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ESSENTIAL COMODITIES ACT, 1955

Covering-

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EXPECTED
MARKS COVERAGE
(1 to 5)

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From Bare Act...

The Gazette of India

THE ESSENTIAL COMMODITIES ACT, 19551

ACT NO. 10 OF 1955

[1st April, 1955.]

An Act to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trude and commerce, in certain commodities.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:-

- Short title and extent.—(1) This Act may be called the Essential Commodities Act, 1955.
- (2) It extends to the whole of India 2000.
- 2. Definitions. -- In this Act, unless the context otherwise requires, --
- ³[(ia) "Collecter" includes an Additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the powers of the Collector under this Act;]

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- (b) "food-crops" include crops of sugarcane;
- (a) "notified order" means an order notified in the Official Gazette;
- [[co] "order" includes a direction issued thereunder,]
- ^a[(d) "State Government," in relation to a Union territory, means the administrator thereof;]
- "((e) "sugar" means-
- (/) any form of sugar containing more than ninety per cent, of sucrose, including sugar candy;
- (//) khandsari sugar or bura sugar or crushed sugar or any sugar in crystalline or powdered form; or
 - (III) sugar in process in vacuum pan sugar factory or raw sugar produced therein.]
- *[2A. Essential commodities declaration etc.—(1) For the purposes of this Act, "assential commodity" means a commodity specified in the Schedule.
- (2) Subject to the provisions of sub-section (4), the Central Government may, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to—
 - (a) add a commodity to the said Schedule;
 - (b) remove any commodity from the said Schedule,
- 3. Powers to control production, supply, distribution, etc., of essential commodities.—(J) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, ¹[or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.
- (2) Without prejudice to the generality of the powers conferred by sub-section (7), an order made thereunder may provide—
 - (a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;
 - (b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified foodcrops.

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ESSENTIAL COMMODITIES ACT, 1955



DEPARTMENT OF CONSUMER AFFAIRS

OMinistry of Consumer Affairs, Food & Public Distribution, krishi Bhavan, New Delhi, Government of India)



OBJECT OF THE ACT

The object of the Act is to secure *equitable distribution and availability at fair prices of essential commodities in the interest of the general public*. Act intends to control the production, supply and distribution of essential commodities in the interest of the general public.

AUTHORITIES RESPONSIBLE TO ADMINISTER THE ACT

Necessary powers have been given to the **Central Government** under the Act to administer the provisions of the Act by issuing orders/directions notified in the official gazette and **by delegating the authority to State Governments and administrators of Union Territories**.

The **Central Government at its apex level is** responsible for achieving the objectives enshrined by the Parliament under this Act for the welfare and general well-being of all the citizens.

DEFINITIONS

> ESSENTIAL COMMODITY

Section 2A defines the "essential commodity" as to mean a commodity specified in the Schedule.

	1)	drugs;
	2)	fertilizers, whether inorganic, organic or mixed;
The Schedule to the	3)	foodstuffs, including edible oilseeds and oils;
Act lists out	4)	hank yarn made wholly form cotton;
following	5)	petroleum and petroleum products;
commodities:-	6)	raw jute and jute textiles;
<u>commountes</u>	7)	(i) seeds of food-crops and seeds of fruits and vegetables;
		(ii) seeds of cattle fodder; and
		(iii) jute seeds

Sub-section (2) empowers the Central Government to amend, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, *in consultation with the State Government* the Schedule so as to

- (a) add a commodity to the said Schedule; and
- (b) **remove** any commodity from the said Schedule,

> COLLECTOR

"Collector" includes an Additional Collector, and such other officer not below the rank of subdivisional Officer as may be authorised to perform the functions and exercise the powers of the Collector under the Act.



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POWER OF CENTRAL GOVERNMENT UNDER THE ACT

SECTION 3

> POWER TO ISSUE ORDERS

Act empowers Central Government to issue orders for regulating or prohibiting the production, supply and <u>distribution of essential commodities in the following cases:</u>

- (a) To secure the equitable distribution of essential commodities;
- (b) To secure the availability of essential commodities at fair price; or
- (c) To secure any essential commodity for the **defence** of India.

Contents of order

Central Government may issue an order which may provide for all or any of the following matters:

- (a) Regulating the production or manufacture of any essential commodity by licences, permits etc;
- **(b)** Regulating the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity by licences, permits etc;
- (c) Bringing under cultivation any waste land for growing thereon of food crops for otherwise maintaining or increasing the cultivation of food crops;
- (d) Controlling the price at which any essential commodity may be bought or sold;
- (e) Regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs which are likely to be detrimental to the public interest:
- (f) For the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals;
- (g) For the seizure of nay articles, premises, aircraft, vessels, vehicles or other conveyances and animals by a person authorized to make such entry, search or examination.

Effect of the Order

Section 6 provides that the order made under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

> POWER TO DO PRICING OF ESSENTIAL COMMODITIES

Act empowers Central Government to fix prices of essential commodities When sold to Central/State Government, the price may be :-

- (i) The agreed price, where the price can be agreed upon consistently with the controlled price fixed under this section.
- (ii) Controlled price where no such agreement can arrive.
- (iii) Market price existing on the date of sale, where the above two clauses can not be applied.

Pricing during Emergency

Central Government can fix prices of essential commodities to be sold to general public in situation of emergency, which shall be effective for **3 months**. The price as fixed may be:-

- (a) The **agreed price**, where the price can be agreed upon consistently with the controlled price fixed under this section.
- **(b)** Controlled price where no such agreement can arrive.
- (c) Market price existing on the date of sale, where the above two clauses can not be applied.

POWER TO DO PRICING FOR SUGAR

Act empowers Central Government to fix prices be paid to producers of sugar in case sold to:-

- (a) Central government,
- (b) State government,



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- (c) Agent of government,
- (d) Any other class of person specified in order of Central government.

 the producer shall be paid such price for sugar as the Central Government may, by order, determine having regard to
 - (a) the minimum price, if any fixed for sugar cane by the Central Government under this section;
 - (b) the manufacturing cost of sugar;
 - (c) the duty or tax, if any, paid or payable thereon; and
 - (d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar.

POWER TO APPOINT CONTROLLER

Central government can appoint controller to exercise notified function in relation to control as per instruction of central government.

CONFISCATION OF ESSENTIAL COMMODITIES

> SEIZURE AND CONFISCATION OF ESSENTIAL COMMODITIES

The expression 'seize' means to take possession contrary to the wishes of the owner of the property and that such action is unilateral action of the person seizing. The person from whom anything is seized loses, from the moment of seizure, the right or power to control or regulate the use of that thing.

'Confiscation 'is a mode by which Courts can dispose of the property which is seized.

Section 6A provides that where any essential commodity is seized in pursuance of an order made under Section 3, a report of such seizure shall be made, to the collector of the district in which such essential commodity is seized.

if the collector is satisfied that there has been contravention of the order he may pass order for confiscation of:-

- (a) the essential commodity so seized,
- (b) any package, covering or receptacle in which such essential commodity is found, and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

<u>Issue of Show Cause Notice before Confiscation of Essential Commodity/reasonable opportunity</u>

Before passing an order for confiscation the owner of the essential commodity is required to be given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods to provide him an opportunity of making a representation in writing within a reasonable, time and give him a reasonable opportunity of being heard in the matter.

It is not sufficient for the owner to prove that the vehicle carried the essential commodity without his knowledge or concurrence. He must also prove that the vehicle was used without the knowledge, or concurrence of the person in charge of the vehicle. In addition, he must prove that not only he but also the person incharge of the vehicle had taken all reasonable and necessary precautions against such use (Shai Rahhimv. State of Andhra)

> SALE OF THE CONFISCATED COMMODITY

Where the collector is of the opinion that the seized essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do he may:

- (a) order the same to be sold at the controlled price
- (b) where no such price is fixed, order the same to be sold by public auction.



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Provided that in case of **foodgrains**, the collector may, order the same to be sold through **fair price shops** at the price fixed by the Central Government or by the State Government.

> DISPOSAL OF SALE PROCEEDS OF CONFISCATED GOODS

The sale proceeds of the essential commodity sold, after deduction of the expenses **shall be paid** to the **owner** or person from whom it is seized in the following circumstances:-

- (a) where no order of confiscation is ultimately passed by the Collector;
- (b) where an order passed on appeal so requires, or
- (c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made, the person concerned is acquitted.

> APPEAL AGAINST CONFISCATION ORDER

Any person aggrieved by an order of confiscation may appeal to the State Government concerned within **one month** from the date of passing the order. if the appeal has been decided in favour of appellant, he is entitled to the possession of the confiscated goods.

OFFENCES AND PENALTIES

Section 10A of the Act declares that every offence punishable under the Act shall be **cognizable** and **non-bailable**.

Section 11 lays down that before a Court can take cognizance of any offence punishable under the Act, the following **three conditions** must be satisfied:-

- (a) there must be a report in writing,
- **(b)** the report must be made by a public servant,
- (c) Presence of Mens Rea:-

Mensrea means **guilty mind**. If the dealer did believe bona fide that he could store the foodgrains for instance, without infringing any order under Section 3, there could be no contravention. The legal position is that means rea would be presumed but it is avertable presumption, and the burden is on the accused to revert the said presumption.

OFFENCES BY COMPANIES

In case of contravention by a company, every person who, at the time of the contravention, was **in charge** of the conduct of the business of the company, shall be deemed to be guilty of the contravention, and shall be liable to be punished accordingly.

Wherean offence is committed by a company, if it is proved that the offence had been committed with the consent or connivance of or is attributable to any neglect on the part of any **Director**, **Manager**, **Secretary** or other officer of the company, such a person shall be deemed to be guilty of that offence, and is liable to be proceeded against and punished accordingly.

Any such person, can, however, escape liability if he proves that the contravention took place without his knowledge, or that he exercised all due diligence to prevent it.

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ADVANCE

YOUR

KNOWLEDGE



Q. 1. WRITE SHORT NOTES ON THE APPLICABILITY OF THE CONCEPT OF MENS REA UNDER THE ESSENTIALS COMMODITIES ACT, 1995.

Ans. Applicability of the concept of Mensrea under the Essentials Commodities Act, 1995

- (a) Mensrea means guilty mind. It means that whatever wrong is done, it is an international act.
- (b) In natulal v/s State of Madhya Pradesh it was held that means rea of guilty mind is an ingredient of an offence punishable under Section 7 of the Essential Commodities Act of 1955 i.e. an intention contravention of an order made Under Section 3 is an essential ingredients of an offence Under Section 7.

Mensrea is an essential ingredient of any criminal offence and it can be excluded from an statute only where it is absolutely clear that the implantation of mensrea would detect the object of the statue.

- Q. 2. WHETHER 'TEA' IS A FOOD STUFF UNDER THE ESSENTIAL COMMODITIES ACT, 1955? DOES IT HAVE ANY NUTRITIONAL VALUE? DISCUSS IN REFERENCE WITH LEADING CASE LAW, IF ANY.
- Ans. In the case of S. Samuel, AID. Harrisons Malayava v. Union of India, AIR 2004 SC 218, the Supreme Court held that Tea is not foodstuff. Even in a wider sense, foodstuffs will not include tea as tea either in the form of the leaves or in the form of beverage, does not go into the preparation of food proper to make it more palatable and digestible. Tea leaves are not eaten. Tea is beverage produced by steeping tea leaves or buds of the tea plants in the boiled water. Such tea is consumed hot or cold for its flavour, taste and its quality as a stimulant. The stimulating effect is caused by the presence of caffeine therein. Tea neither nourishes the body nor sustains nor promotes its growth.

It does not have any nutritional value. It does not help formation of enzymes nor does it enable anabolism. Tea or its beverage does not go into the preparation of any foodstuff. In common parlance, any one has taken tea would not say that he has taken or eaten food.

Thus tea is not a food.

Q. 3. CULPABLE MENTAL STATE.

Ans. Section 10-C provides for a presumption of culpable mental state, which includes intention, motive, knowledge of a fact and the belief in a fact. It is now provided that in any prosecution for an offence under the Act which requires a culpable mental state on the

part of the accused, the Court shall presume the existence of mental state. Of course, it is open to the accused to prove that he had no such mental state with respect of the act committed by him.

Q. 4. WHO IS EMPOWERED TO APPOINT AUTHORIZED CONTROLLER? STATE THE FUNCTIONS AND LIABILITIES OF SUCH AUTHORIZED CONTROLLER UNDER ESSENTIAL COMMODITIES ACT, 1955.

[Dec. 2017]

Ans. Under section 3(4) of the Essential Commodities Act, 1955 the Central Government is empowered to appoint 'Authorised Controller' when it considered necessary for maintaining or increasing the production and supply of essential commodities. The authorized controller shall exercise such powers and functions of control as may be provided in the order with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity.

The authorized controlled shall exercise his functions in accordance with any instructions given to him by the Central Government. He shall not have any power to give any direction inconsistent with the provisions of any enactment or nay instrument determining the functions of the person in charge of the management of the undertaking except in so far as may be specifically provided by the order. The undertaking shall be carried on in accordance with any directions, given by the authorized controller under the provisions of the order. The person who is responsible to function as a manager of the undertaking or part of it shall comply with such directions.

- Q. 5. COMMENT ON THE PRESUMPTION OF CULPABLE MENTAL STATE. WHO CAN AVOID SUCH PRESUMPTION OF CULPABLE MENTAL STATE AS STATED UNDER THE ESSENTIAL COMMODITIES ACT, 1955? [June. 2017]
- Ans. Section 10-C of the Essential Commodities Act, 1955 provides for a presumption of culpable mental state, which includes intention, motive, knowledge of a fact and the belief in a fact. It is now provided that in any prosecution for an offence under the Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of mental state.

Such presumption may be avoided by the accused. It is open to the accused to prove that he had no such mental state with respect of the act committed by him.



SELF TEST QUESTIONS

FROM PAST CS EXAMS



- 1. Is mensrea an essential ingredient in an offence punishable under the Essential Commodities Act, 1955? Discuss.
- Explain in brief the procedure for seizure and confiscation of essential commodities Act, 1955.
- 3. "Mensrea is an essential ingredient of an offence punishable under the Essential Commodities Act, 1955." Discuss with case law.
- **4.** Discuss the power of the Central Government to control production, supply and distribution of essential commodities under the Essential Commodities Act, 1955.
- **5.** Distinguish between the following:
 - 'Seizure' and 'confiscation' under the Essential Commodities Act, 1955.
 - 'Seizure of an essential commodity' and 'confiscation of an essential commodity'.
- Mention the provisions of the Essential Commodities Act, 1955 regarding confiscation of essential commodities seized in contravention of section 3 of the Act.
- 7. Evaluate the efficacy of the Essential Commodities Act, 1955 in controlling the production, supply and distribution of essential commodities in the country.
- Explain the provisions for confiscation of an essential commodity seized in contravention of the Essential Commodities Act, 1955.
- "A reasonable opportunity is required to be provided to the person concerned before confiscation of his commodity or vehicle, etc., under the Essential Commodities Act, 1955." Elaborate the statement in the light of relevant legal provisions and decided case law.

FROM ICSI MODULE



Answer the following:

- What do you understand by essential commodities? What are the commodities termed as essential commodities, under the Essential Commodities Act?
- Specify the authority responsible for the administration and execution of the Act?
- What do you know about an 'order' under the Act? What are the powers of Central Government in issuing the order under the Act?
- There is difference in seizure and confiscation of commodities under the Act. How can the sale proceeds of confiscated commodities be utilized? What is the procedure for disposal of confiscated goods?
- A reasonable opportunity is required to be given to the person concerned before confiscation of his commodities or vehicle, etc., under the Act. Elaborate this statement in the light of provisions of the Act.



Q. 1.
Answer to Question No. 1:-



Q. 2.
Answer to Question No. 2:-

CHAPTER

5

LEGAL METROLOGY ACT, 2009

Covering-

- Bare Act
- Object of the Act
- Definitions
- Standard Weights and Measures
- Appointment and Power of Director, Controller and Legal Metrology Officers
- Power of Inspection, Seizure
- Forfeiture
- Declarations on Pre-Packaged Commodities
- Approval of Model
- Prohibition on Manufacture, Repair or Sale of Weight or Measure without Licence
- Penalty for Counterfeiting or Seals
- Advance Your Knowledge
- Self Test Questions
 - ➤ From Past CS Exam
 - ➤ From ICSI Module

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- From Bare Act... -



THE LEGAL METROLOGY ACT, 2009

ACT NO. 1 OF 2010

[13th January, 2010.]

An Act to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- Short title, extent and commencement.—(1) This Act may be called the Legal Metrology Act, 2009.
 - (2) It extends to the whole of India.
- (3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.
 - 2. Definitions.—In this Act, unless the context otherwise requires,—
 - (a) "Controller" means the Controller of Legal Metrology appointed under section 14;
 - (b) "dealer", in relation to any weight or measure, means a person who, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any such weight or measure, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes a commission agent, an importer, a manufacturer, who sells, supplies, distributes or otherwise delivers any weight or measure manufactured by him to any person other than a dealer:
 - (c) "Director" means the Director of Legal Metrology appointed under section 13;
 - (d) "export" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
 - (e) "import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
 - (f) "label" means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any pre-packaged commodity;
 - (g) 'Legal Metrology' means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements;
 - (h) "legal metrology officer" means Additional Director, Additional Controller, Joint Director, Joint Controller, Deputy Director, Deputy Controller, Assistant Director, Assistant Controller and Inspector appointed under sections 13 and 14;
- 3. Provisions of this Act to override provisions of any other law.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

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LEGAL METROLOGY ACT, 2009



DEPARTMENT OF CONSUMER AFFAIRS

OMinistry of Consumer Affairs, Food & Public Distribution, krishi Bhavan, New Delhi, Government of India)



Legal Metrology is the name by which the law relating to weights and measures is known in international parlance. Legal Metrology is very vital for scientific, technological and industrial progress of any country.

Legal metrology can be defined as that part of metrology which deals with units of measurement, methods of measurement and measuring instruments in so far as they concern statutory, technical and legal requirements which have the ultimate object of assuring public guarantee from the point of view of security and of appropriate accuracy of measurements.

OBJECT OF THE ACT

Legal metrology Act, 2009 **intend to establish and enforce standards of weights and measures,** regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto.

DEFINITIONS

SECTION 2

> DEALER

Dealer in relation to any weight or measure, means a person

who, carries on, directly or otherwise, the business of **buying, selling, supplying or distributi**ng any such weight or measure, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration;

and includes a commission agent, an importer, a manufacturer, who sells, supplies, distributes or otherwise delivers any weight or measure manufactured by him to any person other than a dealer;

> LEGAL METROLOGY

"Legal Metrology" means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements;

> MANUFACTURER

"Manufacturer"
in relation to any
weight or
measure, means a
person who -

- (i) manufactures weight or measure,
- (ii) manufactures **one or more parts**, and **acquires other parts**, of such weight or measure and, after assembling those parts, claims the end product to be a weight or measure manufactured by himself or itself, as the case may be,
- (iii) does not manufacture any part of such weight or measure but assembles parts thereof manufactured by others and claims the end product to be a weight or measure manufactured by himself or itself, as the case may be,
- (iv) puts, or causes to be put, his own mark on any complete weight or measure made or manufactured by any other person and claims such product to be a weight or measure made or manufactured by himself or itself, as the case may be;

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> PRE-PACKED COMMODITY

"Pre-packaged commodity" as to mean a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity;

WEIGHT AND MEASURE

"Weight or measure" means a **weight or measure** specified by or under this Act and **includes a weighing or measuring instrument.**

STANDARD WEIGHTS AND MEASURES

<u>Section 4</u> of the Act provides that **every unit of weight or measure** shall be in accordance with the **metric system** based on the international system of units.

	(a) length shall be the metre;
	(b) mass shall be the kilogram;
Section 5 of the Act	(c) time shall be the second;
provides that the <u>base</u>	(d) electric current shall be the ampere;
unit of;-	(e) thermodynamic temperature shall be the kelvin;
	(f) luminous intensity shall be the candela; and
	(g) amount of substance shall be the mole

Section 11 of the Act provides that **no person** shall, in relation to any goods, things or service, quote, or make announcement of, whether by word of mouth or otherwise, any price or charge, or issue or exhibit any price list, invoice, cash memo or other document, or prepare or publish any advertisement, poster or other document, or indicate the net quantity of a pre-packaged commodity, or express in relation to any transaction or protection, any quantity or dimension, **otherwise than in accordance with the standard unit of weight, measure or numeration.**

APPOINTMENT AND POWER OF DIRECTOR, CONTROLLER AND LEGAL METROLOGY OFFICERS

DIRECTOR OF LEGAL METROLOGY

Section 13 of the Act empowers the **Central Government** to appoint (by Notification) a **Director of legal metrology**, Additional Director, Joint Director, Deputy Director, Assistant Director and other employees for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to inter-State trade and commerce.

The Director and every legal metrology officer, appointed, shall exercise such powers and discharge such functions in respect of such local limits as the Central Government may, by notification, specify. Every legal metrology officer shall exercise powers and discharge duties under the general superintendence, direction and **control of the Director**.

The Director, the Controller and every legal metrology officer authorised to perform any duty by or under this Act **shall be deemed to be a public servant** within the meaning of section 21 of the Indian Penal Code. **No suit, prosecution or other legal proceeding** shall lie against the Director, the Controller and legal metrology officer authorised to perform any duty by or under this Act in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.



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CONTROLLER OF LEGAL METROLOGY

Section 14 of the Act, provides that the <u>State Government may</u>, by notification, appoint a Controller of legal metrology, Additional Controller, Joint Controller, Deputy Controller, Assistant Controller, Inspector and other employees for the State for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to intra State trade and commerce.

POWER OF INSPECTION, SEIZURE BYLEGAL METROLOGY OFFICERS

Section 15 of the Act confer powers of inspection on the Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, *that* -

any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation.

The powers include <u>entry</u> at any reasonable time into any such premises and s<u>earch for and inspect</u> and also include <u>seizer</u> of any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under the Act has been, or is likely to be, committed in the course of or in relation to, any trade and commerce.

Where any **goods seized are subject to speedy or natural decay**, the Director, Controller or legal metrology officer **may dispose of such goods in such manner as may be prescribed**.

FORFEITURE

Every non-standard or unverified weight or measure, and every package used in the course of, or in relation to, any trade and commerce and seized under section 15, shall be liable to be forfeited to the State Government.

However, such unverified weight or measure shall not be forfeited to the State Government if the person from whom such weight or measure was **seized gets the same verified and stamped within** such time as may be prescribed.

Every weight, measure or other goods seized under section 15 but not forfeited shall be disposed of by such authority and in such manner as may be prescribed.

DECLARATIONS ON PRE-PACKAGED COMMODITIES

Section 18 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity *unless*

- (a) such package is in such standard quantities or number and
- (b) bears thereon such declarations and particulars in such manner as may be prescribed.

<u>Any advertisement</u> mentioning the **retail sale price** of a pre-packaged commodity shall contain a declaration as to the **net quantity** or <u>number</u> of the commodity contained in the package in such form and manner as may be prescribed.



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APPROVAL OF MODEL

Every person, before manufacturing or importing any weight or measure shall seek the approval of model of such weight or measure in such manner, on payment of such fee and from such authority as may be prescribed.

PROHIBITION ON MANUFACTURE, REPAIR OR SALE OF WEIGHT OR MEASURE WITHOUT LICENCE

Section 23 of the Act provides that **no person** shall manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure **unless he holds a licence issued by the Controller**.

However, no licence to repair shall be required by a manufacturer for repair of his own weight or measure.

Section 24 provides for verification and stamping of weight or, measure. Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction, shall, before puttingSuch weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed.

The Central Government may prescribe the kinds of weights and measures for which the verification is to be done through the **Government approved Test Centre.**

PENALTY FOR COUNTERFEITING OR SEALS

A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced. Section 44 provides that whoever counterfeits any seal specified by or under this Act or the rules made thereunder, or sells or otherwise disposes of any counterfeit seal, or possesses any counterfeit seal, or counterfeits or removes or tampers with any stamp, specified by or under this Act or rules made thereunder, or affixes the stamp so removed on, or inserts the same into, any other weight or measure, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

OFFENCES BY COMPANIES

Section 49 provides that where an offence under this Act has been committed by a company, the person, if any, who has been nominated to be **in charge** of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as a **person responsible**);

However, such person shall not be liable to any **punishment**, if he proves that the offence was committed **without his knowledge** and that he **exercised all due diligence** to prevent the commission of such offence.

Where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to the neglect on the part of, any **director, manager, secretary or other officer**, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly



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ADVANCE

YOUR

KNOWLEDGE



- Q. 1. HEALTHY FOODS GAVE AN ADVERTISEMENT IN THE DAILY NEWSPAPER FOR ITS PREPACKED SNACKS, MENTIONING RETAIL SALE PRICE OF THE PACKAGE. HOWEVER, IN THE ADVERTISEMENT, NEITHER THE NET QUANTITY NOR THE NUMBER OF SNACKS CONTAINED IN THE PACKAGE WAS GIVEN. WHAT ARE THE LEGAL PROVISIONS IN THE REGARD AND WHETHER THE ADVERTISEMENT GIVEN BY HEALTHY FOODS IS APPROPRIATE AND SUFFICIENT AS PER RELEVANT LAW?
- Ans. According to provisions contained in Section 18 of the legal metrology Act, 2009, no person shall manufacture, pack sell import distribute, deliver, offer, expose for sale any pre packaged commodity unless such package is in such standard quantities or number and bears there on such declaration and particulars in such manner as may be prescribed. Including the net quantity or number of commodity contained in the package in such form and prescribed manner.

Thus, the advertisement given by Healthy Food is not appropriate and sufficient as per the Legal Metrology Act 2009 as it neither contain the net quantity nor the commodity contained in the package.

- Q. 2. DEFINE THE TERM 'STAMP' UNDER THE LEGAL METROLOGY ACT, 2009.
- Ans. Section 2(t) of the Legal Metrology Act, 2009 defines "stamp" as to mean a mark, made by impressing, casting, engraving, etching, branding, affixing prestressed paper seal or any other process in relation to, any weight or measure with a view to.
 - (a) Certifying that such weight or measure conforms to the standard specified by or under this Act, or
 - (b) Indicating that any which mark which was previously made here on certifying that such weight or measure conforms to the standards specified by or under this Act, has been obliterated;
- Q. 3. "EVERY NON-STANDARD WEIGHT AND MEASURE USED IN THE COURSE OF TRADE IS LIABLE TO BE FORFEITED". COMMENT.

[Dec. 2017]

Ans. As per Section 16 of the Legal metrology Act, 2009, every non-standard or unverified weight or measure, and every package made in contravention of section 18 of the Legal Metrology Act, 2009, used in the course of, or in relation to any trade and commerce and seized under section 15 of the Legal Metrology Act, 2009, shall be liable to be forfeited to the State Government.

However, such unverified weight or measure shall not be forfeited to the State Government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may prescribed.

Every weight, measure or other goods seized under section 15 but not forfeited shall be disposed of by such authority and in such manner may be prescribed.

- Q. 2. DISCUSS THE POWERS OF LEGAL
 METROLOGY OFFICER REGARDING
 INSPECTION AND SEIZURE UNDER LEGAL
 METROLOGY ACT, 2009. [June. 2017]
- Every legal metrology officer so appointed shall Ans. exercise such powers and discharge such functions in respect of such local limit as the State Government may, be notification, specify. Section 15 of the Legal Metrology Act, 2009 confer the powers of inspection on the Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation-
 - Enter at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which trade and commerce has taken place, or is intended to take place and any record, register or other document relating thereto.
 - Seizer of any weight, measure or other goods any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under the Ac has been, or is likely to be, committed in the course of or in relation to, any trade and commerce.

Where any goods sized are subject to speedy or natural decay, the Director, Controller or legal metrology officer may dispose of such goods in such manner as may be prescribed.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



- 1. Healthy Foods gave an advertisement in the daily newspaper for its pre-packed snacks mentioning retail sale price of the package. However, in the advertisement, neither the net quantity nor the number of snacks contained in the package was given. What are the legal provisions in this regard and whether the advertisement given by healthy foods it appropriate and sufficient as per relevant law?
- 2. What is meant by the international organization of Legal metrology (OIML) certificate system for measuring instruments?
- 3 What are the declarations required to be made by the manufacturers on pre-packaged commodities? Also, refer to penalties provided under the Legal Metrology Act, 2009 for the contravention.
- 4 State the powers of the Director to inspect and seize under the Legal Metrology Act, 2009.
- 5 Define 'legal metrology' under the Legal Metrology Act, 2009.
- **6.** With reference to the relevant legal enactments, write short notes on the following:
 - (i) Salient features of the Legal Metrology Act, 2009.
 - (ii) Pre-packaged commodity

FROM ICSI MODULE



Answer the following:

- 1. What are the objectives of Legal Metrology Act, 2009?
- **2.** Enumerate the powers and functions of Controller and Legal Metrology Officer?
- **3.** Write short note on Counterfeit.
- Every non-standard weight and measure used in the course of trade is liable to be forfeited. Comment.
- **5.** Briefly explain the provision regarding declaration on pre-packed commodities.



Q. 1.
Answer to Question No. 1:-



Q. 2.
Answer to Question No. 2:-

CHAPTER

6

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

Covering-

- Salient Features of the Real Estate Act, 2016
- Advantages of RERA
- Important Definition
- Responsibilities of the Appropriate Government
- Establishment and incorporation of real estate regulatory authority
- Prior registration of real estate project with real estate regulatory authority
- Projects exempt from the ambit of the act
- Registration of real estate agents
- Functions and duties of promoter
- Rights and suties of allotters
- Eatablishment of central advisory council
- Establishment of real estate appellate tribunal
- Role of Company Secretaries

EXPECTED
MARKS COVERAGE
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- From Bare Act...-



THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

No. 16 of 2016

[25th March, 2016.]

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTERI

PRELIMINARY

1. (1) This Act may be called the Real Estate (Regulation and Development) Act, 2016.

Short title, extent and commence-

- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Definitions.

- 2. In this Act, unless the context otherwise requires,-
- (a) "adjudicating officer" means the adjudicating officer appointed under sub-section (1) of section 71;
- (b) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;
- ${f 3.}\,(I)$ No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Prior registration of real estate project with Real Estate Regulatory Authority.

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

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REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

Real estate sector plays a catalytic role in fulfilling the needs and demand for housing and infrastructure in the country and is an important pillar of the economy. While this **sector has grown significantly** in recent years, *it has been largely unregulated*, with absence of professionalism and standardisation and lack of adequate consumer protection.

The objects and reasons for which the Act has been framed are:



SALIENT FEATURES OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

- (a) Establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector
- (b) Ensure sale of plot, apartment of building, as the case may be, or sale of real estate project, in an efficient and transparent manner
- (c) Ensure protect the interest of consumers in the real estate sector
- (d) Establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority (RERA)
- (e) Regulates transactions between buyers and promoters of residential real estate projects
- (f) Establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs)

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ADVANTAGES OF RERA (REAL ESTATE DEVELOPMENT AND REGULATION ACT)



IMPORTANT DEFINITIONS

"Allottee" in relation to a real estate project, means the person

to whom a plot, apartment or building, as the case may be, has been **allotted**, **sold** (whether as freehold or leasehold) or otherwise transferred by the promoter,

and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

<u>"Carpet area"</u> means the net **usable floor area** of an apartment, <u>excluding</u> the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, **but includes** the area covered by the internal partition walls of the apartment

Common areas" mean—

- (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;
- (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
- (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
- (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
- (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the real estate project;
- (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

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Appropriate Government'

Section 2(g) of the Act defines 'appropriate Government' to mean as follows:

- (i) for the Union territory without Legislature, the Central Government
- (ii) for the Union territory of Puducherry, the Union territory Government;
- (iii) for the Union territory of Delhi, the Central Ministry of Urban Development;
- (iv) for the **State**, the State Government.

RESPONSIBILITIES OF THE APPROPRIATE GOVERNMENT

- (a) As per section 84 of the Act the appropriate Government is required to notify Rules for the implementation of the Act, within six months of its commencement.
- **(b)** As per section 20 of the Act the appropriate Government is required **to establish the Regulatory Authority** within 1 year from its commencement i.e. maximum by 30th April, 2017.
- (c) As per section 20 of the Act the appropriate Government is required to **designate an officer** (**preferably Housing Secretary**) as **interim Regulatory Authority**, until the establishment of a full time Regulatory Authority.
- (d) As per section 43 of the Act the appropriate Government is required to **establish the Appellate Tribunal** within 1 year from its commencement i.e. maximum by 30th April, 2017.
- **(e)** As per section 43 of the Act the appropriate Government is required to designate **an existing Appellate Tribunal (under any other law in force)** to be the Appellate Tribunal, until the establishment of a full time Appellate Tribunal.
- (f) The Chairperson and Members of the Regulatory Authority and the Members of the Appellate Tribunal are required to be appointed based on recommendations of a Selection Committee, thus the appropriate Government is required to constitute the Selection Committee.
- (g) As per section 28 and section 51 the appropriate Government is required to appoint officers and other employees of Regulatory Authority and the Appellate Tribunal. In addition, it is required to identify office space etc. and other infrastructure for its functioning.
- (h) As per section 41 the Central Government (i.e. the Ministry of HUPA) is required to establish the Central Advisory Council.
- (i) As per section 75 the appropriate Government is required to constitute a 'Real Estate Regulatory Fund'.

ESTABLISHMENT AND INCORPORATION OF REAL ESTATE REGULATORY AUTHORITY

The **appropriate Government** shall establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under the Act.

The appropriate Government of **two or more States or Union territories may, if it deems fit,** establish one single Authority.

Further, the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be

the Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of the 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.

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COMPOSITION OF AUTHORITY

The Authority shall consist of a **Chairperson and not less than two whole time Members** to be appointed by the appropriate Government.

Term of office of Chairperson and Members

The Chairperson and Members shall hold office for a term not exceeding **five years** from the date on which they enter upon their office, or until they **attain the age of sixty-five years**, **whichever is earlier** and shall not be eligible for re-appointment.

FUNCTIONS OF AUTHORITY FOR PROMOTION OF REAL ESTATE SECTOR

The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector **make recommendations to the appropriate Government** of the competent authority, as the case may be, on,

- (a) protection of interest of the allottees, promoter and real estate agent;
- **(b)** creation of a **single window system** for ensuring time bound project approvals and clearances for timely completion of the project;
- (c) creation of a **transparent and robust grievance redressal mechanism** against acts of ommission and commission of competent authorities and their officials;
- (d) measures to encourage **investment in the real estate sector including measures** to increase financial assistance to affordable housing segment;
- (e) measures to encourage construction of **environmentally sustainable and affordable housing**, promoting standardisation and use of appropriate construction materials, fixtures, fittings and construction techniques;

FUNCTIONS OF AUTHORITY

The functions of the Authority shall include—

- (a) to register and regulate real estate projects and real estate agents registered under the Act;
- (b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- (c) to **ensure compliance of its regulations or orders or** directions made in exercise of its powers under the Act:
- (d) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of the Act.

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RESPONSIBILITIES OF THE 'REGULATORY AUTHORITY'

Registration of the real estate project and the real estate agent Extension of Registration of the Recommendation for the growth real estate\ Project and its and Promotion of a healthy. revocation transparent, Renewal of registration of the real estate agent and its **Notify Regulations** revocation To appoint one or more To maintain a website of 'adjudicating office records for public revewing

PRIOR REGISTRATION OF REAL ESTATE PROJECT WITH REAL ESTATE REGULATORY AUTHORITY

A promoter shall not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established.

APPLICATION FOR REGISTRATION OF REAL ESTATE PROJECTS

Step 1

Applicant has to file an **application for registration** with RERA in prescribed form along with prescribed fees and documents.

Step 2

Application for registration must be either approved or rejected within a **period of 30 days** from the date of application by the RERA.

Step 3

On successful registration, the **promoter of the project will be provided with a registration number, a login id and password** for the applicant.

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ATTACHMENT WITH APPLICATION

The promoter shall enclose the following documents along with the application, namely:-

- (a) a **brief details of his enterprise** including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;
- (b) a **brief detail of the projects** launched by him, **in the past five years**, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
- (c) the **location details of the project**, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (d) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (e) the number and areas of garage for sale in the project;
- (f) the names and addresses of his real estate agents, if any, for the proposed project;

GRANTING OF REGISTRATION BY THE AUTHORITY

On receipt of the application, the Authority shall within a period of thirty days-

- (a) grant registration subject to the provisions of the Act and the rules and regulations made thereunder. A registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or
- **(b)** <u>reject the application for reasons</u> to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder. Application shall not be rejected unless the applicant has been given an opportunity of being heard in the matter

REVOCATION OF REGISTRATION

The Authority may, on receipt of a **complaint or suomoto** in this behalf or on the recommendation of the competent authority, **revoke the registration granted, after being satisfied that**—

- (a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made there under;
- (b) the promoter violates any of the terms or conditions of the approval given by the competent authority;
- (c) the promoter is involved in any kind of unfair practice or irregularities

PROJECTS EXEMPT FROM THE AMBIT OF THE ACT

The following projects do not require to be registered under the Act:

- 1. Area of land does not exceed 500 Sq. Meters
- 2. No. of apartments does not exceed 8
- 3. In case of Renovation/Repair/Re-development
 - where the area of land proposed to be developed does not exceed **500 square meters** or
 - the number of apartments proposed to be developed does not exceed eight, inclusive of all phases;
- 4. where the promoter has received completion certificate for a real estate project prior to commencement of this Act;



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REGISTRATION OF REAL ESTATE AGENTS

Real estate broking is **one of the easiest business in India** as there are **no specific qualification or experience requirements** and also **there is no code of practice** which sets accountability, transparency and professional benchmarks.

Hence, there are thousands of non-professional agents/ brokers in every city operating without any accountability.

Hence, to bring in transparency and accountability, agents have also been covered under the ambit of RERA and **registration requirement has been mandatory for them** as per **section 9** of the Act.

Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

FUNCTIONS AND DUTIES OF PROMOTER

- 1. No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in any planning area, without registering the real estate project with the Real Estate Regulatory Authority. Section 3(1)
- 2. Every promoter shall make an application to the Authority for registration of the real estate project in prescribed form and manner. Section 4(1)
- 3. The promoter shall enclose the prescribed documents along with the application. Section 4(2)
- 4. The promoter shall also enclose a prescribed declaration along with application. Section 4(2)(1)
- 5. The promoter shall keep 70% of the amount received from allottees in a separate bank account in a scheduled bank. Section 4(2)(l)(D)
- **6.** The promoter shall withdraw the amounts from the separate account after it is certified by an engineer, an architect and a chartered accountant in practice and the withdrawal is in proportion to the percentage of completion of the project. Section 4(2)(1)(D)
- 7. The promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice. Section 4(2)(1)(D)
- **8.** The promoter shall comply with anything required by or under the Act or the rules or the regulations. Section 7(1)(a)
- **9.** The promoter shall enter into an agreement for sale and register the same before he accepts a sum more than ten per cent of the cost of the apartment, plot, or building. Section 13(1)
- **10.** The promoter shall ensure that the agreement for sale is in prescribed form and contain specified particulars. Section 13(2)

RIGHTS AND DUTIES OF ALLOTTEES

Section 20 provides for the various rights and duties of the allottees.

- (1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in the Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.
- (2) The **allottee shall be entitled to know stage-wise time schedule** of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.



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- (3) The **allottee shall be entitled to claim the possession** of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter.
- (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under the Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale.
- (5) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

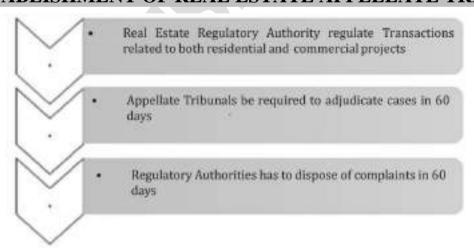
ESTABLISHMENT OF CENTRAL ADVISORY COUNCIL

- (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.
- (2) The **Minister** to the Government of India in charge of the Ministry of the Central Government dealing with **Housing** shall be the **ex officio Chairperson of the Central Advisory Council**.
- (3) The Central Advisory Council shall also consist of **not more than ten members** to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

FUNCTIONS OF CENTRAL ADVISORY COUNCIL

The Central Advisory Council is **required to advise the Central Government** on matters relating to implementation of the Act, questions of policy, protection of consumer interest, foster growth and development of the real estate sector, and other matters as may be assigned to it by the Central Government.

ESTABLISHMENT OF REAL ESTATE APPELLATE TRIBUNAL



- (1) The appropriate Government shall, establish an Appellate Tribunal to be known as the (name of the State/Union territory) **Real Estate Appellate Tribunal**.
- (2) The appropriate Government may, if it deems necessary, establish **one or more benches** of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.
- (3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.



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- (4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal.
- (5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under the Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.

COMPOSITION OF APPELLATE TRIBUNAL

The Appellate Tribunal shall consist of a **Chairperson and not less than two whole time Members** of which one shall be a **Judicial member and other shall be a Technical or Administrative Member**.

TERM OF OFFICE OF CHAIRPERSON AND MEMBERS

The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding **five years from** the date on which he enters upon his office, **but shall not be eligible for re-appointment.**

RIGHT TO LEGAL REPRESENTATION

Section 56 deals with Right to legal representation. It provides that the applicant or appellant may either appear in person or authorise one or more chartered accountants or **company secretaries** or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may.

APPEAL TO HIGH COURT

Any person aggrieved by any decision or order of the Appellate Tribunal may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. The High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appealant was prevented by sufficient cause from preferring the appeal in time.

ROLE OF COMPANY SECRETARIES



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> <u>COMPANY SECRETARIES - ONE STOP PROFESSIONAL ADVISORY</u> <u>SERVICES FOR REAL ESTATE PROJECTS</u>

Company Secretaries holding Certificate of Practice by becoming an expert in the act can indulge in **providing advice in respect of:**

- (a) Financial Advisory Services
- (b) Various applicable provision particular on real estate project
- (c) Registration and extension procedure of real estate project with competent authority
- (d) Various obligation, functions and duties of promoter in a real estate project
- (e) Penal Provisions under the Act
- (f) Funding Options for Real Estate Project
- (g) Taxation aspects for Real Estate Project
- (h) Legal & Regulatory Compliances

> <u>COMPANY SECRETARIES – AS A LEGAL REPRESENTATIVE</u>

As per Section 56 of the Act, a Company Secretary holding certificate of practice **can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer** on behalf of applicant or appellant as the case may be.

Hence a Company Secretary holding certificate of practice can –

- (a) Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- (b) Represent a person before real estate appellate tribunal.
- (c) Represent a person before any other competent authority for any other purpose under Real Estate (Regulation and Development) Act, 2016.



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Q. 1.
Answer to Question No. 1:-



Q. 2.
Answer to Question No. 2:-

CHAPTER

7

THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

Covering-

- The Salient Features of the Benami Transactions Act
- Important Definitions
- Prohibition of benami transactions
- Prohibition of the right to recover property held benami
- Notice and attachment of property involved in benami transaction
- Classification and vesting of benami property
- Appellate tribunal
- Appeal to high court
- Special courts
- Offences and prosecution

EXPECTED
MARKS COVERAGE
(1 to 5)

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- From Bare Act... -

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REGD, NO. D. L.-33004/99



MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 11th August, 2016/Shravana 20, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 10th August, 2016, and is hereby published for general information:—

THE BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016

No. 43 or 2016

[10th August, 2016.]

An Act further to amend the Benami Transactions (Prohibition) Act, 1988.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:---

 (1) This Act may be called the Benant Transactions (Prohibition) Amendment Act, 2016.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Insertion of new heading before section 1. In the Berawi Transactions (Prohibition) Act, 1988 (hereinafter referred to as the principal Act), before section 1, the following heading shall be inserted, namely45 of 1988.

"CHAPTERI

PRELIMENARY:"

Amendment of section 1. In section 1 of the principal Act, for sub-section (f), the following sub-section shall be substituted, namely:—

"(1) This Act may be called the Prohibition of Benami Property Transactions Act, 1988."

45 of 1988.

Substitution of new section for section 2. Definitions. 4. For section 2 of the principal Act, the following section shall be substituted, namely:—

2. In this Act, unless the context otherwise requires,-

 (1) "Adjudicating Authority" means the Adjudicating Authority appointed under section 7;

(2) "Administrator" means an Income-tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961.

43 of 1961.

(3) "Appellate Tribunal" means the Appellate Tribunal established under section 30.

(4) "Approving Authority" means an Additional Commissioner or a Joint Commissioner as defined in clauses (IC) and (28C) respectively of section 2 of the Income-tax Act, 1961;

43 of 1961.

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THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

The Benami Transactions (Prohibition) Act, 1988 was enacted to

prohibit benami transactions and

the right to recover property held benami.

The Salient Features of the Benami Transactions (Prohibition) Act, 1988 are as under:

- (a) It defines a <u>benami transaction</u> and <u>benami property</u> and also provides for exclusions and transactions which shall not be construed benami
- **(b)** It provides the consequences of entering into a prohibited benami transactions
- (c) It lays down the **procedure for determination** and **related penal consequences** in the case of a prohibited benami transaction
- (d) It also provides that the powers of civil court shall be available to authorities under the said Act
- **(e) Miscellaneous Provisions** have been provided for service of notice, protection of action taken in good faith, etc.
- (f) Central Government empowers to make rules for the implementation of the provisions of the Act
- (g) It enables the Central Government in consultation with the Chief Justice of the High Court to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Act
- (h) It provides **penalty for entering** into benami transactions and for furnishing any false documents in any proceeding under the Bill

IMPORTANT DEFINITIONS

(a) "BENAMI PROPERTY"

Benami Property means any property which is the subject matter of a benami transaction and also includes the proceeds from such property. [Section 2(8)]

(b) "BENAMI TRANSACTION"

As per Section 2 (9) of the benami transaction means-

(A) a transaction or an arrangement—

- (a) where a property is transferred to, or is held by, <u>a person</u>, and the <u>consideration for such</u> property has been provided, or paid by, another person; and
- (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—
 - (i) a **Karta**, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
 - (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;
 - (iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;



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- (B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or
- (C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;
- (<u>D</u>) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

(c) "BENAMIDAR"

Benamidar means a **person or a fictitious person,** as the case may be, <u>in whose name the benami</u> <u>property is transferred or held</u> and <u>includes a person who lends his name.</u>[Section 2(10)]

(d) "BENEFICIAL OWNER"

"Beneficial Owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar. [Section 2(10)]

PROHIBITION OF BENAMI TRANSACTIONS

As per Section 3 of the Act, no person shall enter into any benami transaction.

Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to **three years or with fine or with both.**

Where any person enters into any benami transaction on and after the date of commencement of the **Benami Transactions** (**Prohibition**) **Amendment Act, 2016,** shall be punishable in accordance with the provisions contained in **Chapter VII.**

<u>Chapter VII</u> deals with offences and prosecution. It provides that if a person is found guilty of offence of benami transaction by the competent court, he shall be punishable with rigorous imprisonment <u>for a term</u> not less than one year but which may extend to 7 years and <u>shall also be liable to fine which may extend to 25% of the fair market value of the property</u>.

PROHIBITION OF THE RIGHT TO RECOVER PROPERTY HELD BENAMI

Section 4(1) provides that <u>no suit, claim or action</u> to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person <u>shall lie by or on behalf of a person claiming to be the real owner of such property</u>

Further, Section 4(2) provides that **no defense** based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, **shall be allowed** in any suit, claim or action **by or on behalf of a person claiming to be the real owner of such property.**

PROPERTY HELD BENAMI LIABLE TO CONFISCATION

As per section 5 of the Act any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.



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NOTICE AND ATTACHMENT OF PROPERTY INVOLVED IN BENAMI TRANSACTION

Section 24 relates to notice and attachment of property involved in benami transaction.

Sub-section (1) of this section provides that where the **Initiating Officer**, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to such person to show cause within such time as may be specified in the notice why the property should not be treated as benami property. Sub-section (2) of this section provides that a copy of the notice may also be served upon such other person who is a beneficial owner.

Sub-section (4) of this section provides that the **Initiating Officer**, after making such inquires and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1), -

- (a) where the **provisional attachment** has been made under sub-section (3), -
 - (i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or
 - (ii) **revoke the provisional attachment of** the property with the prior approval of the Approving Authority;
- (b) where provisional attachment has not been made under sub-section (3), -
 - (i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order made by the Adjudicating Authority under sub-clause (3) of section 26; or
 - (ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

CONFISCATION AND VESTING OF BENAMI PROPERTY

Section 27 deals with confiscation and vesting of benami property.

Sub-section (1) of this section provides that where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property.

Sub-section (3) of this section provides that where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

APPELLATE TRIBUNAL

Chapter V deals with the provisions relating to the Appellate Tribunal.

Section 30 deals with establishment of Appellate Tribunal. The said section seeks to provide that the Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.



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APPEAL TO HIGH COURT

Section 49 relates to appeal to High Court.

Sub-section (1) of this section provides that any party **aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days** from the date of communication of the decision or order of the Appellate Tribunal to him on **any question of law** arising out of such order.

Sub-section (2) of this section provides that the High Court may entertain any appeal after the said period of sixty days, if it is satisfied that the appellant was prevented by **sufficient cause** from filing the appeal within the period specified in sub-section (1).

SPECIAL COURTS

Section 50 relates to Special Courts.

Sub-section (1) of this section provides that the Central Government, in consultation with the Chief Justice of the High Court, shall for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

OFFENCES AND PROSECUTION

Chapter VII deals with the provisions relating to offences and prosecution.

Section 53 relates to penalty for benami transaction. Sub-section (1) of this section provides that where any person enters into a benami transaction

in order to defeat the provisions of any law or

to avoid payment of statutory dues or to avoid payment to creditors,

the beneficial owner, benamidar and any other person who abets or induces any person to enter into such benami transaction, shall be guilty of the offence of benami transaction.

Sub-section (2) of this section provides that whoever is found guilty of the offence of benami transaction referred to above shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.

OFFENCES BY COMPANIES

Section 62 relates to consequences in case of offences by companies.

Subsection (1) of this section provides that where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, **every person who, at the time the contravention was committed, was in charge of,** and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Sub-section (2) of this section provides that **nothing contained** in subsection (1) of this section shall render any **person liable to punishment**, if he proves that the contravention took place **without his knowledge**.



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Sub-section (3) of this section provides that **notwithstanding anything contained in sub-section** (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the **consent or connivance of**, or is attributable to any neglect on the part of any **director, manager, secretary or other officer of the company**, such director, manager, secretary or other officer shall also **e deemed to be guil**ty of the contravention and **shall be liable to be proceeded against** and punished accordingly.



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Q. 1. **Answer to Question No. 1:-**



Q. 2.
Answer to Question No. 2:-

CHAPTER

8

SPECIFIC RELIEF ACT, 1963

Covering-

- Bare Act
- Specific Performance
- Specific Performance of Part of a Contract
- Who May Sue For Specific Performance
- Persons Against Whom Specific Performance Available
- Persons Against Whom Specific Performance Cannot be Enforced
- Rectification of an Instrument
- Rescission of Contract
- Cancellation of Instruments
- Recovery of Possession of Movable And Immovable Property
- Declaratory Decrees
- Preventive Reliefs
- Injunction
- Advance Your Knowledge
- Self Test Questions

EXPECTED
MARKS COVERAGE
(1 to 5)

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- From Bare Act...-

The Gazette of India

THE SPECIFIC RELIEF ACT, 1963

ACT NO. 47 OF 1963

[13th December, 1963.]

An Act to define and amend the law relating to certain kinds of specific relief.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follow: -

PARTI

PRELIMINIARY

- Short title, extent and commencement.—(7) This Act may be called the Specific Relief Act, 1963.
 - (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.
 - Definitions.—In this Act, unless the context otherwise requires,—
 - (a) "obligation" includes every duty enforceable by law;
 - (b) "settlement" means an instrument (other than a will or codicil as defined by the Indian Succession Act, 1925 (39 of 1925), whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of;
 - (c) "trust" has the same meaning as in section 3 of the Indian Trusts Act, 1882 (2 of 1882), and includes an obligation in the nature of a trust within the meaning of Chapter IX of that Act;
 - (d) "trustee" includes every person holding property in trust;
 - (e) all other words and expressions used herein but not defined, and defined in the Indian Contract Act, 1872 (9 of 1872), have the meanings respectively assigned to them in that Act.
 - 3. Savings.—Except as otherwise provided herein, nothing in this Act shall be deemed-
 - (a) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or
 - (b) to affect the operation of the Indian Registration Act, 1908 (16 of 1908), on documents.
- 4. Specific relief to be granted only for enforcing individual civil rights and not for enforcing penal laws.—Specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

PARTIL

SPECIFIC RELIEF

CHAPTER I

RECOVERING POSSESSION OF PROPERTY

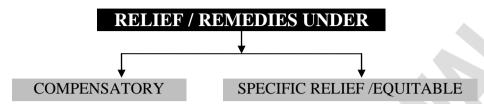
- Recovery of specific immovable property.—A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).
- Suit by person dispossessed of immovable property.—(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming

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SPECIFIC RELIEF ACT, 1963

The expression 'specific relief' means a relief in specie. It is a remedy which aims at the exact fulfilment of an obligation.

The law relating to specific relief in India is provided in the Specific Relief Act, 1963.



Under the Specific Relief Act, 1963, remedies have been divided as specific relief (Sections 5-35) and reventive relief (Sections 36-42). These are:

- (i) Recovering possession of property (Sections 5-8);
- (ii) Specific performance of contracts (Sections 9-25);
- (iii) Rectification of Instruments (Section 26);
- (iv) Rescission of contracts (Sections 27-30);
- (v) Cancellation of Instruments (Section 31-33);
- (vi) Declaratory decrees (Sections 34-35); and
- (vii) Injunctions (Sections 36-42).

SPECIFIC PERFORMANCE

Specific performance refers to an order for performance of any agreement or contract by the party to the agreement.

> CONTRACTS WHICH CAN BE SPECIFICALLY ENFORCED

SECTION 10

The specific performance of any contract may, in the discretion of the Court, be enforced:-

- (a) When there exists **no** standard for **ascertaining** the actual damage caused by the non-performance of the act agreed to be done, or
- (b) When the act agreed to be done is such that **compensation** in money for its non-performance would **not** afford **adequate** relief.

The explanation provides that unless and until the contrary is proved, the Court shall presume:-

- (A) that the breach of a contract to transfer **immovable** property **cannot** be adequately relieved by compensation in **money**,
- (B) that the breach of a contract to transfer **movable** property **can be** so relieved **except** in the two cases:-
 - (a) where the property is not an <u>ordinary article of commerce or is of special value or interest</u> to the plaintiff, or consists of goods which are <u>not easily obtainable in the market</u>,
 - (b) where the property is held by the defendant as the agent or trustee of the plaintiff.

Section 11 provides that the specific performance of a contract may, in the discretion of the Court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust.



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COURT DISCRETION

Section 20 of the Specific Relief Act, 1963 states that the **jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so,** but the discretion of the **court is not arbitrary**. But is sound and reasonable and is guided by judicial principles and is capable of correction by a court of appeal.

CASES IN WHICH THE COURT MAY EXERCISE DISCREATION NOT TO DECREE SPECIFIC PERFORMANCE

- (a) Where the terms of the contract gives the plaintiff an unfair advantage over the defendant.
- (b) Where the performance of contract would involve some hardship on the defendant.
- (c) Where it not equitable to enforce specific performance.

SPECIFIC PERFORMANCE OF PART OF A CONTRACT SECTION 12

Section 12 (1) lays down the general principle that except as otherwise provided in this section, the Court shall not direct the specific performance of a part of a contract.

Sub-sections (2)-(4) lay down the exceptions to this general rule (i.e the Court may, at the suit of the either party, direct the specific performance) as follows:-

(a) the part which is left unperformed is only a small proportion to the whole in value and can be compensation in money.

For example;—A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belongs to A and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use of enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made in goods in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him. For not conveying the two remaining bighas; B may be directed at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase money less the sum awarded as compensation for the deficiency.

(b) where a party to a contract is unable to perform part which forms a considerable part of the whole, relinquishes all claims to the performance of the remaining part of the contract and all rights to compensation

For example, A contracts to sell B a piece of land consisting of 100 bighas for $\ref{1,00,000}$. It turns out that only 50 bighas of land belong to A. 50 bighas are substantial part of the contract. A cannot demand specific performance of the contract but B can demand specific performance to get 50 bighas of land from A by paying the full consideration i.e. $\ref{1,00,000}$.

(c) when a part of a contract which stands on a separate and independent footing from another part of the same contract.

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CONTRACTS WHICH CANNOT BE SPECIFICALLY ENFORCED SECTION 14

Section 14 lays down the contracts which cannot be specifically enforced. They are:-

- (a) A contract for the non-performance of which compensation in money is an adequate relief;
- **(b)** A contract which runs into **such minute and numerous details** that the Court cannot enforce specific performance of its material terms or which is dependent upon the personal qualification or volition of the parties or a contract from its nature is such that the Court cannot enforce specific performance;
- (c) A contract which is in its nature **determinable**:
- (d) A contract, the performance of which involves the performance of a **continuous duty** which the court cannot supervise.
- (e) A contract to refer present or future difference to **arbitration** unless otherwise provided in Arbitration Act.

WHO MAY SUE FOR SPECIFIC PERFORMANCE SECTION 15

Section 15 lays down that specific performance of a contract may be obtained by:-

- (a) any party thereto;
- (b) the representative in interest or the principal, of any party thereto;
- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company the new company which arises out of the amalgamation;
- (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such a contract is warranted by the terms of the incorporation of the company provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

PERSONS AGAINST WHOM SPECIFIC PERFORMANCE AVAILABLE SECTION 19

	(a)	either party thereto,
According to	(b)	any person claiming under him,
Section 19, specific	(c)	any person claiming under a title which though prior to the contract, and
performance of a		known to the plaintiff, might have been displaced by the defendant,
contract may be		Examples - joint tenants claiming survivorship and remainder man.
enforced against:-	(d)	when a company has entered into a contract and subsequently becomes
		amalgamated with another company — the new company which arises out of
		the amalgamation,

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PERSONS AGAINST WHOM SPECIFIC PERFORMANCE CANNOT BE ENFORCED

SECTION 16

Under Section 16),	who would not be entitled to recover compensation for its breach, or
specific performance of	of	
a contract cannot b	e (b)	who has became incapable of performing,
enforced in favour of	<u>a</u> (c)	who fails to perform the essential terms of the contract.
person:-	(d)	who acted in fraudulent manner.

RECTIFICATION OF AN INSTRUMENT

According to **section 26** of the Specific Relief Act, 1963, when, through fraud or mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which Company Act, 1956, applies) **does not express their real intention, then**: -

- (a) either party or his representative-in-interest may institute a suit to have the instrument rectified; or
- (b) The **plaintiff** may, in any suit in which any right rising under the instrument is in issue, claim in his pleading that the instrument be rectified; or
- (c) A **defendant** in any such suit as is referred to in above clause, may in addition to any other defence open to him, ask for rectification of the instrument.

If, in any suit the Court finds that the instrument through fraud or mistake, does not express the real intention of the parties, the Court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

No relief for the rectification of an instrument shall be granted to any party unless it has been specifically claimed.

RESCISSION OF CONTRACT

According to Section 27 of the Specific Relief Act 1963, **Rescission** *means making a contract void ab initio*. It is not applicable to void contracts. It goes along with a suit for specific performance.

The main purpose of granting rescission is to bring all the parties in their original position.

- The court **may recent** a contract in the following cases:-
 - (a) If the contract is terminable by plaintiff.
 - **(b)** In case of unlawful contracts.
- The court may **refuse to recent** a contract in the following cases:-
 - (a) contract has been rectified by the plaintiff.
 - **(b)** the parties to the contract cannot be brought to the same position as they were in the beginning of the contract.
 - (c) third parties have a acquit rights for value and in good faith.
 - (d) if contract cannot be partly rescinded.

A person suing for rescission cannot in the alternative sue for specific performance, but a person suing for specific performance can sue of rescission.



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CANCELLATION OF INSTRUMENTS

Section 31 provides that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may in its discretion, so adjudge it and order it to be delivered up and cancelled.

Relief of cancellation under Section 31 would be available in the following conditions are satisfied:

- (i) an instrument id void or voidable against the plaintiff;
- (ii) the plaintiff may apprehend serious injury if the instrument is left outstanding; and
- (iii) it is proper under the circumstances of the case to grant the relief.

Anglo Daubing	A agrees to sell and deliver a ship to B, to be paid by B's acceptance of four bills of
Co.	exchange, for sums amounting to `30,000 to be drawn by A on B. The bills are drawn and
V.	accepted, but the ship is not delivered according to the agreement. A sues B on one of the
Roberson	bills. B may obtain the cancellation of all the bills.

RECOVERY OF POSSESSION OF MOVABLE AND IMMOVABLE PROPERTY

SECTION 5-8

Sections 5 to 8 deal with recovery of possession of property.

Sections 5 and 6 deal with recovery of possession of immovable property

while Sections 7 and 8 deal with movable property.

➤ RECOVERY OF POSSESSION OF SPECIFIC IMMOVABLE PROPERTY SECTION 5

According to Section 5, a person, entitled to the possession of specific immovable property may recover the same in the **manner** provided by the **Code of Civil Procedure**, **1908**. The action under Section 5 arises when claim is made on the basis of "title".

➤ RECOVERY OF POSSESSION OF DISPOSSESSED IMMOVABLE PROPERTY SECTION 6

The Act provides another relief under Section 6 for the recovery of possession of immovable property where the claim is based merely on 'possession'. Section 6 provides that if any person is dispossessed without his consent, of immovable property otherwise than in due course of Law, he or any person claiming through him may be suit recover possession thereof.

There are two restrictions; no suit under Section 6 shall be brought:-

- (i) after the expiry of 6 months from the date of dispossession
- (ii) against the Government.

No appeal or review is allowed of any order of decree passed under this Section. A suit under Section 6 is maintainable between landlords and tenants. Heirs are also entitled to sue for recovery of possession.



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RECOVERY OF SPECIFIC MOVABLE PROPERTY

SECTION 7-8

> (SECTION 7)

A person is entitled to recover the **possession** of specific **movable property** in the manner provided by the **Code of Civil Procedure**, **1908**. A trustee may sue for possession of movable property of which he is a trustee.

A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

Movable property to be recovered should be capable of being ascertained/identified.

> (SECTION 8)

Section 8 lays down that any **person having the possession** or control of a particular article of movable property of which he is **not** the **owner**, may be **compelled** specifically, to **deliver** it to the person entitled to its immediate possession in any of the following four cases:-

- (a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff,
- (b) when the compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed,
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss,
- (d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

DECLARATORY DECREES

SECTION 34

A declaratory decree is a decree whereby any right as to any property or the legal character of a person is **judicially ascertained**. Declaratory decree merely declares the right of the decreehoder vis-a-vis the judgement debtor and does not in terms direct the judgement debtor to do or refrain from doing any particular act or thing.

The object of declaratory decree is to remove doubt by having legal status of any rights declared by the Court. The relief by way of declaration is purely discretionary.

To maintain a suit under this Section following conditions must be fulfilled:-

- (a) The plaintiff must be a person entitled to any property;
- (b) The defendant must be a person denying plaintiff's title to such right;
- (c) The declaration issued for must be a declaration that the plaintiff is entitled to property
- (d) Where the plaintiff is not able to seek further relief than a mere declaration

The relief by way of declaration is purely discretionary. Instances of legal characters are —

- (1) Divorce on the ground of impotency
- (2) Legal character by marriage
- (3) Legitimacy or illegitimacy
- (4) Status of an adopted son
- (5) Priest of temple



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Effect of Declaration

Declaration is binding on:-

- (i) the parties to the suit,
- (ii) persons claiming through them respectively

PREVENTIVE RELIEFS

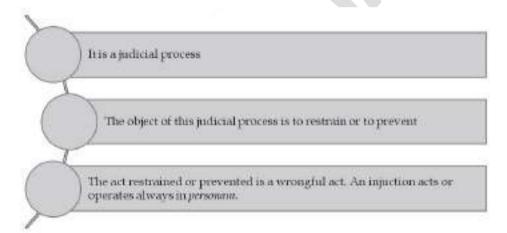
Preventive Relief are those reliefs which prevent a party from doing that which he is under an obligation not to do. Preventive relief is granted at the **discretion** of the **court** by way of an injunction.

INJUNCTION

An injunction is a specific **order** of the Court whereby a party is ordered to refrain from doing or to do a particular act or thing".

Characteristics of an injunction

An injunction has three characteristic eatures;



TYPES OF INJUCTION

1. TEMPORARY INJUNCTION

Temporary injunctions are such as are to **continue until a specified time**, or **until the further order of the Cou**rt and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.

2. PERPETUAL / PERMANENT INJUNCTION

Perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of right, or from the commission of an act, which would be contrary to the rights of the Plaintiff.

3. MANDATORY INJUNCTION

Mandatory injunctions are granted to prevent the **breach of an obligation, when it becomes necessary to compel the performance of certain acts which the Court is capable of enforcing**. The Court may in its discretion grant mandatory injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

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<u>DIFFERENCE BETWEEN THE REMEDIES OF SPECIFIC PERFORMANCE AND INJUNCTION</u>

- (a) Specific performance is decreed to **compel** the performance of an active duty, while injunction is decreed to **prevent** the violation of a negative duty.
- **(b)** Normally, the former deals with **contracts**, while the latter with **torts** and other subjects of equitable nature.
- (c) If a contract is **positive** in its nature, it calls for the relief of **specific performance**, On the other hand, if it is **negative** in its nature, it calls for relief of **injunction**.

INJUNCTION WHEN REFUSED

SECTION 41

Section 41 provides that an injunction cannot be granted —

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought,
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced.

INJUNCTION TO PERFORM NEGATIVE AGREEMENT

SECTION 42

Where a contract **comprises** an **affirmative agreement** to do a certain act, coupled with **negative agreement**, express or implied, not to do a certain act, the circumstance that the **Court** is **unable** to compel specific performance of the **affirmative** agreement, the Court **may** grant an injunction to **perform** the **negative agreement**.

	(i)	The contract should comprise of two agreements, one affirmative and
Conditions		another negative.
necessary for the	(ii)	Both the agreements must be divisible.
applicability of this	(iii) The negative agreement must relate to a specific act.	
situation are:-	(iv)	The Court should be unable to compel specific performance of the
		affirmative agreement.

Illustration

Sangini, a singer agreed to sing at Lakshmi theatre from January to April, and not to sing anywhere else during that period. Afterwards she entered into contract to sing at Kamala's theatre during the said period and refused to sing at Lakshmi theatre during that period. Lakshmi theatre filed an application in appropriate court against Sangini.

In this case the court may grant an injuction restraining Sangini from singing in any other theatre but, it cannot grant an injuction directing her to sing at Lakshmi theatre. (Lumley v. Wagner)



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Q. 1.
Answer to Question No. 1:-



Q. 2.
Answer to Question No. 2:-