accepted, the patent is sealed. A patent is dated as of to complete specification was filed.
3. For items as food or medicine, the process patent is granted for five years from the date of sealing or seven years from date of patent. Patent can be legally assigned or mealy licensed to other parties, for use in India or any part of country.
4. Beside this process, the government may on a reciprocal basis, declare any other country as a "convention" country, for the purpose of fulfilling any treaty. In such a case if a patent-holder abroad maker application in India within 12 months of having applied for a patent abroad, his patent production in India will start from the same date it starts in his own country. India is a signatory to patent convention treaty, 1970.

#### **5.11.6 Revocation of Patents [Section 64, 66 and 85]**

##### **Invention Earlier Claimed:**

The material date as far as validity of the patent is concerned must be the date on which the complete specification having been accepted, is finally published and therefore comes to the notice of the public who are going to perform it. That the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India. In order to 'establish prior claim, it has to be shown that the invention was distinctly claimed in the specification and not merely comprehended by the terms of the claim.

##### **1. Patentee not Entitled to Apply:**

That the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefore: Provided that a patent granted under the Indian Patents and Designs Act, 1911 (2 of 1911) shall not be revoked on the ground that the applicant was the communicators or the importer of the invention in India and therefore not entitled to make an application for the grant of a patent under this Act.

##### **2. Patent Wrongfully Obtained:**

That the patent was obtained wrongfully in contravention of the rights of the petitioner or any person under or through whom the patentee claims.

##### **3. Subject Claim not an Invention:**

That the subject of any claim contained in the complete specification is not an invention within the meaning of this Act.

**4. Claims not New:**

That the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in Section 13: Provided that in relation to patents granted under the Indian Patents and Designs Act, 1911 (2 of 1911), this clause shall have effect as if the words "or elsewhere" had been omitted.

**5. False Suggestion:**

That the patent was obtained based on a false suggestion or representation.

**6. Claims not Patentable:**

That the subject of any claim contained in the complete specification is not patentable under this Act.

**7. Invention Secretly Used before Priority Date of Claim:**

That the invention so far as claimed in any claim of the complete specification was secretly used in India, otherwise than as mentioned in Sub-section (3), before the priority date of the claim.

**8. Failure to Disclose Information:**

That the applicant for the patent has failed to disclose to the Controller, the information required by Section 8 or has furnished information which in any material particular was false to his knowledge;

**9. Contravened Secrecy:**

That the applicant contravened any direction for secrecy or made or caused to be made an application for the grant of a patent outside India.

**10. Amendment Obtained by Fraud:**

That leave to amend the complete specification under Section 57 or Section 58 was obtained by fraud.

**11. Wrong Mentions:**

That the complete specification either does not disclose or wrongly mentions the source (geographical origin) of biological material used for the invention.

**12. Invention was Anticipated:**

That the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available with any local or indigenous community in India or elsewhere.

**13. Requirements of Public not Satisfied:**

Where in respect of a patent, a compulsory license has been granted or the endorsement of licenses of rights has been made, the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price.

**14. Patent has Expired:**

A patent which has already expired may be revoked.

**5.12 REFERENCE**

1. Elements of Mercantile Law – N.D. Kapoor
2. Business Law for Managers – P.K. Goel
3. Legal Aspects of Business – Akhileshwar Pathack
4. Legal Aspects of Business – Balachandran V.